# LAW OF PERJURY

## SECOND EDITION 2021

**-:BY:-**

**Adv. Nilesh C. Ojha**
National President
Indian Bar Association

**Co-Authors**

**Adv.Dipali N. Ojha**
Advocate High Court &
Supreme Court

**Adv. Vivek Ramteke**
Chairman
All India SC, ST, & Minority
Lawyers Association

# MAIN CONTENTS OF THE BOOK

**EFFECTIVE USE OF SECTION 340 OF CRIMINAL PROCEDURE CODE FOR PROVING YOUR CASE**

- How to prosecute mischievous litigants who have filed false Suits, cases, and action against witnesses who are involved in creating false evidence and using it to be genuine one.
- How to get compensation when opposite party has harassed you by creating false evidence, forged documents etc.
- How to get bail in false cases.
- How to prove your innocence or any claim when you are on right side.
- Special note for Rape, DRT, 138 NI Act cases, NCLT& Civil Suits.
- Law regarding urgent hearing and decision in such cases.
- How to deal with police in a case of false implication.
- How to understand the corrupt motive of a Judge in passing an order and also how to understand the 'Intellectual Dishonesty', Fraud & abuse of Power, Malice, Bias, Prejudice by a Judge, and how to ask for recusal of a Judge or transfer of the case to other Bench.

- How to prosecute (before Criminal & Civil Court) the Judges, Advocates, Government Pleaders, Public Prosecutor, Collector, public servants, Minister etc. involved in passing wrong and unlawful orders to help the undeserving opposite parties and to frustrate your rights.
- Law on right of advocates to ask the court to consider all of their arguments.
- How to deal with corrupt Police officers, Public Servants, Ministers etc.
- How to deal with arrogant, impish, mischievous, corrupt and criminal minded judges.
- How to prosecute Judges under defamation.
- Precedents/Cases where the Judges of all Courts (lower to Higher) were prosecuted, dismissed, suspended and punished.
- Cases where corrupt judges of Lower Court to Supreme Court are not prosecuted despite having clear proofs against them.
- How to deal and prosecute the Media involved in publishing one sided news.

**Second Edition :2021**

**Published By: INDIAN BAR ASSOCIATION**



**INDIAN BAR ASSOCIATION**

(ADVOCATES' ASSOCIATION OF INDIA)

Office No.2,3 Kothari House, 5/7 Oak Lane, A.R.Allana Marg,

Above Burma Burma Restaurant, Fort, Mumbai 400 023

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**Email:** info@indianbarassociation.co.in

# CONTENTS

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***With the blessing of***

***All Mighty God***

***and***

***My Parents***

***Shri. Chandrabhushan Ojha &***

***Late Smt. Suman Ojha***

************************************************

**THIS BOOK IS DEDICATED TO:-**

1) **Yogeshwar 'Shrikrishna'**

2) **Messenger of God 'Moses'**

3) **Messenger of God 'Jesus Christ'**

4) **Prophet Muhammad (PBUH)**

5) **Swami Vivekananda**

6) **Chatrapati Shivaji Maharaj**

7) **Netaji Subhash Chandra Bose**

8) **Bharatratna Dr. Babasaheb Ambedkar**

9) **Martin Luther King, Jr.**

10) **Master Navmesh, Kaushal, Raj, Ku. Kunjika & Ku. Manya**

11) **Human Rights Activists and all those who have directly and indirectly, helped us in publishing this book**

***'Don't see who is right,***

***See what is right.'***

***- Adv.Nilesh C. Ojha***

## ABOUT THE AUTHOR

**Life and Law**

Advocate Nilesh C. Ojha is a practising advocate at Bombay High Court and the Supreme Court of India. He is also a human rights activist who works relentlessly for awareness and protection of fundamental human rights. His mission is to create a Humanist Global India.

Adv. Nilesh Ojha was born and brought up in Pusad, Maharashtra where he completed his B.E (Electronics and Telecommunications). His journey from an Engineer to a Lawyer is indeed an epitome of how an adversity has the seeds of prosperity within it!

Upon completion of B.E., Adv. Nilesh Ojha had joined a leading payments processing company. However his stint in the corporate world was cut short by the strong entrepreneurial streak in him which constantly prodded him to start something of his own and be his own boss!

He chose to venture into the business of mineral water bottling and distribution, in partnership with one of his peers. His business acumen coupled with hard work and confidence turned his maiden venture into a remarkable success until the day when he was wronged by his very own business associates. He found himself embroiled in a legal tussle and realized

that he had become a hapless victim of legal system, which was abused by his adversaries to their advantage. Adv. Nilesh Ojha witnessed his own state of helplessness and the consequences for not being aware of one's rights and not knowing how to initiate action in case of infringement of one's fundamental rights. He vowed to fight back vehemently against the unjust treatment meted out to him. He resolved to make it his mission of life to fight against injustice, not only for himself but for a bigger cause of eliminating injustice heaped on people who have little or no access to legal aid and those who are from economically weaker sections of society. The journey of a human rights' activist had just begun…

As a first step towards gearing up for his mission, Adv. Nilesh Ojha started reading law books and case laws extensively, to gain the knowledge of various laws and allied topics. He always had a special interest in the law of crimes and this branch of law remains his favorite even today. While he continued reading law, he could sense an innate flair and passion for this subject. He was convinced that the unfortunate event in the past, where his close business associates had caused him tremendous hardship, had in fact taken him closer to 'inner calling' of his life which he had found in the field of law. His zeal and grasp for law did not go unnoticed by the lawyers whom he regularly met for discussion on various legal topics and issues. His deep interest in law combined with an ardent desire to work towards protection of human rights, encouraged him to go for formal education in law. He pursued and completed L.L.B from Dr. Babasaheb Ambedkar Marathwada University, Aurangabad and set up his practice in Pusad initially. It did not

take a long time for him to emerge as a prominent name in the legal circle at Pusad and a force to reckon with, at the Nagpur High Court which he frequented for his clients' matters. As he advanced in his legal practice, he never lost his focus on his mission of establishing ethical governance, bringing positive reforms in our system and building a democracy in its purest essence. He has successfully built a strong team of lawyers and volunteers who share his vision and support him in his mission. Such teams are present at various locations across Maharashtra State including Mumbai, where Adv. Nilesh Ojha is currently based.

There is another aspect of this activist cum lawyer's personality which one cannot miss and that is his deep study and inclination towards spirituality which is evident from his instant references to verses from Holy Quran, Holy Bhagwad Geeta, Holy Bible and other religious texts and scriptures. He strongly believes that preserving and promoting ethical behavior is crucial as we march towards eliminating evil and crime from our society. In his efforts to simplify and communicate the messages explained in our holy texts, he has published the following two books in 2016 which he has co-authored with Mr. Q.S. Khan (author of 'Law of Success for both the Worlds'):

- Bhagwad Geeta mein Ishwar ke aadesh
- Pavitra Ved aur Islam Dharm

Adv. Nilesh Ojha opines that knowledge multiplies when it is shared and hence he has always endeavored to disseminate his knowledge of law for the benefit of legal fraternity as well as for the common man. He has authored several books which are well received within the legal community and

general public. His first book titled **'पोलीस, नागरिक आणि मानवाधिकार कयदा' ('Police, Nagarik ani Manavadhikar Kayda')** was published in Marathi in 2008. Thereafter he published a book on **'Human Rights Manual' in 2012**, which focused on the law for getting bail. Due to overwhelming response to the first edition of this book, a revised edition was published in 2014. The second edition is presented in two volumes, titled as **'How to Get Justice against Wrong Judgments and Police Atrocities'**.

His much applauded treatise came in 2017 titled **'How to take action against false affidavits & false cases (Law of Perjury)'** This book is a first of its kind that offers the model drafts of petitions/applications to be filed in the court in order to initiate action against dishonest litigants who create false evidences, distort the existing evidence on record and twist the material facts. The second edition (2019) of this book would be released soon.

Adv. Nilesh C. Ojha is also an anti corruption crusader and supports initiatives that aim at weeding out corruption from the system including the government offices, administrative agencies, police system, judiciary and likewise. He is **the acting Chairman of the Maharashtra Chapter of Transparency International India (TII)** – which is a global organization working towards eradication of corrupt practices in governance.

He is also **All India President of Indian Bar Association (IBA)** which is an association of advocates and also a forum for bringing together like minded

advocates who are keen on championing the cause of bringing fairness and transparency in our judiciary for the betterment of society.

## LIST OF BOOKS AUTHORED BY ADV. NILESH C. OJHA:-

| Sr. No. | Name of the Book | Year of Publication |
|---|---|---|
| 1. | '**पोलीस, नागरिक आणि मानवाधिकार कायदा**' ('Police, Nagarik ani Manavadhikar Kayda') | 2008 |
| 2. | 'Human Rights Manual' – Law of Bails | 2012 |
| 3. | How to Get Justice against Wrong Judgments and Police Atrocities'. | 2014 |
| 4. | Bhagwad Geeta mein Ishwar ke aadesh | 2016 |
| 5. | Pavitra Ved aur Islam Dharm | 2016 |
| 6. | 'How to take action against false affidavits & false cases (Law of Perjury)' | 2017 |
| 7. | Practical Guide to Law of Precedents & Procedures in Indian Courts | 2019 |

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***Acknowledgements***

***for***

***Author's previously published Books***

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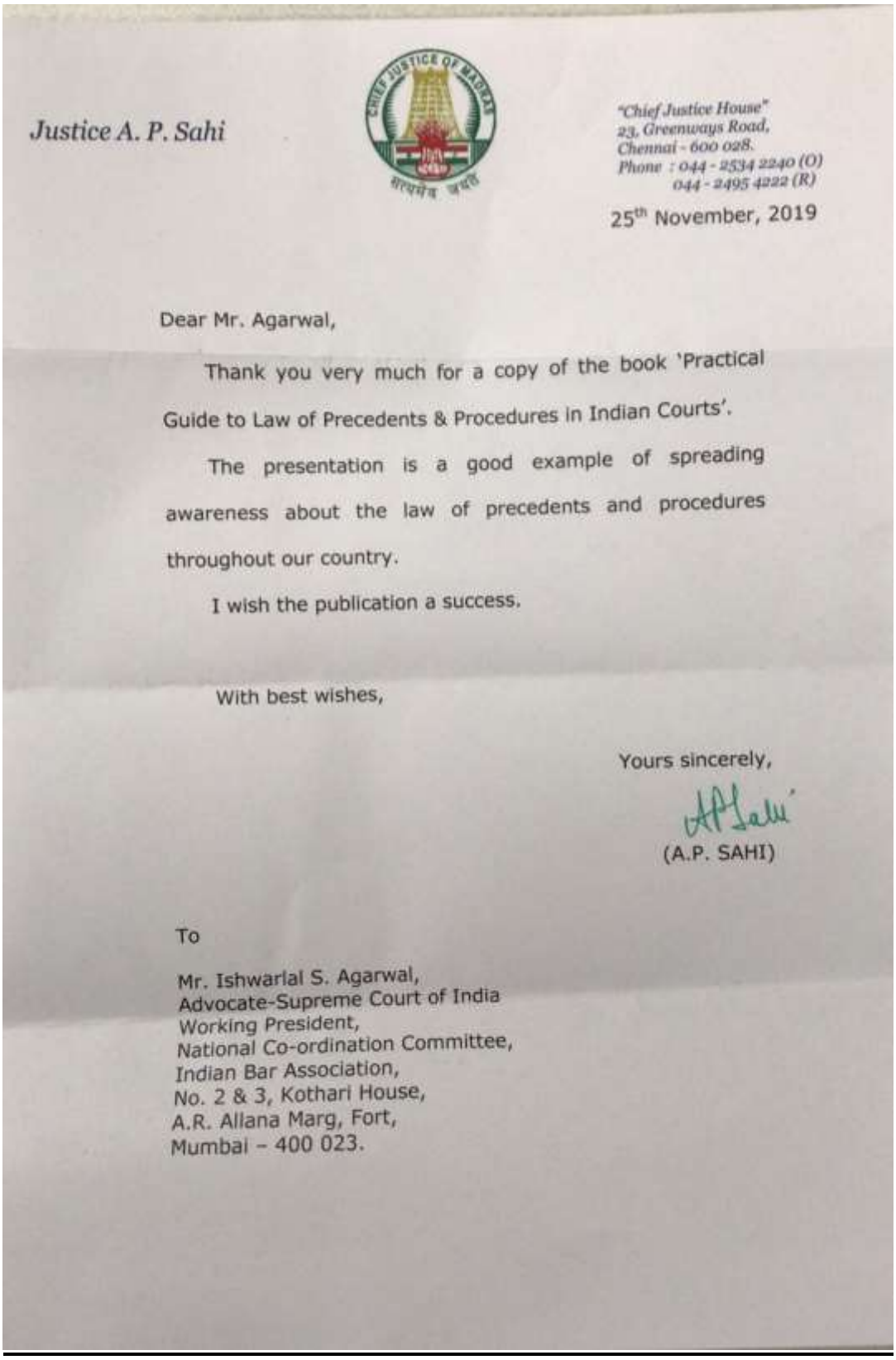


*Justice A. P. Sahi*

*"Chief Justice House"*
*23, Greenways Road,*
*Chennai - 600 028.*
*Phone : 044 - 2534 2240 (O)*
*044 - 2495 4222 (R)*

25th November, 2019

Dear Mr. Agarwal,

Thank you very much for a copy of the book 'Practical Guide to Law of Precedents & Procedures in Indian Courts'.

The presentation is a good example of spreading awareness about the law of precedents and procedures throughout our country.

I wish the publication a success.

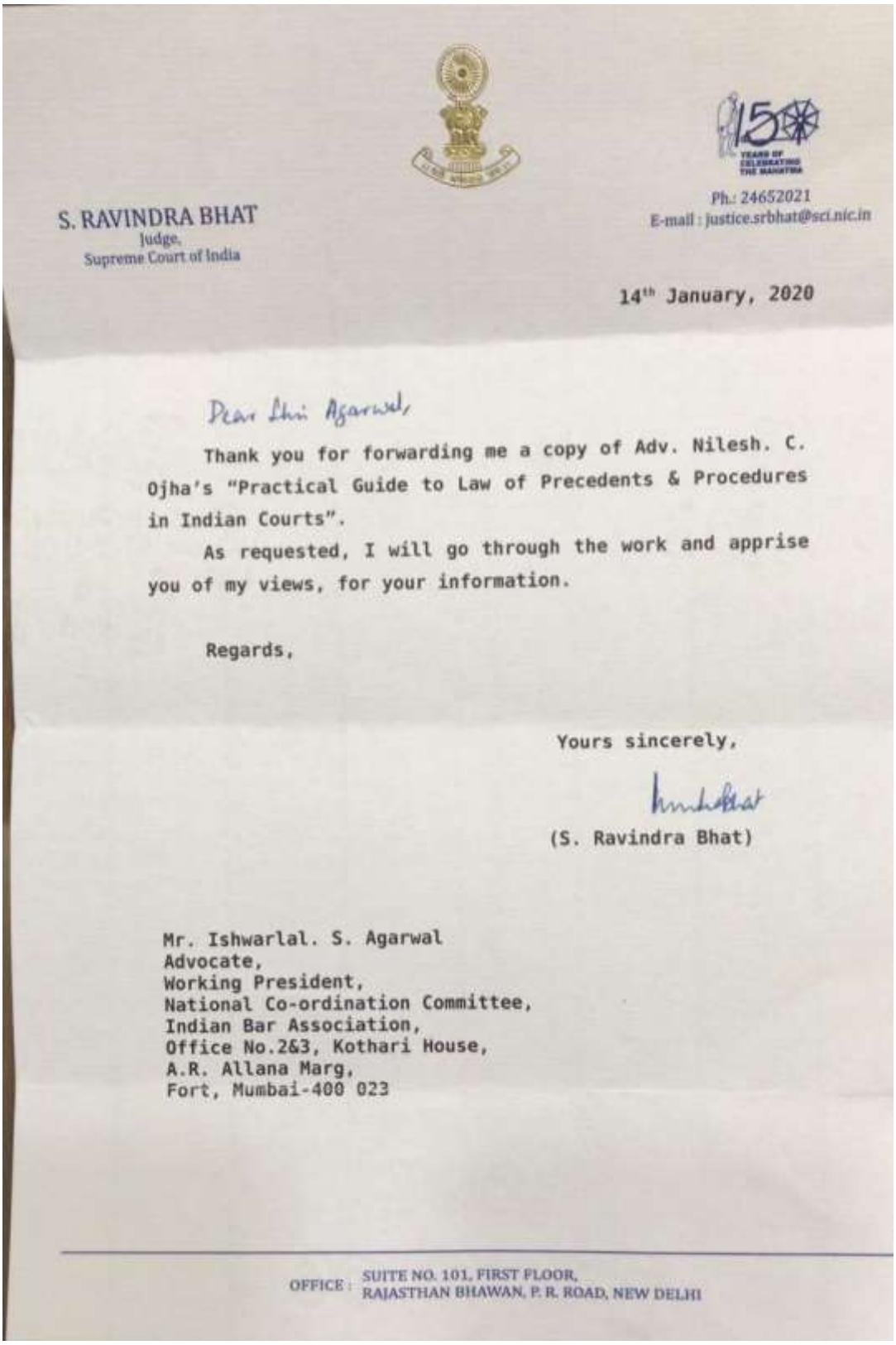
With best wishes,

Yours sincerely,

(A.P. SAHI)

To

Mr. Ishwarlal S. Agarwal,
Advocate-Supreme Court of India
Working President,
National Co-ordination Committee,
Indian Bar Association,
No. 2 & 3, Kothari House,
A.R. Allana Marg, Fort,
Mumbai – 400 023.



S. RAVINDRA BHAT
Judge,
Supreme Court of India

Ph.: 24652021
E-mail : justice.srbhat@sci.nic.in

14th January, 2020

Dear Shri Agarwal,

Thank you for forwarding me a copy of Adv. Nilesh. C. Ojha's "Practical Guide to Law of Precedents & Procedures in Indian Courts".

As requested, I will go through the work and apprise you of my views, for your information.

Regards,

Yours sincerely,

(S. Ravindra Bhat)

Mr. Ishwarlal. S. Agarwal
Advocate,
Working President,
National Co-ordination Committee,
Indian Bar Association,
Office No.2&3, Kothari House,
A.R. Allana Marg,
Fort, Mumbai-400 023

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B.Sc., B.L. (Gold Medalist)
LL.B., LL.M. (Gold Medalist)
Ph.D., P.D.I. (London)
Fulbright Scholar
Vice-Chancellor

RGNUL/VCO/3284
DATE: 07-11-2017

**Shri Ishwarlal S. Agarwal**
**Advocate,**
**Supreme Court of India**
**Working President**
**National Co-ordination Committee**
**Indian Bar Association**

Dear Sir,

Thank you very much for sending the copy of book titled as "Practical Guide to Law of Precedents & Procedures in Indian Courts" authored by Adv. Nilesh C. Ojha and published by Indian Bar Association.

It has been a wonderful reading by scanning the different pages of the book. I congratulate the author for doing this great job. I am confident the book will be a valued edition in the legal literature. The book has been placed in the library for the reference of the students and the researchers.

With warm regards,

Yours Sincerely,

Paramjit S. Jaswal

Sidhuwal, Bhadson Road, Patiala (Punjab) -147 006

Telephone: 0175-2391202 (O) Fax: 0175-2391691(O) E-mail: vc@rgnul.ac.in Website : www.rgnul.ac.in

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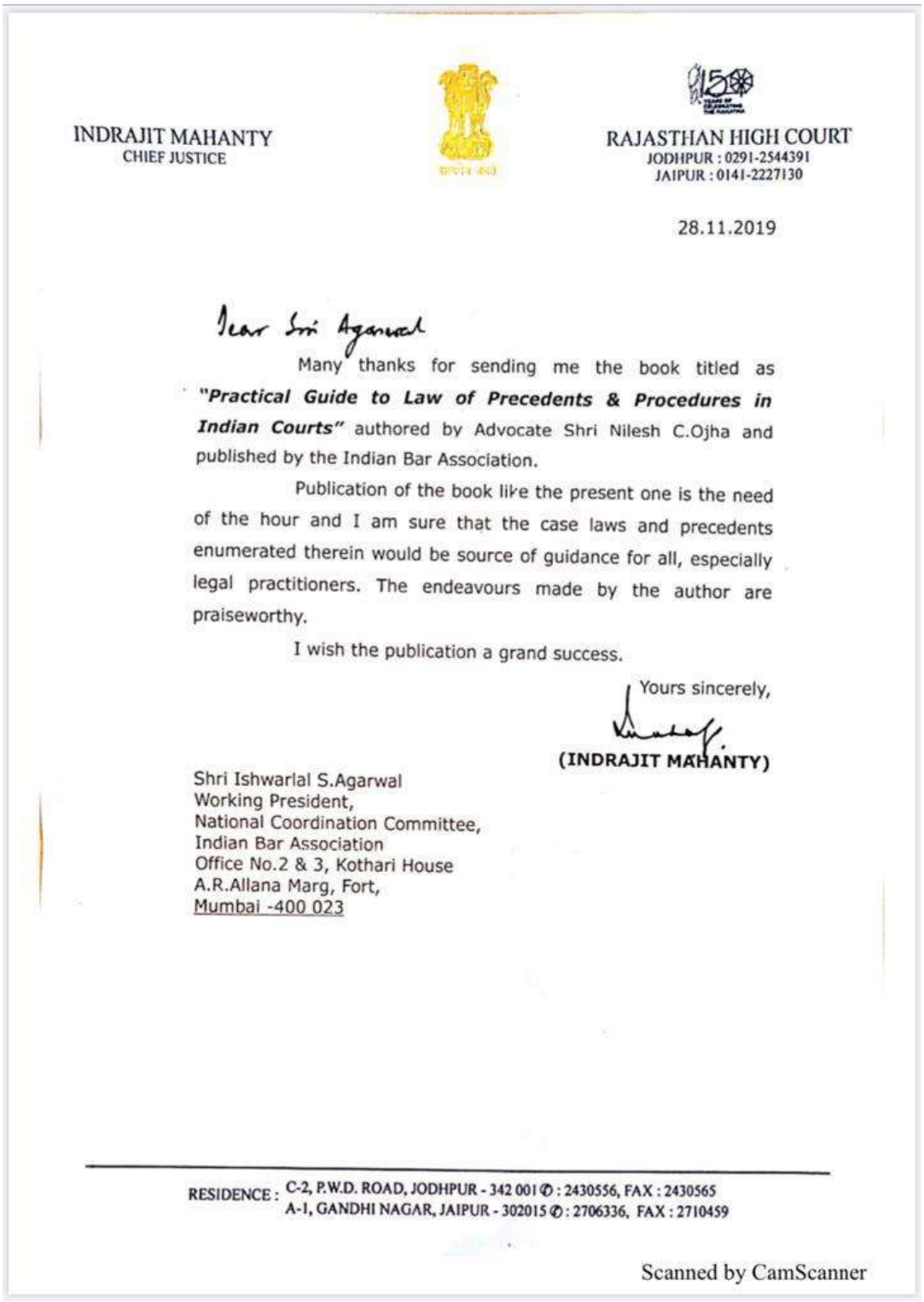

INDRAJIT MAHANTY
CHIEF JUSTICE

RAJASTHAN HIGH COURT
JODHPUR : 0291-2544391
JAIPUR : 0141-2227130

28.11.2019

Dear Sri Agarwal

Many thanks for sending me the book titled as ***"Practical Guide to Law of Precedents & Procedures in Indian Courts"*** authored by Advocate Shri Nilesh C.Ojha and published by the Indian Bar Association.

Publication of the book like the present one is the need of the hour and I am sure that the case laws and precedents enumerated therein would be source of guidance for all, especially legal practitioners. The endeavours made by the author are praiseworthy.

I wish the publication a grand success.

Yours sincerely,

**(INDRAJIT MAHANTY)**

Shri Ishwarlal S.Agarwal
Working President,
National Coordination Committee,
Indian Bar Association
Office No.2 & 3, Kothari House
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निशांत आर. कटनेश्वरकर
ॲडव्होकेट
सुप्रिम कोर्ट, नवी दिल्ली.

Date - 24-01-2012

प्रति,
निलेश चं. ओझा
राष्ट्रीय अध्यक्ष
मानव अधिकार सुरक्षा परिषद.

प्रिय, श्री. निलेश ओझा,

आपल्या द्वारा लिखीत पुस्तक 'लॉ ऑफ बेल्स्' मला पाठविल्याबद्दल मी आपले आभार व्यक्त करतो. पुस्तकाकरीता आपण घेतलेले परिश्रम खरच प्रशंसनीय आहेत.

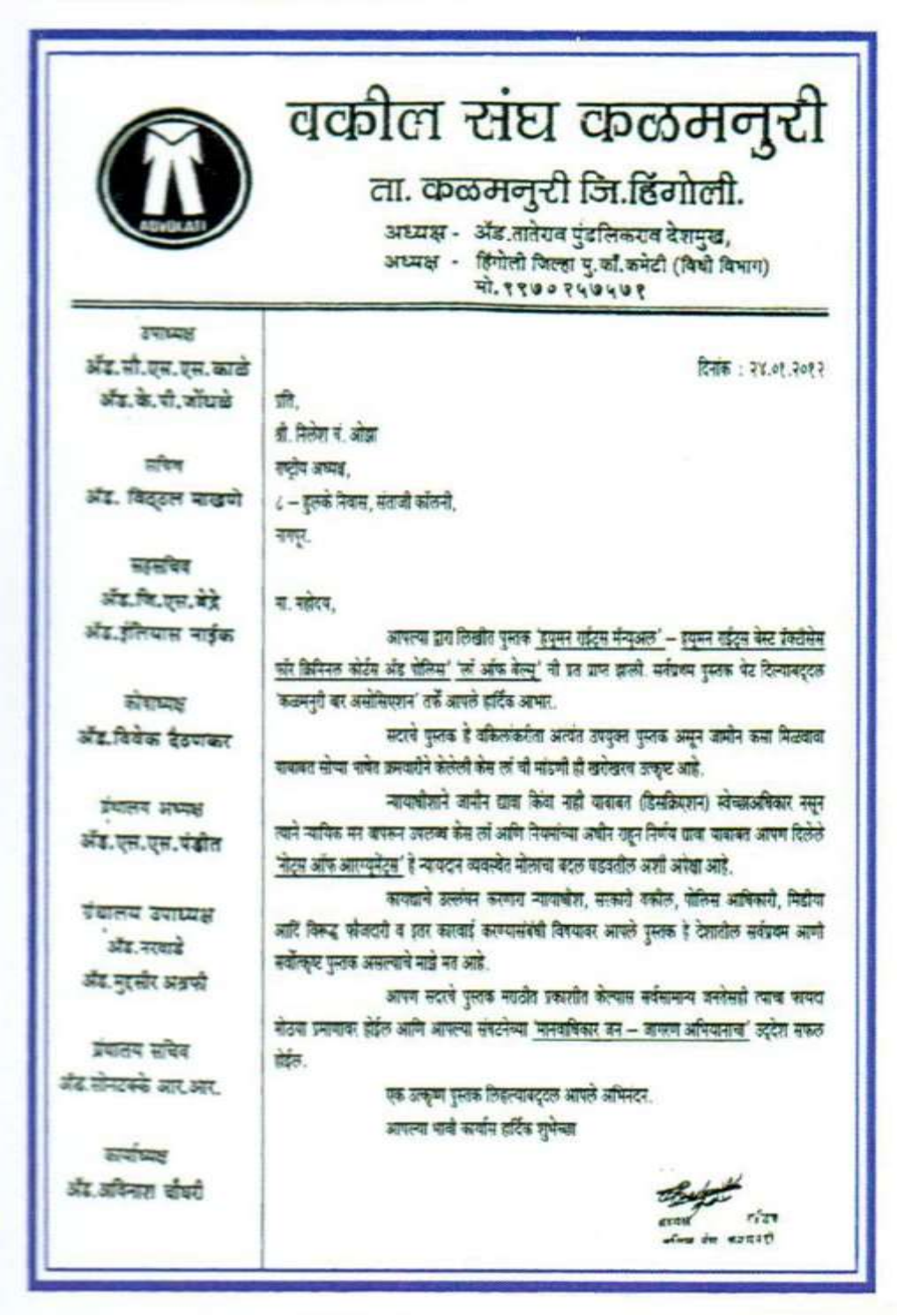
माझे असे मत आहे की सदरचे पुस्तक हे फौजदारी वकीली करणारे वकिल आणी सामान्य नागरिक ज्यांना जामीन विषयीची माहिती नाही त्यांना सर्वांना उपयुक्त ठरेल.

आपण भविष्यात विविध विषयांवर असेच सुंदर पुस्तक प्रकाशीत कराल अशी आशा करतो.

आपल्या उज्वल भविष्याकरीता हार्दिक शुभेच्छा !

आपला

निशांत आर. कटनेश्वरकर
ॲडव्होकेट
सुप्रिम कोर्ट, नवी दिल्ली.



# वकील संघ कळमनुरी

## ता. कळमनुरी जि.हिंगोली.

अध्यक्ष - अॅड.तातेराव पुंडलिकराव देशमुख,
अध्यक्ष - हिंगोली जिल्हा चु.कॉ.कमेटी (विधी विभाग)
मो. ९९७०२५७५७१

उपाध्यक्ष
अॅड.सौ.एस.एस.काळे
अॅड.के.पी.जोंधळे

सचिव
अॅड. विट्ठल चाळणे

सहसचिव
अॅड.वि.एस.बेंद्रे
अॅड.इलियास चाईक

कोषाध्यक्ष
अॅड.विवेक देठणकर

ग्रंथालय अध्यक्ष
अॅड.एस.एस.पंडीत

ग्रंथालय उपाध्यक्ष
अॅड.नरवाडे
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ग्रंथालय सचिव
अॅड.सोनटक्के आर.आर.

कार्यालय
अॅड.अविनाश चौधरी

दिनांक : २४.०१.२०१२

प्रति,
श्री. निलेश वं. ओझा
राष्ट्रीय अध्यक्ष,
८ – हुलके निवास, संताजी कॉलनी,
नागपूर.

मा. महोदय,

आपल्या द्वारा लिखीत पुस्तक 'ह्युमन राईट्स मॅन्युअल' – ह्युमन राईट्स बेस्ट प्रॅक्टीसेस इन क्रिमिनल कोर्टस अॅड पोलिस' 'लॉ ऑफ बेल्स' ची प्रत प्राप्त झाली. सर्वप्रथम पुस्तक पेट टिल्याबद्दल 'कळमनुरी बार असोसिएशन' तर्फे आपले हार्दिक आभार.

सदरचे पुस्तक हे वकिलांकरीता अत्यंत उपयुक्त पुस्तक असून जामीन कसा मिळवावा याबाबत सोप्या भाषेत क्रमवारीने केलेली केस लॉ ची मांडणी ही खरोखरच उत्कृष्ट आहे.

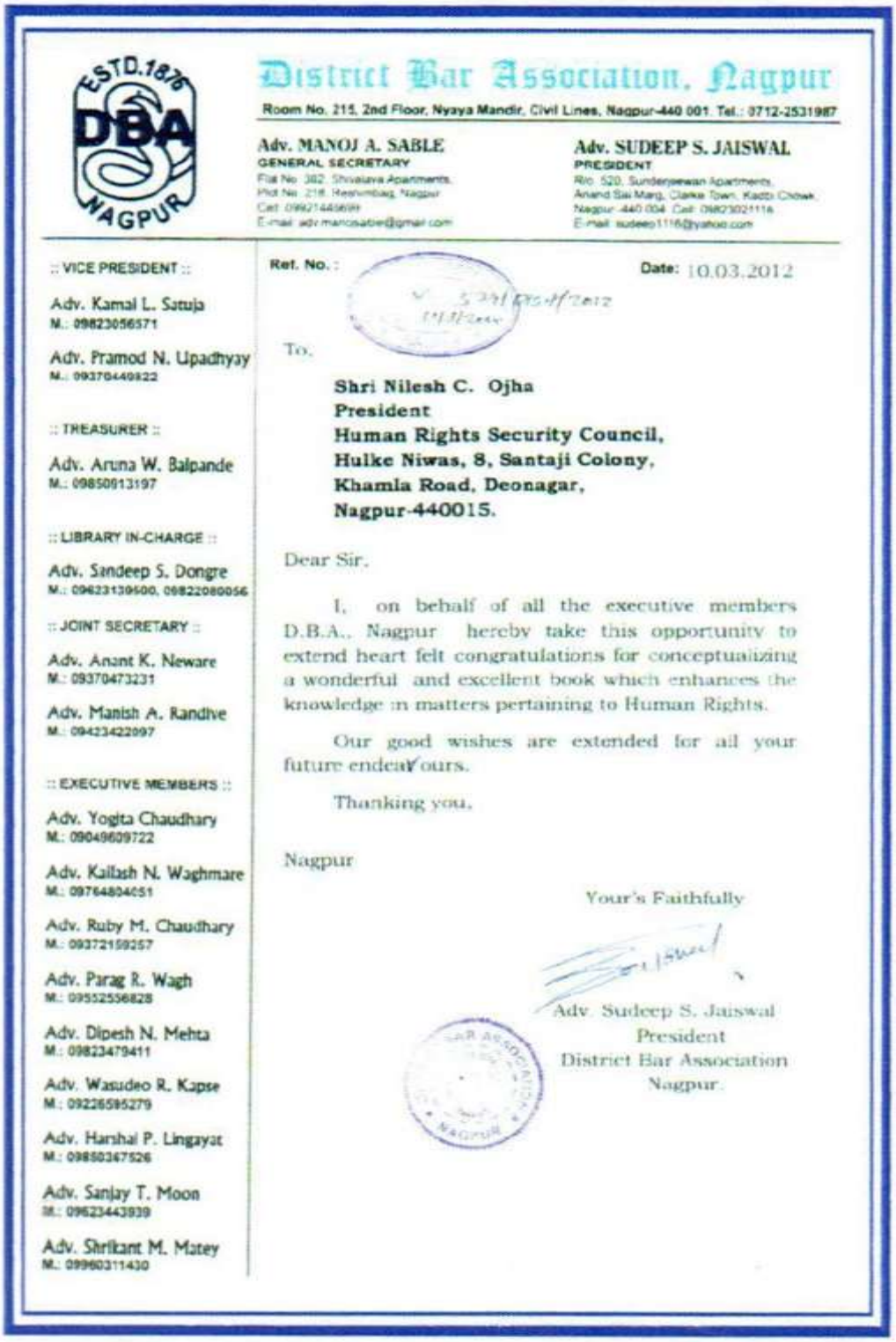
न्यायाधीशाने जामीन द्यावा किंवा नाही याबाबत (डिसक्रिएशन) स्वेच्छाअधिकार वसुन त्याने न्यायिक मन वापरून उपलब्ध केस लॉ आणि नियमांच्या अधीन राहून निर्णय द्यावा याबाबत आपण दिलेले 'गोल्डन ऑफ आरगुमेंटस' हे न्यायदान व्यवस्थेत मोलाचा बदल घडवतील अशी आशा आहे.

कायद्याचे उल्लंघन करणारा न्यायाधीश, सरकारी वकील, पोलिस अधिकारी, मिडीया आदि विरुद्ध फौजदारी व इतर कारवाई करण्यासंबंधी विषयावर आपले पुस्तक हे देशातील सर्वप्रथम आणी सर्वोत्कृष्ट पुस्तक असल्याचे नाही मत आहे.

आपण सदरचे पुस्तक मराठीत प्रकाशीत केल्यास सर्वसामान्य जनतेसही त्याचा फायदा मोठया प्रमाणावर होईल आणि आपल्या संघटनेच्या 'मानवाधिकार जन – जागरण अभियानाचा' उद्देश सफल होईल.

एक उत्कृष्ट पुस्तक लिहल्याबद्दल आपले अभिनंदन.

आपल्या पुढे कार्यास हार्दिक शुभेच्छा



# District Bar Association, Nagpur

Room No. 215, 2nd Floor, Nyaya Mandir, Civil Lines, Nagpur-440 001. Tel.: 0712-2531987

**Adv. MANOJ A. SABLE**
GENERAL SECRETARY
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PRESIDENT
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Anand Sai Marg, Clarke Town, Kadbi Chowk,
Nagpur -440 004. Cell: 09823021116
E-mail: sudeep1116@yahoo.com

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Adv. Harshal P. Lingayat
M.: 09850367526
Adv. Sanjay T. Moon
M.: 09823443939
Adv. Shrikant M. Matey
M.: 09960311430

Ref. No.: 5241/DBA/2012

Date: 10.03.2012

To,

**Shri Nilesh C. Ojha**
**President**
**Human Rights Security Council,**
**Hulke Niwas, 8, Santaji Colony,**
**Khamla Road, Deonagar,**
**Nagpur-440015.**

Dear Sir,

I, on behalf of all the executive members D.B.A., Nagpur hereby take this opportunity to extend heart felt congratulations for conceptualizing a wonderful and excellent book which enhances the knowledge in matters pertaining to Human Rights.

Our good wishes are extended for all your future endeavours.

Thanking you,

Nagpur

Your's Faithfully

Adv. Sudeep S. Jaiswal
President
District Bar Association
Nagpur.

No. 3579015/PS to PM/DESP/2014

**Rajeev Topno**
Private Secretary to
the Prime Minister
Tel. : 23018939
Fax : 23016857

प्रधान मंत्री कार्यालय
नई दिल्ली–110011
PRIME MINISTER'S OFFICE
NEW DELHI - 110011

19 December, 2014

**Dear Shri Ojha,**

The Prime Minister has received your letter of 15 November, 2014 and has asked me to thank you for sending him a copy of your book titled "How to Get Justice Against Wrong Judgements and Police Atrocities".

With regards,

Yours sincerely,

**(Rajeev Topno)**

**Shri Nilesh C. Ojha**
National President & Founder
Human Rights Security Council
Jaihind Building (1st Floor)
Next to Dwarka Restaurant
N.M. Road, Fort
Mumbai-400001

NAGESH SINGH

भारत के उप-राष्ट्रपति के संयुक्त सचिव
और विशेष कार्य अधिकारी
JOINT SECRETARY &
OFFICER ON SPECIAL DUTY
TO THE VICE-PRESIDENT OF INDIA
नई दिल्ली/NEW DELHI - 110011
TEL.: 23016422/23016344 FAX : 23012645

December 19, 2014

Dear Shri Ojha,

I am directed to acknowledge with thanks the receipt of your letter dated November 15, 2014 addressed to Hon'ble Vice President of India, enclosing two volumes of your book entitled "How to Get Justice Against Wrong Judgment and Police Atrocities."

The Vice President, while conveying his appreciation, wishes you all success in your future endeavours.

Best wishes.

Yours sincerely,

(Nagesh Singh)
Ph. 23794336

Adv. Nilesh C. Ojha,
Ist Floor, Jaihind Bldg.,
Next to Dwarka Restaurant,
NM Road,
Mumbai-400001

**RISHI PAL**
Sr. PPS to Chairperson

*National Human Rights Commissi*
*Manav Adhikar Bhawan, C-Block, GPO Complex, INA, New Delhi-110 023 India*
*Phone : 91-011-24663201, 24663202*
*Fax : 91-11-24651329*
*E-mail : rishipalg@yahoo.co.in*

**No. G-31/CH/2015** **Dated: 9th January, 2015**

Dear Shri **Nilesh C. Ojha,**

On behalf of Mr. Justice K.G. Balakrishnan, former Chief Justice of India, presently Chairperson, National Human Rights Commission, I acknowledge with gratitude, receipt of Law Book "How to get Justice against wrong judgments and police atrocities- Volume 1 & 2".

2. May I further convey the appreciation for the endeavours made in covering out with such a qualitative work which is immensely informative and helpful to the readers.

With regards,

Yours sincerely,

**(Rishi Pal)**

**Adv. Nilesh C. Ojha**
National President & Founder
Human Rights Security Council (HRSC)
1st Floor, Jaihind Building
Next to Dwarka Restaurant
N M Road, Fort, Mumbai - 400001

अ० कार्या०/1913/दिनांक 26-12-2014

अमित शाह
अध्यक्ष

भारतीय जनता पार्टी
Bharatiya Janata Party

दिनांक : 16 दिसम्बर, 2014

**श्री निलेश सी ओझा जी,**

आपके द्वारा भेजी गयी पुस्तक "**हाउ टू गेट जस्टिस अगेनस्ट रॉंग जजमेन्ट्स एण्ड पुलिस एट्रोसिटीज**" प्राप्त हुई। इसके लिए मैं आपको हृदय से आभार व्यक्त करता हूँ एवं आपके यशस्वी लेखन हेतु शुभकामनायें व्यक्त करता हूँ।

धन्यवाद,

भवदीय

( अमित शाह )

**एडवोकेट निलेश सी ओझा**
1, पहली मन्जिल, जयहिन्द बिल्डिंग,
द्वारका होटल के आगे,
एन.एम. रोड फोर्ट,
मुम्बई–400001

११, अशोक रोड, नई दिल्ली-११० ००१ दूरभाष: २३००५७०० फैक्स: २३००५७८७
11, Ashok Road, New Delhi-110 001, Phone : 23005700 Fax : 23005787

V-12560/HMP-12

गृह मंत्री
भारत
नई दिल्ली - 110001
HOME MINISTER
INDIA
NEW DELHI-110001

1.2.2012

**Dear Shri Pathan,**

I have received your letter dated 25.1.2012 along with a book "Human Rights Manual".

With regards,

Yours sincerely,

**(P. Chidambaram)**

**Shri Rashid Khan Pathan**
National Secretary,
Human Rights Security Council,
8, Shantaji Colony,
Khamla Road,
Deonagar, Nagrpur.

मुख्य मंत्री
महाराष्ट्र

सत्यमेव जयते

Chief Minister
Maharashtra

No. CMS/12/9881
February 1, 2012

Dear Shri Pathan,

I have received your letter dated January 25, 2012 regarding the activities of the Human Rights Security Council.

Thanks for sending me a book on Human Rights.

Human right is an important area, gaining worldwide attention. This book would be helpful to the people working in the field of Human Rights.

I wish the Council all success in its future endeavours.

With regards,

Yours sincerely,

( **Prithviraj Chavan** )

**Shri Rashid Khan Pathan,**
National Secretary,
Human Rights Security Council,
Hulke Niwas, 8 Santaji Colony,
Nagpur.

# MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

*Justice Kshitij R. Vyas*
**Chairperson**
Former Chief Justice
Bombay High Court

No. SHRC/KRV-Chairperson/05-08/569
Date : May 9, 2008

**To,**
**Nilesh C. Ojha**
**President**
**Human Rights Security Council,**
**5, Jagtap Ojha Arcade, Washim Road**
**Pusad-445 204, Dist. Yavatmal.**

**Sir,**

**Thank you for presenting me a marthi book "पोलिस, नागरिक आणि मानवाधिकार कायदा" written by you.**

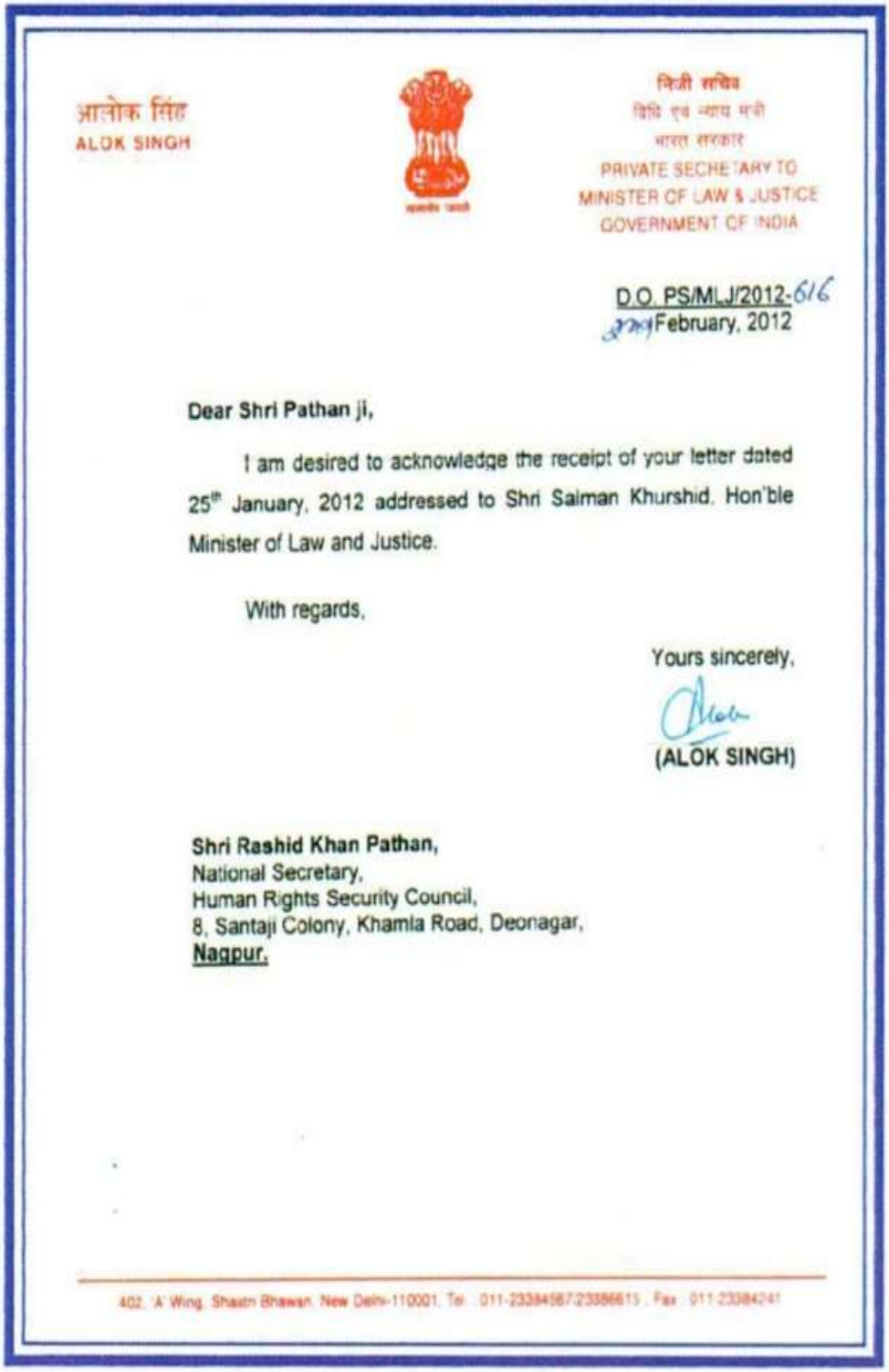
**I have gone through the same. The efforts put in by you, I am sure will certainly help the people to know about their human rights.**

**I wish you all the success.**

Yours faithfully

**(Justice Kshitij R. Vyas)**
**Chairperson**

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Terminus (VT), Mumbai 400001
Tel. 022-22050791, Fax : 2209 3678, 2209 1804, Wevsite :mshrc.maharashtra.gov.in



आलोक सिंह
ALOK SINGH

निजी सचिव
विधि एवं न्याय मंत्री
भारत सरकार
PRIVATE SECRETARY TO
MINISTER OF LAW & JUSTICE
GOVERNMENT OF INDIA

D.O. PS/MLJ/2012-616
27th February, 2012

Dear Shri Pathan ji,

I am desired to acknowledge the receipt of your letter dated 25th January, 2012 addressed to Shri Salman Khurshid, Hon'ble Minister of Law and Justice.

With regards,

Yours sincerely,

(ALOK SINGH)

Shri Rashid Khan Pathan,
National Secretary,
Human Rights Security Council,
8, Santaji Colony, Khamla Road, Deonagar,
Nagpur.

402, 'A' Wing, Shastri Bhawan, New Delhi-110001, Tel : 011-23384567/23386615, Fax : 011-23384041

Sanjay Bhalla
PS to Chairperson

☎ 23382514/23383012

**NATIONAL HUMAN RIGHTS COMMISSION**

No. G-31/CH/2012

30th January 2012

To

Shri Nilesh C. Ojha
National President
Human Rights Security Council
Hulke Niwas, 8, Santaji Colony
Khamla Road, Deonagar
Nagpur - 440 015

Subject: **Acknowledgement of book.**

Sir,

I am directed to acknowledge the receipt of the book titled 'Law of Bails', published by the Pune Unit of Human Rights Security Council and express gratitude for sending it to Hon'ble Mr. Justice K.G. Balakrishnan, Chairperson.

With regards,

Yours truly,

(Sanjay Bhalla)

# CO-EDITED BY

**1. ADV. ISHWARLAL S. AGARWAL**

**Working President, National Co –Ordination Committee**

**Indian Bar Associatiion**

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B.Com, LL.B, DCL, Hospitality Business Management B.A.[Hons] [UK]

**3. ADV.TANVEER NIZAM**

B.A. LL.M.

ADVOCATE-HIGH COURT AND SUPREME COURT

**OUR ORGANIZATION WILL ALWAYS REMAIN GREATFUL TO FOLLOWING HON'BLE JUDGES FOR THEIR LANDMARK JUDGEMENTS.**

1) Justice P. N. Bhagwati,Former Chief Justice of India
2) Justice A.M.Ahmadi, Former Chief Justice of India
3) Justice V.R Krishna Aiyyar Judge, Supreme Court of India
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5) Justice K.S.P. Radhakrishnan, Judge, Supreme Court
6) Justice N. Santosh Hegde, Former Judge, Supreme Court
7) Justice B.S. Chauhan Judge, Supreme Court
8) Justice Dr. A.S. Anand ,Former Judge, Supreme Court
8) Justice Kuldip Singh Former Judge, Supreme Court
9) Justice S.C Agrawal Former Judge, Supreme Court
10) Justice Saghir Ahmad, Former Judge, Supreme Court
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13) Justice G.B. Patnaik , Former Judge, Supreme Court
14) Justice S.C. Sen, Former Judge, Supreme Court
15) Justice G.S. Singhavi Judge, Supreme Court
16) Justice H.L Dattu Judge, Supreme Court
17) Justice Gopal Oza, Former Judge, Supreme Court
18) Justice Sharad Bobade Judge, Supreme
19) Justice A.M.Khanwilkar, Chief Justice,Himachal Pradesh HighCourt
20) Justice B.R. Gavai Judge, Bombay High Court

21) Justice Arun Choudhary Judge, Bombay High Court

22) Justice R.M.S. Khandeparkar, Former Chief Justice, High Court

23) Justice Abhay Thispe , Judge Bombay High Court.

24) Justice V.M. Kanade, Judge, Bombay High Court

25) Justice A.V. Potdar, Judge, Bombay High Court

26) Justice R.C. Chavan, Former Judge, Bombay High Court

27) Justice R. Basant, Former Judge , Kerla High court

28) Justice S.S Parkar, Former Judge, Bombay High Court

29) Justice S.P. Kukdey, Former Judge, Bombay High Court.

30) V.G. Palshikar,Former Judge, Bombay High Court.

31) V.R. Kingaonkar, Former Judge, Bombay High Court.

& all other Hon'ble Judges delivering judgments which protect and uphold Human Rights.

*** SPECIAL THANKS TO***

***Adv. Omkar Kakde***

***Adv.Shailesh Narnaware***

***Adv. Ghanshaym Upadhyay***

***Adv. Partha Sarthy Sarkar***

***Adv. Subhash Jha***

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***Adv. Shivanee P. Shah***

***Miss. Simran Singh***

***Adv. Joy Sarkar***

***Adv. Sandeep Sheregar***

***Adv. Harsh Singhal***

## WE ARE THANKFUL TO

1) Adv. Prashant Bhusan Sr. Counsel, Supreme Court
2) Adv. Ahmad Abdi, Chairman, Bombay Lawyers Association
3) Adv. Gopal M. Karhale, Umerkhed, Yevatmal
4) Adv. Pravin Chawre, Umerkhed, Yevatmal
5) Adv. Rajendrasingh Kakan, Pusad.
6) Adv. Azhar Khan, Pusad
7) Adv. Balaji Kapte, Pusad.
8) Adv. Bharat Jadhav, Pusad.
9) Adv. Zahir Khan, Pusad
10) Adv. Anil Goverdipe, Ex. Vice -Chairman, Bar Council of Maharashtra & Goa
11) Adv. Vitthal Konde Deshmukh, Ex.Chairman,Bar Council of Maharashtra & Goa
12) Adv. Ashish Deshmukh, Ex. Chairman, Bar Council of Maharashtra & Goa
13) Adv. Ashok Mundargi, Senior Counsel, High Court, Mumbai.
14) Adv. Shirish Gupte, Senior Counsel, High Court, Mumbai.
15) Adv. Satyajeet Desai, Supreme Court, New Delhi.
16) Adv. Nishant Katneshwarkar, Supreme Court, New Delhi.
17) Adv. Niranjan Mundargi, Bombay High Court.
18) Adv.Mrs. Jaitley, ADR, Supreme Court of India
19) Adv. Rajiv Kumar Divedi,Supreme Court of India

20) Adv. Balraj Divon, A.O.R. Supreme Court of India
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22) Adv. Arunchandra Kapadiya, High Court, Aurangabad.
23) Adv. S.S. Pervaiz, Supreme Court of India
24) Adv. Kanishk Jayant Gaikwad, High Court, Mumbai
25) Adv. Antara Jayant, High Court, Mumbai.
26) Adv. Mansi jain,High Court, Mumbai.
27) Adv. Karttavya Parmar,High Court, Mumbai.
28) Adv. Ashok Singh,High Court, Mumbai.
29) Adv. Shailesh Patil,High Court, Mumbai.
30) Mr. Ranbeer Singh Rawat
31) Mr. Vijay Baria
32) Mr. Pratik Mhadgut
33) Adv. Rajeev Bafna,High Court, Mumbai.
34) Adv. Sunny Punamiya
35) Adv. Aditya Shiralkar
36) Adv. Asha Bhambwani,High Court, Mumbai.
37) Adv. Satish Maneshinde,High Court, Mumbai.
38) Adv. Dr. G.R. Sharma,High Court, Mumbai.
39) Adv. Dinyar Madon
40) Adv. Raj Singhvi
41) Adv. Niranjan Mogre, High Court, Mumbai.
42) Adv. Haresh Bhandari , Thane.
43) Adv. Amit Sheth, High Court, Mumbai.
44) Adv. Sharad P. Pawar, High Court, Nagpur.

45) Adv. Shrikant H. Sudame, Nagpur
46) Adv. Ravi Ade, High Court, Aurangabad.
47) Adv. Pramod Dethe, High Court, Nagpur.
48) Adv. Jayram Yadav, High Court, Mumbai.
49) Adv. Vivek Pande, Pusad
50) Adv. Prashant Deshmukh, Pusad.
51) Adv Gajanan Deshmukh, Pusad.
52) Adv. Prashant Pande, Pusad.
53) Adv C.L. Thool, Yavatmal.
54) Adv. Deepak Gosavi, Amravati.
55) Adv. Dinesh Rathod. Pusad.
56) Adv. Gajanan Chavan, Thane.
57) Adv. Rajy Gaikwad, Thane.
58) Adv. Rajan Sakunke, Thane.
59) Adv. Santosh Bhalerao, Thane
60) Adv. Sudeep S. Jaiswal, Former President, District Bar Association, Nagpur
61) Adv. Manoj A. Sable, Former General Secretary, District Bar Association, Nagpur
62) Adv. Sandeep Dongre, District Court, Nagpur.
63) Adv. Mahesh H. Rahangdale, District Court, Bhandara.
64) Adv. Najib Shaikh, District Court, Akola.
65) Adv. Juned Khan, Karanja, Washim.
66) Adv. Taterao Deshmukh, Kalamnuri, Hingoli.
67) Adv. Krishna Sonule, Hadgaon, Nanded

68) Adv. Madhukar Gore, Hadgaon, Nanded.

69) Adv. Vitthal Makhane, Kalamnuri, Hingoli.

70) Adv. Ravi Rupurkar,Sessions Court,Pusad.

71) Adv. Nasrullah Khan, Pusad

72) Adv. Arjun Rathod , Pusad.

73) Adv. Manoj Ghadge , Pusad.

74) Adv. Madhav Mane, Pusad.

75) Adv. Yogendra Pathak, Pusad.

76) Adv. Shivaji Kharate, Pusad

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79) Adv. Abhijeet Rode, Darwha, Yavatmal.

80) Adv. Ravi Indoriya, Pusad

81) CA. Rajesh Shukla, Yavatmal.

82) Adv. Amol Kotamkar, Wardha.

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84) Adv. Aspi Chinoy, Sr. Counsel Bombay High Court.

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86) Adv. G. RashmiKant, Bombay High Court.

87) Adv. Anant Peshin, Delhi High Court.

88) Adv. Harshad Nimbalkar, Ex. Chairman, Bar Council of Maharashtra & Goa

89) Adv. Murlidhar D. Tapas, District & Session Court, Pune.

90) Adv. K.R. Shah, District & Session Court, Pune.

91) Adv. Sudhir Shah, District & Session Court, Pune.

92) Adv. Milind Badade, District & Session Court, Pune.
93) Adv. Vijay Pamnani, District & Session court, Pune.
94) Adv. Rohini Amin, High Court, Mumbai.
95) Adv. Sunil Rathod, Pusad.
96) Adv. Shyam Dubey, Spl. P.P., Wardha.
97) Adv. Shyam Tripathi, Bombay High Court.
98) Adv. Arun Atwal, Bombay High Court.
99) Adv. Sachin Patil, Supreme Court of India
100) Adv. Ramesh Tripathi, Bombay High Court
101) Adv. Satish Pailwan, District & Session Court, Pune.
102) Adv. Madhavi Pardeshi, District & Session Court, Pune
103) Adv. Nilesh Bahandari, District & Session Court, Pune
104) Adv. Ramesh Patil,Pusad.
105) Adv. Shivaji M. Patil, High Court (Mumbai)
106) Adv. Javed Khan Pathan, District & Session Court (Nanded)
107) Adv. Shafique khan Pathan, District & Session Court (Nanded)
108) Adv. Balaji M. Shinde, High Court (Mumbai)
109) Adv. Shaikh Bashiruddin, High Court, Aurangabad.
110) Adv. Amol Patil, High Court (Mumbai)
111) Adv. Jitendra Patil, High Court (Mumbai)
112) Adv. Akhlaq Solkar, High Court (Mumbai)
113) Adv. Preeti R. Sharma, High Court (Mumbai)
114) Adv. Amarsingh Chauhan, High Court (Mumbai)

115) Adv.Milind Sathe, High Court, Bombay (BBA)

116) Adv.Rajeev Chavan, High Court, Bombay (AAWI)

117) Adv. Rohan Gupta High Court, Bombay

118) Sh. Kaiwan Kalyaniwalla, President,. BILS

119) Adv. Siddharth Luthra

120) Adv. Amit Desai, Sr. Council High Court Mumbai

121) Adv Mayank Mishra

122) Adv. Adarsh Diwani

123) Adv. Lakshmi Pillai

124) Adv. Shambhavi Sanzigiri

125) Adv. R.R. Tripathi,Supreme Court of India

126) Adv. Akhilesh Pandey, Supreme Court of India

127) Adv. Sunil Pandey, Supreme Court of India

128) Adv. Rajeev Gupta, Supreme Court of India

129) Adv Prabhu Shankar, Supreme Court of India

130) Adv. Mita Rudani

131) Adv. Amit Ingle

132) Adv Pritam Biswas

**********

# INDEX OF CHAPTERS'

| | | |
|---|---|---|
| | abrupt conclusion without holding enquiry. | |
| 7. | During enquiry under section 340 of Criminal Procedure Code the Court/Judge may summon witnesses and examine them in witness box. | **163** |
| 8. | Court can direct the applicant to give materials/proofs in support of his application under section 340 of Criminal Procedure Code. | **165** |
| 9. | Anyone including Stranger to the proceeding can file the application under section 340 of Criminal Procedure Code. | **166** |
| 10. | After direction under section 340 of Criminal Procedure Code by the Court the Registrar concerned has to file the complaint before Magistrate on the same day or at the most within one week. | **175** |
| 11. | When dishonesty is apparent then the Court can take Suo-Moto action. No application from anyone is necessary. | **176** |
| 12. | Filling of false claim also includes filing of false reply with ulterior motive to dismiss the lawful claim in plaint/suit, Writ or before any forum. | **177** |
| 13. | Application under section 340 of Criminal Procedure Code has to be registered separately. Court/ Tribunal cannot refuse to register the application. It has to be decided independently | **183** |

| | | |
|---|---|---|
| | irrespective of the main Case, Suit, Claim Etc.<br>It is an independent proceeding though it is a part of main proceeding.<br>In Criminal proceedings the application can be given directly to the court. No separate application required. | |
| 14. | The application under section 340 of Criminal Procedure Code should be decided first and with the sense of urgency. Based on the enquiry done under section 340 of Criminal Procedure Code the main Claim/Writ may be allowed or dismissed and prosecution be ordered against the guilty. | **206** |
| 15. | When the document produced before the court is a forged one and even if the offence is committed before the production of the document in the court then also the court has to exercise power under section 340 of Criminal Procedure Code private complaint without order from the court is not maintainable. When the offences committed are interconnected with the court then complaint from the court is necessary. | **210** |
| 16. | There are two separate offences. One is to create the forged document and affidavit and second is to use the said False, Forged and Fabricated document in the Court. | **222** |

| | | |
|---|---|---|
| 17. | When it is brought to the notice of the Court that application under section 340 of Criminal Procedure Code is filed, then Court can defer the pronouncement of final judgment. | **222** |
| 18. | If accused adopt the dilatory tactics to delay the application under section 340 of Criminal Procedure Code, then heavy cost should be imposed upon him. | **224** |
| 19. | a] When there are Prima Facie material of perjury and forgery and some more material is required which the applicant is not able to collect and produce then the court can take the help of Police, CBI or any machinery to conduct the investigation and collect the evidence or material.<br>b] Court can constitute committee of expert with CBI officers. | **226** |
| 20. | Whenever any false affidavit is filed or any offence against administration of Justice is committed, then the person who Abated, Conspired and supported the said illegality is liable to be prosecuted by the court. Filing of complaint could be even against the persons who could not then be identified. | **240** |
| 21. | Use of section 340 of criminal procedure code should be at any stage. | **245** |

| | | |
|---|---|---|
| | i) Before Proceedings/Suit/Writ is heard on merits.<br>ii) Even after disposal of the Suit, Writ etc.<br>iii) Even when the case is fixed for pronouncement of judgment.<br>iv) Even if the investigation is not completed or charge sheet is filed. | |
| 22. | For action under sec 340 of Criminal Procedure Code it is not necessary that the false statement on oath. The report submitted should be by police with false and fabricated evidence is also an offence and action is liable to be taken against them. | **260** |
| 23. | Whenever any say/report is filed in the court by the police or by any public servant to oppose the prayer in the petition, then a copy of it should be provided to the person or his counsel against whom it is being used. It will be gross violation of Principles of Natural Justice to not to provide the copy of the report/say. | **268** |
| 24. | Copy of fir should be provided to the accused at the time of arrest. Otherwise the Magistrate cannot allow Police custody of the accused. | **269** |
| 25. | Negative police report can be rejected - in section 340 of the Criminal Procedure Code, the court is | **307** |

| | | |
|---|---|---|
| | not bound to accept the report by police or report of any authority. Even if there is a negative report by police, the court may take direct cognizance under section 340 of Criminal Procedure Code or if required may direct CBI to submit the report by rejecting the report of police. | |
| 26. | Court cannot grant permission to accused to file reply and give Proofs/Evidence.<br>Any order based on the submission of accused is illegal and vitiated | **308** |
| 27. | If the application under section 340 of criminal procedure code is not decided urgently then the aggrieved party can file writ petition for directions to decide the application within a time bound manner such as within one or two months. | **326** |
| 28. | Duty of the Judge/Court to whom application is given or falsity is brought to his notice to conduct preliminary enquiry or direct Police, CBI to investigate and submit the report or to decide the application on the basis of material available on record, when the offence is ex-facie proved. [Sanjeev Mittal Vs. State 2011 RCR (Cri) (7) 2111] | **338** |
| 29. | Minor cases when the Judge/Court may decide to not to take action against the accused. When the | **338** |

| | | |
|---|---|---|
| | offence is not so serious and the accused tendered apology and withdrawn the false claim. | |
| 30. | In certain cases the Judge/Court have no discretion to forgive accused even if accused had not gained any advantage from false affidavit/ evidence? and even if he/she had tendered apology. | **340** |
| 31. | Discretion given to the judge does not mean that, he can pass any order. Discretion should be guided by the sound principles of law and judges should not think in terms 'what pleases the prince has the force of law'.<br>Judge acting contrary to law to save accused or to falsely implicate accused is liable for contempt action and also under section 218, 219, 220 etc. of IPC. | **350** |
| 32. | When both the contesting/opposite parties give contrary and different versions in their affidavits or submissions, then the Court/Judge should direct investigation by Police, CBI or through any committee of experts to find out the truth. | **379** |
| 33. | The Court while passing an order directing prosecution under section 340 of Criminal Procedure Code can impose cost upon mischievous litigants as per section 342 of | **381** |

| | | |
|---|---|---|
| | Government Pleaders, Public Prosecutors and Advocate for the party who are acting with ulterior motive to help the dishonest litigants and to harass the innocent then they are prosecuted as per the provisions of section 340 of Criminal Procedure Code they were dismissed from the post of a judge. Contempt proceedings were also initiated against the judges. The case of advocate is forwarded to bar council. The case of other public servant, in addition to criminal prosecution is forwarded to their superior authority for departmental action. | |
| 40. | Case of Justice Shukla of Allahabad High Court in Medical Council case. Judgment in Medical Counsel case is passed by setting aside the unlawful order by the judge and by se then as per in- house – procedure his judicial work withdrawn. CBO filed charge – sheet.<br>Medical College Scam: CBI books Allahabad High Court Judge S. N. Shukla in Corruption Case. | **432** |
| 41. | When the applicant or any party gives any case law then the Judge/ Court is bound to refer it and explain as to how said ratio is not applicable or applicable to the case in hand.<br>Failure to fallow this procedure makes the judge | **436** |

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| | liable of disciplinary action and also action under contempt.<br>The judgment of other high court should also be respected. | |
| 42. | Merely referring the judgment of Hon'ble Supreme Court by the High Court does not make the precedent. | **447** |
| 43. | The Judge /Court passing any order or doing any act of commission or omission means he/she fails to take immediate action against the guilty person including public servants like police officers are liable to be punished under contempt of court act.<br>Judge cannot take a defence that he was not aware of the law laid down in the judgment of higher courts.<br>Judge has to apply the correct law even if it is not raised by the party. Judge is expected to know the law. | **448** |
| 44. | Law regarding prosecution and action against supreme court and high court judges and also withdrawing their judicial work before impeachment. Powers of Chief Justice of India to forward reference for impeachment. The in- house – procedure as explained in Addl. Session Judge x. (2015)1 SCC 799. | **453** |

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| 45. | Police Officers and all Public Servants such as Collector, Revenue, Ministers, CBI etc. are bound to act as per the guidelines of the Supreme Court and High Courts. Otherwise they will be liable for action under Contempt and under section 166, 167, 218, 219, 220, 341, 342 etc. of IPC. Police Officers are liable for additional action under section 145 (2) of Maharashtra Police Act. | **456** |
| 46. | Appeal as per section 341 of Criminal Procedure Code.<br>**A.** Appellate Court is duty bound to order the prosecution as per section 340 of Criminal Procedure Code when lower Court failed to take action in a case where Prima Facie case is made out.<br>**B.** Wrong order of 340 by Magistrate can be corrected by High Court by directing prosecution.<br>**C.** The victim should not suffer due to mistake committed by the Judge of sub-ordinate Court. | **462** |
| 47. | The prospective accused have no right to participate in a hearing of appeal or revision under section 341 of Criminal Procedure Code. | **464** |
| 48. | Duty of the Advocates to not to withhold the case | **465** |

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| | law or any documents which are against his client. The advocate can not to give overruled or per-incuriam Judgments. | |
| 49. | When the court come to the conclusion that the respondent has made false/inconsistent statement then the court is bound to make complaint. What advantage is taken by the accused is immaterial. | **482** |
| 50. | Power to recall the orders - wrong order based on misrepresentation by the party , incorrect statement or if the court itself is misled due to any mistake, is nullity and such order can be recalled by all the court either Civil, Criminal, Magistrate or even if it is a tribunal not having the provision for review in their rules and act. | **485** |
| 51. | Re-litigating the same cause again & again when the issue is already decided between the parties amounts to gross abuse of the process. Cost imposed. The party is estopped from making same claim again.<br>Multiple proceeding on similar grounds is abuse of process of Court.<br>Re-litigating again & again precedent –there is no overruling on facts. | **493** |
| 52. | The Antecedent, Malafides or Personal Grudge of complaint is not relevant. The only thing is | **504** |

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| | heard, to the person against whom it might file a complaint. | |
| 65. | Accused- deliberately made two contradictory statements- both cannot possibly be true- can be convicted of perjury without being proved which one is true. | **590** |
| 66. | Judge is bound to mention the arguments of the counsel for the parties in the judgment. Otherwise judgment stand vitiated. | **593** |
| 67. | If wrong sections of provisions are mentioned by the applicant or victim that does not affect the cause. Court has to apply the correct provisions while taking action under section 340 of Criminal Procedure Code or passing any order. | **616** |
| 68. | False charge of contempt is punishable under section 211 of IPC. | **617** |
| 69. | Law regarding protection available to an Advocate from any pressure he has to perform his duty fearlessly or to not to pursue the deserving case fearlessly and diligently. | **618** |
| 70. | Law regarding protection available to Witnesses, Petitioner etc. | **631** |
| 71. | Police officer not bound to follow the per-incuriam or unlawful and illegal order of the courts which is against the statutory provisions. | **640** |

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| | Police, Judge etc. proves the malafides and makes the said public servant liable for action and Criminal Prosecution.<br>Such tainted investigation can be quashed even if fir disclosed a Prima Facie case.<br>Any action or order passed by any public servant is liable to be set aside.<br>The Judge passing order with undue haste is liable for action under Contempt. | |
| 105. | No protection of action done in good faith is available to police or any public servant doing any act without due care and caution.<br>Unlawful arrest by police makes them liable for action under section 220 of IPC. | **1000** |
| 106. | Fair Trial | **1000** |
| 107. | Equality before law and equal protection of law - equality of status and opportunity. | **1013** |
| 108. | Court cannot ask for property documents from surety – poor man can also be surety. | **1026** |
| 109. | Lower Court are permitted to see whether order from superior court is obtained by fraud. | **1026** |
| 110. | Written arguments are no substitute for oral hearing. Giving a personal hearing before a final order is passed is essential for ensuring compliance with basic principle of 'Audi Alteram | **1027** |

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| | Partem'. | |
| 111. | The silence or absence of correspondence by any party may be indicative of his dishonest intention. | **1027** |
| 112. | Not filling reply affidavit. Court is bound to accept the submission as not rebutted. | **1029** |
| 113. | Exemption from personal appearance – consideration is mandatory. | **1030** |
| 114. | The court must view with disfavor any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practiced in our country, there is no premium on the truth. | **1031** |
| 115. | The person who obtained the decision by practicing fraud upon the court should not be allowed to eat the fruit of illegality | **1031** |
| 116. | Review of the order. | **1038** |
| 117. | Recall is different than review after dismissal of | **1048** |

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| | recall the party can apply for review. | |
| 118. | For doing justice the procedure can be molded. | **1051** |
| 119. | Principles of Natural Justice - any procedure /rules must be interpreted in a manner so as to sub serve and advance the cause of Justice rather than to defeat it. | **1055** |
| 120. | Article 142, 141 of the Constitution – Supreme Court cannot disregard statutory provision and/or a declared pronouncement of law under article 141 of the Constitution, even in exceptional circumstances. | **1055** |
| 121. | Double standard:- 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. | **1056** |
| 122. | Complaint/allegation against judges is not contempt if the allegations are supported with proof and are well founded. | **1056** |
| 123. | Equality of not only substantial but also Procedural Law. | **1065** |
| 124. | A Judge must not side with either party nor should descend into the arena. | **1065** |
| 125. | Violation of Fundamental Rights by courts including Supreme Court -National Human Rights | **1073** |

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| 189. | The Magistrate while issuing process in proceedings as per section 343 195, 340, 204 etc. of Criminal Procedure Code has to issue non-bailable warrants against the accused and when such accused appears or bought before the court they should not be granted bail when the offences are serious, non-bailable and an attempt to harass the innocent and also when the accused are public servant and police officer.<br>Or when the lawful claim in a suit is opposed on forged documents the accused should not be granted bail. | **1475** |
| 190. | Faulty Investigation - duty of the Police to conduct investigation from the defence side also.<br>Police Officer doing one sided investigation to frame/ falsely implicate the innocent and to help the bogus complainant are liable to be punished severely under section 196, 195, 218, 211, 230, 120 (B) etc. of IPC.<br>No bail should be granted to such Police Officers and they should be tried as under trial prisoners.<br>The Police Officer giving false statement or report to save guilty police officer should be liable for action under IPC. | **1476** |
| 191. | Help of 340 for getting bail to innocents- filing of | **1502** |

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| | application under section 340 of Criminal Procedure Code will come under category of cross case against false implication and it is a ground for getting anticipatory or regular bail to innocent who is falsely implicated. Investigation can be transferred to other agency like CID or CBI. | |
| 192. | Falsity of the police case is Prima Facie proved from the material available on record then the court hearing the matter even in the inherent power under 482 of Criminal Procedure Code or article 226 & 32 of Constitution of India can direct forthwith release of the accused even if his earlier bail applications were rejected. | **1515** |
| 193. | Anticipatory Bail in false implication by Police. | **1525** |
| 194. | 'Bail – false complaint – illegal custody – the victim lady filed notary affidavit stating that complaint was false. | **1525** |
| 195. | Bail is rule arrest should be the last option. | **1529** |
| 196. | Bail Condition for offence related with sec. 340 of Criminal Procedure Code. | **1531** |
| 197. | Bail in false case - act of Session Judge denying Bail is strongly criticized. Session Judge was directed to read the case laws of Bails and to submit a written synopsis on Bail. | **1534** |

## CHAPTER 1

## INTRODUCTION LAW OF PERJURY

### WHAT IS FRAUD ON COURT AND ON OPPOSITE PARTY?

TODAY the biggest menace before our judicial system is false and frivolous litigation. The dockets of almost all courts are full of such litigations, which literally have brought a standstill to the justice delivery system in India. The lawyers, although not all, are also under a wrong impression that conducting a case which in fact is based on falsity and is causeless is the advocacy. However, the advocacy is not as it stands understood by such lawyers. The lawyers are in fact the wheels and chariots of justice. They are the custodian of Rule of Law. However, the rule of law cannot be established unless the false and frivolous litigations are discouraged. Factually speaking, these false and frivolous litigations also cause delay in justice where it is required. They affect the cases which are based on truth.

Henry ford said ***'Don't find a fault but find remedy'*** The remedy is provision of Section 340 of Cr.P.C.

Full Bench In **Sarvapalli Radhakrishanan Ubiversity Vs. Union Of India (2019)14 SCC 761,** it is ruled as under;

> ***A ) False affidavit and suppression by the petitioner :-A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief. The conduct of the College in this case to mislead this Court for the purpose of getting a favourable order is reprehensible and the College deserves to be dealt withsuitably.***
>
> ***– It is offence under Section 193 of Indian Penal Code. Prosecution ordered by Court.***

***Cost of Rs. 5 Crore is imposed on the petitioner. Writ Petition dismissed.***

***Belated apology cannot be accepted when it is used to escape the punishment.***

*The Committee constituted by this Court is due to the vehemence with which the Counsels appearing for the College were trying to convince us that they are fully compliant with all the requirements.*

*B) The brazen attempt by the College in taking this Court for a ride by placing on record manoeuvred documents to obtain a favourable order is a clear-cut act of deceit. The justification given by the College has turned out to be a concocted story. Had we not initiated an enquiry by the Committee of Experts, the fraud played by the College on this Court would not have come to light. It is trite that every litigant has to approach the Court with clean hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief.*

*C) In Re. Suo Motu Proceedings against R. Karuppan, Advocate (2001) 5 SCC 289, this Court observed as under:*

> *"13. 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 filing and 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." (Para 12)*

*In Mohan Singh v. Amar Singh (1998) 6 SCC 686, it was observed by this Court:*

*"36. ...Tampering with the record of judicial proceedings and filing of false affidavit in a court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of the unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity." (Para 13)*

*D) The brazen manner in which the College has indulged in relying upon manipulated records to mislead this Court for the purpose of getting favourable order deserves to be dealt with in a serious manner. We find that this is a fit case where Mr. S.S. Kushwaha, Dean of the College must be held liable for prosecution under Section 193 IPC. (Para 15)*

*E) For the aforementioned reasons, we pass the following order:*

*(i) Mr. S.S. Kushwaha, Dean of the R.K.D.F. Medical College Hospital and Research Centre i.e. Petitioner No. 2- herein is liable for prosecution under Section 193 IPC. The Secretary General of this Court is directed to depute an Officer to initiate the prosecution in a competent Court having jurisdiction at Delhi.*

*(ii) The College is barred from making admissions for the 1st Year MBBS course for the next two years i.e. 2018-19 and 2019-2020.*

*(iii) A penalty of Rs. Five Crores is imposed on the College for playing fraud on this Court. The amount may be paid to the account of the Supreme Court Legal Services Committee.*

*(iv) The students are entitled to receive the refund of fee paid by them for admission to the College for the academic year 2017-19. In addition, the College is directed to pay a compensation of Rs. One Lakh to the said students. (Para 19)*

*The Writ Petition is dismissed accordingly. (Para 20)*

Hon'ble Supreme court in the case of **ABCD v. Union of India (2020) 2 SCC 52** had ruled that anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice**.**

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, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.

A person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court.

In the circumstances a notice is required to be issued to such petitioner in suo motu exercise of power of this Court "why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code". The Registry was directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who was directed to appear in-person.

It is ruled as under;

> ***''2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes*** *with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.*
>
> *17. In* ***K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481****] it was observed :* ***(SCC p. 493, para 39)***
>
> > *"39. If the primary object as highlighted in Kensington Income Tax Commrs. [R. v. General Commissioners for Purposes of Income Tax Acts For District of Kensington, ex p Princess Edmond De Polignac, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] 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, manoeuvring 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."* **.**

*19.In the circumstances a notice is required to be issued to the petitioner in suo motu exercise of power of this Court "why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code". The Registry is directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who is directed to appear in-person before this Court on 14-1-2020.* **.**

*16……..In Chandra Shashi v. Anil Kumar Verma [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks' imprisonment.."*

In **M/S. New Era Fabrics Ltd. Vs. Bhanumati Keshrichand Jhaveri (2020) 4 SCC 41,** it is ruled as under;

***Criminal P. C. (1973), Ss. 340,195(1)(b) Penal Code (1860), Ss. 193, 199 – False evidence – Institution of criminal proceeding against – Application for – Documents on record shows that prima facie case is made out that petitioner fabricated evidence for purpose of SLP proceedings before Apex Court – Direction issued to Secretary General of Apex Court to depute an officer of rank of Deputy Registrar or above to file complaint against petitioner. [Para 5.3 & 6]***

*5.3 We do not wish to comment in detail upon the intention behind making the aforesaid interpolations. At this juncture, all that is required to be assessed is whether a prima facie case is made out that there is a reasonable likelihood that the offence specified in Section 340 read with Section 195(1)(b) of the Cr. P. C. has been committed, and it is expedient in the interest of justice to take action. From the above discussion, it is evident that the handwritten modification made by the Petitioner in Column 12 of the balance sheet dated 19.09.2008 is a significant alteration from the terms as used in the original document. Hence we find that a prima facie case is made out that the Petitioner has fabricated evidence for the purpose of the SLP proceedings before this Court.*

*We further find that prima facie case is also made out against Mr. R.K. Agarwal, for having sworn in his affidavit before this Court as to the veracity of the facts stated and documents filed in SLP (Civil) No. 3309/2018, even though he had relied upon the original auditor's report, which did not contain any handwritten interpolation, in his evidence before the Trial Court.*

*6. In similar circumstances, a three-Judge Bench of this Court in In Re: Suo Motu Proceedings against R. Karuppan, Advocate, (2001) 5 SCC 289 had authorized the Registrar General of this Court to depute an officer to file a complaint for perjury against the respondent therein. Accordingly, we direct the Secretary General of this Court to depute an officer of the rank of Deputy Registrar or above of the Court to file a complaint under Sections 193 and 199 of the Indian Penal Code, 1872 against the Petitioner Company in SLP (Civil) No. 3309/2018 and Mr. R.K. Agarwal, before a Magistrate of competent jurisdiction at Delhi. The officer so deputed is directed to file the aforesaid complaints and ensure that requisite action is taken for prosecuting the complaints.*

Hon'ble Bombay High Court in the case of **Union Of India Vs. Harish Milani 218 SCC OnLine Bom 2080** observed as under;

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

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

Hon'ble Supreme Court in the caseof **Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh SCC OnLine SC 1636** observed as under;

> ***"****....70. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of appellants, reliance has been placed on the definition of fraud as defined in the Black's Law Dictionary, which is as under:*
>
> > ***FRAUD MEANS:***
> > *(1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime.*
> >
> > *(2) A misrepresentation made recklessly without belief in its truth to induce another person to act.*
> >
> > *(3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment.*
> >
> > *(4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."*

**71.Halsbury's Law of England** has defined fraud as follows:

> *"...Whenever a person makes a false statement which he does not actually and honestly believe to be true, for purpose of civil liability, the statement is as fraudulent as if he had stated that which he did know to be true, or know or believed to be false. Proof of absence of actual and honest belief is all that is necessary to satisfy the*

*requirement of the law, whether the representation has been made recklessly or deliberately, indifference or reckless on the part of the representor as the truth or falsity of the representation affords merely an instance of absence of such a belief."*

In **KERR** on the Law of Fraud and Mistake, fraud has been defined thus:

*"...It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice.The Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety... Courts have always declined to define it, ... reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud ... may be said to include property all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another.Al surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled too."*

Hon'bleHigh Court in the case of **Samson Arthur Vs.Quinn Logistic India Pvt. Ltd. and Ors. [2016] 194 Comp Cas 100 (AP):MANU/AP/0623/2015** it is observed as under ;

**SECTION 340 OF CR.P.C- SUPPRESSIO VERI SUGGSTIO FALSI – SUPPRESSION AND FALSE STATEMENT BEFORE COMPANY COURT.**

*A] Suppressioveri", i.e., the suppression of relevant and material facts is as bad as Suggestiofalsi i.e., a false representation deliberately made. Both are intended to dilute- one by inaction and the other by action. "SuppressioveriSuggestiofalsi"-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.*

Hon'ble Bombay High Court in **CIPLA Limited Vs. Krishna Dusyant Rana 2016 SCC OnLineBom 5895**, observed that,

***''if false affidavit filed in Court then such person should be sentenced to maximum punishment – The law should not be seen to sit by simply, while those who defy it go free, and those who seek its protection lose hope***– *The action of the defendant has been deliberate, willful and purposely done with a view to completely mislead this Court. By making false statement on oath, knowing it to be false statement – if this conduct of the defendant is not dealt with firmly, that may result in scandalizing the institution and lowering its dignity in the eyes of the public – even if the defendant had apologized, that cannot take his case any further as there can be no explanation to making deliberate false statements on oath to the Court – In view of the deliberate willful contumascious conduct of the defendant and thereby obstructing the administration of justice, the defendant deserves to be detained in civil prison for three months, the maximum period provided- The Hon'ble Supreme Court of India in the case of Re : Bineet Kumar Sing v. Unknown MANU/SC/0333/2001 : AIR 2001 SC 2018 has in clear terms held that a false or misleading or wrong statement deliberately and willfully made by a party to the proceedings would undoubtedly tantamount to interference with the due course of judicial proceeding.*

Hon'ble Supreme Court in the case of **Meghmala Vs. G. Narasimha Reddy reported in 2010 (8) SCC 383.**In the said landmark judgement the Hon'ble Supreme Court has observed in para 36 that suppression of any material fact/ document amounts to a fraud on the Court. Such wrongdoersshold not be allowed to eat the fruits of illegality. Once a fraud is proved advantages, gain by playing fraud can be taken away. Every Court has an inherent power to recall its own order obtained by fraud as the order so obtained is nonest.

In **Baduvan Kunhi Vs. K.M. Abdulla and Ors, 2016 SCC OnLine Ker 23602**, has observed that;

> *A person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief. if the Court concludes that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court on the facts, the Court ought to refuse to proceed any further with the examination of the merits and 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. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it - fraud vitiates all acts how ever solemn they are. The party practicing fraud either on the Court or on the rival suitor disentitles himself from the privilege of being heard by the Court.*

*Merits notwithstanding, the matter must be thrown out, summarily at that stage.*

In **Phool Chandra&Anr. State Of Uttar Pradesh(2014) 13 SCC 112,** The Apex Court observed,

*"……It is high time that the courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on the learned counsel who act in an irresponsible manner."*

The Apex Court in **V. Chandrasekaran & Anr. Vs. Administative Officer &Ors. (2012) 12 SCC 133,**

*While imposing exemplary costs of '25 lakh, has observed that the judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the Court.*

In **Messer Holdings Ltd.Vs. ShayamMadanmoharruia& others (2016) 11 SCC 484,** the Apex Court has observed that;

*Enormous amount of judicial time of that Court and High Courts ( in that case ) was spent on litigation that was eminently avoidable and could have been well spent on more deserving cases. All that*

*was in the name of "fight for justice". It has, in that process, quoted with approval Ramrameshwari Devi 18 to hold that the Courts must consider, while imposing costs, pragmatic realities and also the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards conducting litigation. The Court deemed it appropriate to impose twenty five lakh rupees on each of the three parties.*

In **Smt.Badami (Deceased) by her L.R. Vs. Bhali (2012) 11 SCC 574,** theHon'ble Supreme Court quoted a statement by a great thinker:

***"Fraud generally lights a candle for justice to get a look at it ; and rogue's pen indites the warrant for his own arrest."***

In **Umesh Kumar, IPS Vs. The State, 2012(4) ALT 437,** it is observed that;

*Suppression either by petitioner or respondent is contempt – A person who suppresses material facts from the Court is guilty of suppresioveri and suggestion falsi i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud – if material facts are suppressed or distorted, the very functioning of Courts, and the exercise of its jurisdiction, would be impossible. This is because " the Court knows law but not facts" – Contempt notice issued to Additional Director General of Police C.I.D, A.P. ( 7th Respondent ) and Sri V. Dinesh Reddy, IPS ( 4th Respondent ) for filing affidavit with suppression and dishonest concealment of facts. Prima facie, it constitutes Criminal Contempt of Court.*

In **A.V. Papayya Sastry and others Vs. Govt of A.P. and others, (2007) 4 SCC 221,** it was held in paras 21 and 22 as follows:-

*"21. Now, it is well settled principle of law that if any judgement or order is obtained by fraud, it cannot be said to be a judgement or*

*order in law. Before three centuries, Chief Justice Edward Coke proclaimed :*

*"Fraud avoids all Judicial acts, ecclesiastical or temporal."*

*22. It is thus settled proposition of law that a judgement, decree or order obtained by playing fraud on the Court, tribunal or authority is a nullity and non-est in the eye of the law. Such ajudgement, decree or order by the first court or by the final court has to be treated as nullity by every court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings."*

In **Kishore Samrite Vs. State Of U.P.& others (2013) 2 SCC 398,** the Apex Court has observed that the abuse of the process of court and such other allied matters have been arising before the courts consistently. It has, after quoting with approval many authorities on the issue, recapitulated the principles of processual fairness thus :

*" 1. Suitors should not approach the Courts with the intent to deceive and mislead them - an approach of unclean hands. The suitors should not initiate proceedings without full disclosure of facts, for such litigants are neither entitled t be heard on the merits nor they are entitled to any relief.*

*2. The people who approach the court for relief on an ex parte statement are under a contract with the court that they would state the whole case fully and fairly to the court, and where the litigant has broken such faith, the discretion of the Court cannot be exercised in favor of such a litigant.*

*3. The obligation to approach the curt with clean hands is an absolute obligation.*

*4. The quest for personal gains should not be a justification to take shelter of falsehood, misrepresentation, and suppression of facts in the Court proceedings. Materialism, opportunism, and malicious, intent should not overshadow the old ethos of litigative values for small gains.*

*5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is noy entitled to any relief, interim or final.*

*6. The court must ensure that its process is not abused ; to prevent abuse of process of court, it would justifiably insist on the litigant's furnishing security. In cases of serious abuse, the court would be duty bound to impose heavy costs.*

*7. Wherever a public interst is invoked, the court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed o be polluted by unscrupulous litigants.*

*8. The courts have to maintain a strict vigil over the abuse of process of the court and ordinarily meddlesome bystanders should not be granted "visa".*

The aforsesaid fact situation is recently aptly noticed by the Delhi High Court speaking through **HON'BLE MR JUSTICE J.R. MIDHA** in **H.S.BediVs. National Highway Authority of India2015 SCC OnLine Del 9524**

in the following words :

*"The greatest challenge before the judiciary today is the frivolous litigation. The judicial system in the country is choked with false claims and such litigants are consuming Courts' time for a wrong cause. False claims are a huge strain on the judicial system. Perjury has become a way of life in the Courts. False pleas are often taken and forged documents are filed indiscriminately in the Courts. The*

*reluctance of the Courts to order prosecution encourage the litigants to make false averments in pleadings before the Court. Section 209 of the Indian Penal Code, which provides an effectivemechanism to curb the menace of frivolous litigation, has been seldom invoked."*

In **Subrata Roy Sahara Vs. Union of India, (2014) 8 SCC 470**, the Supreme Court of India speaking through Justice J.S. Jhehar, observed that the Indian Judicial System is grossly afflicted with frivolous litigation and ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill considered claims. The Supreme Court went on to observe as under:

*191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault?*

*194. Does the concerned litigant realize, that the litigant on the other side has had to defend himself, from Court to Court, and has had to incur expenses towards such defence? And there are some*

*litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law…."*

**SECTION 195 OF CRIMINAL PROCEDURE CODE**

**PROSECUTION FOR CONTEMPT OF LAWFUL AUTHORITY OF PUBLIC SERVANTS, FOR OFFENCES AGAINST PUBLIC JUSTICE AND FOR OFFENCES RELATING TO DOCUMENTS GIVEN IN EVIDENCE.-**

(1) No Court shall take cognizance-

(a) (I) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code,(45 of 1860) or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (I) of any offence punishable under any of the following sections of the Indian Penal Code,(45 of 1860) namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (I) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint.

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

**Provided that-**

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

## CHAPTER 2

PROVISIONS OF SECTION 340 WITH 195, 195 A, 341, 342, 343, 344, 345 OF CRIMINAL PROCEDURE CODE.

**340. Procedure in cases mentioned in section 195.**

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected

an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section," Court" has the same meaning as in section 195.

**195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.**

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860 ), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860 ), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

**341. Appeal.**

(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub- section (1) or sub- section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

**342. Power to order costs. Any Court dealing with an application made to it for filing a complaint under section 340 or an appeal**

**under section 341, shall have power to make such order as to costs as may be just**.

**343. Procedure of Magistrate taking cognizance.**

(1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

**344. Summary procedure for trial for giving false evidence.**

(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness ap- pearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should

be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not

be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub- section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

**345. Procedure in certain cases of contempt.**

(1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860 ), is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be

punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860 ), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

**346. Procedure where Court considers, that case should not be dealt with under section 345.**

(1) If the Court in any case considers that a person accused of any of the offences referred to in section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 345, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if

sufficient security is not given shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

**347. When Registrar or Sub- Registrar to be deemed a Civil Court**. When the State Government so directs, any Registrar or any Sub-Registrar appointed under the [1] Registration Act, 1908 (16 of 1908 ), shall be deemed to be a Civil Court within the meaning of sections 345 and 346.

**348. Discharge of offender on submission of apology.** When any Court has under section 345 adjudged an offender to punishment, or has under section 346 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

**349. Imprisonment or committal of person refusing to answer or produce document.** If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his

possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been, given, to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

**350. Summary procedure for punishment for non- attendance by a witness in obedience to summons.**

(1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

**351. Appeals from convictions under sections 344, 345, 349, and 350.**

(1) Any person sentenced by any Court other than a High Court under section 344, section 345, section 349, or section 350 may, not-withstanding anything contained in this Code appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXIX shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any Registrar or Sub- Registrar deemed to be a Civil Court by virtue of a direction issued under section 347 shall lie to the Court of Session for the sessions division within which the office of such Registrar or Sub- Registrar is situate.

## CHAPTER 2 A

OFFENCES UNDER INDIAN PENAL CODE, 1860

Aforesaid sections of 195 and 340 of Criminal Procedure Code, 1973, deals with procedure to be followed when any offence, described in sections 193 to 196 (both inclusive), 199,200,205 to 211 (both inclusive) and 228, is alleged to have been committed in, or in relation to, any proceeding in any court, and described in section 463, or punishable under section 471, section 475 or section 476, of the said court is alleged to have been committed in respect of a document produced produced or given or produced in evidence in a curt in any proceeding in any court or any criminal conspiracy to commit, or the abetment of, any of the aforesaid offences. Since the author only intend to deal with the offences in respect of any court proceeding, the the author do not want to deal with offences described in sections 172 to 188 (both inclusive) of the Indian Penal Code, 1860. It is profitable to produce here the aforesaid offences with thir description and punishment etc.

**Section 191 Transfer on application of the accused. When a Magistrate takes cognizance of an offence under clause (c) of sub- section**

(1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

**Section 192. Making over of cases to Magistrates.**

(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

**SECTION 193. PUNISHMENT FOR FALSE EVIDENCE**

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**Explanation 1-** A trial before a Court-martial; [101][***] is a judicial proceeding.

**Explanation 2-** An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

**SECTION 194 - GIVING OR FABRICATING FALSE EVIDENCE WITH INTENT TO PROCURE CONVICTION OF CAPITAL OFFENCE**

Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital [102][by the law for the time being in force in [103][India]] shall be punished with [104][imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

if innocent person be thereby convicted and executed- and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment herein before described.

**SECTION 195. GIVING OR FABRICATING FALSE EVIDENCE WITH INTENT TO PROCURE CONVICTION OF OFFENCE PUNISHABLE WITH IMPRISONMENT FOR LIFE OR IMPRISONMENT**

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [102][by the law for the time being in force in [103][India]] is not capital, but punishable with [104][imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is [104][imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to [105][imprisonment for life] or imprisonment, with or without fine.

**SECTION 196. USING EVIDENCE KNOWN TO BE FALSE**

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

**SECTION 199. FALSE STATEMENT MADE IN DECLARATION WHICH IS BY LAW RECEIVABLE AS EVIDENCE**

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

**SECTION 200. USING AS TRUE SUCH DECLARATION KNOWING IT TO BE FALSE**

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

**Explanation -** A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 to 200

**SECTION 205. FALSE PERSONATION FOR PURPOSE OF ACT OR PROCEEDING IN SUIT OR PROSECUTION**

Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or

causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**SECTION 206. FRAUDULENT REMOVAL OR CONCEALMENT OF PROPERTY TO PREVENT ITS SEIZURE AS FORFEITED OR IN EXECUTION**

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest there in from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**SECTION 207. FRAUDULENT CLAIM TO PROPERTY TO PREVENT ITS SEIZURE AS FORFEITED OR IN EXECUTION**

Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that

property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## SECTION 208. FRAUDULENTLY SUFFERING DECREE FOR SUM NOT DUE

Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum that is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Illustration**

A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may

share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

**SECTION 209. DISHONESTLY MAKING FALSE CLAIM IN COURT**

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

**SECTION 210. FRAUDULENTLY OBTAINING DECREE FOR SUM NOT DUE**

Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

**SECTION 211. FALSE CHARGE OF OFFENCE MADE WITH INTENT TO INJURE**

Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that

there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;and if such criminal proceeding be instituted on a false charge of an offence punishable with death,[104][imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 228. INTENTIONAL INSULT OR INTERRUPTION TO PUBLIC SERVANT SITTING IN JUDICIAL PROCEEDING**

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**SECTION 463. FORGERY**

Whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

**SECTION 471. USING AS GENUINE A FORGED DOCUMENT**

Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

**Section 474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.—1**[Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with 2[imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 475. COUNTERFEITING DEVICE OR MARK USED FOR AUTHENTICATING DOCUMENTS DESCRIBED IN SECTION 467, OR POSSESSING COUNTERFEIT MARKED MATERIAL**

Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in Section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of

authenticity to any document then forged or there after to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with [152][imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 476. COUNTERFEITING DEVICE OR MARK USED FOR AUTHENTICATING DOCUMENTS OTHER THAN THOSE DESCRIBED IN SECTION 467, OR POSSESSING COUNTERFEIT MARKED MATERIAL**

Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Section 477 [A]. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.—**

Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such documents, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**SECTION 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.

**Section 219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.—**

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

**Section 220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—**

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

**Section 201. Causing disappearance of evidence of offence, or giving false information to screen offender.**

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the

offence which he knows or believes to be false; if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life.—and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both. Illustration A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

**Section 202. Intentional omission to give information of offence by person bound to inform.—**

Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Section 203. Giving false information respecting an offence committed.**

Whoever knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. 1[Explanation.—In sections 201 and 202 and in this section the word "offence", includes any act committed at any place out of 2[India], which, if committed in 2[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.]

## CHAPTER 3

WHENEVER ANY PERSON (WIFE, HUSBAND, POLICE OFFICER, JUDGE, ADVOCATE, MINISTER, COLLECTOR, ETC.) USES OR GIVES FALSE INFORMATION TO PUBLIC SERVANT OR FILES FALSE CASE AGAINST YOU THEN YOU CAN USE PROVISIONS OF SECTION 340 OF CRIMINAL PROCEDURE CODE AND CONTEMPT OF COURT TO TAKE ACTION AGAINST SUCH MISCHIEVOUS LITIGANTS.

THE RELEVANT CASES LAWS ARE AS BELOW. DETAILS GIVEN IN OTHER CHAPTERS.

1. Govind Mehta **AIR 1971 SC 1708** – **Judge was prosecuted.**
2. K. Ram Reddy Vs. State **1998 (3) ALD 305** – **Judge, Advocate, Public Prosecutor were prosecuted.**
3. State Vs. Kamlakar Bhavsar **2002 ALLMR (Cri.)2640**
4. Sejalben Tejasbhai Chovatiya Vs. State Of Gujarat **2016 SCC OnLine Guj 6333 - Wife was prosecuted.**
5. Fareed Ahmed Qureshi Vs. State of Maharashtra **2018 SCC online Bom 960 - Husband was Prosecuted**
6. Sharad Pawar Vs. Jagmohan Dalmiya & Ors**. (2010) 15 SCC 290**
7. Indresh Vs Gopi **2004 SCC OnLine Bom 577 – Builder**
8. Vijay Enterprises Vs. Gopinath Mahade Koli and Ors. **MANU/ MH/0150/2006 – Intervenor**

**9.** Silloo Danjishaw Mistri 2017 SCC OnLine Bom 2392 **– MLA and impersonating lady**

**10.** T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Ors. **2006 (2) ACR 1649 (SC) - Swaroopsingh Naik, Minister, Chief Secreatary of Mnistry.**

## CHAPTER 4

**A]** IN SECTION 340 OF CR.P.C. THE COURT CANNOT ALLOW THE ACCUSED TO GO SCOT FREE - PROSECUTION IS MUST.

**B]** JUDGE PASSING ORDER TO HELP ACCUSED IS LIABLE FOR ACTION UNDER SECTION 218 ETC. OF IPC.

In **Manohar Lal Vs. Vinesh Anand, (2001) 5 SCC407,** it is ruled that**;**

> *"Before adverting to the matter in issue and the rival contentions advanced one redeeming feature ought to be noticed here pertain to Criminal jurisprudence:* ***To pursue an offender in the event of commission of an offence, is to sub-serve a social need Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus the doctrine of locus-standi is totally foreign to criminal jurisprudence****. This observation of ours however obtains support from the decision of this Court in AR Antulay v. Ramdas Sriniwas Nayak & Anr. : 1984 (2) SCC 500. "*

In **Perumal VS Janaki (2014) 5 SCC 377** it is ruled that, the court is not only have juricdiction but also an obligation to conduct enquiry under section 340 of Cr.P.C

In **State of Maharashtra Vs. Mangesh S/O Shivajirao Chavan 2020 SCC OnLine Bom 672** it is ruled as under;

> ***21.*** *The Hon'ble Supreme Court in Manohar Lal vs. Vinesh Anand and others reported in 2001 AIR SCW 1590 has held that to prosecute the offender is a social need and concept of locus standi is foreign to criminal jurisprudence. In para no. 5, it is observed thus:-*
>
> *"5. Before adverting to the matter in issue and the rival contentions advanced one redeeming feature ought to be noticed here pertain to Criminal jurisprudence: To pursue an offender in the event of commission of an offence, is to sub-serve a social need Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus the doctrine of locus-standi is totally foreign to criminal jurisprudence.*
>
> ***24****. Considering the facts of the present case, in the light of exposition of law in the above referred judgment by the Hon'ble Supreme Court,* ***prima-facie it is clear from the record that PW 22, being a public officer was duty bound in law to protect the deceased who was in his custody****. In his presence, in the Court premises, the deceased was brutally attacked with weapons and murdered. PW 22 while deposing before the Court has resiled from his*

*previous statement and tried to support the defence. Thus, a prima-facie case is made out against PW 22 for perjury and it is expedient in the interests of justice to launch prosecution for perjury against PW 22.*

***25**. In the present case, since this Court being an appellate Court has exercised the power suo motu and issued show cause notice for perjury to PW 22, the same was justified in terms of Sections 195 and 340 of the Code of Criminal Procedure. This Court not only has the authority to exercise such jurisdiction but also has an obligation to exercise such power in appropriate cases.* ***Looking to the facts of the present case, in our considered opinion, this is a fit case to exercise such jurisdiction, so as to maintain the majesty of judicial process and the purity of legal system. This obligation has become more profound as the allegations of commission of perjury are made against a public servant. He has deliberately given false evidence before the Court so as to help the accused persons. Since this offence is committed against public justice, this Court was justified in exercising the jurisdiction by issuing show cause notice for perjury against PW 22.***

***26.** In the fact situation of the case, this Court cannot be a silent spectator where stinking facts warrants interference in order to serve the interests of justice. If this Court*

*remains oblivious to the patent facts on record, it would tantamount to failure in performing its obligation under the law. In this view of the matter, we are unable to accept the contentions of PW 22 that it is only trial Court before which the evidence is recorded can issue notice under Section 340 of the Code of Criminal Procedure."*

In the case of **Zahira Habibullah Sheikh Vs. State of Gujarat (2006) 3 SCC 374** it is ruled as under;

***A] False Evidence – Judge is bound to take steps to discover the truth and punish the guilty. Person playing with justice should not go unpunished.***

***"23.*** *By not acting in the expected manner a Judge exposes himself to unnecessary criticism. At the same time the Judge is not to be innovative at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness, as observed by Cardozo in The Nature of Judicial Process.*

***24.*** *It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep the promise to justice and it cannot stay petrified and sit nonchalantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope (see Jennison v. Baker [(1972) 1 All ER 997 : (1972) 2 QB 52 : (1972) 2 WLR 429 (CA)] ). Increasingly, people*

*are believing as observed by Salmon quoted by Diogenes Laertius in Lives of the Philosophers, "Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away." Jonathan Swift, in his "Essay on the Faculties of the Mind" said in similar lines: "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through."*

***25.*** *As has been noticed earlier in the earlier case (Zahira [(2004) 4 SCC 158 : 2004 SCC (Cri) 999] ) the role to be played by the courts, witnesses, investigating officers, Public Prosecutors has to be focussed, more particularly when eyebrows are raised about their roles.*

***22.*** *The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: 'The Judge was biased.' " (Per Lord Denning, M.R. in Metropolitan Properties Co.*

*Ltd. v. Lannon [(1968) 3 All ER 304 : (1969) 1 QB 577 : (1968) 3 WLR 694 (CA)] , All ER p. 310 A.) The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife [**Ed.**: The reference to Caesar's wife alludes to the statement made by Julius Caesar in Plutarch's The Parallel Lives published in the Loeb Classical Library 1919, 'I thought my wife ought not even to be under suspicion' (p. 467, para 10, line 9). See http:// penelope. uchicago. edu/Thayer/ E/Roman/ Texts/Plutarch/Lives/Caesar*.html (last visited on 1-4-2006)] should be above suspicion (Per Bowen, L.J. in Leeson v. General Council of Medical Education [(1890) 43 Ch D 366 : (1886-90) All ER Rep 78 : 61 LT 849 (CA)] .)*

***35.** This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as*

*persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.*

***18.*** *Whatever be the fate of the trial before the court at Mumbai where the trial is stated to be going on and the effect of her statement made during trial shall be*

*considered in the trial itself. Acceptance of the report in the present proceedings cannot have any determinative role in the trial. Serious questions arise as to the role played by witnesses who changed their versions more frequently than chameleons. Zahira's role in the whole case is an eye-opener for all concerned with the administration of criminal justice. As highlighted at the threshold the criminal justice system is likely to be affected if persons like Zahira are to be left unpunished. Not only the role of Zahira but also of others whose conduct and approach before the inquiry officer has been highlighted needs to be noted. The inquiry officer has found that Zahira could not explain her assets and the explanations given by her in respect of the sources of bank deposits, etc. have been found to be unacceptable. We find no reason to take a different view.*

***20.*** *Zahira has committed contempt of this Court.*

***43.*** *In the aforesaid background, we direct as follows:*

*(1) Zahira is sentenced to undergo simple imprisonment for one year and to pay costs of Rs 50,000 and in case of default of payment within two months, she shall suffer further imprisonment of one year.*

*(2) Her assets including bank deposits shall remain attached for a period of three months. The Income Tax*

*Authorities are directed to initiate proceedings requiring her to explain the sources of acquisition of various assets and the expenses met by her during the period from 1-1-2002 till today. It is made clear that any observation made about her having not satisfactorily explained the aforesaid aspects would not be treated as conclusive. The proceedings shall be conducted in accordance with law. The Chief Commissioner, Vadodara is directed to take immediate steps for initiation of appropriate proceedings. It shall be open to the Income Tax Authorities to direct continuance of the attachment in accordance with law. If so advised, the Income Tax Authorities shall also require Madhu Srivastava and Bhattoo Srivastava to explain as to why the claim as made in the VCD of paying money shall not be further enquired into and if any tangible material comes to surface, appropriate action under the income tax law shall be taken notwithstanding the findings recorded by the inquiry officer that there is no acceptable material to show that they had paid money, as claimed, to Zahira. We make it clear that we are not directing initiation of proceedings as such, but leaving the matter to the Income Tax Authorities to take a decision. The trial court shall decide the matter before it without being influenced by any finding/observation made by the inquiry officer or by the*

*fact that we have accepted the report and directed consequential action."*

***B] Contradictory statements and changing stands–***

***16...****The stand that mere filing of a vakalatnama without an affidavit by the person concerned cannot constitute a statement by the person who has filed the vakalatnama is clearly unacceptable. The appeal undisputedly has been filed by Zahira and it has been candidly admitted that she has filed the vakalatnama for filing the appeal. She cannot now turn around and say that she was not a party in the appeal.*

***17.*** *Above being the position, there is no reason to discard the report given by the inquiry officer which is accordingly accepted. Further, what remains to be done is what is the consequence of Zahira having made such conflicting statements and the effect for changing her stand from the statements made at different stages, particularly in this Court.*

***C] Opinion of right minded people that the Judge was biased.***

***22.*** *The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. If the court acts contrary to the role it is*

*expected to play, it will be destruction of the fundamental edifice on which the justice delivery system stands. People for whose benefit the courts exist shall start doubting the efficacy of the system. "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: 'The Judge was biased.' " (Per Lord Denning, M.R. in Metropolitan Properties Co. Ltd. v. Lannon [(1968) 3 All ER 304 : (1969) 1 QB 577 : (1968) 3 WLR 694 (CA)] , All ER p. 310 A.) The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Caesar's wife [**Ed.**: The reference to Caesar's wife alludes to the statement made by Julius Caesar in Plutarch's The Parallel Lives published in the Loeb Classical Library 1919, 'I thought my wife ought not even to be under suspicion' (p. 467, para 10, line 9). See http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Lives/Caesar*.html (last visited on 1-4-2006)] should be above suspicion (Per Bowen, L.J. in Leeson v. General Council of Medical Education [(1890) 43 Ch D 366 : (1886-90) All ER Rep 78 : 61 LT 849 (CA)] .)*

***D] Criminal Procedure Code Section 311***

***Criminal Procedure Code, 1973 – S.311 – Nature, scope and object of S. 311 – Extensively discussed – Two parts***

***to S. 311: (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be "essential to the just decision of the case" analysed and dismissed - When power under either part to be exercised, discussed in detail – Need for court to ensure that best evidence is brought on record – Right of cross-examination of witnesses called under S. 311 – Nature and scope Evidence Act, 1872, Ss. 165, 173, and 154***

***26.*** *In this context, reference may be made to Section 311 of the Criminal Procedure Code which reads as follows:*

*"311. Power to summon material witness, or examine person present.—Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."*

*The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a criminal court and enables it*

*at any stage of an enquiry, trial or proceeding under the Code (a) to summon anyone as a witness, or (b) to examine any person present in the court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.*

***27.*** *The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.*

***28.*** *As indicated above, the section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the court shall summon and examine*

*all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court. Sections 60, 64 and 91 of the Evidence Act, 1872 (in short "the Evidence Act") are based on this rule. The court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.*

***29.*** *The object of Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the*

*orderly society. If a witness called by the court gives evidence against the complainant, he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant. These aspects were highlighted in Jamatraj Kewalji Govani v. State of Maharashtra [(1967) 3 SCR 415 : AIR 1968 SC 178 : 1968 Cri LJ 231]*

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***30.*** *Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial: the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.*

***31.*** *In 1846, in a judgment which Lord Chancellor Selborne would later describe as "one of the ablest judgements of one of the ablest judges who ever sat in this Court", Vice-Chancellor Knight Bruce said [**Ed.**: Pearse v. Pearse, (1846) 1 De G&SM 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748] (ER p. 957):*

> *"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."*

*The Vice-Chancellor went on to refer to paying "too great a price ... for truth". This is a formulation which has subsequently been frequently invoked, including by Sir Gerard Brennan. On another occasion, in a joint judgment of the High Court, a more expansive formulation of the proposition was advanced in the following terms: "The evidence has been obtained at a price which is*

*unacceptable having regard to the prevailing community standards."*

***32.*** *Restraints on the processes for determining the truth are multifaceted. They have emerged in numerous different ways, at different times and affect different areas of the conduct of legal proceedings. By the traditional common law method of induction there has emerged in our jurisprudence the principle of a fair trial. Oliver Wendell Holmes described the process:*

> *"It is the merit of the common law that it decides the case first and determines the principles afterwards…. It is only after a series of determination on the same subject-matter, that it becomes necessary to 'reconcile the cases', as it is called, that is, by a true induction to state the principle which has until then been obscurely felt. And this statement is often modified more than once by new decisions before the abstracted general rule takes its final shape. A well-settled legal doctrine embodies the work of many minds, and has been tested in form as well as substance by trained critics whose practical interest is to resist it at every step."*

***33.*** *The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development*

*process continually adapted to new changing circumstances, and exigencies of the situation—peculiar at times and related to the nature of crime, persons involved—directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.*

***34.*** *As will presently appear, the principle of a fair trial manifests itself in virtually every aspect of our practice and procedure, including the law of evidence. There is, however, an overriding and, perhaps, unifying principle. As Deane, J. put it:*

> *"It is desirable that the requirement of fairness be separately identified since it transcends the context of more particularised legal rules and principles and provides the ultimate rationale and touchstone of the rules and practices which the common law requires to be observed in the administration of the substantive criminal law."*

***35.*** *This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affects the whole community as a community and is harmful to society in general. The concept of fair trial*

*entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and*

*standing of the judges as impartial and independent adjudicators.*

***E] Fair Trial-***

***38.*** *Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an over hasty stage-managed, tailored and partisan trial.*

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

***40.*** *"Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons*

*beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle the truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth is presented before the court and*

*justice triumphs and that the trial is not reduced to a mockery. Doubts are raised about the roles of investigating agencies. Consequences of defective investigation have been elaborated in Dhanaj Singh v. State of Punjab [(2004) 3 SCC 654 : 2004 SCC (Cri) 851 : JT (2004) 3 SC 380] . It was observed as follows: (SCC p. 657, paras 5-7)*

*"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] )*

*6. In Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.*

*7. As was observed in Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] ."*

***F] Role of Witnesses and duty of the state to protect them.***

***40.*** *"Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the courts on account of frequent turning of witnesses as hostile,*

*either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle the truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery. Doubts are raised about the roles of investigating agencies. Consequences of defective investigation have been*

*elaborated in Dhanaj Singh v. State of Punjab [(2004) 3 SCC 654 : 2004 SCC (Cri) 851 : JT (2004) 3 SC 380] . It was observed as follows: (SCC p. 657, paras 5-7)*

*"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] )*

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*7. As was observed in Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory*

*investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] ."*

***41.*** *The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation (sic repetition). We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments like the Terrorist*

*and Disruptive Activities (Prevention) Act, 1987 (in short "the TADA Act") have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts mere mock trials as are usually seen in movies.*

***42.*** *Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play.*

***If the court acts contrary to the role it is expected to play, it will be the destruction of the fundamental edifice on which the justice delivery system stands – Judiciary – Fundamental duty of – Criminal Procedure Code, 1973, Ss. 344, 311 and 391 – Evidence Act, 1872, S. 165 (Paras 18, 20, 22, 24 and 43)***

***Constitution of India – Arts. 21 and 14 – Fair trial – What is – Held, fair trial for a criminal offence consist not only in technical observance of frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice – Words and phrases – "Fair Trial" – Meaning of – Jurisprudence – Rule of law. (Paras 36 and 39)***

***Constitution of India – Arts. 21 and 14 – Fair trial – Balancing of competing interests of the accused, the victim and society entailed – A trial which is primarily aimed at ascertaining the truth has to be fair to all concerned – Interests of society not to be treated with complete disdain – In fact, public interest in proper administration of justice to be given as much importance, if not more, as interests of the individual accused – In this, courts have a vital role to play – Repeated emphasis by Supreme Court in this regard***

***pointed out – Criminal Trial – Prosecution – Role of – Held, it is the community that acts through the State and prosecuting agencies – jurisprudence – rule of law. (Paras 35, 36 and 42)***

***Criminology – Crimes – Nature of – Held, crimes are public wrongs, in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to society in general. (Para 35)***

***Criminal Trial – Presiding Judge – Purpose of and role of – Held, is the discovery, vindication and establishment of truth – Hence, the trial should be a search for the truth and not a bout over technicalities – Presiding Judge must cease to be spectator and a mere recording machine – He must become a participant in the trial evincing intelligence, active interest and eliciting all relevant materials necessary for reaching the correct conclusion to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community – Restraints on processes for determining the truth – Criminal Procedure Code, 1973 – Ss. 391, 311, 386, 231, 242, 244, 233, 243 and 247 – Purpose of and role of court in criminal trial – Judicial process – Raison***

***d'etre for existence of courts of justice – Rule of law. (Paras 30, 32, 35 and 37)***

Hon'ble Supreme court in the case of **ABCD v. Union of India(2020) 2 SCC52**had ruled that anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice**.**

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, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.

A person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court.

In the circumstances a notice is required to be issued to such petitioner in suo motu exercise of power of this Court "why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code". The Registry was directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who was directed to appear in-person.

It is ruled as under;

***''2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes*** *with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.*

*17. In* ***K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481****] it was observed :* ***(SCC p. 493, para 39)***

> *"39. If the primary object as highlighted in Kensington Income Tax Commrs. [R. v. General Commissioners for Purposes of Income Tax Acts For District of Kensington, ex p Princess Edmond De Polignac, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] 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, manoeuvring 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."***.**

*19.In the circumstances a notice is required to be issued to the petitioner in suo motu exercise of power of this Court "why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code". The Registry is directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who is directed to appear in-person before this Court on 14-1-2020***..**

*16……..In Chandra Shashi v. Anil Kumar Verma [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found*

*guilty of contempt of court and sentenced to two weeks' imprisonment..''*

In **Geeta Monga Vs.Ram Chand S. Kimat Rai and Ors. MANU/DE / 0021/ 2005** it is ruled as under;

***''Code of Criminal Procedure (Cr. PC) – Section 340, 341 –*** *Court once come to the conclusion that* ***the respondent has made a false / inconsistent statement then Court to take action under 340 of Cr.P.C.***

*The District Judge by* ***nothing that the Court cannot take a notice of ''every falsehood sworn in the Court'' and the gravity of the false statement is not such which attracts the provisions of Section 340 Cr.P.C. The whole approach of the learned Additional District Judge to such kind of issue cannot be approved. The impugned order cannot be legally sustained, as it has resulted into miscarriage of justice.***

***HELD, The above findings and observations of the Additional District Judge are not only mutually inconsistent but self – destructive because on one hand the learned Trial Court noted that the respondent has made a false/ inconsistent statement and on the other hand, it has noted that the Court cannot take notice of "every falsehood sworn in the Court" and the gravity of***

***<u>the statement is not such which attracts the provisions of Section 340 Cr. P.C."</u>***

*This Court is at a loss to appreciate such kind of approach the Trial Court. The mere fact that the respondent/ defendant/judgment debtor has filed an appeal against the judgment and decree passed by the learned Additional District Judge should not have dissuaded him from answering the application under section 340 Cr.P.C. on its merits. The whole approach of the learned Additional District Judge to such kind of issue cannot be approved. In the opinion of this Court, the impugned order cannot be legally sustained, as it has resulted into miscarriage of justice.*

*The impugned order passed by Additional District Judge is hereby set aside and the matter is remanded back for deciding the application under Section 340 Cr. P.C. afresh in accordance with the law.*

*The said suit was disposed of and decreed by the learned Additional District Judge vide a judgment and decree dated 29.9.2000. After the disposal of the said suit, the plaintiff/appellant moved an application under Section 340 Cr.P.C. alleging commission of the offence of perjury by Ramchand S. Kimatrai by making false statement in the*

*Court. This appeal is directed against the order of the learned Additional District Judge, Delhi dated 19.9.2003 whereby dismissing an application of the appellant under Section 340 of Cr. P.C. praying for initiating proceeding against a certain Ramchand S. Kimatrai, who appeared as a witness in the Court and is stated to have made a false statement amounting to the commission of the offence of perjury. The said application was contested by the respondent/defendant. The learned Additional District Judge despite according an unequivocal/patent finding that respondent No. 2 had made a false statement during the course of the trial of the civil suit, has still declined to initiate the requisite proceedings under Section 340 Cr.P.C. and has dismissed the complaint.*

*Held, what is sought to be agitated by the appellant is an aspect touching the administration of justice, this Court considers it expedient in the interest of justice to condone the delay, if any, in filing the appeal.''*

In **Dnyandeo Shaji Naik Vs. Mrs. Pradnya Prakash Khadekar (2017) 5 SCC 496** it is ruled as under;

*''**13.** The Court must view with disfavor any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the*

*truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practiced in our country, there is no premium on the truth.''*

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## CHAPTER 5

APPLICATION UNDER SECTION 340 OF CR.P.C CANNOT BE DECIDED WITHOUT CONDUCTING PRELIMINARY ENQUIRY.

COURT IS BOUND TO EXAMINE THE ALLEGATIONS.

JUDGE CANNOT IGNORE THE SERIOUS OFFENCES AND DRAW ABRUPT CONCLUSION WITHOUT HOLDING ENQUIRY.

In **R. Murugesan Vs. The Subordinate Judge 2016 SCC OnLine Mad 5764** it is ruled as under;

***Sec. 340 of Cr. P.C. – The court is bound to examine the allegations and then take a decision as to complaint can be made or not. In such case, whether the petitioner herein is a party to the suit or not does not assume significance.***

***When such a complaint has been received, the learned Subordinate Judge, Namakkal ought to have caused proper enquiry to ascertain the correctness or otherwise of the complaint given by the petitioner and to arrive at a conclusion thereof.***

***Learned Subordinate Judge, Namakkal failed to exercise his powers conferred under Section 340 of Code of Criminal Procedure. Therefore, I am only inclined to set aside the order passed by the learned Subordinate Judge as being contrary to the provisions contained in Section 340 of Code of Criminal Procedure.***

*The impugned order passed by the learned Subordinate Judge, Namakkal in his proceeding D.No.998/2015 dated 17.12.2015 is set aside. The writ petition is allowed. No costs. The learned Subordinate Judge, Namakkal is directed to take the complaint dated 25.11.2015 of the petitioner on his file, deal with the same in accordance with the procedures mentioned in Section 340 of Code of Criminal Procedure and to proceed further in accordance with law.*

*If the Court records a finding after subjective satisfaction that the offences enumerated under Section 195 of the*

*Code of Criminal Procedure are made out in the complaint submitted before it, recourse shall be made to forward a report to the Magistrate to initiate Criminal Prosecution. On the other hand, if the Court has not satisfied itself as to the existence of a prima facie case to proceed further, it shall record reasons for not forwarding the complaint as contemplated under Section 340 (1) (c) of the Code of Criminal Procedure. At any rate, as and when a complaint of the nature specified hereinabove has been received, the Court is bound to cause a preliminary enquiry.*

In **Mahadev Savla Patil Vs. The Village Development Officer 2016 ALL MR (Cri) 344** it is ruled as under;

***"8.** In my opinion, under these circumstances, when it was specifically alleged by the appellant that certain alterations and additions were made in the application for Condonation of delay, and when a contention that a portion in the application was blank, had already been taken by the appellant at the time of hearing of the application for Condonation of delay on 23rd April 2011, the learned Judge ought to have held an inquiry into the matter as contemplated under section 340 of the Code. The allegation was of such a nature that it could not have been ignored. Moreover, there was no basis for coming to*

*a conclusion that the said words were already there.* ***No conclusion as to what was the correct position could have been arrived at without holding a preliminary inquiry as contemplated under section 340 of the Code of Criminal Procedure.*** *Whether to lodge a complaint, or whether any offences as spoken about in section 340 of the Code had, in fact, been committed, and further, whether it would be necessary to make a complaint in respect of any such offences, could have been determined by the learned Judge only after holding such an inquiry.*

***9.*** *To the extent the learned Judge refused to hold an inquiry into the matter, the impugned order is clearly erroneous and needs to be interfered with.*

***7.*** *The learned counsel for the respondent no.11 submitted that holding of such an inquiry is discretionary. While this submission is correct, it needs to be observed that the discretion, being judicial discretion has to be exercised judicially, and in accordance with the well settled parameters. In this case, the respondent no.1 herein had filed a reply to the application for holding an inquiry, as contemplated under section 340 of the Code, as was filed by the present applicant, but in the reply, he did not categorically state that the matter alleged to have been written subsequently was already there, and that it had not*

*been written subsequently, as alleged. The learned Judge has come to a conclusion that the matter i.e. the words 'one year four months' were already there and had not been written subsequently. Admittedly, the learned Judge who had heard the application on 23rd April 2011 and the learned Judge who passed the order on 16th July 2013 were two different Judges. The learned Judge had no personal knowledge of the matter."*

In **Perumal VS Janaki (2014) 5 SCC 377** it is ruled as under;

***"20.*** *The High Courts not only have the authority to exercise such jurisdiction but also an obligation to exercise such power in appropriate cases. Such obligation, in our opinion, flows from two factors – (1) the embargo created by Section 195 restricting the liberty of aggrieved persons to initiate criminal proceedings with respect to offences prescribed under Section 195; (2) such offences pertain to either the contempt of lawful authorities of public servants or offences against public justice.*

***21****. A constitution Bench of this Court in Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., (2005) 4 SCC 370, while interpreting Section 195 Cr.P.C., although in a different context, held that any interpretation which leads to a situation where a victim of crime is rendered remediless, has to be discarded[6]. 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.*

***22.*** *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"[7]. 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."*

## CHAPTER 6

DURING ENQUIRY UNDER SECTION 340 OF CRIMINAL PROCEDURE CODE THE COURT/JUDGE MAY SUMMON WITNESSES AND EXAMINE THEM IN WITNESS BOX.

In **Union of India Vs. Harish Milani 2017 [4] Mh.L.J.441** it is rules as under;

> *''**12.** In the process of formation of opinion, the learned Judge if thinks that some more documents which are referred to by the parties are required then he may call and rely on the same to initiate inquiry under section 340 of Code of Criminal Procedure by the Court. To initiate criminal inquiry against someone is a serious matter and therefore, the Court while forming opinion has to consider the relevant documents or the evidence carefully. Generally decision taking often invites disapproval from the losing party. Forming of opinion is making up mind.* ***Therefore the learned Judge needs to be candid in making up mind. The best source for forming opinion is verification of facts and for the purpose of verification, the true and correct facts should be placed before the Judge. In the process of forming opinion in the inquiry the procedural power to call the witness, to bring the documents revealing the true facts, vests with him. Thus section 311 of Code of Criminal Procedure is***

***helpful not only in the trial but also even in any inquiry or any other proceedings under the Code to get true facts on record.*** *Before registering the complaint by the Magistrate under section 340 of Code of Criminal Procedure hearing the person against whom prosecution is likely to be instituted is not contemplated. A respondent who will face inquiry has every right to know and is to be heard in the proceeding once the complaint is registered and the proceedings are conducted under section 340 of Code of Criminal Procedure, but not at the stage of making of mind by the Judge whether to refer the matter for registering the complaint to the Magistrate under section 340 of Code of Criminal Procedure. In support of this, I rely on the judgment of Pritish (supra) passed by Supreme Court. The Hon'ble Apex Court in the judgment of Pritish (supra) has observed as under:*

*"14. Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to*

*making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would be accused...."*

See also **Zahira Shaikh Vs. State (2006) 3 SCC 374** .

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## CHAPTER 7

COURT CAN DIRECT THE APPLICANT TO GIVE MATERIALS/PROOFS IN SUPPORT OF HIS APPLICATION UNDER SECTION 340 OF CR.P.C.

In **T. Dinakaran 2017 SCC OnLine Mad 30109** it is ruled as under;

***''15.** At the same time, the Court is entitled to direct the party concerned who alleges the production of forged documents or given in evidence to furnish relevant materials in support of the allegations made in the application filed under Section 340 of Cr.P.C.''*

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## CHAPTER 8

ANYONE INCLUDING STRANGER TO THE PROCEEDING CAN FILE THE APPLICATION UNDER SECTION 340 OF CR. P. C.

In **Manohar Lal Vs. Vinesh Anand, ( 2001) 5 SCC 407,** it is ruled that**;**

> *"Before adverting to the matter in issue and the rival contentions advanced one redeeming feature ought to be noticed here pertain to Criminal jurisprudence: To pursue an offender in the event of commission of an offence, is to sub-serve a social need Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus the doctrine of locus-standi is totally foreign to criminal jurisprudence. This observation of ours however obtains support from the decision of this Court in AR Antulay v. Ramdas Sriniwas Nayak & Anr. : 1984 (2) SCC 500."*

In **N. Natarajan Vs. B.K. Subba Rao AIR 2003 SUPREME COURT 541**it is ruled as under;

> ***Criminal P.C. (2 of 1974), S. 340, S. 195- Complaint under S. 340 at his instance though being stranger, is tenable - In respect of offences affecting administration***

***of justice - Can be lodged even by stranger to proceedings - Public Prosecutor Conducting Bomb Blast case - Complainant not interested in outcome of case filing application alleging that conduct of prosecutor in making contradictory submissions would attract provisions of Ss. 192 to 196 and 227, Cr.P.C. - if in respect of any offence, law can be set into motion by any citizen of this country, we fail to see how any citizen of this country cannot approach even under S. 340, Cr.P.C. For that matter, the wordings of S. 340, Cr.P.C. are significant. The Court will have to act in the interest of justice on a complaint or otherwise. Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the Court can take action in the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed covered by the said provision. - Complaint under S. 340 at his instance though being stranger is tenable.***

*It is well settled that in criminal law that a complaint can be lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In respect of offences adverted to in Section 195, Cr.P.C.. there is a restriction that the same cannot be*

*entertained unless a complaint is made by a Court because the offence is stated to have been committed in relation to the proceedings in that Court. Section 340, Cr.P.C. is invoked to get over the bar imposed under Section 195, Cr.P.C. In ordinary crimes not adverted to under Section 195, Cr.P.C. if in respect of any offence, law can be set into motion by any citizen of this country, one fails to see how any citizen of this country cannot approach even under Section 340, Cr.P.C.. For that matter, the wordings of Section 340, Cr.P.C. are significant. The Court will have to act in the interest of justice on a complaint or otherwise. Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the Court can take action in the matter otherwise than on a complaint , that is, when it has received information as to a crime having been committed covered by the said provision.*

***8.*** *Therefore, application by stranger to proceedings alleging that conduct or Public Prosecutor in Bombay Blast case in making contradictory statements would attract provisions of Ss. 192 to 196 and 227, Cr.P.C. can be entertained by Court though complaint is not interested in outcome of the case and is stranger to proceedings.*

**In <u>Bhagwandas NarandasVs.D.D. Patel And Co. AIR 1940 Bom 131</u>**it is ruled as under;

***A) Code of Criminal procedure Section 476 - (Sec. 340 of new code) - Application at the instance of a stranger to the proceedings is maintainable- It is open to the Court to entertain an application under Section 476 at the instance of a stranger to the proceedings out of which the application arises .Court may be moved by a person who was not a party to the proceedings out of which the application arises.***

***B) The application need not be made in the course of the proceedings out of which it arises, or immediately thereafter.***

***C) Court is not confined to the record of the proceedings, but is entitled to take into account and consider evidence outside the record of the case and information otherwise acquired -*** *An offence may be committed in the course of a trial before a Judge, and no one may know anything about it. It may be discovered long after the trial has ended; the Judge or his successor may come to know of it in the course of some other trial or in some other way. No private party may think it worth his*

*while then to apply for a sanction to prosecute; and yet in the interests of public justice it may become necessary that there should be a prosecution – Theseobservations apply with even greater force to the present Section, which contains the words which were not present in the former Section "whether on application made to it in this behalf or otherwise.*

*In my view in deciding whether it is in the interests of justice that an enquiry should be made the Court is not confined to the record of the proceedings, but is entitled to take into account and consider information otherwise acquired.*

***D) Section 44 of the Indian Evidence Act - Section would in my opinion apply in any proceeding, civil or criminal - it is not necessary for the party against whom a judgment is set up to bring a separate suit to have it set aside, but that he may show in the suit or proceeding in which it is set up against him that it was obtained by fraud. I see no ground for drawing any distinction between civil or criminal proceedings as to the applicability of Section 44, which permits "any party to a suit or other proceeding".***

*As regards Section 44 of the Indian Evidence Act, which provides that any party to a suit or other proceeding may*

*show that any judgment, order, or decree, which is relevant under Section s 40, 41, or 42, and which has been proved by the adverse party, was obtained by fraud, it was contended that Section 44 would apply only in a suit for revocation.. The contention that Section 44 would apply only in a suit for revocation is in my opinion ill founded. The Section contains no limitation of the character suggested; it enables any party to a suit or other proceeding to show that a decree proved by the adverse party against him was obtained by fraud. The Section would in my opinion apply in any proceeding, civil or criminal, if the decree sought to be challenged. It is well established that a stranger to a suit in which a decree in rent has been passed may impeach that decree for fraud and have it set aside if the fraud be proved. It is also clear that having regard to Section 44 of the Indian Evidence Act it is not necessary for the party against whom a judgment is set up to bring a separate suit to have it set aside, but that he may show in the suit or proceeding in which it is set up against him that it was obtained by fraud. I see no ground for drawing any distinction between civil or criminal proceedings as to the applicability of Section 44, which permits "any party to a suit or other proceeding "to prove that a judgment proved by the adverse party was obtained by fraud. If therefore a*

*criminal enquiry should be directed and a complaint made, I think that Section 44 would apply if the probate decree were relied upon by the accused. Although the Chancery Division had no jurisdiction to revoke the probate of a will, it had full jurisdiction to decide that it was a forgery. A probate was held not to be conclusive evidence that the party obtaining it had not forged the will, which may at first sight seen inconsistent. Having regard to Section 44 of the Indian Evidence Act I think that it would be equally open to the party offering the evidence of forgery to prove that the probate decree was obtained by fraud, if it were set up against him by the accused, instead of admitting the probate and the title of the executor. Evidence of forgery is admissible in the same manner as it would be admissible in a criminal case. An application under Section 476 being in the nature of a civil application the Court has full jurisdiction to award costs.*

In the case of **R. Murugesan Vs. The Subordinate Judge Namakkal 2016 SCC OnLine Mad 5764,** it is ruled as under;

***"Section 340 – Suit – Application under Sec. 340 by a person who is not a party to suit is maintainable.***

*The Judge is bound to conduct enquiry.*

***11...****Therefore, when such a complaint has been received, the learned Subordinate Judge, Namakkal ought to have*

*caused proper enquiry to ascertain the correctness or otherwise of the complaint given by the petitioner and to arrive at a conclusion thereof. Instead, the learned Subordinate Judge referred the complaint given by the petitioner to the Chairman of District Legal Services Authority for adjudication. Such a course adopted by the learned Subordinate Judge is not warranted and thereby the learned Subordinate Judge, Namakkal failed to exercise his powers conferred under Section 340 of Code of Criminal Procedure.*

***10.*** *It is clear from the above provisions of the Code of Criminal Procedure that when it is complained that fraud was played on the Court purportedly on the strength of documents, which were either forged, fabricated or created for the purpose of judicial proceedings, then the Court can cause necessary preliminary enquiry in to such complaint. This is the pith and substance of Section 340 of Cr.P.C. Such investigation shall be caused in the interest of justice and to uphold the majesty of law. If on enquiry, as contemplated under Section 340 of Cr.P.C. the Court is satisfied that the offences mentioned in Section 195 are committed in relation to a proceeding in the Court, more particularly by producing forged or fabricated document during the course of evidence, then the conclusion of such preliminary enquiry shall be recorded in writing and the*

*same shall be sent to the competent Magistrate Court to initiate Criminal prosecution against the persons who have indulged in such offences. Thus, the learned Subordinate Judge is empowered to deal with the complaint given by the petitioner and it is not as though there is no power to be exercised by him in this regard.*

***12...****Therefore, what is important is whether by producing forged document, administration of justice has been thwarted or not has to be gone into by the learned Subordinate Judge. When such being the allegation, the learned Subordinate Judge ought to have gone into the question as to whether the collusive suit has resulted in the petitioner being thrown out of the property or not. In such case, whether the petitioner herein is a party to the suit or not does not assume significance. In any event, the observations made by the learned Subordinate Judge in the impugned order as though he is not empowered to deal with such a complaint is contrary to the express provisions contained in Section 340 of Code of Criminal Procedure Code. Therefore, I am only inclined to set aside the order passed by the learned Subordinate Judge as being contrary to the provisions contained in Section 340 of Code of Criminal Procedure.*

***13.*** *In the light of what is stated above, the impugned order passed by the learned Subordinate Judge, Namakkal*

*in his proceeding D. No. 998/2015 dated 17.12.2015 is set aside. The writ petition is allowed. No costs. The learned Subordinate Judge, Namakkal is directed to take the complaint dated 25.11.2015 of the petitioner on his file, deal with the same in accordance with the procedures mentioned in Section 340 of Code of Criminal Procedure and to proceed further in accordance with law."*

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## CHAPTER 9

AFTER DIRECTION UNDER SECTION 340 OF CR.PC BY THE COURT THE REGISTRAR CONCERNED HAS TO FILE THE COMPLAINT BEFORE MAGISTRATE ON THE SAME DAY OR AT THE MOST WITHIN ONE WEEK.

In **Prahallad Mallik v. State of Orissa and another 1992 CRI. L. J. 1432** it is ruled as under;

***Criminal P.C. (2 of 1974), S.340, 341,195- Making of a complaint in writing by the concerned officer of the court- Such act is merely consequential, and an administrative act - All the functions enumerated in Cls. (a) to (c) of sub-sec. (1) of S. 340 can be undertaken on the same day or within a reasonable time advisably within a week.***

*4. Making of a complaint in writing is a sequel to the recording of a finding that an offence as referred to above appears to have been committed. Such act is merely consequential, and an administrative act.- if the Court concerned makes a complaint in writing, on the very date when it records a finding regarding desirability to make a complaint in view of prima facie view regarding commission of an offence or within a reasonable time advisably within a week. All the functions enumerated in Cls. (a) to (c) of sub-sec. (1) can be undertaken on the same day or within a reasonable time. If any other view is taken, that would frustrate the legislative intent of providing an appeal, by making it dependant on the fortuitous circumstances of making a complaint which is merely an administrative act.*

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## CHAPTER 10

WHEN DISHONESTY IS APPARENT THEN THE COURT CAN TAKE SUO-MOTO ACTION. NO APPLICATION FROM ANYONE IS NECESSARY.

In proceeding under section 340 of Cr.P.C there is no need that any application should be made.

In following cases the Court had taken suo-moto cognizance under section 340 of Cr.P.C.

1. **ABCD Vs. Union of India (2020) 2 SCC52**
2. **Sarvapalli Radhakrushna Vs Union of India 2019 SCC OnLine SC 51**
3. **Afzal & Anr vs State Of Haryana & Ors (1996) 7 SCC** 397

Hon'ble Supreme court in the case of **ABCD Vs. Union of India (2020) 2 SCC52** had ruled that;

> *19.In the circumstances a notice is required to be issued to the petitioner in suo motu exercise of power of this Court "why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code".* ***The Registry is directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who is directed to appear in-person before this Court on 14-1-2020..***

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## CHAPTER 11

FILLING OF FALSE CLAIM ALSO INCLUDES FILING OF FALSE REPLY WITH ULTERIOR MOTIVE TO DISMISS THE LAWFUL CLAIM IN PLAINT/SUIT, WRIT OR BEFORE ANY FORUM.

In **H.S. Bedi Vs. National Highway Authority of India 2016 SCC OnLine Del 432** it is ruled that;

***"CIVIL SUITS:- FILLING OF FALSE CLAIMS AND DEFENSES WRITTEN STATEMENTS IS FRAUD ON COURT - The claim as defined in Section 209 0f I.P.C is claim not only a claim in affirmative but equally also by denying an averred fact while responding to the plaint or petition etc in a written statement, counter affidavit or reply etc. Doing so is making a "claim" to the non-existence of avert fact. A false denial is also punishable. It also includes the defence adopted by Defandants in the suit.***

***9.4. (iii)*** *To succeed under s 209 of the PC, the Prosecution must establish that the claim was "false" beyond a reasonable doubt and that the accused knew that it was false. A claim is "false" if it is made without factual foundation. A claim is not "false" if it involves a question of law. The test for falsity is not considered by reference to the pleadings in isolation, but must take into account the wider factual context; this necessarily includes facts not revealed in the pleading itself.*

***14.3*** *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 grounds for obtaining that relief.*

*The offence is complete the moment a false claim is filed in a Court.*

***14.4.****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."*

In **Kapol Co-op. Bank Ltd. Vs. State of Maharashtra2005 CRI. L. J. 765**it is ruled as under;

***A] CONTEMPT OF COURT BY POLICE OFFICER – Contempt of Courts Act (1971), SS. 2 (c) (ii), 13 – Criminal contempt – Making a false statement in judicial proceeding or filing false affidavit before Court or the***

***other statements which result in misleading the court or disclose even an attempt to deceive the court, could result in mischievous consequence to the administration of justice and warrant criminal contempt- In a petition to transfer investigation the respondent I.O. Shri Mandar Dharmadhikari – Asstt-P.O., Cuff Parade. Police Station Mumbai, made a false statement with ulterior motive that the petition will be dismissed – It is an act of interference with the administration of justice – the apology tendered by I.O. at belated stage is nothing but mere realization of the contemnor that his adventure has turned into a misadventure as he failed in misleading the Court to get the petition dismissed – I.O. is guilty of committing Criminal Contempt – Cost of Rs. 50,000/- imposed imprisonment till rising of court ordered.***

***B] ABUSE OF PROCESS OF COURT – Abusing the court's process may mean different types of acts – Most serious example is an act which is intended to deceive the Court, for example by deliberate suppression of facts or by the presentation of falsehood is as much abuse of Court's process as the act of bringing frivolous and vexatious and oppresive proceedings.***

***C] The concept of criminal contempt was well explained in the matter of Hastings Mill Limited v. Hira***

***Singh reported in 1978 Cri LJ 560. Shri Justice A. K. Sen, speaking for the Division Bench of the Calcutta High Court, held that :-***

> *"16. S. 2(c) of the said Act has defined criminal contempt to mean doing of any act which either prejudices, or interferes or tends to interfere with the due course of any judicial proceedings or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. In the case of Barada Kanta v. Registrar, Orissa High Court, AIR 1974 SC 710 : (1974 Cri LJ 631), the Supreme Court pointed out that the terminology used in the definition is borrowed from the English Law of Contempt and embodies concepts which are familiar to that law which by and large was applied in India and they have to be understood in the sense in which they have been so far understood by such Courts with the aid of English Law where necessary. Under the English Law any act which is likely to interfere with the course of justice will amount to contempt. Acts which are likely to interfere with the course of justice may be classified into 4 categories, namely, (1) acts which interfere with persons having duties to discharge in a Court of justice, (2) acts which*

*amount to a breach of duty committed by persons officially connected with the Court or its process, (3) acts which interfere with persons over whom the Court exercises special jurisdiction and (4) acts which amount to an abuse of the Court's processes (See - The Law of Contempt Borrie and Lowe 1973 edition, Chapter VIII).* ***Abusing the Court's process may mean different types of acts but generally the term connotes some misuse of the Court's process, the most serious example of which is an act which is intended to deceive the Court, for example, by the deliberate suppression of facts or by the presentation of falsehood, but the same term also includes bringing of frivolous and vexatious proceedings. Therefore, an act of misleading the Court by deliberate suppression of facts or by the presentation of falsehood is as much abuse or the Court's process as the act of bringing frivolous and vexatious and oppressive proceedings****. In Wright v. Bennet (1948) 1 All ER 227 and Stevenson v. Garnett (1898) 1 QB 677 it has been held taking of successive actions covering the same ground and litigating over again the same question is clearly an act of abuse of the process of Court. Such acts are*

*necessarily frivolous and vexatious apart from being oppressive to the defendant."*

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## CHAPTER 12

APPLICATION UNDER SECTION 340 OF CR. P. C HAS TO BE REGISTERED SEPARATELY. COURT/ TRIBUNAL CANNOT REFUSE TO REGISTER THE APPLICATION. IT HAS TO BE DECIDED INDEPENDENTLY IRRESPECTIVE OF THE MAIN CASE, SUIT, CLAIM ETC.

IT IS AN INDEPENDENT PROCEEDING THOUGH IT IS A PART OF MAIN PROCEEDING.

IN CRIMINAL PROCEEDINGS THE APPLICATION CAN BE GIVEN DIRECTLY TO THE COURT. NO SEPARATE APPLICATION REQUIRED.

In **Maud Late John Desa Vs. Gopal Leeladhar Narang 2007 MH. L.J. (Cri.) (2) 860** it is 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 – 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.*

Same law is followed in **T. Dinakaran 2017 SCC OnLine Mad 30109**

In **T. Dinakaran 2017 SCC OnLine Mad 30109** it is ruled as under;

*Merely because civil suit was pending, that did not prevent and could prevent the Civil Judge from entering into an enquiry.*

*18.Considering the facts and circumstances of the instant case, this Court has no hesitation to hold that when an application under section 340 of the Code of Criminal Procedure is filed, the Civil Court has to register the same as Miscellaneous Judicial Case that is a case where a Judicial Enquiry is contemplated. The learned Civil Judge that is the learned Subordinate Judge, Tindivanam should have therefore, directed the application to be registered as Miscellaneous Judicial Case and try the same thereafter in the manner and procedure as contemplated under section 340 and 195 of the Code of Criminal Procedure. Further, this Court also holds that the learned Subordinate Judge, Tindivanam might have proceeded to decide the suit and may also proceed to decide the application under section 340 of Code of Criminal Procedure separately.*

*As far as the judicial proceedings are concerned, it should be conducted by the parties concerned based on facts, oral and documentary evidence. At the same time, the parties concerned are bound to abide by all the legal norms. So, the parties are excepted to be genuine without any falsehood, at the same time,* ***when any one of the party has approached the Court concerned with falsehood either in producing document or oral evidence, a duty is casting upon the Court also to take note of the same****.*

*When any application is filed under Section 340 of Cr.P.C., the Court has to record its opinion that it is expedient in the interest of justice to hold an enquiry. So, the opinion of the Court is very much essential. At the same time, the Court cannot mechanically draw the opinion as to whether the petition filed under Section 340 of the Code of Criminal Procedure is entertainable or not. Each case has its own facts and circumstances. Hence, the Court concerned has the duty to apply its mind and come to the conclusion the said application is entertainable. So, no cryptic and order cannot be passed while disposing of an application filed under section 340 of Code of Criminal Procedure.*

*I do not find a prima facie case satisfying any one of the ingredients of section 195 of I.P.C. Therefore, it is not possible for this Court to initiate any proceedings*

*under section 340 of the Cr.P.C. But, for that matter, this Court cannot close its eyes and keep its arms tied without moving forward to see that the real culprits, who are responsible for the fabrication of these documents, are prosecuted and punished. At this juncture, it needs to be noted as to whether in a case of forgery, it is necessary that the proceedings should be initiated under section 340 of the Cr.P.C., by the Court or whether the police could register a case. This issue was resolved by the Honble Supreme Court in Sachida Nand Singh and another Vs. State of Bihar and another, 1998 SCC (Cri) 660 has held in Paragraphs 10, 11 & 12 as follows:*

*10. The sub-section puts the condition that before the Court makes a complaint of any offence referred to in clause (b) of Section 195(1)the Court has to follow the procedure laid down in section 340. In other words, no complaint can be made by a Court regarding any offence falling within the ambit of section 195(1)(b) of the Code without first adopting those procedural requirements. It has to be noted that section 340 falls within chapter XXVI of the Code which contains a fasciculus of Provisions as to offences affecting the administration of justice. So the offences envisaged in Section 195(1) (b) of the Code must involve acts which have affected the administration of justice.*

*11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in Custodia Legis.*

*12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court could also be treated as a criterion affecting administration of justice merely because that document later reached the Court records. In the case on hand, since, as I have already pointed out, the offence of forgery of Exs.A2 & A3 was committed outside the Court, even before they were produced before the Court, there can be no impediment for the police to register a case. when it was pointed out by this Court to the learned counsel on either side that this Court has power to issue a direction to the Thasildar, Tambaram to forward a complaint to the police in respect of the above offence of forgery, for registration of a Criminal case, so as to investigate the same thoroughly to find out the real culprits, the learned counsel for the Appellant submitted that such power is not available for this Court in a Civil Proceedings. Of course,*

*it is true that there is no express provision in the Civil Procedure Code specifically empowering a Civil Court to issue a direction either to a party or to a witness to make a complaint to the police. But at the same time, it needs to be noted that* ***there is no prohibition, either express or implied, thereby prohibiting a Civil Court from issuing any direction to a party or a witness to forward a complaint to the police when a serious offence of forgery is alleged.***

***Therefore, I hold that to meet the ends of justice, it is absolutely necessary for this Court to issue a direction to the Tahsildar to make a complaint to the police.***

***Therefore, it has become necessary for this Court to clarify that in appropriate cases, the civil Court has got power to issue a direction to a party or to a witness to forward a complaint to the police. This measure alone shall send an appropriate message to the intending wrong doers so that the fraud and forgery could be curtailed.***

*14. So, under the above discussions, it is very clear that the Court in which certain forged documents produced or given in evidence or false evidence is adduced, the said Court is the competent authority to direct the officer*

*concerned of the said Court to initiate legal action as contemplated under section 340 of the Code. The said Court cannot simply direct the parties concerned to approach the concerned Judicial Magistrate for the registration of the case and for legal action. The reason behind this task is that no person is authorized to touch or play with the true spirit of administration of justice that is Fiat Justicia Route Column.*

*15.At the same time, the Court is entitled to direct the party concerned who alleges the production of forged documents or given in evidence to furnish relevant materials in support of the allegations made in the application filed under Section 340 of Cr.P.C.*

*19.At the same time as already stated that both the Original Suit as well as Appeal suit are disposed of by the competent Courts concerned, it is not possible for this Court to remand back the Appeal Suit to the learned trial Court as this Court has no jurisdiction and the Appeal Suit has also been disposed of much earlier. On the other hand, it is for this Court to decide and settle the ambiguities in respect of the procedures adopted in dealing with the petitions filed under section 340 of Code of Criminal Procedure in the Civil Courts, by giving the following directions;*

*(i) When an application is filed under section 340 of the Code of Criminal Procedure, it is for the Court concerned to entertain and decide the issues involved in the said application without any interference into the proceedings of the Original suit or other category of the lis as the case may be;*

*(ii) The Court concerned can very well simultaneously proceed with the petition and the main case and decide them accordingly;*

*(iii) Those petitions are to be numbered as Miscellaneous Judicial Caseand may be tried as per law;*

*(iv) In case if the disposal or the findings of the petition filed under Section 340 of the Code of Criminal Procedure is having any bearing upon the main case, then the concerned Court has to act as per law;*

*20.However, in the present case, though the Original Suit as well as the Appeal Suit are tried and disposed of in the considered opinion of this Court, the trial Court, that is the Additional Subordinate Judge, Tinidivanam is very well competent to receive the particular document connected with the Original Suit in O.S.No.26 of 2005 either from the record of the concerned Court or from the party concerned any shall proceed with further as per the*

*direction given above, by affording all opportunities to the parties involved in the said case.*

***2) M. S. Sheriff vs The State Of Madras And Others on 18 March, 1954***

***Equivalent citations: 1954 AIR 397, 1954 SCR 1229***

***Prosecution of perjury after dismissal of writ – After the report by state the petitions became infructuous and were dismissed. After this, the petitioners applied to the High Court under section 476 of the Criminal Procedure Code and asked that the Sub-InsPectors be prosecuted for perjury under section 193, Indian Penal Code.***

***In view of this conflict between the two_ sets of statements the High Court directed the District Judge to make an enquiry. -*** *Considerable evidence was recorded and documents were filed and* ***the District Judge reported that*** *in his opinion the statements made by the two Sub-Inspectors were correct. The High Court disagreed and, after an elaborate examination of the evidence, reached the conclusion that the petitioners were telling the truth and not the Sub- Inspectors.* ***The petitioners were however regularly arrested after their petitions and before the High Court's order; one was released on bail and the other was remanded to jail custody by an order of a Magistrate. Accordingly their petitions became***

***infructuous and were dismissed. After this, the petitioners applied to the High Court under*** *section 476* ***of the Criminal Procedure Code and asked that the Sub-InsPectors be prosecuted for perjury under*** *section 193,* *Indian Penal Code****.*** *The applications were granted and the Deputy Registrar of the High Court was directed to make the necessary complaints. The Sub-Inspeetors thereupon asked for leave to appeal to this court. Leave was refused on the ground that no appeal lies, but leave was granted under article 132 as an interpretation of articles 134 (1) and 372 of the Constitution was involved. The Sub Inspectors have appealed here against that order as also against the order under section 476. In addition, as an added precaution, they have filed a petition for special leave to appeal under article 136 (1).*

*Held, The High Court has scrutinised the. evidence minutely and has disclosed ample material on which a judicial mind could reasonably reach the conclusion that there is matter here which requires investigation in a criminal court and that it is expedient in the interests of justice to have it enquired into. We have not examined the evidence for ourselves and we express no opinion on the merits of the respective cases but after a careful reading of the judgment, of the High Court and the report of the District Judge we can find no reason for interfering with*

*the High Court's discretion on that score. We do not intend to say more than this about the merits as we are anxious not to prejudge or prejudice the case of either side. The learned Judges of the High Court have also very -rightly observed in their order under section 476 that they were not expressing any opinion on the guilt or innocence of the appellants.*

*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.*

*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.*

*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.*

*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.''*

In **Union of India Vs. Harish Milani 2017 [4] Mh.L.J.441** it is rules as under;

*''**18.** Thus in so far as section 340 of Code of Criminal Procedure is concerned, it is not necessary for the Judge to hear other side, but he may hear the applicant. It is not a requirement to hear the person against whom the proceedings are going to be initiated. It is entirely upto the Court to decide whether to initiate the proceedings under section 340 of Code of Criminal Procedure. Thus the proceedings of the application under section 340 of Code of Criminal Procedure are **Kangaroo Baby***

***proceedings*** *within the civil trial and still it is of an independent character and therefore, for the purpose of the said inquiry the powers under Code of Criminal Procedure can be enjoyed the Civil Court.''*

**10.4. DRT CASES**

In **K. A. Kuttiah Vs.The Federal Bank 2006 Cri.L.J. 3541** it is ruled as under;

***Criminal P.C. (2 of 1974), S.340, S.195 (1)(b) (i), S.195(1)(b)(ii)-Penal Code (45 of 1860), S.199, S.200-Prosecution for perjury in proceedings before Debt Recovery Tribunal - Bank Official giving false statements in declaration and producing forged documents in proceedings before Debt Recovery Tribunal -*** *WHEN a particular statement made in a declaration is false and whether such a declaration has been rendered or used in evidence and the manner in which the use of such material had impaired the course of justice, are matters for the court before which such an exercise is undertaken, to consider, at the first instance. If such authority is conceded as not available to that court, it would lose credit of its majesty of being part of the public justice system- In this view of the matter, the impugned order is liable to be set aside. - It is directed that the DRT will take back Ext. P6 petition to file and consider the*

*same in accordance with Section 195 and Section 340 Cr.P.C.*

*(Paras 12 13 14)*

*The allegation made by the petitioner is that in the proof affidavit field in the proceedings before the DRT, certain statements are made, which run contrary to the materials on record and that the materials show that there was a concerted effort to give false evidence before the DRT by producing false documents and giving false statements. Tendering evidence by affidavit is on oath – DRT took the view in the impugned judgment that no proceedings can be initiated under Section 340 Cr. P.C. if a document is forged before its production before a court – Held, the interpretation drawn by DRT is not correct - If view taken by DRT is accepted and if such authority is conceded as not available to that court, it would lose credit of its majesty of being part of the public justice system - where an offence under Section 199 or Section 200 IPC is made out during consideration of the application under Section 340 then DRT making of a complaint is desirable - If the Court is of the opinion that such offences have been committed in relation to any proceedings in any court, the law does not prevent the making of a complaint by that court before the competent court under the Code. In this*

*view of the matter, the impugned order does not stand. The same is accordingly quashed - It is directed that the DRT will take back Ext. P6 petition to file and consider the same in accordance with law, in the light of what is stated above, as regards the law, and having regard to the entire facts and circumstances of the case, in accordance with Section 195 and Section 340 Cr.P.C.*

*B) Criminal Procedure Code, 1973 - Ss. 195 & 340 – Legislative wisdom and purpose behind providing the mechanism available by application of Sections 195 and 340.As the purity of the proceedings of the court is directly sullied by the crime, the court is considered to be the only party entitled to consider the desirability of complaining against the guilty party.*

*Held: The underlying purpose of Section 195(1)(b) is to control the temptation or. the part of the private parties to start criminal prosecution on frivolous, vexatious or insufficient grounds, inspired by a revengeful desire to harass or spite their opponents. Certain offences have therefore been selected for the court's control because of their direct impact on the judicial process. As the purity of the proceedings of the court is directly sullied by the crime, the court is considered to be the only party entitled*

*to consider the desirability of complaining against the guilty party.*''

In **Shiv Services Pvt. Ltd. Vs. Satish Kamble and Ors. 2018 SCC OnLine Bom 2095** it is ruled as under;

*''**1.** In all these three Writ Petitions, the grievance of the Petitioners is that the Registrar, Debt Recovery Tribunal (D.R.T.), has not registered the Applications of the Petitioners under Section 340 of Cr.P.C. lodged in the Registry of D.R.T.*

***2.** Learned Counsel for the Petitioners has pointed out the judgment of the learned Single Judge of this Court in the case of Union of India v. Haresh Virumal Milani, MH/0804/2017. He submitted that the order of the learned Single Judge was carried to the Supreme Court and the S.L.P. came to be withdrawn. He has also relied upon the Judgment in the case of **K.A. Kuttiah v. The Federal Bank Ltd., Ernakulam, 2006 Cri. L.J. 3541** of the Single Judge of the Kerala High Court.*

***3.** Learned Counsel for the Respondent-Bank, on the other hand, has pointed out the provisions of Section 22(3) of the Recovery of Debts and Bankruptcy Act, 1993 as also Rule 5 of the Debts Recovery Tribunal (Procedure) Rules 1993. He fairly conceded that the Registrar, D.R.T. cannot refuse to process the Applications of the Petitioners. He,*

*however, submitted that the procedure as contemplated under Rule 5 of the Debts Recovery Tribunal (Procedure) Rules, 1993 is required to be followed.*

***4.*** *Having heard the learned counsel, we are of the view that the Registrar, D.R.T. cannot decline to process the Applications of the Petitioners presented in the Registry of D.R.T.*

***5.*** *In the said circumstances, we dispose of the Writ Petitions by directing the Registrar, D.R.T. to process the Applications presented by the Petitioners in accordance with law.*

***6.*** *The Writ Petitions are disposed of in the aforesaid terms. There shall be no order as to costs.''*

In **Badal Ramchandra Singh Vs. Bhawna Singh and Another 2019 SCC OnLine Bom 1326** it is ruled as under;

***Section 340 of Cr. P.C – It is settled by catena of decision that under Sec. 340 of Cr. P.C. application has to be decided as early as possible.***

*The learned counsel for the respondent no. 1 wife submits that in the present proceedings, Respondent wife already filed Misc. Application No. 323 of 2019 for taking action against the Petitioner under section 193, 196, 199, 200 and 205 of the Indian Penal Code read with section 340 of*

*the Criminal Procedure Code. He submits that the said Application was filed by the wife on 10.02.2019. He submits that unless and until Criminal Application filed by Respondent wife is decided, there is no question of deciding Petitioner's Application for divorce. In support of this contention, he relies on following judgments:*

*a. M.S. Sheriff v. State of Maharashtra*[4]*. Paragraph 17 and 18 of the said judgment reads thus:*

> *"17. 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."*

*"18. 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 an 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 made 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 section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."*

*b. Iqbal Singh Marwah v. Meenakshi Marwah*[5] *Paragraph 24 sub paragraph 15 of the said judgment reads thus:*

> *"(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."*

*c. Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha*[6] *Para 2 reads thus:*

> *"2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that*

*judicial discipline obliges them to follow it, regardless of their doubts about its correctness.*

*At the most, they could have ordered that the matter be heard by a Bench of three learned Judges."*

d. **Union of India v. Harish V. Milani, 2018 SCC OnLine Bom 2080,** *Paragraph 4 and 7 reads thus:*

*"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. in Writ Petition No. (M/S) of 2002, wherein also similar point was raised as to whether the application under Section 340 C.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 C.P.C., before proceeding further in accordance with law."*

*"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 C.P.C. before deciding the Writ Petition."*

*It is to be noted that the authorities cited by the Respondent as stated hereinabove, held that that the Criminal matters filed by the parties, is required to be decided as early as possible.*

*Considering these facts and the law declared by the Apex Court as referred hereinabove, I am of the opinion that Marriage Petition of Petitioner as well as Application filed by wife is required to be decided as early as possible by the Trial Court. Hence, following order is passed:*

*a. The learned Civil Judge, Senior Division, Thane is directed to decide Marriage Petition No. 260 of 2018 filed by Petitioner husband under section 13(1)(i) of the Hindu Marriage Act for dissolution of marriage and also other Misc. Application No. 323 of 2019 filed by Respondent wife for taking action against the Petitioner, as early as possible, but in any case on or before 31.03.2020*

## CHAPTER 13

THE APPLICATION UNDER SECTION 340 OF CRIMINAL PROCEDURE CODE SHOULD BE DECIDED FIRST AND WITH THE SENSE OF URGENCY. BASED ON THE ENQUIRY DONE UNDER SECTION 340 OF CRIMINAL PROCEDURE CODE THE MAIN CLAIM/WRIT MAY BE ALLOWED OR DISMISSED AND PROSECUTION BE ORDERED AGAINST THE GUILTY.

1. Union of India Vs Harish Milani 2018 SCC OnLine Bom 2080
2. Sugesan Finance Investment-1989 SCC OnLine Mad 113
3. Sarvepalli Radhakrishna Vs.Union of India 2019 SCC Online SC 61
4. Sanjeev Kumar Mittal Vs. State 2011 RCR (CRI) (7) 2111
5. H.S.Bedi Vs. National Highway Authority of India (2016)1 HCC (Del) 179
6. Vijay EnterprisesVs. Gopinath Mahade Koli and Ors.MANU/MH/0150/2006
7. Nickee Bagaria Vs. Santosh Kimar Bagaria & Ors.2015 SCC OnLine Bom 8535.
8. Silloo Mistry Vs. State 2017 SCC OnLine Bom 2392

In **Union of India Vs. Harish V. Milani2018 SCC Online Bom 2080** it is ruled as under;

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

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

In **M/s New Era Fabrics Ltd. Vs. Bhanumati Keshrichand Jhaveri & Ors. (2020) 4 SCC 41** it is ruled as under;

***Criminal P. C. (1973), Ss. 340,195(1)(b) Penal Code (1860), Ss. 193, 199 – False evidence – Institution of criminal proceeding against – Application for – Documents on record shows that prima facie case is made out that petitioner***

***fabricated evidence for purpose of SLP proceedings before Apex Court – Direction issued to Secretary General of Apex Court to depute an officer of rank of Deputy Registrar or above to file complaint against petitioner. [Para 5.3 & 6]***

*5.3 We do not wish to comment in detail upon the intention behind making the aforesaid interpolations. At this juncture, all that is required to be assessed is whether a prima facie case is made out that there is a reasonable likelihood that the offence specified in Section 340 read with Section 195(1)(b) of the Cr. P. C. has been committed, and it is expedient in the interest of justice to take action. From the above discussion, it is evident that the handwritten modification made by the Petitioner in Column 12 of the balance sheet dated 19.09.2008 is a significant alteration from the terms as used in the original document. Hence we find that a prima facie case is made out that the Petitioner has fabricated evidence for the purpose of the SLP proceedings before this Court.*

*We further find that prima facie case is also made out against Mr. R.K. Agarwal, for having sworn in his affidavit before this Court as to the veracity of*

*the facts stated and documents filed in SLP (Civil) No. 3309/2018, even though he had relied upon the original auditor's report, which did not contain any handwritten interpolation, in his evidence before the Trial Court.*

*6. In similar circumstances, a three-Judge Bench of this Court in In Re: Suo Motu Proceedings against R. Karuppan, Advocate, (2001) 5 SCC 289 had authorized the Registrar General of this Court to depute an officer to file a complaint for perjury against the respondent therein. Accordingly, we direct the Secretary General of this Court to depute an officer of the rank of Deputy Registrar or above of the Court to file a complaint under Sections 193 and 199 of the Indian Penal Code, 1872 against the Petitioner Company in SLP (Civil) No. 3309/2018 and Mr. R.K. Agarwal, before a Magistrate of competent jurisdiction at Delhi. The officer so deputed is directed to file the aforesaid complaints and ensure that requisite action is taken for prosecuting the complaints.*

## CHAPTER 14

WHEN THE DOCUMENT PRODUCED BEFORE THE COURT IS A FORGED ONE AND EVEN IF THE OFFENCE IS COMMITTED BEFORE THE PRODUCTION OF THE DOCUMENT IN THE COURT THEN ALSO THE COURT HAS TO EXERCISE POWER UNDER SECTION 340 OF CR.PC. PRIVATE COMPLAINT WITHOUT ORDER FROM THE COURT IS NOT MAINTAINABLE. WHEN THE OFFENCES COMMITTED ARE INTERCONNECTED WITH THE COURT THEN COMPLAINT FROM THE COURT IS NECESSARY.

In **Arun Dhawan & Anr. Vs. Lokesh Dhawan 2015 Cri. LJ 2126,** it is ruled as under;

> ***Application under Section 340 Cr.P.C. - cases where a party files pleadings being aware that the document on which such pleading is based is forged and fabricated- and, the said averment was a positive averment and was false to the knowledge of the Respondent and was based on a forged and a fabricated document which was supported by an affidavit of the Respondent -***
>
> ***Making 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. 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 – A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law - if a statement or averment in a pleading is false, it falls within the definition of offence under Section 191 of the Code (and other provisions). It is not necessary that a person should have appeared in the witness box.***

*A document, which is tampered or forged and is produced during the Court proceedings, the Court would have jurisdiction to conduct an inquiry under Section 340 of the Code and decide whether the bar contained under Section 195 partially or in its entirety is attracted in the facts and circumstances of the case or not. An offender cannot take advantage of its own offence and wrongs committed, and give an interpretation of the provisions of law, which is destructive of the legislative intent and spirit of the statute.*

In **Kuldeep Kapoor Vs. Susanta Sengupta MANU/DE/2870/2005** it is ruled as under ;

***Code of Civil Procedure Sec. 151 – CrPC Section 340,195 - Plaintiffs had allegedly fabricated, tampered and forged document in question with an intention to use***

***same in Court as evidence or otherwise and had also intentionally given their incorrect addresses before Lower Court on affidavit –***

*Held,*

*1) It is clear that the said plaintiff/respondents, prima facie, have committed offences under Sections 191, 192 read with Sections 193, 199, 200, 465, 471 of the Indian Penal Code. The Registrar of this Court should file a complaint against them in accordance with law within a period of two weeks from today under the provisions of Section 340 Cr.P.C. The said persons shall also furnish a security in the sum of Rs. 10,000/- each for their appearance before the Court of Competent Jurisdiction .*

*2) The court is not required to afford any opportunity of hearing to the person against whom it might file a complaint - the judgments relied upon by the learned counsel for the plaintiff/non-applicants are misplaced.*

*Case History:*

*Plaintiffs had allegedly fabricated, tampered and forged document in question with an intention to use same in Court as evidence or otherwise and had also intentionally given their incorrect addresses before Lower Court on*

*affidavit – Application filed by the defendant under Section 340 of the Code of Criminal Procedure (in short Cr.P.C.) against the plaintiffs - This application has been filed in the above suit during its pendency - The plaintiff/non-applicant has filed two replies, The averments made in the application were denied and a definite stand was taken that the plaintiff - It was denied that the plaintiff has fabricated the said document – The argument of learned counsel appearing for the plaintiff/respondent that if the document was tampered/forged prior to filing in Court, the Court will have no jurisdiction to entertain an application under Section 340 of the Code is entirely misconceived and is without merit. The document has been produced in Court proceedings. A document, which is tampered or forged and is produced during the court proceedings, the Court would have jurisdiction to conduct an enquiry under Section 340 of the Code and decide whether the bar contained under Section 195 partially or in its entirety is attracted in the facts and circumstances of the case or not. An offender cannot take advantage of its own offence and wrongs committed, and give an interpretation of the provisions of law, which is destructive of the legislative intent and spirit of the statute.*

*B ) Sec. 340 of Cr. P. C. – expedient in the interest of justice – 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 interest of justice that enquiry should be made into any of the offences referred to in Section 195(i)(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 - The attempt of doing all this obviously is to mislead the court and interfere in the administration of justice. Such an attempt on the part of a party cannot be ignored by the court. The law enunciated in the above judgments and the facts and circumstances of the case kept in mind, would apparently show that it is expedient in the interest of justice that an enquiry should be made - Applying the principles enunciated in the case of Iqbal Singh Marwah (supra), it is apparent that it is expedient in the interest of justice to direct prosecution of the three persons namely Mr. Kuldeep Kapoor, Mr. Ashok Kapoor and Mr. Girdhari Lal in accordance with law - There is more than one aspect to this application. It does not only relate to fabrication or forgery of documents, but also of filing false affidavits before the court - At least, it is clear that the*

*said plaintiff/respondents, prima facie, have committed offences under Sections 191, 192 read with Sections 193, 199, 200, 465, 471 of the Indian Penal Code. The Registrar of this Court should file a complaint against Kuldeep Kapoor, Ashok Kapoor and Girdhari Lal in accordance with law within a period of two weeks from today under the provisions of Section 340 Cr.P.C. The said persons shall also furnish a security in the sum of Rs. 10,000/- each for their appearance before the Court of Competent Jurisdiction, to the satisfaction of the Registrar of this Court within one week from today.*

*The cumulative effect of all these submissions is that the conduct and acts of the non-applicants, as afore- referred, demonstrably show, at least prima facie, that it has affected the administration of justice and is in relation to a document produced in Court and given in evidence during the proceedings of the Court.*

*In view of the above finding recorded upon preliminary inquiry, the Court is of the prima facie view that Kuldeep Kapoor, Ashok Kapoor and Girdhari Lal have tampered or forged the documents which have been filed in this Court during the pendency of the proceedings and also Kuldeep Kapur has filed false affidavits before this Court, during the proceedings in the Court, fully knowing that the*

*Court is to rely upon such documents while passing judicial orders which would affect the right of the parties one way or the other. At least, it is clear that the said plaintiff/respondents, prima facie, have committed offences under Sections 191, 192 read with Sections 193, 199, 200, 465, 471 of the Indian Penal Code. The Registrar of this Court should file a complaint against Kuldeep Kapoor, Ashok Kapoor and Girdhari Lal in accordance with law within a period of two weeks from today under the provisions of Section 340 Cr.P.C. The said persons shall also furnish a security in the sum of Rs. 10,000/- each for their appearance before the Court of Competent Jurisdiction, to the satisfaction of the Registrar of this Court within one week from today.*

*Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence is either not placed for trial on account of non- filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided.*

*The Court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament.*

*B) Enquiry under Section 340 of the Cr.P.C. – In Pritish v. State of Maharashtra and Ors. 2002 Cri L J 548 , the Supreme Court has ruled that the court is not required to afford any opportunity of hearing to the person against whom it might file a complaint - The purpose of Section 340 is not to find 'whether a person is guilty or not' but is only to find 'whether it is expedient in the interest of justice to inquire into the offence - the judgments relied upon by the learned counsel for the plaintiff/non-applicants do not support the contention that if the document was forged prior to the institution of the suit, the applicant has no right to invoke the provisions of Section 340 of the Code.*

*The purpose of enquiry under Section 340 of the Cr.P.C. is a very limited one. Once the ingredients of this Section are satisfied, the court has to conduct a very limited enquiry. As a result of that enquiry the court may record a finding to that effect, or even on the basis of preliminary enquiry make a complaint or send it to a magistrate of the First Class having jurisdiction, for the offender to be tried in accordance with law.*

*In the case of Pritish v. State of Maharashtra and Ors. MANU/SC/0740/2001 : 2002CriLJ548 , the Supreme Court has held that in respect of any document produced or given in evidence, in relation to proceedings in the court, the court is not required to afford any opportunity of hearing to the person against whom it might file a complaint before the Magistrate for initiating prosecution proceedings. The purpose of Section 340 is not to find 'whether a person is guilty or not' but is only to find 'whether it is expedient in the interest of justice to inquire into the offence. In the present case, to the application filed by the defendant, the non-applicants/plaintiff had even filed detailed replies, and counsel for the parties were heard at great length. The purpose was to provide an opportunity to the non-applicants, at least to show to the court as to whether it was a case where the court would direct filing of the complaint in compliance to the provisions of Section 340 or even drop the proceedings.*

*D) Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded - where a person fabricates documents and then produces the same in evidence knowing it fully well that the Court is going to rely upon or form its opinion on the basis of such document. Still in other cases, the affidavit or statement made by a person in evidence or otherwise*

*and where the person was under an obligation to speak truth, files false affidavit to his knowledge, in both these events he renders himself liable to be proceeded against in accordance with law*

*B ) Sections 193, 199, 200, 465, 471 of the Indian Penal Code - The person, who is legally bound by Oath or any provisions of law to state truth, makes a false statement or declaration which he either knows or believes to be false or does not believe it to be true, would be said to have given false evidence. Such statement could be verbal or otherwise. While a person, who causes any circumstance to exist or make any false entry in any book or record with an intent that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding or a proceeding taken by law and even may cause any person, who in such proceeding, is to form an opinion upon the evidence to entertain an erroneous opinion, will be said to have fabricated false evidence. Once these ingredients are satisfied, the person committing either of these offences would be punished in accordance with the sentence contemplated under Section 193 of the Code.*

*where a person fabricates documents and then produces the same in evidence knowing it fully well that the Court is going to rely upon or form its opinion on the basis of such*

*document. Still in other cases, the affidavit or statement made by a person in evidence or otherwise and where the person was under an obligation to speak truth, files false affidavit to his knowledge, in both these events he renders himself liable to be proceeded against in accordance with law in terms of the afore-referred provisions.*

*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 for a which are time consuming.*

*Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost.*

*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. Such an interpretation would be highly detrimental to the interest of the society at large.*

*The contention raised on behalf of the non-applicants, was that with an intent to avoid conflict of findings between the Civil and Criminal Court, it is necessary to accept the*

*appeal. Their Lordships held that there was neither any statutory provision nor any legal principle that the findings recorded in one proceedings may be treated as final or binding on the other, as both the cases have to be decided on the basis of the evidence adduced therein. The standard of proof required in two proceedings are entirely different.*

*The object of a penal provision is always and must be construed so as to suppress the mischief and advance the object which the Legislature had in view for the administration of justice.*

*Besides filing false affidavits, Mr. Kuldeep Kapoor and his accomplices, who have tampered and forged the documents i.e. the agreement to sell as well as the cash receipt dated 24.10.2004, when and how these documents were forged. Taking the case in alternative and accepting the objections, at best, it could be said that the applicant can file a complaint under different Penal provisions of the Indian Penal Code in that behalf, even without leave of this Court and bar of Section 195(1)(b)(ii) would not operate against the applicant. This does not place the case of the non-applicants on any high pedestal. Keeping in view the complexity of the case and the fact that it is not possible to hold at this stage, as to when exactly the*

*documents were forged, it will be most appropriate and the ends of justice would demand that an Officer of the Court is directed to file the complaint before the Court of competent jurisdiction. It is a matter of fact that until the defendant had produced the photocopies of the documents signed by him, the plaintiff had not produced the original documents before the court. When they were produced, the tampering was visible, even to a naked eye.''*

**********

## CHAPTER 15

THERE ARE TWO SEPARATE OFFENCES. ONE IS TO CREATE THE FORGED DOCUMENT AND AFFIDAVIT AND SECOND IS TO USE THE SAID FALSE, FORGED AND FABRICATED DOCUMENT IN THE COURT. **[Arun Dhawan & Anr vs. Lokesh Dhawan 2015 Cri.LJ 2126]**

## CHAPTER 16

WHEN IT IS BROUGHT TO THE NOTICE OF THE COURT THAT APPLICATION UNDER SECTION 340 OF CR. P. C IS FILED, THEN COURT CAN DEFER THE PRONOUNCEMENT OF FINAL JUDGMENT.

In **Aakar Infraprojects Pvt. Ltd. Vs. Municipal Corporation For Greater Mumbai and Ors. 2020 OnLine Bom 4991** the Division Bench deferred the pronouncement of the judgment on ground of filling of application under section 340 of Cr.P.C.

> ***"2.*** *Earlier i.e. on 19th December, 2019, Advocate M.V. Raut had represented Respondent No. 14 before us. Ms. Kruti Bhavsar has today informed us that in February 2020, she had filed Vakalatnama for Respondent No. 14 after obtaining 'No Objection' from the Advocate who was earlier representing Respondent No. 14. ……. She further states that* ***she has very recently filed another Interim Application under Section 340 Cr.P.C. and that Advocate Vijay Kurle is appearing as her Counsel*** *in the said Interim Application. She states that the said Application is also not served on the Advocate for the Petitioners.*
>
> ***7.*** *In the circumstances, we pass the following Order:—*
>
> *(i) We defer the pronouncement of the final Judgment/Order in the above Writ Petition.*
>
> *(ii) Advocate Ms. Kruti Bhavsar is directed to forthwith forward copies of two Interim Applications filed by her on behalf of Respondent No. 14 to the Advocate for the Petitioners, as well as to the Advocate for the other Respondents.*

*(iii) The Petitioners and/or any other parties desirous of filing response to the Interim Applications taken out on behalf of the Respondent No. 14 may do so by 5th October, 2020.*

*(iv) Stand over to 9th October, 2020 for further hearing."*

## CHAPTER 17

IF ACCUSED ADOPT THE DILATORY TACTICS TO DELAY THE APPLICATION UNDER SECTION 340 OF CR. PC., THEN HEAVY COST SHOULD BE IMPOSED UPON HIM.

In **Mohan Lal Jatia Vs. Registrar General, Supreme Court of India MANU/DE/ 1960/2010** reads thus;

***''Delay tactic by accused in proceedings under sec Section 340 of Code of Criminal Procedure, 1973 (Cr. PC) – Delaying tactics by accused to see that the trials under 340 do not proceed further - The petition being frivolous is dismissed with cost of Rs. 1,00,000/- to be paid by accused Recording Pre-charge evidence - Present petition filed by accused against order Chief Metropolitan Magistrate (CMM) where application of petitioner for adopting procedure of warrant trial as applicable to complaint case and for recording pre-***

***charge evidence was dismissed*** *- Held, no pre-charge evidence was required to be recorded in case - and procedure being abused by petitioner, by applying second time before Court that it was not correct procedure - Complaint under Section 340 Cr.P.C. is to be treated as police report, procedure to be followed by CMM is that of warrant trial case on police report and not of warrant trial case on complaint petition - It is gross misuse of judicial process - Accused persons have came second time before Court assailing procedure being adopted by MM - Case is glaring example how trial can be stalled by adopting delaying tactics -Complaint of offence committed in respect of administration of justice in Supreme Court, where false affidavit was filed, despite investigation got done from CBI by Supreme Court followed by complaint to CMM, through its Registrar General is still at initial stage - Those who talk of judicial reforms must take note of such numerous cases pending in Courts where judicial process is misused to see that trials do not proceed further - The complaint of an offence committed in 1986 in respect of administration of justice in Supreme Court, where a false affidavit was filed, despite investigation got done from CBI by the Supreme Court followed by a complaint to CMM, Delhi through its Registrar General in the year 1994 is still at initial stage. From the year 1994, we are in 2010.*

*For these 16 long years, the trial has not proceeded an inch. Those who talk of judicial reforms must take note of such numerous cases pending in Courts where the judicial process is misused to see that the trials do not proceed further - The petition being frivolous is dismissed with cost of Rs. 1,00,000/- to be deposited with Delhi High Court Legal Services Committee.''*

## CHAPTER 18

**A]** WHEN THERE ARE PRIMA FACIE MATERIAL OF PERJURY AND FORGERY AND SOME MORE MATERIAL IS REQUIRED WHICH THE APPLICANT IS NOT ABLE TO COLLECT AND PRODUCE THEN THE COURT CAN TAKE THE HELP OF POLICE, CBI OR ANY MACHINERY TO CONDUCT THE INVESTIGATION AND COLLECT THE EVIDENCE OR MATERIAL.

**B]** COURT CAN CONSTITUTE COMMITTEE OF EXPERT WITH CBI OFFICERS.

In **Sanjeev Mittal vs State 2011 RCR (CRI) (7) 2111,**it is ruled that;

*"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.*

*12.5. The present is a fit case where the investigation by the Police (Crime Branch) is necessary,* ***otherwise many***

***facts will remain hidden and the others involved will escape punishment.***

*12.1.5. Manjit Kaur v. J.P. Sharma, order dated 8.12.1994 passed by a Division Bench of this Court in FAO(OS)No.152/1994 arising out of Suit No.3174/90 at (internal page 13)-*

*—If really the facts mentioned by the appellant in the memorandum of appeal coupled with the other circumstances are true, it appears to us that a prima facie case of fraud not only on the appellant, but also fraud on this Court has been played by the plaintiff / respondent in this behalf. We have, therefore, decided to order an effective investigation into this issue. We do not consider it fit to refer the inquiry to any other body except to Director of Central Bureau of Investigation, who should either conduct the inquiry himself or have it conducted by a Senior Officer of the CBI. The said authority will go into the entire matter and submit a report in the case within three months from today.*

*12.1.6. In ShobaSamat v. MadanLalDua, order dated 25.05.1995 passed by a Division Bench of this Court (D.P. Wadhwa and Dr.M.K. Sharma, JJ.) in Writ 4649 of 1994, court held that-*

*" We have heard learned counsel for the parties. To some extent, we are of the view that various offences have been committed and the matter needs through investigation by the police. We accordingly direct the D.C.P (Crime) to have the matter investigated. Copies of our proceedings dated 10th March 1995 and that of 18th April 1995 be sent to him and so also copy of the writ petition giving the names of the parties. Liberty is granted to the police to take photo copies of the documents from this file as well as from the file of the Commercial Sub Judge which is lying in sealed cover in the registry of this Court.*

*12.1.7. In Davendar Singh v. Subroto Ghosh, Order dated 5.02.1996 passed by a Division Bench of this Court (M.J. Rao, C.J and Dalveer Bhandari, J.) in FAO(OS)No.52/1996, court held that-*

*In view of the prima facie evidence arrived at by the learned Judge, (which we shall examine later), it has been felt necessary by us that there should be an independent enquiry into the question whether there is a person known as Ashok Kumar Gupta son of Shri Ghasita Ram Gupta R/O 5, Ring Road, Kirlokari, Opposite Maharani Bagh, New Delhi, and whether he was the person who had executed the documents dated 9.10.1990 in favour of defendants 2 and 3 and whether he was also the person*

*who executed the general power of attorney dated 6.3.90, (whose photographs are attached thereto) and the person who applied to Municipal Corporation of Delhi for mutation and obtained the same on 16.10.89 in respect of the suit property. And if so, his whereabouts. The original power of attorney in court custody contains thumb impression of the executant.‖ —There are various other facts and circumstances which are material for deciding the appeal but before we do so, we are of the view that the abovesaid investigation should be conducted by the CBI and a proper report should be placed before us. The Director, CBI is directed to appoint a Senior officer of the CBI to go into the above facts and submit a report to this court on the aspects referred to above.*

*12.1.8. GirdhariLalTewari v. Union of India, 2003 (70) Delhi Reported Judgment 415-*

*—29. We also feel that this is an appropriate case where the Central Bureau of Investigation should be directed to make an enquiry with regard to the entire transactions including the forgery and fabrication of documents which are proved and established. The CBI shall make Investigation and those who are found responsible for such manipulations and misdeeds of tempering, falsifying and interpolation of official record, shall be proceeded*

*with the accordance with law. In terms of the aforesaid directions and observations both the writ petitions stand allowed to the aforesaid extent.*‖

*12.1.9. Vishesh Jain v. ArunMehra, IA No.5596/06 in CS (OS) No.1136 / 05 decided by this Court on 4.04.2008-*

*—All efforts to trace the plaintiff failed.* ***This suit has been filed on the basis of forged documents. Even bailable warrants could not be served on the plaintiff as he is evading service. This application under Section 340 of the Code of Criminal Procedure has been made on behalf of the applicants/defendants No.1, 2 and 3 wherein it is alleged that the present suit was filed by one Vishesh Jain on the basis of forged and frivolous documents.*** *The suit filed by the plaintiff was dismissed by this Court on 12th December 2005 with cost of `10,000/-. This Court issued notice to Mr. R.K. Nanda and Mrs. Promila Nanda, Directors of Durga Builders and recorded statement of Mr. R.K. Nanda. His statement prima facie showed a collusion between them and Mr. Vishesh Jain. He stated that he had no knowledge about the suit being listed on 16th August 2005. He had not met Mr. Vishesh Jain. However, he had executed power of attorney in favour of Mr. Sharad Kumar Aggarwal and Ms. Purnima Aggarwal, Adv and admitted his signatures.*

*The record of other suit No.987 of 2006 was summoned. The suit was shown disposed of having been amicably settled outside the Court between plaintiff and defendants. It was stated by the plaintiff that he had received a sum of `30,000/- as full and final settlement. It seems that there was a conspiracy and collusion between the plaintiff Vishesh Kumar Jain and defendant No.4. The matter needs through investigation.*

*Registrar General of this Court is directed to send the matter for investigation to Crime Branch of Delhi Police to find out who was this Vishesh Jain, his business and his present whereabouts. Report be sent to this Court by Crime Branch within 90 days. Crime Branch shall investigate the conspiracy between defendant No.4 and Vishesh Jain and how the documents filed in this case came into existence, whether they were forged documents or genuine. Registrar General of this Court shall also send all documents filed by the plaintiff in the suit along with copy of the suit to the Crime Branch as well as photocopy of the record of suit No.981 of 2006.*‖

*12.1.10. MahantSurinderNath v. Union of India, 146 (2008) Delhi Law Times 438-*

*—41. I, thus, deem it appropriate to direct that the Registrar General should appoint a Registrar/Joint Registrar of this Court to take necessary action for initiation of proceedings under Section 340(1) Cr.P.C. keeping in mind the aforesaid provisions of the IPC.*

*42. It also cannot be lost sight of that the execution of the sale deeds prima facie appears to be a collusive act not only of the plaintiffs but of three other persons, Mr.Mahender Pal, Smt.Anita Yogi and Mr.Akhilesh Singh, who are closely related to the plaintiff, being the natural brother, the wife of the brother and the brother of such a wife. These vendees are not before the Court. A further inquiry into the execution of sale deeds is necessary. I, thus, deem it appropriate to direct that the Economic Offence Wing of the Delhi Police shall register an FIR against all the five persons and carry out investigation in accordance with law and if offences are made out, to take suitable action thereafter. This direction is necessary as the sale deeds are documents in rem and would give authority to the vandees to mislead the public of the prospect of purchase of land which could never have been sold.*

*—44. The suit is accordingly dismissed with the aforesaid directions with the hope that the authorities concerned*

*would follow-up the matter in a proper perspective to see that the ends of justice are met.*‖

*12.1.11. Nitin Seth v. Rohit Kumar, CM(M) No. 459/2004 decided by this Court on 22.08.2008-*

> *— ... Aggrieved by the said order, the petitioner herein filed an appeal before the Delhi High Court being FAO No. 96/2000 {sic 96/2001}. Delhi High Court vide order dated 3.4.2002 confirmed the status quo order however, during pendency of this FAO, the High Court in order to come at a right conclusion had made detailed enquiry into the facts. The High Court vide order dated 17.4.2001 had directed the petitioner herein to produce the original title deeds of the said property on the basis of claim of ownership was staked and directed an investigation to be done by the Crime Branch of Delhi Police regarding genuineness of the said documents. The Crime Branch made an enquiry and got the documents examined from forensic lab and submitted its enquiry report dated 22.1.2002 to the High Court. The enquiry report revealed that sale deed dated 4.3.1971 in favour of Ms. KumKum Jain and the sale deed dated 31.8.2000 in favour of the petitioner, both were forged and fabricated*

*documents and even the stamps of Sub-Registrar were forged. ...‖*

*12.1.12. Oil and Natural Gas Corporation Ltd. v. PhulaBala Paul, 2007 (4) GLT 680-*

*—9. A bare reading of the two sets of sale deeds pertaining to the same Sub-Registrar office with identical numbers disclose that the exhibited sale deeds, the value have been shown to be fabulously higher and inflated than what is disclosed in the sale deeds so produced by Mr. Dutta as referred to above. Apart from the consideration of amount, the parties to the transaction also do not tally.*

*10. The aforesaid exhibits have been accepted by the learned District Judge in a judicial proceeding in the Reference cases, as produced by the respondents/claimants. The decision to enhance the market value of the acquired land is also based on the aforesaid exhibits so produced by the claimants. The picture that emerges from the aforesaid fact it is apparent prima facie that the claimants appear to have practice fraud to get compensation at inflated rate going to the extent of manufacturing such sale deeds. In such a situation, the decision rendered by*

*the learned District Judge enhancing the compensation based on fraud is not sustainable in law. ...‖*

*12. On perusal of the exhibited documents as well as documents submitted by Mr. Dutta (copies of which are kept on records), there appears a genuine doubt about the genuineness of the aforesaid exhibits, namely Exts.-1, 3, 4, 6, 7 and 8, as exhibited before the Reference Court. ...‖*

*13. In view of the aforesaid discussions and grave doubt about the genuineness of the exhibited documents on the basis of which Awards have been passed, ...‖*

*14. The Registry of this Court is directed to forward a copy of this judgment along with the Ext.-1, 3, 4, 6, 7 and 8 and the documents produced by Mr. Dutta, to the Superintendent of Police, Cachar, Silchar and on receipt of the same, the Superintendent of Police, Cachar, Silcharshall cause registering criminal case under appropriate sections of law and necessary investigation be caused regarding genuineness/fraudulent manufacturing of the aforesaid documents and*

*investigate the matter under his strict supervision to unearth and identify the culprits, if any, and to deal with as per law. The learned District Judge, Cachar, Silchar shall render all assistance from his end whatever is necessary for the purpose of the aforesaid investigation.*

*The Registry shall register a Misc Case and shall appraise the Court regarding the stage of investigation as directed to be conducted as aforesaid. The Superintendent of Police, Cachar, Silchar, and the Officer-in-Charge, Silchar Police Station are also directed to report back to this Court from time to time about the progress of the investigation so that this Court can well monitor the matter.*‖

*12.1.13. Shanthamma v. Sub-Inspector of Police, Malur Police Station, 2007 (3) Kar L J 330-*

*We also deem it proper to direct the Commissioner of Police to get hold of the entire records including the reports and the affidavit filed in this Court and hold appropriate enquiry in accordance with law against Sri. Zahoor Ali Baig, Sub-Inspector, Sri. Mallegowda, PC and Sri. Balanaik, PC for creating false records thereby*

*violating their duty in a manner known to law and in accordance with law departmentally. Further liberty is reserved to the Commissioner of Police to proceed against any other police officers, if they are involved directly or indirectly, departmentally in accordance with law. 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. "*

In **Sarvapalli Radhakrushna Vs Union of India 2019 SCC OnLine SC 51**it is ruled as under;

***The Committee constituted by this Court is due to the vehemence with which the Counsels appearing for the College were trying to convince us that they are fully compliant with all the requirements.***

*The brazen attempt by the College in taking this Court for a ride by placing on record manoeuvred documents to obtain a favourable order is a clear-cut act of deceit. The justification given by the College has turned out to be a concocted story. Had we not initiated an enquiry by the Committee of Experts, the fraud played by the College on this Court would not have come to light. It is trite that every litigant has to approach the Court with clean hands.*

*A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief.*

*19.For the aforementioned reasons, we pass the following order:*

*(i) Mr. S.S. Kushwaha, Dean of the R.K.D.F. Medical College Hospital and Research Centre i.e. Petitioner No. 2-herein is liable for prosecution under Section 193 IPC. The Secretary General of this Court is directed to depute an Officer to initiate the prosecution in a competent Court having jurisdiction at Delhi.*

*(ii) The College is barred from making admissions for the 1st Year MBBS course for the next two years i.e. 2018-19 and 2019-2020.*

*(iii) A penalty of Rs. Five Crores is imposed on the College for playing fraud on this Court. The amount may be paid to the account of the Supreme Court Legal Services Committee.*

*(iv) The students are entitled to receive the refund of fee paid by them for admission to the College for the academic year 2017-19. In addition, the College is directed to pay a compensation of Rs. One Lakh to the said students.*

*20. The Writ Petition is dismissed accordingly.*

**Also see – 1**. Arvinder Singh (1998) 6 SCC 352

**2**. Kishore Samrite Vs State (2013) 2 SCC 398

**3.** H.S. Bedi Vs. National Highway Authority of India 2016 SCC OnLine Del 432

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## CHAPTER 19

WHENEVER ANY FALSE AFFIDAVIT IS FILED OR ANY OFFENCE AGAINST ADMINISTRATION OF JUSTICE IS COMMITTED, THEN THE PERSON WHO ABATED, CONSPIRED AND SUPPORTED THE SAID ILLEGALITY IS LIABLE TO BE PROSECUTED BY THE COURT. FILING OF COMPLAINT COULD BE EVEN AGAINST THE PERSONS WHO COULD NOT THEN BE IDENTIFIED.

In **Sanjeev Mittal vs The State 2011 RCR (CRI) (7) 2111**, it is ruled that the enquiry under section 340 includes investigation by CBI or state agency when there are many conspirators behind the scene and the facts are such on which a private party cannot be expected to itself investigate**.**There may be conspirators, abettors and aiders or those who assisted, who are not before the Court, or even their identity is not known. Otherwise many facts will remain hidden and the others involved will escape punishment.

**In <u>Godrej and Boyce Manufacturing Co. Pvt. Ltd. and Ors. Vs. The Union of India and Ors.</u>**it is ruled as under;

> ***"****Criminal P.C. (2 of 1974), S.340- Direction for filing of complaint - It could be even against persons who could not then be identified - There may be cases where the offence is disclosed clearly but offender is not ascertained with certainty. Action is justified under S.340, though the place at which and the manner in which the offence was committed may have to be elicited by further investigation. (Paras 95 96) The principal perpetrators of the crime would be Godrej, the monetary gain would accrue to Godrej, if the game had gone through smoothly. An industrial enterprise which had daringly caused fabrication of documents, with a view to make wrongful gain of a great magnitude of about Rs.4 crores cannot seek a softened attitude from a Court of law.*
>
> *To permit a stalwart of that standing to tear off and throw away the fair fabric of administration of justice by the use of sophisticated tools and gadgets would lead to a crisis in credibility as regards judicial institutions and undermine the faith of the common man in the administration of justice. A corporate undertaking could not be considered as a straying soul stealing a loaf of bread or as a roofless*

*man sleeping on open pavement, as Ingersol, who did not believe in a soul referred to in his caricature against the majesty of law. Posterity will not willingly condone the lapse on the part of the judiciary, if it thinks that even in such a case, it is not expedient to initiate action under S. 340, IPC.*"

In **Inderjit Singh Grewal v. State of Punjab (2011) 12 SCC 588** it is ruled as under;

***"Perjury – Action against abettor and conspirator***

***23.*** *The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit offence. (Vide Faguna Kanta Nath v. State of Assam [AIR 1959 SC 673 : 1959 Cri LJ 917] and Jamuna Singh v. State of Bihar [AIR 1967 SC 553 : 1967 Cri LJ 541] .) If more than one person combining both in intent and act, commit an offence jointly, each is guilty, as if he has done the whole act alone. "Offence" has been defined under Section 40 IPC and Section 43 IPC defines "illegality". Making false statement on oath before the court is an offence under Section 191 IPC and punishable under Section 193 IPC.*

***22.*** *Respondent 2 herself had been a party to the fraud committed by the appellant upon the civil court for getting*

*the decree of divorce as alleged by her in the impugned complaint. Thus, according to her own admission she herself is an abettor to the crime. A person alleging his own infamy cannot be heard at any forum as explained by the legal maxim allegans suam turpitudinem non est audiendus. No one should have an advantage from his own wrong (commondum ex injuria sua nemo habere debet). No action arises from an immoral cause (ex turpi causa non oritur actio). Damage suffered by consent is not a cause of action (volenti non fit injuria). The statements/allegations made by Respondent 2 patently and latently involve her in the alleged fraud committed upon the court. Thus, she made herself disentitled for any equitable relief.*

***Protection of Women from Domestic Violence Act, 2005 – S.12 – Maintainability of relief claimed – Wife admitting to having obtained decree of divorce under S. 13-B, 1955 Act by fraud and challenging same and seeking other reliefs like: (a) custody of minor son; (b) right of residence; and (c) restoration of dowry articles – Maintainability – Held, where a person gets an order/office by making misrepresentation or playing fraud on competent authority, such order cannot be sustained in the eye of the law as fraud unravels everything – Thus, she disentitled herself from any***

***equitable relief – following maxims applied: (a) "fraus et jus nunquam cohabitant" (fraud and justice never dwell together), (b) "allegans suam turpitudinem non est audiendus" (a person alleging his own infamy cannot be heard at any forum), (c) "commondum ex injuria sua nemo habere debet" (no one should have an advantage from his own wrong), (d) "ex turpi causa non oritur action" (no action arises from an immoral cause), and (e) "volenti non fit injuria" (damage suffered by consent is not a cause of action) – (Paras 16, 17, 22 and 23)***

***Penal Code, 1860 - Ss. 191, 193, 107, 40 and 43 – Perjury – Offence of making false statement on oath under – Liability for offence committed jointly and severally – Each person involved in commission being liable as if he committed whole crime himself – Implications of said offence for present case – Wife admitting to decree of divorce by mutual consent having been obtained by fraud – Criminal Law – Joint and several liability. (Para 23)"***

Hon'ble Supreme Court in **Pushpadevi M. Jatia vs M.L. Wadhavan, Addl. Secretary AIR 1987 SC 1748,** while directing prosecution against the all conspirators it is observed that the manipulations of the petitioner who file SLP 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. It was ruled that all other persons responsible for the fabrication of false evidence should be prosecuted.

**See Also- Arvindervir Singh vs State Of Punjab & Anr. (1998) 6 SCC 352.**

## CHAPTER 20

USE OF SECTION 340 OF CRIMINAL PROCEDURE CODE SHOULD BE AT ANY STAGE.

I) BEFORE PROCEEDINGS/SUIT/WRIT IS HEARD ON MERITS.

II) EVEN AFTER DISPOSAL OF THE SUIT, WRIT ETC.

III) EVEN WHEN THE CASE IS FIXED FOR PRONOUNCEMENT OF JUDGMENT.

IV) EVEN IF THE INVESTIGATION IS NOT COMPLETED OR CHARGE SHEET IS FILED.

In **Union of India Vs Harish Milani 2018 SCC OnLine Bom 2080** it is ruled as under;

> ***''Civil Application for taking action against the petitioner under Section 340 Cr.P.C. should be decided***

***first and the petition can be decided on the basis of result of the enquiry under Section 340 Cr.P.C. –***

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

Same procedure is followed by the Full Bench in;

i] Sarvepalli Radhakrishna Vs.Union of India 2019 SCC Online SC 61.

ii] Arvindervir Singh vs State Of Punjab & Anr. (1998) 6 SCC 352.

iii] Kishore Samrite Vs State (2013) 2 SCC 398.

iv] The Secretary, Hailkandi Bar Association Vs. State of Assam AIR 1996 SC 1925.

v] Afzal & Anr vs State Of Haryana & Ors (1996) 7 SCC 397

In **M.S.Sheriff Vs. State 1954 Cri.LJ 1019,** the application was decided after dismissed of Writ.

***Prosecution of perjury after dismissal of writ – After the report by state the petitions became infructuous and were dismissed. After this, the petitioners applied to the High Court under section 476 of the Criminal Procedure Code and asked that the Sub-InsPectors be prosecuted for perjury under section 193, Indian Penal Code.***

***In view of this conflict between the two_ sets of statements the High Court directed the District Judge to make an enquiry. -*** *Considerable evidence was recorded and documents were filed and* ***the District Judge reported that*** *in his opinion the statements made by the two Sub-Inspectors were correct. The High Court disagreed and, after an elaborate examination of the evidence, reached the conclusion that the petitioners were telling the truth and not the Sub- Inspectors.* ***The petitioners were however regularly arrested after their petitions and before the High Court's order; one was released on bail and the other was remanded to jail custody by an order of a Magistrate. Accordingly their petitions became infructuous and were dismissed. After this, the petitioners applied to the High Court under section 476 of the Criminal Procedure Code and asked that the Sub-InsPectors be prosecuted for perjury under section***

*193, Indian Penal Code. The applications were granted and the Deputy Registrar of the High Court was directed to make the necessary complaints. The Sub-Inspeetors thereupon asked for leave to appeal to this court. Leave was refused on the ground that no appeal lies, but leave was granted under article 132 as an interpretation of articles 134 (1) and 372 of the Constitution was involved. The Sub Inspectors have appealed here against that order as also against the order under section 476. In addition, as an added precaution, they have filed a petition for special leave to appeal under article 136 (1).*

*Held, The High Court has scrutinised the. evidence minutely and has disclosed ample material on which a judicial mind could reasonably reach the conclusion that there is matter here which requires investigation in a criminal court and that it is expedient in the interests of justice to have it enquired into. We have not examined the evidence for ourselves and we express no opinion on the merits of the respective cases but after a careful reading of the judgment, of the High Court and the report of the District Judge we can find no reason for interfering with the High Court's discretion on that score. We do not intend to say more than this about the merits as we are anxious not to prejudge or prejudice the case of either side. The learned Judges of the High Court have also very*

*-rightly observed in their order under section 476 that they were not expressing any opinion on the guilt or innocence of the appellants.*

*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.*

*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.*

*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.*

*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.*

In **Geeta Monga Vs.Ram Chand S. Kimat Rai and Ors. MANU/DE/ 0021/2005** , application was filed in a disposal of Suit.

In **Aakar Infraprojects Pvt. Ltd. Vs. Municipal Corporation For Greater Mumbai and Ors. 2020 OnLine Bom 4991** the application was filed when the case was posted for pronouncement of judgment and court deferred the pronouncement of the judgment.

It is ruled as under;

***"2.** Earlier i.e. on 19th December, 2019, Advocate M.V. Raut had represented Respondent No. 14 before us. Ms. Kruti Bhavsar has today informed us that in February 2020, she had filed Vakalatnama for Respondent No. 14 after obtaining 'No Objection' from the Advocate who was*

*earlier representing Respondent No. 14. ……. She further states that* ***she has very recently filed another Interim Application under Section 340 Cr.P.C. and that Advocate Vijay Kurle is appearing as her Counsel*** *in the said Interim Application. She states that the said Application is also not served on the Advocate for the Petitioners.*

***7.*** *In the circumstances, we pass the following Order:—*

*(i) We defer the pronouncement of the final Judgment/Order in the above Writ Petition.*

*(ii) Advocate Ms. Kruti Bhavsar is directed to forthwith forward copies of two Interim Applications filed by her on behalf of Respondent No. 14 to the Advocate for the Petitioners, as well as to the Advocate for the other Respondents.*

*(iii) The Petitioners and/or any other parties desirous of filing response to the Interim Applications taken out on behalf of the Respondent No. 14 may do so by 5th October, 2020.*

*(iv) Stand over to 9th October, 2020 for further hearing."*

In **Arvindervir Singh vs State Of Punjab & Anr. (1998) 6 SCC 352,** the action under section 340 of Cr.P.C was taken ehen innocent accused were in jail and trial was pending is ruled as under;

> ***Section 340 of Cr. P. C. – Action under sec 193, 194, 211 and 218 IPC for filing false charge sheet against the innocent – Creating false evidence in the statement recorded during investigation- On the direction given by the Supreme Court the CBI*** *submitted report and recommended* ***action under sec 193, 194, 211 and 218 IPC against Police officer. Supreme Court forthwith directed the release of victim from jail – The SC accepted the report and directed CBI to file challan against accused. – On the report by CBI the Designated Court took the cognizance and issued process with non-bailable warrant against the appellant who is Senior Inspector. In pursuance to said process the accused came to be arrested and confined in custody.***

In **Perumal VS Janaki (2014) 5 SCC 377,** the action was taken after aquqital.

In **The Secretary, Hailkandi Bar Association Vs. State of Assam AIR 1996 SC 1925** it is ruled as under;

> *'' A under trial prisoner was brutally beaten by Police who died up - – Bar Association send letter to Supreme*

*Court – Treated as writ – Court called report from S.P. – S.P. Shri A.K. Sinha Kasshyap filed a false report to save guilty police officer – Court not satisfied with reply called report from C.B.I. – C.B.I. pointed out the disdendful role played by S.P. said to be against all tenents of law and morality - an accused who was arrested in healthy condition was a dead person at the hands of police and the attending doctors. They neither gave him food nor proper medical treatment throughout this period. The inevitable result was the death of deceased Nurul Haque at the hand of the Police to which all others including doctors and the Magistracy lent support. – The report and affidavit submitted by S.P. ound to be false/ fabricated – Supreme Court issued a Show cause notice to S.P – In reply to the notice S.P. again try to mislead to court and try to justified his illegal acts – S.P. is guilty of Contempt of Court sentenced to imprisonment for three months.*

*Along with the report CBI sent a forwarding letter in which he stated that the disdainful role played by Shri A.K. Sinha Cassyap, the then Superintendent of Police, Hailakandi District, was against all tenets of law and morality. He submitted a false/fabricated affidavit/report to the Hon'ble Supreme Court. The falsity of his report submitted to the Hon'ble Supreme Court is evident in every sentence, if not every word of the report of said Shri A.K.*

*Sinha Cassyap, S.P. On consideration of the letter and the report submitted by the Superintendent of Police, CBI, a Show Cause Notice was served upon A.K. Sinha Kassyap for showing cause why he should not be punished for the criminal contempt of this Court for filing a false and fabricated report/affidavit in this Court.*

*Since the allegation against Shri A.K. Sinha Cassyap is that he had given an untrue report and filed a false affidavit about the death of Nurul Haque to mislead the Court, it is necessary to set out the facts found by the Superintendent of Police, Central Bureau of Investigation, in detail.*

*In the report of the Superintendent of Police, CBI, it has been stated:-*

*" ....an accused who was arrested in healthy condition was a dead person at the hands of police and the attending doctors. They neither gave him food nor proper medical treatment throughout this period.*

*In the C.D. of the I. O. nowhere it is mentioned that he was provided with even a glass of water, less to say of food. Despite repeated*

*suggestion of the doctor to get him X-rayed, no X-ray was got done though his right leg was fractured. <u>The inevitable</u>*

*result was the death of deceased Nurul Haque at the hand of the Police to which all others including doctors and the Magistracy lent support. The cause of death was ostensibly shown as Cardiac Respiratory Failure which was not a correct fact The deceased had no history of Cardiac problem, nor any ECG of him was got done during his police custody nor he had ever complained about this problem to the police However, anything could have happened to a person subjected to physical torture, shock and lack of sleep, lack of food and having been kept in the lock-up for last 72 hours."*

*It is true that the CBI Report has not recommended any criminal proceeding against him. But the allegation against A.K. Sinha Cassyap is that he suppressed true facts from the Court and gave a false report to mislead the Court as to what was the real cause of the death of Nurul Haque.*

*Assuming within the time frame of 48 hours he could not prepare a report properly, he should have stated that in his report. He could have even prayed for longer time for furnishing a report. But the allegation against him is that he deliberately gave a false report.*

*We, therefore, hold that A.K. Sinha Cassyap is guilty of contempt of this Court. The belated apology given by A.K.*

*Sinha Cassyap cannot be accepted because it has not been given in good faith. He has tendered this apology only after his report was found out to be misleading and his affidavit was found to be false. He had unnecessarily highlighted in his report that Nurul Haque was a dacoit for which there was no clear evidence. He had stated in his report categorically after reciting some misleading fact, "From the above facts and circumstances, it is clear that, Dacoit, Nurul Haque neither died in Police Lock-up nor in Police custody. He died while in Judicial custody as UTP. He was not tortured during the period of Police custody."*

*We are of the view that this was a highly irresponsible report regardless of the truth and also against the records of the case. In spite of the nature of the injuries detected and reported from time to time by Various doctors who examined Nurul Haque after his apprehension by the police and regardless of the recommendations for X-ray examination of the injured leg, which was never done, the contemner has boldly reported to this Court that Nurul Haque was not tortured during the period of police custody.*

*The emphasis that he was a veteran dacoit was also obviously with a view to create prejudice. Far from trying*

*to help the Court to do justice in this case, his report has tried to mislead the Court and prevent the Court from finding out the truth about the allegations made by the Bar Association of Hailakandi.*

*We, therefore, hold that the contemner deliberately forwarded an inaccurate report with a view to misleading this Court and thereby interfered with the due course of justice by attempting to obstruct this Court from reaching a correct conclusion. In the facts and circumstances of the case, we cannot accept his apology and hereby reject it. We hold him guilty of contempt under Article 129 of the Constitution read with Section 12 of the Contempt of Courts Act, 1971. Having regard to the gravity of the case, we sentence the contemner A.K. Sinha Cassyap to undergo simple imprisonment for a term of three months. The contempt rule is disposed of finally as above.*

*The Director General of Police, Assam is directed to ensure that this order is carried out forthwith and the contemner is taken into custody and imprisoned to serve the sentence. The Registrar General will communicate this order to Director General of Police, Assam, with a direction to report compliance to him.''*

In **Afzal & Anr vs State Of Haryana & Ors (1996) 7 SCC 397** it is ruled as under;

*''**A] I.P.C. 193 – Prosecution of S.P. and other Police personnel –** I.O. illegally detained a minor boy and warned that he could be released only when his father surrender before Police - Petition filed before Supreme Court – Report is called form S.P. – False and misleading report submitted by S.P. – Supreme Court being doubtful of report called the report from C.B.I. – It proved the malafides of S.P. – S.P. is guilty u.s. 193 of I.P.C. and convicted for 1 years rigrous imprisonment – Supreme Court appreciated the work done by the C.B.I.*

***B] Contempt of Court – S.P. first filed a false fabricated counter affidavit to get favourable order from Court –** After his falsity disclosed then perceiving adverse atmosphere he again fabricated further false evidence to misled the Court – S.P. Not making can did admissions nor tendering unqualified apology – He is guilty of committing contempt of Judicial process – Sentenced to rigrour imprisonment for 6 month – Police Officers Randhir Singh (ASI), Ishwar Sigh (SI) and M.S. Alhawat (superintendent of police ) convicted – DGP is directed to take the convicts in to custody forthwith and send them to central Jail – And submit the compliance report to the Registry within one week.''*

## CHAPTER 21

FOR ACTION UNDER SEC 340 OF CR PC IT IS NOT NECESSARY THAT THE FALSE STATEMENT ON OATH. THE REPORT SUBMITTED SHOULD BE BY POLICE WITH FALSE AND FABRICATED EVIDENCE IS ALSO AN OFFENCE AND ACTION IS LIABLE TO BE TAKEN AGAINST THEM.

Section 35 of the Evidence Act reads thus;

> *''**35. Relevancy of entry in public 1[record or an electronic record] made in performance of duty.**—An entry in any public or other official book, register or 1[record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or 1[record or an electronic record] is kept, is itself a relevant fact.''*

In **Arijit Sarkar Vs. Monosree Sarkar & Ors., 2017 SCC OnLine Cal 13** it is ruled as under;

> ***''340 read with 195 of CrPC can be pressed into with regard to falsity in Charge-sheet/Challan/Report filed under section 173 of Cr.PC.***
>
> *A. Reports submitted under Section 173 of the Code was perfectly submitted in a judicial proceeding within the meaning of Section 2 (i) and Section 195 (1) (b) (i). It may*

*also be mentioned that sub-section (b) (i) of Section 195 of the Code has contemplated not only judicial proceeding but also in relation to any proceeding in any court.*

*B. Section 195 of the Code is in Chapter XIV of the Code. This Chapter deals with condition requisite for initiation of a proceeding. It is true that Section 195 deals with offences against the public justice also. Section 340 of the Code has laid down a procedure what the court will do where administration of justice has been affected. It has prescribed a procedure for tackling such a situation after making such preliminary inquiry. This is one procedural law which has supplemented Section 195 of the Code. In view of the decision of this court while answering point no.4 this court is satisfied that in the situation as stated while discussing the fact certainly Section 195 of the Code can be pressed into action along with Section 340 of the Code.''*

Full Bench of Hon'ble Supreme Court in the case of **P. C. Purushottam Reddiar Vs. S. Perumal (1972) 1 SCC 9 (Full Bench).** In fact there are two contradictory version of the accused and on Court record there is his affidavit and also the affidavit filed by the victim stating the version of wife. And the police report. **Full Bench of Hon'ble Supreme Court had ruled that the report submitted by a**

**police officer is an evidence in view of Section 35 of Evidence Act & it should be given greatest importance.** It is observed that;

> ***22. The first part of Section 35 of the Evidence Act says that an entry in any public record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty is relevant evidence. Quite clearly the reports in question were made by public servants in discharge of their official duty.***
>
> ***23.*** *The issue before the court is whether the respondent had arranged certain election meetings on certain dates. The police reports in question are extremely relevant to establish that fact. Hence they come within the ambit of the 1st part of Section 35, of the Evidence Act. In this connection we would like to refer to the decision of the Madras High Court in Navaneetha Krishna Thevar v. Ramaswami Pandia Thalavar I.L.R. 40 Mad. 871. Therein the learned judges observed thus :*
>
> *As however the case may not stop here, we think it right to allow the petitioners in Civil Miscellaneous Petitions Nos. 845 and 1655 of 1915 for the admission of certain documents rejected by the Subordinate Judge, namely (1) the decree of the Zilah Court of Tinnevelly, dated 31st May 1859 in Original Suit No. 4 of 1859, (2) the*

*Takid of the Collector to the Muzumdar on the death of the raja in 1850, (3) the reply of the Muzumdar and (4) the Collector's Takid in 1853 on the complaint of the zamindar's widow as to the conduct of Maruthappa Thevar who according to the plaintiff's case was the father of Gnanapurani's mother. They will accordingly be marked as Exhibits XXXIV, XXXV, XXXVI and XXXVII respectively and incorporated in the record. The learned Advocate-General did not support the exclusion of the last three on the ground that the copies of correspondence kept in the Collector's and taluk offices were not signed but contended that they were not admissible under Section 35 of the Indian Evidence Act. We think however that copies of actual letters made in registers of official correspondence kept for reference and record are admissible under Section 35 as reports and records of acts done by public officers in the course of their official duty and of statements made to them, and that in the words of their Lordships in Rajah Muttu Ramalinga Setupati v. Periyanayagam Pillai [1974] L.R. 1 IndAp 209, they are entitled to great consideration in so far as they supply information of material facts and also in so far as they are relevant to the conduct and acts of the parties in relation to the proceedings of Government founded upon them.*

***24.*** *We are in agreement with the view taken by the Madras High Court in that case.*

***19.*** *Before leaving this case it is necessary to refer to one of the contentions taken by Mr. Ramamurthi, learned Counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head-constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility-see Bhagat Ram v. Khetu Ram and Anr. A.I.R. 1929 P.C. 110.*

***20. It was next urged that even if the reports in question are admissible, we cannot look into the contents of those documents. This contention is again unacceptable. Once a document is properly admitted, the contents of that document are also admitted in evidence though those contents may not be conclusive evidence.***

**Also See –**

1. ABCD Vs. Union of India (2020) 2 SCC 52
2. Saint Asha Ram v. State of Rajasthan AIR 2017 SC 726
3. Ranjit Satardekar Vs. Joe Mathias 2006 (6)Mh.L.J. 430

In **Ranjit Satardekar Vs. Joe Mathias and another 2006 SCC OnLine Bom 178 : 2006 (6) Mh. L.J.430** it is ruled as under;

***"Civil Procedure Code, O. 11, R. 14, Criminal Procedure Code (2 of 1974), S. 162 and Evidence Act, S. 145 — Statements recorded by a Police Officer under section 162 of Criminal Procedure Code could be used in a civil proceeding in view of section 145 of the Evidence Act. (1981) 2 SCC 493 : AIR 1981 SC 1068, Rel. (Paras 4 and 5)***

***4.*** *The Apex Court in Khatri's case has also referred to the decision of the Andhra Pradesh High Court in Malakala Surya Rao (supra) with approval. The learned Single Judge of the Andhra Pradesh High Court, had held that:*

> *"It may be stated that section 145 of the Evidence Act permits cross-examination of a witness as to his previous statement made in writing or reduced into writing and relevant to matters in question without such writing being shown to him or being proved. If the witness admits having made any such contradictions in his previous statement, then there is no necessity to show writing or prove it. But if he denies having made any such statement and it is intended to contradict him by the writing, his attention must be drawn to those parts of the statement before the writing can be proved for the purpose of contradicting him."*

*It was further held that:*

*"This section in the Evidence Act does nowhere exclude statement made by witness in writing or reduced to writing, or relevant matters in question, during investigation, enquiry or trial or a criminal case. In other words, a plain reading of the section does not limit the cross-examination only to statement of witnesses made during the investigation of a criminal case or its inquiry or trial. Insofar as the statements made by a person to a Police Officer in the course of investigation under Chapter XIV are concerned, section 162 prohibits their use for any purpose at any inquiry or trial for an offence under investigation except under the proviso to that section. Those statements can be used for purposes of contradiction under section 145 of the Evidence Act and where any part of such statement is so used, any part of it may also be used for purposes of any matter referred to in his cross-examination. The policy of the legislature insofar as the statements made to Police Officers are concerned, has been to exclude them in toto, subject of course to certain exceptions as in section 27 of the Evidence Act or under the proviso to section 162, Criminal Procedure Code."*

*It was also further held that:*

*"The words used in section 145 are 'or reduced into writing' need not necessarily mean that they are reduced into writing by someone authorised by law to reduce them into writing, such as a Magistrate or a Judge etc."*

*After considering various other Judgments of different High Courts, it was held that the statements recorded by a Police Officer under section 162, could be used in a civil proceeding in view of section 145 of the Evidence Act.*

***5.*** *…….Needless to say that the relevancy of the document which is sought to be used for cross-examination will have to be dealt with by the trial Court in the course of recording of evidence bearing in mind the provisions of the Indian Evidence Act as well as Order 13 of Civil Procedure Code."*

## CHAPTER 22

WHENEVER ANY SAY/REPORT IS FILED IN THE COURT BY THE POLICE OR BY ANY PUBLIC SERVANT TO OPPOSE THE PRAYER IN THE PETITION, THEN A COPY OF IT SHOULD BE PROVIDED TO THE PERSON OR HIS COUNSEL AGAINST WHOM IT IS BEING USED. IT WILL BE GROSS VIOLATION OF PRINCIPLES OF NATURAL JUSTICE TO NOT TO PROVIDE THE COPY OF THE REPORT/SAY.

In **Smt. Savitri Chandrakesh Pal Vs. State of Maharashtra, MANU/ MH/0334/2009** it is ruled as under;

> ***''Documents submitted or shown to the decision making authority should be provided to the other side against whom it is used. [ Apex Court judgment in the case of Union of India v. Mohammed Ramzan Khan MANU/SC/0124/1991 : (1991) ILLJ 29 SC relied on. ]***
>
> ***The material supplied or shown to the decision making authority without disclosing it to the person against whom it is to be used clearly constitutes breach of principles of natural justice - the impugned order is liable to be quashed and set aside holding it to be bad and illegal being in breach of principles of natural justice.***

***The adverse material extracted in para- 27 (supra) of the order was used against the petitioner without disclosing it to the petitioner - non-supply of adverse material to the affected person but supply thereof to the authority taking decision against him on that basis constitutes violation of rules of natural justice. In other words, the material supplied or shown to the decision making authority without disclosing it to the person against whom it is to be used clearly constitutes breach of principles of natural justice which is very much applicable to the quasi-judicial proceedings. On this count alone the impugned order is liable to be quashed and set aside holding it to be bad and illegal being in breach of principles of natural justice.''***

**********

## CHAPTER 23

COPY OF FIR SHOULD BE PROVIDED TO THE ACCUSED AT THE TIME OF ARREST. OTHERWISE THE MAGISTRATE CANNOT ALLOW POLICE CUSTODY OF THE ACCUSED.

Full Bench of Hon'ble Madras High Court in the case of **Selvanathan alias Raghavan Vs. State by Inspector of Police, 1988 Mad LW (Crl.) 503** it is ruled as under;

''***A. Every person subjected to arrest is entitled to a copy of FIR free of cost at the time of arrest - No doubt, it is true that if a duty is cast on the arresting officer to comply with certain statutory formalities, there is a corresponding duty cast on the Magistrate who is called upon to pass remand orders to satisfy himself whether the statutory formalities have been strictly complied with or not. In case the Magistrate is not satisfied that the requirements of Sec.50 of the Code have not been complied with, he can limit the remand in the first instance to such period as would be necessary, thereby affording an opportunity to the police officer to communicate in writing the full particulars of the offence for which the accused is arrested or the other grounds of such arrest .***

***B. The Magistrates shall not grant remands to the police custody unless they are satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other Police Officer to the effect that the accused may be liable to give further information, that a request for remand to police custody shall be accompanied by an affidavit by setting out briefly the prior history of the investigation and the likelihood of further clues which the police expect to***

***derive by having the accused in custody, sworn by the investigating or other police officer, not below the rank of a Sub Inspector of Police and that the Magistrate after perusing the affidavit and satisfying himself about the request of the police officer, shall entrust the accused to police custody and at the end of the police custody, the Magistrate shall question the accused whether he had in any way been interfered with during the period of custody.***

*The cherished legal right vested in the accused under Art.22(1) of the Constitution and Sec.50(1) of the Code to obtain full particulars of the offence or the grounds for his arrest, is based on well settled principles of law, as enunciated in a number of judicial pronouncements which we have already referred to. In this connection, it would be useful to bear in mind Arts.3 and 29 of the Universal Declaration of Human Rights, 1948 and Art.9(2) of the International Covenant of Civil and Political Rights, published by the United Nations (New York 1978) at page 24, reading: 'Any one who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him.' Further, if the first information report is laid by the accused himself, he is entitled to get a copy of the information free of cost*

*as per Sec.154(2) of the Code, since the expression 'informant' appearing in Sec.154(2) does not exclude the accused giving information about the crime. When it is so, we are unable to understand as to what would be the legal impediment to furnish a copy to the accused, who as per Sec.50(1) has to be informed of the full particulars, of the offence for which he is arrested or other grounds for such arrest.*

*Though in the heading of Sec.50 of the Code, the word 'informed' is used, in the body of the section, the expression 'communicate' is found. In legal parlance, there is a lot of difference between the expression 'inform' and 'communicate'. As Patanjali Sastri, J., pointed out in his separate judgment in Income-tax Commissioner v. Ahmedbhai Umarbhai and Company, A.I.R. 1950 S.C. 134, 'marginal notes in an Indian Statute, as in an Act of Parliament cannot be referred to for the purpose of construing the statute. Nor can the title of a Chapter be legitimately used to restrict the plain terms of an enactment.' See also Balraj Kunwar v. Jagatpal Singh, 26 All. 393: 31 I.A. 132 (P.C.). Hence, in the light of the above decisions, we have to approach Sec.50(1) only with reference to the specific word used in that section, and not with reference to the word used in the heading of the*

*section. This section requires the arresting person to communicate to the arrestee the full particulars of the offence for which he is arrested or the other grounds for such arrest. Though, the section does not mean that any technical or precise language need be used, it demands that all the particulars of the offence for which the accused is arrested should be communicated to him. If it is to be construed that the communication could be oral also, then it would lead to a dispute, when the accused denies that full particulars of the grounds have not been communicated to him. Even if any communication of the offence is orally made to the accused, the Court may not be in a position to come to a definite conclusion as to what kind of communication was made, whether communication of the mere particulars of the offences was made or whether mere section of the offence was told to the arrestee. THEREfore, in order to avoid any controversy or dispute, it will always be desirable to give the particulars of the grounds in writing. We may point out at this juncture that the Supreme Court in Lallubhai Jagibhai v. Union of India, A.I.R. 1981 S.C. 728, while interpreting the word 'communicate', observed that if the 'grounds' are only verbally explained to the arrestee and nothing in writing is left with him, then the purpose of Sec.50 of the Code is not served and strictly complied with.*

*As repeatedly pointed out by the authoritative judicial pronouncements of the Supreme Court and the various High Courts, it is unconstitutional illegal, unjust and unfair not to let the arrestee know the accusation him or the full particulars of the offence or the grounds on the basis of which the arrest has been effected. To expect an arrestee to a blind and unquestioned obedience in ignorance of the particulars of the offence or the accusation made against him is only the law of the tyrants. After the advent of the Constitution of India, in our view, it should not be allowed to flourish or exist on our soil. Every person subjected to arrest is entitled to know why he is deprived of his freedom. It is only with this underlying principle, Sec.50 is now introduced in the Code.*

*We are of the firm view that it would be desirable that the particulars enumerated by us above be communicated to the arrestee in writing and free of cost, which would be in strict compliance of Art.22(1) of the Constitution of India and Sec.50 of the Code.''*

Hon'ble High Court in the recent judgment in the case of **Sumit Kumar Vs. State of Bihar 2020 SCC OnLine Pat 2700** it is ruled as under;

***Police torture to poor truck drivers –***

***A] Police officer arresting without following procedure is liable for action under Section 166 of Indian Penal Code -***

***22.*** *Here only, we may take note of the provisions of the Penal Code, 1860. As per Section 166, whoever, being a public servant, knowingly disobeys any direction of the law as to how he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.*

***B] Procedure to be followed at the time of arrest –***

***26.*** *Further, the detenue was not produced before the Magistrate within 24 hours, as required under Section 56 of the Cr. P.C. Also, information of arrest was not supplied to a friend, relative or close person or entry made in the book, as required under Section 56A Cr. P.C., which is sacrosanct. The accused was not informed of the ground of arrest, as required under Section 50 Cr.P.C., thus depriving him of his right seeking bail. Police did not serve notice under Section 41A Cr. P.C., either*

*upon the owner of the vehicle or the person driving at the time of occurrence of the alleged accident. Thus, there is an infraction of not only the said provision but also Section 41B Cr. P.C. which requires the memo of arrest to be prepared furnishing correct and complete information, as available, and witnessed by any independent person. Significantly, the valuable right of the accused of seeking legal advice envisaged under Section 41D Cr. P.C. stood infringed. Non-submission of any report to the Magistrate, as provided under Section 157 Cr.P.C only fortifies the version of the detenue. Thus, all this has rendered the police officer responsible for detention, liable for prosecution under Section 166 IPC.*

***27.** In D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, Hon'ble Apex Court summarized that fundamental rights occupy a place of pride in the Indian Constitution. **Article 21** provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty is a sacred and cherished right under the Constitution. The expression "life or personal liberty" must include the right to live with human dignity, necessarily including a guarantee*

*against torture and assault by the State or its functionaries.* ***Article 22*** *guarantees protection against arrest and detention in certain cases and declares that no person arrested shall be detained in custody without information of the grounds of such arrest. Also shall not be denied the right to consult and defend through a legal practitioner of choice. Clause* ***(2) of Article 22*** *mandates the person arrested and detained in custody, necessarily to be produced before the nearest Magistrate, and that too within 24 hours of arrest, excluding the time taken necessary for the journey from the place of arrest to the Court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State.*

***30.*** *The strict requirement of the procedure to be followed in cases of arrest and detention has been upheld in multiple cases by the Hon'ble Apex Court, including Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273; Rini Johar v. State of Madhya Pradesh, (2016) 11 SCC 703.*

***C] Fair investigation – Police torture and atrocities -***

***35.*** *Further, in Gangadhar alias Gangaram v. State of Madhya Pradesh, 2020 SCC OnLine SC 623, the Apex Court held that the right to a fair investigation, which is a facet of a fair trial guaranteed to every accused under Article 21 of the Constitution.*

***36.*** *This right also stands infringed.*

***37.*** *In Monika Kumar v. State of U.P.- (2017) 16 SCC 169, the Apex Court has highlighted the issue of Atrocities committed by the Police, which in fact appears to be a matter of routine.*

***38.*** *In our considered view, simply taking up action of initiation of disciplinary proceedings is not enough. The entire Police Force needs to be sensitized of the constitutional and statutory rights of the detenue/accused, also from the angle of human rights.*

***56.*** *Thus the law expounded by judicial pronouncements can be summarized and categorized, laying the following principles.*

***I-LIBERTY***

*(i) Article 21 - Right to life and personal liberty are of paramount nature. Necessity to drive towards stronger foothold for liberties so as to ensure sustenance of higher democratic values. It's the primary responsibility of the State to protect the fundamental rights and freedoms of all individuals irrespective of race, caste, class or religion. [Tehseen S. Poonawala v. Union of India, (2018) 9 SCC 501]*

*(ii) Inseparable relationship between right to life and personal liberty, under Article 19 and the reflections of dignity, is in guarantee against arbitrariness under Article 14. To live is to live with dignity. Dignity permeates the core of rights guaranteed to the individual by Part III. It is the integral core of fundamental rights. [K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1]*

*(iii) Right under Article 21 cannot be kept in abeyance for convicts, undertrials and prisoners. Allowing Police to violate fundamental rights of such persons would*

*amount to anarchy and lawlessness, which cannot be permitted in a civilized society.*

*(iv) Inhuman treatment to a person in custody withers away the essence of life as enshrined under Article 21. [Mehmood Nayyar Azam (supra)]*

***II. BALANCE BETWEEN NATIONAL SECURITY AND INDIVIDUAL LIBERTY.***

*(i) Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. [Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70]*

***III. ARREST***

*(i) Article 21 and 22(1) are violated as a result of indiscriminate and arrests/illegal detention. [Joginder Kumar (supra)]*

*(ii) Violation of fundamental rights under Article 21 and 22(2) - Police officers who are custodians of law and order should have greatest respect for the personal*

*liberty of citizens and should not become depredators of civil liberties. Their duty is to protect and not to abduct. [Bhim Singh (supra)]*

***IV-DUTY AND POWER TO REGISTER FIR***

*(i) While prompt registration of FIR is mandatory, checks and balances on power of Police are equally important. Power of arrest or of investigation is not mechanical. It requires application of mind in the manner provided. Existence of power and its exercise are different. Delicate balance has to be maintained between the interest of society and liberty of an individual. [Ramdev Food Products (P) Ltd. (supra)]*

*(ii) Mandatory registration of FIR on receipt of information disclosing a cognizable offence is the general rule. This must be followed strictly and complied with. However, where information does not disclose a cognizable offence a preliminary inquiry may be*

*conducted to ascertain whether cognizable offence is disclosed or not. [Lalita Kumari (supra)]*

*(iii) Preliminary inquiry is a must prior to FIR, to avoid false implication of innocent under Atrocities Act. Preliminary inquiry must be made by Deputy Superintendent of Police (DSP) prior to registration of an FIR, Even if case registered after preliminary inquiry, arrest is not mandatory. [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454]*

***V-TORTURE CUSTODIAL DETENTION AND/OR DEATH***

*(i) Torture involves not only physical suffering but also mental agony. It is violation of human dignity and destructive of human personality under Articles 21, 22 and 32 - Custodial Violence - Torture/rape, death in police custody/lock-up infringes Article 21 as well as basic human rights. State terrorism is no answer to terrorism. [D.K. Basu (supra)]*

***VI-HABEAS CORPUS JURISDICTION/RIGHT TO GRANT COMPENSATION***

*(i) Where petitioner apprehends arrest, Court can issue a certiorari to quash the impugned detention order or a mandamus prohibiting the arrest. [Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14]*

*(ii) Constitution confers power on the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III. [Rudul Shah (supra)]*

*(iii) The refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its*

*significant content if the power of this Court were limited to passing orders of release from illegal detention [Rudul Shah (supra)]*

*(iv) The Court has inherent power to quash criminal proceedings amounting to abuse of process. In the interest of protecting fundamental rights under Articles 14 and 21, Court can also issue directions to regulate power of arrest. Balance must be maintained between social need to check crime and need to protect human right of liberty of an innocent person against arbitrary and malafide arrests. [Subhash Kashinath Mahajan (supra)]*

***VII-BALANCE TO BE MAINTAINED WHILE GRANTING RELIEF OF BAIL TO THE ACCUSED-***

*(i) The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the*

*rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider. [Joginder Kumar (supra)]*

*(ii) Balanced approach must be employed while enforcing these rights to ensure criminals do not go scot-free. [D.K. Basu (supra)]*

*(iii) In considering a petition for grant of bail, necessarily, if public interest requires detention of citizen in custody for purposes of investigation could be considered and rejected as otherwise there could be hurdles in the investigation even resulting in tampering of evidence. [K.K. Jerath v. Union Territory, Chandigarh, (1998) 4 SCC 80]*

*(iv) While deciding whether to grant bail to an accused or not, the Court must also take into consideration other facts and*

*circumstances, such as the interest of the society. [Rajesh Ranjan Yadav (supra)]*

*(v) When the provision of Section 438 Cr. P.C. is specifically omitted in the State of Uttar Pradesh, Court as back door entry via Article 226 wherever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice. [Hema Mishra (supra)]*

***VIII-RIGHT OF ACCUSED***

*(i) An arrested person has a right to know of his entitlement of supply of information of detention to friend, relative or other person told that he has been arrested and where he is being detained. [Joginder Kumar (supra)]*

*(ii) Period of detention under section 151 Cr. P.C. cannot exceed 24 hours and in absence of anything else, after expiry of that period the detainee must be released. [Ahmed Noormohmed Bhatti v. State of Gujarat, (2005) 3 SCC 647]*

*(iii) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly. [Joginder Kumar (supra)]*

*(iv) Fair and Independent investigation is crucial to preservation of rule of law and is the ultimate analysis of liberty itself. [Romila Thapar v. Union of India, (2018) 10 SCC 753]*

***IX-REPUTATION***

*(v) Since arrest and detention can cause irreparable damage to a person's reputation a police officer must be guided and act according to principles laid down by the Courts when deciding whether to make an arrest or not. [Lal Kamlendra Pratap Singh v. State of U.P., (2009) 4 SCC 437]*

*(vi) Violation of guidelines under statute; and D.K. Basu; Joginder Kumar case - seriously compromises the dignity of the accused. [Rini Johar (supra)]*

*(vii) Law provides for a procedure for arrest, investigation and trial which needs to be scrupulously followed and no one can be permitted to law into his own hands and annihilate what majesty of law protects.[Tehseen S. Poonawala (supra)]*

***X-SENSITIZING POLICE***

*(i) Police need to be trained and sensitized all of rights of citizens and maintaining law and order in a civilized manner. [Monica Kumar v. State of U.P., (2017) 16 SCC 169]*

***XI-PROCEEDINGS AGAINST POLICE OFFICIAL***

*(i) Mandatory Requirements [as stated in this case] to be followed by police personnel while arresting or detaining a person are in addition to constitutional and statutory safeguards. Non-compliance with the same would make official liable for departmental action [D.K. Basu (supra)]*

*(ii) Arrest made without fulfilling the conditions as set forth under Joginder Kumar (supra) and D.K. Basu (supra),*

*may expose the arresting officer to proceedings for violation of Articles 21 and 22 of the Constitution. [Rajender Singh Pathania v. State (NCT of Delhi), (2011) 13 SCC 329]*

*(iii) Action shall be taken against erring officials who do not register FIRs per law, on receipt of information disclosing cognizable offence. [Lalita Kumari (supra)]*

*(iv) It is open for the State to proceed against erring officials for violating Article 21. [Rini Johar (supra)]*

***57.** Summarizing the principles based on which the Court ought to base its decision of granting compensation in cases of violation of fundamental right under Article 21, we see that: a) Compensation is compensatory in nature; b) The purpose is to assure the victim that the system protects their rights and interests; c) The exact amount of compensation has to be assessed on the basis of facts and circumstances and gravity of each case; d) The mere absence of custodial violence would not preclude the victim from the grant of*

*compensation. The agony and mental harassment caused in police custody are sufficient to constitute a severe violation of fundamental rights; e) In the assessment of the gravity of harm done, the Court would take into account the unlawful imprisonment, mental torture and humiliation caused to the victim.*

***58.*** *The petitioner also established illegal detention of his milk tanker in the custody of the Parsa Police Station for more than 30 days. For this, he sought directions in the form of mandamus to the concerned authorities. Also claimed compensation for loss of his business during this period. We agree the manner in which the police officers apprehended the milk tanker/vehicle to be in complete violation of the procedure for seizure established by law. However, at this point, under this writ petition, we refrain from taking any decision giving liberty to seek remedy before the appropriate forum, under private law.*

***Directions of the Court***

***64.*** *In light of the discussions made above, we direct that:*

*a. The State of Bihar shall pay compensation to the detenue, namely, Mr. Jitendra Kumar*

*@ Sanjay Kumar, an amount of Rs. 5,00,000/- (Rupees Five lac) for the violation of his fundamental right under Article 21 of the Constitution of India. This amount shall positively be paid within a period of six weeks from today.*

*b. This compensation would be without prejudice to and independent of any remedy for damages in private law that the petitioner and/or detenue may wish to avail.*

*c. Appropriate disciplinary action/disciplinary proceedings already stands initiated against the erring police officers, which proceedings be expedited and positively concluded within a period of three months from today. Action taken report be filed in the Registry on or before 30th of April, 2021.*

*d. The Director General of Police, Government of Bihar shall ensure initiation of criminal proceedings against the erring police officers and file compliance report on his personal affidavit within a period of four weeks from today.*

*e. The Director General of Police, Government of Bihar shall ensure that proceedings under the other Laws, including Bihar police Manual, 1978 applicable in the State of Bihar are immediately initiated against the erring officials.*

*f. The Director General of Police, Government of Bihar shall ensure that appropriate action for sensitizing the entire police force, especially, the constabulary in Bihar, with special focus on safeguarding the fundamental rights of citizens is taken.*

*g. The Director General of Police, Government of Bihar shall ensure proper and effective functioning of a Complaint Redressal Mechanism, easily accessible to the general public, especially illiterate and the marginalized people of the State.*

*h. The appropriate authorities take the eye opening facts of this case, of the instances of abuse of process in the State of Bihar, as an opportunity to ensure better supervision over the Police Stations, preventing reoccurrence of such cases of constitutional violations.*

*i. The Director General of Police, Government of Bihar shall get a report prepared, with respect to the number and the nature of the complaints filed against the police officers/officials, and take remedial measures preventing repeated occurrence of such misconduct.*

*j. The State of Bihar shall consider forming a body to represent the views of the truck drivers and provide them with a complaint redressal mechanism.*

*k. The State of Bihar shall make efforts towards improving the conditions of the truck drivers. They must consider issues about their healthcare; access to food; working hours; payment of wages; literacy and access to technology.*

*l. Engage the Civil Society in generally building goodwill of the entire police force amongst the residents of Bihar.*

***E] Criminal prosecution ordered against Police official -***

***64.*** *In light of the discussions made above, we direct that:*

*a. The State of Bihar shall pay compensation to the detenue, namely, Mr. Jitendra Kumar @ Sanjay Kumar, an amount of Rs. 5,00,000/- (Rupees Five lac) for the violation of his fundamental right under Article 21 of the Constitution of India. This amount shall positively be paid within a period of six weeks from today.*

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*l. Engage the Civil Society in generally building goodwill of the entire police force amongst the residents of Bihar.*

***1.** Torture, either mental or physical, represents the worst violations of individual human personality, an*

*outright and premeditated attack on human dignity. It has no place in the governance of the State and its legitimate use of force. In any democracy, the right to live with dignity and self-worth, cannot be violently defiled within the ambit of Rule of Law and good governance.*

***2.*** *Truck drivers in our country are amongst the most vulnerable sections of our society. The backbone of the national economy is dependent upon the untiring and ever driving efforts and labour of the poor, mostly illiterate and the vulnerable. In the absence of the hard work and toil of truck drivers, economic activity throughout the country is bound to come to a standstill.*

***3.*** *Truck drivers lack proper education; proper healthcare; face daily hardships; have strained and unstable personal relationships; and most importantly are most susceptible to be at odds with the law and the functionaries of the State. These individuals are under the constant, endless pressure to make ends meet and ensure the survival of their families. It is these vulnerabilities that make them prone to derelictions of the "dark side of human civilization."*

***4.*** *The Hon'ble Apex Court, in D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 : AIR 1997 SC 610, has observed that*

> *"**12.** In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law."*

*(emphasis supplied)*

***5.*** *Truck drivers are faced with a great deal of high stress and pressure as part of their job. The introduction of the additional hassle and trauma, perpetuated by the authorities, through the use of hostility and torture is akin to grave human injustice. Such practices are a clear violation of the human rights guaranteed to every citizen of the world. With the failure of the State to protect its citizens, it becomes the responsibility and duty of the Judiciary to intervene in aid of these most downtrodden and helpless individuals.*

***Illegal Detention and Breach of Fundamental Rights***

***18.*** *The facts of the instant case indicate a grim state of affairs where the police officials have acted in contravention and violation of the procedure established by law. The vehicle and detenue were detained and kept in police custody for more than 35 days without either filing of FIR or following any other procedure of arrest prescribed in law, ensuring constitutional protections to all persons. Even if the version of the Police of the detenue being in the vehicle of his own volition is to be believed, then also the documents annexed along with the affidavit filed by the DGP do record that at least for two days, he was kept in the police lock up. A further version of he being in the compound of the Police station is wholly unplausible, hence unacceptable.*

***19.*** *In numerous cases, the Hon'ble Apex Court has reiterated that detaining a person directly affects their fundamental right of life and personal liberty. The procedure established by law must be followed under all circumstances. The version of the Police, of apprehending the accused on account of an alleged accident, falls short of compliance of procedure established by law. Therefore any detention made by the Police in this case, is*

*completely illegal, unlawful, in contravention of the constitutional and statutory provision and direct violation of detenue's fundamental rights. This follows from the constitutional protections guaranteed to every person under Articles 21 and 22 of the Constitution.*

***Procedure of Arrest required to be followed***

***20.*** *The procedure to be followed on arrest of a person, is prescribed under the provisions of the Code of Criminal Procedure 1973.*

***22.*** *Here only, we may take note of the provisions of the Penal Code, 1860. As per Section 166, whoever, being a public servant, knowingly disobeys any direction of the law as to how he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.*

***23.*** *The detenue alleges illegally detained, whereas the Police, states that he was moving freely, sitting in the vehicle parked outside the police compound. Noticeably, only in the affidavit of Director General of Police, the truth stood revealed, and the other*

*version contradicted. The accused was illegally detained and the vehicle not legally impounded, but detained and not allowed to be plied. The narration of the facts by the State authorities, as recorded in our orders reproduced supra, remains contradictory and appears to be a concocted story. They fail to answer essential questions leaving holes in their story - (i) why did the Police not register the FIR immediately when the vehicle driven by the detenue was intercepted by the Dariapur police, especially when the interception was made on account of communication of the alleged accident and fleeing away of the driver? (ii) Why was the vehicle not impounded? (iii) why was the drive not produced before the Court?; and (iv) why was no action promptly taken against the officials?*

***26. Further, the detenue was not produced before the Magistrate within 24 hours, as required under Section 56 of the Cr. P.C. Also, information of arrest was not supplied to a friend, relative or close person or entry made in the book, as required under Section 56A Cr. P.C., which is sacrosanct. The accused was not informed of the ground of arrest, as required under Section 50 Cr.P.C., thus depriving him of his right seeking bail.*** *Police did*

*not serve notice under Section 41A Cr. P.C., either upon the owner of the vehicle or the person driving at the time of occurrence of the alleged accident. Thus, there is an infraction of not only the said provision but also Section 41B Cr. P.C. which requires the memo of arrest to be prepared furnishing correct and complete information, as available, and witnessed by any independent person. Significantly, the valuable right of the accused of seeking legal advice envisaged under Section 41D Cr. P.C. stood infringed. Non-submission of any report to the Magistrate, as provided under Section 157 Cr.P.C only fortifies the version of the detenue. Thus, all this has rendered the police officer responsible for detention, liable for prosecution under Section 166 IPC.*

***27. Article 22** guarantees protection against arrest and detention in certain cases and declares that no person arrested shall be detained in custody without information of the grounds of such arrest.*

*(9) <u>Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record</u>.*

***29.*** *In the case of Joginder Kumar v. State of U.P., (1994) 4 SCC 260, with the release of the writ petitioner from the illegal custody of the Police after five days, when the Police sought dismissal of Habeas Corpus petition on the ground of illegal detention no longer surviving, the Hon'ble Apex Court observed that:*

> *"...**20….** Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a Police Officer issues notice to person to attend the Station House and not to leave Station without permission would do."*

*(Emphasis supplied)*

***30.*** *The strict requirement of the procedure to be followed in cases of arrest and detention has been*

*upheld in multiple cases by the Hon'ble Apex Court, including Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273; Rini Johar v. State of Madhya Pradesh, (2016) 11 SCC 703.*

***35.*** *Further, in Gangadhar alias Gangaram v. State of Madhya Pradesh, 2020 SCC OnLine SC 623, the Apex Court held that the right to a fair investigation, which is a facet of a fair trial guaranteed to every accused under Article 21 of the Constitution.*

***36.*** *This right also stands infringed.*

***37.*** *In Monika Kumar v. State of U.P.- (2017) 16 SCC 169, the Apex Court has highlighted the issue of Atrocities committed by the Police, which in fact appears to be a matter of routine.*

***Right to Compensation under Articles 32 & 226 of the Constitution of India for Violation of Fundamental Rights***

***45.*** *The instant case is one that is fit for hefty compensation to be levied on the State for violation of the fundamental right to life and liberty by way of illegal detention of Jitendra Kumar @ Sanjay Kumar, the detenue. This right would remain independent of the right of the petitioner as also the*

*detenue to claim other damages as private law remedy.*

***46.*** *In the case of Rudul Sah v. State of Bihar, (1983) 4 SCC 141, Hon'ble the Supreme Court upheld the grant of compensation for illegal detention under a petition of Habeas Corpus, "taking into consideration the grave harm done". The petitioner was illegally detained for over fourteen years despite his acquittal in a full-dressed trial. In a Habeas Corpus petition, Court directed his release from illegal detention and passed orders for payment of compensation by observing that:*

> *"**10.** ...In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-ser vice to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment*

*of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."*

## CHAPTER 23

USE OF SECTION 340 OF CRIMINAL PROCEDURE CODE BEFORE DEBT RECOVERY TRIBUNALS, AND OTHER PUBLIC SERVANTS ETC.

1. **DRT** - K.A.Kuttiah Vs. The Federal Bank Ltd**. 2006 Cri..L.J 3541**

2. Shiv Services Pvt. Ltd. Vs. Satish Kamble and Ors**. 2018 SCC OnLine Bom 2095.**
3. **NCLT –** KVR Industries Private Ltd. Vs. Bafna Ventures Private **2020 SCC Online NCALT 828**
4. **Revenue Court, Tahsildar –** Mahesh Chand Sharma Vs. State **2009 ALL MR [Cri.]3445 [S.C.]**

## CHAPTER 24

NEGATIVE POLICE REPORT CAN BE REJECTED - IN SECTION 340 OF THE CR.P.C, THE COURT IS NOT BOUND TO ACCEPT THE REPORT BY POLICE OR REPORT OF ANY AUTHORITY. EVEN IF THERE IS A NEGATIVE REPORT BY POLICE, THE COURT MAY TAKE DIRECT COGNIZANCE UNDER SECTION 340 OF CR.P.C OR IF REQUIRED MAY DIRECT CBI TO SUBMIT THE REPORT BY REJECTING THE REPORT OF POLICE.

1. **M.S. Sheriff Vs. State 1954 Cri.LJ 1019**
2. **Afzal & Anr vs State Of Haryana & Ors (1996) 7 SCC 397**
3. **Arvinder Singh (1998) 6 SCC 352**
4. **The Secretary, Hailkandi Bar Association Vs State AIR 1996 SC 1925**

## CHAPTER 25

COURT CANNOT GRANT PERMISSION TO ACCUSED TO FILE REPLY AND GIVE PROOFS/EVIDENCE.

ANY ORDER BASED ON THE SUBMISSION OF ACCUSED IS ILLEGAL AND VITIATED

**[M. Naraindas Vs. State (2003) 11 SCC 251, M/s A-One Industries 1999 CRI. L. J. 4743, Davinder Mohan Zakhmi 2002 CRI. L. J. 4485]**

In **M/s. A-One IndustriesVs.D.P. Garg 1999 CRI. L. J. 4743** it is ruled as under;

> ***A) Criminal P.C. (2 of 1974), S.340- Complainant for filing false affidavit in judicial proceedings pending before District Judge -*** *Material on record clearly making out case against accused under Section 193 of Penal Code- Court cannot examine defence of accused at initial stage of filing of complaint under Section 340 - Order directing prosecution of accused for offence under S. 193 - No interference. (Para 5)*
>
> ***B) False Affidavit -****It is contended on behalf of the appellant that the said affidavit was filed under a bona fide mistake. It needs to be highlighted that filing a false affidavit or giving false evidence in a judicial proceeding*

*is a serious matter- At this stage the Court cannot examine the defence of the appellant and record a finding thereon - Supreme Court in Dhananjay Sharma v. State of Haryana (1995) 4 JT (SC) 483 : (AIR 1995 SC 795) observed that Filing of false affidavits or making false statement on oath in Court 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 institution 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 reporting to filing of false affidavits or giving of false statements and fabricating false evidence in a Court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that no one can be permitted to undermine the dignity of the Court and interfere with due course of judicial proceedings or the administration of justice.*

In **M. Naraindas Vs. State (2003) 11 SCC 251,** it is ruled as under;

*(A)Criminal P.C. (2 of 1974), S.482- Inherent powers - Exercise of, for quashing complaint - Complaint lodged under S.468, S.470, S.471 and 120B of Penal Code alleging that documents filed by respondents in a suit were forged and fabricated - Conclusion of High Court that the*

*complaint was false, vexatious and frivolous is based, alone on material produced by the Respondents - No conclusion drawn by High Court that allegations made in complaint do not prima facie constitute any offence nor disclose a cognizable offence justifying an investigation by the police officer - Order of High Court quashing complaint - Is illegal.*

*2002 Cri LJ 388: 2002 AIR - Kant HCR 2908, Reversed. (Para 6)*

*(B)Criminal P.C. (2 of 1974), S.195, S.340- Prosecution for fabricating false evidence - Provisions of S. 195 and S.340 do not circumscribe the power of the police to investigate - Provision of S.195 is applicable once investigation is completed - Court could then file a complaint under S.340 on basis of the FIR and the material collected during investigation - Hence, respondent cannot be said to be deprived of right of appeal as provided under S.341. (Para 8)*

*(C)Criminal P.C. (2 of 1974), S.195, S.482- Prosecution for fabricating false evidence - Provision of S.195 is not applicable at stage of investigation - Hence, non-consideration of question whether S. 195 is applicable or not - Cannot be a ground to quash FIR. (Para 10)*

**In Devinder Singh Zakhmi Vs. Amritsar Improvement Trust, Amritsar & Anr. 2002 Cri.L.J. 4485,**it is ruled that;

> ***" Cr. P. C. S. 340–195 : -***
>
> *The entertainment of the application of, respondents by the trial Court in order to enable them to produce evidence in defence, as such was against the mandate of law. The findings of the trial Court that the provisions of Section 340 of the Code do not propose to shut down all gates for the respondents to place their case before the Court, and these provisions are only directive in nature, as such cannot be accepted in the face of the dictum of law laid down in the above-mentioned cases. Manifestly, the trial Judge has committed a patent error in passing order dated 2-4-2002 and for that reason, the same cannot be sustained.*
>
> *He placed reliance on the observations made in case Madan Lal Sharma v. Punjab and Haryana High Court through its Registrar 2000 (1) Rec Cri R 592 : 2000 Cri LJ 1512 wherein it was laid down that no hearing is required to be given to the accused before filing of the complaint because the accused can raise all defences before the Magistrate when the complaint is filed. Further reference was made to observations of the Apex Court in Pritish v. State of Maharashtra 2002 (1) Rec Cri*

*R 92 : 2002 Cri LJ 548 wherein it was observed in paras 9 and 10 as under :-*

*9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the Court (before which proceedings were to be held) that, it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the Court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the Court can form such an opinion when it appears to the Court that an offence has been committed in relation to a proceeding in that Court. It is important to notice that even when the court forms such an opinion it is not mandatory that the Court should make a complaint. This sub-section has conferred a power on the Court to do so. It does not mean that the Court should, as a matter of course, make a complaint. But once the Court decides to do so, then the Court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the Court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the Court to do so, though absence of any such preliminary inquiry would not vitiate*

*a finding reached by the Court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the Court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.*

*10. "Inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a magistrate or Court." It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion. whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said Court has to make a complaint in writing to the Magistrate of first class concerned. As the offences involved are all falling within the purview of "warrant case" (as defined in Section 2(x)) of the Code the Magistrate concerned, has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if*

> *it were instituted on a police report, that being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to 243 of the Code."*

That in view of the provisions of law and law laid down by the Full bench in the case of **Pritishvs State (2002) 1 SCC 253** there is a specific bar for allowing the accused to participate the enquiry under Sec. 340 of Cr. P. C.

The order and findings based on the defence of accused in an enquiry under sec. 340 of Cr. P. C. is beyond the purview of the jurisdiction of the Court:

That, in catena of decisions it is ruled that the Court conducting enquiry under sec 340 of cr. P. C. Cannot accept the defence of the accused and if any order is passed by relying on the defence/submission of the accused then such order is vitiated.

In the case of **State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659,** it is ruled that in such cases the court has to follow the procedures laid down under sec. 200,202, 204 of **Criminal Procedure Code** and there is no right to would be accused that he must be heard before making complaint. It is ruled thus;

> *"When complaint is made to the Magistrate having jurisdiction then, the Magistrate, if he thinks fit, can*

> *conduct further enquiry by considering the complaint as the Police Report. The Magistrate has to follow procedure under section 200, 202, 203, 204 of Criminal Procedure Code "*

It was held by this Honorable Court in the case of **Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another 1983 SCR (2) 724**, that:-

> ***"The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. Such a person cannot even be legally called to participate in the proceedings under Section 202 of the Code".***

In **Chandra Deo Singh v. Prakash Chandra Bose** reported in **MANU /SC/ 0053/ 1963[1964] 1 SCR 639,** the Supreme Court has held that the object of enqury under Section 202 of Cr.P.C. is to enable the Court to scrutinize carefully the allegations made in the complaint with a view to prevent the person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind that provision and it is to find out what material is there to support the allegations made in the complaint. It is the bound ant duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not

has, at that stage, necessarily to be determined on the basis of material placed before the Magistrate by the complainant. **Whatever defence the accused may have can only be enquired into at the trial. An enquiry under Section 202 Cr.P.C. can in no sense be characterised as a trial.** Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in the enquiry under Section 202 of Cr.P.C.

In **Smt.Nagawwa v. Veeranna Shivalilingappa Konjalgi, AIR 1976 SC 1947** the Supreme Court has held that, at the stage of issuing of process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient ground for proceeding against the accused. The scope of the enquiry under Section 202 of Cr.P.C. is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the material placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have in fact. In proceedings under Section 202, the accused has absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

> *"7. The aforesaid two decisions of the this Hon'ble Court make it clear that in an enquiry under Section 202 of Cr.P.C., the accused has no right to be heard. In fact, he has no locus to address the court on the question whether the process should be issued against him or not. He may remain present in person or through an advocate with a view to be informed as to what is going on, but has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so."*

In the case of **Ramesh Sobti Vs. State of West Bengal and Ors 2017 Cri. L. J. 4163,** it is ruled that;

> ***"13. Hence, there is no dispute that a Magistrate holding enquiry under Section 202 Cr. P. C. cannot call upon an accused to participate in such enquiry or pose any question to him or his witnesses. It is only upon conclusion of such enquiry if the Magistrate is satisfied on the basis of materials on record that there is sufficient ground to proceed against the accused he shall issue process for his appearance in the case. He cannot permit the accused to participate and canvass his defence in the course of the pre-summoning enquiry and convert it to a 'mini trial' even before the commencement of the trial itself.***

***14. Police officer conducting investigation under Section 202 Cr.P.C. is a delegatee of the Magistrate and his powers of investigation are, therefore, circumscribed by the limitations imposed upon the principal, that is, the Magistrate himself. Since the Magistrate in the course of enquiry under Section 202 Cr.P.C. is not entitled to issue notice upon the accused to appear and participate in the proceeding, the police officer as his delegatee cannot claim higher powers and issue notice upon the accused and interrogate him in the course of investigation under Section 202 Cr.P.C. No doubt, the police officer may exercise other powers of investigation e.g. proceed to the spot, interrogate the complainant and his witnesses, collect evidence by effecting searches and seizures for the purpose of determining the intrinsic truth in the allegations in the complaint but he cannot in course of such investigation issue notice to the accused and interrogate him to elicit his responses to the allegations in the complaint. If he does so, he would be enlarging the scope of enquiry under Section 202 Cr.P.C. wherein an accused is precluded from participating and raising his defences in rebuttal to the allegations in the petition of complaint.***

In the case of **Kareem Fatima &Ors.Vs.Habeeb Omer &Anr. 2009 ALL MR (Cri) JOURNAL 21** it is ruled that the **Accused has no statutory right to be heard before taking cognizance of offence whether it is before Magistrate Court or Revisional Court**;

> *"The above decisions clearly indicate that the accused need not be afforded an opportunity of being heard before taking cognizance of the offence whether it is before the Magistrate or before the revisional Court and the contention that the documents were not alleged to be forged after filing them into Court is also not an embargo to take cognizance of the offence. Therefore, I do not see any merit in the contention of the learned Counsel for petitioners that the revisional Court failed to give them an opportunity of being heard and failed to consider the contentions raised by them.*
>
> *3. In support of his contention the learned Counsel for first respondent relied on* ***PritishVs. State of Maharashtra and others, 2002 Cri.L.J. 548 : [2002 ALL MR (Cri) 732 (S.C.)],*** *wherein the apex Court observed that in the proceedings before a criminal Court, before ordering prosecution, when the preliminary enquiry is going on, the Court is not under a legal obligation to hear the persons against whom an accusation is made. The scheme underlying Sections 340, 343, 238 and 243 of the Code*

*clearly shows that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that Court might file a complaint before the Magistrate for initiating prosecution proceedings. Once the prosecution proceedings commence, the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code. Principles of natural justice would not be hampered by not hearing to the person concerned at the stage of deciding whether such person should be proceeded against or not. The Court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom the proceedings are to be taken before the Magistrate. At that stage the Court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. The apex Court further observed that the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pretrial inquiry envisaged in Section 239 of the Code. It is open to him to*

*satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged. "*

In **Madangopal Banarasilal Jalan & others vs. Partha s/o Sarathy Sarkar 2018 SCC OnLine Bom 3525** it is ruled as under;

*"A] The accused does not have any say in the process of accepting the application u/s 340 of Cr.P.C or directing the preliminary inquiry.*

***The legal position is settled by Supreme Court in Pritesh Vs.State of Maharashtra AIR 2002 SC 236 The said legal position is undisputed.***

*B] When falsity of allegation / submissions made by accused is investigated and report is submitted in any proceedings before Court and thereafter if the accused continues to repeat the same false and misleading version in different proceeding in the Court then the Court before whom the false statement is repeated has no option but to take cognizance of the application u/s. 340 of Cr.P.C made by the aggrieved person.*

*Law laid down in the case of Fareed Qureshi Vs. State of Maharashtra 2018 SCC online Bom 960 followed."*

In **Hridayangshu Bhattacharjee v. State of Jharkhand, 2002 SCC OnLine Jhar 176,** it is ruled as under;

***"Cr. P. C. Sec. 340, 202 – <u>Court cannot allow the accused to participate enquiry</u> – Order by sub-ordinate court not proper the learned Munsif has allowed the Opposite parties to appear and fife show cause and also directed the petitioner to reproduce his witnesses for giving opportunities to cross-examine those witnesses in the preliminary enquiry, which was conducted by the Court below under Section 340 of the Code of Criminal Procedure in connection with Misc. Case No. 23/2000.***

***3.*** *The learned Counsel appearing on behalf of the petitioner submitted that the Misc. Case No. 7 of 1999 was started only to enquire into the matter about the documents being forged produced/filed by the Opposite parties in the Court, which is a preliminary enquiry in which the opposite party is not required to appear in the Court as well as the opposite party is not required also for cross-examination of the witnesses of the petitioner, at this stage, rather it is for the Court concerned to come in concussion whether there is material for filing any complaint or not and so the Court below committed error in giving an opportunity to the opposite party for cross-examination of the witnesses of the petitioner, at this stage, it is also submitted that the enquiry under Section 340 of the Code of Criminal Procedure is a similar to the enquiry conducted under Section 202 Cr. P.C. wherein the*

*Court is required to see as to whether a prima fade case is made out against the accused or not and there is no scope for cross-examining the witnesses by the accused. It is also argued that forged document was produced in the Court, who is competent enough to proceed with the case, if it is found to be forged and that is why a petition under Section 195* ***(b)(ii)*** *Cr. P.C. was filed for holding enquiry under Section 340 Cr. P.C., as* ***Sishir*** *Kumar Bhattacharjee already died as back as on 1-3-1999 and by suppressing the truth the Opposite party obtained a decree. The Counsel for the petitioner also relied upon a case of Pritish v. State of Maharastra, (2002) 1 East Cr. Cases, 206 (SC).*

***7.*** *Thus, even if any forgery is committed even in the Civil Court in the matter of Civil cases, an enquiry will be held in accordance with Section 340 of the Code of Criminal Procedure. Enquiry has been defined under Section 2(g) of the Code, which reads as under:*

> *"inquiry" means every inquiry, other than a trial conducted under this Code of a Magistrate or Court."*

***8.*** *Thus, the inquiry shall be conducted by a Magistrate or Court and therefore, any Court as described under Section 195(3) Cr. P.C. is empowered to hold inquiry accordingly as required under Section 340 Cr. PC., if any application*

*is filed under Section 195(1)(b)(ii)Cr. P.C. Hence, the argument as advanced by the learned Counsel for the Opposite party that the matter is relating to the civil case and therefore, inquiry cannot be conducted under Section 340 Cr. P.C., has got no substance in view of 195(3) Cr. P.C. Further, the facts of the decision of Sachidand Singh v. State of Bihar (supra), is quite distinguishable from the facts of the instant case. The scope of preliminary enquiry envisaged in Section 340. (1) of the Code is to ascertain whether any offence attracting administration of justice has been committed in respect of document produced in Court.*

***9.*** *In the case of Pritish v. State of Maharastra (supra), the Apex Court held that at the stage of inquiry under Section 340 (1) of the Code, this Court is not deciding the guilt or innocence of the accused against whom the Court might file complaint before the Magistrate, the Court only considers where it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. The scope is confined to see whether the Courts could then decide on the materials available that the matter requires inquiry by a Criminal Court and that it is expedient in interest of justice to have it inquired into. There is no statutory requirement to afford an opportunity of hearing to the accused against*

*whom that Court might file a complaint before the Magistrate for initiating prosecution proceedings.*

***10.*** *Thus, It is evidence that the inquiry held under Section 340 (1) of the Code by the Court is a preliminary inquiry and if the Court thinks necessary it may record the finding in writing and will proceed in accordance with law.*

***11.*** *In the result, I find that the Court below committed error in passing the order impugned by giving the opportunity to the Opposite parties for cross-examination of the witnesses of the petitioner, at this stage, which is liable to be quashed.*

***12.*** *Accordingly, I find merit in this application, which is allowed. The order dated 13-2-2001 is, hereby, quashed.*

***13.*** *Application allowed."*

Hon'ble Bombay High Court in the case of **Tushar Galani Vs. Jagdeesh 2001 ALL MR (Cri.) 46** it is ruled as under ;

***Criminal P.C.(1973),Ss.202,204- Issue of process – Magistrate cannot issue notice to proposed accused as to why process be not issued against him for the alleged offences.***

*The learned Magistrate could not have evolved new procedure which is not contemplated by law. The accused has no locus standi in the matter before issuing process against him and therefore, he is not entitled to be heard before process is issued against him. The learned Magistrate has to consider the question of issuing process purely from the point of view of the complainant without reference to any defence that the accused may have. At the stage of issuing, the Magistrate cannot enter into a detailed discussion on the merits or demerits of the case.*

## CHAPTER 26

IF THE APPLICATION UNDER SECTION 340 OF CRIMINAL PROCEDURE CODE IS NOT DECIDED URGENTLY THEN THE AGGRIEVED PARTY CAN FILE WRIT PETITION FOR DIRECTIONS TO DECIDE THE APPLICATION WITHIN A TIME BOUND MANNER SUCH AS WITHIN ONE OR TWO MONTHS.

In **Surendra Mishra Vs. State 2019 SCC OnLine Bom 291,** it is ruled as under**;**

*1. Upon urgent mentioning, taken on Production Board.*

***2.** Rule. Rule made returnable forthwith by consent of the parties and heard finally at the stage of admission.*

***3.*** *This petition is filed for a limited relief that the application filed by the petitioner under sections 340 r/w 195 of the Code of Criminal Procedure in C.C. No. 2436 PW of 2017, be decided expeditiously.*

***4.*** *Considered para 32 of the judgement of the Constitution Bench of the Supreme Court in the case of* ***Iqbal Singh Marwah v. Meenakshi Marwah*** *(2005) 4 SCC 370*

***5.*** *In view of the limited relief prayed for, the petition is disposed of by directing the learned Metropolitan Magistrate, 67th Court, Borivali, to decide the application filed by the petitioner under section 340 r/w section 195 of the Code of Criminal Procedure in CC No. 2436 PW of 2017 within two months from the date of receipt of the copy of this order.*

***6.*** *Rule made absolute accordingly.*

In the case of **Gopal Pandey @ Sonu Pandey Vs. The State of U.P.** High Court of Allahabad in order dated **9.1.2020**, it is ruled as under;

***"Expeditious deciding of Application under section 340 of Cr. P. C.***

***Judicial Magistrate III, Faizabad is directed to expediate the application under Section 340 Cr.P.C. dated 26.10.2010.***

***Expeditiously and preferably within a period of two months from the date of receipt of certified copy of the order."***

In **Sugesan Finance Investment v. M/s. Mulji Metha & Sons, 1989 SCC OnLine Mad 113** it is ruled as under;

***''Application under sec 340 has to be decided urgently. – Offences alleged, being those against administration of justice, prompt action is desirable. In fact, it is so in almost all criminal cases. 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. The argument by opposite counsel that it should be decided at the time of rendering judgment at the trial of the suit is rejected.***

***It is expedient in the interests of justice to set the criminal law in motion as prayed for by the applicants in regard to the above said first charge of giving fictitious address of plaintiff. Offences prima facie disclosed are under Ss. 191, 193 and 199 of the Penal Code, 1860.***

*Larger interest of administration of Justice also demands that a fuller probe is made by the Criminal Court in this matter as to whether the alleged offences have been*

*committed by the respondent, so that such alleged bad practice to get the desired result is not resorted to by other litigants.*

*The result is, I sanction prosecution only with reference to the first of the above said charges (dealt with in paragraph 6 to 12 above) and direct the Registrar of this Court to prefer a complaint against the respondents under the punishing Ss. 193 and 199 of the Penal Code, 1860 read with S. 191 thereof before the Chief Metropolitan Magistrate, Madras.*

***Constitution bench judgment of supreme Court relied to expeditious and urgent hearing of 340 applications.***

*The learned Counsel for the plaintiff argued that only at the time of rendering judgment at the trial of the suit, sanction, if at all, can be granted under S. 340, Cr. P.C. and not earlier. But S. 340, Cr. P.C. does not contemplate or provide any particular stage at which alone the proceeding could be resorted to. Offences alleged, being those against administration of justice, prompt action is desirable. In fact, it is so in almost all criminal cases. The following words of Supreme Court in* ***M.S. Sheriff v. State of Madras1954 SCR 1229*** *Supreme Court may be cited in this connection:—*

*"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".*

*Further it must also be noted that with reference to the above referred to statement regarding the plaintiff's address, no further finding is warranted or can be expected in judgment that will be delivered in the main suit. So, the above said argument of the learned Counsel for the plaintiff has no merit.''*

In **Badal Singh Vs. Bhawna Singh 2019 SCC OnLine Bom 1326** it is ruled as under;

***''Section 340 of Cr. P.C – It is settled by catena of decision that under Sec. 340 of Cr. P.C. application has to be decided as early as possible.***

*The learned counsel for the respondent no. 1 wife submits that in the present proceedings, Respondent wife already filed Misc. Application No. 323 of 2019 for taking action against the Petitioner under section 193, 196, 199, 200 and 205 of the Indian Penal Code read with section 340 of the Criminal Procedure Code. He submits that the said Application was filed by the wife on 10.02.2019. He submits that unless and until Criminal Application filed by*

*Respondent wife is decided, there is no question of deciding Petitioner's Application for divorce. In support of this contention, he relies on following judgments:*

*a. M.S. Sheriff v. State of Maharashtra[4]. Paragraph 17 and 18 of the said judgment reads thus:*

> *"17. 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."*
>
> *"18. 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 an 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 made 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 section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."*

*b. Iqbal Singh Marwah v. Meenakshi Marwah*[5] *Paragraph 24 sub paragraph 15 of the said judgment reads thus:*

*"(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."*

*c. Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha*[6] *Para 2 reads thus:*

> *"2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness.*
>
> *At the most, they could have ordered that the matter be heard by a Bench of three learned Judges."*

*d. Union of India v. Harish V. Milani,*[7] *Paragraph 4 and 7 reads thus:*

> *"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. in Writ Petition No. (M/S) of 2002, wherein also similar point was raised as to whether the application under Section 340 C.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 C.P.C., before proceeding further in accordance with law."*
>
> *"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 C.P.C. before deciding the Writ Petition."*

*It is to be noted that the authorities cited by the Respondent as stated hereinabove, held that that the Criminal matters filed by the parties, is required to be decided as early as possible.*

*Considering these facts and the law declared by the Apex Court as referred hereinabove, I am of the opinion that Marriage Petition of Petitioner as well as Application filed by wife is required to be decided as early as possible by the Trial Court. Hence, following order is passed:*

*a. The learned Civil Judge, Senior Division, Thane is directed to decide Marriage Petition No. 260 of 2018 filed by Petitioner husband under section 13(1)(i) of the Hindu Marriage Act for dissolution of marriage and also other Misc. Application No. 323 of 2019 filed by Respondent wife for taking action against the Petitioner, as early as possible, but in any case on or before 31.03.2020''*

**2.** In **Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr. (2005) 4 SCC 370** in **para 32** it is ruled 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 the old Code, the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras [1954 SCR 1144 : AIR 1954 SC 397 : 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)*

*"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 Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."*

## CHAPTER 27

DUTY OF THE JUDGE/COURT TO WHOM APPLICATION IS GIVEN OR FALSITY IS BROUGHT TO HIS NOTICE TO CONDUCT PRELIMINARY ENQUIRY.

**OR**

DIRECT POLICE, CBI TO INVESTIGATE AND SUBMIT THE REPORT.

**OR** TO DECIDE THE APPLICATION ON THE BASIS OF MATERIAL AVAILABLE ON RECORD, WHEN THE OFFENCE IS EX-FACIE PROVED. **[SANJEEV MITTAL VS STATE 2011 RCR (CRI) (7) 2111]**

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## CHAPTER 28

MINOR CASES WHEN THE JUDGE/COURT MAY DECIDE TO NOT TO TAKE ACTION AGAINST THE ACCUSED. WHEN THE OFFENCE IS NOT SO SERIOUS AND THE ACCUSED TENDERED APOLOGY AND WITHDRAWN THE FALSE CLAIM.

Hon'ble Delhi High Court in **Rajeev Choudhary @ Rejeev Kumar vs State in CRL.REV.P. 1052/2018 order dated 23 January, 2019** reads thus**;**

> *''The court would, while forming such an opinion, also examine the effect and impact of such an evidence, which*

*is alleged to be tainted. It would not be in every cases that the Court would comes to a conclusion that it is expedient and in the interest of justice, that such an inquiry should be made. If the concerned court is of the view that the tainted material/evidence is inconsequential and would not have any bearing on the issues at hand, the court may deem it expedient not to proceed further under section 340 and 195 Cr.P.C. and may pass appropriate orders for admonishment or imposing some form of penalty or fine. However, it would depend on facts of each case.''*

In **Prabhakar Yeshwant Masram Vs. 7th Adhoc Additional District Judge, Nagpur 2012 SCC OnLine Bom 1183** it is ruled as under;

***"9.** It is well settled that the prosecution for perjury should be sanctioned by Courts only in those cases where the perjury appears to be deliberate and conscious and conviction is reasonably probable or likely. It is no doubt true that to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial.*

***10.*** *In the present case, it is prima facie seen that the appellants had filed false affidavit in support of the stay application. No doubt, giving of false evidence and filing false affidavit is an evil which must be effectively curbed with a strong hand. In my considered opinion, there is prima facie case of deliberate falsehood on a matter of substance and I am further satisfied that there is reasonable foundation for the charge. The material brought to my notice is sufficiently adequate to justify the conclusion that it is expedient in the interest of justice to file a complaint. I find that the two basic ingredients: (1) the offences appear to have been committed, and (2) it is expedient to act under this section, are present to initiate a proceeding under Section 340 Cr. P. C. The Court concerned shall act according to law without being influenced by observations made prima facie by this Court."*

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## CHAPTER 29

IN CERTAIN CASES THE JUDGE/COURT HAVE NO DISCRETION TO FORGIVE ACCUSED EVEN IF ACCUSED HAD NOT GAINED ANY ADVANTAGE FROM FALSE AFFIDAVIT/ EVIDENCE? AND EVEN IF HE/SHE HAD TENDERED APOLOGY.

In **Sarvepalli Radhakrishna Vs.Union of India 2019 SCC Online SC 61**it is ruled as under;

> ***''17.*** *We are unable to persuade ourselves to accept the apology offered on behalf of the College. The College has been habitually indulging in foul play which is clear from the course of events in 2015 when faculty members were found to have been working elsewhere and running hospitals. The bravado shown by the College in an attempt to cheat the MCI, the Government and this Court has to be condemned. The Committee constituted by this Court is due to the vehemence with which the Counsels appearing for the College were trying to convince us that they are fully compliant with all the requirements. "Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.''*

Hon'ble Apex Court in **Sciemed Overseas Inc.Vs. BOC India Limited (2016) 3 SCC 70,** it is ruled as under;

***"The only question for our consideration is whether the High Court was correct in imposing costs of Rs. 10 lakhs on the Petitioner for filing a false or misleading affidavit in this Court - In our opinion, the imposition of costs, was fully justified- this Court had observed that the sanctity of affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged Giving false evidenceby filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered***

*The fact of the matter is that a false or misleading statement was made before thiO09s Court and that by itself is enough to invite an adverse reaction.*

*30. In the case of* ***Suo Moto Proceedings Against R. Karuppan, Advocate MANU/SC/0338/2001 : (2001) 5 SCC 289 this Court had observed that the sanctity of affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged.*** *It was observed by this Court as follows:*

*Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.*

*31. Similarly, in MuthuKaruppan v. ParithiIlamvazhuthi MANU/SC/0418/2011 : (2011) 5 SCC 496 this Court expressed the view that the filing of a false affidavit should be effectively curbed*

*with a strong hand. It is true that the observation was made in the context of contempt of Court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said:*

*Giving false evidenceby filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of "deliberate falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.*

*32. On the material before us and the material considered by the High Court, we are satisfied that the imposition of costs by the High Court was justified.*

In **Murray And Co. Vs. Ashok Kr. Newatia 2000 (1) SCR 367**it is ruled 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 majesty 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 deprecated 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 majesty 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.***

***Contempt of Courts Act (70 of 1971), S.13- Contempt of Court - Punishment - Allegation that contemnor in his affidavit had falsely denied assertion that property was sold in disobedience of Court order - Facts of case and the stage at which affidavit was filed revealing that contemnor had not gained any advantage through his***

***false statement - However considering the fact that statement was not mere denial of fact but positive assertion of a fact known to be false - Was made with definite intent to pass of a falsity and if possible to gain advantage - Court refused to exonerate contemnor on mere tendering of unconditional apology and imposed a fine of Rs. 2,500/-.***

***(B) Contempt of Courts Act (70 of 1971), S.2(c), S.13- Contempt of Court - Conviction and punishment - Considerations differ - Whether contemnor obtained certain definite advantage because of the act alleged - Would be wholly immaterial in matter of commission of offence under Act - But would be a relevant factor in context of punishment to be imposed against a contemnor - Person making definite and deliberate false statement in affidavit - Cannot escape the liability of being held guilty of contempt.***

***Contempt of Courts Act (70 of 1971), S.2- Contempt of Court - What amounts to - Determination - Litigative spirit of complainant party - Relevancy.***

*9. 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.''*

In **Uttar Pradesh Residents Employees Co-Operative House B. Society Vs. New Okhla Industrial Development Authority (2010) 3 SCC (Cri) 586** it is ruled as under;

*''**Apology once fraud is disclosed is not permissible - 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)''*

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## CHAPTER 30

DISCRETION GIVEN TO THE JUDGE DOES NOT MEAN THAT, HE CAN PASS ANY ORDER. DISCRETION SHOULD BE GUIDED BY THE SOUND PRINCIPLES OF LAW AND JUDGES SHOULD NOT THINK IN TERMS 'WHAT PLEASES THE PRINCE HAS THE FORCE OF LAW'.

JUDGE ACTING CONTRARY TO LAW TO SAVE ACCUSED OR TO FALSELY IMPLICATE ACCUSED IS LIABLE FOR CONTEMPT ACTION AND ALSO UNDER SECTION 218, 219, 220 ETC. OF IPC.

In **Sundarjas Kanyalal Bhathija and Ors. Vs. The Collector, Thane, Maharashtra and others 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.''***

In **Anurag Kumar Singh and Ors.Vs.State of Uttarakhand and Ors.** it is ruled as under;

***''Discretion:****It assumes the freedom to choose among several lawful alternatives. Therefore, discretion does not exist when there is but one lawful option. In this situation, the judge is required to select that option and has no freedom of choice. No discretion is involved in the choice between a lawful act and an unlawful act. The judge must*

*choose the lawful act, and he is precluded from choosing the unlawful act. Discretion, on the other hand, assumes the lack of an obligation to choose one particular possibility among several.''*

In **Medical Council of India Vs. G.C.R.G. Memorial Trust and Ors. (2018) 12 SCC 564** it is ruled as under;

***''13. 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 rhetoric's.*

*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.''*

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

***''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.''***

In Re **M.P.Dwivedi AIR 1996 SC 2299,** it is ruled as under;

***''A ) <u>VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF CONTEMPT.</u>***

*Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.*

*Held, Thecontemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this Court - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners*

*in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.*

*We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field*.''

In **Superintendent of Central Excise Vs. Somabhai Ranchhodhbhai Patel (2001) 5 SCC 65**, it is ruled as under;

*''A) Contempt of Courts Act (70 of 1971), S.2 – The level of judicial officer's understanding can have serious impact on other litigants- We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court.*

*Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand – Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any,*

*taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court. (Paras 15 16)''*

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

***''(i) Failure to follow Higher Court's decision and passing order by ignoring law declared by higher Courts, makes the Judge liable for action under Contempt, (ii) Filing false affidavit is Contempt, (iii) Deterrent action require to uphold the majesty of law. Maximum Punishment be given to dishonest litigants (iv) Imposition of costs for frivolous and vexatious litigations, (v) No limit for imposing costs, (vi) Cost includes Lawyers fees (vi) Law of precedents reiterated.***

***Judgments/case laws pronounced by Higher Courts are binding on all including the Licensee/Plaintiff who could not bypass or disregarded them otherwise he is liable for action of contempt of this Court - The plaintiff misled the Trial Court to disregard well settled law***

***Brief Facts:***

***This is a classic case in which the Licensee instituted a frivolous suit and succeeded in obtaining an interim order – Various judgments were submitted and relied upon at the time of final hearing by NDMC in the written submissions. However, the Trial Court did not even consider and discuss the aforesaid judgments in the impugned judgment. The impugned judgment rendered by the leaned Trial Court in violation of the binding precedents of the higher Courts and in particular the Apex Court is a nullity. Reliance is placed on Dwarikesh Sugar Industries ltd. Vrs. Prem Heavy Engineering Works (P) Ltd. & Ors.1997 (6) SCC 450.***

***While setting aside the judgment of Trial Court and passing strictures against the Trail Court's Judge , and imposing cost against the Plaintiff, High Court held as Follows;***

***RATIO:***

***(i) Judgments/case laws pronounced by Higher Courts are binding on all including the Licensee/Plaintiff who could not bypass or disregarded them otherwise he is liable for action of contempt of this Court - The plaintiff misled the Trial Court to disregard well settled law -*** *The Trial Court has dared to disregard and deliberately ignore the judgments - The impugned judgment and decree is*

*vitiated on account of conscious disregard of the well settled law -*

***30.28.*** *The impugned judgment under challenge, stands vitiated on account of several serious errors of law, apparent on the face of it and the Trial Court not only acted arbitrarily and irrationally on a perverse understanding or misreading of the materials but also misdirected himself on the vital issues before him so as to render the impugned judgment to be one in utter disregard of law and the precedents. Although the impugned judgment purports to determine the claims of parties, a careful scrutiny of the same discloses total non-application of mind to the actual, relevant and vital aspects and issues in their proper perspective. Had there been a prudent and judicious approach, the Trial Court could not have awarded any relief whatsoever to the Licensee.*

*30.29. The impugned judgment is based on mere conjectures and pure hypothetical exercises, absolutely divorced from rationality and reality, inevitably making law, equity and justice, in the process, a casualty. The impugned judgment is so perverse, arbitrary and irrational that no responsible judicial officer could have arrived at such a decision.*

*30.30. The impugned judgment bristles with numerous infirmities and errors of very serious nature undermining the very credibility and objectivity of the reasoning as well as the ultimate conclusions arrived at by the Trial Court. The impugned judgment has resulted in a windfall in favour of the Licensee, more as a premium for their own defaults and breaches. The Licensee has enjoyed the subject property without paying the licence fee in terms of the licence deed which has accumulated to the tune of Rs. 122 crores by virtue of the impugned judgment of the Trial Court.*

*30.31. The conclusions in the impugned judgment are seriously vitiated on account of gross misreading of the materials on record. Conclusions directly contrary to the indisputable facts placed on record throwing over board the well-settled norms, the basic and fundamental principle that a violator of reciprocal promises cannot be crowned with a prize for his defaults.*

*30.32. The conclusions arrived at by the Trial Court are nothing but sheer perversity and contradiction in terms. Even common sense, reason and ordinary prudence would commend for rejecting the claim of the Licensee.*

*30.33. The manner in which the Trial Court has chosen to decree the suit not only demonstrates perversity of approach, but per se proves flagrant violation of the*

*principles of law. The principles of well settled law are found to have been observed more in their breach.*

*30.34. The Trial Court appears to have relied upon mere surmises and conjectures as though it constituted substantive evidence. The impugned judgment suffers from obvious and patent errors of law and facts.*

*30.35. The Trial Court failed in the duty and obligation to maintain purity of standards and preserve full faith and credibility in the judicial system. The impugned judgment, on the face of it, is shown to be based upon a proposition of law which is unsound and findings recorded are absurd, unreasonable and irrational.*

*30.36. This case warrants imposition of costs on the petitioners in terms of the judgments of the Supreme Court in Ramram eshwari Devi v. Nirmala Devi (supra) and Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (supra), Subrata Roy Sahara v. Union of India (supra) and of this Court in Harish Relan v. Kaushal Kumari Relan & Ors. in RFA(OS) 162/2014 decided on 03rd August, 2015, Punjab National Bank v. Virender Prakash, MANU/DE/0620/2012 : 2012 V AD (Delhi) 373 and Padmawati v. Harijan Sewak Sangh (supra).*

*30.37. For the reasons discussed hereinabove, the appeal is allowed. The Licensee's suit was not maintainable. The Trial Court had no jurisdiction in this matter. The*

*impugned judgment and decree are non-est and therefore set aside. The Licensee's suit is dismissed with costs of Rs. 5,00,000/- to be paid by the Licensee to NDMC within two months. All pending applications are disposed of.*

*30.38. This Court is constrained to hold that the Licensee made a false claim, dragged the case for years by filing one application after the other and misled the Court on law as well as facts. The Licensee did not pursue the proceedings honestly before the Trial Court.*

*FAILURE TO FOLLOW HIGHER COURT'S DECISION AND PASSING ORDER BY IGNORING LAW DECLARED BY HIGHER CORTS MAKES THE JUDGE LIABLE FOR ACTION UNDER CONTEMPT: - In Re: M.P. Dwivedi & Ors., (1996) 4 SCC 152, the Supreme Court initiated suo moto contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court- In, (1973) 1 SCC 446, the appellant therein, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt.*

*The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court*

*or tribunal and for that matter any other authority can ignore the law stated by this Court - directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted - This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system - Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court*

*If the Trial Court does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts - The consequence of the Trial Court not following the well settled law amounts to contempt of Court. Reference in this regard may be made to the judgments given below - if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State - and they cannot*

*ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding - If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, anything done by any authority, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971 - 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 - Failure to follow Higher Court's decision and ignorance of law makes the Judge liable for action under Contempt : 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- In Re: M.P. Dwivedi & Ors., (1996) 4 SCC 152, the Supreme Court initiated suo moto contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court - Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. Inaction or even dormant behaviour by*

*the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding.*

*22.9. In Priya Gupta v. Addl. Secy. Ministry of Health and Family Welfare and others, (2013) 11 SCC 404, the Supreme Court ruled that . The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed*

*in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice. It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court. Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be*

*operative till proper legislations are enacted. The directions of the court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified.*

*22. Consequences of the Trial Court disregarding well settled law - If the Trial Court does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the*

*constitutional Courts - It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State - and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding - If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971 . The consequence of the Trial Court not following the well settled law amounts to contempt of Court. Reference in this regard may be made to the judgments given below.*

*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)*

*22.4. In Baradakanta Mishra Ex-Commissioner of Endowments v.Bhimsen Dixit, (1973) 1 SCC 446, the appellant therein, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-*

*"15. The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court"s disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the*

*law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law"(Emphasis supplied)*

*22.5. In Re: M.P. Dwivedi & Ors., (1996) 4 SCC 152, the Supreme Court initiated suo moto contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court against handcuffing of under-trial prisoners.*

*The Supreme Court held this to be a serious lapse on the part of the Magistrate, who was expected to ensure that basic human rights of the citizens are not violated. The Supreme Court took a lenient view considering that Judicial Magistrate was of young age. The Supreme Court, however, directed that a note of that disapproval to*

*be placed in his personal file. Relevant portion of the said judgment is reproduced hereunder: -*

*"22. ... It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing inasmuch as when the prisoners were produced before him in court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner. We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so*

*that judicial officers are made aware about the developments in the law in the field."(Emphasis supplied)*

*22.6. In T.N. Godavarman Thirumulpad v. Ashok Khot, (2006) 5 SCC 1, the Supreme Court held that disobedience of the orders of the Court strike at the very root of rule of law on which the judicial system rests and observed as under:-*

*"5. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with."(Emphasis supplied)*

*22.7. In Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273, the Supreme Court held as under:-*

*"26. ... Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs...*

*29. Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. ... Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. ... Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding.*

*22.8. In Mohammed Ajmal Mohammed Amir Kasab v. State of Maharashtra (2012) 9 SCC 1, the Supreme Court directed that it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner*

*and, in case he has no means to engage a lawyer of his choice, it should be provided to him from legal aid at the expense of the State. The Supreme Court further directed that the failure of any magistrate to discharge this duty would amount to dereliction in duty and would made the concerned magistrate liable to departmental proceedings.*

*22.9. In Priya Gupta v. Addl. Secy. Ministry of Health and Family Welfare and others, (2013) 11 SCC 404, the Supreme Court held as under:-*

*"12. The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to*

*reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.*

*13. These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice.*

*xxx xxx xxx*

*19. It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court. To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but*

*even impossible to regulate such orders of the court, is an argument which does not impress the court. As already noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the*

*effect that the disobedience is of a general direction and not of a specific order issued inter se parties.*

*Such distinction, if permitted, shall be opposed to the basic rule of law.*

*23. ... The essence of contempt jurisprudence is to ensure obedience of orders of the Court and, thus, to maintain the rule of law. History tells us how a State is protected by its courts and an independent judiciary is the cardinal pillar of the progress of a stable Government. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified...(Emphasis supplied)*

*22.10. In Subrata Roy Sahara v. Union of India (2014) 8 SCC 470, the Supreme Court held that the decisions rendered by the Supreme Court have to be complied with by all concerned. Relevant portion of the said judgment is as under: -*

*17. There is no escape from, acceptance, or obedience, or compliance of an order passed by the Supreme Court, which is the final and the highest Court, in the country.*

*Where would we find ourselves, if the Parliament or a State Legislature insists, that a statutory provision struck down as unconstitutional, is valid? Or, if a decision rendered by the Supreme Court, in exercise of its original jurisdiction, is not accepted for compliance, by either the Government of India, and/or one or the other State Government(s) concerned? What if, the concerned government or instrumentality, chooses not to give effect to a Court order, declaring the fundamental right of a citizen? Or, a determination rendered by a Court to give effect to a legal right, is not acceptable for compliance? Where would we be, if decisions on private disputes rendered between private individuals, are not complied with? The answer though preposterous, is not far-fetched. In view of the functional position of the Supreme Court depicted above, non-compliance of its orders, would dislodge the cornerstone maintaining the equilibrium and equanimity in the country's governance. There would be a breakdown of constitutional functioning, It would be a mayhem of sorts.*

*185.2. Disobedience of orders of a Court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance with a judicial order. Judicial orders cannot*

*be permitted to be circumvented. In exercise of the contempt jurisdiction, courts have the power to enforce compliance with judicial orders, and also, the power to punish for contempt.*

*(iii) Precedents : What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.*

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## CHAPTER 31

WHEN BOTH THE CONTESTING/OPPOSITE PARTIES GIVE CONTRARY AND DIFFERENT VERSIONS IN THEIR AFFIDAVITS OR SUBMISSIONS, THEN THE COURT/JUDGE SHOULD DIRECT INVESTIGATION BY POLICE, CBI OR THROUGH ANY COMMITTEE OF EXPERTS TO FIND OUT THE TRUTH.

In **Sarvepalli Radhakrishna Vs.Union of India 2019 SCC Online SC 61**it is ruled as under;

***The Committee constituted by this Court is due to the vehemence with which the Counsels appearing for the College were trying to convince us that they are fully compliant with all the requirements.***

*B) The brazen attempt by the College in taking this Court for a ride by placing on record maneuvered documents to obtain a favourable order is a clear-cut act of deceit. The justification given by the College has turned out to be a concocted story. Had we not initiated an enquiry by the Committee of Experts, the fraud played by the College on this Court would not have come to light. It is trite that every litigant has to approach the Court with clean hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief.*

*C) For the aforementioned reasons, we pass the following order:*

> *(i) Mr. S.S. Kushwaha, Dean of the R.K.D.F. Medical College Hospital and Research Centre i.e. Petitioner No. 2-herein is liable for prosecution under Section 193 IPC. The Secretary General of this Court is directed to depute an Officer to initiate the prosecution in a competent Court having jurisdiction at Delhi.*

*(ii) The College is barred from making admissions for the 1st Year MBBS course for the next two years i.e. 2018-19 and 2019-2020.*

*(iii) A penalty of Rs. Five Crores is imposed on the College for playing fraud on this Court. The amount may be paid to the account of the Supreme Court Legal Services Committee.*

*(iv) The students are entitled to receive the refund of fee paid by them for admission to the College for the academic year 2017-19. In addition, the College is directed to pay a compensation of Rs. One Lakh to the said students. (Para 19)*

*The Writ Petition is dismissed accordingly. (Para 20)*

## CHAPTER 32

THE COURT WHILE PASSING AN ORDER DIRECTING PROSECUTION UNDER SECTION 340 OF CR. P.C CAN IMPOSE COST UPON MISCHIEVOUS LITIGANTS AS PER SECTION 342 OF CR. P. C.

**Section 342 of Cr.P.C. reads as under;**

***''342. Power to order costs. Any Court dealing with an application made to it for filing a complaint under***

***section 340 or an appeal under section 341, shall have power to make such order as to costs as may be just.''***

**In <u>Godrej and Boyce Manufacturing Co. Pvt. Ltd. and Ors. Vs. The Union of India and Ors.</u>**it is ruled as under;

***109****. We shall now consider the appropriate order as to costs under S. 343. In this connection, it is to be remembered that the Bombay State had incorporated the revisions for orders as to casts by a Special State amendment of the year 1955. The Law Commission specifically noted it and commented about it in appreciative terms. That provision has been incorporated with the Code under S 342. We shall not ignore the thrust and farce of these legislative developments.*

***110****. We feel that the lst petitioner in Writ Petition No. 1110 of 1983, Godrej, shall be made liable for the costs of these proceedings. The actions involved are, as we have indicated earlier, very serious. The revenue sought to be evaded is appreciable. A sum of about Rs. 4 cores was ultimately paid by way of duty. The proceedings were protracted and lasted for more than ten years. Many compilations of records had to be furnished. Taking into consideration all aspects, we fix the costs in a*

*consolidated sum of Rs. 10,000,/- which shall be paid by Godrej to the Union of India within 15 days from today.*

In **Baduvan Kunhi Vs. K.M. Abdulla and Ors.MANU/ KE/0828 /2016** it is ruled as under;

*''48.* ***The Apex Court in V. Chandrasekaran[11], while imposing exemplary costs of ` 25 lakh, has observed that the judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, because the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.***

*49. Their Lordships, in that context, have quoted with approval Dalip Singh[12], Ritesh Tewari[13] and Amar Singh[14]. It pays to mention the pertinent observations in those decisions.* ***In Dalip Singh it is observed that an altogether new creed of litigants, that is, dishonest litigants are the fast emerging breed. Though truth constitutes an integral part of the justice delivery system, the quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter***

***of falsehood, misrepresentation and suppression of facts in court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.***

*50. In Ritesh Tewari and Amar Singh, as quoted in V. Chandrasekharan, it is observed that the truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess; therefore, a litigant cannot prevaricate and take inconsistent positions.* ***It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings.***

*51. In Vijay Mallya[15] the Apex Court speaking J. Chelameswar, J., has invoked Anatole France, who poetically, poignantly observed that "The law in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread." Having found on facts that the appellant abused the process of court, the Apex Court imposed exemplary costs of ten lakh rupees to be paid to the Supreme Court Legal Services Authority.*

***52. In Phool Chandra[16], the Apex Court, per curiam, observed, "It is high time that the courts should come down heavily upon such frivolous litigation, and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on the learned counsel who act in an irresponsible manner."'''***

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

***''26. Imposition of Costs***

*26.1. In Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-*

*43. .....We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb*

*uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.*

*52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.*

*C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.*

*54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to*

*also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.*

*55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.*

*56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/-*

*(Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.‖ (Emphasis supplied) 26.2. In Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (2012) 5 SCC 370, the Supreme Court held that heavy costs and*

*prosecution should be ordered in cases of false claims and defences as under:-*

*85. This Court in a recent judgment in Ramrameshwari Devi (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation.*

*The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.‖ (Emphasis supplied) 26.3. In*

*Subrata Roy Sahara v. Union of India (2014) 8 SCC 470, the Supreme Court again held that costs must be imposed on frivolous litigation:*

*191. The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault?*

*(Emphasis Supplied) 26.4. In Harish Relan v. Kaushal Kumari Relan & Ors. in RFA(OS) 162/2014 decided on 03rd August, 2015, the Division Bench of this Court considered the pronouncements of the Supreme Court with respect to false claims as well as costs and held that there*

*is no limitation on the imposition of costs by the Courts in appeals. Relevant portion of the said judgment is as under.*

*"88. It is important to note that Section 35A has no application to appeal or revision proceedings. Given the fact that this court is adjudicating an appeal assailing the judgment passed in exercise of original jurisdiction. Therefore, the jurisdiction of this court to impose costs by virtue of Section 35 of the CPC is unhindered by the limitation contained in Section 35A.*

*95. On the issue of costs, Sections 35, 35A, 35B as well as Order XXA and Order XXIII of the Code of Civil Procedure apply to civil suits alone. There is no statutory provision even providing for imposition of costs, let alone restricting the exercise the power to do so in appellate jurisdiction. We also find that even under the Delhi High Court Rules, 1967 only, the manner in which counsel's fee may be computed in the appeal against the decree on the original side, is provided. There is no provision in the Delhi High Court Rules as to the manner in which the costs in appeals are to be evaluated or imposed. Guidance on the consideration by this court would therefore, be taken from the principles laid down in the several precedents by the Supreme Court of India. There is*

*therefore, no limitation by statute or the Rules at all on the appellate court to impose actual, reasonable costs on the losing party at all.*

*Orders under Section 151 CPC for abuse of process of the court*

*96. It is also necessary to advert to the power of the court under Section 151 of the CPC. This statutory provision specifically states that ―Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court‖. The spirit, object and intendment of the statutory provisions, as well as statutory scheme shows, that the inherent powers of the court are complementary to the powers specifically conferred on the court by the Code, and are in addition thereto. While Section 35A is confined to award of compensatory costs in respect of ―false or vexatious claims or defences‖, Section 151 takes within its ambit a much wider area of litigation which tantamounts to abuse of process of court.*

*Section 151 therefore, enables a court to pass orders as may be necessary for the ends of justice, or to ―prevent abuse of process of the court‖ which is beyond the ―false and vexatious‖ litigation covered under Section 35A and*

*are wide enough to enable the court to pass orders for full restitution.‖ (Emphasis supplied) 26.5. In Padmawati v. Harijan Sewak Sangh, 154 (2008) DLT 411, this Court imposed cost of Rs. 15.1 lakhs and noted as under:*

*—6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.*

*7.... The petitioners are, therefore, liable to pay costs which is equivalent to the average market rent of 292 months to the Respondent No. 1 and which comes to Rs.*

*14,60,000/- apart from litigation expenses and Counsel's fee throughout which is assessed at Rs. 50,000/-. The petition is hereby dismissed with costs of Rs. 15,10,000/- to be recovered from the petitioners jointly and severally. If any amount has been paid towards user charges, the same shall be adjustable.*

*9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in*

*prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."*

*(Emphasis supplied) Padmawati"s challenge in the Supreme Court by way of a Special Leave Petition was dismissed by an order reported at (2012) 6 SCC 460, Padmawati v. Harijan Sewak Sangh & Ors.''*

## CHAPTER 33

THE COURT IN ADDITION TO ACTION UNDER SECTION 340 OF CR.P.C CAN ALSO TAKE ACTION UNDER CONTEMPT OF COURT FOR PLAYING FRAUD UPON THE COURT BY FILLING FALSE AFFIDAVIT BEFORE THE COURT.

Hon'ble Supreme court in the case of **ABCD Vs. Union of India (2020) 2 SCC52** had ruled that;

*17. In **K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481]** it was observed : **(SCC p. 493, para 39)***

*"39. If the primary object as highlighted in Kensington Income Tax Commrs. [R. v. General Commissioners for Purposes of Income Tax Acts For District of Kensington, ex p Princess Edmond De Polignac, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] 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, manoeuvring 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."***.**

*19.In the circumstances a notice is required to be issued to the petitioner in suo motu exercise of power of this Court*

*"why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code". The Registry is directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who is directed to appear in-person before this Court on 14-1-2020.***.**

*16……..In Chandra Shashi v. Anil Kumar Verma [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks' imprisonment.."*

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

***''FALSE CLAIM CONSTITUTE CRIMINAL CONTEMPT :***

*The Supreme Court observed that any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt- The swearing of false*

*affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath 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 affidavits or giving of false statements and fabricating false evidence in a court of law.*

*28.3. In Afzal v. State of Haryana : (1996) 7 SCC 397, the Supreme Court held as under:*

*32 ... Section 2(b) defines "contempt of court" to mean any civil or criminal contempt. "Criminal contempt" defined in Section 2(c) means interference with the administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. ... He first used fabricated counter-affidavit, forged by Krishan Kumar in the proceedings to obtain a favourable order. But when he perceived atmosphere adverse to him, he fabricated further false evidence and sought to use an affidavit evidence to show that Krishan Kumar had forged his signature without his knowledge and filed the fabricated document. Thereby he further committed contempt of the judicial process. He has no regard for truth. From stage to stage, he committed contempt of court by making false statements. Being a responsible officer, he is required to make truthful statements before the Court, but he made obviously false statements.Thereby, he committed criminal contempt of judicial proceedings of this Court. (Emphasis supplied)*

*28.4. In Rita Markandey v. Surjit Singh Arora (1996) 6 SCC 14, the Supreme Court observed under:-*

*14 ... by filing false affidavits the respondent had not only made deliberate attempts to impede the administration of justice but succeeded in his attempts in delaying the delivery of possession. We, therefore, hold the respondent guilty of criminal contempt of court.*

*28.5. In Murray & Co. v. Ashok Kumar Newatia (2000) 2 SCC 367, the Supreme Court held as under:*

*—24 ... but there is no dispute as such on the factum of a false and fabricated statement finding its place in the affidavit. The statement cannot be termed to be a mere denial though reflected in the affidavit as such. Positive assertion of a fact in an affidavit known to be false cannot just be ignored. It is a deliberate act. The learned Advocate appearing for the respondent made a frantic bid to contend that the statement has been made without releasing 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 deprecated 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 majesty of Courts as otherwise the Law Courts would lose its efficacy to the litigant public. ...*

*28.6. In Re: Bineet Kumar Singh (2001) 5 SCC 501, the Supreme Court held as under:*

*6. ...Criminal Contempt has been defined in Section 2(c) to mean interference with the administration of justice in any manner. A false or misleading or a wrong statement deliberately and wilfully made by party to the proceedings to obtain a favourable order would undoubtedly tantamount to interfere with the due course of judicial proceedings. When a person is found to have utilised an order of a Court which he or she knows to be incorrect for conferring benefit on persons who are not entitled to the same, the very utilisation of the fabricated order by the person concerned would be sufficient to hold him/her guilty of contempt, irrespective of the fact whether he or she himself is the author of fabrication... (Emphasis supplied)*

*28.7. In Chandra Shashi v. Anil Kumar Verma (1995) 1 SCC 421, the Supreme Court held as under:*

*2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice...*

*7. There being no decision of this Court (or for that matter of any High Court) to our knowledge on this point, the same is required to be examined as a matter of first principle. Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he violates court's order, but also to keep the stream of justice clear and pure ... ... so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples.*

*8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication 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.*

*9. ... The word _interfere', means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance*

*of duty ... ... obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. Now, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do.*

*14... if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. (Emphasis supplied)*

*28.8. In Rajeev Kumar v. State of U.P. 2006 (1) AWC 34, the Court held as under:*

*—45. In view of the above, we are of the considered opinion that as the petitioners filed a forged document purporting to be an agreement reached on behalf of respondent nos. 6 to 8 (Annex.2), and filed the petition totally on false averments in order to mislead the Court to obtain a favourable order, they are liable to be tried for committing criminal contempt and are further liable to be dealt with heavy hands.*

*28.9. In Cyril D'souza v. Ponkra Mugera 1998 (1) KarLJ 659, the Court held as under:*

*6 ... Instead, this petition appears to be an attempt of the petitioner to procure some order from the Court on the basis of an agreement which prima facie appears to be an ante-dated document prepared after that date and it prima facie shows that a false document has been filed with false allegations.... Filing a false affidavit and filing forged document, as per law laid down by the Supreme Court is nothing but an act illegal, interfering with the proper administration of justice and it prima facie makes out a case for contempt.*

*7. In this view of the matter, I think this Court should take necessary steps and issue notice to the petitioner as well as respondent 1, to show-cause why this Court should not take action for contempt and punish them for having committed contempt of this Court.*

*28.10. I am also of the opinion that utilising the fabricated document in the court proceedings amounts to interference with the administration of justice and thus attracts the liability of contempt. In effect, it is the builder and the brokers who have been on investigation found to be the real persons in moving an application through an illiterate person Mahadu Lakhama Kakade to utilise the said certificate. Though the application was in the name of*

*Mahadu Lakhma Kakade, in fact by virtue of the joint development agreement the real beneficiary was Manoj Kumar Devadiga as he was entitled to develop the said property. I am of the view that this is a fit case where action must be taken...*

*(Emphasis supplied)*

## CHAPTER 34

PER-INCURIAM AND NON- BINDING JUDGMENTS ON THE 340 PROCEEDINGS.

The Following judgements are per-incuriam and impliedly overruled

**1. Sharad Pawar Vs. Jagmohan Dalmiya & Ors. (2010) 15 SCC 290**

**2.Aarish Asgar Qureshi Vs. Fareed Ahmad Qureshi (2019) 18 SCC 172**

**3. Satyanarayan Nandkishor Pande 2018 SCC OnLine Bom 7272**

**4.CTR Manufacturing Vs. Sergi Transformer Explosion Prevention & ors. 2013 ALL MR (1) 153**

That, in **Sharad Pawar Vs. Jagmohan Dalmiya & Ors. (2010) 15 SCC 290,** the earlier binding precedent in **Pritish v. State of Maharashtra 2002 Cri LJ 548** is not consider/ ignore. Hence it is per-incuriam. This fact was noted by the Supreme Court and matter was referred to the larger bench.

The judgment in **Aarish Asgar Qureshi Vs. Fareed Ahmad Qureshi (2019) 18 SCC 172** case is per-incuriam as it is passed by ignoring many binding precedent and more particulary by ignoring Full Bench judgment in **P. C. Purushottam Reddiar Vs. S. Perumal (1972) 1 SCC 9.**

In **Satyanarayan Nandkishor Pande 2018 SCC OnLine Bom 7272,** it is observed by the signal Judge Sh. S.J.Kathawalla of Bombay High Court that, Judge if he thinks can hear accused. It is against procedure of Cr.P.C. It is also against the binding precedent of Hon'ble Supreme Court.

In **Manharibhai Muljibhai Kakadia and Anr Vs. Shaileshbhai Mohanbhai Patel and Ors. (2012) 10 SCC 517** it is ruled as under;

> *''Judge Cannot Consider As To What Would Be The Defence Of The Accused Before Issuing Process Against The Accused.*
>
> *Accused have no locus before issuance of process. However if order is in favor of accused and it is challenged then Court can hear accused.''*

Later Division Bench judgment in **Dr. Santosh Shhetty Vs. Ameeta Shetty 2019 SCC OnLinie Bom 99** had ruled that accused should not be heard.Hence the judgment of single judge stands overruled.

In **Trident Steal Vs Vollourec 2018 SCC OnLine Bom 4060** the Division bench of Hon'ble Bombay had ruled that, justice S.J.Kathawalla is not having knowledge of Cr.P.C.

In the case of **Tushar Galani Vs. Jagdeesh 2001 ALL MR (Cri.) 46** , ruled as under ;

> *''**Criminal P.C.(1973),Ss.202,204- Issue of process – Magistrate cannot issue notice to proposed accused as to why process be not issued against him for the alleged offences.***
>
> *The learned Magistrate could not have evolved new procedure which is not contemplated by law. The accused has no locus standi in the matter before issuing process against him and therefore, he is not entitled to be heard before process is issued against him. The learned Magistrate has to consider the question of issuing process purely from the point of view of the complainant without reference to any defence that the accused may have. At the stage of issuing, the Magistrate cannot enter into a detailed discussion on the merits or demerits of the case.''*

In **M/s A-One Industries Vs. D.P Garg (1999 Cri. L.J. 4743),** it is ruled that during the enquiry under sec 340 of Cr P C. the **court cannot**

**examine the defense of the appellant and record a finding thereon. It is observed thus**;

> *"5. Whether action in such matters should be taken under Section 195 Cr. P.C. is a matter primarily for the court which hears the application, and its discretion is not to be lightly interfered with an appeal. In the instant case, the material on record clearly makes out a case under Section 193 IPC against the appellant. The order dated 18.11.1996 passed by the learned Metropolitan Magistrate shows that a charge under Section 193 IPC has already been framed against the appellant. At this stage the court cannot examine the defense of the appellant and record a finding thereon."*

In **Devinder Singh Zakhmi Vs. Amritsar Improvement Trust, Amritsar & Anr. 2002 Cri.L.J. 4485,** it is ruled that;

> ***" Cr. P. C. S. 340–195 : -***
>
> *The entertainment of the application of, respondents by the trial Court in order to enable them to produce evidence in defence, as such was against the mandate of law. The findings of the trial Court that the provisions of Section 340 of the Code do not propose to shut down all gates for the respondents to place their case before the Court, and these provisions are only directive in nature, as such cannot be accepted in the face of the dictum of law laid down in the above-mentioned cases. Manifestly, the trial*

*Judge has committed a patent error in passing order dated 2-4-2002 and for that reason, the same cannot be sustained.*

*He placed reliance on the observations made in case Madan Lal Sharma v. Punjab and Haryana High Court through its Registrar 2000 (1) Rec Cri R 592 : 2000 Cri LJ 1512 wherein it was laid down that no hearing is required to be given to the accused before filing of the complaint because the accused can raise all defences before the Magistrate when the complaint is filed. Further reference was made to observations of the Apex Court in Pritish v. State of Maharashtra 2002 (1) Rec Cri R 92 : 2002 Cri LJ 548 wherein it was observed in paras 9 and 10 as under :-*

*9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the Court (before which proceedings were to be held) that, it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the Court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the Court can form such an opinion when it appears to the Court that an*

*offence has been committed in relation to a proceeding in that Court. It is important to notice that even when the court forms such an opinion it is not mandatory that the Court should make a complaint. This sub-section has conferred a power on the Court to do so. It does not mean that the Court should, as a matter of course, make a complaint. But once the Court decides to do so, then the Court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the Court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the Court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the Court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the Court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.*

*10. "Inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a magistrate or Court." It refers to the pre-trial inquiry, and in the present context it means the inquiry to*

*be conducted by the Magistrate. Once the court which forms an opinion. whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said Court has to make a complaint in writing to the Magistrate of first class concerned. As the offences involved are all falling within the purview of "warrant case" (as defined in Section 2(x)) of the Code the Magistrate concerned, has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report, that being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to 243 of the Code."*

Calcutta High Court in the case of **Ramesh Sobti Vs. State of West Bengal and Ors 2017 SCC OnLine Cal 8424 in para 16 and 17 that:**

***''16. Hence, there is no dispute that a Magistrate holding enquiry under Section 202 Cr.P.C. cannot call upon an accused to participate in such enquiry or pose any question to him or his witnesses. It is only upon conclusion of such enquiry if the Magistrate is satisfied on the basis of materials on record that there is sufficient***

***ground to proceed against the accused he shall issue process for his appearance in the case. He cannot permit the accused to participate and canvass his defence in the course of the pre-summoning enquiry and convert it to a 'mini trial' even before the commencement of the trial itself.***

***17.*** *Police officer conducting investigation under Section 202 Cr.P.C. is a delegatee of the Magistrate and his powers of investigation are, therefore, circumscribed by the limitations imposed upon the principal, that is, the Magistrate himself. Since the Magistrate in the course of enquiry under Section 202 Cr.P.C. is not entitled to issue notice upon the accused to appear and participate in the proceeding, the police officer as his delegatee cannot claim higher powers and issue notice upon the accused and interrogate him in the course of investigation under Section 202 Cr.P.C. No doubt, the police officer may exercise other powers of investigation e.g. proceed to the spot, interrogate the complainant and his witnesses, collect evidence by effecting searches and seizures for the purpose of determining the intrinsic truth in the allegations in the complaint but he cannot in course of such investigation issue notice to the accused and interrogate him to elicit his responses to the allegations in the complaint. If he does so, he would be enlarging the*

*scope of enquiry under Section 202 Cr.P.C. wherein an accused is precluded from participating and raising his defences in rebuttal to the allegations in the petition of complaint.''*

## CHAPTER 35

THE TRIAL OF OFFENCES RELATED WITH PERJURY AND COVERED UNDER SECTION 195 AND 340 OF CR.P.C. SHOULD BE ONLY BEFORE THE MAGISTRATE HAVING JURISDICTION AND EVEN THE SUPREME COURT CANNOT PRONOUNCE THE PUNISHMENT FOR OFFENCES OF IPC.

Full Bench of Hon'ble Supreme Court in **M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278,**where it is ruled that;

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

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

***This Court has always adopted as done in Mohan Singh's case (1998) 6 SCC 686 procedure whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false**. The order made by Court convicting the petitioner under S. 193, IPC is,*

*therefore, one without jurisdiction and without following due procedure prescribed under law - We have not been able to appreciate as to why this procedure was given a go-bye in the present case. May be the provisions of Sections 195 and 340, Cr.P.C. were not brought to the notice of the learned Division Bench - To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience."*

In **M/s New Era Fabrics Ltd.Vs.Bhanumati Keshrichand Jhaveri & Ors. (2020) 4 SCC 41**it is ruled as under;

***Criminal P. C. (1973), Ss. 340,195(1)(b) Penal Code (1860), Ss. 193, 199 – False evidence – Institution of criminal proceeding against – Application for – Documents on record shows that prima facie case is made out that petitioner fabricated evidence for purpose of SLP proceedings before Apex Court – Direction issued to Secretary General of Apex Court to depute an officer of rank of Deputy Registrar or above to file complaint against petitioner. [Para 5.3 & 6]***

*5.3 We do not wish to comment in detail upon the intention behind making the aforesaid interpolations. At this juncture, all that is required to be assessed is whether a prima facie case is made out that there is a reasonable likelihood that the offence specified in Section 340 read*

*with Section 195(1)(b) of the Cr. P. C. has been committed, and it is expedient in the interest of justice to take action. From the above discussion, it is evident that the handwritten modification made by the Petitioner in Column 12 of the balance sheet dated 19.09.2008 is a significant alteration from the terms as used in the original document. Hence we find that a prima facie case is made out that the Petitioner has fabricated evidence for the purpose of the SLP proceedings before this Court.*

*We further find that prima facie case is also made out against Mr. R.K. Agarwal, for having sworn in his affidavit before this Court as to the veracity of the facts stated and documents filed in SLP (Civil) No. 3309/2018, even though he had relied upon the original auditor's report, which did not contain any handwritten interpolation, in his evidence before the Trial Court.*

*6. In similar circumstances, a three-Judge Bench of this Court in In Re: Suo Motu Proceedings against R. Karuppan, Advocate, (2001) 5 SCC 289 had authorized the Registrar General of this Court to depute an officer to file a complaint for perjury against the respondent therein. Accordingly, we direct the Secretary General of this Court to depute an officer of the rank of Deputy Registrar or above of the Court to file a complaint under Sections*

*193 and 199 of the Indian Penal Code, 1872 against the Petitioner Company in SLP (Civil) No. 3309/2018 and Mr. R.K. Agarwal, before a Magistrate of competent jurisdiction at Delhi. The officer so deputed is directed to file the aforesaid complaints and ensure that requisite action is taken for prosecuting the complaints.*

**********

## CHAPTER 36

THE COMPLAINT FILED BY THE OFFICER OF THE COURT HAS TO BE TREATED AS A POLICE REPORT AS PER SECTION 343 OF CR.PC AND THE MAGISTRATE CAN STRAIGHTAWAY ORDER ISSUE OF PROCESS/SUMMONS AGAINST ACCUSED AS PER SECTION 204 OF CR.P.C OR CAN ORDER FURTHER ENQUIRY AS PER SECTION 202 OF CR.PC

Section **343** of Cr.P.C reads as under;

***''343. Procedure of Magistrate taking cognizance.***

*(1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.*

*(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been*

> *transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.''*

In the case of **State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659,** it is ruled that in such cases the court has to follow the procedures laid down under sec. 200,202, 204 of **Criminal Procedure Code** and there is no right to would be accused that he must be heard before making complaint. It is ruled thus;

> *"When complaint is made to the Magistrate having jurisdiction then, the Magistrate, if he thinks fit, can conduct further enquiry by considering the complaint as the Police Report. The Magistrate has to follow procedure under section 200, 202, 203, 204 of Criminal Procedure Code "*

## CHAPTER 37

DUTY OF THE MAGISTRATE TO GIVE IMPORTANCE TO THE COMPLAINT, WHEN THE COMPLAINT IS AS PER SECTION 343,340,195 OF CR.P.C AND IS FILED BY THE REGISTRAR OR ANY OTHER OFFICER.

In **State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659** it is ruled as under;

*''**58**. We are thus of the firm opinion that a Trial Magistrate, on receipt of a complaint Under Section 340 and/or Section 341 of the Code, if there is a preliminary inquiry and adequate materials in support of the considerations impelling action under the above provisions are available, would be required to treat such complaint to constitute a case, as if instituted on police report and proceed in accordance with law. However, in absence of any preliminary inquiry or adequate materials, it would be open for the Trial Magistrate, if he genuinely feels it necessary, in the interest of justice and to avoid unmerited prosecution to embark on a summary inquiry to collect further materials and then decide the future course of action as per law. In both the eventualities, the Trial Magistrate has to be cautious, circumspect, rational, objective and further informed with the overwhelming caveat that the offence alleged is one affecting the administration of justice, requiring a responsible, uncompromising and committed approach to the issue referred to him for inquiry and trial, as the case may be. In no case, however, in the teeth of Section 343(1), the procedure prescribed for cases instituted otherwise than on police report would either be relevant or applicable qua the complaints Under Section 340 and/or 341 of the Code of Criminal Procedure.''*

## CHAPTER 38

CORRUPT AND CRIMINAL MINDED JUDGES, GOVERNMENT PLEADERS, PUBLIC PROSECUTORS, AND ADVOCATE FOR THE PARTY WHO ARE ACTING WITH ULTERIOR MOTIVE TO HELP THE DISHONEST LITIGANTS AND TO HARASS THE INNOCENT THEN THEY ARE PROSECUTED AS PER THE PROVISIONS OF SECTION 340 OF CR.P.C THEY WERE DISMISSED FROM THE POST OF A JUDGE. CONTEMPT PROCEEDINGS WERE ALSO INITIATED AGAINST THE JUDGES. THE CASE OF ADVOCATE IS FORWARDED TO BAR COUNCIL. THE CASE OF OTHER PUBLIC SERVANT, IN ADDITION TO CRIMINAL PROSECUTION IS FORWARDED TO THEIR SUPERIOR AUTHORITY FOR DEPARTMENTAL ACTION.

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

> *''False information in bail application - Action against Advocates - Sections 195, 197, 340, 341 and 343 of Criminal Procedure Code, 1973- Sections 120-B, 193, 466, 468 and 471 of Indian Penal Code, 1860 – Accused A1 and A2 who are advocates, are legally bound to state the truth, but they intentionally gave false information in a judicial proceeding viz., bail application, knowing fully well that their statements are false and they*

*thereby fabricated false evidence in a judicial proceeding. The 1-Addl. Sessions Judge who was in charge of the District and Sessions Court and a party to the conspiracy, made over the bail application to the II-Addl. Sessions Court- all the accused and Sri P. Thirupathi Reddy, the then II-Addl. Sessions Judge entered into a criminal conspiracy to do all sorts of illegal acts in order to get their bail application made over to the II-Addl. Sessions Court with a view to get favourable orders- - The then II-Addl. Sessions Judge and A3 (appellant in Crl. Appeal No. 385/97) helped the other accused by willfully and intentionally ignoring the false Cr.M.P.No. 1626/96, which has no connection either with A4 and A5 or the Crime in which they are involved. The II-Addl. Sessions Judge, who is a party to the conspiracy, allowed the petition for amendment on 13-8-1996 and granted bail to A4 and A5. The II-Addl. Sessions Judge is being proceeded with departmentally and is now under suspension - The advocate and B.Prabhakar very well knew that amount of Rs.2,24,904-73 Ps. lying in the Court docs not belong to his fake client and that they are not entitled to receive it. Yet, they fabricated false documents with the forged signatures of B.Gangaram and affixed the photo of B.Prabhakar on the affidavit to make the Court*

*believe that the photo belongs to B.Gangaram and filed the fabricated and forged documents...."*

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

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

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

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

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

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

*15. The Modus Operandi is - the Advocate files a bail application falsely mentioning that the offence alleged against the accused is one under Section 307 I.P.C. After it was made over to any of the Additional District Courts, the figures '307' are altered to 302 in the bail application/s wherever the figures '307' occur.*

*The concerned Advocates, Clerks of the Addl. District Courts, Additional Public Prosecutors joined hands in this racket and the role of the two Addl. District Judges cannot be ruled out in this murky affair.*

*What is apparent from this report dated 30-10-1996 is that certain devious methods were being adopted in the Sessions Court at Karimnagar by certain advocates with the connivance of the staff of the I and II Additional Sessions Courts and the Additional Public Prosecutors attached to those courts, and that the two Additional Sessions Judges at the relevant time were also parties aware of those devious methods employed mostly in matters relating to bails - These devious methods polluted the streams of justice and necessitated urgent correctives and action in the interests of administration of justice.''*

In **State Vs. Kamlakar Bhavsar 2003-Mh.LR 2-117** 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.''*

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

*The petitioner Justice Mrs. Nirmal Yadav, the then Judge of Punjab and Haryana High Court found to have taken bribe to decide a case pending before her- CBI charge sheeted - It is also part of investigation by CBI that this amount of Rs.15.00 lacs was received by Ms. Yadav as a consideration for deciding RSA No.550 of 2007 pertaining to plot no.601, Sector 16, Panchkula for which Sanjiv Bansal had acquired interest. It is stated that during investigation, it is also revealed that Sanjiv Bansal paid the fare of air tickets of Mrs. Yadav and Mrs. Yadav used matrix mobile phone card provided to her by Shri Ravinder Singh on her foreign visit. To establish the close proximity between Mrs. Yadav, Ravinder Singh, Sanjiv Bansal and Rajiv Gupta, CBI has given details of*

*phone calls amongst these accused persons during the period when money changed hands and the incidence of delivery of money at the residence of Ms. Nirmaljit Kaur and even during the period of initial investigation - the CBI concluded that the offence punishable under Section 12 of the PC Act is established against Ravinder Singh, Sanjiv Bansal and Rajiv Gupta whereas offence under Section 11 of the PC Act is established against Mrs.Justice Nirmal Yadav whereas offence punishable under Section 120-B of the IPC read with Sections 193, 192, 196, 199 and 200 IPC is also established against Shri Sanjiv Bansal, Rajiv Gupta and Mrs. Justice Nirmal yadav*

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

In **Shameet Mukharjee Vs. CBI 2003-DRJ-70-327** it is ruled as under;

> *''Cr. P.C. – Section 439 – Accused was a Judge of High Court – Arrested under section 120 – B, IPC r/w sec. 7,8,11,12,13 (1) of prevention of corruption Act.- Charges of misuse of power for passing favourable order – Petitioner/accused is having relationship with another accused – Petitioner used to enjoy his hospitality in terms of wine and women – 12 days police remand granted but nothing incriminating was found – Petitioner's wife is ill – Held petitioner entitled to be released on bail.''*

In **Rabindra Nath Singh –Vs- Pappu Yadav case (2010 (3) SCC (Cri) 165,** Hon'ble Supreme Court held that, the High Court committed contempt of Court in not following the guidelines of Supreme Court in the concerned matter.

In **Shrirang Waghmare's case (2019) 9 SCC 144** it is ruled as under;

> ***"8.*** *Judges must remember that they are not merely employees but hold high public office. In R.C. Chandel v. High Court of Madhya Pradesh [(2012) 8 SCC 58], this Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of this Court are relevant:*

*"37. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secure that Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, judicial system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartially and intellectual honesty."*

***9**. There can be no manner of doubt that a judge must decide the case only on the basis of the facts on record*

*and the law applicable to the case. If a judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law."*

In **Union of India Vs. K.K Dhawan (1993) 2 SCC 56** it is ruled as under;

***"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.*

Division Bench of Hon'ble Bombay High Court in **Deelip Bhikaji Sonawane Vs. State 2003 (1)B.Cr.C. 727**, where it is ruled as under;

*"**10.** So far as the respondent No. 2 is concerned, he is claiming protection under the provisions of the Judges (Protection) Act, 1985. The said Act is applicable to the Judges which includes a person who is empowered by law to give a judgment in any legal proceedings. Under Section 3(1) of the said Act it is provided that no Court*

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

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

*A] Cri. P.C. Sec. 197 – Sanction for prosecution of High Court Judge – Accused are Additional High Court Judge, Suprintendant of Police Sanjeev Bhatt and others – The accused hatched conspiracy to falsely implicate a shop owner in a case under N.D.P.S. Act and when shop*

*owner submitted to their demands he was discharged – Complaint u.s. 120-B, 195, 196, 342, 347, 357, 368, 388, 458, 482, I.P.c. and Sec. 17, 58 (1), (2) of NDPS Act – Held – there is no connection between official duty and offence – No sanction is required for prosecution – Registration of F.I.R. and investigation legal and proper.*

*B] Cri. P.C. Sec. 156 – Investigation against accused Addl. High Court Judge – Whether prior consultation with Chief Justice is necessary prior filling of F.I.R. against a High Court Judge as has been laid down by Supreme Court in K. Veerswami's case (1991) (3) SCC 655) – Held – In K. Veerswami's case Supreme Court observed that the Judges are liable to be dealt with just the same as any other person in respect of criminal offence and only in offence regarding corruption the sanction for criminal prosecution is required – the directions issued by Hon'ble Supreme Court are not applicable in instant case.*

*C] The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of city Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a*

*questionnaire through the registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner in view of the facts of the case.*

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

*E] Jurisdiction – Continuing offence – Held – Where complainants allegations are of stinking magnitude and the authority which ought to have redressed it have closed*

*its eyes and not even trid to find out the real offender and the clues for illegal arrest and harassment are not enquired then he can not be let at the mercy of such law enforcing agencies who adopted an entirely indifferent attituFAULYde – Legal maxim Necessiatas sub lege Non contineture Quia Qua Quad Alias Non Est Lictum Necessitas facit Lictum, Means necessity is not restrained by laws – Since what otherwise is not lawful necessity makes it lawful – Proceeding proper cannot be quashed.*

## CHAPTER 39

CASE OF JUSTICE SHUKLA OF ALLAHABAD HIGH COURT IN MEDICAL COUNCIL CASE. JUDGMENT IN MEDICAL COUNSEL CASE IS PASSED BY SETTING ASIDE THE UNLAWFUL ORDER BY THE JUDGE AND BY SE THEN AS PER IN- HOUSE – PROCEDURE HIS JUDICIAL WORK WITHDRAWN. C.B.I FILED CHARGE – SHEET.

MEDICAL COLLEGE SCAM: CBI BOOKS ALLAHABAD HC JUDGE S.N. SHUKLA IN CORRUPTION CASE

The agency carried out searches at the judge's residence in Lucknow and said it had recovered several incriminating documents.

**Scroll Staff - Dec 06, 2019 · 10:06 pm**

Justice SN Shukla | Allahabad High Court website

The Central Bureau of Investigation has registered a corruption case against sitting Allahabad High Court judge SN Shukla, PTI reported on Friday, citing officials. The allegations against Shukla pertain to the Medical Council of India bribery case.

The action came four months after former Chief Justice of India Ranjan Gogoi permitted the CBI to file a case against the serving high court judge. The Supreme Court had in 1991 ruled that investigating agencies must show evidence to the chief justice before filing a case against a sitting judge of the top court or High Courts. This was reportedly the first time the chief justice had approved such a request.

The alleged scam involves some medical colleges that were denied permission to function by the Medical Council of India. A middleman allegedly assured the colleges that the judiciary would allow them to keep running. The institutes then allegedly paid the middleman to facilitate this.

Besides Shukla, former Orissa High Court judge IM Quddusi, who was already named in the chargesheet, and four others – Bhawana Pandey, Bhagwan Prasad Yadav and Palash Yadav of Prasad Education trust, and another alleged middleman Sudhir Giri – have been booked by the CBI in an FIR filed on December 4.

The CBI also carried out searches at the residence of Shukla in Lucknow, Quddusi's residence in Delhi and five other places,

according to the *Hindustan Times*. Several incriminating documents related to investments and financial transactions were recovered, said the agency.

"...it is revealed that Justice Shri Narayan Shukla...abused his official position and entered into criminal conspiracy...and obtained illegal gratification in order to obtain pecuniary advantage for BP Yadav and Palash Yadav of Prasad Education trust...," the probe agency said in its FIR.

The agency said Prasad Institute of Medical Sciences was debarred in May 2017 by the central government from admitting medical students in academic years 2017-'18 and 2018-'19 due to substandard facilities and non-fulfillment of required criteria along with 46 other medical colleges on similar grounds. The Prasad Education trust challenged the decision before the Supreme Court through a writ petition, CBI said.

"Subsequently, a conspiracy was hatched among the FIR named accused and the writ petition was withdrawn with the permission of the court," it added. "Another writ petition was filed before Lucknow bench of Allahabad High Court on August 24, 2017. It was further alleged that the petition was heard on August 25, 2017, by the division bench of the court comprising of Justice SN Shukla and a favourable order was passed on the same day."

"Quddusi and BP Yadav of Prasad Trust met Justice Shri Narayan Shukla in the morning of August 25, 2017 at his residence in Lucknow regarding the matter and delivered illegal gratification," the FIR stated.

Shukla's verdict was challenged by the Medical Council of India three days later in the Supreme Court. It was heard by the then chief justice and two other judges. The top court disposed off the high court petition as the matter was already being heard. After this, the FIR alleged, "BP Yadav pursued with IM Quddusi and Bhawana Pandey to get back the bribe paid to Justice Shri Narayan Shukla".

In January 2018, an in-house committee set up by Gogoi's predecessor, Dipak Misra, found judicial irregularities in the Medical Council of India bribery case and had asked Shukla to resign or retire voluntarily. After Shukla had done neither, Misra asked the chief justice of the Allahabad High Court to not give him judicial work. Shukla had then reportedly gone on a long leave.

In June, Gogoi had written to Prime Minister Narendra Modi, urging him to initiate a motion in Parliament to remove Shukla. Gogoi had in May declined Shukla's request for judicial work to be allocated to him again.

On September 19, 2017, the CBI had filed an FIR against Quddusi and others for allegedly bribing public officials. However, the FIR did not mention Shukla.

Shukla joined the Allahabad High Court in 2005 and is scheduled to retire in July 2020.

## CHAPTER 40

WHEN THE APPLICANT OR ANY PARTY GIVES ANY CASE LAW THEN THE JUDGE/ COURT IS BOUND TO REFER IT AND EXPLAIN AS TO HOW SAID RATIO IS NOT APPLICABLE OR APPLICABLE TO THE CASE IN HAND.

FAILURE TO FALLOW THIS PROCEDURE MAKES THE JUDGE LIABLE OF DISCIPLINARY ACTION AND ALSO ACTION UNDER CONTEMPT.

THE JUDGMENT OF OTHER HIGH COURT SHOULD ALSO BE RESPECTED.

In the case of **Yogesh Waman Athavale vs. Vikram Abasaheb Jadhav 2020 SCC OnLine Bom 3443** it is ruled as under;

> ***"14.*** *The last instance is in respect of criminal proceeding in S.C.C. No. 2134 of 2013 filed under Section 138 of the N.I. Act. According to petitioner although the complainant in his cross examination had clearly and unequivocally admitted the receipt of payments in lieu of blank signed cheques given to him yet accused came to be convicted by*

*overlooking the ratio laid down in the case of John v. Returning Officer (supra). The copy of judgment is made available on record.*

***15.*** *Paragraph 16 of the judgment though shows the reliance placed by accused in John v. Returning Officer (supra), surprisingly, there is no comment/opinion/observation of respondent No. 1 about the utility or otherwise of ratio laid down therein. The judicial mind does not reflect it as to how ratio laid down in the said judgment was not applicable to the case in hand. We prima facie intuitively feel that learned Counsel for the petitioner is right when he laments approach of respondent No. 1 vis-a-vis the above noted authorities/pronouncements. A common sense would prompt the conclusion that respondent No. 1 ought to have carefully gone through the decisions and the ratio laid down therein and then would have formed opinion about applicability or otherwise of the same. Unfortunately, it is clear that exercise was not properly undertaken and orders came to be passed in oblivion of the pronouncements/provisions.*

***7.*** *The first instance pertains to R.C.S. No. 209 of 2012 wherein an issue was framed as "4A-Do the plaintiff proves that the sale deed executed by defendant Nos. 1 to*

*8 is barred by the provisions of Consolidation and Fragmentation Act? It is pertinent to note that pursuant to the framing of the said issue, an application came to be moved, copy of which is annexed, by the petitioner requesting therein that the said issue be referred to the competent authority under the provisions of the said Act, and in support thereof so also placed reliance in Tukaram Motiram Shinde (supra) and Jagmittar Sain Bhagat v. Director Health Services, Haryana*[5]*. which is apparent from the record.*

***8.*** *Respondent No. 1, on his part, passed order below Exh. 120 after hearing both the parties and rejected the application of petitioner.*

***9.*** *We have carefully gone through the order so passed below Exh. 120 in R.C.S. No. 209 of 2012.*

***10.*** *It is true that the entire order is tellingly silent on the above noted authorities. There is absolutely no whisper as to whether those authorities relied on by the petitioner were taken into consideration or not before passing the order below Exh. 120. However, learned Counsel appearing for respondent No. 2 has informed the Court that already respondent No. 1 was informed and he was called by the learned Guardian Judge of the concerned District, on administrative side for counseling and he has*

*been accordingly and suitably counseled and in such circumstances, there remains nothing in the Petition and same is liable to be disposed of.*

***18.*** *In the case in hand though there is negligence but the same cannot be termed as "willful breach" or "willful disobedience" at the hands of respondent No. 1.*

***19.*** *Here we deem it proper to take into account the submission of Mr. Nargolkar. According to him respondent No. 1 has already been summoned by this Court on the administrative side and has been properly counseled pursuant to the similar complaint of the petitioner. It appears that respondent No. 1 has been properly and suitably counseled on the administrative side of the High Court.*

***20.*** *We hope and trust that in future respondent No. 1 will exercise his judicious mind while dealing with judicial work with greater care, caution and circumspection. We issue direction to learned Principal District and Sessions Judge with a request to monitor the performance of respondent No. 1 for one year henceforth by randomly checking the judgments and orders and keep the High Court informed, if required, for necessary action."*

In **Dattani Vs. Income Tax Officer 2013 SCC OnLine Guj 8841** it is ruled as under;

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

Hon'ble High Court **Roy Joseph 2008 ALL MR (Cri.) 851,** had ruled as under;

> ***"PRECEDENTS- CASE NOTE/PLACITUM IS NOT THE LAW – THE JUDGE IS EXPECTED TO GO THOUGHT THE JUDGMENT AND THEN SEE THE RATIO DECIDENDI.***
>
> ***Precedents – How to deal with case law relied by the party - Sessions Judge merely reproduced the head notes/placitums - The Magistrate also did not discuss the case law with reference to the ratio of the decisions - Held, many Judicial Officers follow practice of reproducing the head notes/placitum from the reported***

***precedents. The Judicial Officers need to understand that the head notes are drawn by editors/staff members of the Law Journals. It is necessary to read the precedent in entirety. The judicial Officer is required thereafter to cull out the ratio of the authority. The matching of facts and circumstances would then enable the Court to examine whether such ratio is applicable to the case with which the Court is required to deal with- the Judicial Officers shall avoid such practice. They shall not merely quote the head notes/placitum appearing from the indexes or the prelude to the judgments reported in the law Journal. (Para 6)***

*The learned sessions Judge quoted a part of the observations of the Single Bench in support of his conclusion that filing of the complaint by a power of attorney is prima facie legal and proper. However, the quotation as stated in paragraph 14 of the impugned order is just reproduction of the head notes/placitums. Not only that but even in respect of other quotations, the learned sessions Judge merely reproduced the head notes/placitums. The learned Judicial Magistrate also did not discuss the case law with reference to the ratio of the decisions.*

*This Court has noticed, of late, the practice adopted by many Judicial Officers to simply refer the decision of this*

*Court or the apex Court without examining whether the ratio is really applicable to the given case. So also, many Judicial Officers follow practice of reproducing the head notes/placitum from the reported precedents. The Judicial Officers need to understand that the head notes are drawn by editors/staff members of the Law Journals. It is necessary to read the precedent in entirety. The judicial Officer is required thereafter to cull out the ratio of the authority. The matching of facts and circumstances would then enable the Court to examine whether such ratio is applicable to the case with which the Court is required to deal with. Unfortunately, both the Courts below have failed to undertake such exercise before making references to the authorities cited before them. How I wish, the Judicial Officers shall avoid such practice. They shall not merely quote the head notes/placitum appearing from the indexes or the prelude to the judgments reported in the law Journal."*

In **Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., (1997) 6 SCC 450** it is 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."***

In **Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. 2018 (3) SCC 85** it is ruled as under;

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

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

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

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

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

*courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.''*

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

*''**CASE LAW SHOULD BE GIVEN PROPER WEIGHTAGE** - The Judge Should recorded short reasons demonstrating how the case law is applicable to the case. The conduct of judge about passing of cryptic orders even without mentioning full title of the judgement and citation thereof is illegal. Courts are expected to exhibit from their conduct and their orders concern for justice and not casualness.''*

In **Adarsh Graming Sahakari Patsanstha Vs. Dattu R. Paithankar 2010 (1) Crimes 714 (Bom),** Hon'ble Court ruled that, whenever any authority is relied by the counsel then it is bounded duty of the judge to meticulously examine the issues and rulings in support thereof. Simply

listing the rulings in the judgement without going in to the ratio decidendi of the same is illegal.

In **Maharashtra Govt., through G. B. Gore, Food Inspector, Nanded Vs Rajaram Digamber Padamwar & Anr. 2011 SCC OnLineBom 2021** it is rled as under;

> ***''JUDICIAL DISCIPLINE –*** *Judgement of another High court – Observations of trial Magistrate that the judgement of Kerala High Court is not binding on him – Further observing the legality and correctness of the judgement of another High Court is against the judicial discipline and propriety – Registrar General directed to take suitable action against concerned Judge. (Paras 42, 43, 44, 45)''*

In **Pradip J. Mehta v. Commissioner of Income-tax, Ahmedabad (2008)14 SCC 283** 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***

## CHPTER 41

MERELY REFFERING THE JUDGMENT OF HON'BLE SUPRMEE COURT BY THE HIGH COURT DOES NOT MAKE THE PRECEDENT.

In **The Liquidator, The Maratha Market People's Co-op. Bank Ltd. Vs Jeejaee Estate and Ors. 2019 SCC OnLine Bom 32** it is ruled as under;

> *''If any judgment of Supreme Court is only referred but not discussed, then such judgemnet is not binding. Law laid down by Supreme Court should be followed.''*

In the case of **Shiv Lal Vs. Ram Babu Dwivedi MANU/UP/ 0040/ 2006** it is ruled as under;

> ***Law laid down by earlier larger Bench of Hon'ble Apex Court will prevail over the later smaller Bench decision of the Hon'ble Apex Court, even if later smaller Bench of Hon'ble Apex Court considered the earlier larger Bench decision the same cannot be construed at variance with the larger Bench decision.***
>
> *Thus in view of law laid down by the Hon'ble Apex Court we have no hesitation to hold that law laid down by earlier larger Bench of Hon'ble Apex Court will prevail over the*

*later smaller Bench decision of the Hon'ble Apex Court, even if later smaller Bench of Hon'ble Apex Court considered the earlier larger Bench decision the same cannot be construed at variance with the larger Bench decision*

## CHAPTER 42

THE JUDGE / COURT PASSING ANY ORDER OR DOING ANY ACT OF COMMISSION OR OMISSION MEANS HE/SHE FAILS TO TAKE IMMEDIATE ACTION AGAINST THE GUILTY PERSON INCLUDING PUBLIC SERVANTS LIKE POLICE OFFICERS ARE LIABLE TO BE PUNISHED UNDER CONTEMPT OF COURT ACT. JUDGE CANNOT TAKE A DEFENCE THAT HE WAS NOT AWARE OF THE LAW LAID DOWN IN THE JUDGMENT OF HIGHER COURTS.

JUDGE HAS TO APPLY THE CORRECT LAW EVEN IF IT IS NOT RAISED BY THE PARTY. JUDGE IS EXPECTED TO KNOW THE LAW.

In **Re M.P.Dwivedi AIR 1996 SC 2299,** it is ruled as under;

***''A ) VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF CONTEMPT.***

*Held, Contemner No.1, M.P. Dwivedi, was Superintendent of Police of District Jhabwa at the relevant time. notice was being issued to him for the reason that, being over all in charge of the police administration in the distinct, he was responsible to ensure strict compliance with the directions given by this Court .*

*Contemner No.2, DharmendraChoudhary, was posted as SDO (Police) at Aliraipur at the relevant time.Contemners Nos. 1 and 2, even though not directly involved in the said incidents since they were not present, must be held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge, they condoned the illegality by not taking stern action against persons found responsible for this illegality. We, therefore, record our disapproval of the conduct of all the five contemners Nos. 1 to 5 in this regard and direct that a note regarding the disapproval of their conduct by this Court be placed in the personal file of all of them.*

*Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a serious lapse on the part of the contemner in the discharge*

*of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.*

*Held, Thecontemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this Court - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young Judicial*

*Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.*

*We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field*.''

In **Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. 2018 (3) SCC 85** it is ruled as under;

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

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

***16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be***

***raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order.***

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

***32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing***

***whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.''***

## CHAPTER 43

LAW REGARDING PROSECUTION AND ACTION AGAINST SUPREME COURT AND HIGH COURT JUDGES AND ALSO WITHDRAWING THEIR JUDICIAL WORK BEFORE IMPEACHMENT. POWERS OF CJI TO FORWARD REFERENCE FOR IMPEACHMENT. THE IN- HOUSE – PROCEDURE AS **EXPLAINED IN ADDL. SESSION JUDGE X. (2015)1 SCC 799.**

**In Addl. Session Judge X. (2015)1 SCC 799** it is ruled as under;

***''53.*** *In view of the consideration and the findings recorded hereinabove, we may record our general conclusions as under:*

*(i) The "in-house procedure" framed by this Court, consequent upon the decision rendered in C. Ravichandran Iyer's case (supra) can be adopted, to examine allegations levelled against Judges of High Courts, Chief Justices of High Courts and Judges of the Supreme Court of India.*

*(ii) The investigative process under the "in-house procedure" takes into consideration the rights of the complainant, and that of the concerned judge, by adopting a fair procedure, to determine the veracity of allegations levelled against a sitting Judge. At the same time, it safeguards the integrity of the judicial institution.*

*(iii) Even though the said procedure, should ordinarily be followed in letter and spirit, the Chief Justice of India, would have the authority to mould the same, in the facts and circumstances of a given case, to ensure that the investigative process affords safeguards, against favouritism, prejudice or bias.*

*(iv) In view of the importance of the "in-house procedure", it is essential to bring it into public domain. The Registry of the Supreme Court of India, is accordingly directed, to place the same on the official website of the Supreme Court of India.*

***54.** In the facts and circumstances of the present case, our conclusions are as under:*

*(i) With reference to the "in-house procedure" pertaining to a judge of a High Court, the limited authority of the Chief Justice of the concerned High Court, is to determine whether or not a deeper probe is required. The said*

*determination is a part of stage-one (comprising of the first three steps) of the "in-house procedure" (elucidated in paragraph 37, hereinabove). The Chief Justice of the High Court, in the present case, traveled beyond the determinative authority vested in him, under stage-one of the "in-house procedure".*

*(ii) The Chief Justice of the High Court, by constituting a "two-Judge Committee", commenced an in-depth probe, into the allegations levelled by the Petitioner. The procedure adopted by the Chief Justice of the High Court, forms a part of the second stage (contemplated under steps four to seven-elucidated in paragraph 37, hereinabove). The second stage of the "in-house procedure" is to be carried out, under the authority of the Chief Justice of India. The Chief Justice of the High Court by constituting a "two-Judge Committee" clearly traversed beyond his jurisdictional authority, under the "in-house procedure".*

*(iii) In order to ensure, that the investigative process is fair and just, it is imperative to divest the concerned judge (against whom allegations have been levelled), of his administrative and supervisory authority and control over witnesses, to be produced either on behalf of the complainant, or on behalf of the concerned judge himself. The Chief Justice of the High Court is accordingly*

*directed to divest Respondent No. 3-Justice 'A', of the administrative and supervisory control vested in him, to the extent expressed above.*

*(iv) The Chief Justice of the High Court, having assumed a firm position, in respect of certain facts contained in the complaint filed by the Petitioner, ought not to be associated with the "in-house procedure" in the present case. In the above view of the matter, the Chief Justice of India may reinitiate the investigative process, under the "in-house procedure", by vesting the authority required to be discharged by the Chief Justice of the concerned High Court, to a Chief Justice of some other High Court, or alternatively, the Chief Justice of India may himself assume the said role.''*

## CHAPTER 44

POLICE OFFICERS AND ALL PUBLIC SERVANTS SUCH AS COLLECTOR, REVENUE, MINISTERS, CBI ETC. ARE BOUND TO ACT AS PER THE GUIDELINES OF THE SUPREME COURT AND HIGH COURTS. OTHERWISE, THEY WILL BE LIABLE FOR ACTION UNDER CONTEMPT AND UNDER SECTION 166, 167, 218, 219, 220, 341, 342 ETC. OF INDIAN PENAL CODE. POLICE OFFICERS ARE LIABLE FOR ADDITIONAL ACTION UNDER SECTION 145 (2) OF MAHARASHTRA POLICE ACT.

They are also liable for misappropriation of public property as per section 409 of IPC.

**Section 166 of Indian Penal Code is read as under;**

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

**Section 167 of Indian Penal Code is read as under;**

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

imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Section 218 of Indian Penal Code is read as under;**

**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.

**Section 219 of Indian Penal Code is read as under;**

**Public servant in judicial proceeding corruptly making report, etc., contrary to law.—**Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to

law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Section 220 of Indian Penal Code is read as under;**

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

**Section 341 of Indian Penal Code is read as under;**

**Punishment for wrongful restraint.—**Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

**Section 342 Indian Penal Code is read as under;**

**Punishment for wrongful confinement.—** Whoever wrongfully confines any person shall be punished with imprisonment of either

description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**Section 330 Indian Penal Code is read as under;**

**Voluntarily causing hurt to extort confession, or to compel restoration of property.—**Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Illustrations

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section. CLASSIFICATION OF OFFENCE Punishment—Imprisonment for 7 years and fine—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

**Section 409 Indian Penal Code is read as under;**

**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.

In **Ashaq Hussain Vs. Assistant Collector of Customs (P) Bombay 1990 Cri. L.J. 2201** it is ruled that the arrest start from the point of confining the movement and not from time of arrest recorded by the I.O. in documents. The video recording is available. This is an offence under **Sec. 166, 341, 342** of IPC and **section 145 (2), 147, 148** of **Maharashtra Police Act**.

## CHAPTER 45

APPEAL AS PER SECTION 341 OF CR. P. C

**D.** APPELLATE COURT IS DUTY BOUND TO ORDER THE PROSECUTION AS PER SECTION 340 OF CR. P. C WHEN LOWER COURT FAILED TO TAKE ACTION IN A CASE WHERE PRIMA FACIE CASE IS MADE OUT.

**E.** WRONG ORDER OF 340 BY MAGISTRATE CAN BE CORRECTED BY HIGH COURT BY DIRECTING PROSECUTION.

**F.** THE VICTIM SHOULD NOT SUFFER DUE TO MISTAKE COMMITTED BY THE JUDGE OF SUB-ORDINATE COURT.

Hon'ble Madras High Court in **Krishnamoorthy vs. The Presiding Officer order dated 23 January, 2018** it is ruled as under;

> *''Hence, the proceedings under Section 340 Cr.P.C., will not have any bearing on the main case nor the proceedings in the main case will have any bearing on the proceedings initiated under Section 340 Cr.P.C., against the petitioner.*
>
> *the Court acting under Section 340 Cr.P.C., should not give a finding of guilt and it should leave it to the Trial Court to appreciate the evidence and come to an appropriate conclusion.*

*This Court expunges the last paragraph of the impugned Order, dated 18.11.2017, in Crl.M.P.No.2599 of 2016 in S.C.No.57 of 2014 and in its place, the following portion shall be substituted:*

*From the statements given by P.Ws.1 to 4, it is found that there are prima facie materials to show that Krishnamoorthy / P.W.1 appears to have committed an offence punishable under Section 194 I.P.C., and hence, this Court directs that a private complaint to be lodged as against him before the jurisdictional Magistrate I.e., the Judicial Magistrate No.I, Thanjavur. The Head Clerk of this Court is directed and authorized to lodge complaint before the learned Judicial Magistrate No.I, Thanjavur, in this regard.?*

*11. The learned Judicial Magistrate No.I, Thanjavur, shall proceed with the complaint in accordance with law and come to a conclusion without in any manner being influenced by what has been stated either in this Order or in the impugned order, dated 18.11.2017, made in Crl.M.P.No.2599 of 2016 in S.C.No.57 of 2014, by the learned I Additional District and Sessions Judge (P.C.R.), Thanjavur.''*

## CHAPTER 46

THE PROSPECTIVE ACCUSED HAVE NO RIGHT TO PARTICIPATE IN A HEARING OF APPEAL OR REVISION UNDER SECTION 341 OF CR. P. C

In **Kareem Fatima & Ors.Vs.Habeeb Omer & Anr.2009 ALL MR (Cri) Journal 21**it is ruled as under;

> ***''Criminal P.C. (1973), Ss.195(1)(b)(ii), 340, 343, 238, 243 - Offences u/Ss.471, 475/476, IPC - Cognizance of - Contention that documents were not alleged to be forged after filing them into Court, no embargo to take cognizance of offence - Bar u/S.195(1)(b)(ii), Cr.P.C. does not apply - Accused has no statutory right to be heard before taking cognizance of offence whether it is before Magistrate Court or Revisional Court.***
>
> *The accused need not be afforded an opportunity of being heard before taking cognizance of the offence whether it is before the Magistrate or before the revisional Court and the contention that the documents were not alleged to be forged after filing them into Court is also not an embargo to take cognizance of the offence. Therefore, there is no merit in the contention that the revisional Court failed to give them an opportunity of being heard and failed to consider the contentions raised by them. 2002 ALL MR*

*(Cri) 732 (S.C.); 2005 ALL MR (Cri) 1326 (S.C.) - Rel. on. [Para 5]''*

## CHAPTER 47

DUTY OF THE ADVOCATES TO NOT TO WITHHOLD THE CASE LAW OR ANY DOCUMENTS WHICH ARE AGAINST HIS CLIENT. THE ADVOCATE CAN NOT TO GIVE OVERRULED OR PER-INCURIAM JUDGMENTS.

Hon'ble Apex Court in **R.Muthukrishnan's 2019 SCC OnLine SC 105,** had ruled as under;

> ***''25.*** *It is said by Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An Advocate conduct is supposed to be exemplary. In case an Advocate causes disrepute of the Judges or his colleagues or involves himself in*

> *misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off.''*

In a similar case in **Lal Bahadur Gautam Vs. State (2019) 6 SCC 441,** "Hon'ble Justice Arun Mishra" while condemning the misconduct of a Counsel observed in **"para 10"** that, relying on judgments of repealed act amounts to giving overruled judgment. **[Please see:- Para 10 to15]**

Hon'ble Supreme Court in **State Of Orissa Vs. Nalinikanta Muduli (2004) 7 SCC 19 ,**had ruled as under;

> ***"6……****It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned single Judge. Members of the Bar are officers of the Court.* ***They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern.*** *It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it - It was certainly the duty of the counsel for the respondent*

*before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court.* ***Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment -We can only express our anguish at the falling standards of professional conducts****."*

In **Hindustan Organic Chemicals Ltd. Vs. ICI India Ltd.2017 SCC Online Bom 74** it is ruled as under;

***"DUTY OF ADVOCATES TO NOT TO MISLED THE COURT EVEN ACCIDENTALLY – THEY SHOULD COME BEFORE COURT BY PROPER ONLINE RESEARCH OF CASE LAW BEFORE ADDRESSING THE COURT.***

**I have found counsel at the Bar citing decisions that are not good law.**

***The availability of online research databases does not absolve lawyers of their duties as officers of the Court. Those duties include an obligation not to mislead a Court, even accidentally. That in turn casts on each lawyer to carefully check whether a decision sought to be cited is or is not good law.*** *The performance of that*

> *duty may be more onerous with the proliferation of online research tools, but that is a burden that lawyers are required to shoulder, not abandon. Every one of the decisions noted in this order is available in standard online databases. This pattern of slipshod research is inexcusable."*

Hon'ble High Court in **Court on its Own Motion Vs. D.S.P. Jayant Kashmiri 2017 SCC OnLine Del 7387** had ruled that, giving overruled judgment to misled the Court is Contempt of Court. Here Ld. Amicus Mr. Luthra despite having full knowledge that, the judgments relied by him are overruled decided wilfully to rely on the same and therefore he can not take defence of any bonafide mistake.

It is ruled as under;

> **''68. Therefore, unless the intention was to mislead the court, erroneous citing of an overruled judgment may not ipso facto and per se be considered contumacious.''**

In **Shiv Kumar Vs. Hukam Chand (1999) 7 SCC 467(F.B)** it is ruled as under;

> ***"13.*** *The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or*

> *the other irrespective of the true facts-involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well.* ***If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle or conceal it On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes this knowledge."***

In **Heena Nikhil Dharia Vs. Kokilaben Kirtikumar Nayak and Ors. 2016 SCC OnLine Bom 9859**, it is ruled as under;

> *"**35. Wholly unrelated to any preliminary issue or the question of limitation, or to any estate, partition or administration action, is** the decision of AM Khanwilkar J (as he then was) in Chandrakant Govind Sutar v. MK Associates 2003 (1) Mh. LJ 1011 Counsel for the petitioner raised certain contentions on the maintainability of a civil revision application. Khanwilkar J*

*pronounced his judgement in open Court, finding for the petitioner. Immediately thereafter, counsel for the petitioner brought to the court's notice that certain relevant decisions on maintainability had not been placed. He requested that the judgement be not signed and instead kept for re-hearing on the question of maintainability. At that fresh hearing, petitioner's counsel placed decisions that clinched the issue against the petitioner. The civil revision application was dismissed. The counsel in question was A.S. Oka, now Mr. Justice Oka, and this is what Khanwilkar J was moved to observe in the concluding paragraph of his judgement:*

*'**9.**While parting I would like to make a special mention regarding the fairness of Mr. Oka, Advocate. He conducted the matter with a sense of detachment. In his own inimitable style **he did the wonderful act of balancing of his duty to his client and as an officer of the Court concerned in the administration of justice. He has fully discharged his overriding duty to the Court to the standards of his profession, and to the public, by not withholding authorities which go against his client**. As Lord Denning MR in **Randel v. W. (1996) 3 All E. R. 657** observed:*

> *"Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocate puts his first duty to the Court, he has nothing to fear. But it is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants.* ***The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law — it is a code of honour.*** *If he breaks it, he is offending against the rules of the profession and is subject to its discipline."*

*This view is quoted with approval by the Apex Court in* ***Re. T.V. Choudhary, [1987] 3 SCR 146*** *(E.S. Reddi v. Chief Secretary, Government of AP).*

***36. The cause before Khanwilkar J may have been lost, but the law gained, and justice was served.***

***37.*** *Thirteen years ago, Khanwilkar J wrote of a code of honour. That was a time when we did not have the range, width and speed of resources we do today. With the proliferation of online databases and access to past orders on the High Court website, there is no*

*excuse at all for not cross- checking the status of a judgement. I have had no other or greater access in conducting this research; all of it was easily available to counsel at my Bar.* ***Merely because a judgement is found in an online database does not make it a binding precedent without checking whether it has been confirmed or set aside in appeal****. Frequently, appellate orders reversing reported decisions of the lower court are not themselves reported.* ***The task of an advocate is perhaps more onerous as a result; but his duty to the court, that duty of fidelity to the law, is not in any lessened. If anything, it is higher now.***

***38. Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperiled."***

In **Lal Bahadur Gautam Vs. State (2019) 6 SCC 441** it is ruled as under;

***"10. Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the respondent management of the private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal Digests which***

***had to be studied earlier, reliance was placed upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary research. We would not be completely wrong in opining that though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment.***

***11. Simply, failure in that duty is a wrong against the justice delivery system in the country. Considering that over the years, responsibility and care on this score has shown a decline, and so despite the fact that justice is so important for the Society, it is time that we took note of the problem, and considered such steps to remedy the problem. We reiterate the duty of the parties and their Counsel, at all levels, to double check and verify before making any presentation to the Court. The message must be sent out that everyone has to be responsible and careful in what they present to the Court. Time has come***

***for these issues to be considered so that the citizen's faith in the justice system is not lost. It is also for the Courts at all levels to consider whether a particular presentation by a party or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to be utilized for justice delivery and in the adversarial system, is not a licence for waste.***

***12.*** *As a responsible officer of the Court and an important adjunct of the administration of justice,* ***the lawyer undoubtedly owes a duty to the Court as well as to the opposite side.*** *He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in* ***State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors., (2016) 6 SCC 1****: "34….relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client….."*

***13.*** *The observations with regard to the duty of a counsel and the high degree of fairness and probity required was noticed* ***in D.P. Chadha vs. Triyugi Narain Mishra and others, (2001) 2 SCC 221****: "22. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous*

*stand, more so, when there are conflicting claims.* ***While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put***

***forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practicing deception or fraud on the court.*** *The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after*

*case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.*

*24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that* ***while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot.*** *While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse.* ***Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot.*** *As responsible officers of the court, as they are called – and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but*

*overzealousness and misguided enthusiasm have no place in the personality of a professional.*

*26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception.* ***A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party."***

*14. That a higher responsibility goes upon a lawyer representing an institution was noticed in State of Rajasthan and another vs. Surendra Mohnot and others, j(2014) 14 SCC 77: "33.* ***As far as the counsel for the State is concerned, it can be decidedly stated that he has a high responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action***

> ***has to be sensible.*** *He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court.* ***When these values corrode, one can say "things fall apart".*** *He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones.*
>
> **We hope, that there would be response towards duty; the hallowed and honoured duty."**

In **P. V. R. S. Manikumar** v. **Krishna Reddy 1999 Cri.L.J 2010** it is ruled as under;

> ***''28. The counsel is endowed with noble duties. He has not only got duty towards his client, but also to his colleague. He has not only got duty towards the Court, but also towards society. Therefore, he should see the case of his client conducted fairly and honestly. The Advocates are responsible to the Court for the fair and honest***

***conduct of the case. In matters of this kind, they are bound to exercise an independent judgment and to conduct themselves with a sense of personal responsibility.***

***29.*** *According to the Supreme Court in Hari Shankar Rastogi*

***v. Girdhari Sharma, AIR 1978 SC 1019 : (1978 Cri LJ 778), the Bar is not different from the Bench. They are the two sides of the same coin. Bar is an extension of the system of justice; lawyer is an officer of the Court. He is a master of an expertise, but more than that, kindful to the Court and governed by high ethics. The success of judicial process often depends on the service of the legal profession.***

***30.*** *Normally, in dealing with the application for quashing, etc., while interim orders, the Court naturally takes the facts and grounds contained in the petition at their face value and the oral submission made by the counsel before this Court. Therefore, it may not be fair and proper on the part of the counsel to betray the confidence of the Court by making statements which are misleading.*

***31.*** *Mr. N. R. Elango, the learned Government Advocate, who was asked to assist in this matter as Amicus Curiae, has cited the judgment of the Supreme Court in P. D. Khandekar v. Bar Council of Maharashtra, AIR 1984 SC 110, wherein it has been held that the members of the legal profession should stand free from suspicion and that nothing should be done by any member of the legal fraternity which might tend to lessen any decree of confidence of the public in the fidelity, honesty and integrity of the profession.*

***32.*** *As the Apex Court would point out, giving a wrong legal advice cannot be said to be unethical, but giving an improper legal advice cannot be said to be ethical. When a client consults with a lawyer for his advice, the client relies upon his requisite experience, skill and knowledge as a counsel. In such a situation, the counsel is expected to give proper and dispassionate legal advice to the client for the protection of his interests.''*

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

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

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## CHAPTER 48

WHEN THE COURT COME TO THE CONCLUSION THAT THE RESPONDENT HAS MADE FALSE/INCONSISTENT STATEMENT THEN THE COURT IS BOUND TO MAKE COMPLAINT. WHAT ADVANTAGE IS TAKEN BY THE ACCUSED IS IMMATERIAL.

In **Geeta Monga Vs.Ram Chand S. Kimat Rai and Ors. MANU/DE / 0021/ 2005** it is ruled as under;

> ***''Code of Criminal Procedure (Cr. PC) – Section 340, 341 –*** *Court once come to the conclusion that* ***the respondent has made a false / inconsistent statement then Court to take action under 340 of Cr.P.C.***

*The District Judge by nothing that the Court cannot take a notice of "every falsehood sworn in the Court" and the gravity of the false statement is not such which attracts the provisions of Section 340 Cr.P.C._The whole approach of the learned Additional District Judge to such kind of issue cannot be approved. The impugned order cannot be legally sustained, as it has resulted into miscarriage of justice.*

*HELD, The above findings and observations of the Additional District Judge are not only mutually inconsistent but self – destructive because on one hand the learned Trial Court noted that the respondent has made a false/inconsistent statement and on the other hand, it has noted that the Court cannot take notice of "every falsehood sworn in the Court" and the gravity of the statement is not such which attracts the provisions of Section 340 Cr. P.C."*

*This Court is at a loss to appreciate such kind of approach the Trial Court. The mere fact that the respondent/defendant/judgment debtor has filed an appeal against the judgment and decree passed by the learned Additional District Judge should not have dissuaded him from answering the application under section 340 Cr.P.C. on its merits. The whole approach of the learned*

*Additional District Judge to such kind of issue cannot be approved. In the opinion of this Court, the impugned order cannot be legally sustained, as it has resulted into miscarriage of justice.*

*The impugned order passed by Additional District Judge is hereby set aside and the matter is remanded back for deciding the application under Section 340 Cr. P.C. afresh in accordance with the law.*

*The said suit was disposed of and decreed by the learned Additional District Judge vide a judgment and decree dated 29.9.2000. After the disposal of the said suit, the plaintiff/appellant moved an application under Section 340 Cr.P.C. alleging commission of the offence of perjury by Ramchand S. Kimatrai by making false statement in the Court. This appeal is directed against the order of the learned Additonal District Judge, Delhi dated 19.9.2003 whereby dismissing an application of the appellant under Section 340 of Cr. P.C. praying for initiating proceeding against a certainRamchand S. Kimatrai, who appeared as a witness in the Court and is stated to have made a false statement amounting to the commission of the offence of perjury. The said application was contested by the respondent/defendant. The learned Additional District Judge despite according an unequivocal/patent finding*

*that respondent No. 2 had made a false statement during the course of the trial of the civil suit, has still declined to initiate the requisite proceedings under Section 340 Cr.P.C. and has dismissed the complaint.*

*Held, what is sought to be agitated by the appellant is an aspect touching the administration of justice, this Court considers it expedient in the interest of justice to condone the delay, if any, in filing the appeal.''*

**a. Sciemed Overseas Inc.Vs. BOC India Limited 2016(3) PUNJ L J 28**

**See Also - Murray And Co. Vs. Ashok Kr. Newatia 2000 (1) SCR 367.**

## CHAPTER 49

POWER TO RECALL THE ORDERS - WRONG ORDER BASED ON MISREPRESENTATION BY THE PARTY , INCORRECT STATEMENT OR IF THE COURT ITSELF IS MISLED DUE TO ANY MISTAKE, IS NULLITY AND SUCH ORDER CAN BE RECALLED BY ALL THE COURT EITHER CIVIL, CRIMINAL, MAGISTRATE OR EVEN IF IT IS A TRIBUNAL NOT HAVING THE PROVISION FOR REVIEW IN THEIR RULES AND ACT.

In **Indian Bank v. M/s. Satyam Fibres (India) Pvt. LtdAIR 1996 SC 2592**it is ruled as under;

> ***''Section 151 C.P.C. - Power of Court to recall its judgment or order - where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order- The judiciary in India also possesses inherent power, specially under Section 151 CPC to recall its judgment or order.***
>
> ***Authorities, be they Constitutional, Statutory or Administrative, and particularly those who have to decide a lis possess the power to recall their judgments or orders if they are obtained by Fraud on Court - Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.***
>
> ***The judiciary in India also possesses inherent power, specially under Section 151 CPC to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent power are powers which are resident in all Courts - Letter filed before commission alleged to be wrong one - Said plea***

***could not have been legally ignored by Commission - Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as Fraud and Justice never dwell together. (Para 20, 22,23)***

*22. The judiciary in India also possesses inherent power, specially under* ***Section 151 CPC to recall its judgment or order if it is obtained by Fraud on Court****. In the case of fraud on a party to the suit or proceedings the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent power are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the construction of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business.*

*23. Since fraud affects the solemnity, regularly and orderliness of the proceedings of the Court and also*

> *amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court.* ***Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.***

In **Deepak Vs. Shriram and Ors. 2018 SCC OnLine Bom 2199** it is ruled as under;

> ***''RECALL OF ORDER IN CRIMINAL CASE -*** *Magistrate can recall his order in criminal case.If it is found that order is obtained by suppression and practising fraud on the Court.''*

Full Bench of Hon'ble Supreme Court in **M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278,**where it is ruled that;

> *"**Recall of Order.– To perpetuate error is no virtue but to correct it is compulsion od judicial conscience.***
>
> ***Wrong order by Two Judge Bench of Supreme Court convicting petitioner under Contempt and perjury are corrected.***
>
> ***This Court has always adopted as done in Mohan Singh's case (1998) 6 SCC 686 procedure whenever it is noticed that proceedings before it***

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

In **Amarjit Singh and Others Vs, State of Punjab and Another 2021 SCC OnLine P&H 184** it is ruled as under;

> ***42.*** *Though, the trial Court has rightly observed that once the cognizance has been taken, the Court cannot recall the summoning order, however, it has ignored the fact that the application was moved by the petitioners to dismiss the protest petition in view of the fact that the summoning order was procured by the complainant by playing fraud with the Court as the son of the complainant is alive and*

*therefore, nothing precluded the trial Court to dismiss the protest petition.*

***43.*** *Further observation made by the Magistrate that since the offenceswere triable by the Court of Magistrate/Court of Sessions, though are correct but the Magistrate, in exercise of power under Section 239 Cr.P.C, in order to prevent any injustice to the petitioners could have allowed the application and discharge them by dismissing the protest petition.*

***44.*** *The Magistrate, while dismissing the application vide impugned order dated 02.12.2020 even again issued Non-bailable Warrants against the petitioners. This part of the order is also illegal as in view of provision of Section 87 of Cr.P.C, the Magistrate can withdraw Warrants as per the information supplied and also in view that the petitioners through counsel had already appeared. The proper course was to direct the counsel for the petitioners to furnish bail/surety bonds as they intended to appear before the Magistrate, but for dismissal of anticipatory bail by the Additional Sessions Judge, they apprehended arrest for no fault.*

***45.*** *However, the Additional Sessions Judge having failed to exercise the jurisdiction under Section 438 Cr.P.C, in dismissing the anticipatory bail application of the*

*petitioners despite the fact that it was brought to his notice that they are being prosecuted in pursuance to a fraud committed by the complainant, has passed a totally illegal order.*

***46.*** *Accordingly, this petition is allowed, the protest petition dated 20.01.2012 filed in case No. 45 dated 21.11.2011 under Sections 302/201 IPC read with Section 34 IPC as well as the impugned summoning order dated 07.12.2017 passed by the Judicial Magistrate I$^{st}$ Class, Ludhiana and the order dated 02.12.2020 passed by the Judicial Magistrate I$^{st}$ Class, Ludhiana, refusing to dismiss the protest petition are set-aside and the petitioners are discharge in FIR No. 115 dated 21.08.2010 registered under Sections 302, 201, 34 IPC at Police Station Dehlon, Ludhiana, District Ludhiana.*

***47.*** *Considering the fact that the petitioners are subjected to unwanted and unnecessary criminal prosecution for a period of last 15 years, it is directed that the State Legal Services Authority, Punjab through District Legal Services Authority, Ludhiana, will pay the costs of Rs. 50,000/- each to all the 03 present petitioners namely Amarjit Singh, Jaswant Singh and Kabal Singh within a period of 04 months from today.*

***48.*** *It will be open for the prosecution to initiate the proceedings under Section 340 Cr.P.C. against CW-1 Satpal Singh, CW-2 Gurdial Singh and CW-4 Naginder Singh i.e. the complainant.*

***49.*** *It will also be open for the prosecution to recover the amount of Rs. 2.00 lacs from the complainant namely Naginder Singh or his legal representatives and to recover the costs of Rs. 50,000/- each from CW-1 Satpal Singh, CW-2 Gurdial Singh and CW-4 Naginder Singh or their LRs, after paying the same to the petitioners. Considering the fact that the Additional Sessions Judge, has failed to exercise its jurisdiction, it is directed that he will go through at least 10 judgments of the Hon'ble Supreme Court including the 02 Constitutional Bench Judgments i.e. "Gurbaksh Singh Sibbia v. State of Punjab", (1980) 2 SCC 565 : AIR 1980 SC 1632 and "Sushila Aggarwal v. State (NCT of Delhi)", (2020) 1 RCR (Cri) 833, wherein the Hon'ble Supreme Court has interpreted the provisions of Section 438 Cr.P.C.*

***50.*** *The Additional Sessions Judge-I, Ludhiana, will submit the written synopsis on the exercise of jurisdiction by a Judge under Section 438 Cr.P.C, after going through the judgments, within a period of 30 days to the Director, Chandigarh Judicial Academy.*

## CHAPTER 50

- RE-LITIGATING THE SAME CAUSE AGAIN & AGAIN WHEN THE ISSUE IS ALREADY DECIDED BETWEEN THE PARTIES AMOUNTS TO GROSS ABUSE OF THE PROCESS. COST IMPOSED. THE PARTY IS ESTOPPED FROM MAKING SAME CLAIM AGAIN.

- MULTIPLE PROCEEDING ON SIMILAR GROUNDS IS ABUSE OF PROCESS OF COURT.

- RELITIGATING AGAIN & AGAIN PRECEDENT –THERE IS NO OVERRULING ON FACTS.

In **K. K.Modi Vs.K.N. Modi and Ors. (1998) 3 SCC 573,** it is ruled as under;

> ***A. Reagitating &relitigating the same issue again & again is abuse of process of court if any party defendant or plaintiff raises an issue which had be decided in Criminal trial then court can struck down those pleading as an abuse of process of court. One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided***

***earlier against him. The re-agitation may or may not be barred as res judicata.***

*But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court.* ***A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.*** *Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.*

*B. . In Mcllkenny v. Chief Constable of West Midlands Police Force and Anr., (1980) 2 AER 227, the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial.*

*The court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to re-litigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel*

*C. In the case of Greenhalgh v. Mallard, (1947) 2 AER 255 the court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexations and an abuse of the process of court.*

*D. Under Order 6 Rule 16, the Court may, at any state of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the CPC. (15th Edition, Volume II, page 1179 note 7) has stated that power under Clause (c) of Order 6 Rule 16 of the Code is*

*confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of Court on the basis of what is stated in the plaint.*

*E. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation....The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."*

In **Ashok Aggarwal** **(2013) 14 SCC 147** it is ruled as under;

*''Litigating same issue again is abuse of process of Court and tantamounts to contempt of court - Res Judicata & public policy*

*of finality to judicial decisions:- When a matter - whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again- It is not permissible for the appellants to consider the renewal of the suspension order or to pass a fresh order without challenging the order of the Tribunal dated 1.6.2012 and such an attitude tantamounts to contempt of court and arbitrariness as it is not permissible.''*

Bombay High Court imposes cost of Rs. 50k on petitioner firm for abuse of law by filling multiple proceedings on similar grounds. **[M/s Vibyog Texotech Ltd. Vs Board of Director,SBI MANU/MH/2583/ 2018**]

In **Vijay Lata Vs. Sh. Rajiv Arora 2021 SCC OnLine P&H 203** it is ruled as under;

***"Sec. 340 of Cr. P. C. – Perjury – Relitigating the same issue when it was already rejected – Petition dismissed with a cost of Rs. 25,000/-***

***14.*** *A perusal of the above narrated facts would make it clear that the petitioner has already unsuccessfully*

*knocked on the doors of this Court several times by invoking the provisions of Section 340 Cr. P. C. The petitions have either been for charging the respondent for knowingly filing a false affidavit or for granting sanction to initiate criminal proceedings against the respondent for knowingly filing a false affidavit. This Court has not granted the petitioner any relief in her earlier petitions. Infact, this Court has held back from imposing costs on the petitioner for filing frivolous petitions. The issues being raised by the petitioner in the present petition have already attained finality, not once but several times over. The present proceedings must be labelled as nothing more than an abuse of the process of the Court particularly in view of the fact that with respect to the same subject-matter several similar petitions had already been filed by the petitioner against this very respondent which were all dismissed. The earlier orders passed by this Court declining any relief to the petitioner in her petitions filed under Section 340 Cr. P. C still hold good and have not been set aside by the Supreme Court. The present petition seeking the same relief on the same cause of action is not maintainable.*

***15.*** *The Court cannot also but express its dismay at the manner in which the petitioner has repeatedly been filing petitions under Section 340 Cr. P. C on the same cause*

*which gives an impression that she is indulging in 'bench hunting' which has to be deprecated in the strongest possible words. Though the principles of res judicata and such analogous principles are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a Coordinate Bench must receive serious consideration at the hands of the Court entertaining a similar petition at a later stage when the same had been rejected earlier. In 'Kalyan Chandra Sarkar v. Rajesh Ranjan' [(2005) 2 SCC 42] the Supreme Court observed that "Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting".*

***16.*** *Four Coordinate Benches of this Court have found that no inquiry under Section 340 Cr. P. C. is called for in relation to the written statement filed in CWP No. 1986 of 1993 and this Court does not find any material on record to permit the petitioner to reagitate this issue. The present petition is on identical facts and the core of the present petition as well as the earlier petitions is identical. Apart from the averments made in the present petition and the*

*earlier petitions, even Annexures P-1 to P-24 attached with the present petition are also attached as Annexures P-1 to P-24 in the earlier petitions being CRM-M-48956-2018 and CRM-M-10355-2020, whose paperbooks have been accessed on the website of the High Court. Thus, this Court finds no justifiable reason to entertain the present petition.*

***17.*** *Further, the petitioner has concealed from this Court several orders passed by this Court as well as other Courts. She has not come to Court with clean hands. It is well settled that litigants who, with an intent to deceive and mislead the Courts, initiate proceedings without full disclosure of facts, such litigantshave come with unclean hands and are not entitled to relief. In 'Dalip Singh v. State of Uttar Pradesh' [(2010) 2 SCC 114] the Supreme Court observed that:*

> *"In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or*

*who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final".*

***18.*** *Even the averment by the petitioner that her earlier CRM-M-10355-2020 was dismissed due to a technical defect of legal procedure due to wrong prayer as per Section 195 of Cr. P. C. is also incorrect and false."*

***19.*** *In view the discussion above, the present petition is held to be not maintainable and is dismissed with costs. Costs are being imposed since precious judicial time, during the Covid-19 Pandemic, has been wasted on an issue which already stands decided against the petitioner on four earlier occasions. Costs of Rs. 25,000/- be deposited with the 'Haryana Corona Relief Fund'.*

In the case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan (2005) 2 SCC 42** it is ruled as under;

***"Relitigating the same issue again & again – High Court committed error and acted in irresponsible manner and the order was Contrary to record and law.***

***34.*** *It is already noticed that the impugned order is pursuant to an application for grant of bail made by the respondent within 11 days of the order made by this Court in the second of the appeals referred to*

*hereinabove. It is also an admitted fact that during these 11 days no fresh material had come into existence nor has been pleaded by the respondent in the present application for bail before the High Court. A perusal of the impugned order clearly shows that the High Court proceeded to reconsider the very same two questions namely the existence of a prima facie case and the evidentiary value of retracted confession and by substituting its subjective satisfaction practically overruled the findings of this Court as well as that of the High Court recorded in the earlier orders, without even discussing these findings and as if the case was being argued and considered by the Court for the first time even though the previous orders of this Court as well as that of the High Court were on record. This reconsideration and recording of a new finding was without there being any fresh factual or legal basis.*

***35.*** *In our opinion, as contended by the learned counsel for the appellants the approach of the High Court in the impugned order to say the least was irresponsible, contrary to the records and law.*

***36.*** *Thus, in our opinion the question of prima facie case and admissibility as well as the evidentiary value of retracted confession having already been considered by the High Court and this Court in the previous proceedings, same could not have been made the basis by the High Court in the impugned order to grant bail without there being fresh material. We are also of the opinion that the learned counsel for the respondent was in error when he contended that these two questions have not been decided by the High Court or by this Court in the earlier orders.*

## CHAPTER 51

THE ANTECEDENT, MALAFIDES OR PERSONAL GRUDGE OF COMPLAINT IS NOT RELEVANT. THE ONLY THING IS WHETHER THE ACCUSED HAD COMMITTED OFFENCE AGAINST ADMINISTRATION OF JUSTICE OR NOT. MESSAGE IS IMPORTANT NOT THE MESSENGER.

**In M. Narayandas Vs. State of Karnataka & Others (2003) 11 SCC 251,** it is ruled as under;

> ***(A)Criminal P.C. (2 of 1974), S.482- Inherent powers - Exercise of, for quashing complaint - Complaint lodged under S.468, S.470, S.471 and 120B of Penal Code alleging that documents filed by respondents in a suit were forged and fabricated - Conclusion of High Court that the complaint was false, vexatious and frivolous is based, alone on material produced by the Respondents - No conclusion drawn by High Court that allegations made in complaint do not prima facie constitute any offence nor disclose a cognizable offence justifying an investigation by the police officer - Order of High Court quashing complaint - Is illegal.***

***2002 Cri LJ 388: 2002 AIR - Kant HCR 2908, Reversed. (Para 6)***

***(B) Criminal P.C. (2 of 1974), S.195, S.340- Prosecution for fabricating false evidence - Provisions of S. 195 and S.340 do not circumscribe the power of the police to investigate - Provision of S.195 is applicable once investigation is completed - Court could then file a complaint under S.340 on basis of the FIR and the material collected during investigation - Hence, respondent cannot be said to be deprived of right of appeal as provided under S.341. (Para 8)***

***(C)Criminal P.C. (2 of 1974), S.195, S.482- Prosecution for fabricating false evidence - Provision of S.195 is not applicable at stage of investigation - Hence, non-consideration of question whether S. 195 is applicable or not - Cannot be a ground to quash FIR. (Para 10)***

In **The Bombay Diocesan Trust Association Pvt. Ltd. and Ors Vs. P.B. Amolik and Ors. 2017 SCC OnLine Bom 2559,** it is ruled as under;

*''**67.** In a matter of this nature, the observations that James Baker is not a holy cow or that he has mislead the authority, were really not warranted. In a matter of this nature, what is really important is*

*the message and not messenger. Section 41D of the MPT Act also empowers the Charity Commissioner to exercise his jurisdiction suo moto. Accordingly, the observations made against James Baker are ordered to be expunged. The writ petition is therefore, allowed to the said extent.''*

## CHAPTER 52

APPEAL UNDER SECTION 341 OF CR. P.C CANNOT BE KEPT PENDING AND HAS TO BE DECIDED URGENTLY.

In **Koppala Venkataswami, Vs. Satrasala Lakshminarayana Chetti, AIR 1959 AP 204,** it is ruled as under;

> ***''Criminal P.C. (5 of 1898), S.476 - FORGERY - Suit on forged contract - Party found to have committed forgery - Where it was found as a fact that in the suit the party, had committed acts of deliberate forgery in concocting a false contract in support of his claim, such a person is obviously a danger to society and this is a typical case where the Court should file a complaint- Such cases should be decided urgently - such cases should not be stayed casually –*** The law is conceived in the interests of the public and unless complaints are made against parties or witnesses who are proved to be forgers or perjurers in time, the growing evil of the impunity with which documents are got up and false evidence secured to support false and frivolous claims or to defeat genuine ones, cannot be controlled or eradicated. This cannot be done if the appellate Court suspends the operation of the order of a subordinate Court directing the filing of a complaint as a matter of course when an appeal is filed by a party against that order. It is necessary that the appellate Court should scrutinise the facts of the case with care and

give stay only if it is convinced that there is an arguable case for the appellant. (Para 17)''

## CHAPTER 53

JUDGE, POLICE OFFICERS INVOLVED IN COMMITTING OFFENCE UNDER THIS SECTION CANNOT CLAIM PROTECTION OF WORK DONE IN DISCHARGE OF OFFICIAL DUTY. FORGERY, PERJURY, CONTEMPT, FALSE IMPLICATION OF INNOCENT IS NOT A PART OF OFFICIAL DUTY. NO SANCTION IS REQUIRED FOR PROSECUTION IN SUCH CASES.

**1. In <u>K. Ram Reddy Vs. State 1998(3) ALD 305</u>** it is ruled as under;

***''False information in bail application - Action against Advocates - Sections 195, 197, 340, 341 and 343 of Criminal Procedure Code, 1973- Sections 120-B, 193, 466, 468 and 471 of Indian Penal Code, 1860 – Accused A1 and A2 who are advocates, are legally bound to state the truth, but they intentionally gave false information in a judicial proceeding viz., bail application, knowing fully well that their statements are false and they thereby fabricated false evidence in a judicial proceeding.*** *The 1-Addl. Sessions Judge who was in charge of the District and Sessions Court and a*

*party to the conspiracy, made over the bail application to the II-Addl. Sessions Court- all the accused and Sri P. Thirupathi Reddy, the then II-Addl. Sessions Judge entered into a criminal conspiracy to do all sorts of illegal acts in order to get their bail application made over to the II-Addl. Sessions Court with a view to get favourable orders- - The then II-Addl. Sessions Judge and A3 (appellant in Crl. Appeal No. 385/97) helped the other accused by willfully and intentionally ignoring the false Cr.M.P.No. 1626/96, which has no connection either with A4 and A5 or the Crime in which they are involved. The II-Addl. Sessions Judge, who is a party to the conspiracy, allowed the petition for amendment on 13-8-1996 and granted bail to A4 and A5. The II-Addl. Sessions Judge is being proceeded with departmentally and is now under suspension - The advocate and B.Prabhakar very well knew that amount of Rs.2,24,904-73 Ps. lying in the Court docs not belong to his fake client and that they are not entitled to receive it. Yet, they fabricated false documents with the forged signatures of B. Gangaram and affixed the photo of B. Prabhakar on the affidavit to make the Court*

*believe that the photo belongs to B. Gangaram and filed the fabricated and forged documents...."*

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

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

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

*It is also stated that provisions of Section 197 of the Code were not attracted because entering into a criminal conspiracy to tamper the records of a judicial proceeding with a view to secure the release of an accused on bail was no part of official duty and as such no sanction to prosecute the Additional Public Prosecutor was necessary. Thereafter, the facts relating to the case are mentioned and it is stated that the District and Sessions Judge came to the conclusion that there were sufficient, valid and justifiable grounds that offences punishable under Sections 120B, 193, 466, 468, and 471 IPC referred to in Clause (b) of subsection (1) of Section 195 of the Code appeared to have been committed by the accused mentioned in relation to the proceedings and in respect of the documents produced and given in evidence in a proceeding in the Court" and that "he is satisfied that it is expedient in the interests of justice to launch Prosecution against the above individuals". It is then ordered that a complaint be filed before the Chief Judicial Magistrate, Karimnagar under Section 340(1)(b) of the Code against the accused for the offences mentioned. Pursuant to that order, complaint was filed under*

*Section 340(1)(b) of the Code, and it was taken on file as C.C. No. 1/1997. The other C.Cs. were also based on complaints filed on similar orders of the learned District and Sessions Judge at Karimnagar.*

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

*15. The Modus Operandi is - the Advocate files a bail application falsely mentioning that the offence alleged against the accused is one under Section 307 I.P.C. After it was made over to any of the Additional District Courts, the figures '307' are altered to 302 in the bail application/s wherever the figures '307' occur.*

*The concerned Advocates, Clerks of the Addl. District Courts, Additional Public Prosecutors joined hands in this racket and the role of the two Addl. District Judges cannot be ruled out in this murky affair.*

*What is apparent from this report dated 30-10-1996 is that certain devious methods were being adopted in the Sessions Court at Karimnagar by certain advocates with the connivance of the staff of the I and II Additional Sessions Courts and the*

*Additional Public Prosecutors attached to those courts, and that the two Additional Sessions Judges at the relevant time were also parties aware of those devious methods employed mostly in matters relating to bails - These devious methods polluted the streams of justice and necessitated urgent correctives and action in the interests of administration of justice.''*

In **Raman Lal Vs State 2000 Cri. L. J. 800,** it is ruled as under;

***Cri. P.C. Sec. 197 – Sanction for prosecution of High Court Judge – Accused are Additional High Court Judge, Superintendent of Police Sanjeev Bhatt and others – The accused hatched conspiracy to falsely implicate a shop owner in a case under N.D.P.S. Act and when shop owner submitted to their demands he was discharged – Complaint u.s. 120-B, 195, 196, 342, 347, 357, 368, 388, 458, 482, I.P.c. and Sec. 17, 58 (1), (2) of NDPS Act – Held – there is no connection between official duty and offence – No sanction is required for prosecution – Registration of F.I.R. and investigation legal and proper.***

## CHAPTER 54

IF JUDGE HIMSELF IS GUILTY OF OFFENCE THEN NO COMPLAINT FROM THAT COURT IS NECESSARY. SUPERIOR COURT CAN DIRECT PROSECUTION AGAINST THE SAID JUDGE.

In **Govind Mehta Vs. The State of Bihar AIR 1971 SC 1708** it is ruled as under;

> ***''Criminal P.C. (5 of 1898), S.195- I.P.C. 167, 465,466 ,471 - A first class Magistrate was alleged to have made some interpolation in the order sheet of a case in after sanction under section 197 by the state Govt. a complaint was filed in a competent court of Magistrate against the said first class Magistrate. Action is legal The jurisdiction of the court, under S. 190, to take cognisance of a complaint, filed by the Public Prosecutor against a magistrate under S. 197, for offences under Ss. 167, 465, 466 and 471. Penal Code, for having interpolated in the order sheet, after an application for transfer of a case has been made, certain orders, containing the remark that the District magistrate was interfering with the proceeding in the case before him. in order to make it appear that they had been passed much earlier, and sending the order sheet as the true report in the case to the court dealing with the transfer application, is not barred by S. 195 or S. 476 of the Code. (Para 18)***

*The offences under Ss. 167 and 466 are not covered by S. 194 (1) (b) or (c) and therefore the power of the Court to take cognisance of the offences is not barred on the ground of absence of a complaint against the accused by the court to which he was subordinate.* ***(Para 15)***

*Even as regards the offence under S. 471, Penal Code the jurisdiction of the magistrate to take cognisance is not barred by S. 195 (1) (c) as although that offence is taken in by that section its essential requirement that the offence should have been committed by a party to any proceeding in court is not satisfied. The accused had no personal interest in the transfer applications and the mere fact that certain allegations had been made against the accused in the transfer application would not make him party to the proceeding before the court dealing with that application.* ***(Para 17)***

*Section 476 of the Code also would not apply to the case in view of the fact that cls (b) and (c) of S.195 (1) do not apply. The fact that an application was also made by the complainant for filing a complaint under Sections 471 and 467, Penal Code would not attract the application of the section when the court gave its finding that the accused*

*had committed forgery and interpolation in the order sheets only for the purpose of transferring the case and merely sent its order to the Government for taking action against the accused if it desired.* ***(Para 18)***

*It is true that S. 465, Penal Code was mentioned in the complaint and since it deals with punishment for offence under S. 463, Penal Code which is taken in by Cl. (c) of S. 195 (1) of the Code, it may also be said to be covered by that clause. Even then that clause cannot operate in the case because the offence cannot be said to have been committed by the accused "as a party to any proceeding " in a court .* ***(Para 19)''***

## CHAPTER 55

ACTION OF CONTEMPT AGAINST PUBLIC SERVANT, MINISTERS FOR ACTING CONTRARY TO LAW.

In **T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Ors. 2006 (2) ACR 1649 (SC)** it is ruled as under;

> ***Contempt of Courts Act, 1971 - Sections 2 (b), 14 and 17--Civil contempt--Wilful and deliberate defiance of order of Supreme Court--Supreme Court by order dated 4.3.1997 directed closure of all unlicensed saw mills, veneer and plywood industries--By order dated 30.10.2002, Supreme Court directed that no State Government would permit opening of any saw mill, veneer and plywood industry without prior permission of Central Empowered Committee (CEC)--Permission sought by State of Maharashtra declined by Supreme Court by order dated 14.7.2003--On enquiries made by CEC and amicus curiae State Government stated that orders of Supreme Court will be complied with and six mills in question were actually closed--But by orders dated 7.4.2004 and 29.5.2004, State of Maharashtra granted permission to said six units to operate in State--Permission granted on basis of decisions taken by contemnor No. 1 Ashok Khot, Principal Secretary, Forest Department Government of Maharashtra and***

***contemnor No. 2. Swarup Singh Naik Minister incharge of Forest Department at relevant time--Explanation of contemnors clearly unacceptable--Mens rea is writ large--Both contemnors deliberately flouted order of Supreme Court in brazen manner--Apology not acceptable -- Contemnors deserve severe punishment -- Custodial sentence of one month simple imprisonment imposed on each.***

*Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the Court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward.*

*Apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry.*

Hon'ble Supreme Court in **E.T.Sunup Vs. C.A.N.S.S. Employees Association 2005 ALL MR (CRI.) 841 (SC)** it is ruled as under;

*A) CONTEMPT OF COURT – deliberate attempt on the part bureaucracy to circumvent order of court and try to take recourse to one justification or other– this shows complete lack of grace in accepting the order of the Court -this tendency of undermining the court's order cannot be countenanced –in democracy the role of Court cannot be subservient to the administrative fiat – the executive and legislature had to work within constitution framework and judiciary has been given role of watch dog to keep the legislature and executive within check- the appellant office flouted order of this court is guilty of contempt of court.*

*B) PUNISHMENT TO BUREAUCRATS - apology tendered – order of court complied- held – if the Court's are flouted like this , then people will loose faith in the court –therefore it is necessary that such violation should be dealt with strong hands and to convey to the authorities that the courts are not going to take things lightly - order of the high court convincing the officer under contempt of court's act and imposition of fine of Rs 5000 is affirmed .*

**Also See-**

**i.** New Delhi Municipal Council Vs. M/s. Prominent Hotels Limited 2015 SCC OnLine Del 11910

**ii.** In Re M.P.Dwivedi AIR 1996 SC 2299

**iii.** Yogesh Waman Athavale vs. Vikram Abasaheb Jadhav 2020 SCC OnLine Bom 3443

**iv.** Manubhai Hargovadas Patel Vs. Learned A.P. Khanorkar 2021 SCC OnLine SC 67

## CHAPTER 56

SUPPRESSION OF MATERIAL FACT BY ANYONE INCLUDING PUBLIC SERVANT IS A SERIOUS OFFENCE AND FRAUD ON COURT. ALSO FRAUD ON OPPOSITE PARTY. PROSECUTION SHOULD BE ORDERED.

**1.** In **Samson Arthur Vs. Quinn Logistic India Pvt. Ltd. and Ors. [2016] 194 Comp Cas 100 (AP)** it is ruled as under;

> ***Section 340 of Cr.P.C- SUPPRESSIO VERI SUGGSTIO FALSI – Suppression and false statement before Company Court.***
>
> *A] Dishonesty should not be permitted to bear fruit and confer benefit to the person who has made a misrepresentation.*
>
> *B] 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 L Rs. 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.*

*C] 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.*

*D] 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.*

*E] Suppressioveri", 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. "Suppressioveri Suggestio falsi"-suppression of the truth is equivalent to the suggestion of what is false.*

*F] 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.*

SEE ALSO - **ABCD v. Union of India(2020) 2 SCC 52**

In **Umesh Kumar IPS Vs. The State of Andhra Pradesh2012 (4) ALT 437** it is ruled as under;

***Suppression either by Petitioner or respondent is contempt – A person who suppresses material facts from the Court is guilty of suppression veri and suggestio falsi i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud – If material facts are suppressed or disorted, the very functioning of Courts, and the exercise of its Jurisdiction, would become impossible. This is because "the Court knows law but not facts – Contempt Notice issued to Additional Director General of Police C.I.D. A.P. (7th Respondent) and Sri. V. Dinesh Reddy,***

***IPS ( 4th respondent) for filling affidavit with suppression and dishonest concealment of facts. Prima facie, it constitute criminal Contempt of Court.***

***Prima facie, it constitute criminal Contempt of Court. The Registrar – General of the High Court shall forthwith initiate suo – motu contempt proceedings, under the Contempt of Courts Act, against both the 4th & 7th respondent herein - The respondents, more particularly those holding custody of the records of the case, have a similar, if not a greater, responsibility to the Court. If either the petitioner or the respondents suppress material facts, or state material facts in a distorted manner, in order to mislead the Court, the Court is duty bound to protect itself and prevent abuse of its process - If recourse to falsehood is taken with an oblique motive, the same would definitely hinder, hamper or impede the even flow of justice, and would prevent the courts from performing their legal duties as they are supposed to do – A person who suppresses material facts from the Court is guilty of suppressio veri and suggestio falsi i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud - If***

***material facts are suppressed or distorted, the very functioning of Writ Courts, and the exercise of its jurisdiction, would become impossible. This is because "the court knows law but not facts". Suppression or concealment of material facts is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdictions.***

***A false statement made in the court, or in the affidavits filed before it, intentionally to mislead the Court, amounts to Criminal Contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the court as causing obstruction in the due course of justice "undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity".***

***SUPPRESION OF MATERIAL FACTS:***

*68. Anything done with an oblique motive interferes with the administration of justice. Such persons are required to be properly dealt with, not only to*

*punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of the people in the system of administration of justice. (**Chandra Shashi v. Anil Kumar Verma** (1995) 1 SCC 421). Anyone who attempts to impede or undermine or obstruct the free flow of the unsoiled stream of justice, by resorting to false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the provisions of the Contempt of Courts Act. It would be a public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements or fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. (**Dhananjay Sharma v. State of Haryana** AIR 195 SC 1795; **Chandra Shashi**). **v. State of Haryana** (1996) 7 SCC 397). **A false statement made in the court, or in the affidavits filed before***

***it, intentionally to mislead the court, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the court as causing obstruction in the due course of justice "undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity". (State of Madhya Pradesh v. Narmada Bachao Andolan*** *2011) 7 SCC 639;* ***Naraindas v. State of M.P*** *(1974) 4 SCC 788,****Advocate General, State of Bihar v. M.P. Khair Industries*** *(1980) 3 SCC 311;and* ***Afzal***

*69. Any conduct which has the tendency to interfere with the administration of justice, or the due course of judicial proceedings, amounts to the commission of criminal contempt. (****Dhananjay Sharma****). The word 'interfere', in this context, means any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty i.e., obstacles or impediments which hinder, impede or in any manner interrupt or prevent the*

*administration of justice**. If recourse to falsehood is taken with an oblique motive, the same would definitely hinder, hamper or impede the even flow of justice, and would prevent the courts from performing their legal duties as they are supposed to do.** (Chandra Shashi; Words and Phrases (Permanent Edn.),Vol. 22).*

*70. If false statements made in Court or in the affidavits filed before the Court amounts to criminal contempt, can suppression of material facts stand on a different footing, as the endeavour both in the case of filing of false affidavits and suppression of material facts is only to mislead and misguide the Court, and thereby interfere with the administration of justice? The answer can only be in the negative. In Black's Law Dictionary (Sixth Edition)* ***Suppressio veri*** *is defined as suppression or concealment of the truth. It is a rule of equity, as well as of law, that a suppression veri is equivalent to a suggestion falsi; and where either the suppression of the truth or the suggestion of what is false can be proved, the party injured may have relief. Recourse to suppressio veri and suggestio falsi amounts to overreaching the Court. (**Union of India v. Malti Sharma** 2006) 9 SCC 262). **A person***

***who suppresses material facts from the court is guilty of suppressio veri and suggestio falsi i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud***. *(NarmadaBachao Andolan). The very basis of the writ jurisdiction rests in the disclosure of true and complete (correct) facts****. If material facts are suppressed or distorted, the very functioning of Writ Courts, and the exercise of its jurisdiction, would become impossible. This is because "the court knows law but not facts". Suppression or concealment of material facts is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdictions****. (K.D. Sharma v. Steel Authority of India Limited (2008) 12 SCC 481; R v. Kensington Income Tax Commrs (1917) 1 KB 486).*

*71. While the petitioner must, no doubt, disclose all material facts fairly and truly****, the respondents, more particularly those holding custody of the records of the case, have a similar, if not a greater, responsibility to the Court. If either the petitioner or the respondents suppress material facts, or state material facts in a distorted manner, in order to***

***mislead the Court, the Court is duty bound to protect itself and prevent abuse of its process.***

*72.* ***Prima facie, the false affidavit filed by Sri S.V. Ramana Murthy, IPS, Additional Director General of Police C.I.D, A.P. (7th respondent), and suppression of material facts by both Sri V. Dinesh Reddy, IPS (4th respondent) and Sri S.V. Ramana Murthy, IPS (7th respondent) constitute criminal Contempt of Court. The Registrar-General of the High Court shall forthwith initiate suo-motu criminal contempt proceedings, under the Contempt of Courts Act, against both the 4th and the 7th respondent herein.*** *The Writ Petition is disposed of accordingly.However, in the circumstances, without costs.*

2. In **S.P. Chengal Varaya Naidu (Dead) By Lrs. Vs. Jagannath (Dead) By Lrs**. & Ors., (1994) 1 SCC 1, this Court observed as follows in para 1:-

*1. "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and honest in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by*

*every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."*

In **Vidur Impex and Traders Pvt. Ltd. and Ors. Vs. Pradeep Kumar Khanna and Ors. 2017(165)DRJ 314** it is ruled as under;

***A] Sec. 151 of Civil Procedure Code : DISMISSAL OF SUIT FOR CONCEALMENT OF FACT - S. 151 of the Code may be utilized to throw out vexatious cases premised upon fraud in order to prevent the abuse of the processes of the court.***

***B] In order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents. ... "***

***(Emphasis Supplied)***

***In Oriental Insurance Co. Ltd. v. Meena Variyal and Ors.*** *MANU/SC/7265/2007 : (2007) 5 SCC 428, paragraph 26 it has been held that the obiter of the*

*Supreme Court may be binding on the High Courts in the absence of any direct pronouncement on that question.(PARA 82)*

*From the aforegoing conspectus of judgments, the broad principles which can be culled out are:*

*"(i) The ratio decidendi of a decision of a Court alone is binding and not mere obiter dictum. The only exception is that the obiter of the Supreme Court is binding upon subordinate courts in the absence of any direct pronouncement on the aspect. Otherwise, obiter carries only persuasive value.*

*(ii) Not everything said by a judge is binding, it is only points which were raised and decided by the Court and not aspects which were never before the Court as the same constitute mere obiter.*

*(iii) The prime test to ascertain whether a particular issue was decided is that of necessity, i.e. whether the issue was directly in issue and not collaterally or incidentally in issue.*

*(iv) If a particular expression or opinion was not necessary and was made only 'by the way', the same would be obiter and not binding.*

*(v) It must also be remembered that it is not permissible to dissect a single line from a judgment as judgments are tailored to a particular set of facts. Accordingly, all observations should be adjudged in their context and not isolated therefrom."(PARA 82)*

*C] Any person who approaches the Court is duty bound to come with clean hands disclosing all relevant particulars and documents. If any document which has a material bearing upon the suit and is within the knowledge of the plaintiff, he should disclose the same. Failure to do so would disentitle him from any relief whatsoever. The Court in such a scenario should summarily dismiss such cases. The suit is dismissed as being an abuse of process of this Court.*

*The plaintiffs in the present case are guilty of suppressing the filing of the 1997 Suit which, the aforegoing discussion would show, had a material bearing upon the suit. Had the quantum of filing of the suit been disclosed, this Court might have been reluctant in even issuing notice to the defendants. Yet, precious judicial time has been wasted by the hearing of the suit and even the defendants have been harassed for years.*

*Only after the concealment was pointed out by the defendants, the plaintiffs in an unrepentant manner moved an application under Order VI Rule 17 of the Code seeking amendment of the plaint - The amendment it merely states that the 1997 Suit has "no material bearing on the present suit" and that the same is sought to be included "by way of abundant caution" and to "facilitate the course of adjudication." I deprecate such conduct of the plaintiffs and such a practice should not be encouraged. The case should have been dismissed as vexatious on this ground alone, but I have also decided the applications on merits in order to give a quietus to the matter.*

*Held, The Apex Court in Oswal Fats & Oils Ltd. MANU/SC/0216/2010 : (2010) 4 SCC 728, paragraph 20 has held that the court is duty bound to deny relief to persons mischievously approaching it with unclean hands. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by*

*exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.*

*133. Though authorities upon the subject are multitudinous, I may refer to a few. In S.P. Changalvaraya Naidu MANU/SC/0192/1994 : (1994) 1 SCC 1 the Supreme Court, while dealing with a case where a release deed was suppressed, came down heavily upon the such tactics of litigants. It observed that the non-mentioning and non-production of the release deed amounted to "playing fraud upon the court" and concluded that:*

*"6. ...A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."*

*134. A coordinate bench of this Court in Shiju Jacob Varghese MANU/DE/5662/2012 : 196 (2013) DLT 385 has held that S. 151 of the Code may be utilized to throw out vexatious cases premised upon fraud in order to prevent the abuse of the processes of the court.*

*135. The Apex Court in Oswal Fats & Oils Ltd. MANU/SC/0216/2010 : (2010) 4 SCC 728, paragraph 20 has held that the court is duty bound to deny relief to persons mischievously approaching it with unclean hands. The relevant portion reads as under:*

*"20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person."*

*136. One may also refer to M/s. Seem ax Constructions; MANU/DE/0031/1992 : AIR 1992 Del 197 R. v. Kensington Income Tax Commr.; (1917) 1 KB 486 (DC&CA) State of Haryana & Ors. v. Karnal Distillery Co. Ltd. and Ors.; MANU/SC/0022/1976 : (1977) 2 SCC 431 Vijay Kumar Kathuria (Dr. ) v. State of Haryana and Ors.; MANU/SC/0054/1983 : (1983) 3 SCC 333 Welcome Hotel v. State of A.P.; MANU/SC/0029/1983 : (1983) 4 SCC 575 G. Narayanaswamy Reddy v. Govt. of Karnataka; MANU/SC/0386/1991 : (1991) 3 SCC 261 Agricultural and Processed Food Products v. Oswal Agro Furane; MANU/SC/0483/1996 : (1996) 4 SCC 297 Union of India v. Muneesh Suneja; MANU/SC/1130/2001 : (2001) 3 SCC 92 Prestige Lights Ltd. v. SBI; MANU/SC/3355/2007 : (2007) 8 SCC 449 Sunil Poddar v. Union Bank of India; MANU/SC/0322/2008 : (2008) 2 SCC 326 K.D. Sharma v. SAIL; MANU/SC/3371/2008 : (2008) 12 SCC 481 G. Jayashree v. Bhagwandas S. Patel; MANU/SC/8451/2008 : (2009) 3 SCC 141 Dalip Singh v. State of U.P.; MANU/SC/1886/2009 : (2010) 2 SCC 114 and Sripal v. South Delhi Municipal Corporation. MANU/DE/0697/2017.*

***CONCLUSION***

*140. I sum up my findings as under:*

*"(i) The present applications are maintainable under Section 151 as none of the provisions of the Code expressly or by necessary implication exhaust or limit the inherent power of this Court;*

*(ii) The judgment of the Supreme Court in Vidur Impex MANU/SC/0663/2012 : (2012) 8 SCC 384 has sealed the fate of the plaintiffs herein holding the Sale Deeds as having no legal sanctity conferring no title upon the plaintiffs and Vidur having no subsisting right I n the Suit Property;*

*(iii) The present suit is barred by the provisions of Order XXIII Rule 1 owing to the withdrawal of the 1997 Suit without seeking liberty to file afresh;*

*(iv) The additional relief of damages sought in the present suit is barred as having been relinquished under Order II Rule 2 of the Code;*

*(v) The present suit is liable to be dismissed as having been filed after the expiry of the period of limitation on 18.10.2012, when the limitation period elapsed on 19.05.2009 or best on 14.07.2009; and*

*(vi) The plaintiffs/Vidur are guilty of concealing and suppressing the filing and withdrawal of the 1997 Suit*

*from this Court and therefore, are not entitled to any relief."*

*141.* ***Consequently, the applications are allowed;the suit is dismissed as being an abuse of process of this Court.***

In **Akashaditya Harishchandra Lama Vs. Ashutosh Gowarikar and Ors. 2016(5) ABR 312** it is ruled as under;

***SUPPRESSION IS FRAUD : APPLICATION REJECTED WITH COST OF Rs.1.5 Lakh. I do not think that there is a slightest vestige of substance in a thing that this Plaintiff has said in support of his claim for a copyright infringement. This is an entirely false suit, based on suppression, speculation, contradictions, prevarication and evasion. There is, too, wilful suppression: the 1995 document was carefully kept from disclosure in previous actions and proceedings. It emerged only after the release of the official trailer to Mr. Gowarikar's film, to which it then bore an unholy resemblance. There are mis-statements in the Plaintiff's own correspondence about what he registered and when. There are claims made to a script of a play that is even now not disclosed. There is mention in other proceedings in the City Civil Court of a script of a film; that never finds place in this suit. The fact that the Plaintiff sought***

***to drop his claim in infringement in the City Civil Court finds no mention in the present Plaint. There is gross and unexplained delay. The entire suggestion in the Plaint, the single premise on which the suit is founded, is utterly false, viz., that the Plaintiff had a 'script' of 1995, one that he saved from flood, rain and all other natural calamity, but never disclosed till 28th June 2016, a few short weeks before Mr. Gowarikar's film's release. There is no explanation for the repeated assertions of a script of a play made in the Plaintiff's own email and later in his Advocate's notice; and the suggestion that the 1995 documents are a script of a play is rank nonsense: there is simply no 'play' in the 1995 document at all. It is not even a script as we know it. What the Plaintiff does have is a 2010 or 2012 play (not fully disclosed; only three pages are shown as noted earlier), said to have been based on the script of 2010 registered with the FWA. But this is called Samrajya, not Mohenjo Daro, and even in the Plaint no attempt is made to show any similarity between this document and the film. Given Mr. Gowarikar's tabulation, one that shows the differences between the 2010 document registered with the FWA and the film, it necessarily follows that there is no case made out in infringement at all. There is nothing to infringe.***

***This is the kind of suit that falls squarely within the frame of the Chengalvaraya Naidu principle.***

## CHAPTER 57

IF AFFIDAVIT IS FALSE OR WITH SUPPRESSION OF MATERIAL FACTS THEN COURT CANNOT GRANT ANY RELIEF EITHER INTERIM OR FINAL TO SUCH LITIGANTS.

ANY RELIEF GRANTED CAN BE WITHDRAWN BY THE COURT OR AUTHORITY WHEN DISHONESTY IS BROUGHT TO THE NOTICE OF THE COURT.

Hon'ble Supreme court in the case of **ABCD v. Union of India(2020) 2 SCC52** had ruled that;

> ***''2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes*** *with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.*
>
> *17. In* ***K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481****] it was observed :* ***(SCC p. 493, para 39)***

*"39. If the primary object as highlighted in Kensington Income Tax Commrs. [R. v. General Commissioners for Purposes of Income Tax Acts For District of Kensington, ex p Princess Edmond De Polignac, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] 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, manoeuvring 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."***.**

*19.In the circumstances a notice is required to be issued to the petitioner in suo motu exercise of power of this Court*

*"why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code". The Registry is directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who is directed to appear in-person before this Court on 14-1-2020.***.**

*16.……..In Chandra Shashi v. Anil Kumar Verma [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks' imprisonment.."*

## CHAPTER 58

## MALICE IN LAW & MALICE IN FACT

In **Selvi J. Jayalalithaa Vs. State (2014) 2 SCC 401**it is ruled as under;

***"26.*** *In Ravi Yashwant Bhoir v. District Collector, Raigad & Ors., AIR 2012 SC 1339, while dealing with the issue, this Court held:*

*"37..... Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill-feeling and spite. Mala fide exercise of power does not imply any moral turpitude. 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 o n the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts.Passing an order for unauthorized purpose constitutes malice in law." (See also: Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., AIR 2010 SC 3745).''*

In the case of **West Bengal State Electricity Board Vs. Dilip Kumar Ray (AIR 2007 SC 976),** it is ruled as under;

***15.*** *Malice and malicious prosecution as stated in Advanced Law Lexicon, 3rd Edn. by P. RamanathaAiyar read as follows:*

*"Malice.—Unlawful intent.*

*Ill will; intent to commit an unlawful act or cause harm. Express or actual malice is ill will or spite towards the plaintiff or any indirect or improper motive in the defendant's mind at the time of the publication which is his sole or dominant motive for publishing the words complained of. This must be distinguished from legal malice or malice in law which means publication without lawful excuse and does not depend upon the defendant's state of mind.*

*(1) The intent, without justification or excuse, to commit a wrongful act. (2) Reckless disregard of the law or of a person's legal rights. (3) Ill will; wickedness of heart. This sense is most typical in non-legal contexts.*

*'Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin malitia means badness, physical or moral—wickedness in disposition or in conduct—not specifically or exclusively ill will or malevolence; hence the malice of English law, including all forms of evil purpose,*

*design, intent, or motive. [But] intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive.'*

*'Malice in the legal sense imports (1) the absence of all elements of justification, excuse or recognised mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result….*

*The Model Penal Code does not use "malice" because those who formulated the Code had a blind prejudice against the word. This is very regrettable because it represents a useful concept despite some unfortunate language employed at times in the effort to express it.'*

*'Malice' in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense it means a wrongful act done intentionally without just cause or excuse.*

*'Malice', in its legal sense, does not necessarily signify ill will towards a particular individual, but denotes that condition of mind which is manifested by the intentional doing of a wrongful act without just cause or excuse. Therefore the law implies malice where one deliberately injures another in an unlawful manner.*

*Malice means an indirect wrong motive.*

*'... "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.'*

*Malice, in ordinary common parlance, means ill will against a person, and in legal sense, a wrongful act done intentionally, without just cause or reason.*

*It is a question of motive, intention or state of mind and may be defined as any corrupt or wrong motive or personal spite or ill will.*

*'Malice' in common law or acceptance means ill will against a person, but in legal sense it means a wrongful act done intentionally without just cause or excuse.*

*It signifies an intentional doing of a wrongful act without just cause or excuse or an action determined by an improper motive.*

*' "Malice", in common acceptation, means, ill will against a person; but in its legal sense, it means, a wrongful act done intentionally without just cause or excuse' ... Malice in its common acceptation, is a term involving some intent of the mind and heart, including the will; and has been said to mean a bad mind; ill will against a person; a wicked or evil state of the mind towards another; an evil intent or wish or design to vex or annoy another; a wilful intent to do a wrongful act; a wish to vex, annoy or injure another person or an intent to do a wrongful act; a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.*

*' "Malice" means wickedness of purpose, or a spiteful or malevolent design against another; a purpose to injure another; a design of doing mischief, or any evil design or inclination to do a*

*bad thing, or a reckless disregard to the rights of others, or absence or legal excuse, or any other motive than that of bringing a party to justice.'*

*'The meaning of the term malice in English law, has been a question of much difficulty and controversy; and those who made through the many disquisitions on the subjects in textbooks and judicial opinions are almost tempted to the conclusion that the meaning varies almost infinitely, and that the only sense which the term can safely be predicated not to have in any given legal context is that which it has in popular language viz. spite or ill will. It certainly has different meanings with respect to responsibility for civil wrongs and responsibility for crime; and even with respect to crime it has a different sense according as it is used with reference to murder, libel, or the capacity of an infant to commit crime, expressed by the rule malitiasupplet act item.' (Ency. of the Laws of England.) Ordinarily, the absence of reasonable and probable cause in instituting a proceeding which terminates in favour of the plaintiff, would give rise to the inference of malice.*

*Malice has been said to mean any wrong or indirect motive but a prosecution is not malicious*

*merely because it is inspired by anger. However, wrong-headed a prosecutor may be, if he honestly thinks that the accused has been guilty of a criminal offence he cannot be initiator of a malicious prosecution.*

*Malice means the presence of some improper and wrongful motive—that is to say an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. It means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill will; it may be due to a desire to obtain a collateral advantage.*

***

*Malice in fact is malue animus indicating that action against a party was actuated by spite or ill will against him or by indirect or improper motives.*

*Malice: Hatred: Aversion: Antipathy: Enmity: Repugnance: Ill Will: Rancour: Malevolence: Malignity: Malignancy. Hatred is a very general term. Hatred applies properly to persons. It seems not absolutely involuntary. It has its root in passion, and may be checked or stimulated and indulged. Aversion is strong dislike. Aversion is a*

*habitual sentiment, and springs from the natural taste or temperament which repels its opposites, as an indolent man has an aversion to industry, or a humane one to cruelty. Antipathy is used of causeless dislike, or at least one of which the cause cannot be defined. It is found upon supposition or instinctive belief, often utterly gratuitous. Enmity is the state of personal opposition, whether accompanied by strong personal dislike or not; as 'a bitter enemy'. Repugnance is characteristically employed of acts or courses of action, measures, pursuits, and the like. Ill will is a settled bias of the disposition. It is very indefinite, and may be of any degree or strength. Rancour is a deep-seated and lasting feeling of ill will. It preys upon the very mind of the subject of it. While enmity may be generous and open, rancour is malignant and private. Malice is that enmity which can abide its opportunity of injuring its object, and pervert the truth or the right, or go out of its way, or shape course of action, to compass its ends. 'Malevolence commences with some idea or evil belonging to and connected with the object; and it settles into a permanent hatred of his person and of everything relative to him' — (Gogan). Malignity is cruel malevolence, or innate*

*love of harm for the sake of doing it. It is malice the most energetic, inveterate, and sustained.*

***

*Malice in fact.—'Malice in fact' means express malice.*

*Malice in fact or actual malice, relates to the actual state or condition of the mind of the person who did the act.*

*Malice in fact is where the malice is not established by legal presumption or proof of certain facts, but is to be found from the evidence in the case.*

*Malice in fact implies a desire or intention to injure, while malice in law is not necessarily inconsistent with an honest purpose.*

*Malice in law.—'Malice in law' means implied malice.*

*'Malice in law' simply means a depraved inclination on the part of a person to disregard the rights of others, which intent is manifested by his injurious acts.*

***

*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. S.R. Venkataraman v. Union of India [(1979) 2 SCC 491 : 1979 SCC (L&S) 216 : AIR 1979 SC 49] , AIR at p. 51.*

***

*Malicious.—Done with malice or an evil design; wilful; indulging in malice, harboring ill will, or enmity malevolent, malignant in heart; committed wantonly, wilfully, or without cause, or done not only wilfully and intentionally, but out of cruelty, hostility of revenge; done in wilful neglect of a known obligation.*

*'Malicious' means with a fixed hate, or done with evil intention or motive; not the result of sudden passion.*

***

*Malicious abuse of civil proceedings.—In general, a person may utilise any form of legal process without any liability, save liability to pay the costs of proceedings if unsuccessful. But an action lies for initiating civil proceedings, such as action, presentation of a bankruptcy or winding-up petition, an unfounded claim to property, not only unsuccessfully but maliciously and without*

*reasonable and probable cause and resulting in damage to the plaintiff. (Walker)*

*Malicious abuse of legal process.—A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by order of court— the malicious perversion of a regularly issued process, whereby an improper result is secured.*

*There is a distinction between a malicious use and a malicious abuse of legal process. An abuse is where the party employs it for some unlawful object—not the purpose which it is intended by the law to effect; in other words, a perversion of it.*

*Malicious abuse of process.—Wilfully misapplying court process to obtain object not intended by law. The wilful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ. An action for malicious abuse of process lies in the following cases. A malicious petition or proceeding to adjudicate a person an insolvent, to declare a person lunatic or to wind up a company, to make action against legal practitioner under the Legal Practitioners Act, maliciously procuring arrest or*

*attachment in execution of a decree or before judgment, order or injunction or appointment of receiver, arrest of a ship, search of the plaintiff's premises, arrest of a person by police.*

*Malicious abuse of process of court.—****

*Malicious act.—Bouvier defined a malicious act as 'a wrongful act, intentionally done, without cause or excuse'.*

*A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief—a wrongful act intentionally done, without legal justification or excuse.*

***

*'A malicious act is an act characterised by a pre-existing or an accompanying malicious state of mind. …'*

*Malicious prosecution—Malice.—Malice means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill will. It may be due to a desire to obtain a collateral advantage.*

*The principles to be borne in mind in the case of actions for malicious prosecutions are these:—*

*Malice is not merely the doing of a wrongful act intentionally but it must be established that the defendant was actuated by malus animus, that is to say, by spite or ill will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause,' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.*

*Other definitions of 'Malicious Prosecution'.— 'A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it.'*

*'A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure.'*

*'A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor, or through mere wantonness or carelessness, if it be at the same time wrong and unlawful within the*

*knowledge of the actor, and without probable cause.'*

*'A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy.'*

*The term 'malicious prosecution' imports a causeless as well as an ill-intended prosecution.*

*Malicious prosecution is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.*

*In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein.*

*1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of action resulting from the institution of such a proceeding. Once a wrongful prosecution has ended in the defendant's favor, he or she may sue for tort damages—Also*

*termed (in the context of civil proceedings) malicious use of process. (Black's, 7th Edn., 1999)*

*'The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect—the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings.' 52 Am. Jur. 2dMalicious Prosecution S. 2, at 187 (1970).*

*The term 'malice,' as used in the expression 'malicious prosecution' is not to be considered in the sense of spite or hatred against an individual, but of malus animus, and as denoting that the party is actuated by improper and indirect motives.*

*As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe*

*has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in Lightbody case [1882, 9 Rettie, 934] : 'When it comes to the knowledge of anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice i.e. "not in discharge of his public duty but from an illegitimate motive," and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord Shand added (p. 940): "He has not only a duty but a right when the cause affects his own property." '*

*Most criminal prosecutions are conducted by private citizens in the name of the Crown. This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged*

*occasion; but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy. (See H. Stephen, Malicious Prosecution, 1888; Bullen and Leake, Prec. P1., Clerk and Lindsell. Torts, Pollock, Torts; LQR, April 1898; Vin., Abr., tit. 'Action on the Case' Ency. of the Laws of England.)*

*Malicious prosecution means that the proceedings which are complained of, were initiated from a malicious spirit i.e. from an indirect and improper motive, and not in furtherance of justice. (Sri NathShaha v. L.E. Ralli [(1905-06) 10 CWN 253 (FB)] )*

*[The performance of a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute 'malice'. (Abbott v. Refuge Assurance Co. [(1962) 1 QB 432 : (1961) 3 All ER 1074 : (1961) 3 WLR 1240 (CA)] )]*

*['Malicious prosecution thus differs from wrongful arrest and detention, in that the onus of proving that the prosecutor did not act honestly or reasonably, lies on the person prosecuted' (per Diplock, L.J. in Dallison v. Caffery [(1965) 1 QB*

*348 : (1964) 2 All ER 610 : (1964) 3 WLR 385 (CA)] )]. (Stroud, 6th Edn., 2000)"*

*(emphasis in original)*

***16.*** *"['Malice' means and implies spite or ill will.] Incidentally, be it noted that the expression 'mala fide' is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances." (See Prabodh Sagar v. Punjab SEB [(2000) 5 SCC 630 : 2000 SCC (L&S) 731] , SCC p. 640, para 13.)*

***17.*** *"12. The legal meaning of malice is 'ill will or spite towards a party and any indirect or improper motive in taking an action'. This is sometimes described as 'malice in fact'. 'Legal malice' or 'malice in law' means 'something done without lawful excuse'. In other words, '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 of the rights of others.' "*

*(See State of A.P. v. GoverdhanlalPitti [(2003) 4 SCC 739] , SCC p. 744, para 12.)*

***18.*** *"[T]he word 'malice' ... in common acceptation means and implies 'spite' or 'ill will'. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record…. In Jones Bros. (Hunstanton) Ltd. v. Stevens [(1955) 1 QB 275 : (1954) 3 All ER 677 : (1954) 3 WLR 953 (CA)] the Court of Appeal has stated upon reliance on the decision of Lumley v. Gye [(1853) 2 E&B 216 : 22 LJQB 463 : 118 ER 749] as below: (Stevens case [(1955) 1 QB 275 : (1954) 3 All ER 677 : (1954) 3 WLR 953 (CA)] , All ER pp. 679 H-680 A)*

> *'For this purpose maliciously means no more than knowingly. This was distinctly laid down in Lumley v. Gye [(1853) 2 E&B 216 : 22 LJQB 463 : 118 ER 749] where Crompton, J. said that it was clear law that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has*

*quitted his master during his period of service, commits a wrongful act for which he is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse— Bromage v. Prosser [(1825) 1 C&P 673 : 171 ER 1362 and 4 B&C 247 : 107 ER 1051] . "Intentionally" refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as for instance to rebut a plea of privilege in defamation, malice in fact has to be proved.' " (See State of Punjab v. V.K. Khanna [(2001) 2 SCC 330 : 2001 SCC (L&S) 1010] , SCC p. 336, para 5)*

***19.*** *"[Malice in law.] Malice in law is, however, quite different. Viscount Haldane described it as follows in Shearer v. Shields [1914 AC 808 : 83 LJPC 216 : 111 LT 297 (HL)] :*

*'A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an 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 his mind is concerned, he acts ignorantly, and in that sense innocently.'*

*Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause." (See S.R. Venkataraman v. Union of India [(1979) 2 SCC 491 : 1979 SCC (L&S) 216 : AIR 1979 SC 49] , SCC p. 494, para 5.)*

***20.*** *"21. [Malice per common law.] Malice in common law or acceptance means ill will against a person, but in the legal sense it means a wrongful act done intentionally without just cause or excuse." (See Chairman and MD, BPL Ltd. v. S.P. Gururaja [(2003) 8 SCC 567 : JT 2003 Supp (2) SC 515] , SCC p. 580, para 21.)*

***21.*** *"11. While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal inquiries, intention, as distinguished from motive is the all-important factor. In common parlance, a malicious act has been equated with intentional act without just cause or excuse." [See Jones Bros. (Hunstanton) v. Stevens [(1955) 1 QB 275 : (1954) 3 All ER 677 : (1954) 3 WLR 953 (CA)] , Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar*

*Pant [(2001) 1 SCC 182 : 2001 SCC (L&S) 189] , SCC p. 190, para 11.]''*

Hon'ble Supreme Court in **Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors**.**(2010) 9 SCC 437** had ruled as under;

> ***A. Legal Malice: The State is under obligation to act fairly without ill will or malice in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others.*** *Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended."* ***It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. Passing an order for an unauthorized purpose constitutes malice in law.***
>
> ***"25.*** *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. (Vide ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC 521 : AIR 1976 SC 1207] , S.R. Venkataraman v. Union of India [(1979) 2 SCC 491 : 1979 SCC (L&S) 216 : AIR 1979 SC 49] , State of A.P. v. Goverdhanlal Pitti [(2003) 4 SCC 739 : AIR 2003 SC 1941] , BPL Ltd. v. S.P. Gururaja [(2003) 8 SCC 567] and W.B. SEB v. Dilip Kumar Ray [(2007) 14 SCC 568 : (2009) 1 SCC (L&S) 860] .)*

***26.** Passing an order for an unauthorised purpose constitutes malice in law. (Vide Punjab SEB Ltd. v. Zora Singh [(2005) 6 SCC 776] and Union of India v. V.*

*Ramakrishnan [(2005) 8 SCC 394 : 2005 SCC (L&S) 1150] .)*

***27.*** *The instant case is required to be examined in the light of the aforesaid settled legal propositions.***"**

In **Kishor M. Gadhave Patil Vs. State 2016 (5) Mh.L.J.75.** it is ruled as under;

***LEGAL MALICE: -*** *Discrimination between two person is Legal Malice- The fact that another employee of the respondent was also a co-petitioner in the Civil writ filed in this Court. However , no action is taken against him leaves much to be desired and makes bona fides of the respondents suspect is a factor which brings the respondent virtually within the ambit of legal malice;*

*For the reason recorded above, reasonable inference has to be drawn as regards existence of legal mala fides."*

## CHAPTER 59

WHEN JUDICIAL OFFICER COMMITS OFFENCE THEN WHILE DECIDING PETITION THE HIGH COURT OR SUPREME COURT CAN DIRECT PROSECUTION OF SAID JUDGE AND NO SANCTION IS REQUIRED IN VIEW OF SECTION 3[2] OF JUDGES PROTECTION ACT.

Division Bench of Hon'ble Bombay High Court in **Deelip Bhikaji Sonawane Vs. State 2003 (1)B.Cr.C. 727**, where it is ruled as under;

> *"**10.** So far as the respondent No. 2 is concerned, he is claiming protection under the provisions of the Judges (Protection) Act, 1985. The said Act is applicable to the Judges which includes a person who is empowered by law to give a judgment in any legal proceedings. Under Section 3(1) of the said Act it is provided that no Court can entertain a civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function. **However, Sub-section (2) of Section 3 empowers the respective Government or the Supreme Court or the High Court or any other authority to take such action whether by way of civil, criminal, or departmental proceedings or otherwise against any person who is or was a Judge.** As per the*

*finding of the Sessions Court the petitioner was wrongfully and illegally confined for five days in Chapter Case No. 43 of 1994 which amounted to an offence under Section 342 of IPC. We are also of the view that the Respondent No. 2 was acted illegally without following the procedure under the provisions of Cr.P.C. before confining the petitioner to jail. In the circumstances, we direct the State Government to take appropriate action against the Respondent No. 2 for his wrongful and illegal act."*

## CHAPTER 60

I.P.C SEC. 463, 471- MAKING ANY DOCUMENT CONTAINING FALSE STATEMENT IS FORGERY.

**1.** I.P.C – Section 193, 196,446,471 read with section 109Cr.P.C – Section 109 Cr.P.C – Section 344 – Summary trail against Judicial Magistrate, Public Prosecutor, Police Officer, Others for fabricated false evidence. **[State of Maharashtra Vs. Kamlakar Nnadram Bhawsar 2002 ALL MR (Cri) 0-2640]**

**2.** Cr.P.C – Section 340 False entries in case dairy by the Police Officer – show cause notice issued I.P.C – Section 193,195, and 211. **[Mohd. Zahid Vs. Govt. of NCT of Delhi 1998 CRI.L.J 2908]**

**3.** Forgery – Impersonation – Forged memo of appeal etc. – High Court directed prosecution under section 182, 191,192, 193,199, 200, 205, 463, 466, 471 of I.P.C **[Parsanna Kumar Roy Karmakar Vs. State of west Bengal and Ors. (1997) 1 Cal LT 476 (HC)]**

**4.**Section 193,196,199 and 200 of I.P.C - Court has power to direct investigation.- Filling false affidavit is contempt**. [Sanjeev Kumar Mittal Vs. The State 2011 RCR (Cri) 7 2111]**

**5.** Complaint filed by Registrar of Supreme court – Tempering of Court Records – Accused convicted under section 193,466 of IPC – Each year's imprisonment. **[State Vs Mohan Singh]**

**6**. Prosecution of advocate under section 193,197,198,199,200 of I.P.C – For false affidavit – Registrar of the Court directed to file complaint before Magistrate. **[Ranbir Singh Vs. The State 1990 (3) Crimes 207]**

**7.** I.P.C Section 466,471 – Charge against advocate for impersonation – Written complaint from the court is necessary. **[ManoranjanKhatua Vs. State of Orissa 1990 CRI.L.J 1583 ]**

**8.** Cr.P.C – Section 340 (1) I.P.C Section 193,191,209 – False affidavit filed – Court ordered prosecution. **[CTR Manufacturing Industries Ltd. Vs. Sergi Transformer Explosion Prevention &Ors. 2013 ALL MR (1) 153]**

**9.** Application Under Section 340 – Cr.P.C making false averments in pleading, false affidavit filed- Court ordered prosecution. **[Arun Dhawan & Anr Vs LokeshDhawan 2015 Cri. L.J. 2126, [2015] ]**

**10.** I.P.C – Section 193 – Prosecution of S.P. and other police personnel for filling false affidavit – Contempt of Court. **[Afzal Vs. State of Haryana AIR 1996 SC 2326]**

**11.** Impersonation – Bringing some other persons and presenting before the Court is criminal contempt – Registrar of High Court directed to file complaint. **[Advocate General, High Court of Karnataka, Banglore Vs. Chidambar and another. ILR 2003 KAR 3631]**

**12.** Cr.P.C. – Section 476 – Forgery- Suit on forged contract – Party found to have committed forgery – Such person is danger to the society – Complaint should be made**. [KoppalaVenkataswami Vs. S.L.Chetti& Another AIR 1959 ANDHRA PRADESH 204]**

**13.** Contempt of Courts Act – Section 2 (c ) – Criminal Contempt section 12- Filing false affidavit intentionally is a criminal contempt. **[Uttar Pradesh Resident Employees Cooperative Housing Board Society & Ors Vs. NOIDA & Another [(2010) 3 SCC (Cri) 586]**

**14.** I.P.C. 194 – Fabrication of records by Police for procuring conviction – Certified copies showing timing – Investigation papers not showing timing-Accused guilty. **[Suresh Chandra Sharma Vs. State of M.P. 2009 Cri.L.J. 4288(SC)]**

**15.** Cr.P.C – Section 340, 341, - Court once come to the conclusion that the respondent has made a false/inconsistent statement then court has to take action under 340 of Cr.P.C. **[Mrs.GeetaMonga Vs RamChand S. Kimat Rai and Ors. MANU/DE/0021/2005]**

**16.** The Contempt Of Court 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 offense under the contempt of court Act –the respondents cannot escape the liability of being held guilty of contempt by reason of a definite and deliberate false statement. **[Murray and Co. Vs. Ashok Kr. Newatia and Anr AIR 2000 SC 833,]**

## CHAPTER 61

1. COURT- TAHSILDAR CONDUCTING MUTATION PROCEEDING IS REVENUE COURT.
2. AN OFFENCE U/S 467 IS COVERED U/S 195 OF CR.P.C.

In **Mahesh Chand Sharma Vs. State of U.P. & Others 2009 ALL MR (Cri.) 3445 (S.C)** it is ruled as under;

> *''Criminal P.C. (1973), Ss. 195(1)(b)(ii),156(3), 482- Offence against Revenue officer relating to document Given in evidence- Revenue officer giving False report to Tahsildar representing that The only surviving heir was dead-Complaint by appellant under S. 156(3) Application for quashing complaint- High Court quashed the*

*complaint-Held, High Court was not justified in treating the Case as one under S. 195(1)(b)(ii) and 340 And in quashing the complaint- Order of High Court quashed and set aside- Magistrate is directed to proceed with Criminal Complaint against accused and dispose off the same within six months.''*

## CHAPTER 62

SECTION 197 CR.P.C.- DEEMED SANCTION TO PROSECUTE ANY PUBLIC SERVANT - IF SANCTION IS NOT GRANTED WITHIN 3 MONTHS THEN COMPLAINT CAN BE FILED TREATING TO BE DEEMED SANCTION.

In **Shashikant Prasad Vs. The State Thru C.B.I.,/A.C.B., Lucknow. 2013 (83) ALLCC 2015** it is ruled as under;

***Section 197 of Cr.P.C. DEEMED SANCTION FOR PROSECUTION -*** *if sanction is not granted within 3 months then complaint can be filed treating to be deemed sanction.*

*Whether trial Court is competent to proceed with the case on the basis of deemed sanction to prosecute the accused, if prosecution sanctioned is not accorded by competent authority/State within the period of four months in terms of the direction issued by Apex Court in Vineet Narain and another Vs. U.O.I. and another*

*(1998 SCC(Cri) 307) - It has been submitted by the learned counsel for the petitioner that law laid down in Vineet Narayan's case (supra) has no binding effect in absence of any legislative amendment made in P.C. Act. It was further submitted that in Vineet Narain's case (Supra) certain directions have been given by the Apex Court to CBI and Central Vigilance Commission (for short 'CVC'). Direction no. 15 deals with time frame for according sanction which runs as follows:-*

*"Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."*

*7. In this regard paragraph 61 of the judgment of Vineet Narain's Case (Supra) is very important and so it is reproduced herein below:*

*"61. In the result, we strike down Directive No. 4.7(3) of the Single Directive quoted above and issue the above directions, which have to be construed in the light of the earlier discussion. The Report of the Independent Review Committee (IRC) and its recommendations which are similar to this extent can be read, if necessary, for a proper appreciation of these directions. To the extent we agree with the conclusion and recommendations of the IRC, and that is a large area, we have adopted the same in the*

*formulation of the above directions. These directions require the strict compliance/adherence of the Union of India and all concerned."*

*8. In the light of this paragraph no room left to doubt that the direction given in Vineet Narain's case (Supra) ought to have been strictly complied with by all concerned including State Government. Therefore, directions issued in Vineet Narain's case (Supra) shall have the binding effect in the light of Article 141 of Constitution of India- learned counsel appearing for CBI drew attention of this court towards the judgment of Division Bench of this Court delivered in Writ Petition No. 10503 (M/B) of 2009 (Vishwanath Chaturvedi Vs. Union of India), wherein the Division of this court keeping in view the direction issued in Vineet Narain's case (Supra) fixing time limit to accord sanction has held that in default of taking decision to accord sanction within the time fixed, the sanction shall be deemed to have been granted -Perusal of this paragraph reveals that unless the amendment is made by the parliament in the light of Vineet Narain's case (Supra) the concept of deemed sanction shall be there. The order dated 3.12.2010 passed by the Division Bench of this Court in the aforesaid writ petition was assailed by the State before Apex Court by filing a Special Leave Petition (c) No.11563 of 2011. The Apex Court while entertaining the appeal vide its order dated 18.4.2011 has passed the following interim order:-*

*"..... Ad-interim stay of the direction No. (iii) in para 155 and the second part of directions no. (viii) in para 155 requiring the reports to be submitted to the High court in read to every investigation at interval of two months.*

*In regard to directions no. (iv) in para 155 of the impugned order, the period three months mentioned therein shall be substituted by the period 'six months'....."*

*12. Perusal of it shows that the Apex court has not stayed the operation of direction (iv) given in para 155 but simply extent period from three months to six months which shows that concept of deemed sanction has been accepted by the Apex court . In Dr. Subramanian Swamy's case (supra). The Apex court again reminded to the Parliament to do its job. The guide line no. 3 of para 56 deals with concept of deemed sanction.*

*13. As such if Investigating Officer asked for grant of sanction from the government, after expiry of time limit fixed as above, the prosecuting agency or complainant may ask the trial court to proceed in the matter on the basis of deemed sanction.*

## CHAPTER 63

CIVIL SUIT- PLAINTIFFS FABRICATED DOCUMENTS AND USED IN COURT- EVEN IF DOCUMENTS ARE FABRICATED OUTSIDE THE COURT- THE COURT CAN INITIATE PROSECUTION U/S 340 OF CR.P.C.

COURT IS NOT REQUIRED TO AFFORD OPPORTUNITY TO BE HEARD, TO THE PERSON AGAINST WHOM IT MIGHT FILE A COMPLAINT

**In Kuldeep Kapoor Vs. Susanta Sengupta MANU/DE/2870/2005** it is ruled as under;

> ***''Code of Civil Procedure Sec. 151 – CrPC Section 340,195 - Plaintiffs had allegedly fabricated, tampered and forged document in question with an intention to use same in Court as evidence or otherwise and had also intentionally given their incorrect addresses before Lower Court on affidavit –***
>
> *Held,*
>
> *1) It is clear that the said plaintiff/respondents, prima facie, have committed offences under Sections 191, 192 read with Sections 193, 199, 200, 465, 471 of the Indian Penal Code. The Registrar of this Court should file a complaint against them in*

*accordance with law within a period of two weeks from today under the provisions of Section 340 Cr.P.C. The said persons shall also furnish a security in the sum of Rs. 10,000/- each for their appearance before the Court of Competent Jurisdiction .*

*2) The court is not required to afford any opportunity of hearing to the person against whom it might file a complaint - the judgments relied upon by the learned counsel for the plaintiff/non-applicants are misplaced.*

*Case History:*

*Plaintiffs had allegedly fabricated, tampered and forged document in question with an intention to use same in Court as evidence or otherwise and had also intentionally given their incorrect addresses before Lower Court on affidavit – Application filed by the defendant under Section 340 of the Code of Criminal Procedure (in short Cr.P.C.) against the plaintiffs - This application has been filed in the above suit during its pendency - The plaintiff/non-applicant has filed two replies, The averments made in the application were denied and a definite stand*

*was taken that the plaintiff - It was denied that the plaintiff has fabricated the said document – The argument of learned counsel appearing for the plaintiff/respondent that if the document was tampered/forged prior to filing in Court, the Court will have no jurisdiction to entertain an application under Section 340 of the Code is entirely misconceived and is without merit. The document has been produced in Court proceedings. A document, which is tampered or forged and is produced during the court proceedings, the Court would have jurisdiction to conduct an enquiry under Section 340 of the Code and decide whether the bar contained under Section 195 partially or in its entirety is attracted in the facts and circumstances of the case or not. An offender cannot take advantage of its own offence and wrongs committed, and give an interpretation of the provisions of law, which is destructive of the legislative intent and spirit of the statute.*

*B ) Sec. 340 of Cr. P. C. – expedient in the interest of justice – 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 interest of justice that enquiry should be made into*

*any of the offences referred to in Section 195(i)(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 - The attempt of doing all this obviously is to mislead the court and interfere in the administration of justice. Such an attempt on the part of a party cannot be ignored by the court. The law enunciated in the above judgments and the facts and circumstances of the case kept in mind, would apparently show that it is expedient in the interest of justice that an enquiry should be made - Applying the principles enunciated in the case of Iqbal Singh Marwah (supra), it is apparent that it is expedient in the interest of justice to direct prosecution of the three persons namely Mr. Kuldeep Kapoor, Mr. Ashok Kapoor and Mr. Girdhari Lal in accordance with law - There is more than one aspect to this application. It does not only relate to fabrication or forgery of documents, but also of filing false affidavits before the court - At least, it is clear that the said plaintiff/respondents, prima facie, have committed offences under Sections*

*191, 192 read with Sections 193, 199, 200, 465, 471 of the Indian Penal Code. The Registrar of this Court should file a complaint against Kuldeep Kapoor, Ashok Kapoor and Girdhari Lal in accordance with law within a period of two weeks from today under the provisions of Section 340 Cr.P.C. The said persons shall also furnish a security in the sum of Rs. 10,000/- each for their appearance before the Court of Competent Jurisdiction, to the satisfaction of the Registrar of this Court within one week from today.*

*The cumulative effect of all these submissions is that the conduct and acts of the non-applicants, as afore-referred, demonstrably show, at least prima facie, that it has affected the administration of justice and is in relation to a document produced in Court and given in evidence during the proceedings of the Court.*

*In view of the above finding recorded upon preliminary inquiry, the Court is of the prima facie view that Kuldeep Kapoor, Ashok Kapoor and Girdhari Lal have tampered or forged the documents which have been filed in this Court during the pendency of the proceedings and also*

*Kuldeep Kapur has filed false affidavits before this Court, during the proceedings in the Court, fully knowing that the Court is to rely upon such documents while passing judicial orders which would affect the right of the parties one way or the other. At least, it is clear that the said plaintiff/respondents, prima facie, have committed offences under Sections 191, 192 read with Sections 193, 199, 200, 465, 471 of the Indian Penal Code. The Registrar of this Court should file a complaint against Kuldeep Kapoor, Ashok Kapoor and Girdhari Lal in accordance with law within a period of two weeks from today under the provisions of Section 340 Cr.P.C. The said persons shall also furnish a security in the sum of Rs. 10,000/- each for their appearance before the Court of Competent Jurisdiction, to the satisfaction of the Registrar of this Court within one week from today.*

*Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence is either not placed for trial on account of non- filing*

*of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided.*

*The Court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament.*

*B) Enquiry under Section 340 of the Cr.P.C. – In Pritish v. State of Maharashtra and Ors. 2002 Cri L J 548 , the Supreme Court has ruled that the court is not required to afford any opportunity of hearing to the person against whom it might file a complaint - The purpose of Section 340 is not to find 'whether a person is guilty or not' but is only to find 'whether it is expedient in the interest of justice to inquire into the offence - the judgments relied upon by the learned counsel for the plaintiff/non-applicants do not support the contention that if the document was forged prior to the institution of the suit, the applicant has no right to invoke the provisions of Section 340 of the Code.*

*The purpose of enquiry under Section 340 of the Cr.P.C. is a very limited one. Once the ingredients of this Section are satisfied, the court has to conduct a very limited enquiry. As a result of that enquiry the court may record a finding to that effect, or even on the basis of preliminary enquiry make a complaint or send it to a magistrate of the First Class having jurisdiction, for the offender to be tried in accordance with law.*

*In the case of Pritish v. State of Maharashtra and Ors. MANU/SC/0740/2001 : 2002CriLJ548 , the Supreme Court has held that in respect of any document produced or given in evidence, in relation to proceedings in the court, the court is not required to afford any opportunity of hearing to the person against whom it might file a complaint before the Magistrate for initiating prosecution proceedings. The purpose of Section 340 is not to find 'whether a person is guilty or not' but is only to find 'whether it is expedient in the interest of justice to inquire into the offence. In the present case, to the application filed by the defendant, the non-applicants/plaintiff had even filed detailed replies, and counsel for the parties were heard at great length. The purpose was to provide an opportunity to the non-applicants, at*

*least to show to the court as to whether it was a case where the court would direct filing of the complaint in compliance to the provisions of Section 340 or even drop the proceedings.*

*D) Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded - where a person fabricates documents and then produces the same in evidence knowing it fully well that the Court is going to rely upon or form its opinion on the basis of such document. Still in other cases, the affidavit or statement made by a person in evidence or otherwise and where the person was under an obligation to speak truth, files false affidavit to his knowledge, in both these events he renders himself liable to be proceeded against in accordance with law*

*B ) Sections 193, 199, 200, 465, 471 of the Indian Penal Code - The person, who is legally bound by Oath or any provisions of law to state truth, makes a false statement or declaration which he either knows or believes to be false or does not believe it to be true, would be said to have given false evidence. Such statement could be verbal or*

*otherwise. While a person, who causes any circumstance to exist or make any false entry in any book or record with an intent that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding or a proceeding taken by law and even may cause any person, who in such proceeding, is to form an opinion upon the evidence to entertain an erroneous opinion, will be said to have fabricated false evidence. Once these ingredients are satisfied, the person committing either of these offences would be punished in accordance with the sentence contemplated under Section 193 of the Code.*

*where a person fabricates documents and then produces the same in evidence knowing it fully well that the Court is going to rely upon or form its opinion on the basis of such document. Still in other cases, the affidavit or statement made by a person in evidence or otherwise and where the person was under an obligation to speak truth, files false affidavit to his knowledge, in both these events he renders himself liable to be proceeded against in accordance with law in terms of the afore-referred provisions.*

*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 for a which are time consuming.*

*Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost.*

*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. Such an interpretation would be highly detrimental to the interest of the society at large.*

*The contention raised on behalf of the non-applicants, was that with an intent to avoid conflict of findings between the Civil and Criminal Court, it is necessary to accept the appeal. Their Lordships held that there was neither any statutory provision nor any legal principle that the findings recorded in one proceedings may be treated as final or binding*

*on the other, as both the cases have to be decided on the basis of the evidence adduced therein. The standard of proof required in two proceedings are entirely different.*

*The object of a penal provision is always and must be construed so as to suppress the mischief and advance the object which the Legislature had in view for the administration of justice.*

*Besides filing false affidavits, Mr. Kuldeep Kapoor and his accomplices, who have tampered and forged the documents i.e. the agreement to sell as well as the cash receipt dated 24.10.2004, when and how these documents were forged. Taking the case in alternative and accepting the objections, at best, it could be said that the applicant can file a complaint under different Penal provisions of the Indian Penal Code in that behalf, even without leave of this Court and bar of Section 195(1)(b)(ii) would not operate against the applicant. This does not place the case of the non-applicants on any high pedestal. Keeping in view the complexity of the case and the fact that it is not possible to hold at this stage, as to when exactly the documents were forged, it will be most appropriate and the ends of justice would demand*

*that an Officer of the Court is directed to file the complaint before the Court of competent jurisdiction. It is a matter of fact that until the defendant had produced the photocopies of the documents signed by him, the plaintiff had not produced the original documents before the court. When they were produced, the tampering was visible, even to a naked eye.''*

See Also - **Bandekar Brothers Pvt. Ltd. Vs. Prasad Vassudev Keni 2020 SCC OnLine SC 707**

## CHAPTER 64

ACCUSED- DELIBERATELY MADE TWO CONTRADICTORY STATEMENTS- BOTH CANNOT POSSIBLY BE TRUE- CAN BE CONVICTED OF PERJURY WITHOUT BEING PROVED WHICH ONE IS TRUE.

Hon'ble Allahabad High Court in **Umrao Lal Vs. State 1954 Cri.L.J. 860** it is ruled as under;

> ***Accused- deliberately made two contradictory statements- both cannot possibly be true- can be convicted of perjury without being proved which one is true.***
>
> ***Penal Code (45 of 1860), S.193- Contradictory statements - an accused in the witness box deliberately made two statements which are so contradictory to, and irreconcilable with, each other, that both cannot possibly be true, he can be convicted of perjury even without its being proved which one of them was not true. (Paras 2 3)***
>
> ***'Mens rea' is an essential ingredient of the offence of perjury - It is not difficult to imagine a witness's making two statements which are contradictory to each other and one of which he does not know or believe to be false. (Para 4)***

***No accused can be acquitted of the charge of perjury on the ground that it was not expedient to prosecute him. (Para 9)***

*When a witness admits having made a previous statement incorrectly and corrects himself later, it is not expedient to prosecute him for perjury. When, however, a witness makes two contradictory statements intentionally and there is nothing to show that the earlier statement was wrong and was corrected by the subsequent statement and he does not admit that he had committed a mistake in making the earlier statement and when the prosecution charges him in the alternative with making one of the two statements falsely, he must be convicted of perjury. Where the two statements made by the applicant were so contradictory to each other that they could not be reconciled with each other and could not both be true and one of them was bound to be false, the applicant deposing about matters which were within his knowledge and there being no scope for his making any mistake, it is clearly a case of making both the statements deliberately and when they are bound to be irreconcilable he must be convicted. (Para 4)*

*It is quite immaterial that the two contradictory statements were made in the course of one deposition in one trial. If the first statement is false, the applicant committed the offence of perjury as soon as he made it. Whether he made it deliberately and whether he knew or believed it to be false or did not believe it to be true is to be seen with reference to the time at which he made it. If the requirements of S. 191 are fulfilled, he committed the offence of perjury as soon as he made it. The completion of the offence does not remain in abeyance for a short time in order to give him an opportunity of repenting and correcting himself. What he does subsequently has absolutely no bearing on the offence already committed by him. The offence is not purged or wiped off by subsequent repentance or retraction or correction; of course, on account of the subsequent repentance and admission of mistake, the Court may say that he had not made the earlier statement deliberately knowing or believing it to be false or not believing it to be true; but that would mean that he had not committed the offence at all by making the earlier statement and not that he had committed it and the commission is purged or wiped off by the subsequent repentance andconfession. Section 191 does not take into consideration the fact that the false statement was, subsequently in the same deposition or in the same trial,*

*admitted to be incorrect and replaced by the correct statement or that the deposition was not finished before the accused corrected himself.* ***(Para 6)***

*The questions that are in issue when a person is prosecuted for perjury are quite different from those that arise in proceedings under S. 476 of the Criminal Procedure Code. In the latter the Court has to see whether it is expedient in the interest of justice to prosecute the witness for committing perjury whereas in the former the Court has only to see whether the ingredients of the offence of perjury are proved by the prosecution and is not at all concerned with the question of the expediency.''*

*****************

## CHAPTER 65

JUDGE IS BOUND TO MENTION THE ARGUMENTS OF THE COUNSEL FOR THE PARTIES IN THE JUDGMENT. OTHERWISE JUDGMENT STAND VITIATED.

In the case of **Yogesh Waman Athavale vs. Vikram Abasaheb Jadhav 2020 SCC OnLine Bom 3443** the advocate filed contempt petition against the Judge who did not considered the argument properly. While taking action against the Judge. It is ruled by Division Bench of the Bombay High Court as under;

*''**7.** The first instance pertains to R.C.S. No. 209 of 2012 wherein an issue was framed as "4A-Do the plaintiff proves that the sale deed executed by defendant Nos. 1 to 8 is barred by the provisions of Consolidation and Fragmentation Act? It is pertinent to note that pursuant to the framing of the said issue, an application came to be moved, copy of which is annexed, by the petitioner requesting therein that the said issue be referred to the competent authority under the provisions of the said Act, and in support thereof so also placed reliance in Tukaram Motiram Shinde (supra) and Jagmittar Sain Bhagat v. Director Health Services, Haryana[5]. which is apparent from the record.*

***8.** Respondent No. 1, on his part, passed order below Exh. 120 after hearing both the parties and rejected the application of petitioner.*

***9.** We have carefully gone through the order so passed below Exh. 120 in R.C.S. No. 209 of 2012.*

***10.** It is true that the entire order is tellingly silent on the above noted authorities. There is absolutely no whisper as to whether those authorities relied on by the petitioner were taken into consideration or not before passing the order below Exh. 120. However, learned Counsel appearing for respondent No. 2 has informed the Court*

*that already respondent No. 1 was informed and he was called by the learned Guardian Judge of the concerned District, on administrative side for counseling and he has been accordingly and suitably counseled and in such circumstances, there remains nothing in the Petition and same is liable to be disposed of.*

***11.*** *The next instance is about filing of private complaint No. 105 of 2017 under Section 498 A of the IPC wherein the present petitioner represented husband-accused. Copy of the said complaint* ***(Exh.B colly)*** *is filed on record. Cause title would show the residence of all the accused beyond the territorial jurisdiction of respondent No. 1.*

***12.*** *Further, it appears that after recording the verification statement of the complainant, respondent No. 1 directly passed the order of issuance of process against all the accused. The grievance of petitioner is that since the accused are resident of Pune and Yavatmal i.e., beyond territorial jurisdiction of respondent No. 1, respondent No. 1 should have postponed the issue of process against them and either should have enquired into the case himself or should have directed an investigation to be made by a police officer. This grievance essentially emanates from the requirement of Section 202 of the Cr.P.C. We are again unable to locate from the order of issuance of process as to why there was no mention of requirement of*

*Section 202 of the Cr.P.C or its non-applicability having regard to the fact that accused are admittedly the resident of place which was beyond territorial jurisdiction of respondent No. 1. Such approach of respondent No. 1 was not proper.*

***13.*** *This takes us to the third instance wherein the petitioner had closed his evidence in D.V. Application No. 39 of 2015. The grievance of the petitioner is that despite there being no pleadings, respondent therein filed an application* ***(Exh. 79 and 80)*** *soliciting the issuance of witness summons which came to be eventually allowed by respondent No. 1 without adhering to the ratio laid down in National Textile Corporation Ltd. (supra). We have gone through the order passed below Exh. 79 and 80 in D.V. Application No. 39 of 2015, copy of which is filed on record. Though the judgments relied on by the present petitioner are referred in the said order but there is no clarity as to how those judgments were distinguishable and not applicable to the case in question. This is not the way of differentiating the authorities vis-a-vis the facts and circumstances of the case in hand.*

***14.*** *The last instance is in respect of criminal proceeding in S.C.C. No. 2134 of 2013 filed under Section 138 of the N.I. Act. According to petitioner although the complainant in his cross examination had clearly and unequivocally*

*admitted the receipt of payments in lieu of blank signed cheques given to him yet accused came to be convicted by overlooking the ratio laid down in the case of John v. Returning Officer (supra). The copy of judgment is made available on record.*

***15.*** *Paragraph 16 of the judgment though shows the reliance placed by accused in John v. Returning Officer (supra), surprisingly, there is no comment/opinion/observation of respondent No. 1 about the utility or otherwise of ratio laid down therein. The judicial mind does not reflect it as to how ratio laid down in the said judgment was not applicable to the case in hand. We prima facie intuitively feel that learned Counsel for the petitioner is right when he laments approach of respondent No. 1 vis-a-vis the above noted authorities /pronouncements. A common sense would prompt the conclusion that respondent No. 1 ought to have carefully gone through the decisions and the ratio laid down therein and then would have formed opinion about applicability or otherwise of the same. Unfortunately, it is clear that exercise was not properly undertaken and orders came to be passed in oblivion of the pronouncements/ provisions.*

***16.*** *The learned Counsel for the petitioner, firstly, placed reliance in Shri Baradkanta Mishra, Ex Commissioner of Endowments v. Shri Bhimsen Dixit*[6] *wherein the remarks*

*of the petitioner were found objectionable by the High Court of Orissa and therefore, the appellant was found guilty of contempt. This was challenged by the appellant before the Hon'ble Apex Court, however, the Hon'ble Apex Court upheld the findings of the High Court. The case in our hand is not a case of unwarranted remarks at the hands of respondent No. 1.*

***17.*** *The learned Counsel, secondly, placed reliance in Balkrishna Mahadev Lad v. State of Maharashtra[7] It has been held by this Court that whether it is a civil contempt or criminal contempt, the quintessence, is, that the breach must be a willful breach or willful disobedience or replete with mens rea. If the Judge of the subordinate Court were to commit some error in discharge of his/her official or judicial duty or functions, that per se cannot be the basis to proceed against the judicial officer.*

***18.*** *In the case in hand though there is negligence but the same cannot be termed as "willful breach" or "willful disobedience" at the hands of respondent No. 1.*

***19.*** *Here we deem it proper to take into account the submission of Mr. Nargolkar. According to him respondent No. 1 has already been summoned by this Court on the administrative side and has been properly counseled pursuant to the similar complaint of the*

*petitioner. It appears that respondent No. 1 has been properly and suitably counseled on the administrative side of the High Court.*

***20.*** *We hope and trust that in future respondent No. 1 will exercise his judicious mind while dealing with judicial work with greater care, caution and circumspection. We issue direction to learned Principal District and Sessions Judge with a request to monitor the performance of respondent No. 1 for one year henceforth by randomly checking the judgments and orders and keep the High Court informed, if required, for necessary action.*

***21.*** *With the above directions, Contempt Petition stands disposed of.''*

In **Dhanuben Lallubhai Patel Vs. Oil And Natural Gas Corporation Of India 2014 SCC OnLine Guj 15949** it is ruled as under;

***"REASONED ORDER : 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.***

***"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 contentions C/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.*

In **State of Gujarat Vs. Bhagabhai Dhanabhai Barad MANU/GJ/ 0398/ 2019 it is ruled as under;**

***''Reasoned Order – Any Order should be with intellectual reasons on each point- Any Judge or quasi judicial authority is bound to pass a reasoned order-***

*Reasons in support of decisions must be cogent, clear and succinct.*

*"adequate and intelligent reasons must be given for judicial decisions".*

*A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.*

*The Apex Court further held that a litigant who approaches the Court with any grievance is entitled to know the reasons for grant or rejection of his prayer.*

*It further held that insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, but it must also appear to be done, as well. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi- judicial or even administrative power. Insistence on reason is a requirement for both judicial accountability and transparency.*

*If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process, then, it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

*Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the*

*said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, MANU/UKWA/0114/2001 : 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires "adequate and intelligent reasons must be given for judicial decisions".*

*The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.*

*"the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."*

*To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.*

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

*Considering these decisions and also noticing that the combined order impugned, passed below Exh. Nos. 3 and 4 of the Criminal Appeal No. 4 of 2019 lacks completely reasons and is a cryptic, non-speaking order, therefore, cannot stand to leg nor can it be sustained. The application, which had been tendered on the part of respondent No. 1 even though contains requirements of respondent No. 1 and also has conveyed the details as would be required to be placed before the Court concerned, however, that which is obligatory on the part of the Court can have no other substitute and the appellate Court while dealing with such application, when has totally failed in its duty in giving reasons, this*

*Court would be failing in its duty if it does not interfere and quash the said order.*

*It can be deduced that the State is before this Court seeking quashment of the order invoking powers of this Court under Articles 226 and 227 so also under section 482 of the Code. It is a settled law that the High Court can exercise its powers of judicial review and such powers are conferred upon the High Court to check the abuse of process of law.*

*Reasons being the soul of any order, this opaqueness on account of absence of reasons, it not checked, it may give impetus to the arbitrariness and to trade on extraneous grounds. Our democracy based on rule of law, favours the reasoned order and decisions based on facts and hence, to upkeep the objectives of judicial accountability and transparency, this Court is required to interfere with the order impugned.*

*Resultantly, the petition is allowed. The order of the appellate Court dated 07.03.2019 passed below Exhs. 3 and 4 in Criminal Appeal No. 4 of 2019 is quashed and set aside. Considering the fact that this order would leave a void.''*

## CHAPTER 66

IF WRONG SECTIONS OF PROVISIONS ARE MENTIONED BY THE APPLICANT OR VICTIM THAT DOES NOT AFFECT THE CAUSE. COURT HAS TO APPLY THE CORRECT PROVISIONS WHILE TAKING ACTION UNDER SECTION 340 OF CR. P. C. OR PASSING ANY ORDER

In **Union of India Vs. Harish Milani 2017 [4] Mh.L.J.441** in a proceeding under section 340 of Cr.P.C the application to summons witness was filed under sec 30 of CPC but the judge find it proper to pass order under sec 311 of Cr.P.C. high court upheld the order.

Hon'ble Supreme Court of India in **J.Kumaradasan Nair Vs.IRIC Sohan 2009 AIR SCW 1921** it is ruled as under;

> ***''Mentioning Of A Wrong Provision Or Non-Mentioning Of Any Provision Of Law Would, By Itself, Be Not Sufficient To Take Away The Jurisdiction Of A Court If It Is Otherwise Vested In It In Law''***

## CHAPTER 67

FALSE CHARGE OF CONTEMPT IS PUNISHABLE UNDER SECTION 211 OF INDIAN PENAL CODE.

Full Bench of Hon'ble Supreme Court in the case of **Hari Das & Another Vs State of West Bangal & others AIR 1964 SC 1773** had ruled as under

> *Penal Code (45 of 1860), S.211,193,199 - Institution of criminal proceedings - False charge of having committed contempt of Court - Held amounted to falsely charging and amounted to institution of criminal proceedings which is offence under 211 of IPC. If there was no just or lawful ground for commencing this proceeding for contempt in the High Court then the requirements of S. 211 of Penal Code must be taken to be prima facie satisfied. A contempt of court can be punished by imprisonment and fine and that brings an accusation charging a man with contempt of court within the wide words 'criminal proceeding'.*
>
> *Constitution of India, Art.134- High Court ordering complaint to be filed against appellants under Ss. 193, 199, 211, Penal Code - Appeal to Supreme Court – Appeal dismissed.*

## CHAPTER 68

LAW REGARDING PROTECTION AVAILABLE TO AN ADVOCATE FROM ANY PRESSURE HE HAS TO PERFORM HIS DUTY FEARLESSLY OR TO NOT TO PURSUE THE DESERVING CASE FEARLESSLY AND DILIGENTLY.

In **Sh. H. Syama Sundara Rao Vs Union of India (UOI) and Ors. 2007 Cri. L. J. 2626**, it is ruled as under;

> ***''Contempt of Courts – Filing case against Advocate and any attempt to prevent him from putting forward its defense and pleas as may be deemed by it to be relevant for the purposes of adjudicating the case in hand amounts to Contempt. We award the contemner punishment of simple imprisonment for a period of three days and impose a fine of Rs. 1,000/- on him. This order shall take effect immediately. The contemner, who is present in the court, shall be taken into custody immediately and he shall be sent to the Tihar Jail to undergo the sentence.***
>
> *Comment upon an advocate which has reference to the conduct of his cases may amount to contempt of court on exactly the same principle, that while criticism of a Judge and even of a Judges judgment in Court is permissible, criticism is not permissible if it is made at the time and in*

*such circumstances or is of such a character that it tends to interfere with the due course of justice. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceedings. In each such instance, the tendency is to poison the fountain of justice, sully the stream of judicial administration, by creating distrust, and pressurizing the advocates as officers of the court from discharging their professional duties as enjoined upon them towards their clients for protecting their rights and liberties.*

*The Courts are under an obligation not only to protect the dignity of the Court and uphold its majesty, but also to extend the umbrella of protection to all the limbs of administration of justice and advocates, while discharging their professional duties, also play a pivotal role in the administration and dispensation of justice. It is thus the duty of the courts to protect the advocate from being cowed down into submission and under pressure of threat of menace from any quarter and thus abandon their clients*

*by withdrawing pleas taken on their behalf or by withdrawing from the brief itself, which may prove fatal not only to the legal proceeding in question but also permit an impression to gain ground that adoption of such tactics are permissible or even acceptable. Failure to deal with such conduct and nip it in the bud shall result in the justice system itself taking a severe knocking, which tendency must be put down as it amounts to direct interference with the administration of justice and is, Therefore, a contempt of a serious nature.*

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

*For proper administration of justice, it is essential that all these persons are, in the performance of their respective duties, ensured such fullness of freedom as is fair and legitimate. Anything that tends to curtail or impair the*

*freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course of justice. It must, Therefore, be held to constitute contempt of Court*

*As in each such instance, tendency is to poison fountain of justice, sully stream of judicial administration, by creating distrust, and pressurizing witnesses. any attempt made by a party to pressurize the opposite party to withdraw a plea taken in the course of proceedings pending in court, amounts to direct interference with the administration of justice. Such an attempt, in our opinion, also takes in its fold, issuance of notices containing scurrilous, disparaging and derogatory remarks against the opposite party - All publications which offend against the dignity of the Court, or are calculated to prejudice the course of justice, will constitute contempts.*

*The law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the*

*Court. All these persons can well be described as the limbs of the judicial proceedings. For proper administration of justice, it is essential that all these persons are, in the performance of their respective duties, ensured such fullness of freedom as is fair and legitimate. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course of justice. It must Therefore be held to constitute contempt of Court.*

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

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

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

*For proper administration of justice, it is essential that all these persons are, in the performance of their respective duties, ensured such fullness of freedom as is fair and legitimate. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course of justice. It must, Therefore, be held to constitute contempt of Court*

*It is the right of every litigant to take before the court every legitimate plea available to him in his defense. If the pleas are found to be patently false, contrary to law, an attempt to mislead the court, irrelevant, immaterial, scandalous or extraneous, the courts are not powerless. The courts have sufficient power not only to reject such false pleadings, but also to have such irrelevant, immaterial, scandalous or extraneous pleas struck out from the record either on an application being made to the court or even on its own. However, any attempt made by a*

*party to pressurize the opposite party or its advocate to withdraw a plea taken in the course of proceedings pending in court, amounts to direct interference with the administration of justice. Such an attempt, in our opinion, also takes in its fold, issuance of notices and filing of applications, etc., containing scurrilous, disparaging and derogatory remarks against the opposite party and its advocate. In preventing the respondent from putting forward its defense and pleas as may be deemed by it to be relevant for the purposes of adjudicating the case in hand, it cannot be a defense to state that any party, even if he is a party in person, enjoys a privilege to pressurize the opposite party, much less his/her advocate. In our opinion, such an act amounts to creating impediments in the free flow of administration of justice. Any such attempt has to be treated as an attempt to interfere with and obstruct the administration of justice. In this context, we may refer to the following judgments:*

*Unlike a Judge, an advocate is quite entitled to be engaged in politics as much as he likes, and comment upon an advocates political opinions and activities would in no way be contempt of Court; but comment upon an advocate which has reference to the conduct of his cases may amount to contempt of court on exactly the same principle, that while criticism of a Judge and even of a*

*Judges judgment in Court is permissible, criticism is not permissible if it is made at the time and in such circumstances or is of such a character that it tends to interfere with the due course of justice.*

*Para 12: The learned Judge took the view that all those including clerks and ministerial and menial staff of the Court are necessary limbs of the judicial proceeding and that any act or conduct which affects the free and unhampered discharge of their respective duties would amount to a hampering of the due administration of law and interfering with the course of justice and would, Therefore, amount to contempt of Court.*

*Contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation.*

*In order to amount to a threat, the language used need not necessarily be aimed at causing bodily injury or hurt. If it is calculated to injure the reputation so as to restrain the freedom of action of that person, it is sufficient. The essence of the matter is the course of conduct adopted by the contemner and not that the words amounted to a*

*threat. It is enough if the conduct on the whole has a tendency to interfere with the course of administration of justice or to subvert the court of justice. The nexus between the threat and the demand for doing something or refraining from doing something need not be express or need not be expressly stated. It is enough if from the context the link between the two is apparent. The subsequent conduct of the contemner in so far as it relates to the carrying out of the threat would, also be relevant....*

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

*20. The Courts are under an obligation not only to protect the dignity of the Court and uphold its majesty, but also to extend the umbrella of protection to all the limbs of administration of justice and advocates, while discharging their professional duties, also play a pivotal role in the administration and dispensation of justice. It is thus the duty of the courts to protect the advocate from being cowed down into submission and under pressure of threat of menace from any quarter and thus abandon their clients*

*by withdrawing pleas taken on their behalf or by withdrawing from the brief itself, which may prove fatal not only to the legal proceeding in question but also permit an impression to gain ground that adoption of such tactics are permissible or even acceptable. Failure to deal with such conduct and nip it in the bud shall result in the justice system itself taking a severe knocking, which tendency must be put down as it amounts to direct interference with the administration of justice and is, Therefore, a contempt of a serious nature.*

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

*(Oswald's Contempt of Court, 3rd Edn. p.87). the Question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit*

*or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent then there can be no doubt that in law the appellants have been guilty of contempt of Court.*

***ACT TO CREATE PRESSURE IN PENDING MATTER/F.I.R. IS CONTEMPT OF COURT***

*Interference with course of justice - Prejudicing the public in favour of or against a party in a pending case by writing an article in the Press is contempt'. The reason is that such articles tend to prejudice the mind of the court, to deter witness from giving evidence, to induce a party to abandon his defence and to possibly affect the decision of the court, though as a rule courts are not affected. Such writings tend to prejudice the public opinion by incubating the public with definite opinion about the matter. The result may be that public confidence in court might be lost if the result was otherwise than the opinion formed. In the instant case of* ***Mankad Probodh Chandra v. Sha Panlal Nanchand, AIR 1954 Kutch. 2,*** *a police officer was searched by the anti-corruption police on suspicion of bribery against the officer. Meantime a newspaper published a series of articles under the guise of publishing information, suggesting that the officer had accepted the bribe, that the trap was cent per cent successful, that the*

*acceptance of the bribe of Rs. 100 had been ill- ominous to others and hence would be so in the case of that officer also, that the officer had become nervous, he had no other hope of escape except invoke the aid of God, that attempts were being made by the friends of the officer to tamper with the witnesses and that at the instance of some outside agency the Court had advanced the date of the hearing of the case against the officer.*

*This kind of news conveying was held as flagrant contempt, scandalizing the Court and prejudicing the public mind against the office. The editor, the printer and the publisher are responsible for such publication and cannot escape the consequences by pleading that it was factual news as they bona fide got it or that they had no intention to offend the Court proceedings; intention does not come in at all in such matters. It is the result or the consequence of such publication that counts. There was no doubt that it created disastrous results in interfering with the course of justice.*

*The law of contempt throws a ring of protection around the entire course of litigation. Party, witness, Judge or counsel are all integral parts of that process. Anything which tends to impair the legitimate freedom of any these cannot but result in obstructing the course of justice.*

*In* ***Gaini Ram v. Ramnath Dutt, AIR 1955 Raj 123 (DB),*** *a superior official gave a charge-sheet to his subordinate who was figuring as a witness in a pending case. His evidence was not yet over. The departmental charge-sheet asked him to explain certain statements made by him as a witness. It was held that the action of the superior official was clear interference with the course of justice. He was hampering evidence being given, as he put the witness under departmental censure for the lacuna in the evidence. The Court is thereby deprived of valuable testimony being given without fear or favour.*

*For a person to be convicted of Contempt of Court for interfering with the course of justice it has to be shown :*

*(a) that something has been published which is either clearly intended or at least is calculated to prejudice a trial which is pending;*

*(b) that the offending article was published with the knowledge of the pending cause or with the knowledge that the cause was imminent; and*

*(c) that the matter published intended substantially to interfere with the due course of*

*justice or was calculated to create prejudice in the public mind.*

*It has to be borne in mind that an offending act, though not influencing the Judge's mind, may affect the conduct of parties to the proceeding which is likely to affect the course of true justice* ***[Awadh Narain Singh v. Jwala Prasad, AIR 1956 Pat 321 (DB)***

## CHAPTER 69

LAW REGARDING PROTECTION AVAILABLE TO WITNESSES, PETITIONER ETC**.**

In **Delhi High Court Dr. M. K. Wats vs State & Ors. (2009) 162 DLT 613,** it is ruled as under;

*''Despite the aforesaid bail order, the petitioner was not released from Central Jail, Tihar as a forgery was committed on the release warrants by the Assistant Superintendent, Jail at the instance of Ram Lubhaya Sharma and the officials of Punjab Police and for that reason the petitioner remained confined for one more day in the Tihar Jail.*

*iv) The petitioner having approached JMIC, Amritsar*

*came to know that on the complaint filed by Satwant Singh at the instance of Ram Lubhaya Sharma warrants were issued against him on 12.08.1996 only under Section 324 IPC which was a bailable offence but Section 326 IPC was added in those warrants basically to make the offences non-bailable in furtherance of common intention and common object which enabled the respondents to arrest the petitioner and keep him in judicial custody and thereafter for another day by forging the release warrants.*

*v) The petitioner then filed an application under Section 340 Cr.P.C. on 22.05.1987 before the ACMM, Patiala House Courts, New Delhi praying inter alia to hold an enquiry against the accused persons under Sections 466/468/471/342/34 IPC read with Section 120-B IPC which application was marked to Sh. D.R. Jain, Metropolitan Magistrate at the relevant time to hold an inquiry.*

*vi) After conducting the inquiry Sh. D.R. Jain concluded that Sh. Ram Lubhaya Sharma and Head Constable Subegh Singh, S.I. Sunil Kumar and Sh. R.D. Behott, Assistant Superintendent, Jail should be summoned, tried and punished for the offences under Sections 466/468/471/342/34 IPC vide his order dated 05.01.1990.*

*vii) The observation made by MM reads as under :*

*I have perused the application u/s 340 Cr.P.c. and the*

*record regarding enquiry in the present application. As it is evident that the warrant against the applicant M.K. Wats was u/s 324 IPC only as per order of the Court of Shri S. S. Gupta, JMIC, Amritsar, dated 12.8.1986 and as it is evident that the respondent Ram Lubhaya Sharma was in connivance with H.C. Subegh Singh No. 1188/ASR/Divn. III, P.S. Amritsar Punjab forged the warrant by adding u/s 326 IPC in the aforesaid warrant and as it is evident that Respondent Ram Lubhaya Sharma in connivance with the aforesaid H.C. Subegh Singh No. 1188/ASR/Divn. III along with I.O. Sunil Kumar SI No. D-1123 3rd Battalion DAP and RD Bahot and then Assistant Superintendent Jail, Tihar in charge of the custody warrant forged the jail warrant by adding that the accused be not released as he is wanted in other cases despite the fact that applicant/accused had been ordered to be released on bail and no other case was pending against him and tehse accused persons committed forgery in respect of the record of the court for the purpose of cheating the court as well as the applicant with intention to wrongfully confinement and used the same as forged document, a complaint be made before Ld. ACMM, New Delhi u/s 466/468/471/341/34 IPC against the aforesaid Ram Lubhaya Sharma R/O 630, Vikas Kunj, Vikaspuri, New Delhi. HC Subhegh Singh No. 1188/ASR Divn. II P.S.*

*Amritsar, SI Suni Kumar no. D- 1123 and R.D. Behot, Assistant Superintendent, Central Jail, Tihar, New Delhi. The record of the present enquiry be enclosed with the said complaint.*

*viii) Consequently, he also filed a complaint before the learned ACMM, New Delhi to take cognizance of the offences against the accused persons on 12.02.1990. The aforesaid complaint was marked to Sh. Brijesh Sethi, M.M., New Delhi for trial in accordance with law.*

*14. In view of the aforesaid the reasoning followed by the learned Addl. Sessions Judge in having come to a conclusion that the complaint was not filed before the same Court and the same Court has not held a preliminary enquiry as is required to be done by the Court in view of Section 340 Cr.P.C. is mis-conceived for the simple reason that once the complaint under Section 340 Cr.P.C. was marked to a Metropolitan Magistrate on its administrative side, the said Magistrate was performing the functions of the Court of ACMM in relation to the subject matter of complaint marked to him. It is thereafter he held a preliminary enquiry and once he was satisfied that a case was made out for taking action against the accused persons then he filed the complaint and it is on that basis the summons were issued by the Magistrate concerned. Thus, it is apparent that it is only after being satisfied that*

*it was in the interest of justice and expedient to prosecute the accused persons that the complaint in this case was filed.*

*15. In view of the aforesaid while allowing the Crl.M.C. 3458/1999 of the petitioner I find no reason to allow his Crl.M.C. 450/1999 as I do not find any specific role assigned to Sh. Om Prakash and Satwant Singh in having committed any offence. Merely because they were present would not make them co-accused as no role as has been assigned to them even in his complaint by the petitioner.*

*16. Both the petitions are disposed of as stated above and directions are given to the trial Court to proceed further with the complaint which has been registered against the accused Ram Lubhaya Sharma, Head Constable Subegh Singh and S.I. Sunil Kumar and R.D. Behott, the then Assistant Superintendent of Jail, Centrail Jail (Tihar) under Sections 466/468/471/341/34 IPC.*

*17. The parties shall appear before the concerned Court on 04.05.2009.*

In **Sudhir M. Vora, Vs. Commissioner of Police for Greater Bombay and others, 2004 CRI. L. J. 2278** it is ruled as under;

***(A) Criminal P.C. (2 of 1974), S.154 - FIR - F.I.R. against police - Written complaint to Commissioner of Police disclosing information regarding commission of***

***cognizable offence against Police Officers - It has to be registered as F.I.R. in terms of S.154 of Code. In such type of cases , Commissioner of Police should ensure that inquiry was done by independent agency such as C.I.D. - Enquiry by officers associated with same Police Station should not be ordered if done is illegal - From the explanation offered on behalf of respondents before us, we are persuaded to take the view that the inquiry so conducted was only a show cause without anything more. Inasmuch as the same has been undertaken by the officers of the same Police Station with a seal of approval put by the Assistant Commissioner of Police, Bandra Division by way of his interim report. The gist of the statements of concerned persons recorded in the interim report would clearly show that the main focus about the allegations in the complaint sent by the petitioner to the Commissioner of Police, has been glossed over and instead opinion rather a finding of guilt, is recorded against the petitioner that he has made a false and mischievous allegation against respondent No. 2 with ulterior purpose. In the matter of such serious allegations, the Commissioner of Police should have at least, ensured that the inquiry was done by an independent agency and responsible officer and***

***not by the officers associated with the same Police Station.***

*"We make it clear that we are not endorsing the action of the Commissioner of Police directing the inquiry into the matter instead of registering the offence under Section 154 of the Code and of further actions under Chapter XII of the Code. Suffice it to observe that inquiry as made, has no legal efficacy so as to ignore the complaint made by the petitioner in writing which discloses the commission of a cognizable offence. In view of the foregoing discussion, we have no hesitation in directing the respondent No. 1 Commissioner of Police to cause to reduce the written complaint sent by the petitioner dated 22-11-2000 in the appropriate book maintained for the purpose of registering crime as per Section 154 of the Code and further to cause investigation into the said complaint by an independent agency such as DCB CID, having regard to the fact that serious allegations have been made against the police officers of having committed acts of commission or omission constituting cognizable offence; and the matter ought to be taken to its logical end in accordance with law after investigation is completed and report in that behalf is filed before the appropriate Court.*

***(B) Criminal P.C. (2 of 1974), S.24 - PUBLIC PROSECUTOR - Public prosecutor - Should not defend police officer against whom allegations of acts of commission or omission are made.''***

In the case of **Arnab Goswami Vs. The Maharashtra State Legislative Assambly and ors order dated 6.11. 2020** it is ruled as under;

*''The above statements made by Mr. Vilas Athawale, Assistant Secretary, Maharashtra Vidhan Mandal Sachivalaya, are unprecedented and tend to interfere in the course of administration of justice. The intention of the author of the said letter viz., Mr. Vilas Athawale, Assistant Secretary, Maharashtra Vidhan Mandal Sachivalaya, seems to be to intimidate the petitioner because the petitioner approached this Court and to threaten him with a penalty for seeking legal remedy.*

*The office of the respondent no.2 would have been well advised to understand that the right to approach this Court under Article 32 of the Constitution of India is itself a fundamental right. Article 32(1) of the Constitution of India reads as under :*

*"32(1). The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights*

*conferred by this Part is guaranteed." There is no doubt that if a citizen of India is deterred in any case from approaching this Court in exercise of his right under Article 32 of the Constitution of India, it would amount to a serious and direct interference in the administration of justice in the country.*

*Though the respondent nos.1 to 3 have been served apparently on 05.10.2020 vide Affidavit of Service dated 13.10.2020, instead of entering appearance, the office of the respondent no.2 has issued a letter in question on 13.10.2020 to the petitioner.*

*We, therefore, issue notice returnable on 23.11.2020 to Mr. Vilas Athawale, Assistant Secretary, Maharashtra Vidhan Mandal Sachivalaya, to show cause why he should not be proceeded against for contempt of this Court in exercise of our powers under Article 129 of the Constitution of India.*

*In the meantime, the petitioner shall not be arrested in pursuance of the present proceedings impugned in the instant writ petition.''*

## CHAPTER 70

POLICE OFFICER NOT BOUND TO FOLLOW THE PER INCURIAM OR UNLAWFUL AND ILLEGAL ORDER OF THE COURTS WHICH IS AGAINST THE STATUTORY PROVISIONS.

Justice Krishna Iyer in a landmark judgment in the case of **Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424** said as under;

> ***''Police officer, ignorantly insisting on a woman appearing at the police station, in flagrant contravention of the whole-some proviso to Section 160 (1) of the Cr. P. C. Such deviance must be visited with prompt punishment since policemen may not be a law unto themselves expecting others to obey the law.***
>
> ***Police cannot be the law unto themselves expecting others to obey the law. If the alibi is that the Sessions Court had directed the accused to appear at the police station, that is no absolution for a police officer from disobedience of the law.''***

Division Bench of Bombay High Court in similar case took a firm stand and was likely to impose cost upon the Mumbai Police. Then the police officer tendered apology and withdrawn the notice. The Division

Bench recorded the statement of the officer in the case of **Uzma Zakir Siddiqui Vs. State 2016 SCC OnLine Bom 15930** it is held as under;

> ***"2.*** *The learned counsel for the petitioner prays for ad-interim order. Mr. Yagnik, the learned APP having taken instructions from A.P.I. Mr. Himmat Jadhav, EOW Unit 7, Mumbai, however, makes a statement that t****he impugned notice would not be acted upon till the next date,*** *provided the petitioner cooperates into investigation, gives permanent address of her residence to the Investigating Officer and will not leave the same without prior permission of the Investigating Officer.*
>
> ***3.*** *Statement accepted."*

Recently, the three Judge Bench of the Supreme Court in the case of **Roshni Biswas Vs. State 2020 SCC OnLine SC 881** it is clear that the police should investigate on Phone/E-mail/Whatsapp and if required they has to go to the residence of the accused. Justice Chandrachud observed;

> "*We are, however, of the considered view that to require the petitioner at this stage to comply with the summons under Section 41A during the pendency of the proceedings before the High Court would not be justified in the facts as they have*

*emerged in this case.* ***Hence we grant an ad-interim stay against the implementation of the direction of the High Court requiring the petitioner to appear before the Investigating Officer at Ballygunge Police Station.*** *This is subject to the condition that the petitioner undertakes to respond to any queries that may be addressed to her by the Investigating Officer and, if so required, attend to those queries on the video conferencing platform with sufficient notice of twenty-four hours. Mr Jethmalani, learned senior counsel appearing on behalf of the petitioner states that the petitioner would cooperate in all respects though after the order of 5 June 2020, no query was addressed to the petitioner, despite five months having elapsed since then. Mr R Basant, learned senior counsel submits that liberty may be granted to the Investigating Officer, if so required, to come to Delhi for the purpose of eliciting specific responses by way of clarification from the petitioner in regard to the alleged Facebook posts. Mr Jethmalani states that there is no objection to the Investigating Officer doing so with twenty-four hours' notice. We accede to the request of Mr Basant."*

The another landmark judgment on the provision of Section 160 of Criminal Procedure Code is the case of **Pusma Investment (P.) Ltd. and Ors. Vs. State 2010 Cri. L. J. 56,** where Hon'ble High Court quashed the notice issued by the police observing as under;

> *"If the contention of the learned Additional Advocate General that under Section 160, the police officer making the investigation is not disabled from requiring the attendance of a witness residing beyond the local limits of his police station or adjoining station, is accepted, that will amount to ignoring the words "being within the limits of his own or any adjoining station". In my opinion, such interpretation is against all canons of interpretation. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute (see Ashwini Kumar Ghosh v. Arabinda Bose, AIR 1952 SC 369). "In the interpretation of statutes", observed Das Gupta, J. in J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U. P., AIR 1961 SC 1170 (at page 1174), "the Courts presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every*

*part of the statute should have effect." The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. When the language of Section 160 is plain and unambiguous, this Court cannot plunge headlong into a discussion of the reason which motivated the Legislature into enacting this provision and took into consideration the hardship and inconvenience being caused to the investigating agency if they are not allowed to enforce the attendance of witnesses residing beyond their police station or adjoining police station. The rule of purposive construction cannot also be invoked in this provision. The correct principle, according to the learned author, G. P. Singh, J., is that after the words have been construed in the context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be controlling and gives way to the plain meaning rule. But the rule cannot be used to "the length of applying unnatural meanings to familiar words or of so stretching the language that its former shape is transformed into something which is not only significantly different*

*but has a name of its own especially when "the language has no evident ambiguity or uncertainty about it. (see Principles of Statutory, Interpretation, 9th Edn. pp. 119-120). In the view that I have taken, the impugned notices are ultra vires the provisions of Section 160 of the Code of Criminal Procedure, 1973, and cannot be sustained in law. I have carefully gone through the case Anirudha S. Bhagat (2005 Cri LJ 3346) (supra) cited by the learned Additional Advocate General, but, with respect, I find myself unable to agree with view taken by the Division Bench of the Bombay High Court for the reasons already stated in the foregoing.''*

*Consequently, this writ petition succeeds. The impugned notices issued by the respondent No. 6 to the petitioners under Section 160, Cr. P. C. are hereby quashed. No further notice under S. 160, Cr. P. C. shall be issued by him upon the petitioners hereafter to enforce their attendance from Delhi as witnesses"*

## CHAPTER 71

RESULT OF NARCO TEST, BRAIN MAPPING TEST, LIE DETECTOR TEST OR ANY SUCH SCIENTIFIC TESTS CAN BE USED TO PROVE INNOCENCE OF THE ACCUSED.

High Court of Bombay in the case of **Yogesh Chandane Vs. State of Maharashtra in Criminal Writ Petition No. 825 of 2015** vide its order dated 16.04.2015 had passed the following order:

> *"2…Learned counsel for the petitioner prays for withdrawal of the petition. Liberty is granted to the petitioner to get the Narco Analysis Test done on his own accord to prove his innocence. Petition stand disposed of."*

Hon'ble Court in **T. Nagappa Vs. Y. R. Muralidhar, reported as (2008) 5 SCC 633** had ruled as under:

> *"An opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it.*
>
> *What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence.*

*The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."*

In **Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria (Dead) through LRs**, reported **as (2012) 5 SCC 370**, this Hon'ble Court held that:

*"48. The obligation to pursue truth has been carried to extremes. Thus, in United States v. Havens 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".*

*36. In Ritesh Tewari v. State of U.P. this Court reproduced often quoted quotation which reads as under:*

*"37……. Every trial is voyage of discovery in which truth is the quest"*

*This Court observed that the*

*"power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth."*

*47. In James v. Giles et al. v. State of Maryland, the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the defendants and use of perjured testimony held that such rules existed for a purpose as a necessary component of the search for truth and justice that judges, like prosecutors must undertake. It further held that the State's obligation under the Due Process Clause "is not to convict, but to see that so far as possible, truth emerges."*

*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.*

*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.*

*34. In Mohanlal Shamji Soni v. Union of India 1991 Supp (1) SCC 271, this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should 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 or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering 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.*

*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.*

*37. Lord Denning in Jones v. National Coal Board has observed that:*

*"....In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries."*

*38. Certainly, the above, is not true of the Indian Judicial system. 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". In 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.*

*39. Lord Denning further observed that*

*"It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth..."*

*40. 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 minimized.*

*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."*

*44. Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all Courts need to play an active role. The Committee observed thus:*

*"2.2..... In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The State discharges the obligation to*

*protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court.....*

*2.15 The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth.....*

*2.16.9. Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore 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. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth…."*

*45. In Chandra Shashi v. Anil Kumar Verma 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.*

*49. Justice Cardozo in his widely read and appreciated book "The Nature of the Judicial Process" discusses the role of the judges. The relevant part is reproduced as under:-*

*"There has been a certain lack of candour," "in much of the discussion of the theme [of judges' humanity], or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations." I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."*

*50. Aharon Barak, President of Israeli Supreme Court from 1995 to 2006 takes the position that:*

*"For issues in which stability is actually more important than the substance of the solution - and there are many such case - I will join the majority, without restating my dissent each time. Only when my dissenting opinion*

*reflects an issue that is central for me - that goes to the core of my role as a judge - will I not capitulate, and will I continue to restate my dissenting opinion: "Truth or stability - truth is preferable".*

*"On the contrary, public confidence means ruling according to the law and according to the judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the judge is doing justice within the framework of the law and its provisions. Judges must act - inside and outside the court - in a manner that preserves public confidence in them. They must understand that judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for 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."*

In **M. S. Saravanan Vs. S. M. Jeyaraj, reported as 2014 (3) Crimes 297(Mad.)** it is ruled as under;

*"As far as the present case is concerned, this Court is of the considered view that what kind of evidence is to be adduced in a given case it is within the domain of the Petitioner/Accused and it is for him to establish his case in the manner known to law and in accordance with law. It is true that the learned Judicial Magistrate cannot permit a party to unnecessarily prolong the conduct of the trial of a given case or summons witnesses whose evidence may not have any baring on the case at all. Generally speaking, the Petitioner/Accused ought to be provided with the opportunity for seeking the assistance of the court of law in regard to the summoning of witnesses and the like nature.*

*In short, the nature of evidence what should be ought not to be left within the ambit of a court of law after all the Petitioner/Accused is the well the best person and gauge as to how he can establish his case by projecting necessary defence.*

*One cannot brush aside the important fact that as seen from paragraph No. 9 of the impugned order in Crl. M.P. 5149 of 2013 in C.C. No. 721 of 2012 passed by the trial court some opportunities were given to the Petitioner/Accused this Court opines that the right lead the evidence and to let in what kind of evidence is purely within the domain and discretion of the*

> *Petitioner/Accused and for proving his version of the case or his stand. Afuller and adequate opportunity must be provided so as to defend the cause of justice. If Crl. M.P. 5149 of 2013 in C.C. NO. 721 of 2012 Is allowed, the highest thing that would happen is an opportunity would be provided to the Petitioner/Accused to project his version or proving of his case in the best possible manner as he wishes/desires."*

As per Article 20(3) of the Constitution of India only the accused is given protection to not to be forced to be witness against himself. But no such law is present for the complainant or any other witnesses. Hence, there is no legal bar to direct the Complainant and victim girl to undergone through the Narco Analysis Test. Moreover, it is also necessary to mention here that the Ld. Sessions Judge without calling any say from complainant or victim came to abrupt conclusion and dismissed the application of the accused/ Petitioner for conducting Narco Analysis Test.

Hon'ble High Court of Rajasthan in **State Vs. Jasveersingh Jat, reported as (2018) 3 RLW 1935 (Raj)** has taken the view as under;

> *"7. The solitary objection raised by Shri Sunil Mehta learned counsel representing the complainant and the learned Public Prosecutor for opposing the prayer of the accused to get himself subjected to the invasive scientific*

*test was that the application was belated and that if at all, the same could have been filed during the course of investigation as per the plain language of Section 54 Cr.P.C.. However, the said objection is not of any significance because in the entire purview of Cr.P.C., the only stage where the accused is allowed to speak out before the court is the stage of defence i.e. under Section 313 Cr.P.C. Before that, the accused has to simply go by the commands of the prosecution and the court. Otherwise also, Section 165 of the Evidence Act empowers the trial court with wide powers to discover or obtain facts. As per Section 315 Cr.P.C., the accused has a right to appear as a witness in defence. The learned Trial Judge, whilst allowing the application of the accused has clearly observed that the endeavour of the accused to get himself subjected to the invasive technical tests would as a matter of fact be of assistance in arriving to the truth and also appears to be essential for providing fair opportunity of defence to the under-trial accused."*

In **Dr. Purshottan Soni Vs. State, reported as 2007 SCC Online Guj 58,** Gujarat High Court took the view as under:

*"23. At this stage it is required to be noted that in the present case the petitioner is the accused. It is also important to note that the accused is demanding Brain*

*Mapping Test/Brain Fingerprinting to prove his innocence. Brain Fingerprinting is based on the principle that the brain is central to all human acts. In a criminal act, there may not be many physical evidences at the crime scene, but the "brain" is always there recording the sequences of the crime. The basic difference between a criminal and innocent person is that the criminal has the details of the crime stored in his brain, whereas the innocent does not. In brain fingerprinting testing, the subject is made to sit in a quiet room with sensors on his headband that measure electrical brain responses. Three types of stimuli "targets", "irrelevant", and "probes", in the form of words, pictures, or sounds are presented for a fraction of a second each, under computer control. Incoming stimulus that is significant and noteworthy results in a specific, electrical brain response, known as P-300, which is one aspect of a larger brain wave response known as MERMER (Memory and Encoding Related Multifaceted Electroencephalographic Response). However, determination of innocence or guilt is a legal entity rather than a scientific determination. The investigating agencies can take the results of "Brain Fingerprinting" as an evidence along with all other available evidence to reach a verdict of guilty or not guilty. According to a study the accuracy rate of this test*

*is 99.99 per cent and in USA, the FBI have been making use of this technique to convict criminals.*

*24. According to the petitioner he has been falsely involved in the case and he disputes recovery of weapon at his instance. It is also required to be noted that the petitioner is facing serious charge of offence of murder, which is punishable with capital punishment. The petitioner-accused himself volunteers for the Brain Mapping Test/Lie Detector Test. For a fair trial all possible evidence is required to be brought on record to decide whether the accused is guilty or not. Denying any opportunity to bring on record certain evidence on the ground that the trial will be delayed would amount to denying substantial justice to an accused especially when he is facing a murder trial. On the contrary, if the Lie Detector Test/Brain Mapping Test is allowed, and if it is presumed that the said test is in his favour, that will not exonerate the petitioner-accused. The evidence is required to be considered in their totality. It cannot be said that merely on Lie Detector Test/Brain Mapping Test the petitioner-accused will be acquitted even though other evidence against him are on record. Looking to the particular facts of the case, especially when the petitioner accused specifically pleaded for Brain Mapping Test, I am of the view that, such an opportunity cannot be denied*

*on the ground that the trial will be delayed. It is also required to be noted that unless it is proved that the petitioner-accused is guilty, the presumption is always in his favour. Even if the Lie Detector Test/Brain Mapping Test is allowed, at the most it may happen that the trial may be delayed by a few days. Moreover, if the Test allowed, justice will be done to the petitioner and the prosecution can have no grievance about the test.*

*25. Under Article 21 of the Constitution of India, it is the fundamental right conferred on every person, including an accused to have a fair and open trial. The scope of Article 21 has received a liberal and expansive interpretation from time to time by the Apex Court and fair trial is the essence of the fundamental right conferred to every person under the Constitution. Under the right conferred by Article 21 of the Constitution of India, if the liberty of a person is deprived otherwise according to the procedure established by law, then the Court can interfere in the matter.*

*27. It is required to be noted that the right of the accused to give evidence to prove his innocence not only flows from the principles of natural justice, which is now held to be a part of Articles 14/21 of the Constitution of India, but also under Section 315 of the Code of Criminal Procedure. Giving of evidence cannot be restricted only*

*to giving of oral testimony in Court. In this century, electronic usage has been accepted in judicial dispensation. I am of the view that in a matter where it is the case of the accused that he is falsely involved, he should be permitted to give evidence in any form whether it be in the form of oral deposition before the Court or in the form of scientific nature like that of Brain-mapping test. To deprive the accused of such a right would tantamount to violation of his fundamental rights.*

*28. It is also required to be noted that undue interest has been taken in the matter by the State. A special Senior Prosecutor has been appointed in the matter. Umpteen number of affidavits and documents were placed on record. The request for brain-mapping test has been objected by tooth and nail. Admittedly the prosecution has failed to show any prejudice being caused in case of Brain-mapping test is allowed. The fact that the State opposes the Brain-mapping test raises doubt about the conduct of prosecution.*

*29. A contention has been raised that if this application is allowed, it would encourage number of persons to file similar applications. However, it is a well-known fact that very few accused resort to this provision and give evidence. It cannot be presumed that the brain-mapping test would be in favour of the accused. In fact a guilty*

*accused would be wary of allowing himself to undergo brain-mapping because it would prove his guilt. Another aspect is the fact that the entire purpose of criminal law and prosecution is to find out the truth and if for the purpose of finding out the truth, brain-mapping is resorted to, the so-called apprehension cannot come in the way of the ultimate aim of finding out the truth.*

*30. According to the respondent, the brain-mapping is only a psychological test and is not an evidence. This argument cannot be accepted. In the recent past in number of cases brain-mapping test has been carried out. As to whether the results of brain-mapping test can be treated as evidence or what evidentiary value is to be given to such test is a matter to be decided by the trial court. However, the light to produce such evidence cannot be deprived merely because the prosecution at this stage believes that the evidence is inadmissible. The question is not of inadmissibility of evidence, but the question is of what weightage is to be given to the brain-mapping test, which is for the trial court to decide. I am of the view that on this ground such evidence cannot be prevented from coming on record.*

*31. It is also required to be noted that the respondent has failed to prove any prejudice which may be caused to it by the accused undergoing a brain-mapping test. On the*

*contrary, if the brain-mapping test goes against the accused, it would support the prosecution case.*

*32. It is also required to be noted that the prosecution itself at the initial stage had asked for a polygraph test which is a very raw test as compared to a brain-mapping test and despite the fact that the accused had written from the jail that he wants his polygraph or lie-detection test, the same was not conducted and no reasons are forthcoming for not doing so. It is also required to be noted that there is no substance in the argument that it would delay the trial. The application for brain-mapping has been given much before the trial has begun. Even from the jail in the year 2002 the petitioner accused had asked for a lie-detection test which was not carried out. I am therefore of the opinion that if a brain-mapping test is allowed, no prejudice is likely to be caused to the prosecution.*

*33. In the premises the petition is partly allowed. The prayer for further investigation is rejected. However, the investigating authority shall conduct Brain Mapping/Brain Finger Printing Test of the petitioner-accused as requested by the petitioner as expeditiously as possible. Rule is made absolute to the aforesaid extent. D.S. permitted."*

In **Vinodbhai Vanjani Vs. State, reported as 2016 SCC OnLine Guj 302**, Gujarat High Court ruled that:

> *"4. Learned APP has submitted that when the prayer has been restricted so far as point/ground No. 7 of the application at Exh.6 is concerned, as narrated in the affidavit dated 3/5/2016, he has no objection if this Criminal Revision Application is partly allowed so far as point/ground No. 7 of application Exh.6 is concerned.*
>
> *5. I have considered the above referred submissions made by learned advocates for the parties and gone through the above referred observations made by the Hon'ble Supreme Court so far as this narco analysis test/lie detector test is concerned.*
>
> *6. It appears from the impugned order that the learned trial Judge has observed to the effect that lie detector test or narco analysis test is always to be in the aid of investigation and cannot be accepted as an evidence of a particular fact. For that, as such, there is no dispute but the particular fact or any fact comes after the said test is carried out by the concerned authority after following due procedure. Under the circumstances, keeping in mind the ratio laid down by the Hon'ble Supreme Court in mind, in my view, the present Criminal Revision Application deserves to be partly allowed and the*

*impugned order passed by the trial court requires to be modified.*

*7. The present Criminal Revision Application is partly allowed. Impugned order dated 2/4/2016 passed by the learned Additional Sessions Judge, City Sessions Court, Ahmedabad, in. Sessions Case No. 376 of 2014 below application Exh.6 is hereby modified to the effect that the investigating agency is hereby directed to carry out the investigation only so far as point/ground No. 7 of the application at Exh.6 is concerned under section 173(8) of Cr.P.C. Upon completion of the said test, the concerned Investigating Officer is directed to produce the report of the said test before the concerned Court after following due procedure. The concerned authority is requested to carry out the procedure as early as possible after the said task is handed over by the concerned Investigating Officer. Direct service is permitted."*

In **Jaga Arjan Dangar Vs. State, reported as MANU/GJ/0824/ 2018,** Gujarat High Court took the view as under:

*"13. The Court also had clarified that the report of the three tests would not by itself be contrary and it is open for the prosecution to lead appropriate evidence both oral as well as documentary for the purpose of establishing his case beyond reasonable doubt and it*

*would be open for the defence to lead evidence in accordance with law. The report of Forensic Science Laboratory shall be considered by the trial Court along with other evidence that may be led in the course of trial in accordance with law.*

*14. A comprehensive tutorial review by Lawrence A. Farwell has also been pressed into service to point out that the report of brain fingerprinting has virtually no error rate. The error rate is 0% and 100% of determinations have been correct. Apt would be to refer the same as under:-*

*"Summary*

*The role of brain fingerprinting in forensic science is to bring within the realm of scientific scrutiny the record of a crime, terrorist act, terrorist training, specific crime-or terrorism-related knowledge or expertise, or other relevant information stored in the brain of a suspect or other person of interest, and to develop reliable forensic science evidence based on the accurate detection of such information.*

*Brain fingerprinting is a scientific technique to detect concealed information stored in the brain by measuring event-related potential (ERP) brainwave responses. Brain*

*fingerprinting laboratory and field tests at the CIA, the FBI, the US Navy, and elsewhere have detected the presence or absence of information regarding the following:*

*real-life events including felony crimes;*

*real crimes with substantial consequences, including judicial outcomes such as the death penalty or life in prison;*

*concealed information in real-world cases where subjects were offered a $100,000 reward for beating the test;*

*knowledge unique to FBI agents;*

*knowledge unique to explosives (EOD/IED) experts;*

*knowledge unique to US Navy medical military personnel;*

*pictorially represented knowledge;*

*mock crimes and mock espionage scenarios;*

*other laboratory tests and real-world applications.*

*xxx xxx xxx*

*xxx xxx xxx*

*Brain fingerprinting computes a determination of "information present" (the subject possesses the specific information tested) or "information absent" (he does not) for each individual subject. The brain fingerprinting bootstrapping algorithm also computes a statistical confidence for each individual determination.*

*In data analysis, responses to probes are compared with two standards. Target stimuli provide a standard for the subject's brain response to known crime-relevant information, information which is provided to all subjects. Irrelevant stimuli provide a standard for the subject's response to irrelevant information consisting of plausible but incorrect features of the crime. Data analysis determines whether the response to the probes is more similar to the response to the targets or to the response to the irrelevants, and provides a statistical confidence for this determination.*

*In our view, in order to be viable for field use, a technique must have less than 1% error rate overall, and less than 5% error rate in every individual study. Brain fingerprinting exceeds this standard. In over 200 cases including all field and laboratory research so far, brain*

*fingerprinting has not produced a single error, neither a false negative nor a false positive. Error rate has been 0%. 100% of determinations have been correct. (Note, however, that this is simply a report of the actual data to date; no science can be generally characterized as "100% accurate" without qualification or reference to a specific data set.) In brain fingerprinting using the P300-MERMER, all tests have resulted in a definite determination with a high statistical confidence. There have been no indeterminates. In brain fingerprinting using the P300 alone, in less than 3% of cases, the data analysis algorithm has concluded that insufficient information is available to make a determination in either direction with a high statistical confidence, resulting in an indeterminate outcome (not an error).*

*Brain fingerprinting specific issue tests detect information regarding a specific event at a particular time and place, such as a crime or terrorist act. Brain fingerprinting specific screening tests detect a specific type of knowledge or expertise, such as knowledge unique to FBI agents, bomb makers, or Al-Qaeda-trained terrorists. Brain fingerprinting is not applicable for general screening, when the investigators have no idea what information is being sought.*

*Brain fingerprinting is highly resistant to countermeasures. Subjects have been taught the same countermeasures that have proven effective against other, non-brain fingerprinting techniques. Countermeasures had no effect on brain fingerprinting, despite the $100,000 reward offered for beating the test with countermeasures and the motivation to beat the test inherent in real-world applications. All subjects, whether practicing countermeasures or not, have been correctly detected."*

*15. On this subject, yet another article, called "Braining Fingerprinting" a Critical Analysis by J. Peter Rosenfeld, a Ph.D. And Professor of Northwestern University is also brought on record.*

*16. Worthwhile would it be to refer to the insight of the author as an expert in the field:-*

*"One of the most serious potential problems with all deception-related paradigms based on P300 as a recognition index is the potential vulnerability of these protocols to countermeasures (CMs). These are covert actions taken by subjects so as to prevent detection by a GKT. (See Honts & Amato, 2002; Honts, Devitt, Winbush, & Kircher, 1996.) One might think that CM use*

*would be detectable, and thus not so threatening to P300-based deception detection. For example, if the subject simply failed to attend to the stimuli, then there would be no P300s to the targets, and that would indicate noncooperation."*

*xxx xxx xxx*

*xxx xxx xxx*

*One may read the following claim on the BF Web site:*

*Farwell Brain Fingerprinting is a revolutionary new technology for solving crimes, with a record of 100% accuracy in research with US government agencies and other applications. The technology is proprietary and patented. Farwell Brain Fingerprinting has had extensive media coverage around the world. The technology fulfills an urgent need for governments, law enforcement agencies, corporations, and individuals in a trillion-dollar worldwide market. The technology is fully developed and available for application in the field."*

*17. On the strength of these articles, which have been referred to hereinabove, it can be noticed that these tests essentially are designed, brain fingerprinting in particular, also responding to counter measures. The*

*counter measures, in fact, as claimed by the experts have no effect on brain-fingerprinting. Many rewards have been offered for beating the test with counter measures and they have not been successful in beating.*

*18. Reverting to the factual matrix in the instant case, it can be noticed that the case is of murder of one Mr. Indrajith Zala, who was an undertrial prisoner and was out on temporary bail being an undertrial prisoner for the alleged murder of one Mr. Popatbhai Devabhai Bharwad belonging to Bharwad community and the present applicant belongs to Bharwad community. Considering the fact that the applicant is, from the beginning, averring that his involvement has been with sheer vindictiveness and he be permitted to undergo scientific tests and as one of the objectives of these tests is to eliminate the innocent persons from the clutches of criminal justice machinery even if the results are not going to, in any manner, change the course of the trial, this Court is inclined to consider his request permitting him to undergo these tests at his own cost.*

*19. Let the Investigating agency schedule applicant's test in narco analysis, brain mapping and lie detection after scheduling with the Forensic Science Laboratory as quickly as possible since the charges have not been*

*framed so far. It is expected that within a period of four weeks, from the date of receipt of the copy of this order, the same shall be accomplished. The outcome of which shall be governed by the law on the subject and would not automatically absolve the applicant. The petitioner to cooperate with the Investigating Officer. Expenses shall be borne by the accused.*

*20. Petition stands allowed in above terms. Rule is made absolute accordingly."*

In regard to the Narco Analysis Test of complainant and his witnesses Gujarat High Court in **Sunilkumar Virjibhai Damor Vs State of Gujarat, reported as (2018) SCC Online Guj 2153**, held as under;

*"38. ....I am of the view that the first informant, her son and the mother of the victim, they all should be subjected to the three tests viz. Lie Detector; Narco Analysis and Brain Mapping. Subjecting these three witnesses to the three scientific tests will make the picture moreclear. For this, the Investigating Officer may do it as a part of the further investigation by informing the trial Court in this regard. If any of the three offer any resistance in this regard then the same by itself will be an indication of their guilty conscience. To level false allegations of sexual assault against any person is something very*

*serious. Ultimately, if such allegations are found to be false, then there is no way, in which, the person against whom such false allegations are levelled can be compensated. In any society, once such allegations are levelled, the entire image of that person as well as the family members of that person would get tarnished. People would start hating them. For no fault on the part of the other family members, they would have to pay a very heavy price. Keeping this in mind, I have suggested to subject the grandmother, her son and her daughter-in-law to the three tests.*

*39. Let me clarify and it goes without saying that any observations touching the merits of the case are purely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of the final opinion in the main matter.*

*40. Let me make myself very clear that the reports of the three tests by itself does not put an end to the trial. It will be open for the prosecution to lead appropriate evidence both, oral as well as documentary for the purpose of establishing its case beyond the reasonable doubt. At the same time, it shall be open for the defence also to lead appropriate evidence in accordance with law. The reports of the Forensic Science Laboratory shall be considered*

*by the trial Court in accordance with law alongwith the other evidence that may be led in the course of the trial."*

## CHAPTER 72

TO PROVE THE FALSITY OF THE EVIDENCE BY THE COMPLAINANT AND ITS WITNESSES, THE NARCO TEST OR ANY SCIENTIFIC TEST CAN BE ASKED AND ITS RESULT CAN BE USED TO DISCREDIT THE TESTIMONY OF THE WITNESSES.

Full Bench of Hon'ble Supreme Court in **Smt. Selvi Vs. State (2010) 7 SCC 263** had ruled that the Narco Analysis Test could be requested by defendants who want to prove their innocence. It is further ruled that;

> ***49. This technique can serve several ends. The revelations could help investigators to uncover vital evidence or to corroborate pre-existing testimonies and prosecution theories.*** *Narcoanalysis tests have also been used to detect "malingering" (faking of amnesia). The premise is that during the "hypnotic stage" the subject is unable to wilfully suppress the memories associated with the relevant facts. Thus, it has been urged that drug-induced revelations can help to narrow down investigation efforts thereby saving public resources.* ***There is of course a very real possibility that information extracted through***

***such interviews can lead to the uncovering of independent evidence which may be relevant.*** *Hence, we must consider the implications of such derivative use of the drug-induced revelations, even if such revelations are not admissible as evidence.* ***We must also account for the uses of this technique by persons other than investigators and prosecutors. Narco analysis tests could be requested by the defendants who want to prove their innocence. Demands for this test could also be made for purposes such as gauging the credibility of testimony, to refresh the memory of witnesses or to ascertain the mental capacity of persons to stand trial. Such uses can have a direct impact on the efficiency of investigations as well as the fairness of criminal trials.*** *[See generally George H. Dession, Lawrence Z. Freedman, Richard C. Donnelly and Frederick G. Redlich, "Drug-Induced Revelation and Criminal Investigation" [62 Yale Law Journal 315-347 (February 1953)] .]*

## CHAPTER 73

AS PER NEW PROVISION OF CR.PC THERE IS NO NEED THAT JUDGE SHOULD RECORD A FINDING IN SPECIFIC WORD THAT IN THE INTEREST OF JUSTICE, PROSECUTION IS NEEDED.

In **Prem Sagar Manocha v. State (NCT of Delhi) (2016) 4 SCC 571** it is ruled as under;

> ***''Criminal Procedure code, 1973 – S. 340(1)(a) – Recording of finding by court after preliminary inquiry regarding commission of offences not mandatory – Court only required to record finding in respect of preliminary inquiry, for forming opinion that it is expedient in the interest of justice that an inquiry should be made in respect of offences which appears to have been committed.***
>
> ***11.*** *Section 340 CrPC, prior to amendment in 1973, was Section 479-A in the 1898 Code and it was mandatory under the pre-amended provision to record a finding after the preliminary inquiry regarding the commission of offence; whereas in the 1973 Code, the expression "shall" has been substituted by "may" meaning thereby that under the 1973 Code, it is not mandatory that the court should record a finding. What is now required is only recording the finding of the preliminary inquiry which is*

*meant only to form an opinion of the court, and that too, opinion on an offence "which appears to have been committed", as to whether the same should be duly inquired into.*

***12.*** *We are unable to appreciate the submission made by the learned Senior Counsel that the impugned order is liable to be quashed on the only ground that there is no finding recorded by the court on the commission of the offence. Reliance placed on Har Gobind v. State of Haryana [Har Gobind v. State of Haryana, (1979) 4 SCC 482 : 1980 SCC (Cri) 98] is of no assistance to the appellant since it was a case falling on the interpretation of the pre-amended provision of CrPC. A three-Judge Bench of this Court in Pritish v. State of Maharashtra [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] has even gone to the extent of holding that the proceedings under Section 340 CrPC can be successfully invoked even without a preliminary inquiry since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed. To quote: (Pritish case [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] , SCC pp. 258-59, para 9)*

*"9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry*

*contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."*

***(Emphasis Supplied)''***

In **M. Muthuswamy v. Special Police Establishment, 1984 SCC OnLine Mad 158,** it is ruled as under;

***"10.*** *My attention has been drawn to the decision in Sundararami Reddi v. Venkatasubba Naidu, (1958) 2 Andh WR 480 wherein it was held:*

*"Failure by the Sessions Judge to use the actual words of the S. 476, namely, that it is expedient in the interests of justice that an enquiry should be made, does not ipso facto make the order sanctioning prosecution of the appellant bad, if the language used makes it clear that the prosecution was in the interests of justice."*

This Judgment in **M. Muthuswamy v. Special Police Establishment, 1984 SCC OnLine Mad 158** is approved by Full Bench of Supreme Court in **Pritish v. State of Maharashtra, (2002) 1 SCC 253.**

## CHAPTER 74

POLICE IN HIS CHARGE SHEET CANNOT DECIDE THE GUILT OR INNOCENCE OF ANY ONE BY GIVING A JUDGMENT LIKE A JUDGE.

Police has duty to only to collect the evidence. They are only evidence collecting agencies. They have to put the evidence before the judge and then the judge before whom the material/evidence is produced, has to decide as to which offence is disclosed.

In **Sandeep Rammilan Shukla and Ors. Vs. The State of Maharashtra and Ors. 2009 ALL MR (CRI.) 2991** it is ruled as under;

> ***A] Equality Before Law –*** *Article 14 of the constitution – Guarantee of equality before law and equal protection of law. This guarantee has to be meaningful and purposeful. It can be such if every day is treated equally before the law, without any discrimination or favorable treatment. The concept is that Justice is "not only be done '" but "seen to be done". Secondly, when material is produced demonstrating strong suspicion that protectors of law are themselves involve in crime, then, no different yardstick or criteria can be applied to their cases.* ***This is a stage where none is to be***

***pronounced guilty or innocent. That matter is to be determined by a Court of Law. The police force cannot take over this function of court of law. They would be overstepping their limits if they are permitted to usurp the functions of a court of law.***

***B]*** *If The Police do the work of Court by declaring innocence or guilt there will be complete breakdown of the constitutional Machinery and rule of law. In future if any police officer found to be flouting the rule of law, brazenly and openly the court will direct stringent action against such officer.*

## CHAPTER 75

JUDGE IS A WITNESS FOR WHAT HAPPENED BEFORE HIMSELF.

**Section 121** in The Indian Evidence Act, 1872 reads thus;

> *''**121. Judges and Magistrates.—**No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any question as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he*

*may be examined as to other matters which occurred in his presence whilst he was so acting.*

*Illustrations*

*(a) A, on his trial before the Court of Sessions, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.*

*(b) A is accused before the Court of Sessions of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.*

*(c) A is accused before the Court of Sessions of attempting to murder a police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.''*

In **K. Sathishkumar v. State through Inspector of Police, All Women Police Station, Ramanathapuram MANU/TN/7583/2018,** it is ruled as under;

***''9.*** *A reading of the above provision makes it clear that* ***a Judge or Magistrate can be examined before the Court only with regard to matters which occurred in his presence while he was so acting as a Judge or Magistrate****. The illustrations that have been provided under Section 121 of Evidence Act, clearly explains the manner in which, a Judge or a Magistrate can be*

> *examined upon a special order passed by a Superior Court. This provision has also been lost sight of by the prosecution for a long number of years and this Court only hopes that going forward, this mistake of adding the Judges and Magistrates as witnesses, just because they recorded 164 statement, does not continue.''*

In a recent judgment in case of **Suo Motu Vs. Santy George 2020 SCC OnLine Ker 563,** Justice Kamal Pasha is summoned on the application filed by the alleged contemnor.

In **Re: Vinay Chandra (1995) 2 SCC 584,** the Full Bench of Hon'ble Supreme Court asked the complaining Judge Shri. Justice Keshote to file reply to the affidavit by the alleged contemnor.

> *"The affidavits filed by the contemner were directed to be sent to Justice Keshote making it clear that he might offer his comments regarding the factual averments in the said affidavits.*
>
> *4. In view of the said order, the Court dismissed the contemner's application No. 2560/94 praying for discharge of the notice. The contemner thereafter desired to withdraw his application No. 2561/94 seeking initiation of proceedings against the learned judge for contempt of his own Court, by stating that he was doing so "at this stage reserving his right to file a similar application at a*

*later stage". The Court without any comment on the statement made by the Contemner, dismissed the said application as withdrawn.*

*5. Justice Keshote by a letter of 20th August, 1994 forwarded his comments on the counter affidavit and the supplementary/ additional counter affidavit filed by the contemner.* **"**

In **R. Vishwanathan Vs. Rukn AIR 1963 SC 1**, the sitting Chief Justice and other two sitting Judges of the High Court were cross examined to prove bias. It is ruled as under;

***''110.*** *Among the witnesses examined in the case were Viswanathan, the eldest son of Ramalingam, and Puttaraja Urs, J., for the plaintiffs, and Abdul Wajid, Narayanaswami Mudaliar and Balakrishniah, J., for the other side, Medappa, C.J., and Raju were cited but were not examined. After a protracted trial, Ramaswami, J., held that the judgment of the Full Bench of Mysore was coram non judice and that the judgment was thus not conclusive under Section 13 of the Code of Civil Procedure. He further held that the properties in suit were those of a joint family. The claim of the sons of Ramalingam, was thus decreed, and possession was ordered against the executors and also accounts. Ancillary*

*orders were passed in the other suits already mentioned, which were tried along with the main suit, CS No. 214 of 1944.''*

In the case of **Woodward Vs. Waterbury 155 A. 825** sitting Judge of the Supreme Court was summoned as a witness and was cross examined for his observation in the order which were not supported by the material available on record.

It is ruled as under;

***"The two judges of the Superior Court called by the plaintiff as witnesses testified as to matters involved in the testimony of Krooner given at the first trial which were not apparent in the transcript of evidence then taken, that is, the points he indicated in the course of his testimony when he pointed out certain places upon photographs in evidence.***

*The weight to be given the testimony of the two judges called as witnesses was one of those incidental matters a failure to charge as to which furnishes no ground upon which a reversal can be based in the absence of any request to charge.Crane v. Hartford-Connecticut Trust Co., supra, p. 316.*

*The calling of judges of the Superior Court as witnesses should be avoided whenever it is reasonably possible to do so. Counsel should never summon them if the rights of their clients can be otherwise protected. But if summoned, they cannot refuse to testify. Gorham v.New Haven, 79 Conn. 670, 675, 66 A. 505; Bishop v.New Haven, 82 Conn. 51, 53, 72 A. 646. The judge who heard the first case was peculiarly qualified to testify upon the matters as to which he was questioned. The other judge had been, before his appointment to the bench, counsel for Krooner in the former trial. This fact was evidently brought out in the evidence, as it is stated in the finding and so was before the jury for their consideration. We have never held, nor do we know of any such decision by any other court, that an attorney is disqualified as a witness because he has been counsel for a party in the case, where his professional connection with that party and with counsel for him has been definitely and completely severed. Jennings Co., Inc. v. DiGenova,107 Conn. 491, 497, 141 A. 866."*

**See also: Jawand Singh Hukam Singh 1959 Cri.L.J. 1469 (Para 72,73), Murat Lal Vs. Emperor 1917 SCC OnLine Pat 1.**

In **Jawand Singh Hukum Singh v. Om Prakash Agarwal, Sub Judge 1st Class, Jagadhri, AIR 1959 Punj. 632** In the instant case it was pithily stated;

> *"Among a large variety of acts and conduct which mounts to contempt of court, whereby due administration of justice is obstructed, interrupted, embarrassed, or impeded, an attempt to corrupt a judge is perhaps the most serious. It is a dangerous assault upon the integrity of the court. Every public office is a public trust, but a judicial office is more than that - it is a sacred trust. It is abhorrent to the conception of public justice that a judge should be influenced in making his decision by extraneous influences to corrupt him or out of feeling for personal retaliation. Courts have shown scant mercy to those who have attempted to deter a presiding officer of a court from performance of his duty by attempting to influence his decision by means of private communication.*
>
> *In the instant case the gravamen of the petitioner's complaint was that when he had filed a complaint in the Judicial Magistrate's court against certain officials for offences under Section 352, 341, 500 and 506, of Indian Penal Code, the respondent who was a Sub-Judge and a friend of the accused spoke to the Magistrate in favour of the accused. The court on scrutiny of all the affidavits and*

*documents filed and the evidence recorded in the matter came to the conclusion that the allegations were not only untrue but motivated by malice to damage the career of the Sub-Judge, and the court added:*

*"If the allegations as have been made in this case had been substantiated the guilty person would have richly deserved a deterrent punishment"*

In **Murat Lal Vs. Emperor 1917 SCC OnLine Pat 1** it is ruled as under;

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

***An accused person must not be put at a disadvantage by any act of the Court, in that be may have the corresponding right of cross-examining : the person who has formed an opinion from what he has seen. Their Lordships of the Privy Council have laid down in very express terms that "it ought to be known, and their***

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

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

## CHAPTER 76

BAR UNDER SECTION 195 OF CR. PC R/W 340 OF CR. P.C. IS FOR PROTECTION OF THE INNOCENT FROM FRIVOLOUS PROSECUTION BY LITIGANTS.

In **Bandekar Brothers Pvt. Ltd. Vs. Prasad Vassudev Keni 2020 SCC OnLine SC 707** it is ruled as under;

> ***"Penal Code (45 of 1860), S. 191, S. 192 – Criminal P.C. (2 of 1974), S. 190, S. 195 – Giving/fabricating false evidence – Private complaint – Maintainability – Private complaint filed for offences under Ss. 191 and 192 is not maintainable, even if false evidence is created outside Court premises.***
>
> *S.195 of CrPC states that in offences covered by it, no Court shall take cognizance except upon complaint in writing of public servant, insofar as offences mentioned in sub-clause (1)(a) are concerned, and by complaint in writing of 'Court' as defined by sub-section (3), insofar as offences delineated in sub-clause (1) (b) are concerned. Where facts mentioned in a complaint attracts provisions of Ss. 191 to 193 of the IPC, S.195(1)(b)(i) of CrPC applies. Once these sections of IPC are attracted, offence should be alleged to have been committed in, or in relation*

*to, any proceeding in any Court. Offence punishable under these sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court. Contrasted with S. 195(1)(b)(i), S. 195(1)(b)(ii) of CrPC speaks of offences described in S. 463, and punishable under Ss 471, 475 or 476 of the IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. What is conspicuous by its absence in S. 195(1)(b)(ii) are the words 'or in relation to', making it clear that if provisions of S. 195(1)(b)(ii) are attracted, then offence alleged to have been committed must be committed in respect of document that is custodia legis, and not an offence that may have occurred prior to document being introduced in court proceedings.*

*Thus, When Section 195(1)(b)(i) of the CrPC is attracted, the ratio of judgment reported in AIR 2005 SC 2119 which approved AIR 1998 SC 1121, is not attracted, and that therefore, if false evidence is created outside Court premises attracting Ss. 191/192 of the IPC, aforesaid ratio would not apply so as to validate a private complaint filed for offences made out under these sections."*

In the case of **Manoj Suresh Deware Vs. State of Maharashtra 2014 ALL MR (Cri) 3145** it is ruled as under;

> ***''S. 195(1)(b)(ii) – Penal Code (1860), Ss. 465, 471 – u/S. 195(1)(b)(ii) –*** *Against taking of cognizance of offences punishable u/Ss. 465 and 471 of IPC – Applicability – Process issued against accused for offence of false evidence u/s. 193 as also for forgery u/Ss. 465 and 471 – All offences alleged on basis of same facts – Object of forgery, as per complainant herself, was to give the false evidence in court – Held, in such a case, offence of forgery cannot not be separated from offence of giving false evidence – Bar S. 195(1)(b)(ii) would be attracted - Said bar cannot be circumvented on ground that forgery in question had been committed before submitting document in Court.''*

## CHAPTER 77

USE OF 340 CR. PC IN DIFFERENT COURT, TRIBUNALS AND PROCEEDINGS.

DEFINITION OF COURT AS PER SECTION 195 OF CR.PC.Section **195(3)** of Cr.P.C reads thus;

> *''**195(3)** In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.''*

1. Civil Court
2. Magistrate Court
3. High Court
4. Supreme court
5. DRT
6. Contempt proceeding
7. Bail Petition
8. Charity commissioner
9. Tahasildar, Collector, Revenue Court
10. Company Court, NCLT Etc.
11. 138 N. I. Act cases
12. Family Court

## CHAPTER 78

IF SUBORDINATE COURT/ FAMILY COURT, SINGLE JUDGE FAILS TO TAKE ACTION THEN THE HIGHER COURT OR DIVISION BENCH CAN ORDER PROSECUTION UNDER SECTION 340 OF CR.P.C.

In **Godrej and Boyce Manufacturing Co. Pvt. Ltd. and Ors. Vs. The Union of India and Ors. 1992 CriLJ 3752 it is ruled as under;**

*(A) Notice of Motion for initiating action under Code of Criminal Procedure, S. 340- Creation of backdated letter and using it in Court – The Union of India had filed the present Notice of Motion for initiating action against Godrej, action under S. 340 of the Code of Criminal Procedure, for offences u/S. 192 of the Indian Penal Code.*

*(B) Criminal P.C. (2 of 1974), S.340, S.343- Documents produced before Court - the fact that there was delay in initiating action would not vitiate finding that expediency existed for action under S.340. -Complaint under - Detailed preliminary enquiry is not necessary in each and every case - Natural justice also does not require a notice to prospective accused at the stage of directing filing of complaint.*

*99. We have carefully and anxiously considered the materials before us. On the basis of such close and careful examination, we feel, that the first person on the array of accused should be Dr. Hathi. The letter written by him on 1-6-1983 is at pages 54 to 57 of the compilation which was marked as exh. 'l' for identification. The statement which he made on 17-6-1987 to the Departmental officials is annexure-1 to the affidavit of Viswas Bholse filed on 17-10-1991. He was the General Manager for seven years as on 1987. For four decades and four years, he had served the company. There is hardly any worldly work with which he would be unfamiliar. He must be an adept in market operation and clever in commercial drafting, and endowed with the foresight about the above possible consequences of every step he takes and of every act he does. To such a person, a plea of "order from above" would not be of any avail. The general position of law is that no one can plead the order of a superior officer, military or civil, as an excuse for breaking the law. The official superior could not write, as was done by Kaiser when he wrote his name, and added below, "Supreme Lex Regis Voluntas"(The*

*Will of the King is the Highest Law!). The remark is applicable even in the case of an industrial empire. He is not one who could sing the lines in the song of Brecht. "Here a good deed may be a crime And a wrong be right To you who go in darkness we say It's not easy to know the light." We are clearly of the view that among the identified accused, Hathi stands foremost.*

*100. K. S. G. Murthi, Branch Manager of Madras is a senior officer, whose statement dated 12-6-1987 is Exh. 2, in the aforesaid affidavit of Viswas Bhosle. He is the Regional Manager of the South. The materials do indicate his deep involvement in the offence. He shall figure as accused No. 2.*

*The two persons who had intimate connection with the proceeding and the production of the letters, and the perseverance in the presentation of the false facade, prima facie as revealed as false, are Mr. Lam and 2nd writ petitioner K. N. Naoroji. Mr. Lam occupies the high and responsible position of Vice President and the Director (Corporate Affairs). His involvement is of such depth, that he could not be let off as a mere passive Director, who is content to*

*receive the reward but reluctant to undertake work or take any trouble. The affidavit of Mr. Lam before the Supreme Court and before this Court are contained in pages 162 and 239 of the paper book. He shall figure as accused No. 3. Mr. K. N. Naoroji, the second petitioner in the Writ Petition, cannot be treated as a mere Director. He is a Director, who, on his own showing, had a greater interest in the prosecution of the Writ Petition. The writ petition contains profuse pleadings which was eloquently about the infraction of his constitutional and legal rights. He had not withdrawn from the Writ Petition and its prosecution at any stage later. He cannot plead ignorance about the subsequent developments. He cannot, as a petitioner, disown the acts of Counsel and/ or officers of the company whose cause he had espoused with vigour and vitality. He shall figure as accused No. 4.*

## CHAPTER 79

LAW REGARDING RECUSAL/DISQUALIFICATION OF A JUDGE AND TRANSFER OF CASE FROM ONE COURT TO ANOTHER COURT WHEN FAIR JUSTICE IS DOUBTED.

LAW REGARDING DISQUALIFICATION OF A JUDGE AND PROCEDURE FOR RECUSAL OF A JUDGE

Constitution Bench in **Supreme Court Advocates on Records Association (2016) 5 SCC 808** it is ruled as under;

> ***''77. The above principles are universal in application. Impartiality of a Judge is the sine qua non for the integrity institution. Transparency in procedure is one of the major factors constituting the integrity of the office of a Judge in conducting his duties and the functioning of the court. The litigants would always like to know though they may not have a prescribed right to know, as to why a Judge has recused from hearing the case or despite request, has not recused to hear his case. Reasons are required to be indicated broadly. Of course, in case the disclosure of the reasons is likely to affect prejudicially any case or cause or interest of someone else, the Judge is free to state that on account of personal reasons which the Judge does not want to disclose, he has decided to recuse himself from hearing the case.''***

Full Bench of Hon'ble Supreme Court while taking cognizance of contempt found that, since allegations of corruption are made against one of the member i.e. Justice Kapadia therefore, he (Justice Kapadia) cannot sign the order.

In **Union of India Vs. Ram Lakhan Sharma (2018) 7 SCC 670 : 2018 SCC OnLine SC 646**, it is rules as under;

> *"Principle of Natural Justice:*
> *Fundamental principles of natural justice enumerated the seven well recognised facets which is to the following effect:*
> ***"7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause.*** *This principle consists of seven well recognised facets:*
> *(i) The adjudicator shall be impartial and free from bias,*
> *(ii)The adjudicator shall not be the prosecutor,*
> *(iii)The complainant shall not be an adjudicator,*
> *(iv) A witness cannot be the Adjudicator,*
> *(v)The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,*
> *(vi)The Adjudicator shall not decide on the dictates of his Superiors or others,*

> *(vii)The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations.*
>
> *If any one of these fundamental rules is breached, the inquiry will be vitiated.**"***

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.**

Full Bench of Hon'ble Supreme Court in **Amicus Curiae Vs. Adv. Prashant Bhushan (2010) 7 SCC 592**, observed as under;

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

In **State of Punjab Vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770** it is ruled as under;

*"Constitution of India, Article 226 - BIAS- allegations made against a Judge of having bias - High Court Judge in order to settle personal score passed illegal order against public servant acted against him - Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial / judgment/order etc.*

*stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial "coram non-judice". - Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as "sua causa. Whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one – No one should be Judge of his own case. This principle is required to be followed by all judicial and quasi-judicial*

*authorities as non-observance thereof, is treated as a violation of the principles of natural justice. The failure to adhere to this principle creates an apprehension of bias on the part of Judge.*

***10.*** *There may be a case where allegations may be made against a Judge of having bias/prejudice at any stage of the proceedings or after the proceedings are over. There may be some substance in it or it may be made for ulterior purpose or in a pending case to avoid the Bench if a party apprehends that judgment may be delivered against him. Suspicion or bias disables an official from acting as an adjudicator. Further, if such allegation is made without any substance, it would be disastrous to the system as a whole, for the reason, that it casts doubt upon a Judge who has no personal interest in the outcome of the controversy.*

***11.*** *In respect of judicial bias, the statement made by Frank J. of the United States is worth quoting:*

*If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one will. The human mind, even at infancy, is no*

*blank piece of paper. We are born with predispositions ". Much harm is done by the myth that, merely by". taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine.*

*(In re: Linahan 138 F. 2nd 650 (1943))*

*(See also:* ***State of West Bengal and Ors. v. Shivananda Pathak and Ors.*** *MANU/SC/0342/1998 : AIR 1998 SC 2050).*

***12.*** *To recall the words of Mr. Justice Frankfurter in* ***Public Utilities Commission of the District of Columbia v. Franklin S. Pollak*** *343 US 451 (1952) 466: The Judicial process demands that a judge moves within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that, on the whole, judges do lay aside private views in discharging their judicial functions. This is achieved through training,*

*professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted.*

***13.*** *In* ***Bhajan Lal, Chief Minister, Haryana v. Jindal Strips Ltd. and Ors.*** *MANU/SC/0836/1994 : (1994) 6 SCC 19, this Court observed that there may be some consternation and apprehension in the mind of a party and undoubtedly, he has a right to have fair trial, as guaranteed by the Constitution. The apprehension of bias must be reasonable, i.e. which a reasonable person can entertain. Even in that case, he has no right to ask for a change of Bench, for the reason that such an apprehension may be inadequate and he cannot be permitted to have the Bench of his choice. The Court held as under:*

*Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as 'sua causa', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with*

*the subject-matter, from a close relationship or from a tenuous one.*

***14.*** *The principle in these cases is derived from the legal maxim nemo debet esse judex in causa propria sua. It applies only when the interest attributed is such as to render the case his own cause. This principle is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. (Vide:* ***Rameshwar Bhartia v. The State of Assam*** *MANU/SC/ 0039/1952 : AIR 1952 SC 405;* ***Mineral Development Ltd. v. The State of Bihar and Anr.*** *MANU/SC/0015/1959 : AIR 1960 SC 468;* ***Meenglas Tea Estate v. The Workmen*** *MANU/SC/ 0139/ 1963: AIR 1963 SC 1719; and* ***The Secretary to the Government , Transport Department, Madras v. Munuswamy Mudaliar and Ors.*** *MANU/SC/0435/ 1988 : AIR 1988 SC 2232).*

*The failure to adhere to this principle creates an apprehension of bias on the part of the Judge. The question is not whether the Judge is actually biased or, in fact, has really not decided the matter impartially, but whether the circumstances are such*

*as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. (Vide:* ***A.U. Kureshi v. High Court of Gujarat and Anr.*** *MANU/SC/0209/2009 : (2009) 11 SCC 84; and* ***Mohd. Yunus Khan v. State of U.P. and Ors.*** *MANU/SC/0767/2010 : (2010) 10 SCC 539).*

***15.*** *In* ***Manak Lal, Advocate v. Dr. Prem Chand Singhvi and Ors.*** *MANU/SC/0001/1957 : AIR 1957 SC 425, this Court while dealing with the issue of bias held as under:*

*Actual proof of prejudice in such cases may make the Appellant's case stronger but such proof is not necessary'. What is relevant is the reasonableness of the apprehension in that regard in the mind of the Appellant.*

***16.*** *The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way. Public policy requires that there should be no doubt about the purity of the adjudication*

*process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice, i.e., the Judge has to act fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial 'coram non judice'. Therefore, the consequential order, if any, is liable to be quashed. (Vide:* ***Vassiliades v. Vassiliades*** *AIR 1945 PC 38;* ***S. Parthasarathi v. State of Andhra Pradesh*** *MANU/SC/ 0059/ 1973: AIR 1973 SC 2701; and* ***Ranjit Thakur v. Union of India and Ors.*** *MANU/SC/0691/1987: AIR 1987 SC 2386).*

***17.*** *In* ***Rupa Ashok Hurra v. Ashok Hurra and Anr.*** *MANU/SC/0910/2002 : (2002) 4 SCC 388, this Court observed that public confidence in the judiciary is said to be the basic criterion of judging the justice delivery system. If any act or action, even if it is a passive one, erodes or is even likely to erode the ethics of judiciary, the matter needs a further look. In the event, there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system, technicality*

*ought not to outweigh the course of justice ' the same being the true effect of the doctrine of ex debito justitiae. It is enough if there is a ground of an appearance of bias.*

*While deciding the said case, this Court placed reliance upon the judgment of the House of Lords in Ex Parte Pinochet Ugarte (No. 2) 1999 All ER 577, in which the House of Lords on 25.11.1998, restored warrant of arrest of Senator Pinochet who was the Head of the State of Chile and was to stand trial in Spain for some alleged offences. It came to be known later that one of the Law Lords (Lord Hoffmann), who heard the case, had links with Amnesty International (AI) which had become a party to the case. This was not disclosed by him at the time of the hearing of the case by the House. Pinochet Ugarte, on coming to know of that fact, sought reconsideration of the said judgment of the House of Lords on the ground of appearance of bias and not actual bias. On the principle of disqualification of a Judge to hear a matter on the ground of appearance of bias, it was pointed out:*

*An appeal to the House of Lords will only be reopened where a party though no fault of its own,*

*has been subjected to an unfair procedure. A decision of the House of Lords will not be varied or rescinded merely because it is subsequently thought to be wrong.*

***18.*** *In* ***Locabail (UK) Ltd. v. Bayfield Properties Ltd. and Anr.*** *(2000) 1 All ER 65, the House of Lords considered the issue of disqualification of a Judge on the ground of bias and held that in applying the real danger or possibility of bias test, it is often appropriate to inquire whether the Judge knew of the matter in question. To that end, a reviewing court may receive a written statement from the Judge. A Judge must recuse himself from a case before any objection is made or if the circumstances give rise to automatic disqualification or he feels personally embarrassed in hearing the case. If, in any other case, the Judge becomes aware of any matter which can arguably be said to give rise to a real danger of bias, it is generally desirable that disclosure should be made to the parties in advance of the hearing. Where objection is then made, it will be as wrong for the Judge to yield to a tenuous or frivolous objection as it will be to ignore an objection of substance. However, if there is real ground for doubt, that*

*doubt must be resolved in favour of recusal. Where, following appropriate disclosure by the Judge, a party raises no objection to the Judge hearing or continuing to hear a case, that party cannot subsequently complain that the matter disclosed gives rise to a real danger of bias.*

***19.** In Justice **P.D. Dinakaran v. Hon'ble Judges Inquiry Committee** MANU/SC/0727/2011 : (2011) 8 SCC 380, this Court has held that in India the courts have held that, to disqualify a person as a Judge, the test of real likelihood of bias, i.e., real danger is to be applied, considering whether a fair minded and informed person, apprised of all the facts, would have a serious apprehension of bias. In other words, the courts give effect to the maxim that 'justice must not only be done but be seen to be done', by examining not actual bias but real possibility of bias based on facts and materials.*

*The Court further held:*

*The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as*

*Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision- making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.'*

***20.*** *Thus, it is evident that the allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in hand. The court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order. Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not*

*required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial 'coram non-judice."*

In **Suresh Ramchandra Palande Vs.The Government of Maharashtra 2016 (2) ALL MR 212: 2015 SCC OnLine Bom 6775,** it is ruled as under;

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

*want of impartiality is a nullity and the trial ' coram non judice'.*

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

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

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

***Criminal P.C. (5 of 1898), -Transfer of case -*** *What transpires after giving intimation for transfer can be a ground for transfer- If Judge feels irritated when a party makes clear his intention to apply for transfer from the Court- it will be a good ground for transfer as there is every likelihood of the subsequent trial before him being not impartial and in any case the party will have reasonable apprehension for such a fear- Case should be transferred."*

Hon'ble Supreme Court in **P.K. Ghosh and Ors. Vs. J.G. Rajput (1995) 6 SCC 744** as under;

***"Judicial Bias: Judge should have recused himself from hearing the contempt petition, particularly when a specific objection to this effect was taken by the appellants.***

*Contempt of Courts Act - Constitution of Bench - Objection as to hearing of Contempt petition by a particular Judge - Failure to recuse himself is highly illegal - order vitiated - The response given by B. J. Shethna, J. to Chief Justice of India indicated his disappointment that contempt proceedings were not initiated against the*

*appellants for raising such an objection. The expression of this opinion by him is even more unfortunate.*

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

*Learned Chief Justice of India apprised B. J. Shethna, J. of this allegation to elicit his comments - Letter sent by B. J. Shethna, J. to the Chief Justice of India in this connection are on record. In none of these letters, the basic facts relevant in the present context have been defined and the tenor of both the letters indicates, unfortunately, an attempt to justify the course adopted by B. J. Shethna, J. of hearing the contempt petition and making the impugned order in spite of the above objection expressly taken*

*to his presence in the Bench which heard the contempt petition - These letters also indicated his disappointment that contempt proceedings were not initiated against the appellants for raising such an objection. The expression of this opinion by him is even more unfortunate.*

*In view of the fact that B. J. Shethna, J. has since then been transferred from the High Court of Gujarat to the High Court of Rajasthan, it is needless to direct that the matter be now heard in the High Court of Gujarat by a Bench of which he is not a member.*

*We are indeed sad that in these circumstances, B. J. Shethna, J. persisted in hearing the contempt petition, in spite of the specific objection which cannot be called unreasonable on the undisputed facts, and in making the impugned order accepting prima facie the respondent's above noted contention- The more appropriate course for him to adopt was to recuse himself from the Bench hearing this contempt petition, even if it did not occur to him to take that step earlier when he began hearing it. It has become our painful duty to emphasise on this*

*fact most unwillingly. We do so with the fervent hope that no such occasions arise in future which may tend to erode the credibility of the course of administration of justice.*

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

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

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

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In **R. Vs. Commissioner of pawing (1941) 1 QB 467,** William J. Observed:

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

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It is ruled by Hon'ble Supreme Court in **Sukhdev Singh Sodhi v. Chief Justice S. Teja Singh,1954 SCR 454** that, **a judge who has been personally attacked should not hear a contempt matter which, to that extent, concerns him personally**;

Relevant para of Supreme Court judgment reads as under;

*"We wish however to add that though we have no power to order a transfer in an original petition of*

*this kind we consider it desirable on general principles of justice that* ***a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally.*** *It is otherwise when the attack is not directed against him personally. We do not lay down any general rule because there may be cases where that is impossible, as for example in a court where there is only one judge or two and both are attacked.*

*Other cases may also arise where it is more convenient and proper for the Judge to deal with the matter himself, as for example in a contempt in facie curiae. All we can say is that this must be left to the good sense of the judges themselves who, we are confident, will comfort themselves with that dispassionate dignity and decorum which befits their high office and will bear in mind the oft quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by Judges who have no personal interest or concern in his case."*

Even in the proceedings under section 15 of the Contempt of Court's Act the Judge taking suo - motu cognizance has to recuse himself. He is disqualified to sit in the case. The Judge against whom allegations are made should not hear the case**. [See: Balogh Vs. St. Albans Crown Court [1975] 1 QB 73**, **Re: Vinay Chandra Mishra AIR 1995 SC 2348, Deepak Kumar Prahladka Vs. Chief Justice Prabha Shankar Mishra (2004 ) 5 SCC 217]**

In **Deepak Kumar Prahladka Vs. Chief Justice Prabha Shanker Mishra (2004) 5 SCC 217,** it is ruled as under;

> ***"Contempt of Court - Criminal Procedure Code (CrPC) - Appellant filed two contempt petitions for initiating contempt of Court proceedings against respondents, judges of High Court - Conviction by High Court holding appellant guilty of contempt of Court for having made contemptuous and reckless averments scandalizing Court in two contempt petitions - Conviction challenged by appellant Held, the Judge against whom allegations are made should not have heard the contempt petitions- Evidence on record to show that neither any notice was issued nor a reasonable opportunity was afforded to appellant before passing of impugned order - Although course adopted by appellant was very shocking and prima***

***facie filing of two contempt petitions and nature of insinuations against judges were contemptuous - However appellant was still entitled to a notice and an opportunity of being heard - Impugned judgment convicting appellant set aside.***

*……The second contempt petition could not have been heard and disposed of by the learned Judges since they were respondents in the said petition. The prayer in that case though totally misconceived was to initiate contempt proceedings against the judges who heard and disposed it of. The justice should not only be done but should also appear to have been done. It may further be noticed that the present is not a case of contempt in the face of the court. It is a case where the averments made in the two contempt petitions are prima facie contemptuous and tend to scandalize the Court."*

Hon'ble Supreme Court in **Dr. Prodip Kumar BiswasVs. Subrata Das (2004) 4 SCC 573** has ruled as under;

***" Contempt- Different procedure under Section 14 and 15 of the Act - proper procedure should be followed- Proceedings not as per rules.***

*Proceedings should not be initiated lightly- no rules nisi drawn up- Niether any notice of contempt*

*issued to contemnors nor any hearing took place- Reasonble opportunity not given to appellant- High Court's order holding appellant guilty of contempt and imposing punishment cannot be sustained.*

*The procedure to initiate contempt proceedings has been laid down in the Act. Section 14 lays down the procedure when the contempt is in the face of the Supreme Court or a High Court. The case in hand is not covered by Section 14 of the Act. It is not a case of contempt in the face of the Court. That was also not the submission urged on behalf of Respondent No.1 In the case of a criminal contempt, other than a contempt referred to in Section 14 of the Act, the procedure to take cognizance has been laid down in Section 15 of the Act. Sub-section (3) of Section 15, inter alia, provides that every motion or reference made under the section shall specify the contempt of which the person charged is alleged to be guilty. The procedure to be followed after taking cognizance has been provided for in Section 17 of the Act. Section 17provides that notice of every proceeding under Section 15 shall be served personally on the person charged, unless the court for reasons to be recorded directs otherwise. It also sets out the documents which are required to be*

*accompanied with the notice. The Calcutta High Court, in exercise of powers conferred by Section 23 of the Act and Article 215 of the Constitution of India has made rules to regulate the proceedings for contempt of itself or of a court subordinate to it under the Act being the Contempt of Courts Calcutta High Court Rules, 1975. Rule 19, inter alia, provides that the Court may issue rule nisi. It further provides that the rule nisi shall be drawn up, as far as may be, in the model form in Form No.1, Appendix 1. Rule 20, inter alia, provides that where a rule is issued by the Court on its own motion under Rule 15, the rule nisi shall be drawn up, as far as may be, in the model form in Form No.2, Appendix 1. Rule 29 provides that the respondent or the contemnor may file an affidavit showing cause and the petitioner may file a reply thereto within such time as may be directed by the Court. The court may, however, in a contempt proceeding take such evidence as may be considered necessary. Admittedly, rule nisi was not drawn up. In fact, it seems that neither any notice of contempt was issued to the appellant nor any hearing took place except what has been noticed hereinbefore.*

> ***<u>The contempt proceedings should not be initiated lightly. Since, in the present case, in the face of the infirmities abovenoticed, the impugned judgment and order cannot be sustained,</u>*** *one course that can be adopted is to remand the contempt case for its fresh decision by the High Court, after due observance of the rules and affording opportunity to the appellant and the other course that can be adopted is to dispose of the contempt case as also these appeals on the basis of an affidavit dated 25th March, 2004 that has been filed by the appellant in this Court. We are of the view that it would be expedient to adopt the later course which would meet the ends of justice. In the affidavit dated 25th March, 2004 the appellant has undertaken not to mention the name of the High Court in any advertisement or publicity in connection with his institution in future. In the light of this affidavit, on the facts of the present case, we do not think that any useful purpose will be served in continuing with the contempt proceedings against the appellant."*

That, it is settled law that in case of suo- motu cognizance of Contempt proceedings the Judge at whose instance cognizance is taken should not hear the further proceedings and recuse himself.

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

In the case of **R.V. Lee, (1882) 9 Q.B.D. 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."***

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

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

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

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

In **Balogh Vs St. Albans Crown Court [1975] 1 QB 73** It is ruled in Balog's case as under;

> ***"A Judge should act of his own motion only when it is urgent and imperative to act immediately. In all other cases he should not take it upon himself to move. He should leave it to the Attorney-General or to the party aggrieved to make a motion in accordance with the rules in R.S. C., Ord. 52. The reason is so that he should not appear to be both prosecutor and judge: for that is a role which does not become him well.***
>
> *A considerable body of authority supports the view that the power of the court to commit for contempt*

> *by summary procedure should be jealously watched: see per Sir George Jessel M.R. in In re Clements (1877) 46 L.J.Ch. 375, 383, that* ***it should be exercised only in rare cases where there is no other remedy to preserve the dignity of the court and protect the public. The reason is that it is an inherently despotic and arbitrary power in which the judge often acts as prosecutor, witness, jury and judge."***

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

> ***''9. …… The learned Judge or the Bench could have itself taken action for the offence on the spot. Instead, the learned Judge probably thought that it would not be proper to be a prosecutor, a witness and the Judge himself in the matter and decided to report the incident to the learned Acting Chief Justice of his Court. There is nothing unusual in the course the learned Judge adopted, although the procedure adopted by the learned Judge has resulted in some delay in taking action for the contempt (see Balogh v. Crown Court at St.***

***Albans. (1975) QB 73 : (1974) 3 All ER 283. The criminal contempt of Court undoubtedly amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law even in this country has always been summary. However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner.***

*10. In the present case, although the contempt is in the face of the Court, the procedure adopted is not only not summary but has adequately safeguarded the contemner's interests. The contemner was issued a notice intimating him the specific allegations against him. He was given an opportunity to counter the allegations by filing his counter affidavit and additional counter/supplementary affidavit as per his request, and he has filed the same. He was also given an opportunity to file an affidavit of any other person that he chose or to produce any other material in his defence, which he has not done.''*

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 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 : (2012) 4 SCC (Cri.) 714,** has, in no unclear terms, held that, the person at whose instance prosecution is launched, cannot enquire the case.

Same law is affirmed by Full Bench of Hon'ble Supreme Court in recent case of **Mohan Lal Vs. State of Punjab (2018) 17 SCC 627: 2018 SCC OnLine SC 974,** where it is ruled that;

> *"The informant and the person enquiring should not be the same person. Justice is not only to be done but appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded.*

*The prosecution is vitiated due to conducted by same person."*

Full Bench of Hon'ble Supreme Court in **Mohan Lal Vs. The State of Punjab AIR 2018 SC 385,** had ruled as under;

***"31.** In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an Accused as a guaranteed constitutional right Under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the Accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that **the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the***

> ***more imperative in laws carrying a reverse burden of proof.***
>
> ***32.*** *Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The Appellant is directed to be set at liberty forthwith unless wanted in any other 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."***

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

> ***"43(8).*****……***If an appropriate enquiry is initiated into any one or all of the allegations made by the contemnor (Justice C.S. Karnan), he would figure as a witness to establish the truth of the allegations made by him.* ***Unfortunately the contemnor appears to be oblivious of one of the***

***fundamental principles of law that a complainant/informant cannot be a judge in his own complaint.The contemnor on more than one occasion "passed orders purporting to be in exercise of his judicial functions" commanding various authorities of the states to take legal action against various judges of the Madras High Court on the basis of the allegations made by him from time to time.***

***44(9).*** *Whether all the above-mentioned conduct amounts to either "proved misbehavior" or "incapacity" within the meaning of Article 124(4) read with Article 217(1)(b) of the Constitution of India warranting the impeachment of the contemnor is a matter which requires a very critical examination. If the contemnor is unable to prove the various allegations made against judges of the Madras High Court, what legal consequences would follow from such failure also requires an examination. Probably, the contemnor would be amenable for action in accordance with law for defamation, both civil and criminal apart from any other legal consequences."*

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

***"78.*** *Whether the filing of an application by a party to the proceedings requesting a Judge to recuse himself from hearing the case on the ground that he is biased constitutes contempt?*

***79.*** *In order to appreciate the case of bias alleged against a Judge, we have to carefully scan the allegations made in the affidavit of the 1st respondent.*

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

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

*of bias on his part, then he should not sit. And if he does sit his decision cannot stand."*

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

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

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

*unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, Judges recuse themselves. They do not sit in judgment.*

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

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

*In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a*

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

*The Apex Court in the case of A.K. Kraipak & Others v. Union of India and Others reported in*

*MANU/SC/0427/1969 : AIR 1970 SC 150, held as under:*

*"The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."*

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

*"Bias is the second limb of natural justice. Prima facie no one should be a Judge in what is to be regarded as 'sua cause', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with*

*the subject matter, from a close relationship or from a tenuous one."*

*The Apex Court in the case of P.K. Gosh, IAS v. J.G. Rajput reported in MANU/SC/0124/1996 : (1995) 6 SCC 744, held as under:*

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

*relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done."*

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

*"17. In the course of the impugned "reference", the learned single Judge has also suggested that contempt proceedings be initiated against some of the lawyers who appeared before him besides the appellant. On the basis of what we have noticed above, we find to cause to have been made out to institute contempt proceedings, as suggested. We may notice here that even on an earlier occasion the learned single Judge (Vyas, J.,) had in the same appeal (Misc. Appeal No. 143 of 1994) made a reference to this Court for taking action against Shri Girish Desai, Senior Advocate, representing the appellant besides his instructing counsel and the company secretary of the appellant under the Contempt of Courts Act. On 12.2.96, this Court declined to proceed against them for contempt of*

*Court. Contempt of Court jurisdiction is a special jurisdiction. It has to be used cautiously and exercised sparingly. It must be used to uphold the dignity of the Courts and the majesty of law and to keep the administration of justice unpolluted, where the facts and circumstances so justify. "The comer stone of the contempt law is the accommodation of two constitutional values - the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel". Long long ago in Queen v. Grey, (1900) 2 QB 36 at 40) it was said that Judges and Courts are alike open to criticism and if reasonable argument is offered against any judicial act as contrary to law or to the public good, no Court could or would treat it as contempt of Court." Therefore, contempt jurisdiction has to be exercised with scrupulous care and caution, restraint and circumspection. Recourse to this jurisdiction, must be had whenever it is found that something has been done which tends to effect the administration of justice or which tends to impede its course or tends to shake public confidence in the majesty of law and*

*to preserve and maintain the dignity of the Court and the like situations. "The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction." We have given our careful consideration to the facts and circumstances of the case but are not persuaded to initiate contempt proceedings as suggested by the learned Single Judge either against the lawyers or the appellant for their "action" in making request to the learned Judge or recuse himself from the case. The reference to that extent is also declined.*

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

*"39. It is of the essence of judicial decisions and judicial administration that judges should act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that*

*a bias attributable to a Judge might have operated against him in the final decision of the tribunal. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet case judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years, many more subsidiary rules came to be added to the rules of natural justice. The purpose of the rules of natural justice is to prevent miscarriage of justice. Arriving at a just decision is the aim of judicial*

*enquiries. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened, the Court should decide whether the observance of that rule was necessary for a just decision on the facts of that case."*

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

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

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

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

***93.*** *Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done. The initiation of contempt action should be only when there is substantial and mala fide interference with*

*fearless judicial action, but not on fair comment or trivial reflections on the judicial process and personnel. The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction."*

Full Bench of Hon'ble Supreme Court in **The CIT Bombay City Vs. R.H.Pandi (1974) 2 SCC 627** it is ruled as under;

***"6……..*** *Cursus curiae est lex curiae. The Practice of the Court is the law of the Court. See Broom's Legal Maxims at p.82. Where a practice has existed it is convenient to adhere to it because it is the practice."*

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 disinterested persons. We cannot go into a poll of the Bench."***

Full Bench of Hon'ble Supreme Court in **Amicus Curiae Vs. Adv. Prashant Bhushan (2010) 7 SCC 592,** it is observed as under;

***"3.*** *On 6th November, 2009, when the said facts were placed before the Bench presided over by Hon'ble the Chief Justice, K.G. Balakrishnan, as His Lordship then was,* ***in which Justice Kapadia was also a member****,*

*directions were given to issue notice and to post the matter before a three Judge Bench of which Justice Kapadia was not a member.* ***It should, however, be indicated that Justice Kapadia was not a party to the aforesaid order that was passed."***

Hon'ble Supreme Court in the case of **State Vs. Mamta Mohanty(2011) 3 SCC 436,** it is ruled as under;

***"****A. 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 and Ors. MANU/SC/0225/1998 : AIR 1998 SC 1289; Mangal Prasad Tamoli (Dead) by L.Rs. v. Narvadeshwar Mishra (Dead) by L.Rs. and Ors. MANU/SC/0153/2005 : AIR 2005 SC 1964; and Ritesh Tiwari and Anr. v. State of U.P.*

*B. 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*

*C. The rule of law inhibits arbitrary action and also makes it 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 give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where Statute confers wide power coupled with wide discretion on an authority. If the 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. (Vide Haji T.M. Hassan Rawther v. Kerala Financial Corporation MANU/SC/0516/1987 : AIR 1988 SC 157; Dr. Rash Lal Yadav v. State of Bihar and Ors. MANU/SC/0792/1994 : (1994) 5 SCC 267; and Tata Cellular v. Union of India MANU/SC/0002/1996 : (1994) 6 SCC 651*

*D. Similarly, in* ***S.G. Jaisinghani v. Union of India and Ors. MANU/SC/0361/1967 : AIR 1967 SC 1427,*** *a Constitution Bench of this Court observed as under:*

*14...absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional system is based.... Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and in 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.*

*41.. It is a matter of common experience that a large number of orders/letters/circulars, issued by the State/statutory authorities, are filed in court for placing reliance and acting upon it. However, some of them are definitely found to be not in conformity with law. There may be certain such orders/circulars which are violative of the mandatory provisions of the Constitution of India. While dealing with such a situation, this Court in Ram Ganesh Tripathi and Ors. v. State of U.P. and Ors. MANU/SC/0341/1997 : AIR 1997 SC 1446 came across with an illegal order passed by the statutory authority violating the provisions of Articles 14 and 16 of the*

*Constitution. This Court simply brushed aside the same without placing any reliance on it observing as under:*

*''The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter affidavit.... This order is also deserved to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents...*

*43. The whole exercise done by the State authorities suffers from the vice of arbitrariness and thus is violative of Article 14 of the Constitution. Therefore, it cannot be given effect to."*

In **Supreme Court Advocates-on-Record Vs.Union of India (2016) 5 SCC 808: 2015 SCC OnLine SC 976,** it is ruled as under ;

***"Recusal – The prayer should be made to the said particular Judge sitting in the Bench – Other Judges have no role:- Reason should be mentioned about recusal or non recusal - Therefore, I am of the view that it is the constitutional duty, as reflected in one's oath, to be transparent and accountable, and hence, a Judge is required to indicate reasons for his recusal from a particular case. This would help to curb the tendency for forum shopping.***

*The above principles are universal in application. Impartiality of a Judge is the sine qua non for the integrity institution. Transparency in procedure is one of the major factors constituting the integrity of the office of a Judge in conducting his duties and the functioning of the court. The litigants would always like to know though they may not have a prescribed right to know, as to why a Judge has recused from hearing the case or despite request, has not recused to hear his case. Reasons are required to be indicated broadly. Of course, in case the disclosure of the reasons is likely to affect prejudicially any case or cause or interest of someone else, the Judge is free to state that on account of personal reasons which the Judge does not want to disclose, he has decided to recuse himself from hearing the case.*

*<u>On the ground of him having conflicting interests.</u>*

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

*It all started with a latin maxim Nemo Judex in Re Sua which means literally – that no man shall be a judge in his own cause. There is another rule which requires a Judge*

*to be impartial. The theoretical basis is explained by Thomas Hobbes in his Eleventh Law of Nature. He said*

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

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

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

*The House of Lords held that participation of Lord Cottenham in the adjudicatory process was not justified. Though Lord Campbell observed:*

*"No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest he had in this concern: but, my Lords, it is of the last importance that the maxim that no man is to be a judge in his own cause be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest .... This will be a lesson to all inferior tribunals*

*to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence."*

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

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

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

*"Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to*

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

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

*The Pinochet[105] case added one more category to the cases of automatic disqualification for a judge. Pinochet, a former Chilean dictator, was sought to be arrested and extradited from England for his conduct during his incumbency in office. The issue was whether Pinochet was entitled to immunity from such arrest or extradition. Amnesty International, a charitable organisation, participated in the said proceedings with the leave of the*

*Court. The House of Lords held that Pinochet did not enjoy any such immunity. Subsequently, it came to light that Lord Hoffman, one of the members of the Board which heard the Pinochet case, was a Director and Chairman of a company (known as A.I.C.L.) which was closely linked with Amnesty International. An application was made to the House of Lords to set aside the earlier judgment on the ground of bias on the part of Lord Hoffman.*

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

*"The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that*

*he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.*

*In my judgment, this case falls within the first category of case, viz. where the judge is disqualified because he is a judge in his own cause. In such a case, once it is shown that the judge is himself a party to the cause, or has a relevant interest in its subject matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias. The mere fact of his interest is sufficient to disqualify him unless he has made sufficient disclosure."*

*And framed the question;*

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

*He concluded that,*

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

*promotion of a cause in which the judge is involved together with one of the parties"*

*Lord Wilkinson opined that*

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

*and held that:*

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

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

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

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

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

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

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

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

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

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

***They were unequivocal in their protestation.***

*In my respectful opinion, when an application is made for the recusal of a judge from hearing a case, the application is made to the concerned judge and not to the Bench as a*

*whole. Therefore, my learned brother Justice Khehar is absolutely correct in stating that the decision is entirely his, and I respect his decision.*

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

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

*Called upon to discharge the duties of the Office without fear or favour, affection or ill-will, it is only desirable, if not proper, that a Judge, for any unavoidable reason like some pecuniary interest, affinity or adversity with the parties in the case, direct or indirect interest in the*

*outcome of the litigation, family directly involved in litigation on the same issue elsewhere, the Judge being aware that he or someone in his immediate family has an interest, financial or otherwise that could have a substantial bearing as a consequence of the decision in the litigation, etc., to recuse himself from the adjudication of a particular matter. No doubt, these examples are not exhaustive.*

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

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

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

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

*A judge shall not knowingly, while a proceeding is before, or could come before, the judge**, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the***

***process***. *Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.*

*A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances wherethe judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;*

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

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

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

*The simple question is, whether the adjudication by the Judge concerned, would cause a reasonable doubt in the mind of a reasonably informed litigant and fair-minded public as to his impartiality. Being an institution whose*

*hallmark is transparency, it is only proper that the Judge discharging high and noble duties, at least broadly indicate the reasons for recusing from the case so that the litigants or the well- meaning public may not entertain any misunderstanding that the recusal was for altogether irrelevant reasons like the cases being very old, involving detailed consideration, decision on several questions of law, a situation where the Judge is not happy with the roster, a Judge getting unduly sensitive about the public perception of his image, Judge wanting not to cause displeasure to anybody, Judge always wanting not to decide any sensitive or controversial issues, etc. Once reasons for recusal are indicated, there will not be any room for attributing any motive for the recusal. To put it differently, it is part of his duty to be accountable to the Constitution by upholding it without fear or favour, affection or ill- will. Therefore, I am of the view that it is the constitutional duty, as reflected in one's oath, to be transparent and accountable, and hence, a Judge is required to indicate reasons for his recusal from a particular case. This would help to curb the tendency for forum shopping.*

*In Public Utilities Commission of District of Columbia et al. v. Pollak et al.[706], the Supreme Court of United States dealt with a question whether in the District of*

*Columbia, the Constitution of the United States precludes a street railway company from receiving and amplifying radio programmes through loudspeakers in its passenger vehicles. Justice Frankfurter was always averse to the practice and he was of the view that it is not proper. His personal philosophy and his stand on the course apparently, were known to the people. Even otherwise, he was convinced of his strong position on this issue. Therefore, stating so, he recused from participating in the case. To quote his words,*

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

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

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

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

***If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the*** *decision [see per Lord Denning, H.R. in (Metropolitan Properties Co. (F.G.C.)*

*Ltd. v. Lannon and Others, etc. [(1968) 3 WLR 694 at 707]). We should not, however, be understood to deny that the Court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings."*

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

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

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

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

*The above principles are universal in application. Impartiality of a Judge is the sine qua non for the integrity institution. Transparency in procedure is one of the major factors constituting the integrity of the office of a Judge in conducting his duties and the functioning of the court. The litigants would always like to know though they may not have a prescribed right to know, as to why a Judge has recused from hearing the case or despite request, has not recused to hear his case. Reasons are required to be indicated broadly. Of course, in case the disclosure of the reasons is likely to affect prejudicially any case or cause or interest of someone else, the Judge is free to state that*

*on account of personal reasons which the Judge does not want to disclose, he has decided to recuse himself from hearing the case"*

The letter sent by Justice Ramanna on **25th April, 2019** while recusing from enquiry committee "In- House-Procedure " against CJI Gogoi reads as under;

***"Subject: Recusal from the Committee constituted on 23rd April, 2019 "In the Matter of Complaint Dated 19th April 2019 Along with Affidavit Dated 18th April, 2019".***

*Let me at the outset state that I recuse myself from the above referenced matter. I was asked to be a part of the said Committee by your Lordship which was duly approved by the Full Court. This involves an extraordinary obligation which ought not to be avoided unless there are extreme circumstances. I set forth, in brief, a broad outline of my reasons for recusing from this Committee.*

*The complainant, in the letter dated 24th April, 2019, has raised objections to my being a part of the Committee, on the grounds that, firstly, I may have prejudged the matter based on a selective extract of my speech on the occasion of Centenary Celebrations of the High Court Building at*

*Hyderabad, and, secondly, I am a close friend of the Chief Justice of India and like a family member to him. These grounds, according to the complainant, raise fears that her affidavit and evidence will not receive an objective and fair hearing.*

*I categorically reject these baseless and unfounded aspersions on my capacity to render impartial judgment in this matter, in consonance with the best traditions of judicial propriety and the integrity of this Honourable Court. The grounds cited by the complainant ought not to be taken as evidence of a legitimate doubt for the following reasons:*

*(i) The topic of the speech – "Judicial Journey – The Road Ahead" - delivered by me on the occasion of the Centenary Celebrations of the High Court Building in Hyderabad, was decided at least two weeks prior to the receipt of the complaint in the instant matter. As a part of a broad analytical and factual discussion of the topic, which included discussions about pendency of cases, use of technology and issues relating to the Bar, I also spoke about personal attacks against members of the judiciary seeking to cast aspersions on their ability to render impartial judgements. If anything,*

*the implicit assumption of that portion of my speech was that our conduct as judges ought to be exemplary so as to protect the dignity of the judicial institution from these frequent attacks. Judges, therefore, ought not to be cowed down in upholding the dignity of the judiciary. The dignity of the judiciary, first and foremost, flows from the capacity of judges to render impartial justice. The fact that this assertion, on the need to protect the dignity of the judiciary, is now being used to allege bias is a sad reflection of the state of affairs; and*

*(ii) As regards to the second apprehension raised by the complainant, I am, like any other judge of the Honourable Supreme Court, required to attend official meetings at the home office of the Chief Justice of India. We, the judges of Honourable Supreme Court, regularly meet each other - including socially - and also the Chief Justice of India. In fact, we call ourselves a "family" - to encapsulate that fraternity and collegiality. The same, inter alia, are essential for an honest appreciation of differences of opinions among fellow judges, which in turn, is vital for the intellectual growth of a judge. It helps us become wiser. The Chief Justice of India is primus inter*

*pares, who allots a variety of administrative duties and responsibilities to the Judges. Thus, the judges often meet Chief Justice of India in connection with the same. My visits to the residence of Chief Justice of India cannot, therefore, suggest any proximity than what is absolutely normal under the circumstances. Thus, the apprehension expressed by the complainant in this regard is wholly misconceived.*

*In light of the above, I unequivocally reject the aspersions expressed by the complainant.*

*However, let us not be under any impression that the situation is not extraordinary – both in terms of the nature of the complaint and also the events that have transpired subsequently. The growth of every institution is necessarily based on iterative steps and a re-evaluation of the same with the courage to make changes based on our best sensibilities – intellectual and emotional. Wisdom does not flow from unbending assertion of authority, but recognition of frailty and the need to safeguard institutional integrity.*

*My decision to recuse is only based on an intent to avoid any suspicion that this institution will not conduct itself in keeping with the highest*

*standards of judicial propriety and wisdom. It is the extraordinary nature of the complaint, and the evolving circumstances and discourse that underly my decision to recuse and not the grounds cited by the complainant per se. Let my recusal be a clear message to the nation that there should be no fears about probity in our institution, and that we will not refrain from going to any extent to protect the trust reposed in us. That is, after all, our final source of moral strength.*

*It is true that justice must not only be done, but also manifestly seem to be done. Let me also caution, at this stage, that it is also equally true that no one who approaches the Court should have the power to determine the forum and subvert the processes of justice. Let not my recusal in the instant matter be taken to mean, even in the slightest of measures, that we have transgressed either of these principles. I wish to say nothing further.*

*Thanking all my Sister and Brother judges, who by reposing faith and confidence, unanimously chose me to be a Member of the Committee."*

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

> ***"479****. Case in which Judge or Magistrate is personally interested. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself. Explanation.- A Judge or Magistrate shall not be deemed to be a party to, or personally interested in, any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred and made an inquiry in connection with the case."*

Therefore, the Judge forwarding reference cannot sit in the Division Bench hearing contempt. He is only informant in of **Supreme Court Bar Association Vs. UOI (1998) 4 SCC 409**

> *".....**As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.***
>
> **.....**
>
> *Moreover, a case of contempt of court is not stricto sensor a cause or a matter between the parties inter*

*se. It is a matter between the court and the contemner. It is not, strictly speaking, tried as an adversarial litigation.* ***The party, which brings the contumacious conduct of the contemner to the notice of the court, whether a private person or the subordinate Court, is only an informant and does not have the status of a litigant in the contempt of Court case."***

## CHAPTER 80

CREATING NEWS OR PUBLISHING ONE SIDED AND DISTORTED FACTS IN THE NEWS WITH A VIEW TO CAUSE PREJUDICE TO THE INNOCENT OR PREJUDICE TO THE PENDING CAUSE OF ANY PERSON IS ALSO CONTEMPT AND ITS AN OFFENCE OF FORGERY AND USING A FORGED DOCUMENT AS GENUINE ONE.

In **Bhim Sen Garg Vs. State of Rajasthan"2006 CRI. L. J. 3643** it is ruled as under;

> *A]* ***Cr. P.C. Sec. 154 – F.I.R. registered against a Newspaper's Editor –*** *The Newspaper published some news items regarding involvement of a person in an incident about prosecution by women – On the basis of newspaper reporting an enquiry was launched by Police – During enquiry the news item was found to be flase against the person – On the basis of enquiry report F.I.R. registered against Editor of news Paper under Sections 465, 467, 471 and 120-B of I.P.C. as the C.D. on basis of which news was published was also found to be interpolated – Editor challenged the F.I.R. by filing petition – Held that – the F.I.R. and proceedings are legal and proper and cannot be qushed.*

*B] Necessary Party – Allegation of malafides in petition against a person who is not respondent can not be accepted.*

In the case of **Dr. Naresh Kumar Mangla Vs. Anita Agarwal and Others 2020 SCC OnLine SC 1031** it is ruled as under;

***"20.*** *The Constitution Bench has reiterated that the correctness of an order granting bail is subject to assessment by an appellate or superior court and it may be set aside on the ground that the Court granting bail did not consider material facts or crucial circumstances. A two judge Bench of this Court, in Kanwar Singh Meena v. State of Rajasthan[11], noted that:*

*"10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the*

*witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration.* ***Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial.*** *While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice.* ***If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the***

***question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.*** *Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."*

***(emphasis supplied)***

***21.*** *Recently, this Court in Myakala Dharmarajam v. The State of Telangana*[12] *reiterated the above principles and stated:*

*"9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the Accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the Accused, the High Court or the Sessions Court would be justified in cancelling the bail."*

***22.*** *It is apposite to mention here the distinction between the considerations which guide the grant of anticipatory bail and regular bail. In Pokar Ram v. State of Rajasthan[13], while setting aside an order granting anticipatory bail, this Court observed:*

*"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal. Three situations in which the question of granting or refusing to grant bail would arise, materially and substantially differ from*

*each other and the relevant considerations on which the courts would exercise its discretion, one way or the other, are substantially different from each other. This is necessary to be stated because the learned Judge in the High Court unfortunately fell into an error in mixing up all the considerations, as if all the three become relevant in the present situation.*

*6. The decision of the Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565 : 1980 SCC (Cri) 561] clearly lays down that "the distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest". Unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. A direction under Section 438 is intended to confer conditional immunity from the touch as envisaged by Section 46(1) or confinement. In para 31,*

*Chandrachud, C.J. clearly demarcated the distinction between the relevant considerations while examining an application for anticipatory bail and an application for bail after arrest in the course of investigation. Says the learned Chief Justice that in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. It was observed that "it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond". Some of the relevant considerations which govern the discretion, noticed therein are "the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and 'the larger interests of the*

*public or the State', are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail". A caution was voiced that "in the evaluation of the consideration whether the applicant is likely to abscond, there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it."*

***23.*** *Judged in the light of the above principles, the judgment of the Single Judge of the High Court of Judicature at Allahabad is unsustainable. The FIR contains a recital of allegations bearing on the role of the accused in demanding dowry, of the prior incidents of assault and the payment of moneys by cheque to the in-laws of the deceased. The FIR has referred to the telephone calls which were received both from the father-in-law of the deceased on the morning of 3 August 2020 and from the deceased on two occasions on the same day-a few hours before her body was found. The grant of anticipatory bail in such a serious offence would operate to obstruct the investigation. The FIR by a father who has suffered the death of his*

*daughter in these circumstances cannot be regarded as "engineered" to falsely implicate the spouse of the deceased and his family. We hasten to add that our observations at this stage are prima facie in nature, and nothing that we have said should be construed as a determination on the merits of the case which will be adjudicated at the trial.*

***D Transfer of further investigation to the CBI***

***24.*** *The investigation by the UP Police in the present case leaves much to be desired. We have already extracted in the earlier part of this judgment, the contents of the counter affidavit which have been filed on behalf of the Deputy Superintendent of Police, Agra. The contents of the counter affidavit are at a material divergence with the contents of the charge-sheet filed on 5 November 2020. During the course of the hearing, this Court has been specifically informed by learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, that no investigation was conducted into the allegation in the FIR that the deceased had been murdered. Though much was sought to be made out of the alleged suicide note, at this stage it needs to be emphasised that its authenticity has been seriously disputed by the appellant. As the learned Senior*

*Counsel for the State of Uttar Pradesh informed the Court, the forensic science laboratory referred the matter back in the absence of adequate material to assess the genuineness of the suicide note and upon re-submission, a report is awaited.*

***25.*** *Within a couple of days of the death of Deepti, the alleged suicide note found its way into the newspapers in Agra. This is in fact a circumstance relied upon by the learned Counsel for the accused when they submit that despite the publicity given to the suicide note, the FIR does not impugn its authenticity. The sequence in this case appears to follow familiar patterns. Immediate publicity was given to the alleged suicide note. These examples are now becoming familiar. Selective disclosures to the media affect the rights of the accused in some cases and the rights of victims' families in others. The media does have a legitimate stake in fair reporting. But events such as what has happened in this case show how the selective divulging of information, including the disclosure of material which may eventually form a crucial part of the evidentiary record at the criminal trial, can be used to derail the administration of criminal justice. The investigating officer has a duty to investigate when information about the commission of a cognizable*

*offence is brought to their attention. Unfortunately, this role is being compromised by the manner in which selective leaks take place in the public realm. This is not fair to the accused because it pulls the rug below the presumption of innocence. It is not fair to the victims of crime, if they have survived the crime, and where they have not, to their families. Neither the victims nor their families have a platform to answer the publication of lurid details about their lives and circumstances. Having said this, we prima facie reject the insinuation that the FIR had not doubted or referenced the suicide note, despite its publication in the news media. The daughter of the appellant had died in mysterious circumstances. The family had completed the last rites. To expect that they should be scouring the pages of the print and electronic media before reporting the crime is a mockery of the human condition. The apprehension of the appellant that A-2 and his family have a prominent social status in Agra and may have used their position in society to thwart a proper investigation cannot be regarded to be unjustified.*

***26.*** *In the backdrop of what has been stated above and the serious deficiencies in the investigation, we have during the hearing, made all the counsel aware of*

*the possibility of this court referring the case for further investigation to the CBI. The court must enter upon the prospect of such a course of action with circumspection for two reasons. First, this court has repeatedly observed that the power which is vested in a superior court to transfer the investigation to another agency, such as the CBI, must be wielded with caution. In a recent judgement of this Court, Arnab Goswami v. Union of India[14], one of us (Dr. Justice D.Y. Chandrachud) had interpreted the rationale underpinning the circumspection in the following terms:*

> *"44. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled.* ***An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated***

***allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation.*** *Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation."*

***(emphasis supplied)***

***27.*** *Second, in the facts of this case, the charge-sheet which is dated 24 October 2020 has been submitted to the competent court on 5 November 2020. The submission of the charge-sheet does not oust the jurisdiction of a superior court, when as in the present case, the investigation is tainted and there is a real likelihood of justice being deflected. In Vinay Tyagi v. Irshad*[15]*, a two judge Bench of this Court, speaking through Justice Swatanter Kumar, has held:*

*"43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same.* ***The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior***

***courts very sparingly and with great circumspection.”***

In the case of **Nilesh Navalakha & Ors. Vs. Union of India 2021 SCC OnLine Bom 56** it is ruled as under;

> ***‘‘220.*** *The controversy before us lies in a narrow compass but raises questions of contemporary importance touching upon the right of the press/media to express views freely, the right of the deceased to be treated with respect and dignity after death, the need to ensure investigation of crime to proceed on the right track without being unduly prejudiced/influenced by press/media reports based on “investigative journalism”, and the right of the accused to a free and fair trial as well as the right not to be prejudged by the press/media.*
>
> ***221.*** *Our discussion ought to commence acknowledging that the right guaranteed by Article 19(1)(a) of the Constitution is not merely a right of speech and expression but a right to freedom of speech and expression. Noticeably, reference to freedom is absent in enumeration of the other rights in clauses (b) to (g).*

***238.*** *Soon after the 1952 Act was enacted, in Rizwan-ul-Hasan v. State of U.P., reported in AIR 1953 SC 185, the Supreme Court while referring to Anantalal Singha (supra), observed on the different sorts of contempt known to law as follows:*

> *"8. *** There are three different sorts of contempt known to law in such matters. One kind of contempt is scandalizing the court itself. There may likewise be a contempt of the court in abusing parties who are concerned in causes in that court. <u>There may also be a contempt of court in prejudicing mankind against persons before the cause is heard</u>. ***"*
>
> *(underlining for emphasis by us)*

***239.*** *Hon'ble K. Subba Rao, J. in his dissenting opinion in Saibal Kumar Gupta (supra) had the occasion to trace the law of contempt while observing as follows:*

> *"26. *** The Contempt of Courts Act, 1926, has not defined the phrase 'contempt of court'. The judgment of Lord Hardwicke, L.C., in Re Read & Huggonson [(1742) 2 Atk 469], which has always been regarded as the locus*

*classicus on the subject, declared 'Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes before the cause is finally heard'. The learned Lord Chancellor characterized contempt as of three kinds, namely, scandalizing the court, abusing parties in court, prejudicing mankind against parties and the court before the cause is heard. Adverting to the third category, which is germane to the present case, the Lord Chancellor proceeded to state at p. 471 thus:*

> *'There may also be a contempt of this court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.'*

*But to constitute contempt of court, in the words of Lord Russel, C.J., 'the applicant must show that something has been published which*

*either is clearly intended, or at least is calculated, to prejudice a trial which is pending'. (See The Queen v. Payne, [1896] 1 Q.B. 577). In The Queen v. Gray, [1900] 2 Q.B. 36, the phrase 'contempt of court' is defined' as, inter alia, 'something done calculated to obstruct or interfere with the due course of justice or the lawful process of the courts'. Lord Goddard, C.J., in R. v. Odham's Press Ltd., (1956) 3 All ER 494, after considering the relevant authority on the subject, laid down the following test to ascertain whether there is contempt of court in a given case, at p. 497:*

> *'The test is whether the matter complained of is calculated to interfere with the course of justice….'*

*Words much to the same effect were used by Parker, C.J., in a recent decision in R. v. Duffy, (1960) 2 All ER 891, when he stated at p. 894 that,*

> *'….the question in every case is whether…the article was intended or calculated to prejudice the fair hearing of the proceedings.'*

*In Halsbury's Laws of England, 3rd Edn. Vol. 8, it is stated at p. 8, 'It is sufficient if it is clear that the comment tends to prejudice the trial of the action'. Adverting to the third category of contempt described by Lord Hardwicke, L.C., the learned author says at p. 8 thus:*

> *'The effect of such misrepresentations may be not only to deter persons from coming forward to give evidence on one side, but to induce witnesses to give evidence on the other side alone, to prejudice the minds of jurors, or to cause the parties to discontinue or compromise, or to deter other persons with good causes of action from coming to the court.'*

*27. The said view has been accepted and followed also in India : see State v. Biswanath Mohapatra, ILR 1955 Cut 305 and Ganesh Shankar Vidyarthi case, AIR 1929 All 81.*

*29. <u>On the said authorities it is settled law that a person will be guilty of contempt of court if the act done by him is intended or calculated or likely to interfere with the course of justice</u>. ***"*

*(underlining for emphasis by us)*

***240.*** *In P.C. Sen, In re, reported in AIR 1970 SC 1821, the Supreme Court was seized of an appeal carried from an order of the Calcutta High Court by none other than the Chief Minister of West Bengal, whereby he was held guilty of contempt and his conduct was disapproved. On the law of contempt, this is what the Court held:*

> *"8. The law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court; R.V. Gray [[1900] 2 Q.B. 36]. Contempt by speech or writing may be by scandalising the Court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. It is incumbent upon Courts of justice to preserve their proceedings from being misrepresented, for prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speeches or writings*

*misrepresenting the proceedings of the Court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources. The question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. The question is not so much of the intention of the contemner as whether it is calculated to interfere with the administration of justice. As observed by the Judicial Committee in Devi Prasad Sharma v. King-Emperor, (1942-43) 70 IA 216 at p. 224:*

> *"...the test applied by the ... Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law."*

*If, therefore, the speech which was broadcast by the Chief Minister was calculated to interfere with the course of justice, it was liable to be declared a contempt of the Court even assuming that he had not intended thereby to interfere with the due course of justice. ***"*

*(underlining for emphasis by us)*

***242.*** *In A.K. Gopalan (supra), two questions arose for decision of the Supreme Court : (1) whether on the day when the appellant, A.K. Gopalan, made the statements complained of or when it was published in 'Deshabhimani' any proceedings in a court could be said to be imminent; and (2) whether this statement amounts to contempt of court. The majority held that the appellant A.K. Gopalan was not guilty of contempt since no proceedings were imminent and allowed his appeal. However, the appeal of the other appellant, P. Govinda Pillai, was dismissed on the ground that the offending statements came to be published after the arrest of an accused. It would be profitable to extract a passage from the said decision, reading thus:*

*"7. It would be a undue restriction on the liberty of free speech to lay down that even*

*before any arrest has been made there should be no comments on the facts of a particular case. In some cases no doubt, especially in cases of public scandal regarding companies, it is the duty of a free press to comment on such topics so as to bring them to the attention of the public. As observed by Salmon, L.J., in R. v. Sayundranaragan and Walker, (1968) 3 All ER 439:*

> *'It is in the public interest that this should be done. Indeed, it is sometimes largely because of facts discovered and brought to light by the press that criminals are brought to justice. The private individual is adequately protected by the law of libel should defamatory statements published about him be untrue, or if any defamatory comment made about him is unfair.'*

***Salmon, L.J., further pointed out that 'no one should imagine that he is safe from committal for contempt of court if, knowing or having good reason to believe that criminal proceedings are imminent, he chooses to publish matters calculated to prejudice a fair trial'."***

***243.*** *The majority view of Hon'ble S.M. Sikri, J. as well as the minority view penned by Hon'ble G.K. Mitter, J. would unmistakably reveal that publication of material which could prejudice a cause being heard at a time when judicial proceedings were imminent was considered a factor to commit for contempt. This is plainly evident from a sentence appearing in the minority view to the effect that "the consensus of authorities both in England and in India is that contempt of court may be committed by any one making a comment or publication of the exceptionable type if he knows or has reason to believe that proceedings in court though not actually begun are imminent". It would not be out of place to note that at the relevant time in the United Kingdom, for avoiding a substantial risk of prejudice to the administration of justice in proceedings that were pending or imminent, orders could be passed directing that publication be postponed.*

***248.*** *Does "administration of justice", which necessarily includes the power to try civil and criminal proceedings by courts, also include actions/steps that the relevant statute requires to be taken for securing criminal justice even before the*

*matter reaches the criminal court? This, in turn, would give rise to a further question, when does "administration of justice" on the criminal side begin?*

***250.*** *The starting point of the process for free flow of justice after a crime has been committed, is the information to that effect being given to the police which is usually reduced in writing and results in registration of an FIR. Although an FIR need not record in minute details the version of the informant as to the crime, the place of occurrence, the persons who witnessed the crime, etc., it would serve the course of justice better if the FIR were to contain such details for assisting in investigation of the crime since its primary aim is to detect crime, collect evidence and bring criminals to speedy justice. The underlying principle of "administration of justice" qua the criminal justice system is that the alleged criminal should be placed on trial as soon after the commission of crime as circumstances of the case would permit [see : Macherla Hanumantha Rao v. State of Andhra Pradesh, reported in AIR 1957 SC 927].*

***252.*** *Human life is not mere biological existence. When we conceive of the basic rights guaranteed to*

*a person, we cannot shut our eyes to the jurisprudential concept of certain minimum natural rights which are inherent in the human existence. These are categories of basic human rights well recognized in all major political philosophies. They are also recognized in the Constitution, in the present context Articles 14, 20 and 21. In Golak Nath v. State of Punjab, reported in AIR 1967 SC 1643, the Supreme Court held that the Fundamental Rights are the modern name, for what has been traditionally known as natural rights. Such rights have a distinct existence independent of the Constitution and a significant sanctity than the law made by the legislature.* ***These are basic inalienable rights which are inherent in free and civilized human beings, derived from a concept called the natural law. A person cannot be dehumanized, disreputed, vilified and maligned qua his societal existence at the hands of the media in an attempt to sensationalize any crime which is under investigation. We do not see how in a civilized society such rights so personal can in any manner be tinkered with and/or attacked by any media in the garb and label of its free speech and***

***<u>expression, so as to nullify a right to a free and fair trial.</u>***

***253.*** *Resting on the authorities referred to above and as a sequel to our aforesaid discussion, we hold that any act done or publication made which is presumed by the appropriate court (having power to punish for contempt) to cause prejudice to mankind and affect a fair investigation of crime as well as a fair trial of the accused, being essential steps for "administration of justice", could attract* sub-clause *(iii) of section 2(c) of the CoC Act depending upon the circumstances and be dealt with in accordance with law.*

***257.*** *An observation of the Supreme Court in the decision in Sahara India Real Estate Corpn. Ltd. (supra), on consideration of A.K. Gopalan (supra), needs to be noticed immediately and considered by us because of the submissions made by Ms. Gokhale. The Court said:*

> *"33. *** In view of the judgment of this Court in A.K. Gopalan v. Noordeen, (1969) 2 SCC 734, such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair*

*trial of a suspect or accused under Article 21 from the time when the criminal proceedings in a subordinate court are imminent or where the suspect is arrested. ***"*

***262.*** *Regard being had to our understanding of section 2(c) of the CoC Act, as extensively discussed supra, we do not see any reason or ground to hold that a literal reading of section 3 produces absurd results or that there is any warrant for reading the explanation provided by the expression "judicial proceedings" [which is provided only for the purposes of section 3 to pending criminal proceedings] to include the stage commencing from registration of an FIR. Also, the window kept open by sub-section (1) of section 3 for an alleged contemnor to take the defence that he had no reasonable ground to believe that a proceeding is pending and proving it to the satisfaction of the Court for escaping the rigours of contempt does not require judicial interdiction.*

***293.*** *The discussion leading to the answer to this question must begin with what a 'fair trial' is and what is a 'trial by media'.*

***294.*** *The criminal justice system in India has, at its heart, the right of an accused to a fair trial. A 'fair trial' takes within its embrace various rights that are well acknowledged, viz. the fundamental of the criminal justice system that an accused is presumed to be innocent unless proved guilty, and the rights of an accused : to maintain silence, to have an open trial, to have the facility of legal representation, to speedy trial, to hear witnesses and to cross-examine them. Apart from benefiting the accused in his right of defence, what is of paramount importance is that these rights are in-built in the system to enhance the confidence of the public insofar as efficiency and integrity of the justice delivery system is concerned.*

***295.*** *While the right of a fair trial has to be zealously guarded, equally important is the right of the press/media to keep the public informed of matters of public interest. These could include reporting of court proceedings involving people belonging to the top echelons of society, legislators, judges, bureaucrats, celebrities, etc.*

***296.*** *What would be the position if these two rights are in conflict? One would find an interesting observation in Solicitor General v. Wellington*

*Newspapers Ltd., reported in (1995) 1 NZLR 45, to the following effect:*

> *"In the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all other things being equal, the latter should prevail … In pre-trial publicity situations, the loss of freedom involved is not absolute. It is merely a delay. The loss is an immediacy; that is precious to any journalist, but is as nothing compared to the need for fair trial…"*

***297.*** *There are precedents in the matter of trial by media and the effect it may have on pending trials. The same are instructive and would provide suitable guidance to us to decide the question issue arising for decision.*

***298.*** *R.K. Anand (supra), notices the definition of 'trial by media' (without reference to its author) in the context of whether a sting operation amounts to a trial by media. It says:*

> *"293. What is trial by media? The expression 'trial by media' is defined to mean:*
>
> *'The impact of television and newspaper coverage on a person's reputation by creating*

*a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.'*

***299.*** *In Rajendra Jawanmal Gandhi (supra), the Hon'ble Supreme Court held:*

*"37. We agree with the High Court that a great harm had been caused to the girl by unnecessary publicity and taking out of morcha by the public. Even the case had to be transferred from Kolhapur to Satara under the orders of this Court. There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is the very antithesis of rule of law. It can well lead to miscarriage of justice…."*

*(underlining for emphasis by us)*

***300.*** *In Sidhartha Vashisht @ Manu Sharma (supra), the Supreme Court while stressing that coverage should not be prejudicial to those who are on trial said:*

> *"296. Cardozo, one of the great Judges of the American Supreme Court in his Nature of the Judicial Process observed that the judges are subconsciously influenced by several forces. This Court has expressed a similar view in P.C. Sen, In Re [AIR 1970 SC 1821] and Reliance Petrochemicals Ltd. v. Indian Express Newspapers, Bombay (P) Ltd. [(1988) 4 SCC 592].*
>
> *297. <u>There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which outrightly hold the suspect or the accused guilty even before such an order has been passed by the court</u>.*

*298. Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.*

***

*301. Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. [Anukul Chandra Pradhan v. Union of India [(1996) 6 SCC 354]]. It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a*

*free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice.*

*302. In the present case, various articles in the print media had appeared even during the pendency of the matter before the High Court which again gave rise to unnecessary controversies and apparently, had an effect of interfering with the administration of criminal justice. We would certainly caution all modes of media to extend their cooperation to ensure fair investigation, trial, defence of the accused and non-interference with the administration of justice in matters sub judice.*

*303. Summary of our conclusions:*

*...*

*(11) Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is*

*entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible."*

*(underlining for emphasis by us)*

***301.*** *Tehseen S. Poonawalla v. Union of India, reported in (2018) 9 SCC 501, makes poignant observations on the aspect of maintenance of law and order by the State and the rights available to a citizen, which we consider relevant for the present purpose and reproduce hereunder:*

*"1. *** The majesty of law cannot be sullied simply because an individual or a group generate the attitude that they have been empowered by the principles set out in law to take its enforcement into their own hands and gradually become law unto themselves and punish the violator on their own assumption and in the manner in which they deem fit. They forget that the administration of law is conferred on the law-enforcing agencies and no one is allowed to take law into his own hands on the fancy of his 'shallow spirit of judgment'. Just as one is entitled to fight for his rights in law, the other is entitled to be treated as innocent till he is found*

*guilty after a fair trial. No act of a citizen is to be adjudged by any kind of community under the guise of protectors of law. It is the seminal requirement of law that an accused is booked under law and is dealt with in accordance with the procedure without any obstruction so that substantive justice is done. No individual in his own capacity or as a part of a group, which within no time assumes the character of a mob, can take law into his/their hands and deal with a person treating him as guilty. That is not only contrary to the paradigm of established legal principles in our legal system but also inconceivable in a civilised society that respects the fundamental tenets of the rule of law. And, needless to say, such ideas and conceptions not only create a dent in the majesty of law but are also absolutely obnoxious.*

***

*15. *** The States have the onerous duty to see that no individual or any core group take law into their own hands. Every citizen has the right to intimate the police about the infraction of law. As stated earlier, an accused booked for an offence is entitled to fair and speedy trial under*

*the constitutional and statutory scheme and, thereafter, he may be convicted or acquitted as per the adjudication by the judiciary on the basis of the evidence brought on record and the application of legal principles. There cannot be an investigation, trial and punishment of any nature on the streets. The process of adjudication takes place within the hallowed precincts of the courts of justice and not on the streets. No one has the right to become the guardian of law claiming that he has to protect the law by any means. ***"*

*(underlining for emphasis by us)*

***302.*** *Facts of two cases are seldom alike. However, one decision of the Supreme Court which could be of some assistance to us in view of the facts thereof bearing close resemblance to the stage of proceedings (read : police investigation into a crime was/is in progress) is the one in M.P. Lohia (supra). The Supreme Court was dealing with an application for anticipatory bail of an applicant husband, accused of abetting the suicide of his wife. The applicant's claim was that his wife committed suicide due to depression. At the stage of investigation, the case received wide publicity. An*

*article was published in a magazine, based on the version of the deceased, as regards complicity of the applicant and his family members. The Court deprecated such irresponsible publication during pending investigation and ruled as follows:*

> *"10. Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interest of justice. The death of Chandni took place on 28-10-2003 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was disposed of by the High Court of Calcutta on 13-2-2004 and special leave petition was pending before this Court. Even then an article has appeared in a magazine called 'Saga' titled 'Doomed by Dowry' written by one Kakoli Poddar based on her interview of the family of the deceased, giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that these type of articles appearing in the media would certainly interfere with the*

*administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue is sub judice."*

*(underlining for emphasis by us)*

***303.*** *The Supreme Court in Rajendran Chingaravelu (supra), observed:*

*"21. But the appellant's grievance in regard to media being informed about the incident even before completion of investigation, is justified. There is a growing tendency among investigating officers (either police or other departments) to inform the media, even before the completion of investigation, that they have caught a criminal or an offender. Such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed. Even where a suspect surrenders or a person required for questioning voluntarily appears, it is not uncommon for the investigating officers to represent to the media that the person was arrested with much effort after considerable investigation or a chase. Similarly, when someone voluntarily declares the*

*money he is carrying, media is informed that huge cash which was not declared was discovered by their vigilant investigations and thorough checking. Premature disclosures or 'leakage' to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law. Be that as it may."*

*(underlining for emphasis by us)*

***304.*** *Whenever the Courts in India are called upon to undertake the sensitive and delicate task of reconciling conflicting public interests, i.e., preserving freedom of speech, respecting privacy and protecting fair trial, they must be extremely cautious in striking a balance to ensure that while effective exercise of the right of freedom of speech is not throttled by using the weapon of contempt, any unwanted attempt at intrusion into one's private life and undue tarnishing of the reputation built up by him after years of efforts is either kept in abeyance or invalidated, and the people's faith in the judicial system is duly sustained. A subtle understanding of and a mutual respect for each other's needs would be required before the conflict becomes too acute.*

***305.*** *Drawing inspiration from the definition of 'trial by media' in R.K. Anand (supra) as well as the authorities referred to above, it can safely be concluded that to amount to a trial by media, the impact of the press/media coverage on the reputation of the person targeted as an accused must be such that it is sufficient to create a widespread perception of his guilt, prior to pronouncement of verdict by the court, thus making him the subject of intense public scrutiny for the rest of his life.*

***307.*** *At this stage, we may once again briefly advert attention to the aspect of "investigation" by the police and the adverse impacts on police investigation by media reportage.*

***309.*** *The observations of the Supreme Court in Sidhartha Vashisht @ Manu Sharma (supra) are noteworthy. It says:*

> *"199. It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is*

*that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehors his position and influence in the society."*

*(underlining for emphasis by us)*

***310.*** *In Romila Thapar (supra), the Supreme Court in no uncertain terms laid down the law that while Courts do not determine the course of investigation, they act as watchdogs to ensure that fair and impartial investigation takes place since a fair and independent investigation is crucial to preservation of the rule of law and, in the ultimate analysis, to liberty itself.*

***311.*** *The following passage from the decision in Pooja Pal v. Union of India, reported in (2016) 3 SCC 135, is important from the view-point of the present discussion:*

*"86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and*

*adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice."*

*(underlining for emphasis by us)*

***312.*** *A fair trial must kick off only after an investigation is itself fair and just, has been reiterated by the Supreme Court in its decision in Vinubhai Haribhai Malaviya v. The State of Gujarat, reported in (2019) 17 SCC 1.*

***314.*** *The legal position clearly emerging on a bare reading of the scheme of the Cr.P.C. relatable to investigation under Chapter XII thereof as well perusal of the dicta of the Supreme Court noted above is that a fair trial ought to be preceded by an investigation that is fair to the accused as well as the victim. To ensure that an investigation is fair is not the duty of the courts alone, it is as much an obligation of the investigator and his superiors to have an investigation into a crime conducted in such manner that it serves the purpose for which it is intended. Although investigation is an arena reserved for the police and the executive and the courts would be loath to interfere with investigation, it does not detract from the character of activity undertaken by an investigator that a free, fair, impartial, effective and meaningful investigation of a cognizable offence is a necessary concomitant of "administration of justice", undoubtedly covering a wider area than "adjudication of cases and*

*dispensation of justice", which truly belongs to the judiciary, and any speech/publication in exercise of a citizen's freedom of speech while conforming to restrictions imposed by law in general under clause (2) of Article 19 must also yield to larger considerations of maintaining the purity of administration of justice. The Punjab High Court in Rao Harnarain v. Gumori Ram, reported in AIR 1958 Punj 273, rightly pointed out:*

> *"Liberty of the press is subordinate to the administration of justice. The plain duty of a journalist is the reporting and not the adjudication of cases."*

***324.*** *In Union of India v. Raghubir Singh, reported in (1989) 2 SCC 754 : AIR 1989 SC 1933, a Constitution Bench of the Supreme Court had the occasion to observe that today, it is no longer in doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from decisions of the superior courts. It is not expected that a high court, despite observing violation of rights, would remain a mute spectator by adopting a passive or negative role. The high courts' power to reach injustice, whenever and wherever found is well-entrenched*

*and directions can well be issued by the high courts, in exercise of its Article 226 jurisdiction, to enforce Fundamental Rights in a manner that it does not conflict with any statute.*

***351...<u>When the society as a whole, as it ought to be, is vitally interested in the prevention of improper convictions as also unmerited acquittals.</u>***

***353.*** *While not proposing to issue directions for postponement of news reporting for the reasons noted above, yet, bearing in mind the adverse impact that a trial by media could have on pending investigations (which was not the subject matter of consideration before the Supreme Court in the aforesaid decisions), that an accused is entitled to Constitutional protections and invasion of his rights is to be zealously guarded, that there is an emerging need to foster a degree of responsibility as well as promote accountability and the reason in the paragraph that follows, we do not consider it to be either impermissible or imprudent in the present context to maintain a fine balance between competing rights as well as having regard to the ever-changing societal needs to suggest measures for exercise of restraint by the media in respect of certain specified matters, with a view to secure*

*proper administration of justice, while it proceeds to exercise its right to report.*

***354.*** *As it is, dignity of an individual, even after he is dead, cannot be left to the mercy of the journalists/reporters. The same, being part of Article 21, has to be protected. Besides, the other rights that various individuals have under Article 21 also call for protection. The measures we would thus propose to remedy the ills that have so long remained unchecked for the lack of strict enforcement of the regulatory control mechanism, in whatever manner it is available on paper, as well as lack of proper understanding of the law of contempt of court and the procedures governing the criminal justice system, are intended to safeguard the dignity of an individual and his liberty the basic philosophy of our Constitution. We would do so, conscious of our own limitations of not crossing the boundaries, while urging the media houses not to step out of their boundaries too and thereby enter the grey area beyond the proverbial 'Lakshman Rekha'.*

***359.*** *That apart, one of the suggestions of Mr. Datar seems to us to be worthful and hence, we observe that Mumbai Police as well as the other investigating agencies may consider the desirability*

*of appointing an officer who could be the link between the investigator and the media houses for holding periodic briefings in sensitive cases or incidents that are likely to affect the public at large and to provide credible information to the extent such officer considers fit and proper to disclose and answer queries as received from the journalists/reporters but he must, at all times, take care to ensure that secret and confidential information/material collected during investigation, the disclosure whereof could affect administration of justice, is not divulged. Such officer, if at all appointed, would nonetheless be instructed to bear in mind the decision of the Supreme Court in Rajendran Chingaravelu (supra).* ***There, the Court warned of the growing tendency among investigating officers (either police or other departments) to inform the media, even before completion of investigation, that they have caught a criminal or an offender and that such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed. The investigating agency should refrain from such acts that would prejudice not only the investigation***

***but also the trial before the Court. We say no more on this topic.****''*

In the case of **Dr. Naresh Kumar Mangla Vs. Anita Agarwal and Others 2020 SCC OnLine SC 1031** it is ruled as under;

***''25.*** *Within a couple of days of the death of Deepti, the alleged suicide note found its way into the newspapers in Agra. This is in fact a circumstance relied upon by the learned Counsel for the accused when they submit that despite the publicity given to the suicide note, the FIR does not impugn its authenticity. The sequence in this case appears to follow familiar patterns. Immediate publicity was given to the alleged suicide note. These examples are now becoming familiar.* ***Selective disclosures to the media affect the rights of the accused in some cases and the rights of victims' families in others. The media does have a legitimate stake in fair reporting. But events such as what has happened in this case show how the selective divulging of information, including the disclosure of material which may eventually form a crucial part of the evidentiary record at the criminal trial, can be used to derail the administration of criminal justice. The investigating officer has a duty to investigate when information about the commission of a***

***cognizable offence is brought to their attention. Unfortunately, this role is being compromised by the manner in which selective leaks take place in the public realm. This is not fair to the accused because it pulls the rug below the presumption of innocence. It is not fair to the victims of crime, if they have survived the crime, and where they have not, to their families. Neither the victims nor their families have a platform to answer the publication of lurid details about their lives and circumstances. Having said this, we prima facie reject the insinuation that the FIR had not doubted or referenced the suicide note, despite its publication in the news media. The daughter of the appellant had died in mysterious circumstances. The family had completed the last rites. To expect that they should be scouring the pages of the print and electronic media before reporting the crime is a mockery of the human condition. The apprehension of the appellant that A-2 and his family have a prominent social status in Agra and may have used their position in society to thwart a proper investigation cannot be regarded to be unjustified***.

***26.*** *In the backdrop of what has been stated above and the serious deficiencies in the investigation, we have during the hearing, made all the counsel aware of*

*the possibility of this court referring the case for further investigation to the CBI. The court must enter upon the prospect of such a course of action with circumspection for two reasons. First, this court has repeatedly observed that the power which is vested in a superior court to transfer the investigation to another agency, such as the CBI, must be wielded with caution. In a recent judgement of this Court, Arnab Goswami v. Union of India[14], one of us (Dr. Justice D.Y. Chandrachud) had interpreted the rationale underpinning the circumspection in the following terms:*

> *"44. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled.* ***An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated***

***allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation.*** *Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation."*

***(emphasis supplied)***

***27.*** *Second, in the facts of this case, the charge-sheet which is dated 24 October 2020 has been submitted to the competent court on 5 November 2020. The submission of the charge-sheet does not oust the jurisdiction of a superior court, when as in the present case, the investigation is tainted and there is a real likelihood of justice being deflected. In Vinay Tyagi v. Irshad*[15]*, a two judge Bench of this Court, speaking through Justice Swatanter Kumar, has held:*

*"43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same.* ***The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior***

***courts very sparingly and with great circumspection.”***

In **Re: P.C.Sen (1969) 2 SCR 649** it is ruled as under;

*“**15.** In The **William Thomas Shipping Co., in re. H. W. Dhillon & Sons Ltd. v. The Company, In re. Sir Robert Thomas and Ors., [1930] 2 Ch. 368** it was observed that, the publication of injurious misrepresentations concerning parties to proceedings in relation to those proceedings may amount to contempt of Court, because it may cause those parties to discontinue or to compromise, and because it may deter persons with goods causes of action from coming to the Court, and was thus likely to affect the course of justice. But Maugham, J. observed :*

> *"There is an atmosphere in which a common law judge approaches the question of contempt somewhat different from that in which a judge who sits in this (Chancery) Division has to approach it. The common law judge is mainly thinking of the effect of the alleged contempt on the mind of the jury and also, I think, he has to consider the effect or the possible effect of the alleged contempt in preventing witnesses from coming forward to give evidence. In these days, at any rate, a Judge who sits in this Division is not in least likely to be*

*prejudiced by statements published in the press as to the result of cases which are coming before him. He has to determine the case on the evidence, of course, and with regard to the principles of law as he understands them; and the view of a newspaper, however intelligible conducted it may be, cannot possibly affect his mind. Accordingly, a Judge in the Chancery Division starts on the footing that only in the rarest possible case is it likely that the publication by a newspaper of such a statement as I have here to consider will affect the course of justice in the sense of influencing, altering or modifying the judgment or judgments which the Court will ultimately have to deliver;"*

*But our Courts, are Courts, which administer both law and equity. Assuming that a Judge holding a trial is not likely to be influenced by comments in newspapers or by other media of mass communication may be ruled out--though it would be difficult to be dogmatic on that matter also--the Court is entitled and is indeed bound to consider, especially in our country where personal conduct is largely influenced by opinion of the members of the caste, community, occupation or profession to which he belongs, whether comments holding up a party to public ridicule, or which prejudices society against him may not dissuade*

*him from prosecuting his proceeding or compel him to compromise it on terms unfavourable to himself. That is a real danger which must be guarded against : the Court is not in initiating proceedings for contempt for abusing a party to a litigation, merely concerned with the impression on the Judge's mind or even on the minds of witnesses for a litigant, it is also concerned with the probable effect on the conduct of the litigant and persons having similar claims.*

***16.** In **Regina v. Duffey and Ors. Ex Parte Nash, [1960] 2 Q.B.D. 188** the Court of Appeal in England had to consider the question whether comments made upon a person after his conviction and before his appeal was heard may be regarded as contempt of Court. Lord Parker, C.J., observed :*

> *"Even if a Judge who eventually sat on the appeal had seen the article in question and had remembered its contents, it is inconceivable that he would be influenced consciously or unconsciously by it. A Judge is in a very different position to a juryman. Though in no sense superhuman, he has by his training no difficulty in putting out of his mind matters which are not evidence in the case. This, indeed, happens daily to Judges on Assize. This is*

*all the more so in the case of a member of the Court of Criminal Appeal, who, in regard to an appeal against conviction is dealing almost entirely with points of law, and who, in the case of an appeal against sentence is considering whether or not the sentence is correct in principle,"*

*This may be true when a Court of Appeal determines questions of law only or the appeal is confined to questions of sentence, but where a proceeding which is tried on evidence in the Court of First Instance, or in the Court of Appeal on questions of fact as well as of law, it would be an over-statement to assert that a Judge may not be influenced even "unconsciously" by what he has read in newspapers.*

***17.*** *No distinction is, in our judgment, warranted that comment on a pending case or abuse of a party may amount to contempt when the case is triable with the aid of a jury, and not when it is triable by a Judge or Judges.*

***18.*** *Ordinarily a Court will not initiate proceedings for commitment for contempt where there is a mere technical contempt. In Legal Remembrancer v. Matilal Ghose and Ors., I.L.R. 41 Cal. 173 it was observed by Jenkins, C.J., that proceedings for contempt should be initiated with*

*utmost reserve and no court in the due discharge of its duty can afford to disregard them. It was also observed that jurisdiction to punish for contempt was arbitrary, unlimited and uncontrolled and should be exercised with the greatest caution : that this power merits this description will be realised when it is understood that there is no limit to the imprisonment that may be inflicted or the fine that may be imposed save the Court's unfettered discretion, and that the subject is protected by no right of general appeal. We may at once observe that since the enactment of the Contempt of Courts Act 12 of 1926 and Act 32 of 1952 the power of the Court in imposing punishment for con tempt of court is not an uncontrolled or unlimited power, That, however does not justify the court in commencing proceedings without due caution and reserve. But Banerjee, J., who must be conversant with local conditions was of the view that action of the Chief Minister was likely to interfere with the course of justice for it was likely to have "baneful effects" upon the petitioners their cause and upon persons having a similar cause, and sitting in appeal we do not think that we can hold that he took an erroneous view of his power or of the tendency of the speech, which hs has chisraeterified as having "baneful effects". Banerjee, J., has ultimately treated the contempt as technical for he has not imposed*

*any substantive sentence, not even a warning. He has merely expressed his displeasure. The speech was ex facie calculated to interfere with the administration of justice. In the circumstances the order of Banerjee, J., observing that the Chief Minister had acted improperly and expressing disapproval of the action does not call for any interference by this Court."*

## CHAPTER 81

WHEN THE OFFENCE OF PERJURY AND FORGERY IS COMMITTED BEFORE A TRIBUNAL/ AUTHORITY WHICH IS NOT COVERED AS COURT, AND TO WHICH PROVISIONS OF SECTION 340 ARE NOT APPLICABLE, THEN, THE PRIVATE COMPLAINT IS MAINTAINABLE ON THE BASIS OF COMPLAINT FILED BY THE ANY PERSON.

THE PARTY CAN APPROACH THE POLICE AS PER SECTION 154 OF CR. PC TO REGISTER THE FIR.

OR CAN DIRECTLY FILE THE PRIVATE COMPLAINT AS PER SECTION 190, 200 OF CR. PC

OR CAN FILE AN APPLICATION UNDER SECTION156 (3) OF CR. PC FOR DIRECTION TO POLICE TO REGISTER THE FIR AND POLICE TO INVESTIGATE THE CASE.

## CHAPTER 82

COURT IS A OPEN COURT AND NOTHING HAPPENS PRIVATE THERE.

In **Subramanian Swamy Vs. Arun Shourie AIR 2014 SC 3020,** it is had ruled that the party cannot give documents in sealed cover.

Article published in **'LiveLaw'** dated 21st November, 2017 **"Nothing Private Happens Here": SC Favors Audio Video Recording Of Court Proceedings In "Public Interest"**

Link for the detailed article **– https://www.livelaw.in/nothing-private-happens-here-sc-favors-audio-video-recording-of-court-procee din gs-in-public-interest/**

The Supreme Court, on Tuesday, favored the audio and video recording of proceedings, noting that such recording would be in "larger public interest".

During the hearing, the Bench comprising Justice A.K. Goel and Justice U.U. Lalit remarked, "What privacy? This is not a case of privacy. We don't need privacy here. Judges don't need privacy in court proceedings. Nothing private is happening here. We all are sitting in front of you."

It also sought a report from the Centre on the progress already made in this regard. The report has been directed to be submitted by 23 November. It was then informed by Additional Solicitor General Pinky Anand, who was appearing for the Centre, that the Ministry of Law and Justice has to sanction a proposal for financial outlay, which could be accorded any time soon.

The Court had, in March this year, directed that CCTV cameras may be installed inside the courts and at such important locations of the court complexes, at least in two districts in every State/Union Territory. Such installation had been directed to be completed within three months.

Thereafter, in August, it had considered it desirable for CCTV cameras to be installed in all subordinate Courts as well. The Court had then opined that such installation should be undertaken in a phased manner, as considered appropriate by the respective High Courts. It had, therefore, directed that the schedule for such installation be laid down within one month, and information be furnished to the Apex Court within two months. Audio recording, it had said, may also be done.

## CHAPTER 83

IF WRONG IS COMMITTED BY THE POLICE/PUBLIC SERVANT/JUDGE THEN HE HAS TO COMPENSATE THE VICTIM. TAX PAYERS MONEY CANNOT BE MISUTILIZED FOR WRONG COMMITTED BY THE GUILTY.

JUDGE IS THE EXECUTIVE ARM OF THE STATE. STATE SHOULD COMPENSATE FOR WRONG COMMITTED BY THE JUDGE.

In **Lucknow Development Authority Vs.. M. K. Gupta, 1994 AIR SCW 97,** it is ruled as under;

> ***''Misconduct by Public Officer - Damages to be recovered from erring official -Misfeasance in public offices - Liability to pay damages - Can be fastened on erring official- Relief that can be granted - Not limited to award of value of goods or service - Compensation for harassment, mental agony or oppression suffered by consumer can also be awarded - Commission should direct recovery of the same from persons responsible for that.- When the Court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It***

***is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries. -***

*(Paras 8, 11)*

*In Lala Bishambar Nath v. Agra Nagar Mahapalika, Agra, AIR 1973 SC 1289. It was held that where the authorities could not have taken any action against the dealer and their order was invalid, 'it is immaterial that the respondents had acted bona fide and in the interest of preservation of public health. Their motive may be good but their orders are illegal. They would accordingly be liable for any loss caused to the appellants by their action.' The theoretical concept that King can do no wrong has been abandoned in England itself and the State is now held responsible for tortuous act of its servants. The first Law Commission constituted after coming into force of the*

*Constitution on liability of the State in Tort, observed that the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine liability of the State. Friedmann observed,*

*"It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities, engages in activities of a commercial, industrial or managerial character. The proper test is not an impracticable distinction between governmental and non-governmental function, but the nature and form of the activity in question."*

*Even M/s. Kasturi Lal Ralia Ram Jam v. State of Uttar Pradesh, AIR 1965 SC 1039 did not provide any immunity for tortuous acts of public servants committed in discharge of statutory function if it was not referable to sovereign power. Since house construction or for that matter any service hired by a consumer or facility availed by him is not a sovereign function of the State the ratio of Kasturi Lal (supra) could not stand in way of the Commission awarding compensation. We respectfully agree with*

*Mathew, J., in Shyam Sunder v. State of Rajasthan, (1974) 1 SCC 690 : (AIR 1974 SC 890) that it is not necessary, 'to consider whether there is any rational dividing line between the so-called sovereign and proprietary and commercial functions for determining the liability of the State'. In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently.*

*Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the Statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the Statute like the Commission or the Courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. The word 'compensation' is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, 'compensating' or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss*

*and 'may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission or the forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him.''*

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

*In our opinion a reckless arrest of a citizen and detention even under a warrant of arrest by a competent Court without first satisfying itself of such necessity and fullfilment of the requirement of law is actionable as it violates not only his fundamental rights but such action deserves to be*

*condemned being taken in utter disregard to human rights of an individual citizen.*

*Compensation granted*

*"**11.** We have ascertained the status of the petitioner so as to work out his entitlement for compensation. We are informed that the petitioner works as Production Manager in a reputed firm M/s. Haldiram Bhujiwala, and draws salary of more than Rs.7000/- p.m. He has, wife, two marriageable daughters and a son in his family. After giving our anxious thought to the matter we award a sum of Rs.10,000/- to the petitioner as compensation. The State is directed to pay the amount of Rs.10,000/- to the petitioner within a period of four weeks, or deposit the same in this Court. We are also granting cost to the petitioner quantified to Rs.5000/-. It will be open for the State to recover the amount so awarded from the monetary benefits/pension, the delinquent clerk/his family is entitled to receive or will be receiving on his death. Rule made absolute in the aforesaid terms. Certified copy expedited.*

*12. Additional Registrar, to circulate the copy of this order to all the District & Sessions Judges, for*

*being circulated to Judicial Officers working within their jurisdiction.**"***

A Five Judge Bench of Privy Council 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."***

The above judgment of Privy Council is followed in **D.K. Basu's 1997) 1 SCC 416**

In **Bharat Devdan Salvi and Ors. Vs. The State of Maharashtra 2016 ALLMR (Cri) 1239,** it is ruled as under;

> ***''The learned Judge was directed to dispose of the application on 19.06.2015 itself. The learned Judge did not dispose of the application and***

***adjourned the same to 22.6.2015. On 24.06.2015 the learned counsel for the petitioners made a statement that on 19.6.2015 the counsel for the petitioners and the learned APP were present in the court and despite the request to hear the bail application, the learned Judge was reluctant to hear the application and had adjourned the hearing to 22.06.2015. - In view of the above statement, this court by order dated 24.6.2015 ordered to release the petitioners on bail. The Principal District Sessions Judge, Pune was directed to submit the report to this court.***

*33. We have perused the report and the explanation tendered by the learned Judge, and the same in our view is not satisfactory. The bail application was filed on 09.06.2015 and was opposed on the same grounds as stated in the remand application. The learned Judge failed to consider that there were no allegations of rape against these petitioners and the only allegation were of offence punishable under Section 417 IPC. The learned Judge had adjourned the hearing on 19.6.2015, merely on the statement of the APP that the offence was of serious nature. Despite the direction to dispose of the bail application on 19.06.2015, and despite the offence*

*being bailable offence, the failure of the learned Judge to dispose of the application expeditiously has also resulted in illegal detention of the petitioners in custody from 7th June, 2015 to 24th June, 2015.*

*34. It is indeed a matter of great concern that despite the offence being bailable, the Investigating agency, the Judicial Magistrate as well as the Sessions Court were responsible for detaining the aforesaid petitioners in custody from 7.6.2015 to 24.6.2015 in total contravention of the directions of the Apex Court in Arnesh Kumar (supra) and in violation of the fundamental rights of the petitioner nos.3 and 4.*

*35. Hence we deem it fit to direct an enquiry against the errant police officers, as well as the concerned judicial officers, in accordance with the directions of the Apex Court in Arnesh Kumar (para 11.7 and 11.8. supra). The petitioner nos.3 and 4 are at liberty to file appropriate proceedings for compensation, if they so desire.*

*36. Under the circumstances and in view of discussion supra, we pass the following order:-*

*(i) The petition is partly allowed, with costs of Rs. 50,000/- to be paid to the petitioner nos.3 and 4.*

*(ii) The C.R. No.46 of 2015 registered at Bhosari Police Station, Pune, is quashed qua the Petitioner Nos. 2 to 7 and quashed qua the petitioner no.1 only in respect of the offence under section 417 r/w 34 of the IPC.*

*(iii) The registry is directed to forward copy of this order to the Commissioner of Police, Pune. The Commissioner of Police, Pune to enquire into the matter of illegal detention and to fix the responsibility and to take disciplinary action against the erring police officers.*

*(iv) The respondent no.1 shall recover the costs of Rs. 50,000/- from the erring police officers.*

*(vi The inquiry and action taken report be filed before this court within four months from the date of receipt of this order.*

*(vi) A copy of this order be forwarded to the Registrar General, High Court, to be placed before the Honourable The Chief Justice, Bombay High Court.''*

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

> ***40.*** *If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the Appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation.* ***The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the Appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the Appellant.*** *In Sube Singh v. State of Haryana and Ors. MANU/SC/0821/2006 : (2006) 3 SCC 178, the three-*

*Judge Bench, after referring to the earlier decisions, has opined:*

***38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right Under Article 21, by a public servant.*** *The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation Under Section 357 of the Code of Criminal Procedure.*

***44.*** *Mr. Giri, learned senior Counsel for the Appellant and the Appellant who also appeared in person on certain occasions have submitted that the grant of compensation is not the solution in a case of the present nature. It is urged by them that* ***the authorities who have been responsible to cause such kind of harrowing effect on the mind of the Appellant should face the legal consequences. It is suggested that a Committee should be constituted to take appropriate steps against the erring officials. Though the suggestion has been strenuously***

***opposed, yet we really remain unimpressed by the said oppugnation. We think that the obtaining factual scenario calls for constitution of a Committee to find out ways and means to take appropriate steps against the erring officials. For the said purpose, we constitute a Committee which shall be headed by Justice D.K. Jain, a former Judge of this Court. The Central Government and the State Government are directed to nominate one officer each so that apposite action can be taken.*** *The Committee shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its business including the secretarial staff by the Central Government.*

In **Prempal and Ors. vs. The Commissioner of Police and Ors. (2010) ILR 4 Delhi 416** it is ruled that;

*''Compensation for undue harassment of petitioner no 1 and his family at hands of police in false charge of rape - Held, after analysis of evidence*

*Trial Court came to conclusion that petitioner no 1 was not involved in rape of child - In light of crushing evidence, which attained finality, petitioner no 1 has been treated unreasonably, unfairly by police and his fundamental rights were violated by respondents - Therefore petitioner entitled to be compensated by respondent for suffering because he had to undergo on account of illegal actions of police in implicating him falsely in FIR - Petitioner was working and entitled to minimum wages as claimed by him for loss of income during period of his illegal detention - Therefore direction issued to respondent no 1 to pay compensation with simple interest at 6 % and petition disposed of in above terms - In addition the Court directs the Commissioner of Police to send, within a period of two weeks from today, a written apology to Prempal and each of his family members on behalf of the Delhi Police for the suffering they have had to undergo at the hands of the police as found by both the learned ASJ as well as this Court. If confidence has to be restored among the citizenry that the police is meant to protect their rights, then such expression of contrition by those at the helm is an imperative- a direction is issued to the Respondent No. 1 to pay to*

*Petitioner No. 1 a sum of Rs. 5,32,750/- together with simple interest at 6 per cent per annum from 23rd May 2002, the date on which Prempal was arrested till the date of payment, and a further sum of Rs. 30,000/- towards costs of the present petition, within a period of four weeks from today.''*

In **Rini Johar and Others Vs. State (2016) 11 SCC 703** it is ruled as under;

***A. Criminal Procedure Code, 1973 – Ss. 41 to 41 –C- Power of Police to arrest – Procedure to be followed- guidelines given in D.K. Basu, (1997) 1 SCC 416, to be followed in cases of arrest and detention, reiterated – Concern regarding complaints of human rights prior to, and, after arrests, noted***

***- Arrest in violation of due procedure, seriously jeopardizing dignity of both arrested lady petitioners – None of procedural requirements were complied with – Police officers of State Played with liberty of petitioners and experimented with it – Law does not countenance such kind of experiments as that causes trauma and pain – Compensation of Rs. 5 Lakhs each, granted to them therefor, which is to be paid by State – State open to proceed against erring officials, if advised***

*- In instant case, respondent 8 filed complaint against petitioners [Petitioner 1, doctor and Petitioner 2, practicing advocate for last 36 years (both ladies) ] , leading to registration of FIR UNDER Ss. 420 and 34 IPC and S. 66-D, IT Act, 2000, against them – They were arrested from their residence in Pune, and were put in an unreserved train compartment for being taken from Pune to Bhopal, without being produced before local Magistrate- They were compelled to lie on the cold floor of compartment, without any food or water – They ere produced before Magistrate at Bhopal and Petitioner 2 was enlarged on bail after being in custody for about 17 days and Petitioner 1 was released after more than three weeks – Allegedly, they were forced to pay Rs 5 lakhs to Respondent 3 DSP, Cyber Cell, Bhopal*

*- Held, there was clear violation of Art. 21 of Constitution, and petitioners were compelled to face humiliation – They were treated with attitude of insensibility and their dignity was seriously jeopardized – Not only was there violation of guidelines issued in D.K. Basu case, but there was also flagrant violation of mandate of law enshrined under Ss. 41 and 41-A CrPC- Investigating officers in no circumstances can flout the law with brazen proclivity – In such a situation, Public law remedy comes into play and constitutional courts, taking note of suffering and*

*humiliation, are entitled to grant compensation – Hence, taking into consideration in totality of facts and circumstances, a sum of Rs 5 lakhs is granted towards compensation to each of the petitioners, to be paid by State within three months hence – Further, it is open to State to proceed against erring officials, if so advised*

*- Constitution of India – Arts. 21 and 32 – Violation of Art. 21 – Compensation/Damages – Constitutional courts when entitled to grant – Penal Code, 1860 – Ss. 420 and 34 – Information Technology Act, 2000 – S. 66-D – Tort Law – Public Law Torts – Illegal arrest and detention*

*In the instant case, Petitioner 1 is a doctor and she is presently pursuing higher studies in USA. She runs an NGO meant to provide services for South Asian abused women in USA. Petitioner 2, a septuagenarian lady, is a practising advocate in the District Court at Pune for last 36 years. Petitioner 1 is associated with US company.*

*Certain transactions between the informant, Respondent 8, and the US company were made. Afterwords, Respondent 8 filed a complaint before the Inspector General of Police, Cyber Cell, Bhopal alleging that Petitioner 1 and one G had committed fraud of USD 10,500. On the basis of the complaint made, FIR under Sections 420 and 34 IPC and Section 66-D, Information*

*Technology Act, 2000 was registered against the petitioners by Cyber Police Headquarters, Bhopal,*

*Thereafter, the petitioners were arrested from their residence at Pune. Various assertions have been made as regards the legality of the arrest which cover the spectrum of non-presence of the witnesses at the time of arrest of the petitioners, non-mentioning of date, and arrest by unauthorised officers, etc. That after they were arrested, they were taken from Pune to Bhopal in an unreserved railway compartment marked — "viklang" (handicapped). Despite request, Petitioner 2, an old lady, was not taken to a doctor, and was compelled to lie on the cold floor of the train compartment without any food and water. The petitioners faced undignified treatment and humiliation. They were produced before the Magistrate at Bhopal and Petitioner 2 was enlarged on bail after being in custody for about 17 days and Petitioner 1 was released after more than three weeks. They were allegedly forced to pay Rs 5 lakhs to Respondent 3, DSP, Cyber Cell, Bhopal.*

*In the instant writ petition filed by the petitioners before the Supreme Cour, they, while appearing in person, agonisingly submitted that the Supreme Court should look into the manner in which they were arrested, how the norms fixed by the Supreme Court were flagrantly violated*

*and how their dignity was sullied, permitting the atrocities to reign. It was urged, that if the Court was prima facie satisfied that violations are absolutely impermissible in law, they would be entitled to compensation.*

*Allowing the writ petition, the Supreme Court*

*Held :*

*The State in its initial affidavit had stated that the Director General of Police had appointed Inspector General of Police, CID to enquire into the allegations as regards the violation of the provisions enshrined under Sections 41-A to 41-C CrPC. In pursuance of the order passed by the Director General, an enquiry has been conducted by the Inspector General of Police Administration, CID, Bhopal. It has been styled as "preliminary enquiry". The said report was brought on record. (Paras 10 to 14)*

*Referring to the enquiry report and the legal position prevalent in the field and on a studied scrutiny of the report, it is quite vivid that the arrest of the petitioners was not made by following the procedure of arrest. Section 41-A CrPC as has been interpreted by the Supreme Court has not been followed. The report clearly shows that there have been number of violations in the arrest, and seizure. Circumstances in no case justify the*

*manner in which the petitioners were treated.*

*(Paras 15 to 22)*

*In such a situation, the dignity of the petitioners, a doctor and a practising advocate has been seriously jeopardised. Dignity is the quintessential quality of a personality, for it is a highly cherished value. It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonised, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil faith of the collective in the system. It does not require wisdom of a seer to visualise that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty. The investigating agency, as it seems, has put its sense of accountability to law on the ventilator. The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus-eyed to perceive the same.*

*Its visibility is as clear as the cloudless noon day. (Para 23)*

*The liberty, which is basically the splendour of beauty of life and bliss of growth, cannot be allowed to be frozen in such a contrived winter. That would tantamount to comatosing of liberty, which is the strongest pillar of democracy. (Para 24)*

*The officers of the State had played with the liberty of the petitioners and, in a way, experimented with it. Law does not countenance such kind of experiments, as that causes trauma and pain. (Para 25 and 26))*

*In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in D.K. Basu (1997) 1 SCC 416, there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and*

*circumstances, it is appropriate to grant a sum of Rs 5,00,000 towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised. (Para 27)*

*B.* ***Constitution of India – Arts. 32, 19(1)(a) and (2) – Scope of interference under Art. 32 – Criminal matters – Dispute purely of civil nature (relating to alleged fraud committed by personation by using computer Resources) – But, effort made to give it a criminal colour – Continuance of criminal proceedings – Justifiability of – Not made out – Prosecution thus initiated, quashed***

*- Complainant agaist petitioners [Petitioner 1, doctor and Petitioner 2, practicing advocate for last 36 years (both ladies)] by Respondent 8, leading to registration of FIR under Ss. 420 and 34 IPC and S. 66-D, IT Act, 2000, against them – On discharge application filed by petitioners, Magistrate passed order discharging them under S. 66-D, IT Act, however, Magistrate opined that there was prima facie case under S. 66-A(b), IT Act r/w Ss. 420 and 34 IPC*

*- Held, S. 66-A, IT Act, was struck down in its entirety, being violative of Art. 19 (1)(a), Constitution and not saved under Art. 19(2), Constitution, in Shrya Singhal,*

*(2015)5 SCC 1 – Therefore, only offence that remains, is S. 420 IPC – Magistrate had recorded a finding that there was no impersonation – However, he had opined that there were some material to show that petitioners had intention to cheat – However, on a perusal of FIR, it is clear that dispute is purely of a civil nature, but a maladroit effort was made to give it a criminal colour – It can be stated with certitude that no ingredient of S. 420 IPC is remotely attracted – Even if it is a wrong, the complainant has to take recourse to civil action – Instant case does not fall in the categories where cognizance of offence can be taken by court and accused can be asked to face trial – Entire case projects a civildispute and nothing else – Therefore, invoking principle laid down in Bhajan Lal, 1992 Supp (1) SCC 335, proceedings initiated are quashed and order negative prayer for discharge of accused person, set aside – Prosecution initiated against petitioners stands quashed – Criminal Procedure Code, 1973 – S. 227 – Penal Code, 1860 – Ss. 420 and 34 – Information Technology Act, 2000, Ss. 66-D and 66-A (b)*

*(Paras 28 & 29)*

In **Dinkarrao R. Pole Vs. State of Maharashtra 2004 (1) Crimes 1 (Bom) (DB)** where it is ruled as under;

***"A] Wrongful arrest & detention in police custody*** *– IPC Ss. 420 & 471 Cr.P.C. S.41-Police Officer is not expected to act in a mechanical manner and in all cases to arrest accused as soon as report of cognizable offence is lodged – Existence of power to arrest is another thing & justification for exercise of it is another thing there must be some reasonable justification in opinion of officer effecting arrest that it was necessary and justified – Except in heinous offences arrest should be avoided – If Police Officer issue notice to a person to attend the Police Station and not leave the station without permission would do – offence u.s. 420, 471, 468 of IPC are not herious offences – Arrest illegal.*

***B] Compensation- Petitioner was arrested by respondent Police Officer in case registered U/s 420, 468, 471. If IPC –*** *Offences are not heinous offences - Arrest found malafide and mischievous & not protected by element of good faith – Infringement of fundamental right of a citizen cannot stop by giving a mere declaration – Compensatory relief is to be provided under – Cost of Rs. 25,000/- imposed on Police Officer who arrested the petitioner."*

In **Antonio Sebastiao Mervyn ..Vs.. State of Goa 2008-All MR(Cri)-0-2432** it is ruled as under;

> ***I.P.C. section 186, 353, 356, 379 – Constitution of India, - Arts 226, 21 – Cri. P.C., (1973), S. 46 – Arrest – Power of Police to arrest the accused – Held, the investigation has to be made without touching the offender – The question of touching the offender would arise only while submitting a charge-sheet – Compensation of Rs. 25,000/- granted to accused – State directed to take action against police officer responsible for violation of fundamental rights of accused.***

In **Miss Veena Sippy vs. The State Of Maharashtra 2012 SCC OnLine Bom 339,** it is ruled as under;

In **veena sippy Vs. Narayan Dambre 2012 All Mr (Cri) 1263,** it is ruled as under;

> ***" (A) Bombay Police Act (1951), Ss.117, 112 - Constitution of India, Art.21 - Illegal detention - Petitioner, a woman was arrested for having committed offence under S.117 r.w. S.112 of Bombay Police Act which was admittedly bailable - No arrest memorandum or Panchnama drawn - Not even an intimation of arrest was given to petitioner's only relative i.e. her mother -***

***Petitioner was also not informed about her right of seeking bail - Case of not only gross breach of directions issued by Apex Court in D.K. Basu's case, but also a case of gross and flagrant violation of fundamental right of life and liberty - Detention of petitioner in police custody is totally unlawful. (Paras 15, 16)***

***(B) Constitution of India, Art.21 - Illegal detention - Compensation - Petitioner, a woman illegally detained in police custody for a period of one day for commission of bailable offence - Petitioner had to spend a night in police lock up along with 40 persons in inhuman condition - State Government liable to pay compensation of Rs.2,50,000/- to petitioner together with interest at rate of 8% per annum from date of illegal detention - Further State Government also directed to pay cost of Rs.25,000/- to petitioner who appeared in court on at least 22 occasions. (Paras 21, 23)"***

Division Bench of Hon'ble High Court in the case of **Saileajnand Pande vs. Sursh AIR 1969 Pat 194**held that, **when a Judge acts illegally and without jurisdiction in the matter of arrest then he is not protected.**

It has been held that putting a person under arrest for realizing Certificate by adopting questionable and unlawful method is

highly deplorable. Such person cannot remain as judge. To know the motive behind such malafide act investigation is necessary. It was held that,

> ***"A) Action against Judicial officer causing illegal arrest- Magistrate acting illegally and without jurisdiction in the matter of arrest is not protected – Magistrate has no absolute protection in regard to his act of illegal arrest***.
>
> *B) First class Magistrate issued letter to appear and directed to show cause against prosecution on the petition filed by another person - When petitioner appeared he was detained to custody - the bail bond furnished by the petitioner were rejected by the Magistrate deliberately - Petitioner claimed that due to such illegal, unauthorized and mala fide conduct of the Magistrate in arresting him, he has lowered in the estimation of the public and claimed for the damage -The action of he Magistrate by putting the petitioner under arrest for realizing the certificate dues by adopting questionable and unlawful method is highly deplorable - it was unbecoming of a Magistrate - it is relevant to investigate to find out the motive, the propriety and the legality of the action of the Magistrate in arresting the petitioner - It is not*

*a'judicial act although exercised during the judicial proceedings -The Magistrate exercised its power with the ulterior object of coercing the petitioner.*

*C) At page 178 of the 14th Edition of Salmond on Torts it is said - "The wrong of false imprisonment consists in the act of arresting or imprisoning any person without lawful justification, or otherwise preventing him without lawful justification from exercising his right of leaving the place in which he is. In my opinion, Defendant No. 1 has committed the wrong of false imprisonment in this case.*

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

*"Protection is afforded by common law and by statute to justices in respect of acts done in the execution of their duty as such; but this protection does not extend to*

*cases where they have acted either maliciously and without reasonable and probable cause, or without or in excess of their jurisdiction, and in such cases they are liable to an action for damages at the suit of the party "aggrieved,".*

Hon'ble High Court in the case of **State of U.P. vs. TulsiRam, AIR 1971 All 162** held that, a Magistrate issuing NBW against acquitted accused is not entitled to protection. Where the Judicial Magistrate concerned, issued NBW against the acquitted accused and got him arrested, The Magistrate complying with order certified u/s.425 does not act under that provision but only performs ministerial and not a judicial or a protected executive function. If negligently signs arrest warrants against acquitted persons he is not protected by **Sec. 1 Judicial Officers' Protection Act, 1850**. Even if he does so of the negligence of his subordinate he will still be liable for damages. He not be relieved of his liability by the failure to impaled that subordinate in suit for damages, even if the latter can be considered a joint tort feasor.

## CHAPTER 84

IF POLICE IS NOT TAKING ACTION ON COMPLAINT AND THE COMPLAINANT FILES THE COMPLAINT BEFORE COURT THEN THE COURT SHOULD NOT GIVE LONG DATE AND THE ORDER SHOULD BE PASSED IMMEDIATELY.

In **Mayur chandulal Contractor Vs Hercules D'souza 1999 ALLMR (Cri.) 8** it is ruled as under;

> *''Code of Criminal Procedure, 1973 S.482 S.2O2 S.200 Indian Penal Code, 1860 S.506(2) S.386 S.452 S.451 Complaint case has to be decided urgently - issue Of process - Validity - Process issued after over one year of complaint splitting the offences - Held, Section 200 does not permit the Magistrate to wait for such a long time on a complaint filed by the complainant under Section 200 I.P.C.It should bear in mind that Section 200 cr.P.C.Is an alternative protection for a citizen who suffers, against the reluctant attitude of the police either to entertain his complaint or a police officer May be baised against the accused.In that circumstances, a complaint filed under Section 200 should be Acted with a sense of urgency.Here, an year has been taken.The complaint was filed on 5-2-90 and verification has been taken for the reasons best known to the Magistrate only on*

*6-3-1990 and the Actual verification process started on 5-6-1990 and again evidence was called for on 2-2-1991.Ultimately, the endorsement was made by the advocate on 2-4-1991 and the order was passed for issuing summons against the petitioner on 2-4-1991.The time spent by the Magistrate is not in the ordinary course of business of the Court.Such delay is not admissible in the light of the provisions of Sections 200, 202, 203, and 204 of cr.P.C.The Magistrate cannot split offences according to the wishes of the complainant as is done in this case.The procedure adopted by the Magistrate is clearly an instance of mis-carriage of justiceand liable to be Quashed''*

## CHAPTER 85

EVEN IF CASE IS OF FALSE POLICE REPORT IS SUBMITTED BY THE POLICE. THE ACTION UNDER SECTION 340 OF CR.P.C CAN BE TAKEN.

In **Perumal VS Janaki (2014) 5 SCC 377,** it is ruled as under;

> ***"20.*** *The High Courts not only have the authority to exercise such jurisdiction but also an obligation to exercise such power in appropriate cases. Such obligation, in our opinion, flows from two factors – (1) the embargo created by Section 195 restricting the liberty of aggrieved persons to initiate criminal proceedings with respect to offences prescribed under Section 195; (2) such offences pertain to either the contempt of lawful authorities of public servants or offences against public justice.*
>
> ***21****. A constitution Bench of this Court in Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., (2005) 4 SCC 370, while interpretingSection 195 Cr.P.C., although in a different context, held that any interpretation which leads to a situation where a victim of crime is rendered remediless, has to be discarded[6]. 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.*

***22.*** *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"[7]. 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."*

**See Also – i] Arijit Sarkar Vs. Monosree Sarkar & Ors., 2017 SCC OnLine Cal 13.**

## CHAPTER 96

CASES WHERE THE JUDGES OF ALL COURTS (LOWER TO HIGHER) WERE PROSECUTED, DISMISSED, SUSPENDED AND PUNISHED. CRIMINAL CASES THAT HAVE BEEN INSTITUTED AGAINST THE JUDGES**.**

**1)** The Former Supreme Court Justice Markandey Katju said that at least 50% of the judges in Indian courts are corrupt**.[14 April 2015]**

**2)** One FIR was registered against the High Court Judge Raman Lal for having falsely implicated an innocent person in a false Criminal case and the said FIR was justified and ratified by the High Court**.[2001 Cr. LJ 800]**

**3)** A defamation case under section 500, IPC was filed against a judge for having used defamatory and insulting word against an advocate and the case against said judges held to be legal and justified by the Supreme Court holding that it was not the part of official duty or work of the judge ot defame or insult any person and further holding that in such case previous sanction to prosecute such a judge was not required and that a case can be directly filed in the court**.[ AIR 1983 SC 64]**

**4)** A Principal District Judge had filed criminal case under section 167,471,474 and 466 of IPC, against a judge who interfered and tampered with the Roznama of a case and the case against said

Judge was found to be legal, proper and justified by the Supreme Court**. [AIR 1971 SC 1708]**

**5)** A case under section 504, IPC filed against a judge who used abusive word against a person was found to be legal ,proper and justified by the Supreme Court holding that in such cases previous sanction to prosecute such a judge is not required and that a case can be directly filed in the court against the judge**.[1993 Cri. LJ 499]**

**6)** A sitting Judge of Delhi High Court, who passed an order by obtaining illegal gratification (bribe ) was arrested by C.B.I. and was in police custody for 13 days and thereafter released on bail**.[2003 DRJ(70)327]**

**7)** A Judge from Maharashtra Judiciary namely S.B.Nikkam, was held guilty of contempt of Supreme Court for having failed to take action against a police officer who handcuffed an accused. The judge was not punished as he tendered apology. However Supreme Court ordered to record its strong disapproval in service book of said Judge**.[AIR 1996 SC 2299**]

**8)** A sitting High Court Judge was held guilty of the contempt by the Supreme Court for acting against order of the Supreme Court**.[(2010) 6 SCC 417]**

**9)** While holding a judge guilty of wrongful confinement by not granting bail and illegally detaining a person in custody, the High Court held that no protection from prosecution can be granted to such judges.**[AIR 1969 PAT 194]**

**10)** A CBI Court Judge was arrested for accepting bribe of Rs.10 Crores, in the case of Janardan Reddy and the Supreme Court with pain warned to keep the Judiciary away from corruption.[ **TNN 20 FEB 2015(36PG)**

**11) Corrupt Judges should be thrown out:-** While responding to a casewhere a judges had extended unwarranted relied to a person despite contrary order of Supreme Court, the Supreme Court not only refused to expunge those remarks but reiterated that they were true.**[Mail Today 11 MAY 2011]**

**12)** The High Court of Allahabad had filed an application seeking to expunge certain remarks against the corrupt and unethical conduct of High Court Judges of Allahabad, but Supreme Court not only refused to expunge those remarks but reiterated that they were true.**[i) The Hindu, Chennai 10 Dec. 2010, 30th march,2013][ii) Hindustan Times 12 Dec,2010]**

**13)** The investigation of five corrupt High Court Judges of Allahabad conducted by IB, the then CJI S.H. Kapadiya said that they were corrupt but however no action was taken against them. The former SC Judge Justice Markandey Katju had written a blog on this incident. [TIMES OF INDIA] CJI Kapadiya is also liable to punishment for offences under section 218 and 201 of IPC for saving accused Judges and not initiating criminal prosecution as required by law against said corrupt Judges.

**14)** The Senior counsel Shanti Bhushan, Ex. Law Minister, Govt of India and Prashant Bhushan had submitted affidavits in Supreme

Court informing that eight chief justices of Supreme Court were corrupt. While no action is being taken against the corrupt judges, the voice of Bhushan is being tried to be curbed down by issuing notice to him. Whether this is democracy?**[TNN 17 Sep. 2010]**

**15)** The former SC Judge Justice Markandey Katju informed that the Government pressurized Supreme Court collegiums to rpomeote one corrupt Judges of Madras High Court to Supreme Court and the very corrupt jidge was so promoted/ elevated to Supreme Court. **[ 20 July 2014, 21 July 2014, TOI]**

**16)** The Chief Justice of Karnataka High Court namely P.D. Dinkaran whose corruption was exposed and found to be true was left scot free b only transferring to other High Court. He resigned later, but no action and criminal prosecution was taken against him.

**17)** Kolkata High Court Judge Soumitra Sen was involved in the misappropriation and corruption of Rs. 22.83 lakh but he was only put to impeachment in Rajysabha but no action was taken under criminal law i.e. Section 409 IPC. Why?**[17 AUGUST 2011]**

**18)** The Supreme Court Judge namely V. Ramaswamy faced only impeachment but no punishment was given to him under criminal law.

**19)** A three judges bench of Supreme Court whimsically and hurriedly dismissed a petition filed by advocate Shanti Bhushan in the matter of corruption of 1000 Crore Rupees by Supreme Court Judge Justice Prasad. The President of Supreme Court Bar Association Advocate

Dushyant Dave Has also written about this incident in his blog.**[14 April 2015]**

**20)** CBI filed a charge sheet against six judges of High Court in the matter of corruption of Rupees 6.8Crore of PF Scam.**[Mail Today 4 July, 2010]**

CBI Court framed charges against six Judges.**[27 November 2013] (37PG)**

**21)** In the matter of bribe of 10 lakh rupees, the CBI, filed a charge-sheet against the Punjab and Haryana High Court Judge Nirmal Yadav and CBI Court also framed charges in the case. **[The Hindu 18 Jan. 2014]**

**22)** Bombay High Court issued notice to magistrate and sessions judge calling their explaination for not giving bail to a woman accused**. [Cri. Writ Petition No. 92 of 2009, Order dated 17th Jan, 2009 Adv. Rajesh Panchal]**

**23)** A misinterpretation of Higher Court order i.e. Supreme Court order is contempt by the said judge. The registrar directed to take action against the said Judge**.[AIR 2001 SC 1975]**

**24)** A Judge issued non-bailable warrant in the disposed of case. The victim was granted compensation of Rs.25,000/-**[2001 ALL MR (Cri.)173]**

**25)** If judge interpolates the records of a pending case then he is guilty of offence u.sec.466,471,474,471 of IPC.

i. 1928 I.L.R. (52) mad 347

ii. AIR 1940 Lah 292

iii. AIR 1971 SC 1708

**26)** Court cannot deny hearing of a case only because the person had made complaint against judges. **[(2002) 8 SCC 715]'**

**27)** If the judge does not grant bail to the accused when case laws of supreme court and High court are shown to him then apart from departmental action the said judge will also be liable for prosecution under contempt of Court's Act**.[2012 ALL MR (Cri.)271]**

**28)** The judges have no discretion when the case law is clear. It is the duty of Higher courts to make the law more predictable. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients Subordinate courts would find themselves in embarrassing position it choose between the conflicting decisions. The general public would be in dilemma to obey or not to obey or nor obey such law and ultimately falls in to disrepute**.[AIR 1990 SC 261]**

**29)** The judge was held guilty of contempt of court for giving unwanted relief to accused **[1993 Cri.L.J.816]**

**30)** The Judgement of other high court is also binding. Bombay High Court ordered action against a judge. The said judge had taken a stand that kerala High Court case laws is not binding on him.**(2011(4) AIR Bom R 238) [2011 (4) AIR BOM R 238]**

**31)** All the judges including judges of High court would be guilty of Judicial Adventurism for passing order by ignoring law settled by Supreme Court. It would be judicial impropriety for sub-ordinate courts including High courts to ignore the settled decisions. The

tendency of the subordinate courts is not applying the settled principles and passing whimsical order granting wrongful and unwarranted relief to one of the parties is strongly deprecated. Such tendency should be stopped**.[AIR 1997 SC 2477]**

**33]** If Misconduct of passing whimsical order by public officer is proved then damages to be recovered from erring official. When court directs recovery of compensation or payment of damages against state then the ultimate sufferer is the common man. Government money is the tax payers money which should not be paid for inaction of those who are entristed under the Act to discharges their duties in accordance with the law**.[AIR 1994 SC 787]**

## CHAPTER 87

HOW TO UNDERSTAND THE CORRUPT MOTIVE OF A JUDGE IN PASSING AN ORDER AND ALSO HOW TO UNDERSTAND THE 'INTELLECTUAL DISHONESTY', FRAUD & ABUSE OF POWER, MALICE, BIAS, PREJUDICE BY A JUDGE. AND HOW TO ASK FOR RECUSAL OF A JUDGE OR TRANSFER OF THE CASE TO OTHER BENCH.

Full Bench in **Vijay Shekhar Vs. Union of India (2004) 4 SCC 666** ruled as under;

> ***"9.*** *This Court in Express Newspapers Pvt. Ltd. & Ors. v. Union of India & Ors. (AIR 1986 SC 872) at para 118 has held thus :*
>
> ***"Fraud on power voids the order if it is not exercised bona fide for the end design.*** *There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises* ***when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers.*** *The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of*

*Punjab, (1964) 4 SCR 733 : (AIR 1964 SC 733). A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order.The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtown, 1904 AC 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the power shall be used bona fide for the purpose for which they are conferred'. It was said by Warrngton, C.J. in Short v. Poole Corporation, (1926) 1 Ch 66 that :*

*"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative."*

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

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

*(emphasis supplied)*

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

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

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

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

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

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

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

***12.*** *In view of our finding that the complaint filed before the Court of Metropolitan Magistrate, Court No.10 at Ahmedabad in Criminal Case No.118 of 2004 dated 15.1.2004 is ex facie an act of fraud by a fictitious person, and an abuse of the process court, every and any action taken pursuant to the said complaint gets vitiated. Therefore, we think the complaint registered before the Metropolitan Magistrate, Court No.10 at Ahmedabad in Criminal Case No.118 of 2004 dated 15.1.2004 and all*

*actions taken thereon including the issuance of non-bailable warrants is liable to be declared ab initio void, hence, liable to be set aside.*

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

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

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

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

In **Sunil Goyal & Another Vs. Additional District Judge Jaipur 2011 (2) ILR (Raj) 530** it is ruled as under;

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

Hon'ble Apex Court in **Prabha Sharma Vs. Sunil Goyal (2017) 11 SCC 77** it is ruled as under;

*"Article 141 of the Constitution of India - disciplinary proceedings against Additional District Judge for not*

*following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.*

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

*High Court initiated disciplinary proceedings against Appellant who is working as Additional District Judge, Jaipur City for not following the Judgments of the High Court and Supreme Court. Appellant filed SLP before Supreme Court - Supreme Court dismissed the petition.*

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

*Based on this Judgment, disciplinary proceedings have been initiated against the Appellant by the High Court. We make it clear that the High Court is at liberty to proceed*

*with the disciplinary proceedings and arrive at an independent decision and to finalise the same expeditiously."*

In **Shrirang Waghmare Vs State of Maharashtra 2019 SCC Online SC 1237**, it is ruled as under.

*"**9.** Judges must remember that they are not merely employees but hold high public office. In R.C. Chandel v. High Court of Madhya Pradesh [(2012) 8 SCC 58], this Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of this Court are relevant:*

*"37. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secure that Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no*

*excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, judicial system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartially and intellectual honesty."*

***10.*** *There can be no manner of doubt that a judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law."*

**MALICE IN LAW**

In the case of **West Bengal State Electricity Board** Vs. **Dilip Kumar Ray (AIR 2007 SC 976),** it is ruled as under;

*"**Malice in law** **"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of***

> ***malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.*** *See S. R. Venkataraman v. Union of India, (1979) 2 SCC 491.*

Hon'ble Supreme Court in **Kalabharati Advertising Vs. Hemant Vimalnath Narichania And Ors**.**(2010) 9 SCC 437** had ruled as under;

> ***A. Legal Malice: The State is under obligation to act fairly without ill will or malice in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others.*** *Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law*

> *intended."* ***It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. Passing an order for an unauthorized purpose constitutes malice in law.***

In **Kishor M. Gadhave Patil Vs. State 2016 (5) Mh.L.J.75.** it is ruled as under;

> ***LEGAL MALICE :-*** *Discrimination between two person is Lefgal Malice- The fact that another employee of the respondent was also a co-petitioner in the Civil writ filed in this Court. However , no action is taken against him leaves much to be desired and makes bona fides of the respondents suspect is a factor which brings the respondent virtually within the ambit of legal malice;*
>
> *For the reason recorded above, reasonable inference has to be drawn as regards existence of legal mala fides."*

Three Judge Bench of This Hon'ble Court in **Union of India Vs. K.K Dhawan (1993) 2 SCC 56** had read as under;

> ***"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.*

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

**"*Hon'ble Supreme Court observed:***

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

*The petitioner Justice Mrs. Nirmal Yadav, the then Judge of Punjab and Haryana High Court found to have taken bribe to decide a case pending before her- CBI charge sheeted - It is also part of investigation by CBI that this amount of Rs.15.00 lacs was received by Ms. Yadav as a consideration*

*for deciding RSA No.550 of 2007 pertaining to plot no.601, Sector 16, Panchkula for which Sanjiv Bansal had acquired interest. It is stated that during investigation, it is also revealed that Sanjiv Bansal paid the fare of air tickets of Mrs. Yadav and Mrs. Yadav used matrix mobile phone card provided to her by Shri Ravinder Singh on her foreign visit. To establish the close proximity between Mrs. Yadav, Ravinder Singh, Sanjiv Bansal and Rajiv Gupta, CBI has given details of phone calls amongst these accused persons during the period when money changed hands and the incidence of delivery of money at the residence of Ms. Nirmaljit Kaur and even during the period of initial investigation - the CBI concluded that the offence punishable under Section 12 of the PC Act is established against Ravinder Singh, Sanjiv Bansal and Rajiv Gupta whereas offence under Section 11 of the PC Act is established against Mrs.Justice Nirmal Yadav whereas offence punishable under Section 120-B of the IPC read with Sections 193, 192, 196, 199 and 200 IPC is also established against Shri Sanjiv Bansal, Rajiv Gupta and Mrs. Justice Nirmal yadav*

*It has been observed by Hon'ble Supreme Court "Be you ever so high, the law is above you." Merely*

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

***B) In-House procedure 1999 , for enquiry against High Court and Supreme Court Judges - Since the matter pertains to allegations against a sitting High Court Judge, the then Hon'ble Chief Justice of India, constituted a three members committee comprising of Hon'ble Mr.Justice H.L. Gokhale, the then Chief Justice of Allahabad High Court, presently Judge of Hon'ble Supreme Court, Justice K.S. Radhakrishnan, the then Chief Justice of Gujarat High Court, presently, Judge of Hon'ble Supreme Court and Justice Madan B.Lokur, the then Judge of Delhi High Court, presently Chief Justice Gauhati High Court in terms of In-House procedure adopted by Hon'ble Supreme Court on***

***7.5.1997. The order dated 25.8.2008 constituting the Committee also contains the terms of reference of the Committee. The Committee was asked to enquire into the allegations against Justice Mrs. Nirmal Yadav, Judge of Punjab and Haryana High Court revealed, during the course of investigation in the case registered vide FIR No.250 of 2008 dated 16.8.2008 at Police Station, Sector 11, Chandigarh and later transferred to CBI. The Committee during the course of its enquiry examined the witnesses and recorded the statements of as many as 19 witnesses, including Mrs.Justice Nirmal Yadav (petitioner), Ms. Justice Nirmaljit Kaur, Sanjiv Bansal, the other accused named in the FIR and various other witnesses. The Committee also examined various documents, including data of phone calls exchanged between Mrs. Justice Nirmal yadav and Mr.Ravinder Singh and his wife Mohinder Kaur, Mr.Sanjiv Bansal and Mr.Ravinder Singh, Mr.Rajiv Gupta and Mr. Sanjiv Bansal. On the basis of evidence and material before it, the Committee of Hon'ble Judges has drawn an inference that the money delivered at the residence of Hon'ble Ms.Justice***

***Nirmaljit Kasectionur was in fact meant for Ms.Justice Nirmal Yadav."***

In **Superintendent of Central Excise and others Vs. Somabhai Ranchhodhbhai Patel (2001) 5 SCC 65** it is ruled as under;

***"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."*

In the case of **Prem Kaur Vs State of Punjab and others (2013) 14 SCC 653,** it is ruled as under;

***High Court dismissing revision without considering evidence recorded finding admitted contrary medical evidence on record --- sustainability --- since sound reasoning for acquittal lacking and based on fanciful conjectures without testing them on touchstone of evidence, held, findings recorded by court below are perverse ---***

***matter remanded to trial for fresh decision on bases of evidence in accordance with law.***

***18.*** *In Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805] , the Court while dealing with a case of disciplinary proceedings against an employee considered the issue and held as under: (SCC pp. 647-48, para 17)*

> *"17. It is equally well settled that where a quasi-judicial tribunal or arbitrator* ***records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. … they disclose total non-application of mind****. … The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence."*

***19.*** *This Court in Satyavir Singh v. State of U.P. [(2010) 3 SCC 174: (2010) 2 SCC (Cri) 48] , held: (SCC p. 183, para 21)*

> *"21.* ***… 'Perverse' was stated to be behaviour which most of the people would take as wrong, unacceptable,***

***unreasonable and a 'perverse' verdict may probably be defined as one that is not only against the weight of the evidence but is altogether against the evidence. Besides, a finding being 'perverse', it could also suffer from the infirmity of distorted conclusions and glaring mistakes."***

***20.*** *If the judgments of the courts below are examined in the light of the aforesaid settled legal proposition, the same have to be labelled as suffering from perversity.*

***16.*** *In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] , this Court held that* ***an order suffers from perversity, if relevant piece of evidence has not been considered or if certain inadmissible material has been taken into consideration or where it can be said that the findings of the authorities are based on no evidence at all or if they are so perverse that no reasonable person would have arrived at those findings.*** *In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429 : AIR 1999 SC 677] , this Court while reiterating the same view added that: (SCC p. 14, para 10)*

*"10. ... if there is some evidence on record which is acceptable and which could be relied upon, howsoever, compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."*

***15.*** *In Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312] this Court held that: (SCC p. 317, para 7)*

> *"7. ... if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*

***17.*** *In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501 : AIR 2001 SC 386] , this Court further added that an order is perverse, if it suffers from the vice of procedural irregularity.*

***21***. *The trial court did not decide the case giving adherence to the provisions of Section 354 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"). The said provisions provide for a particular procedure and style to be followed while delivering a judgment in a criminal case and such format includes a reference to the points for determination, the decision thereon, and the reasons for the decision, as pronouncing a final order without a reasoned judgment may not be valid, having sanctity in the eye of the law. The judgment must show proper application of the mind of the Presiding Officer of the court, and that there was proper evaluation of all the evidence on record, and the conclusion is based on such appreciation/evaluation of*

*evidence. Thus, every court is duty-bound to state reasons for its conclusions.*

***22.*** *In State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407] this Court held as under: (SCC pp. 285-86, para 23)*

> *"23.* ***A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."***

***23.*** *In* ***Mukhtiar Singh v. State of Punjab [(1995) 1 SCC 760*** *: 1995 SCC (Cri) 296 : AIR 1995 SC 686] this Court emphasised on the compliance with the statutory requirement*

*of Section 354 CrPC, observing as under: (SCC pp. 765-66, para 10)*

*"10. ... same is far from satisfactory.* ***Both, the order of acquittal as well as the order of conviction, have been made by the trial court in a most perfunctory manner without even noticing much less, considering and discussing the evidence led by the prosecution or the arguments raised at the bar.*** *... It was in paras 28 to 32, noticed above, that the orders of acquittal and conviction were made. The trial court was dealing with a serious case of murder. It was expected of it to notice and scrutinise the evidence and after considering the submissions raised at the bar arrive at appropriate findings. ... There is no mention in the judgment as to what various witnesses deposed at the trial, except for the evidence of the medical witness. The judgment does not disclose as to what was argued before it on behalf of the prosecution and the defence. The judgment is so infirm.... The trial court appears to have been blissfully ignorant of the requirements of Section 354(1)(b) CrPC. Since, the first appeal lay to this Court, the trial court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate court to know the basis on which the 'decision' is based. A*

*'decision' does not merely mean the 'conclusion'—it embraces within its fold the reasons which form the basis for arriving at the 'conclusions'. The judgment of the trial court contains only the 'conclusions' and nothing more. The judgment of the trial court cannot, therefore, be sustained. The case needs to be remanded to the trial court for its fresh disposal by writing a fresh judgment in accordance with law."*

## CHAPTER 88

HOW TO PROSECUTE JUDGES UNDER DEFAMATION LAW I.E. UNDER SECTION 500,501 ETC. OF IPC**.**

In the case of **B. S. Sambhu Vs. T.S. Krishnaswamy (1983) 1 SCC 11** it is ruled as under;

*''Cri. P.C. Sec 197- Sanction for prosecution of Judges – A Judge was prosecuted u/s 499 of I P C for USING WORDS "ROWDY", "A BIG GAMBLER" and "A MISCHIVIOUS ELEMENT" against complainant- Trial court held that sanction for prosecution of judge is not necessary – HELD – Such unparliamentarilyword can never be connected with discharge of official duty on the part of Judge- No sanction is necessary to prosecute him even if the remarks are written while performing duty as a Judge.''*

In **Bidhi Singh Vs. M.S.Mandayal 1993 Cr.L.J. 499** it is ruled as under;

> ***''Criminal P.C. (2 of 1974), S.197 - Sanction For Prosecution - Prosecution of judges and public servants - Complaint under Section 504 I.P.C. - Use of words "non-sense" and 'bloody fool' by Presiding Officer against complainant - Sanction to prosecute, not necessary – This is not the part of his official duty.***
>
> *A Presiding Judge is expected to maintain decorum in the proceedings before him. He is expected also to act with restraint- One would expect him to be sober, unruffled and temperate in language even when faced with a situation where those appearing before him may tend to lose their composure. In this scheme of things any vituperative outburst on the part of the Presiding Officer, howsoever grave the provocation to him, cannot be countenanced as an action sustainable as one performed by him "while acting or purporting to act in the discharge of his official duty."*

## CHAPTER 89

ACTION AGAINST GOVT. OFFICIAL, STATE, UNION OF INDIA INVOLVED IN FRIVOLOUS LITIGATIONS AND CHALLENGING LAWFUL ORDERS WITHOUT ANY LEGITIMATE OR REASONABLE GROUNDS**.**

In **Union of India v. Pirthwi Singh, (2018) 16 SCC 363** it is ruled as under;

> ***''3.*** *After dismissal of the batch of appeals, the Union of India filed yet another appeal on the same subject being Civil Appeal No. (blank) of 2018 (Diary No. 4893 of 2018) entitled Union of India v. Balbir Singh. That appeal came up for consideration before this Court on 9-3-2018 [Union of India v. Balbir Singh, 2018 SCC OnLine SC 2450, wherein it was directed:"1. Leave to appeal is granted. Delay condoned. This appeal was filed well after several similar matters were dismissed by this Court. We cannot appreciate the conduct of the Union of India in this regard of filing civil appeals/special leave petitions after the issue has been concluded by this Court. This is unnecessarily adding to the burden of the justice delivery systems for which the Union of India must take full responsibility.2. The civil appeal is dismissed with costs of Rs 1,00,000 to be deposited by the appellants with the Supreme Court*

*Legal Services Committee within four weeks from today for utilisation of juvenile justice issues.3. The Union of India must shape up its litigation policy.4. List the matter after five weeks for compliance."] and was dismissed following the decision in Balbir Singh Turn [Union of India v. Balbir Singh Turn, (2018) 11 SCC 99 : (2018) 1 SCC (L&S) 866 : (2017) 14 Scale 189] . While dismissing the appeal, it was noted that it was filed well after several similar matters were dismissed [**Ed.**: It seems that reference is to Union of India v. Johari Mal, Diary No. 37952 of 2017, order dated 4-1-2018 (SC) and Union of India v. Rajeev Kumar, Diary No. 38767 of 2017, order dated 16-2-2018 (SC), which were disposed of as dismissed in terms of order in Union of India v. Balbir Singh, (2018) 11 SCC 99 : (2018) 1 SCC (L&S) 866] by this Court. The conduct of the Union of India in filing civil appeals/special leave petitions after the issue is concluded by this Court was not appreciated. It was noted that the Union of India must take full responsibility for unnecessarily adding to the burden of the justice delivery system.*

***4.*** *To ensure that the Union of India is far more circumspect, costs of Rs 1,00,000 were imposed and it was observed that the Union of India must shape up its litigation policy. Unfortunately, the Union of India has*

*learnt no lesson and has continued its non-cooperative attitude.*

***5.*** *The present appeal was filed on 8-3-2018 which is also well after the decision in Balbir Singh Turn [Union of India v. Balbir Singh Turn, (2018) 11 SCC 99 : (2018) 1 SCC (L&S) 866 : (2017) 14 Scale 189] . We would have expected that with the dismissal of the appeals relating to Balbir Singh Turn [Union of India v. Balbir Singh Turn, (2018) 11 SCC 99 : (2018) 1 SCC (L&S) 866 : (2017) 14 Scale 189] and Balbir Singh [Union of India v. Balbir Singh, 2018 SCC OnLine SC 2450, wherein it was directed:"1. Leave to appeal is granted. Delay condoned. This appeal was filed well after several similar matters were dismissed by this Court. We cannot appreciate the conduct of the Union of India in this regard of filing civil appeals/special leave petitions after the issue has been concluded by this Court. This is unnecessarily adding to the burden of the justice delivery systems for which the Union of India must take full responsibility.2. The civil appeal is dismissed with costs of Rs 1,00,000 to be deposited by the appellants with the Supreme Court Legal Services Committee within four weeks from today for utilisation of juvenile justice issues.3. The Union of India must shape up its litigation policy.4. List the matter after five weeks for compliance."] , the Union of India would*

*take steps to withdraw this appeal from the Registry of this Court so that it is not even listed and there is no unnecessary burden on the Judges. But obviously, the Union of India has no such concern and did not withdraw its appeal from the Registry itself.*

***6.*** *The Union of India must appreciate that by pursuing frivolous or infructuous cases, it is adding to the burden of this Court and collaterally harming other litigants by delaying hearing of their cases through the sheer volume of numbers. If the Union of India cares little for the justice delivery system, it should at least display some concern for litigants, many of whom have to spend a small fortune in litigating in the Supreme Court.*

***7.*** *On 23-6-2010, the Union of India released the "National Legal Mission to Reduce Average Pendency Time from 15 Years to 3 Years" and this document is called "National Litigation Policy". The vision/mission of the National Litigation Policy is as follows:*

> *"1. The National Litigation Policy is based on the recognition that Government and its various agencies are the predominant litigants in courts and Tribunals in the country. Its aim is to transform Government into an efficient and responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to*

*respect fundamental rights and those in charge of the conduct of government litigation should never forget this basic principle.*

*"Efficient litigant" means*

*(i) Focusing on the core issues involved in the litigation and addressing them squarely.*

*(ii) Managing and conducting litigation in a cohesive, coordinated and time-bound manner.*

*(iii) Ensuring that good cases are won and bad cases are not needlessly persevered with.*

*(iv) A litigant who is represented by competent and sensitive legal persons: competent in their skills and sensitive to the facts that Government is not an ordinary litigant and that a litigation does not have to be won at any cost.*

*"Responsible litigant" means*

*(i) That litigation will not be resorted to for the sake of litigating.*

*(ii) That false pleas and technical points will not be taken and shall be discouraged.*

*(iii) Ensuring that the correct facts and all relevant documents will be placed before the court.*

*(iv) That nothing will be suppressed from the court and there will be no attempt to mislead any court or tribunal.*

*2. The Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the court decide", must be eschewed and condemned.*

*3. The purpose underlying this Policy is also to reduce government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the National Legal Mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of the Government have to keep in mind the principles incorporated in the National Mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary government cases. Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority."*

*(emphasis supplied)*

*None of the pious platitudes in the National Litigation Policy have been followed indicating not only the Union of India's lack of concern for the justice delivery system but scant regard for its own National Litigation Policy.*

***8.*** *The website of the Department of Justice shows that the National Litigation Policy, 2010 is being reviewed and formulation of the National Litigation Policy, 2015 is under consideration. When this will be finalised is anybody's guess. There is also an Action Plan to Reduce Government Litigation which was formulated on 13-6-2017.*

***9.*** *Nothing has been finalised by the Union of India for the last almost about 8 years and under the garb of ease of doing business, the judiciary is being asked to reform. The boot is really on the other leg.*

***10.*** *Interestingly, the Action Plan mentions, among others, two interesting steps to reduce pendency:*

*(i) Avoid unnecessary filing of appeals—appeals should not be filed in routine matters—only in cases where there is a substantial policy matter.*

*(ii) Vexatious litigation should be immediately withdrawn.*

*These pendency reduction steps (particularly (ii) above) have been conveniently overlooked as far as this appeal is concerned.*

***11.*** *To make matters worse, in this appeal, the Union of India has engaged 10 lawyers, including an Additional Solicitor General and a Senior Advocate! This is as per the appearance slip submitted to the Registry of this Court. In other words, the Union of India has created a huge financial liability by engaging so many lawyers for an appeal whose fate can be easily imagined on the basis of existing orders of dismissal in similar cases. Yet the Union of India is increasing its liability and asking the taxpayers to bear an avoidable financial burden for the misadventure. Is any thought being given to this?*

***12.*** *The real question is: when will the Rip Van Winkleism stop and the Union of India wake up to its duties and responsibilities to the justice delivery system?*

***13.*** *To say the least, this is an extremely unfortunate situation of unnecessary and avoidable burdening of this Court through frivolous litigation which calls for yet another reminder through the imposition of costs on the Union of India while dismissing this appeal. We hope that*

*someday some sense, if not better sense, will prevail on the Union of India with regard to the formulation of a realistic and meaningful National Litigation Policy and what it calls "ease of doing business", which can, if faithfully implemented benefit litigants across the country.*

***14. <u>The appeal is dismissed with costs of Rs 1,00,000 as before to be deposited with the Supreme Court Legal Services Committee within four weeks from today for utilisation for juvenile justice issues. Pending IAs are also disposed of.</u>***

***<u>15. List for compliance after five weeks.</u>***

Hon'ble Supreme Court in **<u>Union of India Vs. Balbir Singh</u>** order dated **8 December, 2017 in** Civil Appeal Diary No. 3744 OF 2016 ruled thus;

*This appeal was filed well after several similar matters were dismissed by this Court. W**<u>e cannot appreciate the conduct of the Union of India in this regard of filing civil appeals / special leave petitions after the issue has been concluded by this Court. This is unnecessarily adding to the burden of the Justice Delivery Systems for which the Union of India must take full responsibility.</u>***

***The civil appeal is dismissed with costs of Rs.1,00,000/-*** *to be deposited by the appellants with the Supreme Court Legal Services Committee within four weeks Signature Not Verified from today for utilization of juvenile justice issues. Digitally signed by MEENAKSHI KOHLI Date: 2018.03.10 12:45:39 IST Reason:*''

## CHAPTER 90

HOW TO DEAL WITH THE PUBLIC SERVANT DENYING THE INFORMATION UNDER RTI/
OR INVOLVED IN DESTROYING THE CCTV FOOTAGES.

In **Lok Nath Chugh v. PIO, 2015 SCC OnLine CIC 6912,** it is ruled as under;

> ***11.*** *Section 6 authorized Use of electronic records and digital signatures in Government and its agencies.*
>
> ***12.*** *The Second Schedule of IT Act amended Evidence Act: (a) in the definition of "Evidence", for the words "all documents produced for the inspection of the Court", the words "all documents including electronic records produced for the inspection of the Court" shall be substituted;*
>
> ***13.*** *Right to Information Act, 2005 section 2(f) says information includes data material held in any electronic form. Section 2(i) says record includes any microfilm, any other material produced by a computer or any other device. Section 2(j) says right to information includes obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print outs where such information is stored in a computer or in any other device.*
>
> ***14.*** *Thus this CCTV footage, being information held by the public authority has to be shared when asked under RTI. The*

*Commission has earlier declared, and once again declares, that though information could be removed according to established policy, if that remained on the date of filing of RTI application, it cannot be destroyed or weeded out unless the RTI application is finally disposed of. As discussed above it is the duty of the public authority to use the footage to prove the untoward incident, which is the very purpose of CCTV installation. If public authority notices any such destruction or weeding out, such an act would attract IPC provisions to prosecute those involved in destruction of evidence. The Commission also can invoke Section 20 of Right to Information Act for destruction of record and denial of information. Hence the public authority is directed to produce a copy of the CCTV footage for the timing referred above and provide the same in CD form along with certification and covering letter to the appellant and also to the prosecuting agency within one week from the date of receipt of this order.*

***15.** Accordingly the appeal is **disposed of."***

## CHAPTER 91

EVEN UNLAWFULLY OR ILLEGALLY OBTAINED EVIDENCE IS ALSO AN EVIDENCE AND ITS EVIDENTIARY VALUE IS EQUAL AS THAT OF LEGALLY OBTAINED EVIDENCE.

In **Yashwant Sinha v. CBI, (2019) 6 SCC 1 : 2019 SCC OnLine SC 518,** it is ruled that ;

> ***" 9.*** *An issue has been raised by the learned Attorney with regard to the manner in which the three documents in question had been procured and placed before the Court. In this regard, as already noticed, the documents have been published in The Hindu newspaper on different dates. That apart,* ***even assuming that the documents have not been procured in a proper manner should the same be shut out of consideration by the Court?*** *In Pooran Mal v. Director of Inspection [Pooran Mal v. Director of Inspection, (1974) 1 SCC 345 : 1974 SCC (Tax) 114 : AIR 1974 SC 348] this Court has taken the view that the "test of admissibility of evidence lies in its relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out****".***

In **State (N. C. T. of Delhi v. Navjot Sandhu AIR 2005 SC 3820** it is ruled as under;

> *"There is warrant for the proposition that even if evidence is illegally obtained it is admissible. Over a century ago it was said in an English case where a constable searched the appellant illegally and found a quantity of offending article in his pocket that it would be a dangerous obstacle to the administration of justice if it were held, because evidence was obtained by illegal means, it could not be used against a party charged with an offence. See Jones V. Owen (1870) 34 JP 759. The Judicial Committee in Kumar, Son of Kanju V. R [1955 1 All E.R. 236] dealt with the conviction of an accused of being in unlawful possession of ammunition which had been discovered in consequence of a search of his person by a police officer below the rank of those who were permitted to make such searches. The Judicial Committee held that the evidence was rightly admitted. The reason given was that if evidence was admissible it matters not how it was obtained. There is of course always a word of caution. It is that the Judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would*

*operate unfairly against the accused. That caution is the golden rule in criminal jurisprudence."*

*We may also refer to the decision of a Constitution Bench of this Court in Pooranmal Vs. Director of Inspection [1974 2 SCR 704] in which the principle stated by the Privy Council in Kurma's case was approvingly referred to while testing the evidentiary status of illegally obtained evidence. Another decision in which the same approach was adopted is a recent judgment in State Vs. NMT Joy Immaculate [(2004) 5 SCC 729].*

## CHAPTER 92

IF COMPLAINT IS AGAINST POLICE OFFICER THEN NO POLICE OFFICER ATTACHED WITH THAT POLICE STATION CAN INVESTIGATE THE CASE. INVESTIGATION SHOULD BE DONE BY THE INDEPENDENT AGENCY LIKE CID, CBI ETC.

In **Sudhir M. Vora Vs. Commissioner of Police for Greater Bombay and others, 2004 Cri. L. J. 2278** it is ruled as under;

> ***(A) Criminal P.C. (2 of 1974), S.154 - FIR - F.I.R. against police - Written complaint to Commissioner of Police disclosing information regarding commission of cognizable offence against Police Officers - It has to be registered as F.I.R. in terms of S.154 of Code. In such type of cases , Commissioner of Police should ensure that inquiry was done by independent agency such as C.I.D. - Enquiry by officers associated with same Police Station should not be ordered if done is illegal - From the explanation offered on behalf of respondents before us, we are persuaded to take the view that the inquiry so conducted was only a show cause without anything more. Inasmuch as the same has been undertaken by the officers of the same Police Station with a seal of approval put by the Assistant Commissioner of Police, Bandra Division by way of his interim report. The gist of the statements of concerned***

***persons recorded in the interim report would clearly show that the main focus about the allegations in the complaint sent by the petitioner to the Commissioner of Police, has been glossed over and instead opinion rather a finding of guilt, is recorded against the petitioner that he has made a false and mischievous allegation against respondent No. 2 with ulterior purpose. In the matter of such serious allegations, the Commissioner of Police should have at least, ensured that the inquiry was done by an independent agency and responsible officer and not by the officers associated with the same Police Station. (Para 14,15)***

*"We make it clear that we are not endorsing the action of the Commissioner of Police directing the inquiry into the matter instead of registering the offence under Section 154 of the Code and of further actions under Chapter XII of the Code. Suffice it to observe that inquiry as made, has no legal efficacy so as to ignore the complaint made by the petitioner in writing which discloses the commission of a cognizable offence. In view of the foregoing discussion, we have no hesitation in directing the respondent No. 1 Commissioner of Police to cause to reduce the written complaint sent by the petitioner dated 22-11-2000 in the appropriate book maintained for the purpose of registering crime as per Section 154 of the Code and*

*further to cause investigation into the said complaint by an independent agency such as DCB CID, having regard to the fact that serious allegations have been made against the police officers of having committed acts of commission or omission constituting cognizable offence; and the matter ought to be taken to its logical end in accordance with law after investigation is completed and report in that behalf is filed before the appropriate Court.*

In **Rubabbudding Shaikh Vs. State of Gujrat (2010) 2 SCC 200** it is ruled as under;

***53.*** *It is an admitted position in the present case that the accusations are directed against the local police personnel in which the high police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be*

*assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility however faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.*

***54.*** *It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI Authorities would be an appropriate authority to investigate the case.*

***55.*** *In Ramesh Kumari v. State (NCT of Delhi) [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678] , this Court at para 8 observed: (SCC p. 681)*

> *"8. ... We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI."*

## CHAPTER 93

WHENEVER COMPLAINT AGAINST POLICE IS GIVEN TO THE SP OR POLICE COMMISSIONER THEN AS PER SECTION 154 [3] OF CR.PC THE SP IS BOUND TO REGISTER FIR AGAINST THE CONCERNED ACCUSED POLICE OFFICER.

In **Sudhir M. Vora Vs. Commissioner of Police for Greater Bombay and others, 2004 Cri. L. J. 2278** it is ruled as under;

> ***(A) Criminal P.C. (2 of 1974), S.154 - FIR - F.I.R. against police - Written complaint to Commissioner of Police disclosing information regarding commission of cognizable offence against Police Officers - It has to be registered as F.I.R. in terms of S.154 of Code. In such type of cases , Commissioner of Police should ensure that inquiry was done by independent agency such as C.I.D. - Enquiry by officers associated with same Police Station should not be ordered if done is illegal - From the explanation offered on behalf of respondents before us, we are persuaded to take the view that the inquiry so conducted was only a show cause without anything more. Inasmuch as the same has been undertaken by the officers of the same Police Station with a seal of approval put by the Assistant Commissioner of Police, Bandra Division by way of his interim report. The gist of the statements of concerned***

***persons recorded in the interim report would clearly show that the main focus about the allegations in the complaint sent by the petitioner to the Commissioner of Police, has been glossed over and instead opinion rather a finding of guilt, is recorded against the petitioner that he has made a false and mischievous allegation against respondent No. 2 with ulterior purpose. In the matter of such serious allegations, the Commissioner of Police should have at least, ensured that the inquiry was done by an independent agency and responsible officer and not by the officers associated with the same Police Station. (Para 14,15)***

*"We make it clear that we are not endorsing the action of the Commissioner of Police directing the inquiry into the matter instead of registering the offence under Section 154 of the Code and of further actions under Chapter XII of the Code. Suffice it to observe that inquiry as made, has no legal efficacy so as to ignore the complaint made by the petitioner in writing which discloses the commission of a cognizable offence. In view of the foregoing discussion, we have no hesitation in directing the respondent No. 1 Commissioner of Police to cause to reduce the written complaint sent by the petitioner dated 22-11-2000 in the appropriate book maintained for the purpose of registering crime as per Section 154 of the Code and*

*further to cause investigation into the said complaint by an independent agency such as DCB CID, having regard to the fact that serious allegations have been made against the police officers of having committed acts of commission or omission constituting cognizable offence; and the matter ought to be taken to its logical end in accordance with law after investigation is completed and report in that behalf is filed before the appropriate Court.*

## CHAPTER 94

GOVT. PLEADER AND PUBLIC PROSECUTOR SHOULD NOT REPRESENT THE CASE OF DELINQUENT ACCUSED AND GUILTY POLICE OFFICERS OR ANY PUBLIC SERVANT.

In **Sudhir M. Vora Vs. Commissioner of Police for Greater Bombay and others, 2004 Cri. L. J. 2278** it is ruled as under;

***''15. In our opinion, there is not only failure of recording F.I.R. in respect of complaint sent by the petitioner but what is intriguing is that some inquiry is directed which is only reduced to a farce of an inquiry.*** *We say so because, it appears from the record that on receipt of complaint from the petitioner dated 22-11-2000, the Commissioner of Police referred the matter to the Deputy Commissioner of Police, Bandra Division,*

*Mumbai. It would have been a different matter if the Deputy Commissioner of Police, Bandra Division, was to cause inquiry but instead, he, in turn, referred the matter to the Assistant Commissioner of Police, Bandra Division, Mumbai. The Assistant Commissioner of Police then depended on the assistance of Senior Inspector of Police and other police officers of Bandra Police Station which fact has been recorded in the interim report dated 11-1-2001 submitted by the Assistant Commissioner of Police.* ***From the explanation offered on behalf of respondents before us, we are persuaded to take the view that the inquiry so conducted was only a show cause without anything more. Inasmuch as the same has been undertaken by the officers of the same Police Station with a seal of approval put by the Assistant Commissioner of Police, Bandra Division by way of his interim report. The gist of the statements of concerned persons recorded in the interim report would clearly show that the main focus about the allegations in the complaint sent by the petitioner to the Commissioner of Police, has been glossed over and instead opinion rather a finding of guilt, is recorded against the petitioner that he has made a false and mischievous allegation against respondent No. 2 with ulterior purpose.In the matter of such serious allegations, the Commissioner of Police***

***should have at least, ensured that the inquiry was done by an independent agency and responsible officer and not by the officers associated with the same Police Station.*** *We make it clear that we are not endorsing the action of the Commissioner of Police directing the inquiry into the matter instead of registering the offence under Section 154 of the Code and of further actions under Chapter XII of the Code. Suffice it to observe that inquiry as made, has no legal efficacy so as to ignore the complaint made by the petitioner in writing which discloses the commission of a cognizable offence. In view of the foregoing discussion, we have no hesitation in directing the respondent No. 1 Commissioner of Police to cause to reduce the written complaint sent by the petitioner dated 22-11-2000 in the appropriate book maintained for the purpose of registering crime as per Section 154 of the Code and further to cause investigation into the said complaint by an independent agency such as DCB CID, having regard to the fact that serious allegations have been made against the police officers of having committed acts of commission or omission constituting cognizable offence; and the matter ought to be taken to its logical end in accordance with law after investigation is completed and report in that behalf is filed before the appropriate Court.''*

**2) In <u>S.Naganna Vs. Krishna Murthy AIR 1965 AP 320</u>** it is ruled as under;

> *"Sec. 340 of Cr.P.C. – Accused Police Officers – The Government Pleader cannot appear for them even if he is authorized by the State authority - the A.P.P. Grade-1 cannot appear for the accused. - merely on the ground that the Collector is competent to give authority to the A.P.P. Grade-1 to defend a Government servant who is an accused in a private case or on the ground that there are government orders to that effect, as contended by the A.P.P. Grade-1 before the learned Munsif-Magistrate. The finding of the learned Munsif-Magistrate accepting the contention of the A.P.P. Grade-I is not tenable to the extent of holding that the A.P.P. Grade-I was entitled to appear as of right to defend the accused on the grounds urged by the A.P.P. Grade-1. - The memorandum of Government is of the nature of administrative instruction and guidance. If any application is filed before the Munsiff-Magistrate under S. 4(1)(r)(2) Cr. P.C. he will have to dispose of it according to law after considering all the circumstances in the light of the relevant law. The revision petition is allowed and the order of the learned Munsiff-Magistrate is set aside." ( PARA 9 & 12)*

In **Rameshwar Kahale Vs. Gajanan Pachpor 2005 ALL MR (Cri) 2392** it is ruled as under;

> *Contempt of Courts Act (1971), Ss.2(b), 12 – Petitioner - Public servant cannot use state machinery in a proceeding against him. Petitioner - directed to pay to the State, Respondent No. 4 quantified cost in a sum of Rs. 5000/- on account of having put the machinery of the State of Maharashtra in motion for filling present writ Petition as litigation sponsored and espoused by the State . The Petitioner – also directed to pay a sum of Rs.2000/- by way of costs to be paid to the Learned Advocate Shri. A. K. Somani who has represented the accused by drawing a Demand Draft in the name of learned Advocate within 15 days.*
>
> *Willful disobedience of lawful orders- Sessions Judge issued a notice to petitioner who is public servant, calling him to show cause as to why action towards the contempt of the order of the Court should not be taken - being dissatisfied with the reply, the Sessions Judge, Akola, filed through District Government Pleader a complaint before the Chief Judicial magistrate - The Petitioner approached the State Government and get the present Criminal Writ Petition filed on state expence .*
>
> *On calling upon explanation as to how the Petition was filed at State's expenses - Private Advocate caused his*

*appearance - Court consequently discharged the learned Asstt. Public Prosecutor from appearance as such for the Petitioner on the condition that the State of Maharashtra was arrayed as the Respondent.*

## CHAPTER 95

FORMAT, CONTAINS AND BASIC REQUIREMENTS NEEDED IN THE AFFIDAVIT TO BE FILED BY THE PUBLIC SERVANT SHOULD BE DETAILED AND CORRECT BEFORE COURT AND ANY PROCEEDING.

In **Seethalakshmi Vs. State of Tamil Nadu and Ors. 1991 Cri. L.J 1037** it is ruled as under;

***''The Reply affidavits are not intended just to point out the flaws in the case of the opponent. Their affidavits should always place all the facts before the Court whether such facts would support the contention of them in the case or not.***

*This Court has on several occasions pointed out that affidavits should not be treated in a light-hearted fashion and prepared in a hap-hazard manner. Every litigant should understand that an affidavit is a sworn statement and it takes the place of deposition. Responsibility of*

*Government officials is much more in this regard. Their affidavits are not intended just to point out the flaws in the case of the opponent. Their affidavits should always place all the facts before the Court whether such facts would support the contention of the Government in the case or not.''*

In **Amardeepsingh Baswantsingh Thakur Vs. Deputy Inspector General (Prisons) (East) Nagpur & Anr. 2020 ALL MR (Cri) 4308**, it is ruled as under;

***"3.*** *The reply filed on behalf of the respondent No.2 is far from satisfactory, rather it borders upon interfering in the administration of justice. We say so with all sense of responsibility. The least that is expected from the state is to be correct on facts and straight forward in submissions. The reply filed on behalf of the respondent No.2, does not fulfill any of these parameters. The reply is misleading and also takes a ground which is not stated in the impugned order, for resisting this petition. It appears that the respondent No.2 has taken the issue quite personally and, therefore, while filing an affidavit, he has displayed his utter dislike for the petitioner. Being a public servant, it is expected of respondent No.2 to be fair in performance of his duty and to treat all the inmates of the jail as well as his staff members with equality. But that has not been done*

*by respondent No.2. This time we would not pass any order which may be adverse to the interest of respondent No.2, but, we would like to put respondent No.2 and the officers like him who are public servants on guard by what we have said just now.*

## CHAPTER 96

PRECAUTION TO BE TAKEN BY THE JUDGES TO SAVE THEMSELVES FROM THE COMMITTING OFFENCES.

Section 52 of Indian Penal Code reads thus;

> ***52. "Good faith".*** *Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.*

Hence, Judges are required to take all precautions before taking decisions.

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

> *"It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him unless there are the other grounds for acting*

*otherwise which has to be justified by reasons recorded in writing."*

Undue haste is a proof against Judges.

**i]** Prof. Ramesh Chandra Vs State **MANU/UP/0708/2007**

**ii]** S. Abdul Parekh Vs. M. K. Prakash and others **(1976) 1 SCC 975**

## CHAPTER 97

## QUALITY OF GOOD JUDGES

While delivering 2nd lecture on M.C. Setalvad Memorial Lecture Seriessometime in the year 2006, the Hon'ble Mr. Justice Y.K.Sabharwal (the then CJI)expressed that;

***"A Judge would always be polite & considerate and imbued with a sense of humility. He would not disturb the submissions of the lawyers midway only to project a "know-all" image for himself. This also means that he would be sitting with an open mind, eager to be advised by the counsel or the parties.''***

On the point of predictability of the outcome of a case and transparency in the judiciary, the reputed and well-known learned authors and legal experts of Bangladesh in ***"The Desired Qualities of a Good Judge"***, have expressed thus:

***"In all acts of judgment, the Judges should be transparent so that not only the lawyers but also the***

***litigants can easily predict the outcome of a case. Transparency and predictability are essential for the judiciary as an institution of public credibility."***

In *"A.M. Mathur vs. Pramod Kumar Gupta; (1990) 2 SCC 533"*, it was held that –**the quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary.**

**Other qualities of a good judge** have been described by the said authors as under:

*(i)* ***A judge is a pillar of our entire justice system and the public expects highest and irreproachable conduct from anyone performing a judicial function.***

*(ii)* ***Judgesmust be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent. Their judgment should be sound and they should be able to make informed decisions that will stand up to close scrutiny.***

*(iii) Centuries ago Justinian said that precepts of law are three in number i.e. to live honestly, to give every man his due and to injure none.*

*(iv)* ***Judiciary as an organ of the state has to administer fair justice according to the direction of the Constitution and the mandate of law.***

*(v) Every judge is a role model to the society to which he belongs. The same are embodied in all the religious scriptures.* ***Socrates once stated that a judge must listen courteously, answer wisely, considers soberly and decides impartially.***

*(vi) The qualities of a good judge include patience, wisdom, courage, firmness, alertness, incorruptibility and the gifts of sympathy and insight. In a democracy, a judge is accorded great respect by the state as well as its citizens. He is not only permitted to assert his freedom and impartiality but also expected to use all his forensic skill to protect the rights of the individual against arbitrariness.*

*(vii)* ***Simon Rifkind laid down "The courtroom, sooner or later, becomes the image of the judge. It will rise or fall to the level of the judge who presides over it… No one can doubt that to sit in the presence of a truly great judge is one of the great and moving experiences of a lifetime."***

*(viii) There is no alternative of qualified and qualitative judges who religiously follow the rule of law and administer good governance.*

*(ix)* ***The social service, which the Judge renders to the community, is the removal of a sense of injustice.***

*(x)* ***Judiciary handled by legal person is the custodian of life and property of the people at large,*** *and so the*

*pivotal and central role as played by the judicial officers should endowed higher degree of qualities in consonance with the principles of "standard of care", "duty of care" and "reasonable person" as necessary with judicial functionaries.*

*(xi)* ***The American Bar Association once published an article called Good Trial Judges in which it discussed the difference in the qualities of a good judge and a bad judge and noted that practicing before a "good judge is a real pleasure," and "practicing before a bad judge is misery.***

*(xii)* ***The Judges exercise the judicial power on trust. Normally when one sits in the seat of justice,he is expected to be honest, trustworthy, truthful and a highly responsible person. The public perception of a Judge is very important. Marshal, Chief Justice of the United States Supreme Court said, "we must never forget that the only real source of power we as judges can tap is the respect of the people. It is undeniable that the Courts are acting for the people who have reposed confidence in them." That is why Lord Denning said, "Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that the Judge is biased".***

*(xiii) A Judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn; great and*

*honest enough to discard all mere pride of opinion, and follow truth wherever it may lead, and courageous enough to acknowledge his errors.*

*(xiv) Judge ought to be more learned than witty, more reverend than plausible and more advised than confident. Above all things, integrity is their portion and proper virtue. Moreover, patience and gravity of hearing is also an essential part of justice, and an over speaking Judge is known as well tuned cymbal.*

*(xv)* ***It is the duty of the Judges to follow the law,as they cannot do anything whatever they like.*** *In the language of Benjamin N. Cardozo – "The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles".*

*(xvi)* ***Judges should be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear and cogent.***

*(xvii)* ***If a Judge leaves the law and makes his own decisions, even if in substance they are just, he loses the protection of the law and sacrifices the appearance of impartiality which is given by adherence to the law.***

*(xviii) A Judge has to be not only impartial but seen to be impartial too.*

*(xix) Every judge is a role model to the society to which he belongs. The judges are certainly, accountable but they are accountable to their conscience and people's confidence. As observed by Lord Atkin – "Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men".*

*(xx)* ***With regard to the accountability of the Judges of the subordinate Courts and Tribunals it may be mentioned that the Constitution authorizes the High Court Division to use full power of superintendence and control over subordinate Courts and Tribunals. Under the Constitution, a guideline in the nature of Code of Conduct can be formulated for the Judges of the subordinate courts for the effective control and supervision of the High Courts Division. In this method, the judicial accountability of the Judges of the subordinate courts could be ensured.***

## CHAPTER 98

RULES AND FORMAT OF 'WRITTEN ARGUMENTS' TO BE SUBMITTED IN COURT.

**In Kiran Chhabra Vs. Pawan 2011 SCC OnLine Del 803** it is ruled as under;

> ***''4****. For each proposition, after stating the factual premises on which a particular argument is given, there should be first the applicable statute which can even be excerpted. Only then, case- law may be cited not just as the legal database on a computer shows up on a query; but each judgment has to be examined and only the more relevant ones for each topic be cited. The Court expects the lawyers to place all case laws, both for and against his case, so long as it is relevant to the proposition in question. Those from the Supreme Court be placed first; those from our High Court be placed next; and those from other High Courts be placed thereafter. In each grouping, the judgments are to be arranged in a reverse chronological order. This is in line with the law relating to precedents. Thereafter, for each decided case which appears to be important, a brief resume of the factual scenario in which the*

*judgment was rendered, is necessary whereafter the relevant portion can be excerpted or described.*

***5.*** *If there are older judgments which have been noticed in a later judgment, then the older judgment need not be cited. But if the later judgment merely follows and says nothing new, then the older judgment, which contains the reasoning and also lays down the law, should be cited and against the first (later judgment) it ought to be noted that it simply follows or approves a particular earlier judgment. In that event, the earlier judgment may be excerpted or discussed together with a brief resume of the factual scenario in that case.*

***6.*** *After the judgments have been cited or portions excerpted, the ratio-decidendi of the judgment needs to be stated, for, it is the ratio-decidendi and not the conclusion, that is binding as a precedent.*

***7.*** *If there is a contention of the opposite side, it must be answered, and not ignored or left for the court to look for an answer. When all the points or proposition on which the arguments are addressed have been stated, there has to be a summing up so*

*that the Court can get a fair idea of what the arguments are leading to.''*

## CHAPTER 99

CASES WHERE STRICT ACTION IS TAKEN AGAINST POLICE

In the case of **Dhananjay Sharma v. State of Haryana (1995) 3 SCC 757**, the Hon'ble Apex Court directed initiation of contempt proceedings and perjury cases against the police officials who were, by way of affidavits to the Court, acting to cover up their acts of illegal detention of the petitioners. The respondent police officials who provided false affidavits denying the police detention were put on charged and sentenced for perjury and contempt of Court.

In **T.C. Pathak v. State of U.P. (1995) 6 SCC 357**, the facts, similar to the instant case, as the detainee was kept in police custody for days without any registered FIR,ground for arrest Etc. against him. The father filed the writ of Habeas Corpus for production of his son, forcibly taken away from the shop. The Apex Court held that even though the detainee was released and the prayer in the Habeas Corpus petition did not survive. Nevertheless, on account of denial of the right of personal liberty guaranteed under Article 21 of illegal confinement, the detainee deserved to be suitably compensated for denial of his constitutional right. The principles stood reiterated in Arvinder Singh Bagga v. State of UP (1995) SCC (Cri) 1156.

In **Mohd. Zahid Vs. Govt. of NCT of Delhi AIR 1998 SC 2023** it is ruled as under;

> *''Cr.P.C. Sec. 340 – False entries in case diary by the Police Officer – Police Officials interpolated the entries in the case diary to create false story to falsely implicate the accused – Accused detained for possessing illegal arms – Evidence of official making arrest not supported by independent witnesses – Time of arrest interpolated – Order of conviction liable to be set aside – Show cause notice issued to Police Officer for Prosecution under section 193, 195, 211 of I.P.C. – Commissioner of police directed to keep the Daily Diary Book in sealed cover until further orders - Accused acquitted - we direct the Delhi Government to pay him a sum of Rs. 50,000/- as compensation. The payment should be made within two months from the date of receipt of the order. The State Government will, however, be at liberty to recover the said amount from the erring police officers.*
>
> *We, therefore, allow this appeal and set aside the conviction and sentence of the appellant and acquit him. The appellant who is in jail be released forthwith.*
>
> *Since the appellant has been made a victim of prolonged illegal incarceration due to machination of P.Ws. 5 and 6 and other police personnel of I.S.B.T. police post we direct the Delhi Government to pay him a sum of Rs. 50,000/- as*

*compensation. The payment should be made within two months from the date of receipt of the order. The State Government will, however, be at liberty to recover the said amount from the erring police officers.*

*From the materials on record, discussed above, we are also of the opinion that it is expedient in the interest of justice that an enquiry should be made in accordance with sub-section (1) of Section 340, Cr.P.C. into commission of offences under Sections 193, 195 and 211, I.P.C. by Sub-Inspector Gopi Chand (P.W. 6), and under Sections 193 and 195, I.P.C. by Assistant Sub-Inspector Chander Bhan (P.W. 5) and Head Constable Premvir Singh (P.W. 4). We, therefore, in exercise of the powers conferred by sub-section (2) of Section 340, Cr.P.C., call upon the above three persons to show cause, on or before July 17, 1998, why a complaint should not be made against them for the aforesaid offences. Let a copy of the judgment along with this order be served upon them through the Commissioner of Police, Delhi. Registry is directed to keep the Daily Diary Book in a sealed cover until further orders of this Court''*

In **Umesh Kumar IPS Vs. The State of Andhra Pradesh2012 (4) ALT 437** it is ruled as under;

***Suppression either by Petitioner or respondent is contempt – A person who suppresses material facts from the Court is guilty of suppression veri and suggestio falsi i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud – If material facts are suppressed or disorted, the very functioning of Courts, and the exercise of its Jurisdiction, would become impossible. This is because "the Court knows law but not facts – Contempt Notice issued to Additional Director General of Police C.I.D. A.P. (7th Respondent) and Sri. V. Dinesh Reddy, IPS ( 4th respondent) for filling affidavit with suppression and dishonest concealment of facts. Prima facie, it constitute criminal Contempt of Court.***

***Prima facie, it constitute criminal Contempt of Court. The Registrar – General of the High Court shall forthwith initiate suo – motu contempt proceedings, under the Contempt of Courts Act, against both the 4th & 7th respondent herein - The respondents, more particularly those holding custody of the records of the case, have a similar, if not a greater, responsibility to the Court. If either the petitioner or the respondents suppress material facts, or state material facts in a distorted manner, in order to mislead the Court, the Court is duty bound to protect itself and prevent abuse of its process -***

***If recourse to falsehood is taken with an oblique motive, the same would definitely hinder, hamper or impede the even flow of justice, and would prevent the courts from performing their legal duties as they are supposed to do – A person who suppresses material facts from the Court is guilty of suppressio veri and suggestio falsi i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud - If material facts are suppressed or distorted, the very functioning of Writ Courts, and the exercise of its jurisdiction, would become impossible. This is because "the court knows law but not facts". Suppression or concealment of material facts is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdictions.***

***A false statement made in the court, or in the affidavits filed before it, intentionally to mislead the Court, amounts to Criminal Contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the court as causing obstruction in the due course of justice "undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and***

***pure, and no one can be permitted to take liberties with it by soiling its purity".***

***SUPPRESION OF MATERIAL FACTS:***

*68. Anything done with an oblique motive interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of the people in the system of administration of justice. (**Chandra Shashi v. Anil Kumar Verma** (1995) 1 SCC 421). Anyone who attempts to impede or undermine or obstruct the free flow of the unsoiled stream of justice, by resorting to false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the provisions of the Contempt of Courts Act. It would be a public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements or fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. (**Dhananjay***

***Sharma v. State of Haryana*** *AIR 195 SC 1795;* ***Chandra Shashi****). v. State of Haryana (1996) 7 SCC 397).* ***A false statement made in the court, or in the affidavits filed before it, intentionally to mislead the court, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the court as causing obstruction in the due course of justice "undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity". (State of Madhya Pradesh v. Narmada Bachao Andolan*** *2011) 7 SCC 639;* ***Naraindas v. State of M.P*** *(1974) 4 SCC 788,****Advocate General, State of Bihar v. M.P. Khair Industries*** *(1980) 3 SCC 311;and* ***Afzal***

*69. Any conduct which has the tendency to interfere with the administration of justice, or the due course of judicial proceedings, amounts to the commission of criminal contempt. (****Dhananjay Sharma****). The word 'interfere', in this context, means any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty i.e., obstacles or impediments which hinder, impede or in any manner interrupt or prevent the*

*administration of justice**. If recourse to falsehood is taken with an oblique motive, the same would definitely hinder, hamper or impede the even flow of justice, and would prevent the courts from performing their legal duties as they are supposed to do.** (Chandra Shashi; Words and Phrases (Permanent Edn.),Vol. 22).*

*70. If false statements made in Court or in the affidavits filed before the Court amounts to criminal contempt, can suppression of material facts stand on a different footing, as the endeavour both in the case of filing of false affidavits and suppression of material facts is only to mislead and misguide the Court, and thereby interfere with the administration of justice? The answer can only be in the negative. In Black's Law Dictionary (Sixth Edition)* ***Suppressio veri*** *is defined as suppression or concealment of the truth. It is a rule of equity, as well as of law, that a suppression veri is equivalent to a suggestion falsi; and where either the suppression of the truth or the suggestion of what is false can be proved, the party injured may have relief. Recourse to suppressio veri and suggestio falsi amounts to overreaching the Court. (**Union of India v. Malti Sharma** 2006) 9 SCC 262). **A person who suppresses material facts from the court is guilty of suppressio veri and suggestio falsi i.e. suppression or failure to disclose what a party is bound*

***to disclose, which may amount to fraud***. *(NarmadaBachao Andolan). The very basis of the writ jurisdiction rests in the disclosure of true and complete (correct) facts.* ***If material facts are suppressed or distorted, the very functioning of Writ Courts, and the exercise of its jurisdiction, would become impossible. This is because "the court knows law but not facts". Suppression or concealment of material facts is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdictions***. *(K.D. Sharma v. Steel Authority of India Limited (2008) 12 SCC 481; R v. Kensington Income Tax Commrs (1917) 1 KB 486).*

*71. While the petitioner must, no doubt, disclose all material facts fairly and truly,* ***the respondents, more particularly those holding custody of the records of the case, have a similar, if not a greater, responsibility to the Court. If either the petitioner or the respondents suppress material facts, or state material facts in a distorted manner, in order to mislead the Court, the Court is duty bound to protect itself and prevent abuse of its process.***

*72.* ***Prima facie, the false affidavit filed by Sri S.V. Ramana Murthy, IPS, Additional Director General of Police C.I.D, A.P. (7th respondent), and suppression of***

***material facts by both Sri V. Dinesh Reddy, IPS (4th respondent) and Sri S.V. Ramana Murthy, IPS (7th respondent) constitute criminal Contempt of Court. The Registrar-General of the High Court shall forthwith initiate suo-motu criminal contempt proceedings, under the Contempt of Courts Act, against both the 4th and the 7threspondent herein.*** *The Writ Petition is disposed of accordingly.However, in the circumstances, without costs.*

Justice Krishna Iyer in **Raghbir Singh vs State of Haryana AIR 1980 SC 1087**, the Supreme Court while upholding the conviction against police has observed as under:

> *" We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scarce in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torture some poignancy when violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case, Police lock-up if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This*

*development is disastrous to our human rights awareness and humanist constitutional order.*

*The State, at the highest administrative and political levels, we hope, will organise special strategies to prevent and punish brutality by police methodology. Otherwise, the credibility of the rule of law in our Republic vis-a-vis the people of the country will deteriorate.*

*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."*

In **Suresh Chandra Sharma Vs. State of M.P. 2009 Cri. L.J. 4288 (SC)** it is ruled as under;

*I.P.C. 194 – Fabrication of records by Police for procuring conviction – Certified copies showing timing – Investigation papers not showing timing- Accused guilty.*

In **Darshan Singh and others Vs State of Punjab1985 Cri.L.J. NOC 71 (Punj & Har),** it is ruled as under;

*''False Implication in charge of murder and Rape – Concocted evidence created by Police Officer – Rs. One Crore compensation granted.''*

Hon'ble High Court in the recent judgment in the case of **Sumit Kumar Vs. State of Bihar 2020 SCC OnLine Pat 2700** it is ruled as under;

***Police torture to poor truck drivers –***

***A] Police officer arresting without following procedure is liable for action under Section 166 of Indian Penal Code -***

***22.*** *Here only, we may take note of the provisions of the Penal Code, 1860. As per Section 166, whoever, being a public servant, knowingly disobeys any direction of the law as to how he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.*

***B] Procedure to be followed at the time of arrest –***

***26.*** *Further, the detenue was not produced before the Magistrate within 24 hours, as required under Section 56 of the Cr. P.C. Also, information of arrest was not supplied to a friend, relative or close person or entry made in the book, as required under Section 56A Cr. P.C., which*

*is sacrosanct. The accused was not informed of the ground of arrest, as required under Section 50 Cr.P.C., thus depriving him of his right seeking bail. Police did not serve notice under Section 41A Cr. P.C., either upon the owner of the vehicle or the person driving at the time of occurrence of the alleged accident. Thus, there is an infraction of not only the said provision but also Section 41B Cr. P.C. which requires the memo of arrest to be prepared furnishing correct and complete information, as available, and witnessed by any independent person. Significantly, the valuable right of the accused of seeking legal advice envisaged under Section 41D Cr. P.C. stood infringed. Non-submission of any report to the Magistrate, as provided under Section 157 Cr.P.C only fortifies the version of the detenue. Thus, all this has rendered the police officer responsible for detention, liable for prosecution under Section 166 IPC.*

***27.*** *In D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, Hon'ble Apex Court summarized that fundamental rights occupy a place of pride in the Indian Constitution.* ***Article 21*** *provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty is a sacred and cherished right under the Constitution. The expression "life or personal liberty" must include the*

*right to live with human dignity, necessarily including a guarantee against torture and assault by the State or its functionaries.* ***Article 22*** *guarantees protection against arrest and detention in certain cases and declares that no person arrested shall be detained in custody without information of the grounds of such arrest. Also shall not be denied the right to consult and defend through a legal practitioner of choice. Clause* ***(2) of Article 22*** *mandates the person arrested and detained in custody, necessarily to be produced before the nearest Magistrate, and that too within 24 hours of arrest, excluding the time taken necessary for the journey from the place of arrest to the Court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State.*

***30.*** *The strict requirement of the procedure to be followed in cases of arrest and detention has been upheld in multiple cases by the Hon'ble Apex Court, including Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273; Rini Johar v. State of Madhya Pradesh, (2016) 11 SCC 703.*

***C] Fair investigation – Police torture and atrocities -***

***35.*** *Further, in Gangadhar alias Gangaram v. State of Madhya Pradesh, 2020 SCC OnLine SC 623, the Apex Court held that the right to a fair investigation, which is a facet of a fair trial guaranteed to every accused under Article 21 of the Constitution.*

***36.*** *This right also stands infringed.*

***37.*** *In Monika Kumar v. State of U.P.- (2017) 16 SCC 169, the Apex Court has highlighted the issue of Atrocities committed by the Police, which in fact appears to be a matter of routine.*

***38.*** *In our considered view, simply taking up action of initiation of disciplinary proceedings is not enough. The entire Police Force needs to be sensitized of the constitutional and statutory rights of the detenue/accused, also from the angle of human rights.*

***56.*** *Thus the law expounded by judicial pronouncements can be summarized and categorized, laying the following principles.*

***I-LIBERTY***

*(i) Article 21 - Right to life and personal liberty are of paramount nature. Necessity to drive towards stronger foothold for liberties so as to ensure sustenance of higher democratic values. It's the primary responsibility of the State to*

*protect the fundamental rights and freedoms of all individuals irrespective of race, caste, class or religion. [Tehseen S. Poonawala v. Union of India, (2018) 9 SCC 501]*

*(ii) Inseparable relationship between right to life and personal liberty, under Article 19 and the reflections of dignity, is in guarantee against arbitrariness under Article 14. To live is to live with dignity. Dignity permeates the core of rights guaranteed to the individual by Part III. It is the integral core of fundamental rights. [K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1]*

*(iii) Right under Article 21 cannot be kept in abeyance for convicts, undertrials and prisoners. Allowing Police to violate fundamental rights of such persons would amount to anarchy and lawlessness, which cannot be permitted in a civilized society.*

*(iv) Inhuman treatment to a person in custody withers away the essence of life as enshrined under Article 21. [Mehmood Nayyar Azam (supra)]*

***II. BALANCE BETWEEN NATIONAL SECURITY AND INDIVIDUAL LIBERTY.***

*(i) Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. [Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70]*

***III. ARREST***

*(i) Article 21 and 22(1) are violated as a result of indiscriminate and arrests/illegal detention. [Joginder Kumar (supra)]*

*(ii) Violation of fundamental rights under Article 21 and 22(2) - Police officers who are custodians of law and order should have greatest respect for the personal liberty of citizens and should not become depredators of civil liberties. Their duty is to protect and not to abduct. [Bhim Singh (supra)]*

***IV-DUTY AND POWER TO REGISTER FIR***

*(i) While prompt registration of FIR is mandatory, checks and balances on power of Police are equally important. Power of arrest or*

*of investigation is not mechanical. It requires application of mind in the manner provided. Existence of power and its exercise are different. Delicate balance has to be maintained between the interest of society and liberty of an individual. [Ramdev Food Products (P) Ltd. (supra)]*

*(ii) Mandatory registration of FIR on receipt of information disclosing a cognizable offence is the general rule. This must be followed strictly and complied with. However, where information does not disclose a cognizable offence a preliminary inquiry may be conducted to ascertain whether cognizable offence is disclosed or not. [Lalita Kumari (supra)]*

*(iii) Preliminary inquiry is a must prior to FIR, to avoid false implication of innocent under Atrocities Act. Preliminary inquiry must be made by Deputy Superintendent of Police (DSP) prior to registration of an FIR, Even if case registered after preliminary inquiry, arrest is not mandatory. [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454]*

***V-TORTURE CUSTODIAL DETENTION AND/OR DEATH***

*(i) Torture involves not only physical suffering but also mental agony. It is violation of human dignity and destructive of human personality under Articles 21, 22 and 32 - Custodial Violence - Torture/rape, death in police custody/lock-up infringes Article 21 as well as basic human rights. State terrorism is no answer to terrorism. [D.K. Basu (supra)]*

***VI-HABEAS CORPUS JURISDICTION/RIGHT TO GRANT COMPENSATION***

*(i) Where petitioner apprehends arrest, Court can issue a certiorari to quash the impugned detention order or a mandamus prohibiting the arrest. [Deepak Bajaj v. State of Maharashtra, (2008) 16 SCC 14]*

*(ii) Constitution confers power on the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III. [Rudul Shah (supra)]*

*(iii) The refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention [Rudul Shah (supra)]*

*(iv) The Court has inherent power to quash criminal proceedings amounting to abuse of process. In the interest of protecting fundamental rights under Articles 14 and 21, Court can also issue directions to regulate power of arrest. Balance must be maintained between social need to check crime and need to protect human right of liberty of an innocent person against arbitrary and malafide arrests. [Subhash Kashinath Mahajan (supra)]*

***VII-BALANCE TO BE MAINTAINED WHILE GRANTING RELIEF OF BAIL TO THE ACCUSED-***

*(i) The law of arrest is one of balancing individual rights, liberties and privileges, on the*

*one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider. [Joginder Kumar (supra)]*

*(ii) Balanced approach must be employed while enforcing these rights to ensure criminals do not go scot-free. [D.K. Basu (supra)]*

*(iii) In considering a petition for grant of bail, necessarily, if public interest requires detention of citizen in custody for purposes of investigation could be considered and rejected as otherwise there could be hurdles in the investigation even resulting in tampering of evidence. [K.K. Jerath v. Union Territory, Chandigarh, (1998) 4 SCC 80]*

*(iv) While deciding whether to grant bail to an accused or not, the Court must also take into consideration other facts and circumstances,*

*such as the interest of the society. [Rajesh Ranjan Yadav (supra)]*

*(v) When the provision of Section 438 Cr. P.C. is specifically omitted in the State of Uttar Pradesh, Court as back door entry via Article 226 wherever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice. [Hema Mishra (supra)]*

***VIII-RIGHT OF ACCUSED***

*(i) An arrested person has a right to know of his entitlement of supply of information of detention to friend, relative or other person told that he has been arrested and where he is being detained. [Joginder Kumar (supra)]*

*(ii) Period of detention under section 151 Cr. P.C. cannot exceed 24 hours and in absence of anything else, after expiry of that period the detainee must be released. [Ahmed Noormohmed Bhatti v. State of Gujarat, (2005) 3 SCC 647]*

*(iii) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to*

*flow from Articles 21 and 22(1) and enforced strictly. [Joginder Kumar (supra)]*

*(iv) Fair and Independent investigation is crucial to preservation of rule of law and is the ultimate analysis of liberty itself. [Romila Thapar v. Union of India, (2018) 10 SCC 753]*

***IX-REPUTATION***

*(v) Since arrest and detention can cause irreparable damage to a person's reputation a police officer must be guided and act according to principles laid down by the Courts when deciding whether to make an arrest or not. [Lal Kamlendra Pratap Singh v. State of U.P., (2009) 4 SCC 437]*

*(vi) Violation of guidelines under statute; and D.K. Basu; Joginder Kumar case - seriously compromises the dignity of the accused. [Rini Johar (supra)]*

*(vii) Law provides for a procedure for arrest, investigation and trial which needs to be scrupulously followed and no one can be permitted to law into his own hands and annihilate what majesty of law protects.[Tehseen S. Poonawala (supra)]*

***X-SENSITIZING POLICE***

*(i) Police need to be trained and sensitized all of rights of citizens and maintaining law and order in a civilized manner. [Monica Kumar v. State of U.P., (2017) 16 SCC 169]*

***XI-PROCEEDINGS AGAINST POLICE OFFICIAL***

*(i) Mandatory Requirements [as stated in this case] to be followed by police personnel while arresting or detaining a person are in addition to constitutional and statutory safeguards. Non-compliance with the same would make official liable for departmental action [D.K. Basu (supra)]*

*(ii) Arrest made without fulfilling the conditions as set forth under Joginder Kumar (supra) and D.K. Basu (supra), may expose the arresting officer to proceedings for violation of Articles 21 and 22 of the Constitution. [Rajender Singh Pathania v. State (NCT of Delhi), (2011) 13 SCC 329]*

*(iii) Action shall be taken against erring officials who do not register FIRs per law, on receipt of information disclosing cognizable offence. [Lalita Kumari (supra)]*

*(iv) It is open for the State to proceed against erring officials for violating Article 21. [Rini Johar (supra)]*

***57.*** *Summarizing the principles based on which the Court ought to base its decision of granting compensation in cases of violation of fundamental right under Article 21, we see that: a) Compensation is compensatory in nature; b) The purpose is to assure the victim that the system protects their rights and interests; c) The exact amount of compensation has to be assessed on the basis of facts and circumstances and gravity of each case; d) The mere absence of custodial violence would not preclude the victim from the grant of compensation. The agony and mental harassment caused in police custody are sufficient to constitute a severe violation of fundamental rights; e) In the assessment of the gravity of harm done, the Court would take into account the unlawful imprisonment, mental torture and humiliation caused to the victim.*

***58.*** *The petitioner also established illegal detention of his milk tanker in the custody of the Parsa Police Station for more than 30 days. For this, he sought directions in the form of mandamus to the concerned authorities. Also claimed compensation for loss of his business during this period. We agree the manner in which the police officers apprehended the milk tanker/vehicle to be in complete*

*violation of the procedure for seizure established by law. However, at this point, under this writ petition, we refrain from taking any decision giving liberty to seek remedy before the appropriate forum, under private law.*

***Directions of the Court***

***64.*** *In light of the discussions made above, we direct that:*

*a. The State of Bihar shall pay compensation to the detenue, namely, Mr. Jitendra Kumar @ Sanjay Kumar, an amount of Rs. 5,00,000/- (Rupees Five lac) for the violation of his fundamental right under Article 21 of the Constitution of India. This amount shall positively be paid within a period of six weeks from today.*

*b. This compensation would be without prejudice to and independent of any remedy for damages in private law that the petitioner and/or detenue may wish to avail.*

*c. Appropriate disciplinary action/disciplinary proceedings already stands initiated against the erring police officers, which proceedings be expedited and positively concluded within a period of three months from today. Action taken report be filed in the Registry on or before 30th of April, 2021.*

*d. The Director General of Police, Government of Bihar shall ensure initiation of criminal proceedings against the erring police officers and file compliance report on his personal affidavit within a period of four weeks from today.*

*e. The Director General of Police, Government of Bihar shall ensure that proceedings under the other Laws, including Bihar police Manual, 1978 applicable in the State of Bihar are immediately initiated against the erring officials.*

*f. The Director General of Police, Government of Bihar shall ensure that appropriate action for sensitizing the entire police force, especially, the constabulary in Bihar, with special focus on safeguarding the fundamental rights of citizens is taken.*

*g. The Director General of Police, Government of Bihar shall ensure proper and effective functioning of a Complaint Redressal Mechanism, easily accessible to the general public, especially illiterate and the marginalized people of the State.*

*h. The appropriate authorities take the eye opening facts of this case, of the instances of abuse of process in the State of Bihar, as an opportunity to*

*ensure better supervision over the Police Stations, preventing reoccurrence of such cases of constitutional violations.*

*i. The Director General of Police, Government of Bihar shall get a report prepared, with respect to the number and the nature of the complaints filed against the police officers/officials, and take remedial measures preventing repeated occurrence of such misconduct.*

*j. The State of Bihar shall consider forming a body to represent the views of the truck drivers and provide them with a complaint redressal mechanism.*

*k. The State of Bihar shall make efforts towards improving the conditions of the truck drivers. They must consider issues about their healthcare; access to food; working hours; payment of wages; literacy and access to technology.*

*l. Engage the Civil Society in generally building goodwill of the entire police force amongst the residents of Bihar.*

***E] Criminal prosecution ordered against Police official -***

***64.*** *In light of the discussions made above, we direct that:*

*a. The State of Bihar shall pay compensation to the detenue, namely, Mr. Jitendra Kumar @ Sanjay Kumar, an amount of Rs. 5,00,000/- (Rupees Five lac) for the violation of his fundamental right under Article 21 of the Constitution of India. This amount shall positively be paid within a period of six weeks from today.*

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*l. Engage the Civil Society in generally building goodwill of the entire police force amongst the residents of Bihar.*

***1.*** *Torture, either mental or physical, represents the worst violations of individual human personality, an outright and premeditated attack on human dignity. It has no place in the governance of the State and its legitimate use of force. In any democracy, the right to live with dignity and self-worth, cannot be violently defiled within the ambit of Rule of Law and good governance.*

***2.*** *Truck drivers in our country are amongst the most vulnerable sections of our society. The backbone of the national economy is dependent upon the untiring and ever*

*driving efforts and labour of the poor, mostly illiterate and the vulnerable. In the absence of the hard work and toil of truck drivers, economic activity throughout the country is bound to come to a standstill.*

***3.*** *Truck drivers lack proper education; proper healthcare; face daily hardships; have strained and unstable personal relationships; and most importantly are most susceptible to be at odds with the law and the functionaries of the State. These individuals are under the constant, endless pressure to make ends meet and ensure the survival of their families. It is these vulnerabilities that make them prone to derelictions of the "dark side of human civilization."*

***4.*** *The Hon'ble Apex Court, in D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 : AIR 1997 SC 610, has observed that*

> *"**12.** In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law."*

*(emphasis supplied)*

***5.*** *Truck drivers are faced with a great deal of high stress and pressure as part of their job. The introduction of the additional hassle and trauma, perpetuated by the authorities, through the use of hostility and torture is akin to grave human injustice. Such practices are a clear violation of the human rights guaranteed to every citizen of the world. With the failure of the State to protect its citizens, it becomes the responsibility and duty of the Judiciary to intervene in aid of these most downtrodden and helpless individuals.*

***Illegal Detention and Breach of Fundamental Rights***

***18.*** *The facts of the instant case indicate a grim state of affairs where the police officials have acted in contravention and violation of the procedure established by law. The vehicle and detenue were detained and kept in police custody for more than 35 days without either filing of FIR or following any other procedure of arrest prescribed in law, ensuring constitutional protections to all persons. Even if the version of the Police of the detenue being in the vehicle of his own volition is to be believed, then also the documents annexed along with the affidavit filed by the DGP do record that at least for two days, he was kept in the police lock up. A further version of he being in the compound of the Police station is wholly unplausible, hence unacceptable.*

***19.*** *In numerous cases, the Hon'ble Apex Court has reiterated that detaining a person directly affects their fundamental right of life and personal liberty. The procedure established by law must be followed under all circumstances. The version of the Police, of apprehending the accused on account of an alleged accident, falls short of compliance of procedure established by law. Therefore any detention made by the Police in this case, is completely illegal, unlawful, in contravention of the constitutional and statutory provision and direct violation of detenue's fundamental rights. This follows from the constitutional protections guaranteed to every person under Articles 21 and 22 of the Constitution.*

***Procedure of Arrest required to be followed***

***20.*** *The procedure to be followed on arrest of a person, is prescribed under the provisions of the Code of Criminal Procedure 1973.*

***22.*** *Here only, we may take note of the provisions of the Penal Code, 1860. As per Section 166, whoever, being a public servant, knowingly disobeys any direction of the law as to how he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person,*

*shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.*

***23.*** *The detenue alleges illegally detained, whereas the Police, states that he was moving freely, sitting in the vehicle parked outside the police compound. Noticeably, only in the affidavit of Director General of Police, the truth stood revealed, and the other version contradicted. The accused was illegally detained and the vehicle not legally impounded, but detained and not allowed to be plied. The narration of the facts by the State authorities, as recorded in our orders reproduced supra, remains contradictory and appears to be a concocted story. They fail to answer essential questions leaving holes in their story - (i) why did the Police not register the FIR immediately when the vehicle driven by the detenue was intercepted by the Dariapur police, especially when the interception was made on account of communication of the alleged accident and fleeing away of the driver? (ii) Why was the vehicle not impounded? (iii) why was the drive not produced before the Court?; and (iv) why was no action promptly taken against the officials?*

***26.*** ***Further, the detenue was not produced before the Magistrate within 24 hours, as required under Section 56 of the Cr. P.C. Also, information of arrest was not supplied to a friend, relative or close person or entry***

***made in the book, as required under Section 56A Cr. P.C., which is sacrosanct. The accused was not informed of the ground of arrest, as required under Section 50 Cr.P.C., thus depriving him of his right seeking bail.*** *Police did not serve notice under Section 41A Cr. P.C., either upon the owner of the vehicle or the person driving at the time of occurrence of the alleged accident. Thus, there is an infraction of not only the said provision but also Section 41B Cr. P.C. which requires the memo of arrest to be prepared furnishing correct and complete information, as available, and witnessed by any independent person. Significantly, the valuable right of the accused of seeking legal advice envisaged under Section 41D Cr. P.C. stood infringed. Non-submission of any report to the Magistrate, as provided under Section 157 Cr.P.C only fortifies the version of the detenue. Thus, all this has rendered the police officer responsible for detention, liable for prosecution under Section 166 IPC.*

***27. Article 22*** *guarantees protection against arrest and detention in certain cases and declares that no person arrested shall be detained in custody without information of the grounds of such arrest.*

*(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.*

***29.*** *In the case of Joginder Kumar v. State of U.P., (1994) 4 SCC 260, with the release of the writ petitioner from the illegal custody of the Police after five days, when the Police sought dismissal of Habeas Corpus petition on the ground of illegal detention no longer surviving, the Hon'ble Apex Court observed that:*

> *"…**20….** Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a Police Officer issues notice to person to attend the Station House and not to leave Station without permission would do."*

*(Emphasis supplied)*

***30.*** *The strict requirement of the procedure to be followed in cases of arrest and detention has been upheld in multiple cases by the Hon'ble Apex Court, including Arnesh Kumar v. State of Bihar, (2014) 8 SCC*

*273; Rini Johar v. State of Madhya Pradesh, (2016) 11 SCC 703.*

***35.*** *Further, in Gangadhar alias Gangaram v. State of Madhya Pradesh, 2020 SCC OnLine SC 623, the Apex Court held that the right to a fair investigation, which is a facet of a fair trial guaranteed to every accused under Article 21 of the Constitution.*

***36.*** *This right also stands infringed.*

***37.*** *In Monika Kumar v. State of U.P.- (2017) 16 SCC 169, the Apex Court has highlighted the issue of Atrocities committed by the Police, which in fact appears to be a matter of routine.*

***Right to Compensation under Articles 32 & 226 of the Constitution of India for Violation of Fundamental Rights***

***45.*** *The instant case is one that is fit for hefty compensation to be levied on the State for violation of the fundamental right to life and liberty by way of illegal detention of Jitendra Kumar @ Sanjay Kumar, the detenue. This right would remain independent of the right of the petitioner as also the detenue to claim other damages as private law remedy.*

***46.*** *In the case of Rudul Sah v. State of Bihar, (1983) 4 SCC 141, Hon'ble the Supreme Court upheld the grant of*

*compensation for illegal detention under a petition of Habeas Corpus, "taking into consideration the grave harm done". The petitioner was illegally detained for over fourteen years despite his acquittal in a full-dressed trial. In a Habeas Corpus petition, Court directed his release from illegal detention and passed orders for payment of compensation by observing that:*

> *"**10.** ...In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-ser vice to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their*

*protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."*

In **Harvinder Singh Vs. State 2015 III AD (Delhi) 210** it is ruled as under;

***A] Quashing of Charge Sheet- Section 406,409,420,201,r/w120 (B) of IPC- Absence of legal evidence- In criminal law there is no vicarious liability – Malafides of the I.O. to falsely implicate the accused – The I.O. deliberately did not investigated the complaints of accused and did not placed those complaints on record alongwith the Charge-Sheet –Investigation is not – The Charge Sheet does not contain any legally admissible evidence to make any case against the accused. It appears that falling short of legally convertible evidence to sustain implication of the petitioner, investigating agency seems to be bent on implicating the petitioner and has gone to the extent of making feeble attempt to rely***

***upon the changed version.*** *Investigating agency has taken shelter of mere suspicion to conclude the cheating. The Law does not authorise the trial court to issue summoning of a person as an accused on mere suspicion of the investigating agency.* ***The conclusion of I.O. is belied from the material on record. Charge- Sheet quashed – Action directed against I.O. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused.(Para 21)***

***This Court can't refuse to invoke its powers to quash criminal case if the material on record is not sufficient enough to put the criminal law into motion.***

***B] Section 204 of Criminal Procedure Code - Duty of Magistrate while issuing process-***

***It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusation made and a case where there is legal evidence, which on appreciation, may or may not support the accusation. The judicial process should not be an instrument of oppression, or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to needlessly harass any person. (Para 32)***

*It is astonishing to take note of the fact that despite thorough investigation into the matter for three years and by three different investigating officers of Inspector rank as well as deployment of the Chartered Accountant instead of coming up with formidable evidences in this regard, investigating agency has taken shelter of mere suspicion to conclude that property has been purchased from the cheated funds. In the absence of any enabling provision for presumption against accused, the Law does not*

*authorise the trial court to issue summoning of a person as an accused on mere suspicion of the investigating agency.* ***(Para 39)***

*Hon'ble Apex Court in* ***'State of Kerala Vs. P. Sugathan & Anr.' MANU/SC/0601/2000 : (2000) 8 SCC 203****:-*

> *"12. ..... A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy."*

***Applying the aforesaid legal principles, it is observed that there is no evidence collected by the prosecution even to prima facie infer that the petitioner was part of any agreement with other accused persons either to do any illegal act or legal act through illegal means, to sustain his summoning as co-accused. Surprisingly, with such intricate factual matrix, the learned trial Court has passed a single line summoning order, which even does***

***not convince this Court that the learned trial Court has applied its mind to the facts to convince itself about existence of prima facie evidence about complicity of the petitioner.*** *It is apparent that while summoning the petitioner as an accused, trial Court has completely ignored the parameters set out by the Hon'ble Apex Court for summoning of an accused as enunciated in the judgment of 'Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.' MANU/SC/1090/1998 : (1998) 5 SCC 749, wherein the law regarding summoning of an accused was considered and it was held:*

*"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of*

*the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."* ***.(Para 51)***

*It does not sound to the prudence that a person would be managing affairs of a company without even being a functionary, authorised signatory, authorised representative or a participant in the Board of Directors of a Company. Had there been a semblance of truth in the conclusion of the investigating agency regarding the petitioner being incharge of the accused company, he would have at least procured authorization to represent the accused company which is also completely missing in the present case.* ***(Para 34)***

*As per the charge sheets Ms. Madhu Singh (Managing Director of accused company) along with others induced innocent investors for investment in aforementioned residential project of the accused company, in defiance of rules and regulations embedded in their agreement.* ***(Para 5)***

*Mr. Kohli has further contended that the conclusion of the investigating agency that the property in question was sold at less than the prevailing market price itself is belied from the prevailing circle rates of the area.* ***(Para 36)***

*I find substance in submissions of Mr. Kohli that reliance on the valuation report to assert that the property in question was sold at a cheaper price is completely ill founded.* ***(Para 37)***

***[C]*** *Hon'ble Apex Court in the matter of 'Satish Mehra v. State of N.C.T. of Delhi and Anr.' (2012) 13 Supreme Court Cases 614 can be safely placed for invoking inherent powers of this Court for quashing proceedings qua the petitioner. Relevant para of the judgment is reproduced herein below:-*

*"19. The view expressed by this Court in Century Spg. case and in L. Muniswamy's case to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage.* ***The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under Article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a criminal***

***charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spg. and Muniswamy.*** *It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not.*

***20.*** *In such a situation to hold either of the appellant-accused to be, even prima facie, liable for any of the alleged wrongful acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record.*

*(Emphasis supplied)*

***[D] Malafides of I.O:-***

*58. During the course of hearing,* ***lot of details have surfaced showing deliberate attempt on the part of investigating officer to implicate the present petitioner.*** *Under normal circumstances this court would have expressed its displeasure on the conduct with a warning to the erring official's but when the abuse is of a wider magnitude, I deem it appropriate to take serious note of the same.* ***When the power is given to the investigating***

***agency, it carries inbuilt responsibility on the officials of the Police force to use the power diligently for detection of crime and not for victimisation of a person for extraneous considerations. It is apparent from record that since the deployment of Inspector Ajay Kumar as an investigating officer, the petitioner has been deliberately targeted. Despite knowing about the frivolity in the claim of Mr. Harjit Singh regarding his being strategic buyer, investigating officer kept on shielding him and eventually facilitated accused Ms. Madhu Singh and others to misappropriate proceeds due to the accused company in terms of the Agreement dated 05.02.2011. Had the intent of the investigating officer been fair, he would have acted on the complaints of the petitioner as well and would have placed all relevant material on the record for perusal of the learned Magistrate for imparting fair opportunity to the court to examine the entire matter independently. Whereas, in the present matter there exist sufficient evidence, records and documents pointing towards innocence of the petitioner, which have been deliberately concealed to implicate and procure summoning of the petitioner.***

*45. In Maksud Saiyed's case (supra) the Apex Court observed as under:*

*"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind.* ***The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company.*** *The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities....."*

*(Emphasis supplied)*

*In Thermax Ltd. & ors. v. K.M. Jony & ors.' 2011 X AD (S.C.) 189, Hon'ble Supreme Court reiterated the principles laid down in the aforesaid judgment of Maksud Saiyed.* ***.(Para 46)***

*Sight of the fact can also not be lost that the version of Mr. Harjit Singh has come as a counter blast to the complaint of the petitioner, who has exposed fraudulent acts of Mr.*

*Harjit Singh in concealing 'Agreement' while stepping in as a 'Strategic Buyer' for the same project under a different name and style with an intention to mislead the court.* ***.(Para 48)***

*Perusal of statements of the informants under section 161 Cr.P.C. does not make out any specific act attributable to the petitioner, which could justify implication of the petitioner as an accused.*

*There is no presumption in favour of existence of conspiracy. The prosecution cannot be absolved of the responsibility of bringing sufficient circumstances pointing towards existence of an agreement amongst the conspirator to do an 'illegal act' or 'a legal act through illegal means'. Apart from commission of 'Acts,' prosecution is also casted with a responsibility to bring evidence on record suggesting that the same has been committed in pursuance of 'an agreement' made between the accused persons who were parties to the alleged conspiracy. It is a well settled proposition of law that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence.* ***.(Para 49)***

## CHAPTER 100

WHEN PETITION OF THE ACCUSED IS PENDING BEFORE THE HIGH COURT THEN POLICE SHOULD NOT RUSH FOR TAKING ACTION AGAINST ACCUSED. IF ACCUSED IS ARRESTED THEN IT WILL AMOUNT TO CONTEMPT.

**i) Sudhir Vora 2004 Cri. L.J. 2278**

**ii) Kishor Rajput 2007 (3) Bom.CR.279**

**iii) S.Abdul Karim (1976)1 SCC 975**

## CHAPTER 101

THE LITIGATING PARTY CANNOT TAKE CONTRARY STAND.THEY ARE ESTOPPED. APROBATE AND REPROBATE IS NOT PERMISSIBLE**.**

**i) Vidur Impex and Traders Pvt. Ltd. Vs. Pradeep Kumar Khanna (2017) DLT 481**

In **V.Chandrasekaran & Anr vs Administrative Officer (2012) 12 SCC 133** this Hon'ble Court imposed a cost of Rs. 25 Lacs upon Appellants for taking inconsistence stands. This Hon'ble Court also ordered action against Govt. officials involved in the conspiracy. It is ruled as under;

*" 3.* ***Dr. Abhishek M. Singhvi and Mr. Rajiv Dutta, learned senior counsel*** *appearing for the appellants, have submitted that, since the Section 6 declaration dated 6.6.1981 has been quashed in toto and no fresh declaration was made thereafter, subsequent proceedings are void ab-initio.*

*..**Dr. A.M. Singhvi has not pressed for the relief of reconveyance. However, it is apparent that the appellants' claim cannot co-exist and can be said to be blowing hot and blowing cold, simultaneously.***

***.. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience***

*In view of the above, we are of the considered opinion that the sale deeds in favour of the appellants are void and unenforceable.*

*36. In Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114, this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the*

*truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.*

*37. The truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. (Vide: Ritesh Tewari & Anr. v. State of Uttar Pradesh & Ors., (2010) 10 SCC 677; and Amar Singh v. Union of India, (2011) 7 SCC 69).*

*38. In Maria Margarida Sequeria Fernandes & Ors. v. Erasmo Jack de Sequeria (dead), (2012) 5 SCC 370), this Court taking note of its earlier judgment in Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249 held:*

*"False claims and defences are really serious problems with real estate litigation, predominantly because of ever-*

*escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our courts. If pragmatic approach is adopted, then this problem can be minimised to a large extent." The Court further observed that wrongdoers must be denied profit from their frivolous litigation, and that they should be prevented from introducing and relying upon, false pleadings and forged or fabricated documents in the records furnished by them to the court.*

*39. In view of the above, the appellants have disentitled themselves for any equitable relief.*

*Facts of the case reveal a very sorry state of affairs as how the public property can be looted with the connivance and collusion of the so called trustees of the public properties. It reflects on the very bad governance of the State authorities.*

*43. The aforesaid conclusions do not warrant any relief to the appellants.* ***The appeals are dismissed with the costs of Rupees Twenty Five lacs,*** *which the appellants are*

*directed to deposit with the Supreme Court Legal Services Authority within a period of six weeks.*

***44.*** *In addition thereto, the Chief Secretary of Tamil Nadu is requested to examine the issues involved in the case and find out as who were the officials of the State or Board responsible for this loot of the public properties and proceed against them in accordance with law. He is further directed to ensure eviction of the appellants from the public land forthwith."*

## CHAPTER 102

THE LITIGATING PARTY CANNOT TAKE ANY PLEA WHICH IS CONTRARY TO LAW AND BINDING PRECEDENTS. IT AMOUNTS TO CONTEMPT.

**1.** New Delhi Municipal Council Vs. M/s. Prominent Hotels Limited **2015 SCC OnLine Del 11910**

**2.** Vidur Impex and Traders Pvt. Ltd. Vs. Pradeep Kumar Khanna **(2017) DLT 481**

## CHAPTER 103

UNDUE HASTE BY ANY PUBLIC SERVANT INCLUDING POLICE, JUDGE ETC. PROVES THE MALAFIDES AND MAKES THE SAID PUBLIC SERVANT LIABLE FOR ACTION AND CRIMINAL PROSECUTION.

SUCH TAINTED INVESTIGATION CAN BE QUASHED EVEN IF FIR DISCLOSED A PRIMA FACIE CASE.

ANY ACTION OR ORDER PASSED BY ANY PUBLIC SERVANT IS LIABLE TO BE SET ASIDE.

THE JUDGE PASSING ORDER WITH UNDUE HASTE IS LIABLE FOR ACTION UNDER CONTEMPT.

i) Prof. Ramesh Chandra MANU/UP/0708/2007,

ii) Noida Entrepreneurs Association (2011) 6 SCC 508,

iii) S.D. Ashok Kumar 1991 Cri.L.J. 1963

iv) Babubhai Vs. State (2010)12 SCC 254,

v) S. Abdul Karim (1976)1 SCC 975,

vi) Kishor Rajput 2007 (3) Bom.CR.279,

vii) Mohindar Kumar (2001) 10 SCC 605,

Hon'ble Supreme Court in **Shanti Devi Vs. State (2008) 14 SCC 220** had observed as under;

> ***''15.*** *.....**The dates speak of the haste with which the orders were passed in the contempt petition which had the effect of ensuring that Respondent 2 obtained possession of the shop room before the***

***appellant could take any steps before the higher forum against the said orders.***

*……..The costs imposed by the impugned judgment and the contempt proceedings are also quashed.''*

## CHAPTER 104

NO PROTECTION OF ACTION DONE IN GOOD FAITH IS AVAILABLE TO POLICE OR ANY PUBLIC SERVANT DOING ANY ACT WITHOUT DUE CARE AND CAUTION.

UNLAWFUL ARREST BY POLICE MAKES THEM LIABLE FOR ACTION UNDER SECTION 220 OF IPC.

i) Noor Mohamed Mohd. Shah R. Patel 2003 SCC OnLine Bom 1233

## CHAPTR 105

FAIR TRIAL

Denial of fair trial is as much injustice to the accused as is to the victim and the society. The object of trial is to convict the guilty and protect the innocent. Accused entitled to have a fair investigation, fair Prosecutor and a fair Judge. It is Fundamental Right as per Article 21 of the Constitution. Court should avoid delay by Complainant or Accused. **[Asha Ranjan and Ors. Vs.State of Bihar and Ors. 2017 (1) Mh.L.J . (Cri.) 605]**

In **Selvi J. Jayalalithaa and Ors. Vs. State of Karnataka and Ors. MANU/SC/0994/2013** it is ruled as under;

> ***Fair Trial –Malice in Law - Supreme Court cannot pass order against statute - Denial of a fair trial is injustice to the accused , victim and the society. It necessarily***

***requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm.***

*If a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted - any hindrance in a fair trial could be violative of Article 14 of the Constitution - 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 - fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings. - If discretionary power has been exercised for an unauthorised purpose, it*

*is generally immaterial whether its repository was acting in good faith or in bad faith and the order becomes vulnerable and liable to be set aside.*

*Held,*

*A) Fair trial - any hindrance in a fair trial could be violative of Article 14 of the Constitution - Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights.*

*Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public*

*confidence in the administration of justice and such duty is to vindicate and uphold the 'majesty of the law' and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.*

*Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial 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. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.*

***B)*** *Supreme Court could not exercise its powers under Article 142 of the Constitution in the present case since such an exercise would be contrary to laws such powers are used in consonance with the statutory provisions -* ***if a statute has conferred a power to do an act and has laid down the method in which that power has to be***

***exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.***

*This Court in* ***A.B. Bhaskara Rao v. Inspector of Police, CBI Vishakhapatnam*** *MANU/SC/1110/2011 : (2011) 10 SCC 259, wherein this Court held that the* ***powers under Article 142 of the Constitution cannot be exercised by this Court in contravention of any statutory provisions, though such powers remain unfettered and create an independent jurisdiction to pass any order in public interest to do complete justice. However, such exercise of jurisdiction should not be contrary to any express provision of law.***

*The powers under Article 142 of the Constitution stand on a wider footing than ordinary inherent powers of the court to prevent injustice. The constitutional provision has been couched in a very wide compass that it prevents "clogging or obstruction of the stream of justice." However, such powers are used in consonance with the statutory provisions.*

*There is yet an uncontroverted legal principle that 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. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it 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 way, then it has to be done in that manner and in no other manner and following any other course is not permissible.*

***In State of Uttar Pradesh v. Singhara Singh and Ors. MANU/SC/0082/1963 : AIR 1964 SC 358, this Court held as under:***

*8. The rule adopted in Taylor v. Taylor (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.*

*(See also: Accountant General, State of Madhya Pradesh v. S.K. Dubey and Anr. (2012) 4 SCC 578)*

*C) Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill-feeling and spite. Mala fide exercise of power does not imply any moral turpitude. 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, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law.*

*(See also: Kalabharati Advertising v. Hemant Vimalnath Narichania and Ors. MANU/SC/0674/2010 : AIR 2010 SC 3745).*

*D) It is trite law that if discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith*

*or in bad faith and the order becomes vulnerable and liable to be set aside.''*

Hon'ble Supreme Court in **Zahira Shaikh Vs. State (2006) 3 SCC 374** had ruled as under;

***''24.*** *It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep promise to justice and it cannot stay petrified and sit non-challantly.* ***The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection loose hope*** *(See Jennison v. Backer (1972 (1) All ER 1006). Increasingly, people are believing as observed by SALMON quoted by Diogenes Laertius in "Lives of the Philosophers" laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away". Jonathan Swift, in his "Essay on the Faculties of the Mind" said in similar lines: "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.*

***22.*** *The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals.* ***If the Court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which justice delivery system stands. People***

***for whose benefit the Courts exists shall start doubting the efficacy of the system. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking that "the Judge was biased".*** *(Per Lord Denning MR in Metropolitan Properties Ltd. v. Lannon (1968) 3 All ER 304 (CA).* ***The perception may be wrong about the judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Ceaser's wife should be above suspicion*** *(Per Bowen L.J. in Lesson v. General Council of Medical Education (1890) 43 Ch.D. 366).*

***23.*** *By not acting in the expected manner a judge exposes himself to unnecessary criticism. At the same time the Judge is not to innovative at pleasure. He is not a Knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness, as observed by Cardozo in "The Nature of Judicial Process".*

In the case of **Zahira Habibullah Sheikh Vs. State of Gujarat (2006) 3 SCC 374** it is ruled as under;

***Fair Trial***

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

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

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

***40.*** *"Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings,*

*political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle the truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery. Doubts are raised about the roles of investigating agencies. Consequences of defective investigation have been elaborated in Dhanaj Singh v. State of Punjab [(2004) 3 SCC 654 : 2004 SCC (Cri) 851 : JT (2004) 3 SC 380] . It was observed as follows: (SCC p. 657, paras 5-7)*

*"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] )*

*6. In Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.*

*7. As was observed in Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of*

*justice. The view was again reiterated in Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] ."*

Hon'ble Supreme Court in **Mohd. Hussain Vs. State (2012) 2 SCC 584,** ruled that As per Article 14 of the International Covenant on Civil and Political Rights**, everyone shall be entitled to the following minimum guarantees, in full equality***:*

*(a)* ***To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;***

*(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*

*(c) To be tried without undue delay;*

*(d)* ***To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;.....***"

*Article 14 (3) (d) entitles the person facing the criminal charge either to defend himself in person or through the*

*assistance of a counsel of his choice* ***and if he does not have legal assistance, to be informed of his right and provide him the legal assistance without payment in case he does not have sufficient means to pay for it.*** ....

## CHAPTER 106

EQUALITY BEFORE LAW AND EQUAL PROTECTION OF LAW - 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. In **Nanha S/o Nabhan Kha Vs. State of U.P 1992 SCC OnLine All 871,**it is ruled 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.*

*SUPREME COURT OBSERVED*

*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."*

**8.2)** In **Prof. Ramesh Chandra, Vs. State of Uttar Pradesh MANU/UP/0708/2007** it is ruled as under;

***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.*

## CHAPTER 107

COURT CAN NOT ASK FOR PROPERTY DOCUMENTS FROM SURETY – Poor Man Can Also Be Surety.[ **Sagayam Vs. State 2017 SCC OnLine Mad 1653]**

## CHAPTER 108

LOWER COURT ARE PERMITTED TO SEE WHETHER ORDER FROM SUPERIOR COURT IS OBTAINED BY FRAUD

**Section 44** of Indian Evidence Act, 1872 reads thus;

> ***44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.—****Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.*

Judgment obtained by non-disclosure of all the necessary facts tantamount to playing fraud on the Court - Such Order/Judgment is a nullity and is to be treated as non est by every Court . Even Courts of

subordinate Jurisdiction are permitted to enter into question whether Judgment of superior court even of Supreme Court was obtained by playing fraud on Court. Res – Judicata & Doctrine of merger – don't apply to an order obtained by playing fraud on Court**. [Union of India Vs. Ramesh Gandhi 2012(1) SCC 476]**

## CHAPTER 109

WRITTEN ARGUMENTS ARE NO SUBSTITUTE FOR ORAL HEARING. GIVING A PERSONAL HEARING BEFORE A FINAL ORDER IS PASSED IS ESSENTIAL FOR ENSURING COMPLIANCE WITH BASIC PRINCIPLE OF AUDI ALTERAM PARTEM. **[Automativ Tyre Manufacturers Association Vs. Designated Authority & Ors. (2011) 2 SCC 258]**

## CHAPTER 110

THE SILENCE OR ABSENCE OF CORRESPONDENCE BY ANY PARTY MAY BE INDICATIVE OF HIS DISHONEST INTENTION.

**The Court has to take into consideration the human probabilities, ordinary course of human conduct and common sense to draw necessary inference. Drawing presumptions is the backbone of the judicial process.**

**The silence or absence of correspondence by any party may be indicative of his dishonest intention.** The dishonest intention of the

seller can be inferred where the purchaser repeatedly contacts the seller for approval of the draft sale deed and for fixing time for payment of balance sale consideration and execution/registration of the sale deed but the seller does not respond or avoids contact. On the other hand, the dishonest intention of the purchaser can be inferred where the purchaser does not contact the seller for approval of the sale deed and fixing date, time and place for payment of balance sale consideration and execution/registration of the sale deed.

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. (Para 10.2) **[Ved Parkash Kharbanda Vs. Vimal Bindal 198 (2013) DLT 555]**

See Also- In **Express Newspapers Pvt.Ltd. Vs. Union of India& Ors. (1986) 1 SCC 133**, it is ruled 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. (Para 115)***

In the case of **Prestiage Lights Ltd. Vs. State Bank of India (2007) 8 SCC 449** it is ruled as under;

> ***"Practice and Procedure – Admission – Failure to deny allegation of the other party – Effect – Civil Procedure Code, 1908 – Or. 8 Rr. 3 and 5 – Applicability – Evidence Act, 1872, S. 58.***
>
> ***"14….****There was no rejoinder by the appellant Company. Thus, there is a word against word. Moreover, this Court cannot be oblivious of the fact that it was only after the order dated 24-10-2005 passed by this Court that in rejoinder-affidavit filed in November 2005, such a statement was made.***"**

## CHAPTER 111

NOT FILLING REPLY AFFIDAVIT. COURT IS BOUND TO ACCEPT THE SUBMISSION AS NOT REBUTTED.

In **Express Newspapers Pvt.Ltd. Vs. Union of India& Ors. (1986) 1 SCC 133**, it is ruled 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. (Para 115)*

*(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. (Paras 118,125, 135)"*

## CHAPTER 112

EXEMPTION FROM PERSONAL APPEARANCE – CONSIDERATION IS MANDATORY.[**Rameshwar Yadav Vs. State Of Bihar (2018) 4 SCC 608**]

## CHAPTER 113

THE COURT MUST VIEW WITH DISFAVOR ANY ATTEMPT BY A LITIGANT TO ABUSE THE PROCESS. THE SANCTITY OF THE JUDICIAL PROCESS WILL BE SERIOUSLY ERODED IF SUCH ATTEMPTS ARE NOT DEALT WITH FIRMLY. A LITIGANT WHO TAKES LIBERTIES WITH THE TRUTH OR WITH THE PROCEDURES OF THE COURT SHOULD BE LEFT IN NO DOUBT ABOUT THE CONSEQUENCES TO FOLLOW. OTHERS SHOULD NOT VENTURE ALONG THE SAME PATH IN THE HOPE OR ON A MISPLACED EXPECTATION OF JUDICIAL

LENIENCY. EXEMPLARY COSTS ARE INEVITABLE, AND EVEN NECESSARY, IN ORDER TO ENSURE THAT IN LITIGATION, AS IN THE LAW WHICH IS PRACTICED IN OUR COUNTRY, THERE IS NO PREMIUM ON THE TRUTH. **(Para 13) [Dnyandeo Shaji Naik Vs. Mrs. Pradnya Prakash Khadekar (2017) 5 SCC 496]**

## CHAPTER 114

THE PERSON WHO OBTAINED THE DECISION BY PRACTICING FRAUD UPON THE COURT SHOULD NOT BE ALLOWED TO EAT THE FRUIT OF ILLEGALITY

Decision obtained by frauds decision liable to be set aside – Basic principle is that party who secured a decision by fraud cannot be allowed to enjoy its fruit. When decision is vitiated by fraud, proper course would be to approach the Court which had rendered the decision for redressal. In this case order/decision had been produced by appellant from a Forest tribunal by fraud and High Court having dismissed the appeal filed under the Act by the state at the admission stage, the order /decision of the Tribunal had merged with the order/decision of High Court and as such governing decision was that of High Court. [**Hamza Haji Vs. State of Kerala And Another (2006) 7 SCC 416**]

**1. Badnekar Brothers Pvt. Ltd Vs. Prasad Vassudev Keni 2020 SCC OnLine SC 707**

In **Ramjisingh Bhulian singh Vs. Tarun K Shah & Ors. 2002 ALL MR (4) 198** it is ruled as under;

> *''ADMINISTRATION OF JUSTICE – FRAUD – ALLEGATIONS OF FRAUD PLAYED UPON COURT OR OF ABUSE OF PROCESS OF LAW, MADE AND ESTABLISHED FROM RECORD:-Court would not sit on technicalities to deny relief to affected party - It will be bounden duty of Court to remedy the mischief, because no man can take advantage of his own wrong.*

**2.** In the case of **Meghmala v. G. Narasimha Reddy, (2010) 8 SCC 383** it is ruled as under;

> ***"32.** The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766] , Union of India v. M. Bhaskaran [1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94] , Kendriya Vidyalaya Sangathan v. Girdharilal Yadav [(2004) 6 SCC 325 : 2005 SCC (L&S) 785] , State of Maharashtra v. Ravi Prakash Babulalsing*

*Parmar [(2007) 1 SCC 80 : (2007) 1 SCC (L&S) 5] , Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co. [(2007) 8 SCC 110 : AIR 2007 SC 2798] and Mohd. Ibrahim v. State of Bihar [(2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] .)*

***36.*** *From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est."*

**In <u>Amarjit Singh Vs. State 2021 SCC OnLine P and H 184</u>** it is ruled as under;

***42.*** *Though, the trial Court has rightly observed that once the cognizance has been taken, the Court cannot recall the summoning order, however, it has ignored the fact that the application was moved by the petitioners to dismiss the protest petition in view of the fact that the summoning order was procured by the complainant by playing fraud with the Court as the son of the complainant is alive and*

*therefore, nothing precluded the trial Court to dismiss the protest petition.*

***43.*** *Further observation made by the Magistrate that since the offenceswere triable by the Court of Magistrate/Court of Sessions, though are correct but the Magistrate, in exercise of power under Section 239 Cr.P.C, in order to prevent any injustice to the petitioners could have allowed the application and discharge them by dismissing the protest petition.*

***44.*** *The Magistrate, while dismissing the application vide impugned order dated 02.12.2020 even again issued Non-bailable Warrants against the petitioners. This part of the order is also illegal as in view of provision of Section 87 of Cr.P.C, the Magistrate can withdraw Warrants as per the information supplied and also in view that the petitioners through counsel had already appeared. The proper course was to direct the counsel for the petitioners to furnish bail/surety bonds as they intended to appear before the Magistrate, but for dismissal of anticipatory bail by the Additional Sessions Judge, they apprehended arrest for no fault.*

***45.*** *However, the Additional Sessions Judge having failed to exercise the jurisdiction under Section 438 Cr.P.C, in dismissing the anticipatory bail application of the*

*petitioners despite the fact that it was brought to his notice that they are being prosecuted in pursuance to a fraud committed by the complainant, has passed a totally illegal order.*

***46.*** *Accordingly, this petition is allowed, the protest petition dated 20.01.2012 filed in case No. 45 dated 21.11.2011 under Sections 302/201 IPC read with Section 34 IPC as well as the impugned summoning order dated 07.12.2017 passed by the Judicial Magistrate Ist Class, Ludhiana and the order dated 02.12.2020 passed by the Judicial Magistrate Ist Class, Ludhiana, refusing to dismiss the protest petition are set-aside and the petitioners are discharge in FIR No. 115 dated 21.08.2010 registered under Sections 302, 201, 34 IPC at Police Station Dehlon, Ludhiana, District Ludhiana.*

***47.*** *Considering the fact that the petitioners are subjected to unwanted and unnecessary criminal prosecution for a period of last 15 years, it is directed that the State Legal Services Authority, Punjab through District Legal Services Authority, Ludhiana, will pay the costs of Rs. 50,000/- each to all the 03 present petitioners namely Amarjit Singh, Jaswant Singh and Kabal Singh within a period of 04 months from today.*

***48.*** *It will be open for the prosecution to initiate the proceedings under Section 340 Cr.P.C. against CW-1 Satpal Singh, CW-2 Gurdial Singh and CW-4 Naginder Singh i.e. the complainant.*

***49.*** *It will also be open for the prosecution to recover the amount of Rs. 2.00 lacs from the complainant namely Naginder Singh or his legal representatives and to recover the costs of Rs. 50,000/- each from CW-1 Satpal Singh, CW-2 Gurdial Singh and CW-4 Naginder Singh or their LRs, after paying the same to the petitioners. Considering the fact that the Additional Sessions Judge, has failed to exercise its jurisdiction, it is directed that he will go through at least 10 judgments of the Hon'ble Supreme Court including the 02 Constitutional Bench Judgments i.e. "Gurbaksh Singh Sibbia v. State of Punjab", (1980) 2 SCC 565 : AIR 1980 SC 1632 and "Sushila Aggarwal v. State (NCT of Delhi)", (2020) 1 RCR (Cri) 833, wherein the Hon'ble Supreme Court has interpreted the provisions of Section 438 Cr.P.C.*

***50.*** *The Additional Sessions Judge-I, Ludhiana, will submit the written synopsis on the exercise of jurisdiction by a Judge under Section 438 Cr.P.C, after going through the judgments, within a period of 30 days to the Director, Chandigarh Judicial Academy*.

Hon'ble Allahabad High Court in **Satendra Kumar Gupta Vs. State Of U.P. And Anr** it is ruled as under;

> ***Sec. 340 of Cr. P.C– Section 125 Cr. P. C. – If in order under Section 340 of Cr.P.C it is found that the wife obtained maintenance on the basis of forged evidence then order of maintenance is liable to be quashed.***
>
> *Court granted maintenance of Rs. 3,500/ - p.m. - The husband challenged the truthfulness of these records by moving an application under Section 340, Cr.P.C even during the continuance of the proceedings but the trial court decided the application under Section 125, Cr.P.C. without deciding the application under Section 340, Cr.P.C. Howeverthe same court decided the application under Section 340, Cr.P.C.*
>
> *In the last paragraph of this order it was observed by the court that the judgment has been obtained by the wife on the basis of forged evidence. The application under Section 340, Cr.P.C was allowed by the court and criminal proceedings were instituted against the wife and others.*
>
> *Once findings recorded on the application under Section 340, Cr.P.C. have not been set aside by any competent court of law, hence, these findings are binding upon the*

*parties and in view of these findings this can very well be said that the evidence on the basis of which the wife got judgment in the proceedings under Section 125,Cr.P.C. cannot be said to be a good judgment as this judgment is based on that evidence which has been held to be forged by that very court which had decided the proceedings under Section 125, Cr.P.C.*

*I am in agreement with the argument advanced that the judgment and order passed in the proceedings under Section 125, Cr.P.C. registered as case No. 340/03 are liable to be quashed.*

*Accordingly, revision is allowed - The parties may be allowed to lead fresh evidence.''*

## CHAPTER 115

REVIEW OF THE ORDER

**Review of order :-**The Court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from malafide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred

upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision.(Para 14)

Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not. [**S.R.Tewari Vs. Union Of India And Another (2013) 6 SCC 602**]

A Constitution Bench of five judges of this Hon'ble Court has held in **P.N Eswara Iyer v Supreme Court of India (1980) 4 SCC 680 at paragraphs 34 and 35** that the scope of this Hon'ble Court's substantive power of review is "as wide for criminal as for civil proceedings.".

It is ruled as under;

> *"The purpose is plain; the language is elastic and interpretation of a necessary power must naturally be expansive. The substantive power is derived from Art. 137 and is as wide for criminal as for civil proceedings. Even the difference in phraseology in the rule (Order 40 Rule 2) must, therefore, be read to encompass the same area and not to engraft an artificial divergence*

*productive of anomaly. If the expression 'record' is read to mean, in its semantic sweep, any material even later brought on record, with the leave of the court, it will embrace subsequent events, new light and other grounds which we find in Order 47 Rule 1 C. P. C. We see no insuperable difficulty in equating the area in civil and criminal proceedings when review power is invoked from the same source."*

Further, a bench of three judges in **Vikram Singh v. State of Punjab (2017) 8 SCC 518 at paragraph 23** has held that the power of review in criminal proceedings is wider under Article 137 than under statute, in the following terms:

"*...scope, ambit and parameters of review jurisdiction are well defined. Normally in a criminal proceeding, review applications cannot be entertained except on the ground of error apparent*

*on the face of the record. Further, the power given to this Court under Article 137 is wider and in an appropriate case can be exercised to mitigate a manifest injustice.*"

Constitution Bench of Seven Judges in **A.R. Antulay Vs. R.S. Nayak (1988) 2 SCC 602** ruled that the doctrine of per incuriam of a judgment can be decided in any proceedings and Court is not powerless to correct its error which has the effect of depriving a citizen of his fundamental rights and more so, the right to life and liberty. It can do so

in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities. Procedure is the handmaid and not a mistress of law, intended to sub serve and facilitate the cause of justice and not to govern or obstruct it. It is ruled thus;

> ***''48**. According to Shri Jethmalani, the doctrine of per incuriam has no application in the same proceedings. We are unable to accept this contention. We are of the opinion that this Court is not powerless to correct its error which has the effect of depriving a citizen of his fundamental rights and more so, the right to life and liberty. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or Article 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the fundamental rights of a citizen or any legal right of the petitioner. See the observations in Prem Chand Garg v. Excise Commissioner, U.P. Allahabad, [1963] Supp. 1 S.C.R. 885.*
>
> *Again under the Rules of the Court a review petition was not to be heard in Court and was liable to be disposed of by circulation. In these circumstances the petition of appeal could not he taken as a review petition. The question, therefore, to be*

*considered now is what is the modality to be followed for vacating the impugned direction.*

*This being the apex Court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in 1917 A.C. 170 stated:*

*"All rules of court are nothing but provisions intended to secure proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose."*

*This Court in Gujarat v. Ram Prakash, [1970] 2 SCR 875 reiterated the position by saying:*

*"Procedure is the handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it, like all rules of procedure, this rule demands a construction which would promote this Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the Court to rectify the mistake by exercising inherent powers.*

*Judicial opinion heavily leans in favour of this view that a mistake of the Court can be corrected by the Court itself without any fetters. This is on the principle as indicated in Alexander*

*Rodger's case (supra). l am of the view that in the present situation, the Court's inherent powers can be exercised to remedy the mistake.*

*The Privy Council in Debi v. Habib, ILR 35 All. 331, pointed out that an abuse of the process of the Court may be committed by the court or by a party. Where a court employed a procedure in doing something which it never intended to do and there is an abuse of the process of the court it can be corrected. Lord Shaw spoke for the Law lords thus:*

*"Quite apart from section 151, any court might have rightly considered itself to possess an inherent power to rectify the mistake which had been inadvertently made."*

*It was pointed out by the Privy Council in Murtaza v. Yasin, AIR 1916 PC 8:. that:*

*"Where substantial injustice would othenwise result, the court has, in their Lordships opinion, an inherent power to set aside its own judgments of condemnation so as to let in bona fide claims by parties .. ".*

*Indian authorities are in abundance to support the view that injustice done should be corrected by applying the principle actus curiae neminem gravabit an act of the court shall prejudice no one.*

*To err is human, is the off-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both.''*

In **Dr. Vijay Mallya's case 2020 SCC OnLine SC 701**, it is observed as under;

*"In the instant Review Petitions, it is specifically asserted in ground "V" as under:-*

*"(v) FOR THAT this Hon'ble Court while passing the said judgment has erred in recording that the Review Petitioner did not file a reply or rebuttal to the response dated 8th December 2017 ("Response") filed by the Respondent Banks (Original Petitioners). Pursuant to the order dated 11.01.2017 passed by this Hon'ble Court a reply dated 30th January, 2017 was filed on behalf of the Review Petitioner to the Respondents' (Original Petitioners') Response."*

*7. The Review Petitions were placed in Chambers three years after the filing.* ***Taking note of the aforesaid ground, the Review Petitions were directed to be placed in open Court****. Thereafter, the concerned documents including Memo of Filing dated 30.01.2017 and copy of the reply dated 30.01.2017 were placed for our perusal.*

*8. From these facts it is clear that it was an error on part of this Court to have observed and proceeded on the premise that no reply was filed by respondent No.3 to the response filed by the banks. "*

**Similar procedure is followed by this Hon'ble Court in the case of National Fertilizer Limited Vs. Tuncky (2013) 9 SCC 600, where the order of conviction under contempt by this Hon'ble Court was heard in open court hearing because the alleged contemnor took objection that the judgment of the court is based upon the wrong premise and incorrect observations. Thereafter this Hon'ble Court admitted its mistake and recalled the order.**

In considering review petitions filed in **Kantaru Rajeevaru v. Indian Young Lawyers Association (2020) 2 SCC 1 at paragraph 4**, a majority of three judges of a Constitution Bench of five, having noted **Article 145(3)** of the Constitution and the pendency of other cases in which the same questions fell to be answered, held that public confidence would be served by the settlement of questions touching the interpretation of rights by an "*authoritative pronouncement"* which would "*ensure consistency in approach for posterity*". The Court then proceeded to enumerate the questions which were to be referred to a bench of the appropriate strength.

***"4.*** *It is time that this Court should evolve a judicial policy befitting to its plenary powers to do substantial and*

*complete justice and for an authoritative enunciation of the constitutional principles by a larger bench of not less than seven judges. The decision of a larger bench would put at rest recurring issues touching upon the rights flowing from Articles 25 and 26 of the Constitution of India.* ***It is essential to adhere to judicial discipline and propriety when more than one petition is pending on the same, similar or overlapping issues in the same court for which all cases must proceed together. Indubitably, decision by a larger bench will also pave way to instil public confidence and effectuate the principle underlying Article 145(3) of the Constitution -which predicates that cases involving a substantial question of law as to the interpretation of the Constitution should be heard by a bench of minimum five judges of this Court.*** *Be it noted that this stipulation came when the strength of the Supreme Court Judges in 1950 was only seven Judges. The purpose underlying was, obviously, to ensure that the Supreme Court must rule authoritatively, if not as a full court (unlike the US Supreme Court). In the context of the present strength of Judges of the Supreme Court, it may not be inappropriate if matters involving seminal issues including the interpretation of the provisions of the Constitution touching upon the right to profess, practise and propagate its own religion, are heard by larger bench*

*of commensurate number of Judges. That would ensure an authoritative pronouncement and also reflect the plurality of views of the Judges converging into one opinion. That may also ensure consistency in approach for the posterity."*

## CHAPTER 116

RECALL IS DIFFERENT THAN REVIEW AFTER DISMISSAL OF RECALL THE PARTY CAN APPLY FOR REVIEW.

In **Rajendra Khare Vs. Swati Nirkhi and Ors. 2021 SCC OnLine SC 68,** it is ruled as under;

***"13.*** *……. The M.A., which was rejected, was an application to recall the judgment. Grounds for recall of a judgment and grounds to review the judgment can be*

*different. Review is a proceeding, which exists by virtue of the Statute. The M.A. which was rejected was not an application to review under Article 137 as well as Order XLVII Rule 1, thus, by rejection of M.A., it cannot be said that review petition filed by the review petitioner is not maintainable.*

***15.*** *We, thus, are of the considered opinion that by mere rejection of M.A. filed by the review petitioner, the review petitioner cannot be precluded from filing the present review petition. Review petition is, thus, fully maintainable and the argument of the respondent that review petition is not maintainable cannot be considered. Further submission of the counsel for the respondent that all grounds which have been taken in the review petition were earlier taken in M.A., and due to rejection of M.A. they cannot be re-agitated, cannot be acceded to. The order passed in M.A. does not indicate that any of the issues which were raised were considered and decided by this Court, and further the review being statutory proceedings cannot be considered on the specious plea raised by the respondents.*

***16.*** *The rectification of an order emanates from the fundamental principles that justice is above all. In the Constitution, substantive power to rectify or review the order by the Supreme Court has been specifically provided*

*under Article 137 as noted above. The basic philosophy inherent in granting the power to the Supreme Court to review its judgment under Article 137 is the universal acceptance of human fallibility.*

***19.*** *We may in this context refer to the judgment of this Court in M.S. Ahlawat v. State of Haryna, (2000) 1 SCC 278. In the above case, this Court convicted the petitioner under Section 193 Penal Code, 1860. This Court recalled and set aside the said order after noticing that the procedure which was required to be followed for conviction was not followed. In paragraphs 3 and 4 of the judgment, the submissions were noticed, and this Court after coming to the conclusion that error was committed by not following the procedure, set aside the order convicting the petitioner. In paragraphs 12 and 15 following was laid down:—*

> ***"12.*** *This Court has always adopted this procedure whenever it is noticed that proceedings before it have been tampered with by production of forged or false documents or any statement has been found to be false. We have not been able to appreciate as to why this procedure was given a go-by in the present case. Maybe the provisions of Sections 195 and 340 CrPC were not brought to the notice of the learned Division Bench.*

*15. To perpetuate an error is no virtue but to correct it is a compulsion of judicial conscience. We, therefore, unhesitatingly set aside the conviction of the petitioner for the offence under Section 193 IPC……"*

***20.** We having found that there was error apparent in the order dated 18.05.2018, the said order has to be corrected. We, thus, allow the review petition, and recall the order dated 18.05.2018……..**"***

## CHAPTER 117

FOR DOING JUSTICE THE PROCEDURE CAN BE MOULDED.

Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. [**Rani Kusum Vs. Kanchan Devi and Ors. (2005) 6 SCC 705]**

In **Amarjit Singh and Others Vs, State of Punjab and Another 2021 SCC OnLine P&H 184** it is ruled as under;

***42.*** *Though, the trial Court has rightly observed that once the cognizance has been taken, the Court cannot recall the summoning order, however, it has ignored the fact that the application was moved by the petitioners to dismiss the protest petition in view of the fact that the summoning order was procured by the complainant by playing fraud with the Court as the son of the complainant is alive and therefore, nothing precluded the trial Court to dismiss the protest petition.*

***43.*** *Further observation made by the Magistrate that since the offenceswere triable by the Court of Magistrate/Court of Sessions, though are correct but the Magistrate, in exercise of power under Section 239 Cr.P.C, in order to prevent any injustice to the petitioners could have allowed the application and discharge them by dismissing the protest petition.*

***44.*** *The Magistrate, while dismissing the application vide impugned order dated 02.12.2020 even again issued Non-bailable Warrants against the petitioners. This part of the order is also illegal as in view of provision of Section 87 of Cr.P.C, the Magistrate can withdraw Warrants as per the information supplied and also in view that the petitioners through counsel had already appeared. The proper course was to direct the counsel for the petitioners to furnish bail/surety bonds as they intended to appear*

*before the Magistrate, but for dismissal of anticipatory bail by the Additional Sessions Judge, they apprehended arrest for no fault.*

***45.*** *However, the Additional Sessions Judge having failed to exercise the jurisdiction under Section 438 Cr.P.C, in dismissing the anticipatory bail application of the petitioners despite the fact that it was brought to his notice that they are being prosecuted in pursuance to a fraud committed by the complainant, has passed a totally illegal order.*

***46.*** *Accordingly, this petition is allowed, the protest petition dated 20.01.2012 filed in case No. 45 dated 21.11.2011 under Sections 302/201 IPC read with Section 34 IPC as well as the impugned summoning order dated 07.12.2017 passed by the Judicial Magistrate I$^{st}$ Class, Ludhiana and the order dated 02.12.2020 passed by the Judicial Magistrate I$^{st}$ Class, Ludhiana, refusing to dismiss the protest petition are set-aside and the petitioners are discharge in FIR No. 115 dated 21.08.2010 registered under Sections 302, 201, 34 IPC at Police Station Dehlon, Ludhiana, District Ludhiana.*

***47.*** *Considering the fact that the petitioners are subjected to unwanted and unnecessary criminal prosecution for a period of last 15 years, it is directed that the State Legal*

*Services Authority, Punjab through District Legal Services Authority, Ludhiana, will pay the costs of Rs. 50,000/- each to all the 03 present petitioners namely Amarjit Singh, Jaswant Singh and Kabal Singh within a period of 04 months from today.*

***48.*** *It will be open for the prosecution to initiate the proceedings under Section 340 Cr.P.C. against CW-1 Satpal Singh, CW-2 Gurdial Singh and CW-4 Naginder Singh i.e. the complainant.*

***49.*** *It will also be open for the prosecution to recover the amount of Rs. 2.00 lacs from the complainant namely Naginder Singh or his legal representatives and to recover the costs of Rs. 50,000/- each from CW-1 Satpal Singh, CW-2 Gurdial Singh and CW-4 Naginder Singh or their LRs, after paying the same to the petitioners. Considering the fact that the Additional Sessions Judge, has failed to exercise its jurisdiction, it is directed that he will go through at least 10 judgments of the Hon'ble Supreme Court including the 02 Constitutional Bench Judgments i.e. "Gurbaksh Singh Sibbia v. State of Punjab", (1980) 2 SCC 565 : AIR 1980 SC 1632 and "Sushila Aggarwal v. State (NCT of Delhi)", (2020) 1 RCR (Cri) 833, wherein the Hon'ble Supreme Court has interpreted the provisions of Section 438 Cr.P.C.*

***50.*** *The Additional Sessions Judge-I, Ludhiana, will submit the written synopsis on the exercise of jurisdiction by a Judge under Section 438 Cr.P.C, after going through the judgments, within a period of 30 days to the Director, Chandigarh Judicial Academy.*

## CHAPTER 118

PRINCIPLES OF NATURAL JUSTICE - ANY PROCEDURE /RULES MUST BE INTERPRETED IN A MANNER SO AS TO SUB SERVE AND ADVANCE THE CAUSE OF JUSTICE RATHER THAN TO DEFEAT IT.

The procedure is designed to facilitate justice and not a thing designed to trip people up. Too technical a construction of section that leaves no room for reasonable elasticity of interpretation should therefore be guarded against interpretation to frustrate it.

Our laws of procedure are based on the principle that as far as possible no proceeding in a court of law should be allowed to be defeated on mere technicalities. [**Ghanshyam Dass and Ors. Vs. Dominion of India and Ors. (1984) 3 SCC 46 ]**

## CHAPTER 119

ARTICLE 142, 141 OF THE CONSTITUTION – SUPREME COURT CANNOT DISREGARD STATUTORY PROVISION, AND/OR A DECLARED PRONOUNCEMENT OF LAW UNDER ARTICLE 141 OF THE CONSTITUTION, EVEN IN EXCEPTIONAL CIRCUMSTANCES. [**Nidhi Kaim and Ors. Vs. State of Madhya Pradesh and Ors. (2017) 4 SCC 1,]**

## CHAPTER 120

DOUBLE STANDARD:-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. **[Nand Lal Misra Vs. Kanhaiyalal Misra AIR 1960 SC 882]**

## CHAPTER 121

COMPLAINT /ALLEGATION AGAINST JUDGES IS NOT CONTEMPT IF THE ALLEGATIONS ARE SUPPORTED WITH PROOF AND ARE WELL FOUNDED. **[Court on its own Motion Vs. DSP Jayant Kashmiri and Ors. MANU/DE/ 0609/2017]**

In **Dr. D.C. Saxena Vs. Hon'ble Chief Justice of India (1996) 5 SCC 216** case itis laid down that, making complaint against Judges of Supreme Court as per **'In-House Procedure'** are protected from action under contempt.

It is ruled as under;

> ***''59*** ***.....*** *Therefore, when the Constitution prohibits the discussion of the conduct of a Judge, by implication, no one has power to accuse a Judge of his misbehaviour or incapacity except and in accordance with the procedure prescribed in the Constitution and the Judges (Inquiry) Act or as per the procedure laid down in Bhattacharjee case [(1995) 5 SCC 457 : 1995 SCC (Cri) 953]''*

In **Additional District and Sessions Judge 'X' (2015) 4 SCC 91** it is ruled as under;

> ***"55 .In view of the consideration and the findings recorded hereinabove, we may record our general conclusions as under:***
>
> ***I. The "in-house procedure"*** *framed by this Court, consequent upon the decision rendered in C. Ravichandran Iyer's case (supra) can be adopted, to examine allegations levelled against Judges of High*

*Courts, Chief Justices of High Courts and Judges of the Supreme Court of India.*

*The investigative process under the "in-house procedure" takes into consideration the rights of the complainant, and that of the concerned judge, by adopting a fair procedure, to determine the veracity of allegations levelled against a sitting Judge. At the same time, it safeguards the integrity of the judicial institution*

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- Complaint 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 stifle 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."***

High Court in **Harihar Shukla 1976 Cri. LJ 507,** had laid down that, when law provides remedy for making complaint then Contempt cannot lie as it will violate that, right and create fear in the mind of complainants. Similar law is laid down by the Constitution Bench in the case of **Baradkanta Mishra (1974) 1 SCC 374.**

In **Court on its Own Motion Vs. Ram Piara Comrade1972 SCC OnLine P & H 277** it is ruled as under;

> ***"****Contempt of Court - Scandalous complaint against Judge to higher authority including Chief Justice of India, Which are admittedly the authorities with disciplinary control does not amount to a publication tending to scandalize the Court of the said Judge Shri Lamba within the meaning of Section 2(c). The mere fact that copies were sent to the Chief Justice of India who too is believed to be having supervisory control over the judiciary in India does not in any way in the*

*instant case amount to publication within the meaning of Section 2 of the Act.*

*12. The very idea of a complaint has inherent in it that the person complaining is levelling some sort of accusations. The complaint for which there is a lawful justification is not per se a publication unless it is a garbled version falsifying the issues raised in the complaint so as to negative any good faith.*

*13. The order is as stated above so patently illegal that the suspicion of the respondent mentioned in his complaints to the Chief Justice that the Judicial Officer might have acted with a corrupt motive or for any other extraneous reason could not be totally ruled out as baseless so as to justify a conclusion by us that the respondent did not act honestly and intended only to scandalize the Court of Shri Lamba.*

***14.*** *For the exercise of power of punishing a contemner the vehemence of the language used in the offending publications concerning a judge is not the only criterion. While punishing a contemner is in the interest of the society, it is equally necessary in order to protect that interest*

*in a democratic set up that a citizen should be allowed to make a complaint to the High Court about a subordinate Judicial Officer so long as the complaint is made in good faith as the Constitution vests in the High Court full and complete administrative and disciplinary control over subordinate judiciary in the State. In order to have a proper control and check over the judiciary, it is but expedient that a citizen is not dissuaded by the threat of prosecution for contempt from making a bona fide complaint to the High Court against the Presiding Officer of a Subordinate Court.*

*15. The act of the respondent in making complaints to the Chief Justice of this Court against Shri Lamba and sending copies of the same to the Governor and the Chief Minister, who are admittedly the appointing authorities;' though disciplinary control is with the High Court, is covered by Section 6 of the Act and does not amount to a publication tending to scandalize the Court of Shri Lamba within the meaning of Section 2(c). The mere fact that copies were sent to the Chief Justice of India who too is believed to be having supervisory control over the judiciary in India does not in any way in the instant case*

*amount to publication within the meaning of Section 2 of the Act.*

*16. In the result, the rule issued against the respondent is discharged with no order as to costs.*

Seven Judge Bench in **Nationwide News Pty. 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.''***

In **Indirect Tax Practitioner Vs. R.K. Jain (2010) 8 SCC 281,** the law of scandalous pleading are explained as under;

> ***''31. The word "scandalise" has not been defined in the Act. In Black's Law Dictionary, 8th Edn., p. 1372, reference has been made to Eugene A. Jones, Manual of Equity Pleading and Practice 50-51, wherein the word scandal has been described as under;***
>
> ***"Scandal consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to decency or good manners, or which charges some person with a crime not necessary to be shown in the cause, to which may be added that any unnecessary allegation, bearing cruelly upon the moral character of an individual, is also scandalous. The matter alleged, however, must be not only offensive, but also irrelevant to the cause, for however offensive it be, if it is pertinent and material to the cause the party has a right to plead it. It may often be necessary to charge false representations, fraud and immorality, and the pleading will not be open to the objection of scandal, if the facts justify the charge."***
>
> ***(emphasis in original)***

***32. In Aiyer's Law Lexicon, 2nd Edn., p. 1727, reference has been made to Millington v. Loring [(1880) 6 QBD 190: 50 LJQB 214 (CA)] wherein it was held:***

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

## CHAPTER 122

EQUALITY OF NOT ONLY SUBSTANTIAL BUT ALSO PROCEDURAL LAW.

**CONSTITUTION OF INDIA:** Article 14 assures to the citizen equality not only in respect of a substantive law but also procedural law, and if any procedure is set up which deprives a citizen of substantive rights of relief and defence the citizen is entitled to of this procedure. [**Arunachalam Swami and Ors. Vs. State of Bombay and Ors. 1956 SCC OnLine Bom 73]**

## CHAPTER 124

A JUDGE MUST NOT SIDE WITH EITHER PARTY NOR SHOULD DESCEND INTO THE ARENA.

In **Ram Chander v. State of Haryana, (1981) 3 SCC 191** it is ruled as under;

> ***"3.*** *With such wide powers, the court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the Counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the Judge must be so as not to frighten, coerce, confuse or intimidate the witnesses. The danger inherent in a Judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett:*
>
> > *"People accustomed to the procedure of the court are likely to be overawed or frightened, or confused, or distressed when under the ordeal of prolonged questioning from the presiding judge. Moreover, when the questioning takes on a sarcastic or ironic tone as it is apt to do, or when it takes on a hostile note as is sometimes almost inevitable, the danger is not only that witnesses will be unable to present the evidence as they may wish, but the parties may begin to think, quite wrongly it may be, that the Judge is not holding the scales of*

*justice quite eventually." [ Extracted by Lord Denning in supra f.n. 2]*

*In Jones v. National Coal Board [Jones v. National Coal Board, (1957) 2 All ER 155 : (1957) 2 WLR 760] Lord Justice Denning observed:*

> *The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of the Judge and assumes the role of an advocate; and the change does not become him well."*

*We may go further than Lord Denning and say that 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" (Section 165 Evidence Act). But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defence Counsel,* ***without any hint of partisanship and without appearing to frighten or bully witnesses.*** *He must take the prosecution and the defence with him.* ***The court, the***

***prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge.*** *The Judge, "like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old".*

***8.*** *The questions put by the learned Sessions Judge, particularly the threats held out to the witnesses that if they changed their statements they would involve themselves in prosecutions for perjury were certainly intimidating, coming as they did from the presiding Judge. The learned Sessions Judge appeared to have become irate that the witnesses were not sticking to the statements made by them under Sections 161 and 164 and were probably giving false evidence before him.* ***In an effort to compel them to speak what he thought must be the truth, the learned Sessions Judge, very wrongly, in our opinion, firmly rebuked them and virtually threatened them with prosecutions for perjury. He left his seat and entered the ring, we may say. The principle of "fair trial" was abandoned.*** *We find it impossible to justify the attitude adopted by the Sessions Judge and we also find it impossible to accept any portion of the evidence of PWs 8 and 9, the two alleged eyewitnesses.*

***2.*** *The adversary system of trial being what it is, there is an unfortunate tendency for a Judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the*

*defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:*

> *"Every criminal 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. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial. [Sessions Judge, Nellore v. Intha Ramana ReddyILR 1972 AP 683 : 1972 Cri LJ 1485] "*

*In the result we accept the appeal, set aside the conviction and sentence and direct the appellant to be set at liberty fortwith."*

**In <u>Nirankar Nath Wahi and others, Appellants v. Fifth Addl. District Judge, Moradabad and others, AIR 1984 SC 1268</u>** it is ruled as under;

***''NATURAL JUSTICE- Injustice by Addl. Dist Judge by dismissing appeal by readymade judgement without waiting for advocate - the High Court rejected the petition summarily - Landlords' appeal from proceeding against a leading influential member of Bar - Refusal of Addl. Dist. Judge to grant short adjournment to landlord to engage senior counsel - Advocate engaged by the appellant was not in a position to appear due illness - Landlord's appeal dismissed by readymade judgment - No reasonable opportunity of hearing to landlord - Judgment of Addl. Dist Judge vitiated- We may incidentally observe that we are also distressed that the High Court rejected the petition summarily in the face of these features and obliged the appellant to approach this Court- the litigant pitted against a leading member of the Bar may also want to engage a counsel of his choice and confidence for it may well appear to him that not every member of the Bar, might present his case with the***

***degree of zeal, enthusiasm, sincerity and conviction which ordinarily a litigant expects from his advocate - We are afraid that these vital aspects were overlooked by the learned Judge when he granted only three days' time to make alternative arrangement for engaging a local senior counsel by reason of the fact that the Saharanpur Advocate engaged by the appellant was not in a position to appear on the ground of illness. This short adjournment for three days was granted the learned Judge refused to grant further time to the appellant who had not been able to make suitable arrangement for engaging a counsel on that date.*** *We are of the opinion that the appellant has been denied a reasonable opportunity of hearing, and that the grievance made by the appellant, as regards, the procedure adopted by the learned Judge on this score, is not unfounded-The judgment rendered by the Addl. Dist. Judge was thus vitiated by reason of the failure to grant reasonable opportunity of hearing to the appellant and by reason of the procedure adopted in connection with the preparation and pronouncement of the judgement.*

*In appeal by landlord arising out of proceeding for eviction of his tenant (a leading and influential member of the bar) from premises in his personal occupation for use as his residence-cum-office, the landlord on 20-5-1983*

*sought second adjournment of hearing of appeal on the ground of indisposition of his senior counsel from outstation. The Addl. Dist. Judge refused the Prayer but granted three days' time for making alternative arrangement and directed that appeal be posted for hearing of further arguments on 23-5-1983. He further directed that in the event of failure to urge arguments on 23-5-1983, `the judgment will be pronounced'. Even so, the appellant again sought an adjournment on the ground that he could not secure the services of his senior counsel as he was not able to appear till the month of July, and prayed for some time to engage a senior counsel. The Addl. Dist, Judge refused the adjournment and dismissed the appeal by pronouncing the judgment which he had kept ready for being delivered. The High Court dismissed the landlords' writ appeal in limine. On appeal to Supreme Court by special leave.*

***Held**, (1) :-"Justice", we do not tire of saying, must not only be done", but ,'must be seen to be done". And yet at times some Courts suffer from temporary amnesia and forget these words of wisdom. In the result, a Court occasionally adopts a procedure which does not meet the high standards set for itself by the judiciary. The present matter falls in that unfortunate category of cases ( para1)*

*that the appellant had been denied a reasonable opportunity of hearing because he was genuinely handicapped in securing the services of a senior advocate to appear for him in the matter. (Para 10)*

*(2) that the Addl. Dist. Judge could not have armed himself with a readymade judgment dismissing the appeal when further arguments were yet to be heard.* ***The judgment rendered by the Addl. Dist. Judge was thus vitiated by reason of the failure to grant reasonable opportunity of hearing to the appellant and by reason of the procedure adopted in connection with the preparation and pronouncement of the judgement****.''*

## CHAPTER 124

VIOLATION OF FUNDAMNETAL RIGHTS BY COURTS INCLUDING SUPREME COURT -NATIONAL HUMAN RIGHTS COMMISSION IS HAVING JURISDICTION TO ENTERTAIN THE PETITION ALLEGING VIOLATION OF FUNDAMENTAL RIGHTS OF THE CITIZEN AT THE HANDS OF COURT EVEN BY THE SUPREME COURT. IT IS CLEAR THAT WHERE THE PARTY IS DENIED OF PROTECTION OF ANY LAW TO WHICH HE IS ENTITLE EVEN BY COURTS OF LAW THE HUMAN

RIGHT COMMISSION IS HAVING JURISDICTION TO ENQUIRE IT. **[Ramdeo Chauhan Vs. Bani Kant Das AIR 2011 SC (Cri.) 31]**

In **Ram Deo Chauhan Vs. Bani Kanta Das AIR 2011 SC (Cri.) 31** it is ruled as under;

> *"Human and Civil Rights – Protection of Human Rights Act, 1993 – Ss. 12(j) and 2(d) – Scope of residuary power of NHRC under S. 12(J) – NHRC's power to recommend vis-a-vis judicial adjudication – Violation of human rights by courts, even by Supreme Court not ruled out – But NHRC not to function as a parallel court of justice or an appellate, review or revisional court – But considering wide scope of human rights, pre-verdict initiation of proceedings before NHRC but post-verdict recommendation of NHRC to Governor to commute death sentence to life, under S. 12(j), held, valid – Scope of NHRC's residuary power under S. 12(j) are very wide – Penal Code, 1860, S. 302."*

Full Bench of Hon'ble Supreme Court in **M.S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278,**where it is ruled that;

> *"Wrong conviction by the Supreme Court -* ***Recall of Order. –***
>
> *Held,* ***To perpetuate error is no virtue but to correct it is compulsion od judicial conscience.***

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

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

## CHAPTER 125

RIGHT TO CHALLENGE THE ORDER PASSED BY THE HON'BLE SUPREME COURT

**THE GENERAL ORDERS CAN BE CHALLENGED IN THREE WAYS;**

1. **Application to recall the order. [**New India Assurance Ltd. Vs. Krishna Kumar Pandey **2019 SCC OnLine SC 1786 ]**

2. **Review Petition -** Rajendra Khare Vs. Swati Nirkhi and Ors. **2021 SCC OnLine SC 68**
3. Curative Petition [**Rupa Ashok Hurra v. AshokHurra, (2002) 4 SCC 388**

## CHAPTER 126

RIGHT OF INTRA COURT APPEAL AGAINST CONVICTION BY THE SUPREME COURT.

### A] RIGHT TO APPEAL IS A FUNDAMENTAL RIGHT UNDER ARTICLE 21.

Under Section 19 of the Contempt of Courts Act, an intra-court appeal lies "as of right" against an order of decision of a single Judge to a bench of not less than two judges of the High Court and in case an order or decision is by a Division Bench, an appeal shall lie to this Hon'ble Court. It is submitted that such a safeguard is provided to avoid any possibility of miscarriage of justice or an abuse of the power of contempt. However, in cases where an order or decision convicting the Act does not provide for any forum of appeal. Thus, an accused is left deprived of his right to appeal in such cases.

**Section 19 Contempt of Courts Act, 1971**

**19. Appeals.**

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

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

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

*(2) Pending any appeal, the appellate Court may order that—*

*(a) the execution of the punishment or order appealed against be suspended;*

*(b) if the appellant is in confinement, he be released on bail; and*

*(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.*

> *(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub- section (2).*
>
> *(4) An appeal under sub-section (1) shall be filed—*
>
> *(a) in the case of an appeal to a Bench of the High Court, within thirty days;*
>
> *(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.*

This Hon'ble Court in various judgments has clearly held that one right to appeal in a criminal conviction is a substantive right flowing from Article 21 of the Constitution and is a part of natural justice.

In **M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544,** a three judge bench of this Hon'ble Court, while dealing with a case where an accused was able to file an appeal against the High Court judgment convicting him after four years, held that at least a single right to appeal is integral to fair legal procedure, natural justice and normative universality and manifests itself in Article 21 of the Constitution. It was held thus:

***Any procedure which permits impairment of the constitutional right to go Abroad without giving reasonable opportunity to show-cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21."***

***One of us this separate opinion there observed [Krishna Iyer, J., 337, 338] :(Paras 81, 82, 84 and 85)***

***"Procedure established by law', with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not ex necessitate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head. Can the sacred essence of the human right to secure which the struggle for liberation, with 'do or die' patriotism, was launched be sapped by formalistic and pharisaic prescriptions, regardless of essential standards? An enacted apparition is a constitutional illusion. Processual justice is writ patently on Article 21.***

***10.*** *One component of fair procedure is natural*

> *justice*. ***Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in Article 21.***

**The Judgment in Madhav Hoskot (1978) 3 SCC 544 is approved by the Constitution Bench in Anita Kushwaha's (2016) 8 SCC 509 case.**

In **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528** this Hon'ble Court again held that, right to appeal against a judgment of conviction affecting the liberty of a person is a fundamental right as under;

> ***"12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of appeal from a judgment of***

***conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.***

In **Tamilnad Mercantile Bank Vs S.C. Sekar (2009) 2 SSC 784,** it is ruled that, in proceedings under the contempt the appeal is fundamental and human right. Technically, if there is no provision of appeal then the aggrieved person cannot be left without remedy. Access to justice is a human right and in certain situations it is a fundamental right.

It is ruled as under;

***"46. We will, however, proceed on the assumption that no appeal was maintainable. An aggrieved person cannot be left without a remedy. Access to justice is a human right. In certain situations it may also be considered to be a fundamental right.*** *(See Tashi Delek Gaming Solutions Ltd. v. State of Karnataka, [ (2006) 1 SCC 442 ] and Arunima Baruah v. Union of India, [(2007) 6 SCC 120]._*

**47. Concededly this Court has the jurisdiction to entertain a special leave petition. When the entire matter is before us this Court in exercise of its jurisdiction under Article 136 read with Article 142 of the Constitution of India may pass such orders which would do complete justice to the**

**parties. [See - T. Vijendradas v. M. Subramanian, (2007) 8 SCC 751 ].**

***49.*** *It is also well settled that even an irregular order can be set aside by the same court or by a higher court. In Isaacs v. Robertson, [(1984) 3 All. E.R. 140], it has been held:*

***"Their Lordships would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are `void' in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are `voidable' and may be enforced unless and until they are set aside. Dicta that refer to the possibility of there being such a distinction between orders to which the descriptions `void' and `voidable' respectively have been applied can be found in the opinions given by the Judicial Committee of the Privy Council in Marsh***

*v. marsh [1945] AC 271 at 284 and Mac Foy v. United Africa Co. Ltd. [1961] 3 ALL ER 1169, [1962] AC 152; but in neither of those appeals nor in any other case to which counsel has been able to refer their Lordships has any order of a court of unlimited*

*jurisdiction been held to fall in a category of court orders that can simply be ignored because they are void ipso facto without there being any need for proceeding to have them set aside.* ***The case that are referred to in these dicta do not support the proposition that there is any category of orders of a court of unlimited jurisdiction of this kind: what they do support is the quite different proposition that there is a category of orders of such a court which a person affected by the order is entitled to apply to have set aside ex debito justitiae in the exercise of the inherent jurisdiction of the court without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity and give to the judge a discretion as to the order he will make.*** *The judges in the cases that have drawn the distinction between the two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that bring an order into the category that attracts ex debito justitiae the right to have it set aside, save that* ***specifically it includes orders that have been obtained in breach of rules of natural justice****. The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to*

*orders made by a court of unlimited jurisdiction in the course of contentions litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it on application to that court; if it is regular it can only be set aside by an appellate court on appeal if there is one to which an appeal lies."*

The above view in **Tamilnad Mercantile Bank Vs S.C. Sekar (2009) 2 SSC, 784** case is approved by the Constitution Bench in **Anita Kushwaha's case (2016) 8 SCC 509.** It is ruled as under;

***11.*** *The Universal Declaration of Rights drafted in the year 1948 gave recognition to two rights pertaining to "access to justice" in the following words:*

*"**8.**Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.*

***

***10.****Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him."*

*(emphasis supplied)*

***15.*** *Courts in England have over the centuries post Magna Carta developed fundamental principles of common law which are enshrined as the basic rights of all humans. These principles were over a period of time recognised in the form of Bill of Rights and the Constitutions of various countries which acknowledged the Roman maxim ubi jus ibi remedium i.e. every right when it is breached must be provided with a right to a remedy. Judicial pronouncements have delved into and elaborated on the concept of access to justice to include among other aspects the State's obligation to make available to all its citizens the means for a just and peaceful settlement of disputes between them as to their respective legal rights.*

***23.*** *The Court in Imtiyaz Ahmad case [Imtiyaz Ahmad v. State of U.P., (2012) 2 SCC 688 : (2012) 1 SCC (Cri) 986] held that the rule of law, independence of judiciary and access to justice are conceptually interwoven. The Court also referred to the International Covenant on Civil and Political Rights and the Statute of the International Criminal Court. It also referred to Article 47 of the Charter of Fundamental Rights of the European Union, 2007*

*and the European Convention on Human Rights and Fundamental Freedom, 1950. Reliance was placed upon the European Court of Human Rights decision in* ***Delcourt v. Belgium [Delcourt v. Belgium, 1970 ECHR 1]*** *to hold that access to justice was a valuable human and fundamental right relatable to Article 21 of the Constitution of India. Having said that, this Court issued directions for better maintenance of the Rule of Law and better administration of justice by the High Courts. It also directed the Law Commission of India to undertake a study and submit its recommendations in relation to measures that need to be taken by creation of additional courts and other allied matters including rational and scientific methods for elimination of arrears to help reduce delay and speedy clearance of the backlog of cases.*

***25.*** *In Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar [Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, (2009) 2 SCC 784] , this Court declared that an aggrieved person cannot be left without the remedy and that access to justice is a human right and in certain situations even a fundamental right.*

***12.*** *To the same effect is clause (3) of Article 2 of the International Covenant on Civil and Political Rights, 1966 which provides that each State party to the Covenant shall undertake that every person whose rights or freedom as recognised is violated, shall have an effective remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, and the State should also ensure to develop the possibilities of judicial remedies.*

***13.*** *De Smith's book on Judicial Review of Administrative Action (5th Edn., 1995) stated the principle thus:*

*"It is a common law presumption of legislative intent that access of Queen's Court in respect of justiciable issues is not to be denied save by clear words in a statute."*

***14.*** *Prof. M. Cappelletti Rabel, a noted jurist in his book Access to Justice (Vol. 1), explained the importance of access to justice in the following words:*

*"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights*

*since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement—the most "basic human right"—of a system which purports to guarantee legal right."*

***16.*** *In R. v. Secy. of State for Home Deptt., ex p Leech (No. 2) [R. v. Secy. of State for Home Deptt., ex p Leech (No. 2), 1994 QB 198 : (1993) 3 WLR 1125 (CA)] Steyn, L.J. was dealing with a prisoner who complained that correspondence with his solicitor concerning litigation in which he was involved or which he intended to launch, was being censored by the prison authorities under the Prisons Rules, 1964. He challenged the authority of the Secretary of State to create an impediment in the free flow of communication between him and his solicitor about contemplated legal proceedings. The Court held that access to justice was a basic right which could not be denied or diluted by any kind of interference or hindrance. The Court said: (QB p. 210 A-D)*

*"... It is a principle of our law that every citizen has a right of unimpeded access to a court.*

*In Raymond v. Honey [Raymond v. Honey, (1983) 1 AC 1 : (1982) 2 WLR 465 (HL)] Lord Wilberforce described it as a "basic right". Even in our unwritten Constitution, it must rank as a constitutional right.*

*In Raymond v. Honey [Raymond v. Honey, (1983) 1 AC 1 : (1982) 2 WLR 465 (HL)] , Lord Wilberforce said that there was nothing in the Prison Act, 1952 that conferred power to "interfere" with this right or to "hinder" its exercise. Lord Wilberforce said that rules which did not comply with that principle would be ultra vires. Lord Elwyn-Jones and Lord Russell of Killowen agreed.... It is true that Lord Wilberforce held that the rules, properly construed, were not ultra vires. But that does not affect the importance of his observations. Lord Bridge of Harwich held that the rules in question in that case were ultra vires. ... he went further than Lord Wilberforce and said that a citizen's right to unimpeded access could only be taken away by express enactment. ... It seems to us that Lord Wilberforce's observations rank as the ratio decidendi of the case, and we accept that such*

*rights can as a matter of legal principle be taken away by necessary implication."*

***18.*** *Reference may also be made to Prabhakar Kesheo Tare v. Emperor [Prabhakar Kesheo Tare v. Emperor, AIR 1943 Nag 26 : 1942 SCC OnLine MP 78] . That was a case where the petitioner had participated in the Quit India Movement of 1942. The detention was challenged on the ground of being vitiated on account of refusal of permission by the authorities to allow them to meet their counsel to seek legal advice or approach the court in person. The State opposed that plea based on Defence of India Act, 1939, which, according to it, took away right of the detenu to move a habeas corpus petition under Section 491 of the Code of Criminal Procedure, 1898. Rejecting the contention and relying upon the observation of Lord Hailsham in Eshugbayi Eleko v. Govt. of Nigeria [Eshugbayi Eleko v. Govt. of Nigeria, 1928 AC 459 : 1928 SCC OnLine PC 58] , the Court held that such fundamental rights, safeguarded under the Constitution with elaborate and anxious care and upheld time and again by the highest tribunals of the realm in language of utmost vigour, cannot be*

*swept away by implication or removed by some sweeping generality. Vivian Bose, J. giving the leading opinion of the Court explained that the right to move the High Court remained intact notwithstanding the Defence of India Act, 1939. He further held that although courts allow a great deal of latitude to the executive and presumptions in favour of the liberty of the subject are weakened, those rights do not disappear altogether. The Court ruled that the attempt to keep the applicants away from the court under the guise of these rules was an abuse of the power and warranted intervention. Bose, J. emphasised the importance of the right of any person to apply to the court and demand that he be dealt with according to law. He said: (Prabhakar Kesheo case [Prabhakar Kesheo Tare v. Emperor, AIR 1943 Nag 26 : 1942 SCC OnLine MP 78] , SCC OnLine MP para 1)*

*"1. ... The right is prized in India no less highly than in England, or indeed any other part of the Empire, perhaps even more highly here than elsewhere; and it is zealously guarded by the courts."*

***19.*** *The decisions of this Court too have unequivocally recognised the right of a citizen to move the Court as a valuable constitutional right recognised by Article 32 of the Constitution as fundamental right by itself. [See Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964 [Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964, AIR 1965 SC 745] (Keshav Singh case) and L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] .]*

***29.To sum up:*** *access to justice is and has been recognised as a part and parcel of right to life in India and in all civilised societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman jurisprudential maxim ubi jus ibi remedium, the development of fundamental principles of common law by judicial pronouncements of the courts over centuries past have all contributed to the*

*acceptance of access to justice as a basic and inalienable human right which all civilised societies and systems recognise and enforce.*

***30.4.*** *In Khatri (2) v. State of Bihar [Khatri (2) v. State of Bihar, (1981) 1 SCC 627 : 1981 SCC (Cri) 228] , the right to free legal aid was held to be a right covered under Article 21 of the Constitution.*

***30.6.*** *So also in Rudul Sah v. State of Bihar [Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : 1983 SCC (Cri) 798] the right to compensation for illegal and unlawful detention was considered to be a right to life under Article 21 and also under Article 14.*

***31.*** *Given the fact that pronouncements mentioned above have interpreted and understood the word "life" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, there is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of Article 21 of the Constitution of India. If "life" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of "access to justice"*

*will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before courts and tribunal and adjudicatory fora where law is applied and justice administered. The citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to*

*equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well.*

***(ii) The mechanism must be conveniently accessible in terms of distance***

***35 [Ed.: Para 35 corrected vide Official Corrigendum No. F.3/Ed.B.J./97/2016 dated 13-7-2017.] .*** *The forum/mechanism so provided must, having regard to the hierarchy of courts/tribunals, be reasonably accessible in terms of distance for access to justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the court/tribunal/court/competent authority to grant such a relief. (See D.K. Basu v. State of W.B. [D.K. Basu v. State of W.B., (2015) 8 SCC 744 : (2015) 3 SCC (Cri) 824] )*

In **Garikapati Veeraya v. N. Subbiah Choudhry AIR 1957 SC 540** this Hon'ble Court opined that:

***"23. (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an***

***intrinsic unity and are to be regarded as one legal proceeding.***

*(ii) The right of appeal is not a mere matter of procedure but is a substantive right.*

*(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.*

*(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.*

*(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."*

*55. Unfortunately, the legislature has not made any express provision in this behalf. In absence of any express provision, the question must be*

*considered having regard to the overall object of a statute.* ***We have noticed hereinbefore that Article 21 of the Constitution of India read with Section 374 CrPC confers a right of appeal. Such a right is an absolute one*** *''*

As per **Maneka Gandhi**, judgment (supra) "*any procedure prescribed by law*" depriving an individual of their life or personal liberty has to satisfy the touchstone of Article 14 and 19 i.e. such a procedure must be just, fair, non- arbitrary and reasonable. An accused, suffering from any adverse orders, convicted and sentenced for criminal contempt by Supreme Court in its original jurisdiction, is not given any avenue for appeal and in the absence of a right to appeal his/her right guaranteed under Article 21 is violated.

## CHAPTER 127

DUTY OF JUDGE TO NOT TO SIT AS MUTE SPECTATOR WHEN VIOLATION OF FUNDAMENTAL RIGHTS ARE BROUGHT TO THEIR NOTICE. [**Mr. X Vs. Hospital Z (1998) 8 SCC 296**]

## CHAPTER 128

JUDGE GUILTY OF CONTEMPT IF JUDGE INSULT THE ADVOCATE**:-**A Judge has every right to control the proceedings of the court in a dignified manner and in a case of misbehavior or misconduct on the part of a lawyer proceedings in the nature of

contempt can be started against the lawyer concerned. But, at the same time a Judge cannot make personal remarks and use harsh words in open Court which may touch the dignity of a lawyer and bring him to disrepute in the eyes of his colleagues and litigants. Lawyers are also officers of the court and deserve the same respect and dignity which a Judge expects from the members of the Bar. In my opinion, this application cannot be brushed aside and has been rightly contended by the learned Counsel for the petitioners that the matter can be resolved only after issuance of notice to the opposite party.[**Harish Chandra Mishra Vs. Hon'ble Mr. Justice Ali Ahmad 1985 SCC OnLine Pat 213**]

In **Harish Chandra Mishra And Ors. Vs. Hon'Ble Mr. Justice Ali Ahmad 1986 (34) BLJR 63** it is ruled as under;

> ***JUDGE IS GUILTY OF CONTEMPT, IF JUDGE INSULT THE ADVOCATE -*** *A Judge has every right to control the proceedings of the court in a dignified manner and in a case of misbehavior or misconduct on the part of a lawyer proceedings in the nature of contempt can be started against the lawyer concerned. But, at the same time a Judge cannot make personal remarks and use harsh words in open Court which may touch the dignity of a lawyer and bring him to disrepute in the eyes of his colleagues and litigants. Lawyars are also officers of the court and deserve the same respect and dignity which a*

*Judge expects from the members of the Bar. In my opinion, this application cannot be brushed aside and has been rightly contended by the learned Counsel for the petitioners that the matter can be resolved only after issuance of notice to the opposite party. (Para 27 )*

*It was essential to preserve the discipline, while administering justice, was realised centuries ago when Anglo Saxon Laws developed the concept of contempt of court and for punishment therefor. The acts which tend to obstruct the course of justice really threaten the very administration of justice. By several pronouncements such acts which tend to obstruct or interfere with the course of justice were identified and were grouped into 'civil contempt' and 'criminal contempt'. However, for a long time they were never defined leaving it to the courts to give their verdict whether under particular set of circumstances any such offence has been committed or not. (Para 3)*

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

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

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

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

*ability while maintaining the dignity of the court. The Judge has also a reciprocal duty to perform and should not be discourteous to the counsel and has to maintain his respect in the eyes of clients and general public. This is, in my view, very important because the system through which justice is being administered cannot be effectively administered unless the two limbs of the court act in a harmonious manner. Oswald on Contempt of Court, 3rd Edition at page 54 remarked "an over subservient bar would have been one of the greatest misfortune that could happen to the administration of Justice."(Para 16)*

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

*(Para 21)*

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

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

In **Bidhi Singh Vs. M. S. Mandyal and another 1993 CRI. L. J. 499** it is ruled as under;

***Criminal P.C. (2 of 1974), S.197 - SANCTION FOR PROSECUTION - Prosecution of judges and public servants - Complaint under Section 504 I.P.C. - Use of words "non-sense" and 'bloody fool' by Presiding Officer against complainant - Sanction to prosecute, not necessary – This is not the part of his official duty.***

*A Presiding Judge is expected to maintain decorum in the proceedings before him. He is expected also to act with restraint- One would expect him to be sober, unruffled and temperate in language even when faced with a situation where those appearing before him may tend to*

*lose their composure. In this scheme of things any vituperative outburst on the part of the Presiding Officer, howsoever grave the provocation to him, cannot be countenanced as an action sustainable as one performed by him "while acting or purporting to act in the discharge of his official duty."*

## CHAPTER 129

HIGH COURT CANNOT DENY HEARING OF THE CASE ON THE GROUND THAT PARTY FILED THE CASE AGAINST JUDGES.

The High Court has declined to hear the arguments of the appellant on the ground that they had alleged bias against the judges – Held that- it would not empower the Court to deny a right of hearing if the person alleging the said bias is otherwise entitled to in case where and allegation of bias against judges found to be not proved it is open to the Court to initiate such action as is permissible in law. [**West Bangal Electricity Regulatory Commisssion Vs. CESC Ltd. (2002) 8 SCC 715]**

## CHAPTER 130

POWER OF ATTORNEY CAN APPPEAR INSTEAD OF ADVOCATE - Whether respondent entitled to plead through power of attorney instead of advocate - facts revealed advocate had abruptly

withdrawn his appearance and there was direction for expeditious disposal of case - respondent was not able to engage another advocate immediately - held, respondent was justified in seeking representation through attorney**.[Bhartiya Bhavan Co.Operative Housing Society Ltd.& Ors, Vs. Krishna H.Bajaj & Ors. 2004 SCC OnLine Bom 145]**

## CHAPTER 131

WHEN ATTENTION OF THE HIGH COURT IS DRAWN TO A CLEAR ILLEGALITY THE HIGH COURT CAN NOT REJECT THE PETITION AS TIME BARRED THEREBY PERPETUATING THE ILLEGALITY AS MISCARRIAGE OF JUSTICE**. [Muncipal Corporation Of Delhi Vs. Girdharilal Sapuru & Ors. (1981) 2 SCC 758]**

## CHAPTER 132

**CIVIL - REMOVAL OF ADMINISTRATOR** HELD, ADMINISTRATOR DUTY BOUND TO ACT IMPARTIALLY - ADMINISTRATOR FAILED TO DISCHARGE HIS DUTY IN IMPARTIAL MANNER - APPLICATION ALLOWED**. [Lilavati Kirtilal Mehta Medical Trust & Anr. Vs. Charu K. Mehta & Ors. 2008 SCC OnLine Bom 1210]**

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## CHAPTER 133

EXPUNGING OF ADVERSE REMARKS – IN ORDER AGAINST LAWYER AND PARTY.

Magistrate seeming to be prejudiced against lawyers as well as complainant and made adverse remarks against them a judge is expected to maintain equanimity and not to get swayed by the prejudices. Those remarks directed to be expunged- Magistrate directed to refrain from making such uncalled and unwarranted remarks against any person and particularly without hearing them. **[Inder Fakirchand Jain Vs. State Of Maharashtra 2007 ALL MR (Cri.) 3012]**

**EXPUNGING OF REMARKS** :-

The person against whom mala fides or bias is imputed should be impleaded as a party respondent to the proceeding and be given an opportunity to meet the allegations. In his absence no enquiry into the allegations should be made, for such an enquiry would tantamount to violative of the principles of natural justice as it amounts to condemning a person without affording an opportunity of hearing**.**

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

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

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

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

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

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

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

*(at page 66) Again this Court in A.M. Mathur vs. Pramod Kumar Gupta, 1990 (2) SCR 1100,* ***reiterated this position while expunging the diappearing remarks made against an advocate who was also the former Advocate General of the State while dismissing a review petition.*** *These disparaging remarks were also contained only in the separate concurring order of one of the learned Judges of the division Bench. Incidentally, this matter was the afterm ath of Nandlal Jaiswal (supra) which made it worse While expunging the disparaging remarks made by the learned*

*Judge in a separate concurring order, this Court stated as under :*

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

*(at page 116) "Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary Judicial restraint in this regard might better be called judicial respect: that is,*

*respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the state. the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will neither good for the judge nor for the judicial process. The Judges Branch is a seat of power Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials.* ***The Judges have the absolute and unchallenged control of the Court domain, But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct.*** *(See (i) R.K. Lakshmanan v. A.K. Srinivasan, [1976] 1 SCR 204 and (ii)Niranjan Patnaik v. Sashibhushan Kar, [1986] 2 SCC 567 at 576)."*

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

In **Om Prakash Chautala Vs. Kanwar Bhan & Ors. (2014) 5 SCC 417** it is ruled as under;

*19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum.*

*And again:*

***20. A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.***

*14. In **Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr. MANU/SC/0639/1997 : (1997) 6 SCC 450**, the threeJudge Bench observed:*

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

*courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.*

*15. The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of understanding and attitude of judging.* ***A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin.***

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

*"**14.** Before parting with this case, We consider it necessary to refer to the observations in some earlier decisions of this Court in similar context indicating the*

*need for sobriety and restraining in making adverse and critical comments. In Niranjan Patnaik vs. Sashibhusan Kar & Anr., 1986 (2) SCR 47. in a similar contex, after referring to earlier authorities, it was stated as under:*

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

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

*"Before we part with this we must express our strong disapproval of the observations made by B.M. Lal, J. in paragraphs 1, 9, 17, 18, 19 and 34 of his concurring opinion The learned Judge made sweeping observations attributing mala fides, corruption and under-hand dealing*

*to the State Government. These observations are in our opinion not at all justified by the record. ....."*

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

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

*(at page 66) Again this Court in A.M. Mathur vs. Pramod Kumar Gupta, 1990 (2) SCR 1100,* ***reiterated this position while expunging the diappearing remarks made against an advocate who was also the former Advocate General of the State while dismissing a review petition.*** *These disparaging remarks were also contained only in the separate concurring order of one of the learned Judges of the division Bench. Incidentally, this matter was the afterm*

*ath of Nandlal Jaiswal (supra) which made it worse While expunging the disparaging remarks made by the learned Judge in a separate concurring order, this Court stated as under :*

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

*(at page 116) "Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the*

*independence of the judiciary Judicial restraint in this regard might better be called judicial respect: that is, respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the state. the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will neither good for the judge nor for the judicial process. The Judges Branch is a seat of power Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials.* ***The Judges have the absolute and unchallenged control of the Court domain, But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct.*** *(See (i) R.K. Lakshmanan v. A.K. Srinivasan, [1976] 1 SCR 204*

*and (ii)Niranjan Patnaik v. Sashibhushan Kar, [1986] 2 SCC 567 at 576)."*

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

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

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

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

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

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

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

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

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

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

***24. Having regard to the limited controversy in the appeal to the High Court and the hearsay nature of evidence of the appellant it was not at all necessary for the Appellate Judge to have animadverted on the conduct of the appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal the remarks of the learned Appellate Judge should be in conformity with the settled practice of courts to observe sobriety, moderation and reserve. We need only remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be.***

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

## CHAPTER 134

RIGHT TO ACCESS TO THE COURT IS FUNDAMENTAL RIGHT

Access to justice is also a facet of rights guaranteed u/Art. 14, 21 - Rule of law, independence of judiciary and access to justice are conceptually interwoven, an aggrieved person cannot be left without the remedy and that access to justice is a human right and in certain situations even a fundamental right. [**Anita Khushwha & Ors. Vs Pushap Sudan And Ors. (2016) 8 SCC 509]**

No order restraining a party to approach the Court should be passed. **[Shyam Lal Gomatwala Vs. Nand Lal and others 1944 SCC Online ALL 34]**

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## CHAPTER 135

A JUDGE CANNOT THREATEN THE WITNESS. HE CAN ASK QUESTIONS BY TAKING THE ADVOCATE FOR THE PARTY INTO CONFIDENCE. IN AN EFFORT TO COMPEL THEM TO SPEAK WHAT HE THOUGHT MUST BE THE TRUTH, THE LEARNED SESSIONS JUDGE, VERY WRONGLY, IN OUR OPINION, FIRMLY REBUKED THEM AND VIRTUALLY THREATENED THEM WITH PROSECUTIONS FOR PERJURY. HE LEFT HIS SEAT AND ENTERED THE RING, WE MAY SAY. THE PRINCIPLE OF "FAIR TRIAL" WAS ABANDONED. A

JUDGE MUST NOT SIDE WITH EITHER PARTY NOR SHOULD DESCEND INTO THE ARENA.

In **Ram Chander v. State of Haryana, (1981) 3 SCC 191** it is ruled as under;

> ***"3.*** *With such wide powers, the court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the Counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the Judge must be so as not to frighten, coerce, confuse or intimidate the witnesses. The danger inherent in a Judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett:*
>
> > *"People accustomed to the procedure of the court are likely to be overawed or frightened, or confused, or distressed when under the ordeal of prolonged questioning from the presiding judge. Moreover, when the questioning takes on a sarcastic or ironic tone as it is apt to do, or when it takes on a hostile note as is sometimes almost inevitable, the danger is not only that witnesses will be unable to present the evidence as they may wish, but the parties may begin to think, quite wrongly it may be, that the Judge is not holding the scales of*

*justice quite eventually." [ Extracted by Lord Denning in supra f.n. 2]*

*In Jones v. National Coal Board [Jones v. National Coal Board, (1957) 2 All ER 155 : (1957) 2 WLR 760] Lord Justice Denning observed:*

> *The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of the Judge and assumes the role of an advocate; and the change does not become him well."*

*We may go further than Lord Denning and say that 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" (Section 165 Evidence Act). But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defence Counsel, ****without any hint of partisanship and without appearing to frighten or bully witnesses.*** *He must take the prosecution and the defence with him. ****The court, the***

***prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge.*** *The Judge, "like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old".*

***8.*** *The questions put by the learned Sessions Judge, particularly the threats held out to the witnesses that if they changed their statements they would involve themselves in prosecutions for perjury were certainly intimidating, coming as they did from the presiding Judge. The learned Sessions Judge appeared to have become irate that the witnesses were not sticking to the statements made by them under Sections 161 and 164 and were probably giving false evidence before him. ****In an effort to compel them to speak what he thought must be the truth, the learned Sessions Judge, very wrongly, in our opinion, firmly rebuked them and virtually threatened them with prosecutions for perjury. He left his seat and entered the ring, we may say. The principle of "fair trial" was abandoned.*** *We find it impossible to justify the attitude adopted by the Sessions Judge and we also find it impossible to accept any portion of the evidence of PWs 8 and 9, the two alleged eyewitnesses.*

***2.*** *The adversary system of trial being what it is, there is an unfortunate tendency for a Judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the*

*defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:*

> *"Every criminal 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. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial. [Sessions Judge, Nellore v. Intha Ramana ReddyILR 1972 AP 683 : 1972 Cri LJ 1485] "*

*In the result we accept the appeal, set aside the conviction and sentence and direct the appellant to be set at liberty fortwith."*

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## CHAPTER 136

JUDGE CANNOT IMPORT IRRELEVANT FACTS, PERSONAL KNOWLEDGE, DOCUMENTS, AND EVIDENCE ON RECORD BY PUTTING QUESTIONS TO THE WITNESS

In **Shivani Sharma vs Ram Chander 2013 SCC OnLine Del 767** , it is ruled as under;

> "…A Judge accordingly, cannot, by the exercise of the powers conferred by this section import into the decision of the case any fact which is not relevant under the Act nor can he in any case dispense with the prescribed mode of proof, or ask questions to credit, accept such as would be permitted if asked by the parties. Thus restricted, the power of asking questions is of obvious utility in a country like India, where in the vast majority of cases, no advocate is employed, but the Judge has to make out the truth as best he can from the confused, inaccurate and often intentionally false accounts of ignorant, excited and mendacious witnesses."

In **Ram Lakhan Sharma (2018) 7 SCC 670,** it is prohibited for any Judge **to import his personal knowledge, documents, information.**

***''the enquiry officer cannot sit as a Judge in the connected case as it amounts to becoming a judge in his own case.''***

**In Murat Lal 1917 SCC OnLine Pat 1, it is ruled that, the Judge has to examine himself as a witness if he bring some documents on record from his own sources.**

**It is ruled thus;**

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

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## CHAPTER 137

SECTION 340 OF CR.P.C IN NATIONAL COMPANY LAW TRIBUNAL

**In KVR Industries Private Limited Vs. P.P. Bafna Ventures Private Limited 2020 SCC OnLine NCLAT 828 it is ruled as under;**

*"20. Section 195(3) of Cr. P.C. referred above shows that the term "Court" used in the Section includes the Tribunal*

*constituted by or under Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this Section. We have already seen Section 424 which in Sub-Section 4 has included the National Company Law Tribunal and National Company Law Appellant Tribunal under the Companies Act and proceedings before these Tribunals have to be deemed to be Judicial Proceedings within the meaning of Section 193 and 228 and for the purposes of Section 196 of the Penal Code, 1860 and the NCLT this Tribunal shall be deemed to be Civil Court for the purposes of Section 195 and Chapter XXVI of Cr. P.C. Chapter XXVI contains Section 340 of Cr. P.C. As per Section 5(1) of IBC the "Adjudicating Authority" for the purposes of Part-II of IBC, means National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013. Under Section 61 of IBC any person aggrieved by the order of the Adjudicating Authority may prefer an Appeal to National Company Law Appellate Tribunal. These Provisions make it clear that Adjudicating Authority was not right in its observations that it did not have jurisdiction to order Prosecution. In our view in appropriate case, the Adjudicating Authority has powers to act in terms of Section 340 of Cr. P.C. read with Section 195 of Cr. P.C. Under Section 340 of Cr. P.C. the Adjudicating Authority can hold preliminary inquiry if it is*

*"of opinion that it is expedient in the Interest of Justice that an inquiry should be made" into the any offence referred in Clause 'b' of Sub-Section 1 of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, i.e.-Adjudicating Authority, here."*

## CHAPTER 138

WHEN JUDGE OR POLICE ACTS AGAINST LAW THEN NO MEMBER OF SOCIETY IS SAFE.

In **Bhagwan Singh Vs. State of Punjab (1992) 3 SCC 249** it is ruled as under;

*"**If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure.***

*If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher."*

## CHAPTER 139

STRICT ACTION REQUIRED AGAINST WOMAN MAKING FALSE ALLEGATIONS ABOUT SEXUAL OFFENCES.

In **Mahila Vinod Kumari Vs. State of Madhya Pradesh (2008)8 SCC 34,** it is ruled as under;

> *"7. ... It is a settled position in law that so far as sexual offences are concerned, sanctity is attached to the statement of a victim. This Court, has, in several cases, held that the evidence of the prosecutrix alone is sufficient for the purpose of conviction if it is found to be reliable, cogent and credible.*
>
> *8. In the present case, on the basis of the allegations made by the petitioner, two persons were arrested and had to face trial and suffered the ignominy of being involved in a serious offence like rape. Their acquittal, may, to a certain extent, have washed away the stigma, but that is not enough. The purpose of enacting Section 344 CrPC corresponding to Section 479-A of the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") appears to be to further arm the court with a weapon to deal with more flagrant cases and not to take away the weapon already in its possession. The object of the legislature underlying enactment of the provision is that the evil of perjury and fabrication of evidence has to be eradicated and can be better achieved now as it is open*

*to courts to take recourse to Section 340(1) (corresponding to Section 476 of the Old Code) in cases in which they have failed to take action under Section 344 CrPC.*

*9. This section introduces an additional alternative procedure to punish perjury by the very court before which it is committed in place of old Section 479-A which did not have the desired effect to eradicate the evils of perjury.*

*11. The object of the provision is to deal with the evil of perjury in a summary way.*

*12. The evil of perjury has assumed alarming propositions (sic proportions) in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts to use the provision more effectively and frequently than it is presently done.*

*13. In the case at hand, the court has rightly taken action and we find nothing infirm in the order of the trial court and the High Court to warrant interference. The special leave petitions are, accordingly dismissed."*

**See Also - Perumal VS Janaki (2014) 5 SCC 377**

## CHAPTER 140

HOW TO DEAL WITH POLICE IN A CASE OF THE FALSE IMPLICATION**.**

- Make a complaint to higher authorities.
- They are bound to register FIR against Police Officer.
- You can file Writ Petition before High Court or Supreme Court
- You can send letter to Chief Justice of Hon'ble Supreme Court.
- You can send letter to Chief Justice of Hon'ble High Court.
- You can send letter to Home Minister, Chief Minister, Media person, National and State Human Rights Commision etc.
- By circulating your griviance on media you can save yourself from anticipated harrashment.

In **Uma Shankar Sitani Vs. Commissioner of Police (1996) 11 SCC 714,** it is ruled as under;

> ***''Criminal P.C. (2 of 1974), S.154, S.156- Investigation by C. B. I. - Registration of criminal case - Accused petitioner alleging false case against him on account of business rivalry - Documents supporting plea of accused that complaint was lodged at instance of business rival - Supreme Court hence, directed matter to be investigated by C. B. I. (Para 4)***
>
> *Where it was alleged against complainants that he lodged an FIR of such criminal case which was never committed*

*it was held that in order to be acquainted with veracity of the case it must be investigated by C.B.I.''*

## CHAPTER 141

HOW TO DEAL WITH CORRUPT POLICE OFFICERS, PUBLIC SERVANTS, MINISTERS ETC**.**

You can approach the High Court or Supreme Court and file writ petition or contempt petition against them if they are acting contrary to law.

In **Re M.P.Dwivedi AIR 1996 SC 2299,** it is ruled as under;

***''A ) VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF CONTEMPT.***

*Held, Contemner No.1, M.P. Dwivedi, was Superintendent of Police of District Jhabwa at the relevant time. notice was being issued to him for the reason that, being over all in charge of the police administration in the distinct, he was responsible to ensure strict compliance with the directions given by this Court .*

*Contemner No.2, DharmendraChoudhary, was posted as SDO (Police) at Aliraipur at the relevant time.Contemners Nos. 1 and 2, even though not directly involved in the said*

*incidents since they were not present, must be held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge, they condoned the illegality by not taking stern action against persons found responsible for this illegality. We, therefore, record our disapproval of the conduct of all the five contemners Nos. 1 to 5 in this regard and direct that a note regarding the disapproval of their conduct by this Court be placed in the personal file of all of them.*

*Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.*

*Held, Thecontemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his*

*part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this Court - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.*

*We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for*

*that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field*.''

In **Priya Gupta v. Addl. Secy. Ministry of Health and Family Welfare and others, (2013) 11 SCC 404**, *the Supreme Court held as under:-*

*"12. The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility*

*of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.*

*13. These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice.*

*xxx xxx xxx*

*19. It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court. To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but even impossible to regulate such orders of the court, is an argument which does not impress the court. As already*

*noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties.*

*Such distinction, if permitted, shall be opposed to the basic rule of law.*

*23. ... The essence of contempt jurisprudence is to ensure obedience of orders of the Court and, thus, to maintain the rule of law. History tells us how a State is protected by its courts and an independent judiciary is the cardinal pillar of the progress of a stable Government. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified...*

*(Emphasis supplied)''*

In **T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Ors. 2006 (2) ACR 1649 (SC)** it is ruled as under;

***Contempt of Courts Act, 1971 - Sections 2 (b), 14 and 17--Civil contempt--Wilful and deliberate defiance of order of Supreme Court--Supreme Court by order dated 4.3.1997 directed closure of all unlicensed saw mills, veneer and plywood industries--By order dated 30.10.2002, Supreme Court directed that no State***

***Government would permit opening of any saw mill, veneer and plywood industry without prior permission of Central Empowered Committee (CEC)--****Permission sought by State of Maharashtra declined by Supreme Court by order dated 14.7.2003--On enquiries made by CEC and amicus curiae State Government stated that orders of Supreme Court will be complied with and six mills in question were actually closed--But by orders dated 7.4.2004 and 29.5.2004, State of Maharashtra granted permission to said six units to operate in State--Permission granted on basis of decisions taken by contemnor No. 1 Ashok Khot, Principal Secretary, Forest Department Government of Maharashtra and contemnor No. 2. Swarup Singh Naik Minister incharge of Forest Department at relevant time--Explanation of contemnors clearly unacceptable--Mens rea is writ large--Both contemnors deliberately flouted order of Supreme Court in brazen manner--Apology not acceptable -- Contemnors deserve severe punishment -- Custodial sentence of one month simple imprisonment imposed on each.*

*Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the Court is going to impose punishment, it*

*ceases to be an apology and becomes an act of a cringing coward.*

*Apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry.*

In **State of Maharashtra & Ors Vs. Sarangdharsingh Shivdassing Chauhan (2011) 1 SCC 577,** Hon'ble Supreme Court punished the CBI director under contempt.

In **Sarangdharsingh Shivdassing Chauhan Vs. State 2009 SCC OnLine Bom 349,** the Hon'ble Bombay High Court imposed cost of Rs. 25000 upon State for passing resolution and issuing circular to save the accused MLA.

Said order was upheld by the Hon'ble Supreme Court and fine was enhanced to 10 Lakh.

In the case of **State of Maharashtra Vs. Sarangdharsingh Shivdassingh Chavan (2011) 1 SCC 577** while declaring the circular issued by the Chief Minister of Maharashtra and imposing cost of Rs. 10 Lac on state, it is ruled as under;

*"**Criminal Procedure Code, 1973 – Ss. 156, 154 and 157 – FIR and investigation – Interference by Chief Minister of State (CM) –Instructions and interference, held (per curiam), illegal, unwarranted, against equality and social justice.***

***46.*** *This Court is extremely anguished to see that such an instruction could come from the Chief Minister of a State which is governed under a Constitution which resolves to constitute India into a socialist, secular, democratic republic. The Chief Minister's instructions are so incongruous and anachronistic, being in defiance of all logic and reason, that our conscience is deeply disturbed. We condemn the same in no uncertain terms.*

***56……. Article 164(3) lays down that the Governor shall before a Minister enters upon his office, administer to him the oath of office and secrecy according to the form set out in the Third Schedule, in terms of which, the Minister is required to take oath that he shall discharge his duties in accordance with the Constitution and the law without fear or favour, affection or ill will.***

***Some members of the political class who are entrusted with greater responsibilities and who take oath to do their duties in accordance with the Constitution and the law without fear or favour, affection or ill will, have by***

***their acts and omissions demonstrated that they have no respect for a system based on the rule of law.***

***If the Chief Minister was impelled by motives of personal ill will against the road transport operators in the western part of Kurnool and he gave the direction to the Corporation to change the order of the districts as originally planned by them and instead take up Kurnool first in order to prejudicially affect his political opponents, and the Corporation carried out his directions it does not need much argument to show that the resultant scheme framed by the Corporation would also be vitiated by mala fides notwithstanding the interposition of the semi-autonomous Corporation***.

*The law does not accord any special treatment to any person in respect of any complaint having been filed against him when it disclose the commission of any cognizable offence. It is a vital component of the rule of law. (Para 31)*

***39.*** *The aforesaid action of the Chief Minister is completely contrary to and inconsistent with the constitutional promise of equality and also the Preambular resolve of social and economic justice. As the Chief Minister of the State Mr Deshmukh has taken a solemn oath of allegiance to the Constitution but the*

*directions which he gave are wholly unconstitutional and seek to subvert the constitutional norms of equality and social justice.*

***40.*** *The argument that some of the cases in which complaints were filed against the family of Sananda, were investigated and charge-sheets were filed, is a poor consolation and does not justify the issuing of the wholly unauthorised and unconstitutional instructions to the Collector. It is not known to us in how many cases investigation has been totally scuttled in view of the impugned directions.*

***41.*** *……**How can the subordinate police officers carry on investigation ignoring such instructions of the Chief Minister? Therefore, the instructions of the Chief Minister have completely subverted the rule of law**.*

***48.*** *We dismiss this appeal with costs of Rs. 10,00,000 (rupees ten lakhs) to be paid by the appellant in favour of the Maharashtra State Legal Services Authority. This fund shall be earmarked by the Authority to help the cases of poor farmers. Such costs should be paid within a period of six weeks from date.*

***49.…Would like to separately record my views on the crucial issue of Ministerial interference in the***

***functioning of the authorities entrusted with the task of enforcing the laws enacted by the legislature****.*

***55.*** *Under the Constitution, the executive power of the State vests in the Governor and is required to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution [Article 154(1)].* ***Article 163 mandates that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under the Constitution required to exercise his functions or any of them in his discretion.***

***57.*** ***The judgment of the Constitution Bench in C.S. Rowjee v. State of A.P. [AIR 1964 SC 962 : (1964) 6 SCR 330] is an illustration of the misuse of public office by the Chief Minister for political gain.*** *The schemes framed by the Government of Andhra Pradesh under Chapter IV-A of the Motor Vehicles Act, 1939 for nationalisation of motor transport in certain areas of Kurnool District of Andhra Pradesh were challenged by filing writ petitions under Article 226 of the Constitution. The High Court repelled the challenge to the validity of the schemes and also negatived the argument that the same were vitiated due to mala fides of the then Chief Minister of the State.*

*This Court allowed the appeals and quashed the scheme and declared that the schemes are invalid and cannot be enforced. While examining the issue of mala fide exercise of power, the Constitution Bench stuck a note of caution by observing that allegations of mala fides and of improper motives on the part of those in power are frequently made and sometimes without any foundation and, therefore, it is the duty of the Court to scrutinise those allegations with care so as to avoid being in any manner influenced by them if they are not well founded.*

***58.*** *The Court in C.S. Rowjee [AIR 1964 SC 962 : (1964) 6 SCR 330] then noted that the scheme was originally framed by the Corporation on the recommendations of the Anantharamakrishnan Committee, but was modified at the asking of the Chief Minister so that his opponents may be prejudicially affected and proceeded to observe: (AIR pp. 972-73, paras 28-30)*

*"28. ... The first matter which stands out prominently in this connection is the element of time and the sequence of dates. We have already pointed out that the Corporation had as late as March 1962 considered the entire subject and had accepted the recommendation of the Anantharamakrishnan Committee as to the order in which the transport in the several districts should be nationalised*

*and had set these out in their administration report for the three year period 1958 to 1961. It must, therefore, be taken that every factor which the Anantharamakrishnan Committee had considered relevant and material for determining the order of the districts had been independently investigated, examined and concurred in, before those recommendations were approved. It means that up to March-April 1962 a consideration of all the relevant factors had led the Corporation to a conclusion identical with that of the Anantharamakrishnan Committee. The next thing that happened was a conference of the Corporation and its officials with the Chief Minister on 19-4-1962. The proceedings of the conference are not on the record nor is there any evidence as to whether any record was made of what happened at the conference. But we have the statement of the Chief Minister made on the floor of the State Assembly in which he gave an account of what transpired between him and the Corporation and its officials. We have already extracted the relevant portions of that speech from which the following points emerge: (1) that the Chief Minister claimed a right to lay down rules of policy for the guidance of the Corporation and, in fact, the learned Advocate General submitted to us that under the Road Transport Corporation Act, 1950, the Government had a*

*right to give directions as to policy to the Corporation; (2) that the policy direction that he gave related to and included the order in which the districts should be taken up for nationalisation; and (3) that applying the criteria that the districts to be nationalised should be contiguous to those in which nationalised services already existed, Kurnool answered this test better than Chittoor and he applying the tests he laid down, therefore suggested that instead of Chittoor, Kurnool should be taken up next. One matter that emerges from this is that it was as a result of policy decision taken by the Chief Minister and the direction given to the Corporation that Kurnool was taken up for nationalisation next after Guntur. It is also to be noticed that if the direction by the Chief Minister, was a policy decision, the Corporation was under the law bound to give effect to it (vide Section 34 of the Road Transport Corporation Act, 1950). We are not here concerned with the question whether a policy decision contemplated by Section 34 of the Road Transport Act could relate to a matter which under Section 68-C of the Act is left to the unfettered discretion and judgment of the Corporation, where that is the State undertaking, or again whether or not the policy decision has to be by a formal government order in writing for what is relevant is whether the materials placed before the Court establish that the*

*Corporation gave effect to it as a direction which they were expected to and did obey.* ***If the Chief Minister was impelled by motives of personal ill will against the road transport operators in the western part of Kurnool and he gave the direction to the Corporation to change the order of the districts as originally planned by them and instead take up Kurnool first in order to prejudicially affect his political opponents, and the Corporation carried out his directions it does not need much argument to show that the resultant scheme framed by the Corporation would also be vitiated by mala fides notwithstanding the interposition of the semi-autonomous Corporation.***

***60.*** *This Court in Chandrika Jha [(1984) 2 SCC 41] prefaced consideration of the question of interference by the Chief Minister with the statutory functions of the Registrar under Bye-law 29 by making the following observations: (SCC p. 44, para 4)*

*"4. The case illustrates an unfortunate trend which has now become too common these days in the governance of the country."*

*"12…****Under the Cabinet system of Government the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The***

***Chief Minister may call for any information which is available to the Minister in charge of any department and may issue necessary directions for carrying on the general administration of the State Government.***

***Neither the Chief Minister nor the Minister for Cooperation or Industries had the power to arrogate to himself the statutory functions*** *of the Registrar under Bye-Law 29.* ***The act of the then Chief Minister in extending the term of the Committee of management from time to time was not within his power. Such action was violative of the provisions of the Rules and the bye-laws framed thereunder. The action of the Chief Minister meant the very negation of the beneficial measures contemplated by the Act.***

***63. This Court in Shivajirao Patil [(1987) 1 SCC 227]***

*"50…****It leaves a great deal of suspicion that tampering was done to please Shri Patil or at his behest. It is true that there is no direct evidence. It is also true that there is no evidence to link him up with tampering. Tampering is established. The relationship is established. The reluctance to face a public enquiry is also apparent. Apparently Shri Patil, though holding a public office does not believe that 'Caesar's wife must be above suspicion'. The facts disclose a sorry state of affairs.***

***51. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even beforecleaning the physical atmosphere. The pollution in our values and standards in (sic is) an equally grave menace as the pollution of the environment. Where such situations cry out the courts should not and cannot remain mute and dumb."***

*(emphasis supplied)*

***64…**11. **The Minister holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy.** The acts done and duties performed are public acts or duties as the holder of public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by the rule of law, power is conferred on the holder of the public office or the authority concerned by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society*

*governed by the rule of law to further socio-economic democracy. ...*

*12. ... If the Minister, in fact, is responsible for all the detailed workings of his department, then clearly ministerial responsibility must cover a wider spectrum than mere moral responsibility: for no Minister can possibly get acquainted with all the detailed decisions involved in the working of his department. ...*

***

*14.* ***The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same."***

*(emphasis supplied)*

***66…No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law***

***enforcement lies on him. He is answerable to the law and to the law alone."***

*(emphasis supplied)*

***68….These are liberties secured by restraints, justice under law, order that provides opportunity, the economy of the good life. From the beginning of human history government has been recognized as the overall holder and regulator of power, maintaining order by limiting all other expressions of power and thereby turning permitted powers into rights. In every age the abuse of power by governments has led to disasters and uprisings, oppressions and vainglorious wars, and sometimes to experiments in the control of power, seeking to make it responsible, or more responsible, subject in some manner to the will of the people, of the majority or those who represented them."***

***69. Shri Dilip Kumar Sananda, a Member of the Legislative Assembly approached the Chief Minister for a special treatment. The Chief Minister, without verifying the truthfulness or otherwise of the assertion of Shri Dilip Kumar Sananda that false complaints were being lodged against his family members, issued instructions that complaints against the MLA concerned and his family members should be first placed before the District Anti-Moneylending Committee, which should obtain legal opinion of the District Government Pleader***

***and then only take decision on the same and take appropriate legal action.***

***70.*** *The camouflage of sophistry used by Shri Vilasrao Deshmukh in the instructions given by him and the affidavit filed before this Court is clearly misleading. The message to the authorities was loud and clear i.e. they were not to take the complaints against Sananda family seriously and not to proceed against them. The District Magistrate, the District Superintendent of Police and officers subordinate to them were bound to comply with the same in their letter and spirit. They could disregard those instructions at their own peril and none of them was expected to do so."*

## CHAPTER 142

HOW TO DEAL WITH ARROGANT, IMPISH, MISCHIEVOUS, CORRUPT AND CRIMINAL MINDED JUDGES.

- By using the case laws mentioned in this book you can file complaint to higher authorities.
- Filing of complaint against a Judge is not a contempt.

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- Complaint 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 stifle 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.*

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

***".…….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."***

High Court in **<u>Harihar Shukla 1976 Cri. LJ 507</u>,** had laid down that, when law provides remedy for making complaint then Contempt cannot lie as it will violate that, right and create fear in the mind of complainants. Similar law is laid down by the Constitution Bench in the case of **<u>Baradkanta Mishra (1974) 1 SCC 374.</u>**

Constitution Bench of this Hon'ble Court in **<u>Baradakanta Mishra and Ors. Vs. Registrar of Orissa High Court (1974) 1 SCC 374</u>,** had ruled that, any other contempt proceedings should not be taken in to consideration.

***"59**.....**<u>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."</u>***

In **<u>Indirect Tax Practitioners Association Versus R.K. Jain (2010) 8 SCC 281</u>** it is ruled as under;

***''CONTEMPT OF COURTS ACT- TRUTH should not be allowed to be silenced by using power of Contempt used by unscrupulous petitioners - Exposing corruption in Judiciary is Duty of every citizen as per Art. 51 - A (h) of Constitution of India - <u>Let Truth and Falsehood grapple - whoever knew Truth put to the worse, in a free and open encounter - Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious; those are the shifts and defences that error makes against her power.</u>***

*A person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution and there is no reason to silence such person by invoking*

*Contempt jurisdiction Articles 129 or 215 of the Constitution or the provisions of the Act.*

*- The association by filing a Contempt petition commited illegality - the petition is dismissed. For filing a frivolous contempt petition, the petitioner is saddled with cost of Rs.2,00,000/-, of which Rs.1,00,000/- shall be deposited with the Supreme Court Legal Services Committee and Rs.1,00,000/- shall be paid to the respondent- In administration of justice and judges are open to public criticism and public scrutiny - power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution- intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded - Voltaire expressed a democrat's faith when he told, an adversary in arguments : "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members..*

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

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

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

*It has been well said that if judges decay, the contempt power will not save them and so the other side of the coin is that judges, like Caesar's wife, must be above suspicion- fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. In fact such fair and reasonable criticism must be encouraged because after all no one, much less judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established*

*facts. Truth's taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens.*

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

*15. In the land of Gautam Buddha, Mahavir and Mahatma Gandhi, the freedom of speech and expression and freedom to speak one's mind have always been respected. After independence, the Courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalize or lower the authority of the Court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons. Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article*

*19(1)(a) of the Constitution. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the Court would use this power. The judgments of this Court in Re S. Mulgaokar (1978) 3 SCC 339 and P.N. Duda v. P. Shiv Shanker(1988) 3 SCC 167 are outstanding examples of this attitude and approach. In the first case, a three-Judge Bench considered the question of contempt by newspaper article published in Indian Express dated 13.12.1977 criticising the Judges of this Court. The article noted that the High Courts had strongly reacted to the proposal of introducing a code of judicial ethics and propriety. In its issue dated December 21, 1977 an article entitled "behaving like a Judge" was published which inter alia stated that the Supreme Court of India was "packed" by Mrs Indira Gandhi "with pliant and submissive judges except for a few". It was further stated that the suggestion that a code of ethics should be formulated by judges themselves was "so utterly inimical to the independence of the judiciary, violative of the constitutional safeguards in that respect and offensive to the self-respect of the judges as to make one wonder how it was conceived in the first place". A notice had been issued to the Editor-in-Chief of the newspaper to show cause why*

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

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

*Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded. Voltaire expressed a democrat's faith when he*

*told, an adversary in arguments : "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members. "Although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19(l)(a) of the Constitution, yet, it is well-recognised that the Press provides the principal vehicle of expression of their views to citizens. It has been said:*

*"Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so subtle. But, like other liberties, this also must be limited."*

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

*"Poise and peace and inner harmony are so quintessential to the judicial temper that huff, "haywire" or even humiliation shall not besiege; nor, unveracious provocation, frivolous persiflage nor terminological*

*inexactitude throw into palpitating tantrums the balanced cerebration of the judicial mind. The integral yoga of shanti and neeti is so much the cornerstone of the judicial process that criticism, wild or valid, authentic or anathematic, shall have little purchase over the mentation of the Court. I quite realise how hard it is to resist, with sage silence, the shafts of acid speech; and, how alluring it is to succumb to the temptation of argumentation where the thorn, not the rose, triumphs. Truth's taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens. In contempt jurisdiction, silence is a sign of strength since our power is wide and we are prosecutor and judge."*

*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.*

*What the respondent projected was nothing but true state of the functioning of CESTAT on administrative side and to some extent on judicial side. By doing so, he had merely*

*discharged the constitutional duty of a citizen enshrined in Article 51A(h).*

*In the free market place of ideas criticisms about the judicial system or judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how courts should approach the powers vested in them as judges to punish a person for an alleged contempt, be it by taking notice of the matter suo motu or at the behest of the litigant or a lawyer. It has been well said that if judges decay, the contempt power will not save them and so the other side of the coin is that judges, like Caesar's wife, must be above suspicion- per Krishna Iyer, J. in Baradakanta Mishra v. Registrar of Orissa High Court. It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalising remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy. Many today suffer from remediless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the judges and lawyers must make about themselves- fair and reasonable criticism of a judgment*

*which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. In fact such fair and reasonable criticism must be encouraged because after all no one, much less judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts.*

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

*"A pleading is said to be `scandalous' if it alleges anything unbecoming the dignity of the court to hear or is contrary*

*to good manners or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading."*

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

*What the respondent projected was nothing but true state of the functioning of CESTAT on administrative side and to some extent on judicial side. By doing so, he had merely discharged the constitutional duty of a citizen enshrined in Article 51A(h). It is not the petitioner's case that the facts narrated in the editorial regarding transfer and posting of the members of CESTAT are incorrect or that the respondent had highlighted the same with an oblique*

*motive or that the orders passed by Karnataka and Kerala High Courts to which reference has been made in the editorial were reversed by this Court. Therefore, it is not possible to record a finding that by writing the editorial in question, the respondent has tried to scandalize the functioning of CESTAT or made an attempt to interfere with the administration of justice.*

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

*23. At this juncture, it will be apposite to notice the growing acceptance of the phenomenon of whistleblower. A whistleblower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually this person would be from that same organization. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption.*

*Whistleblowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues). Most whistleblowers are internal whistleblowers, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistleblowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behavior or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behavior, within an organization, if there are complaint systems that offer not just options dictated by the planning and controlling organization, but a choice of options for individuals, including an option that offers near absolute confidentiality. However, external whistleblowers report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies. In our view, a person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for*

*dealing with cases involving revenue of the State and there is no reason to silence such person by invoking Articles 129 or 215 of the Constitution or the provisions of the Act.*

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

*Section 2(c) of the Contempt of Courts Act, 1971 - Previously the respondent published objectionable editorials in Excise Law Times - This Court had, after taking cognizance of letter dated 18.9.1997 written by Justice U.L. Bhat, the then President of the Customs, Excise and Gold (Control) Appellate Tribunal to the Chief Justice of India pointing out that the respondent had published objectionable editorials containing half truths, falsehoods and exaggerated versions of the alleged deficiencies and irregularities in the functioning of the Tribunal, initiated contempt proceedings against the respondent - the respondent filed an undertaking, the relevant portions of which are reproduced below:*

*"I realize that my approach and wordings in the Impugned Editorials of ELT have given the impression of*

*scandalising or lowering the authority of CEGAT. I state that I had no such intention as I had undertaken the exercise in good faith and in public interest. I sincerely regret the writing of the said Editorials which have caused such an impression.*

*That I have been advised by my senior counsel - Mr. Shanti Bhushan that in future whenever there are any serious complaints regarding the functioning of CEGAT, the proper course would be to first bring those matters to the notice of the Chief Justice of India, and/or the Ministry of Finance and await a response or corrective action for a reasonable time before taking any other action. I undertake to the court to abide by this advise of my counsel in future."*

*After taking cognizance of the same, the Court passed the following order:-*

*"Mr. Shanti Bhushan, learned counsel for the respondent (alleged contemnor) tenders a statement in writing signed by the respondent. We accept the regret tendered by the respondent in the said statement. We also accept the undertaking to Court given by the respondent in the said statement. Having regard to the aforesaid, the contempt notice is discharged. There will be no order as to costs.*

*Thereafter the respondent again published .*

*After the notice of contempt was discharged, the respondent wrote two more letters dated 21.10.2008 and 28.2.2009 to the Finance Minister on the same subject and also pointed out how the appointment and posting of Shri T.K. Jayaraman, Member CESTAT were irregular. He drew the attention of the addressee to the fact that some of the orders pronounced by CESTAT had been changed. Since no one seems to have taken cognizance of the letters written by the respondent, he wrote the editorial in which he commended the administrative and judicial reforms initiated by the new President of CESTAT and, at the same time, highlighted how some members of CESTAT managed their stay at particular place. He also made a mention of what he perceived as irregularities- The respondent then referred to some of the orders passed by the Bench comprising Shri T.K. Jayaraman, which were adversely commented upon by the High Courts of Karnataka and Kerala. He also made a mention of the irregularities in the functioning of the Registry of CESTAT.*

*7. The petitioner has sought initiation of contempt proceedings against the respondent by asserting that the editorial written by him is in clear violation of the undertaking given to this Court that serious complaint regarding the functioning of the Tribunal will be brought to the notice of the Chief Justice of India, and/or the*

*Ministry of Finance and response or corrective action will be awaited for a reasonable time before taking further action. According to the petitioner, the editorial in question will not only create a sense of fear and inhibition in the minds of the members who are entrusted with the onerous task of dispensing justice, but also prevent the advocates and practitioners who appear before CESTAT from advancing the cause of their clients without any apprehension of bias/favouritism. The petitioner also pleaded that by targeting the particular member of CESTAT, the respondent has scandalized the entire institution.*

*12. In our view, the respondent cannot be charged with the allegation of having violated the undertaking filed in this Court on 25.8.1998. The respondent is not a novice in the field. For decades, he has been fearlessly using his pen to highlight malfunctioning of CEGAT and its successor CESTAT.*

*In the second case, this Court was called upon to initiate contempt proceedings against Shri P. Shiv Shanker who, in his capacity as Minister for Law, Justice and Company Affairs, delivered a speech in the meeting of Bar Council of Hyderabad on November 28, 1987 criticising the Supreme Court. Sabyasachi Mukharji, J. (as he then was)*

*referred to large number of precedents and made the following observation:*

*"Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men" -- said Lord Atkin in Ambard v. Attorney-*

*General for Trinidad and Tobago. Administration of justice and judges are open to public criticism and public scrutiny. 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."*

*In the free market place of ideas criticisms about the judicial system or judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how courts should approach the powers vested in them as judges to punish a person for an alleged contempt, be it by taking notice of*

*the matter suo motu or at the behest of the litigant or a lawyer. It has been well said that if judges decay, the contempt power will not save them and so the other side of the coin is that judges, like Caesar's wife, must be above suspicion, per Krishna Iyer, J. in Baradakanta Mishra v. Registrar of Orissa High Court. It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalising remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy. Many today suffer from remediless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the judges and lawyers must make about themselves. We must turn the searchlight inward. At the same time we cannot be oblivious of the attempts made to decry or denigrate the judicial process, if it is seriously done. This question was examined in Rama Dayal Markarha v. State of Madhya Pradesh where it was held that fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. In fact such fair and reasonable*

*criticism must be encouraged because after all no one, much less judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts.*

*After all it cannot be denied that predisposition or subtle prejudice or unconscious prejudice or what in Indian language is called "sanskar" are inarticulate major premises in decision making process. That element in the decision making process cannot be denied, it should be taken note of." In Baradakanta Mishra v. Registrar of Orissa High Court (1974) 1 SCC 374, Krishna Iyer, J. speaking for himself and P.N. Bhagwati, J., as he then was,emphasized the necessity of maintaining constitutional balance between two great but occasionally conflicting principles i.e. freedom of expression which is guaranteed under Article 19(1)(a) and fair and fearless justice, referred to "republican justification" suggested in the American system and observed:*

*"Maybe, we are nearer the republican justification suggested in the American system:*

*"In this country, all courts derive their authority from the people, and hold it in trust for their security and benefit. In this state, all judges are elected by the people, and hold*

*their authority, in a double sense, directly from them; the power they exercise is but the authority of the people themselves, exercised through courts as their agents. It is the authority and laws emanating from the people, which the judges sit to exercise and enforce. Contempt against these courts, the administration of their laws, are insults offered to the authority of the people themselves, and not to the humble agents of the law, whom they employ in the conduct of their Government."*

*This shift in legal philosophy will broaden the base of the citizen's right to criticise and render the judicial power more socially valid. We are not subjects of a king but citizens of a republic and a blanket ban through the contempt power, stifling criticism of a strategic institution, namely, administration of Justice, thus forbidding the right to argue for reform of the judicial process and to comment on the performance of the judicial personnel through outspoken or marginally excessive criticism of the instrumentalities of law and justice, may be a tall order. For, change through free speech is basic to our democracy, and to prevent change through criticism is to petrify the organs of democratic Government. The judicial instrument is no exception. To cite vintage rulings of English Courts and to bow to decisions of British Indian*

*days as absolutes is to ignore the law of all laws that the rule of law must keep pace with the Rule of life.*

*What we have, therefore, concomitantly with our conception of society in revolution is a conception of law itself, as being in a condition of flux, of movement. On this view, law is not a frozen, static body of rules but rules in a continuous process of change and adaptation; and the judge, at the final appellate level anyway, is a part -- a determinant part -- of this dynamic process of legal evolution."*

*The great words of Justice Holmes uttered in a different context bear repetition in this context:*

*"But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon*

*imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."*

*(emphasis supplied)*

*16. We shall now examine whether the editorial written by the respondent is an attempt to scandalise CESTAT as an institution or amounts to an interference with the administration of justice.*

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

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

*21. Although, the petitioner has tried to project the editorial as a piece of writing intended to demean CESTAT as an institution and scandalize its functioning but we do not find anything in it which can be described as*

*an attempt to lower the authority of CESTAT or ridicule it in the eyes of the public. Rather the object of the editorial was to highlight the irregularities in the appointment, posting and transfer of the members of CESTAT and instances of the abuse of the quasi judicial powers. What was incorporated in the editorial was nothing except the facts relating to manipulative transfer and posting of some members of CESTAT and substance of the orders passed by the particular Bench of CESTAT, which were set aside by the High Courts of Karnataka and Kerala*

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

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

*23. At this juncture, it will be apposite to notice the growing acceptance of the phenomenon of whistleblower. A whistleblower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually this person would be from that same organization. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption. Whistleblowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues). Most whistleblowers are internal whistleblowers, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistleblowers is why and under what*

*circumstances people will either act on the spot to stop illegal and otherwise unacceptable behavior or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behavior, within an organization, if there are complaint systems that offer not just options dictated by the planning and controlling organization, but a choice of options for individuals, including an option that offers near absolute confidentiality. However, external whistleblowers report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies. In our view, a person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such person by invoking Articles 129 or 215 of the Constitution or the provisions of the Act.*

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

*with the Supreme Court Legal Services Committee and Rs.1,00,000/- shall be paid to the respondent.''*

## CHAPTER 143

BAR ASSOCIATIONS INTERVENED TO GET JUSTICE TO POOR CITIZENS WHO ARE FALSELY IMPLICATED BY THE POLICE.

i) Punjab & Haryana High Court Bar Association Vs. State (1996) SCC

ii) Arvind Singh Vs. (1998) SCC

iii) Hadilkandi Bar Association Vs. AIR 1996 SC

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

v) P. Gowardhan Reddy Vs. State 2004 SCC OnLine AP 1356

## CHAPTER 144

SECTION 340 BEFORE LABOUR COURT

In **Baskar Mendon Vs. Sadashiv Narayan Shetty and Ors. 2019 (1) BomCR (Cri) 181** it is ruled as under;

***"15.*** *…….the offence covered by Section 193 of IPC is concerned, the proceedings in the pending reference before the Labour Court being proceedings in a Court*

*within the meaning of Section 195(1)(b)(i), though not for the other offences referred to in the application, namely, Sections 196, 199 and 200 of IPC, the application was rightly made under Section 340 of Cr.P.C. for a preliminary enquiry to be followed by a complaint under Section 195(1)(b) (i) of Cr.P.C. for that offence.*

***16.*** *(ii) The application of the second party workmen under Section 340 of the Code of Criminal Procedure, being Exhibit U-58, is remanded to the Labour Court at Mumbai for a fresh hearing on merits in accordance with law.*

*(iii) It is clarified that so far as the offence under Section 193 read with Section 191 of IPC is concerned, the proceeding in the reference before the Labour Court is a proceeding in a Court within the meaning of Section 195(1)(b)(i) of Cr.P.C. and no cognizance of it can be taken without a complaint made by the Labour Court under that provision.*

*(v) The Labour Court shall dispose of the application, being Exhibit U-58, as expeditiously as possible and preferably, within a period of eight weeks from that day."*

## CHAPTER 145

**A]** FAILURE TO MENTION THE FACT IN STATEMENT UNDER SECTION 161 OF CR.P.C. WILL LEAD TO A CONCLUSION THAT THE STORY LATER NARRATED IS FALSE AND AFTER THOUGHT.

**B]** FILING FALSE CRIMINAL COMPLAINT IS MATRIMONIAL CRUELTY FIT FOR DIVORCE.

In the case of **K. Srinivas Vs. K. Sunita (2014) 16 SCC 34** it is ruled as under;

> ***"A. Family and Personal Laws - Hindu Law - Hindu Marriage Act, 1955 – S. 13(1)(i-a) -*** *"Cruelty" - Filing of false criminal complaint against husband and his family members under S. 498-A r/w S. 307 IPC - Held, constitutes matrimonial cruelty - On facts held, since respondent wife had admitted in her cross-examination that she had not mentioned all incidents on which her complaint was predicated in her statement under S. 161 CrPC, it clearly indicated that criminal complaint was a contrived afterthought - Besides, appellant husband and his family members were acquitted by trial court, which order had attained finality - Hence, in such circumstances High Court ought to have*

*unequivocally returned a finding of "cruelty" against respondent wife - Marriage dissolved under S. 13(1)(i-a) - Penal Code, 1860, Ss. 498-A and 307 r/w Ss. 4 and 6. (Para 5)*

*B. Family and Personal Laws - Hindu Law - Hindu Marriage Act, 1955 – S. 13 –Divorce - "Irretrievable breakdown of marriage" - Held, though not a statutory ground of divorce as yet, but Supreme Court in exercise of its plenary powers under Art. 142 has powers "to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it" - Constitution of India, Art. 142. (Para 3)*

*C. Civil Procedure Code, 1908 - Or. 6 Rr. 2 and 4 - Pleadings - Filing of false criminal complaint by respondent wife not pleaded by appellant husband in divorce petition - Held, criminal complaint was filed by wife subsequent to filing of husband's divorce petition, and being a subsequent event could have been looked into by court - Besides, both parties were aware of this facet of cruelty allegedly suffered by husband, and when evidence was led, arguments addressed, objection was not raised by*

*respondent wife that this aspect was beyond pleadings - Hence, such deficiency in petition inconsequential." (Para 6)*

## CHAPTER 146

PERJURY IN THE CASES UNDER SECTION 138 OF NEGOTIABLE INSTRUMENT ACT.

In the case of **Kuldeep Tomar Vs. State of Punjab 2013 ALL MR (Cri) Journal 82** it is ruled as under;

***"Forgery – Dishnour of Cheque – Negotiable Instrument Act (1881), S. 138 – Penal Code (1860), Ss. 420, 467, 468, 471 – Dishonor of cheque – Accused prosecuted for offences of fraud and forgery under Penal Code and not for dishonor of cheque u/s. 138 – Legality – Facts show that cheque was dishonored not for insufficiency of funds but for the reason that***

***signature of accused was not tallying with bank records – Held, no proceedings u/s. 138 could be filed in the instant case – Accused would be prosecuted under Penal Code. 2009 ALL MR (Cri) 1881 (S.C.) Rel. on. (Paras 6, 7)***

***7.*** *In the light of the above, the contention of the counsel for the petitioner cannot sustain that proceedings under Section 138 of the 1881 Act could have been initiated against the petitioner by the respondent as the cheque was not dishonoured because of insufficiency of funds but for the reason that the signatures did not tally with the standard signatures of the petitioner and as per the above judgment of the Supreme Court no proceedings under Section 138 of the 1881 Act could be filed in this case.*

***8.*** *The judgment relied upon by the counsel for the petitioner in* ***Veer Prakash Sharma's*** *case* ***[2007 ALL MR (Cri) 2618 (S.C.)]*** *(supra), the Hon'ble Supreme Court came to the conclusion that there was no allegation of any inducement or that the accused had an intention to cheat the complainant from the very inception on the perusal of the complaint, which is not the situation in the case in hand.* ***Charanjit Singh Chawla's*** *case (supra) was*

*decided by this Court prior to the judgment of the Hon'ble Supreme Court in the case of* ***Raj Kumar Khurana****,* ***[2009 ALL MR (Cri) 1881 (S.C.)]*** *(supra). Therefore, these judgments would not help the case of the petitioner.*

***9.*** *In view of the above, finding no merits in the present petition, the same stands dismissed."*

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## CHAPTER 147

SECTION 482 OF CRIMINAL PROCEDURE CODE -FORGERY PROCEEDING CANNOT BE QUASHED AT THE THRESHOLD.

In the case of **Meera Gupta Vs. State of Jharkhand 2019 SCC OnLine Jhar 135** it is ruled as under;

***"Sale deed executed in fraudulent manner – FIR cannot be quashed****.*

***11.*** *From the contents of the judgment dated 2nd March, 1994, it would appear that the learned Sub Judge-V, Ranchi had accepted the unity of title of the opposite party no. 2 and Late Sanjiv Sinha upon the said dwelling house and accordingly observed that both the parties have equal share in*

*the same. It has specifically been alleged in the complaint that the petitioner in order to fraudulently grab her dwelling house prepared a forged document wherein the purported signature of her brother-Late Sanjiv Sinha did not match with his actual signature made in the passport. The opposite party no. 2 has also submitted that the sale deed in question was executed on 23rd June, 2002, whereas Sanjiv Sinha died in the year 2004. However, neither the petitioner nor Sanjiv Sinha till his death had put the fact of the execution of the sale deed to the knowledge of the learned Sub Judge, though the partition suit was still pending for preparation of final decree. It has also been alleged by the opposite party no. 2 in her complaint that the actual description of the property does not match with the description mentioned in the sale deed, which also creates serious doubt on the genuineness of the same.*

***12.*** *It would, thus, appear from the aforesaid contentions that both the sides have their own case to argue. However, while hearing a petition under Section 482 Cr.P.C., this court cannot conclusively adjudicate upon the rival contentions. All the aforesaid factual averments are required to be*

*examined by the learned court below at appropriate stage of the case.*

***15.*** *It has been held in the aforesaid judgment that even if the accused is successful in showing some suspicion or doubt in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial, as the same would result in giving finality to the accusations levelled by the prosecution/complainant without allowing the prosecution or the complainant to adduce evidence to substantiate the same.*

***16.*** *The very purpose of Section 482 Cr.P.C. is to prevent an abuse of process of court and to secure the ends of justice. The power of quashing of a criminal proceeding should be exercised by the High Court sparingly with circumspection and that too in the rarest of rare cases. The High Court while hearing a quashing petition is not supposed to embark upon the enquiry as to the genuineness and reliability of the complainant. Moreover, the learned court below at the stage of cognizance is only required to go through the complaint, peruse the statements of the complainant on oath and the enquiry witnesses and, thereafter, to pass an order of cognizance if the said allegation prima facie*

*makes out a case against an accused. The defence of an accused is to be taken into consideration at subsequent stage in terms with the provisions of Cr.P.C."*

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## CHAPTER 148

CRIMINAL PROCEDURE CODE 340 – APPLICATION FILED IN SLP WAS DECIDED AND PROSECUTION ORDERED AGAINST PETITIONER.

In the case of **New Era Fabrics Ltd. Vs. Bhanumati Keshrichand Jhaveri (2020) 4 SCC 41** it is ruled as under;

**Criminal Procedure Code Section 340 -**

***"Handwritten modifications made by petitioner Company in balance sheet were a significant alteration from terms as used in the original document.***

***24.*** *We do not wish to comment in detail upon the intention behind making the aforesaid*

*interpolations. At this juncture, all that is required to be assessed is whether a prima facie case is made out that there is a reasonable likelihood that the offence specified in Section 340 read with Section 195(1)(b) CrPC has been committed, and it is expedient in the interest of justice to take action. From the above discussion, it is evident that the handwritten modification made by the petitioner in Column 12 of the balance sheet dated 19-9-2008 is a significant alteration from the terms as used in the original document. Hence, we find that a prima facie case is made out that the petitioner has fabricated evidence for the purpose of the SLP proceedings before this Court.*

***25.*** *We further find that prima facie case is also made out against Mr R.K. Agarwal, for having sworn in his affidavit before this Court as to the veracity of the facts stated and documents filed in SLP (Civil) No. 3309 of 2018, even though he had relied upon the original auditor's report, which did not contain any handwritten interpolation, in his evidence before the trial court.*

***26.*** *In similar circumstances, a three-Judge Bench of this Court in R. Karuppan, Advocate, In re [R. Karuppan, Advocate, In re, (2001) 5 SCC 289 :*

*2001 SCC (Cri) 876] had authorised the Registrar General of this Court to depute an officer to file a complaint for perjury against the respondent therein. Accordingly, we direct the Secretary General of this Court to depute an officer of the rank of Deputy Registrar or above of the Court to file a complaint under Sections 193 and 199 of the Penal Code, 1872 against the petitioner Company in SLP (Civil) No. 3309 of 2018 and Mr R.K. Agarwal, before a Magistrate of competent jurisdiction at Delhi. The officer so deputed is directed to file the aforesaid complaints and ensure that requisite action is taken for prosecuting the complaints."*

## CHPTER 149

COMPLAINT FROM COURT NECESSARY. POLICE CANNOT FILE CHARGE SHEET.

In the case of **Om Prakash Vs. Mangilal & Ors. MANU/RH/0672/2004** it is ruled as under;

***"Copy of Forged rent note produced in the court during trial of a Suit –Court ordered investigation – Police filed charge sheet under Section 467, 468, 471, of Indian Penal Code – Accused took***

***objection that the complaint from court is necessary – Magistrate discharged the accused.***

***While setting aside the order of the Magistrate, the Court held as under;***

***7.*** *In the instant case along with written statement, a photostat copy of the alleged forged rent note was filed in the civil suit on 27.4.1988. The original rent note was recovered during investigation on 20.5.1988. Thus, it is clear that the original document has not been produced before the civil court either before or after filing of the complaint. Thus, the provisions of Section 195(1)(b)(ii) of the Code has not application to the instant case. The learned Magistrate has committed manifest error in discharging the accused respondents of the above referred offences.*

***8.*** *Consequently, the revision petition is allowed. The order dated 18.02.1991 passed by the Judicial Magistrate, Bar is set aside. Trial court is directed to complete the trial expeditiously within a period of six months from the date of this order. The record of the case be returned forthwith.***"**

## CHAPTER 150

FALSE CASE BY POLICE OFFICIALS. TO PRESSURISE COMPLAINANT IS QUASHED.

In the case of **P. Gowtham Reddy Vs. State of A.P., rep. by Public Prosecutor 2004 SCC OnLine AP 1356** it is ruled as under;

> ***"Role of Bar – Indian Penal Code 388, 194, 195, 211 r/w 109, 120(B) of Indian Penal Code – Police officers involved in custody death of a person – In order to save themselves they tried to implicate witnesses under section 3 & 4 of A.P. Control of Organised Crimes Act (COCA Act) – Bar Association passed resolution against police – The proceedings by police is quashed.***
>
> ***22.*** *The whole attempt of the petitioners seem to be that when there had been a lockup death in Satyanarayanapuram Police Station, Vijayawada, the Bar Association at Vijayawada appears to have passed a resolution condemning the said lockup death and that A-1 and A-2 who are the practicing Advocates at Vijayawada filed a private complaint on behalf of the kin of the deceased which was taken cognizance of by the Court as PRC No. 13 of 2003. The police so as to backlash are now seeking to involve the petitioners in the organised crime. At this stage, this Court cannot visualise and take note*

*of certain facts which are otherwise required to be established at the time of the trial in the case The request of the petitioners 1 and 3, for the above reasons, cannot be considered. However, the case of the second petitioner-A-2 is distinguishable from the case against A-1 and A-3. Obviously, no crime has been registered against A-2 except the one in question for the last ten years preceding the present case as can be seen from the impugned proceedings of the Commissioner of Police. The essential ingredients that constitute the offence punishable under Sections 3 and 4 of the COCA are not discernable from the said proceedings qua A-2. In that view of the matter, Sections 3 and 4 of COCA cannot be added against, A-2 as sought for and any such attempt shall have to be prevented. However, the proceedings in crime number 798/2003 registered for the offences punishable under Sections 388, 194, 195, 211 r/w 109 and 120-B of IPC cannot be quashed for the reasons hereinabove discussed.*

***23.*** *For the foregoing reasons, the Criminal Petition No. 322/2004 is dismissed with the observation that no proceedings under Sections 3 and 4 of the COCA can be maintained against the second petitioner-A-2*

*for the reasons mentioned inter alia in the order. Similarly, Criminal Petition No. 752/2004 is also dismissed at the threshold.*

***2.*** *On the report given by one T. Babu Rao, the above crime was registered against the petitioners on 27-12-2003, by the Station House Officer, Satyanarayanapuram Police Station for the offences punishable under Sections 388, 194, 195, 211 read with 109 and 120-B of the Indian Penal Code ('the IPC' for brevity) said to have been committed some time prior to 10-3-2003 and First Information Report was issued. It is alleged inter alia in the said report that A-3 sent an amount of Rs. 5,000/- through one Prasad to the complainant for undergoing cataract surgery and after undergoing surgery he joined as a driver in Venkata Narasimha Rao Lorry Transport at Tenali. In the month of February, 2003 when he was at Gauhati, the Clerk of Lorry Transport Office contacted and informed him that A-3 wanted the complainant to contact him over phone. Four days thereafter when he went to the office of A-3, his Clerk told him that A-3 wanted the complainant to meet A-1. When the complainant went to the office of A-1, whereat A-1 and A-2 were present, and they asked him that he should give*

*evidence against the Commissioner of Police; and that on his enquiry he was informed by them that* ***a case was filed against the Commissioner, Assistant Commissioner, and Sub Inspector of Police; and he should depose to the effect that when he went to Governorpet Police Station, having come to know about the arrest of one Santan Kumar, the sentry at the police station asked him to come later as officers were there in the police station and that in the meanwhile Surendra Babu, and Rami Reddy, the Commissioner and Assistant Commissioner of Police respectively came in a car and brought Santan Kumar and that Surendra Babu directed Srinivasa Rao, the Sub-Inspector of Police to shoot him as he was making galatas and accordingly the Sub-Inspector of Police and sentry Constable-Nanchariah shot that man dead with guns and took the dead body in a Jeep.*** *As the complainant did not incline to depose, he returned to A-3 and told him as to what had happened. A-3 informed him that there was no need to be scared as he had already spoken to the Public Prosecutor and the Judge and even if he refuses to depose, A-1 would get somebody to give evidence. A-3 further informed him that later they could enter into a compromise.*

*As A-3 helped him previously, the de facto complainant accepted to give evidence in Court and accordingly on 10-03-2003 he gave false evidence in the Court. Before going to the Court, A-2 the junior Advocate introduced him to one Rama Devi who is the paternal aunt of the deceased Santan Kumar and he did not know anything about the said Santan Kumar and Rama Devi. The complainant after coming to know about the warrant issued against the Commissioner of Police, informed the entire incident to his owner Narasimha Rao at Tenali and as per his advice he wanted to tell the truth to the Commissioner of Police but on the same day night the driver of A-3 by name Prasad came to him and took him to Vijayawada stating that Police were searching for him and gave him Rs. 3,000/- at the Steel Plant belonging to A-3 at Yanam. He stayed there for about 50 days and when returned home his wife informed him that the Assistant Commissioner of Police, Avanigada, required him at his office. Having realized that he gave false evidence, on 22-12-2003 the complainant informed the Additional Superintendent of Police at Machilipatnam as to what had happened. His statement was recorded by the A.S.P. upon which a*

*case has been registered as Crime No. 798 of 2003 against the petitioners for various offences punishable under Sections **388, 194, 195, 211** read with 109 and 120-B of the IPC."*

## CHAPTER 151

SECTION 340 CAN BE INVOKED EVEN BEFORE ACCEPTING POLICE REPORT DECIDING THE PROTEST PETITION FILED BY THE COMPLAINANT.

Prosecution of complainant before accepting Police Report and before deciding the protest petition who is being alleged to have filed a false complaint is proper.

Accused cannot claim any prejudice because he had ample opportunity to prove the truth of his information in defence.

i) Gonour Singh Vs. Emperor. **AIR 1930 Pat 505**

ii) Emperor Vs. Baharali Biswas **AIR 1931 Cal 634**

## CHAPTER 152

GUIDELINES BY SUPREME COURT TO SUPPORT THE APPLICATION UNDER SECTION 156(3) OF CRIMINAL PROCEDURE CODE WITH AFFIDAVIT TO AVOID FALSE ALLEGATIONS AND TO FIX LIABILITY.

In the case of **Priyanka Srivastava Vs. State of U.P. (2015) 6 SCC 287** it is ruled as under;

***"Section 156(3) Cr. P. C. – Should be supported by affidavit – If affidavit is found to be false the person will be liable for prosecution.***

***31.*** *We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under* ***Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law.*** *This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal*

*delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."*

## CHAPTER 153

SECTION 340 OF CRIMINAL PROCEDURE CODE.SUPREME COURT GUIDELINES FOR ALL COURTS IN INDIA.

In **Rajnesh Vs. Neha and Another 2020 SCC OnLine SC 903** it is ruled as under;

***"Sec. 340 of Cr. P. C. – Family Disputes – Guidelines for all courts in India. Format of affidavits given so as to ensure the fair trail and avoid mischief by husband or wife***

***56.*** *Section 36 provides that the D.V. Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.*

*The Meghalaya State Legal Services Authority has suggested that the declaration in Meghalaya be made in the format enclosed with this judgment as* ***Enclosure III****.*

***(xi)*** *Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:*

***(h)*** ***The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding u/S. 340 Cr.P.C., and for contempt of Court.***

***(f)*** *If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, 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 CPC;*

*On filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C or Section 165 of the Evidence Act 1872, if it considers it necessary to do so;*

*The income of one party is often not within the knowledge of the other spouse. The Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income,*

*assets and liabilities of the spouse are within the personal knowledge of the party concerned."*

## CHAPTER 154

SECTION 313 OF CR. P. C - COURT IS BOUND TO DEAL WITH THE DEFENCE TAKEN UNDER SECTION 313 OF CR. P. C. - IF COURT FAILS TO DO SO, THE CONVICTION STAND VITIATED.

In the case of **Reena Hazarika Vs. State of Assam (2019) 13 SCC 289** it is ruled as under;

***"A. Criminal Procedure Code, 1973 - S. 313 - Scope of - Held, S. 313 cannot be seen simply as a part of audi alteram partem - It confers valuable right upon accused to establish his innocence and can well be considered beyond statutory right as a constitutional right to a fair trial under Art. 21 of Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under S. 313(2) CrPC -*** *The mere use of the word "may" cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby -*

*Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter - If there has been no consideration at all of the defence taken under S. 313 CrPC, in the given fats of a case, conviction may well stand vitiated.*

*- Murder trial - Herein, unfortunately, neither trial court nor High Court considered it necessary to take notice of, much less discuss or observe, with regard to defence by appellant under S. 313 CrPC, to either accept or reject it - Complete non-consideration thereof, has clearly caused prejudice to appellant - Unlike prosecution, accused is not required to establish defence beyond all reasonable doubt - Accused has only to raise doubts on a preponderance of probability - On an overall view of facts and circumstances of the case, conviction reversed - Constitution of India, Art. 21 (Paras 19 and 20)*

***B. Criminal Trial – Defence - Defence evidence - Nature of - Held, unlike prosecution, accused is not required to establish defence beyond all reasonable doubt - Accused has only to raise***

***doubts on a preponderance of probability."***

***(Paras 20 and 21)***

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## CHAPTER 155

"FRIVOLOUS APPEAL AGAINST ACQUITTAL – THE STATE SHOULD PAY THE COST – APPEAL DISMISSED WITH COST".

In the case of **State of Karnataka Vs. Venkatesha 1999 SCC OnLine Kar 591** it is ruled as under;

> ***4.*** *The record being what it is, the Court having acquitted the accused, while deciding whether an appeal should be filed or not, the State was required to scrutinise as to whether such material could sustain a conviction and where it is as clear as day light, that the answer to this question is in the negative an appeal should not have been filed in the first instance. While we do concede that wherever interference is necessary that an appeal would be justified, there is also a class of cases in which the State should refrain from filing an appeal such as the present one. We do believe that if in cases where there is virtually no substance an appeal is preferred that it would constitute a waste of previous judicial time and consequently, we direct while dismissing the appeal on*

*merits, that the State shall pay a token cost of Rs. 501/- which amount shall be credited to the account of the Karnataka State Legal Services Authority within a period of eight weeks from today. We do hope that hereinafter the department concerned will ensure that there is a careful scrutiny of all cases for purposes of eliminating those in which no appeals are warranted.*

***5.*** *We need to observe here that in this particular case the trial Court has very rightly not permitted the compounding since Section 326, IPC is a non-compoundable offence and the Court has very rightly acquitted the accused. As such, no interference is called for with that order.*

***6.*** *We need to specifically bring it to the notice of the State Government that the High Court has been working on several special formulae for purposes of eradicating the areas so that time is available for rendering speedy justice in deserving cases. If utterly worthless Appeals are filed by the State, such cases virtually choke and strangulate the system. The Supreme Court had categorised such proceedings as "fake litigation" we need to go a stage further and observe that such worthless proceedings which are thoroughly devoid of substance are nothing short of garbage which the Courts can do without.*

***7.*** *The Registrar General is directed to forward a copy of this order to the Chief Secretary to the Government, Law Secretary and the Director of Prosecutions, Government of Karnataka for information and necessary action.***"**

## CHAPTER 156

PER-INCURIAM - JUDGMENT IN SHARAD PAWAR CASE IS PER-INCURIAM.

In the case of **State of Punjab Vs. Jasbir Singh (2020) 12 SCC 96** it is ruled as under;

> ***"14.*** *In any event, given that the decision of the three-Judge Bench in Sharad Pawar [Sharad Pawar v. Jagmohan Dalmiya, (2010) 15 SCC 290 : (2013) 1 SCC (Civ) 1188 : (2013) 2 SCC (Cri) 197] did not assign any reason as to why it was departing from the opinion expressed by a Coordinate Bench in Pritish [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] regarding the necessity of a preliminary inquiry under Section 340 CrPC, as also the observations made by a Constitution Bench of this Court in Iqbal Singh Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] , we find it necessary that the present matter be*

*placed before a larger Bench for its consideration, particularly to answer the following questions:*

***14.1.*** *Whether Section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a court?*

***14.2.*** *What is the scope and ambit of such preliminary inquiry?*

***15.*** *Accordingly, we direct the Registry to place the papers before the Hon'ble Chief Justice for appropriate orders.*

***11.*** *Indeed, a three-Judge Bench of this Court in Pritish [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] dealing with the question in consideration here, held that an opportunity to the would-be accused before the filing of the complaint was not mandatory, and observed that the preliminary inquiry was itself not mandatory. The Court observed thus : (SCC pp. 258-61, paras 9-14 & 18)*

> *"9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the*

*interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It*

*should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.*

*10. "Inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of "warrant case" [as defined in Section 2(x)] of the Code the Magistrate concerned has to follow the procedure*

*prescribed in Chapter XIX of the Code. In this context, we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.*

*11. Section 238 of the Code says that the Magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the Magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the Magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the Magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that*

*the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the Magistrate has to proceed to conduct the trial. Until then the inquiry continues before the Magistrate.*

*12. Thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged.*

*13. The scheme delineated above would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. The learned counsel*

*for the appellant contended that even if there is no specific statutory provision for affording such an opportunity during the preliminary inquiry stage, the fact that an appeal is provided in Section 341 of the Code, to any person aggrieved by the order, is indicative of his right to participate in such preliminary inquiry.*

*14. Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford*

*an opportunity of hearing to the would-be accused. In any event the appellant has already availed of the opportunity of the provisions of Section 341 of the Code by filing the appeal before the High Court as stated earlier.*

***

*18. We are unable to agree with the said view [Pritish Ramrao Tayde v. State of Maharashtra, 2000 SCC OnLine Bom 789 : (2001) 1 Mah LJ 937] of the learned Single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of his guilt. We have pointed out earlier that the purpose of conducting preliminary inquiry is not for that purpose at all. The would-be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry (vide M. Muthuswamy v. Special Police*

*Establishment [M. Muthuswamy v. Special Police Establishment, 1984 SCC OnLine Mad 158 : 1985 Cri LJ 420 (Mad)] ).”*

*(emphasis supplied)*

***12.*** *However, in the subsequent decision in Sharad Pawar [Sharad Pawar v. Jagmohan Dalmiya, (2010) 15 SCC 290 : (2013) 1 SCC (Civ) 1188 : (2013) 2 SCC (Cri) 197] , while dealing with a similar question, a three-Judge Bench of this Court did not take note of the dictum in Pritish [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] and went on to observe as follows : (Sharad Pawar case [Sharad Pawar v. Jagmohan Dalmiya, (2010) 15 SCC 290 : (2013) 1 SCC (Civ) 1188 : (2013) 2 SCC (Cri) 197] , SCC p. 291, paras 7-8)*

*“7. Having heard the learned Senior Counsel for both sides and after perusal of the record, we are of the considered view that before giving a direction to file complaint against Defendants 1 to 6, it was necessary for the learned Single Judge [Jagmohan Dalmiya v. BCCI Civil Suit No. 22 of 2007, order dated 12-11-2008 (Cal)] to conduct a preliminary enquiry as*

*contemplated under Section 340 CrPC and also to afford an opportunity of being heard to the defendants, which was admittedly not done.*

*8. We, therefore, in the interest of justice, allow these appeals, set aside the impugned order [Jagmohan Dalmiya v. BCCI Civil Suit No. 22 of 2007, order dated 12-11-2008 (Cal)] of the High Court passed in the application filed by Respondent 1-plaintiff under Section 340 CrPC and remit the matter to the learned Single Judge to decide the application under Section 340 CrPC afresh in accordance with law, and after affording reasonable opportunity of being heard to the defendants, against whom the learned Single Judge ordered enquiry."*

***13.*** *Later, the judgment in Pritish [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] came to be relied upon by a two-Judge Bench of this Court in Amarsang Nathaji [Amarsang Nathaji v. Hardik Harshadbhai Patel, (2017) 1 SCC 113 : (2017) 1 SCC (Cri) 237] . While dealing with the propriety of the procedure adopted by the Court making a complaint under Section 340 of the Code, the Bench in Amarsang Nathaji [Amarsang*

*Nathaji v. Hardik Harshadbhai Patel, (2017) 1 SCC 113 : (2017) 1 SCC (Cri) 237] observed as follows : (SCC p. 117, para 7)*

> *"7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See Pritish v. State of Maharashtra [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] .)"*

*In the same decision, the Court also took note of the following observations made by a Constitution Bench of this Court in Iqbal Singh Marwah v. Meenakshi Marwah [Iqbal Singh*

*Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] in relation to the scope of Section 340 CrPC : (SCC pp. 386-87, para 23)*

*"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."*

*(emphasis supplied)*

*Notably, however, the decision in Amarsang Nathaji [Amarsang Nathaji v. Hardik Harshadbhai Patel, (2017) 1 SCC 113 : (2017) 1 SCC (Cri) 237] did not take note of the contrary observations made in Sharad Pawar [Sharad Pawar v. Jagmohan Dalmiya, (2010) 15 SCC 290 : (2013) 1 SCC (Civ) 1188 : (2013) 2 SCC (Cri) 197] ."*

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## CHAPTER 157

MISUSE OF CHEQUE BY THE COMPLAINANT

In the case of **Sudhir Kumar Bhalla Vs. Jagdish Chand 2008 ALL SCR 2201** it is ruled as under;

> ***"Misuse of cheque by the complainant – Case under section 138 of Negotiable Instrument Act – Accused filed complaint under section 420, 463, 468 & 471 of Indian Penal Code against complainant. High Court did not considered this vital aspect. Judgment of High Court set aside.***
>
> ***16.*** *On examination of the abovestated findings of the learned Single Judge in the judgment impugned before us, we find that the learned Single Judge has not addressed himself on the legal question raised before him by the appellant that the criminal liability of the appellant under the provisions of Section 138 of the Act are attracted only on account of the dishonour of the cheques issued in discharge of liability or debt, but not on account of issuance of security cheques. The learned Single Judge has also*

*not given cogent, satisfactory and convincing reasons for disbelieving and discarding the pre-charge evidence of the appellant corroborated by the evidence of the expert opinion in regard to the interpolation in and fabrication of the cheques by adding one more figure '0' to make Rs 30,000/- to Rs 3,00,000/- and similarly adding one more figure '0' to make Rs 40,000/- to Rs 4,00,000/-. In the backdrop of the facts of these cases, we are of the opinion that the judgments and orders of the High Court cannot be sustained on the premise that the High Court has not addressed itself on the abovesaid two legal questions raised by the appellant and, therefore, the impugned judgments and orders dated 25-1-2007 and 19-2-2007 are set aside. The interest of justice should be subserved if the matters are remitted to the High Court to decide the appeals filed by the respondent against the appellant and criminal miscellaneous petitions seeking for quashing the first information reports registered against the respondent and his wife by the police for commission of the offences stated in FIRs Nos. 93 and 94 of 1998. Needless to say that any observation made by us in this judgment shall not be construed as an expression of opinion on the*

*merits of the cases, which shall be decided by the High Court on their own merits in accordance with law."*

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## CHAPTER 158

DEFAMATION – PRIVATE COMPLAINT – FILLING OF A CASE IS A PUBLICATION

In **Sunil Durgaprasad Agrawal Vs. Pramod Parasmal Shrimal 2012 ALL MR (Cri) 821** it is ruled as under;

> ***"Negotiable Instruments Act (1881), S.138 – Penal Code (1860), S.500 – Criminal P.C. (1973), S.200 – Defamation – Private Complaint – Filling of a case is a publication - However, held, unless contents of the pleadings are defamatory, cognizance of a complaint under s.500 of I.P.C. could not be taken. (Para 8)"***

## CHAPTER 159

COST ON FRIVOLOUS PETITIONS.

In the case of **Umesh Singh Vs. State Of U.P. And Another Order dated 26 November, 2020 by The Hon'ble Allahabad High Court** had ruled as under;

> *Further for misrepresenting the facts before the Court, this Court is of the view that heavy cost be imposed on the petitioner as apparently he did not approach the court with clean hands to seek equitable relief in the form of issuance of either writ of certiorari or writ of mandamus. Therefore, we not only dismiss the writ petition but also impose a cost of Rs. 5,00,000/- (Rupees Five Lakhs) on the petitioner. Let this cost be deposited in the High Court Legal Services Authority within 30 days from today failing which Registrar General shall send a communication to the District Magistrate, Mau for recovery of this amount as arrears of land revenue from the estate of the petitioner.*

## CHAPTER 160

STRICT ACTION AGAINST OFFICERS OF THE COURT INVOLVED IN OFFENCES.

In **Pravat Chandra Mohanty Vs. State 2021 SCC OnLine SC 81,** it is ruled as under;

> ***''34.*** *The Division Bench of the High Court expressed its disagreement with the view taken by the Magistrate. The Court held that the matter was of a very great public*

*concern. The Division Bench held following in the above case:—*

> *"…The matter is, however, aggravated when we find that the person who is said to have done the cheating is a clerk of the Court. All public servants attached to a Court are trustees and guardians of the honour and integrity of the Court. It is a matter of grave import if any of them attempts to extract an illegal gratification or extort money from those who seek access to the Courts, or endeavours to lead them astray and, by abusing his position, tries to enrich himself. Persons in this class of life are looked upon as persons of influence and of some authority by the ordinary ignorant public. If therefore they abuse the position of confidence in which they are placed by reason of their office, it becomes a matter of great public concern. In our opinion, it is perverse to consider otherwise. If ever there was a case in which composition should have been refused, this is such a case…"*

***35.*** *The ratio of the judgment is that in event people holding public office abuse their position, it becomes a matter of great public concern. We fully endorse the above view of the Nagpur High Court.''*

***31.*** *The prosecution by the State is the policy of law because all the offences are against the society. The offenders have to bring to the Courts and punish for their offences to maintain peace and order in the society. It is the duty of the prosecution to ensure that no offender goes scot-free without being punished for an offence. It is also the settled principle of law that innocent should not be punished.*

***32.*** *The question arises as to while granting leave of the Court for composition of offence, what is the guiding factor for the Court to grant or refuse the leave for composition of offence. The nature of offence, and its affect on society are relevant considerations while granting leave by the Court of compounding the offence. The offences which affect the public in general and create fear in the public in general are serious offences, nature of which offence may be relevant consideration for Court to grant or refuse the leave. When we look into the conclusion recorded by the trial court and the High Court after marshalling the evidence on record, it is established that both the accused have mercilessly beaten the deceased in the premises of the Police Station. Eleven injuries were caused on the body of the deceased by the accused. As per the evidence of PW-1, which has been believed by the Courts below, the victim was beaten*

*mercilessly so that he passed on, stool, Urine and started bleeding.*

***36.*** *Present is a case where the offence was committed by the in-charge of the Police Station, Purighat, as well as the Senior Inspector, posted at the same Police Station. The Police of State is protector of law and order. The people look forward to the Police to protect their life and property. People go to the Police Station with the hope that their person and property will be protected by the police and injustice and offence committed on them shall be redressed and the guilty be punished. When the protector of people and society himself instead of protecting the people adopts brutality and inhumanly beat the person who comes to the police station, it is a matter of great public concern. The beating of a person in the Police Station is the concern for all and causes a sense of fear in the entire society.*

***37.*** *We may refer to the judgment of this Court in Yashwant v. State of Maharashtra, (2019) 18 SCC 571, where this Court laid down that when the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. Following was laid down in paragraph 34:—*

*"34. As the police in this case are the violators of law, who had the primary responsibility to protect and uphold law, thereby mandating the punishment for such violation to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. It may not be out of context to remind that the motto of Maharashtra State Police is "Sadrakshnaya Khalanighrahanaya" (Sanskrit:"To protect good and to punish evil"), which needs to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. We must additionally factor this aspect while imposing an appropriate punishment on the accused herein."*

## CHAPTER 161

IF THE PROCEEDINGS OF A SINGLE JUDGE UNDER SECTION 14 IS TRIED BY A DIVISION BENCH THEN ONE RIGHT TO APPEAL HAD GONE AND THEREFORE IT HAS TO BE SET ASIDE.

Seven Judge Bench in **A.R. Antulay vs R.S. Nayak (1988) 2 SCC 602** it is ruled as under;

> ***"Constitution of India – Articles 134, 136 and 137 – Directions of a Bench (of five Judges) of Supreme Court given suo motu in violation of fundamental rights and principles of natural justice and per incuriam were without jurisdiction and nullity – Such directions even if subsequently questioned in another appeal instead of in a review petition under Article 137, can be set aside by another Bench(of seven judges in this case) of the Court ex debito justitiae in excise of its inherent power(Per majority, Venkatachaliah and Ranganathan, JJ. Contra)***
>
> *Court gave a further direction [dated February 16, 1984: (1984) 2 SCC183 at 243] withdrawing the special cases against the appellant pending in the Court of Special Judge and transferring the same to the High Court of Bombay with a request to the Chief Justice to assign the cases to a sitting Judge of the High Court for holding the trial from day to day.*
>
> *The appellant challenged the order by filing a special leave petition (No. 2519 of 1986) before the Supreme Court wherein he questioned the High Court's jurisdiction to try the case in violation of Article 14 and 21 and the provision of Act 46 of 1952.*

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

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

***78.** The directions were in deprival of Constitutional rights and contrary to the express provisions of the Act of 1952. The directions were given in violation of the principles of natural justice. The directions were without precedent in the background of the Act of . The directions **definitely deprived the appellant of certain rights of appeal and revision and his rights under the Constitution**.*

***79.** We do not labour ourselves on the question of discretion to disobey a judicial order on the ground of invalid judicial order. See discretion to Disobey by*

*Mertimer R. Kadish and Sanford H. Kadish pages 111 and 112. These directions were void because the power was not there for this Court to transfer a proceeding under the Act of 1952 from one Special Judge to the High Court. This is not a case of collateral attack on judicial proceeding; it is a case where the Court having no Court superior to it rectifies its own order. We recognise that the distinction between an error which entails absence of jurisdiction and an error made within the jurisdiction is very fine. So fine indeed that it is rapidly being eroded as observed by Lord Wilberforce in Anisminic Ltd. v. Foreign Compensation Commissioner, [1959] 1 All E.R. 208 at 244. Having regard to the enormity of the consequences of the error to the appellant and by reason of the fact that the directions were given suo motu, we do not find there is anything in the observations of Ittavira Mathai v. Varkey Varkey and another, [19641 1 S.C.R. 495 which detract the power of the Court to review its judgment ex debite justitiae in case injustice has been caused. No court, however, high has jurisdiction to give an order unwarranted by the Constitution and, therefore, the principles of Bhatia Co- operative Housing Society Ltd. v. D. C. Patel, [1953] S.C.R. 185 at 190 would not apply."*

*Ex debito justitine, the Court must, therefore, do justice and thelegal wrong that has been caused to the appellant should be remedied.*

*Let that wrong be, remedied. Let right be done and in doing, so let nomore further injury be caused to public purpose. Accordingly, allproceedings in this matter subsequent to the directions of the SupremeCourt on February 16, 1984 are set aside and quashed. The order takingcognizance, however, has become final and is unassailable. The trialshall proceed in accordance with law, that is under the Act of 1952.*

***86.*** *ln the aforesaid view of the matter and having regard to the facts and circumstances of the case, we are of the opinion that the legal wrong that has been caused to the appellant should be remedied. Let that wrong be therefore remedied. Let right be done and in doing so let no more further injury be caused to public purpose.*

***87.*** *ln the aforesaid view of the matter the appeal is allowed; all proceedings in this matter subsequent to the directions of this Court on 16th February, 1984 as indicated before are set aside and quashed. The trial shall proceed in accordance with law, that is to say under the Act of 1952 as mentioned hereinbefore.*

***VIOLATION OF ARTICLE 14 AND 21 OF THE CONSTITUTION***

*Constitution of India -Articles 14 and 21 Supreme Court's order directing withdrawal of case against accused from Special Judge and transfer thereof to High Court - Whether violative of Articles 14 and 21 Whether thereby the accused person singled out for a differential treatment to his prejudice and his right of appeal to the High Court denied.*

*Constitution of India -Article 21 ---Deprivation of one statutory right of appeal would amount to denial of procedure established by law -Accused person deprived of a procedure provided under Section 7(1) of Criminal Law Amendment Act, 1952*

***Per Mukharji, Oza and Natrajan, JJ.***

*Four valuable rights of the appellant have been taken away by the impugned directions: (1) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.*

*(ii) The right of revision to the High Court under Section 9 of the Criminal Law Amendment Act.*

*(iii) The right of first appeal to the High Court under the same section.*

*(iv) The right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary.*

***"55.****Shri Jethmalani urged that the directions given on 16th February, 1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created under section 7(1) of the 1952 Act read with section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions. Furthermore, in giving such directions, this Court did not advert to or consider the effect of Anwar Ali Sarkar's case (supra) which was a binding precedent. A mistake on the part of the Court shall not cause prejudice to any one. He further added that the primary duty of every Court is to adjudicate the cases arising between the parties. According to him, it is certainly open to a larger Bench to take a view different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a corrupt Chief Minister before a High Court, instead of a Judge designated by the State Government was not so injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does*

*the impugned order promote justice? and (2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions;*

*(i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.*

*(ii) The right of revision to the High Court under section 9 of the Criminal Law Amendment Act.*

*(iii)The right of first appeal to the High Court under the same section.*

*(iv) The. right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary."*

*By reason of giving the directions on February 16, 1984, the Supreme Court had unintentionally caused the appellant the denial of rights under Article 14 by denying him the equal protection of law by being singled out for a special procedure not provided for by law. There was*

*prejudice to the accused in being singled out as a special class of accused for a special dispensation without guideline as to which cases required speedier justice and without room for any appeal as of right and without power of the revision to the High Court. That was a mistake of so great a magnitude that it deprives a man, by treating him differently, of his fundamental right of defending himself in a criminal trial in accordance with law.*

***41.*** *In the aforesaid view of the matter and the principle reiterated, it is manifest that the appellant has not been ordered to be tried by a procedure mandated by law, but by a procedure which was violative of Article 21 of the Constitution. That is violative of Articles 14 and 19 of the Constitution also, as is evident from the observations of the 7 Judges Bench judgment in Anwar Ali Sarkar's case (supra) where this Court found that even for a criminal who was alleged to have committed an offence, a special trial would be per se illegal because it will deprive the accused of his substantial and valuable privileges of defences which, others similarly charged, were able to claim. As Justice Vivian Bose observed in the said decision at page 366 of the report, it matters not whether it was done in good faith, whether it was done for the convenience of Government, whether the process could be scientifically classified and labelled, or whether it was an*

*experiment for speedier trial made for the good of society at large. Justice Bose emphasised that it matters not how lofty and laudable the motives were. The question which must be examined is, can fair minded, reasonable, unbiased and resolute men regard that with equanimity and call it reasonable, just and fair, regard it as equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the conditions which are obtained in India today. Judged by that view the singling out of the appellant in this case for a speedier trial by the High Court for an offence of which the High Court had no jurisdiction to try under the Act of 1952 was, in our opinion, unwarranted, unprecedented and the directions given by this Court for the said purpose, were not warranted. If that is the position, when that fact is brought to our notice we must remedy the situation. In rectifying the error, no procedural inhibitions should debar this Court because no person should suffer by reason of any mistake of the Court. The Court, as is manifest, gave its directions on 16th February, 1984. Here no rule of res judicata would apply to prevent this Court from entertaining the grievance and giving appropriate directions. In this connection, reference may be made to the decision of the Gujarat High Court in Soni Vrajlal Jethalal v. Soni Jadavji Govindji and others, A.I.R. 1972*

*Guj. 148. Where D.A. Desai, J. speaking for the Gujarat High Court observed that no act of the court or irregularity can come in the way of justice being done and one of the highest and the first duty of all Courts is to take care that the act of the Court does no in jury to the suitors.*

***47.*** *In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16th February, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper- book. He argued that since the transfers have been made under section 407, the procedure would be that given in section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have*

*been given in the presence of the parties and the clarificatory order of April 5, 1985 which was made in the presence of the appellant and his Counsel as well as the Counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant. It is a settled rule that if a decision has been given per incuriam the Court can ignore it. It is also true that the decision of this Court in the case of The Bengal Immunity Co. Ltd. v. The State of Bihar & Ors. [1955] 2 SCR 603 at 623 was not regarding an order which had become conclusive inter-parties. The Court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.*

***50.** This Court by majority held that Rule 12 of order XXXV of the Supreme Court Rules was invalid in so far as it related to the furnishing of security. The right to move the Supreme Court, it was emphasised, under Article 32 was an absolute right and the content of this right could not be circumscribed or impaired on any ground and an order for furnishing security for the respondent's*

*costs retarded the assertion or vindication of the fundamental right under Article 32 and contravened the said right. The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the Court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J. speaking for the majority of the Judges of this Court said that Article F 142(1) did not confer any power on this Court to contravene The provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At page 899 of the Reports, Gajendragadkar, J. reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice." But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed*

*by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws (Emphasis A supplied). The Court therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32. It follows, therefore, that the directions given by this Court on 16th February, 1984, on the ground of expeditious trial by transferring Special Case No. 24 of 1982 and Special Case No. 3 of 1983 pending in the Court of Special Judge, Greater Bombay, Shri S.B. Sule, to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court was contrary to the relevant statutory provision, namely, section 7(2) of the Criminal law Amendment Act, 1952 and as such violative of Article 21 of the Constitution. Furthermore, it violates Article 14 of the Constitution as being made applicable to a very special case among The special cases, without any guideline as to which cases required speedier justice. If that was so as in Prem Chand Garg's case, that was a mistake of so great a magnitude that it deprives a man by being treated differently of his fundamental right for defending himself in a criminal trial in accordance with law. If that was so then when the attention of the Court is drawn the Court has always the power and the*

*obligation to correct it ex debito justitiae and treat the second application by its inherent power as a power of review to correct the original mistake. No suitor should suffer for the wrong of the Court. This Court in Prem Chand Garg's case struck down not only the administrative order enjoined by Rule 12 for deposit of security in a petition under Article 32 of the Constitution but also struck down the judicial order passed by the Court for non- deposit of such security in the subsequent stage of the same proceeding when attention of the Court to the infirmity of the rule was drawn. It may be mentioned that Shah, J. was of the opinion that rule 12 was not violative. For the present controversy it is not necessary to deal with this aspect of the matter.*

***58.*** *We are clearly of the opinion that the right of the appellant under Article 14 regarding equality before the law and equal protection of law in this case has been violated. The appellant has also a right not to be singled out for special treatment by a Special Court created for him alone. This right is implicit in the right to equality. See Anwar Ali Sarkar's case (supra).*

***73.*** *Dealing with the submission that the order of the Constitution Bench was void or non-est and it violated the principles of natural justice, it was submitted by Shri Jethmalani that it was factually incorrect. Inspite of the*

*submissions the appellant did not make any submission as to directions for transfer as asked for by Shri Tarkunde. It was submitted that the case should be transferred to the High Court. The Court merely observed there that they had given ample direction. No question of submission arose after the judgment was delivered. In any case, if this was bad the fact that no objection had been raised would not make it good. No question of technical rules or res judicata apply, Shri Jethmalani submitted that it would amount to an abuse of the process of the Court. He referred us to Re Tarling, [1979] 1 All E.R. 981 at 987; Ali v. Secretary of State for the Home Department, [1984] 1 All E.R. 1009 at 1014 and Seervai's Constitutional Law, Vol. 1, pages 260 to 265. We are of the opinion that these submissions are not relevant. There is no abuse of the process of the Court. Shri Jethmalani submitted that there was no prejudice to the accused. There was prejudice to the accused in being singled out as a special class of accused for a special dispensation without room for any appeal as of right and without power of the revision to the High Court. There . prejudice in that. Reliance placed on the decision of this Court in Ramesh Chandra Arora v. The State, [1960] 1 S.C.R. 924 at 927 was not proper in the facts of this case.*

***74.*** *If a discrimination is brought about by judicial perception and not by executive whim, if it is unauthorised by law, it will be in derogation of the right of the appellant as the special procedure in Anwar Ali Sarkar's case (supra) curtailed the rights and privileges of the accused. Similarly, in this case by judicial direction the rights and privileges of the accused have been curtailed without any justification in law. Reliance was placed on the observations of the seven Judges Bench in Re: Special Courts Bill, 1978 (supra). Shri Jethmalani relied on the said observations therein and emphasised that purity in public life is a desired goal at all times and in all situations and ordinary Criminal Courts due to congestion of work cannot reasonably be expected to bring the prosecutions to speedy termination. He further submitted that it is imperative that persons holding high public or political office must be speedily tried in the interests of justice. Longer these trials last, justice will tarry, assuming the charges to be justified, greater will be the impediments in fostering democracy, which is not a plant of easy growth. All this is true but the trial even of person holding public office though to be made speedily must be done in accordance with the procedure established by law. The provisions of section 6 read with section 7 of the Act of 1952 in the facts and circumstances of this case is the*

*procedure established by law; any deviation even by a judicial direction will be negation of the rule of law.*

***81.*** *This case has caused us considerable anxiety. The appellant accused has held an important position in this country, being the Chief Minister of a premier State of the country. He has been charged with serious criminal offences. His trial in accordance with law and the procedure established by law would have to be in accordance with the 1952 Act. That could not possibly be done because of the directions of this Court dated 16th February, 1984, as indicated above. It has not yet been found whether the appellant is guilty or innocent. It is unfortunate, unfortunate for the people of the State, unfortunate for the country as a whole, unfortunate for the future working of democracy in this country which, though is not a plant of an easy growth yet is with deep root in the Indian polity that delay has occurred due to procedural wrangles. The appellant may be guilty of grave offences alleged against him or he may be completely or if not completely to a large extent, innocent. Values in public life and perspective of these values in public life, have undergone serious changes and erosion during the last few decades. What was unheard of before is common place today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of*

*the cross-roads of values. It is, for the sovereign people of the country to settle those conflicts yet the Courts have vital roles to play in such matters. With the avowed object of speedier trial the case of the appellant had been transferred to the High Court but on grounds of expediency of trial he cannot be subjected to a procedure unwarranted by law, and contrary to the constitutional provisions. The appellant may or may not be an ideal politician. It is a fact, however, that the allegations have been brought against him by a person belonging to a political party opposed to his but that is not the decisive factor. If the appellant Shri Abdul Rehman Antulay has infringed law, he must be dealt with in accordance with the law. We proclaim and pronounce that no man is above the law, but at the same time reiterate and declare that no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it. This Court? in its anxiety to facilitate the parties to have a speedy trial gave directions on 16th February, 1984 as mentioned hereinbefore without conscious awareness of the exclusive jurisdiction of the Special Courts under the 1952 Act and that being the only procedure established by law, there can be no deviation from the terms of Article 21 of the Constitution of India. That is the only procedure under*

*which it should have been guided. By reason of giving the directions on 16th February, 1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or other vise the injustice noticed will remain forever a blot on justice. It has been said long time ago that "Actus Curiae Neminem Gravabit"-an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law."*

***TC.*** *The provisions of Section 6 read with Section 7 of the Act of 1952 in the facts and circumstances of this case are the procedure established by law and any deviation therefrom even by a judicial direction will be a negation of the rule of law. The directions of the Court dated February 16, 1984 were contrary to these statutory provisions and were, therefore, violative of Article 21. Article 21 safeguards one right of appeal on facts and law.*

***41.*** *In the aforesaid view of the matter and the principle reiterated, it is manifest that the appellant has not been ordered to be tried by a procedure mandated by law, but by a procedure which was violative of Article 21 of the Constitution. That is violative of Articles 14 and 19 of the Constitution also, as is evident from the observations of the 7 Judges Bench judgment in Anwar Ali Sarkar's case (supra) where this Court found that even for a criminal who was alleged to have committed an offence, a special trial would be per se illegal because it will deprive the accused of his substantial and valuable privileges of defences which, others similarly charged, were able to claim. As Justice Vivian Bose observed in the said decision at page 366 of the report, it matters not whether it was done in good faith, whether it was done for the convenience of Government, whether the process could be scientifically classified and labelled, or whether it was an experiment for speedier trial made for the good of society at large. Justice Bose emphasised that it matters not how lofty and laudable the motives were. The question which must be examined is, can fair minded, reasonable, unbiased and resolute men regard that with equanimity and call it reasonable, just and fair, regard it as equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the*

*conditions which are obtained in India today. Judged by that view the singling out of the appellant in this case for a speedier trial by the High Court for an offence of which the High Court had no jurisdiction to try under the Act of 1952 was, in our opinion, unwarranted, unprecedented and the directions given by this Court for the said purpose, were not warranted. If that is the position, when that fact is brought to our notice we must remedy the situation. In rectifying the error, no procedural inhibitions should debar this Court because no person should suffer by reason of any mistake of the Court. The Court, as is manifest, gave its directions on 16th February, 1984. Here no rule of res judicata would apply to prevent this Court from entertaining the grievance and giving appropriate directions. In this connection, reference may be made to the decision of the Gujarat High Court in Soni Vrajlal Jethalal v. Soni Jadavji Govindji and others, A.I.R. 1972 Guj. 148. Where D.A. Desai, J. speaking for the Gujarat High Court observed that no act of the court or irregularity can come in the way of justice being done and one of the highest and the first duty of all Courts is to take care that the act of the Court does no in jury to the suitors.*

***47.*** *In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions*

*on 16th February, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper- book. He argued that since the transfers have been made under section 407, the procedure would be that given in section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of April 5, 1985 which was made in the presence of the appellant and his Counsel as well as the Counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as*

*submitted by the appellant. It is a settled rule that if a decision has been given per incuriam the Court can ignore it. It is also true that the decision of this Court in the case of The Bengal Immunity Co. Ltd. v. The State of Bihar & Ors. [1955] 2 SCR 603 at 623 was not regarding an order which had become conclusive inter-parties. The Court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.*

***50.*** *This Court by majority held that Rule 12 of order XXXV of the Supreme Court Rules was invalid in so far as it related to the furnishing of security. The right to move the Supreme Court, it was emphasised, under Article 32 was an absolute right and the content of this right could not be circumscribed or impaired on any ground and an order for furnishing security for the respondent's costs retarded the assertion or vindication of the fundamental right under Article 32 and contravened the said right. The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the Court cannot make an order inconsistent with the fundamental rights guaranteed by*

*Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J. speaking for the majority of the Judges of this Court said that Article F 142(1) did not confer any power on this Court to contravene The provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At page 899 of the Reports, Gajendragadkar, J. reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice." But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws (Emphasis A supplied). The Court therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32. It follows, therefore, that the directions given by this Court on 16th February, 1984, on*

*the ground of expeditious trial by transferring Special Case No. 24 of 1982 and Special Case No. 3 of 1983 pending in the Court of Special Judge, Greater Bombay, Shri S.B. Sule, to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court was contrary to the relevant statutory provision, namely, section 7(2) of the Criminal law Amendment Act, 1952 and as such violative of Article 21 of the Constitution. Furthermore, it violates Article 14 of the Constitution as being made applicable to a very special case among The special cases, without any guideline as to which cases required speedier justice. If that was so as in Prem Chand Garg's case, that was a mistake of so great a magnitude that it deprives a man by being treated differently of his fundamental right for defending himself in a criminal trial in accordance with law. If that was so then when the attention of the Court is drawn the Court has always the power and the obligation to correct it ex debito justitiae and treat the second application by its inherent power as a power of review to correct the original mistake. No suitor should suffer for the wrong of the Court. This Court in Prem Chand Garg's case struck down not only the administrative order enjoined by Rule 12 for deposit of security in a petition under Article 32 of the Constitution*

*but also struck down the judicial order passed by the Court for non- deposit of such security in the subsequent stage of the same proceeding when attention of the Court to the infirmity of the rule was drawn. It may be mentioned that Shah, J. was of the opinion that rule 12 was not violative. For the present controversy it is not necessary to deal with this aspect of the matter.*

***59.*** *Here the appellant has a further right under Article 21 of the Constitution-a right to trial by a Special Judge under section 7(1) of the 1952 Act which is the procedure established by law made by the Parliament, and a further right to move the High Court by way of, revision or first appeal under section 9 of the said Act. He has also a right not to suffer any order passed behind his back by a Court in violation of the basic principles of natural justice. Directions having been given in this case as we have seen without hearing the appellant though it appears from the circumstances that the order was passed in the presence of the counsel for the appellant, these were bad.*

***64.*** *The right of appeal under section 374 is limited to Clause 24 of Letters Patent. It was further submitted that the expression 'Extraordinary original criminal jurisdiction' under section 374 has to be understood having regard to the language used in the Code and other*

*relevant statutory provisions and not with reference to decisions wherein Courts described jurisdiction acquired by transfer as extraordinary original jurisdiction. In that view the decisions referred to by Shri Jethmalani being Kavasji Pestonji Dalal v. Rustomji Sorabji jamadar & Anr., AIR 1949 Bom. 42, Sunil Chandra Roy & Anr. v. The State, AIR 1954 Cal. 305, Sasadhar Acharjya & Anr. v. Sir Charles Tegart & Ors., [1935] Cal. Weekly Notes 1088, Peoples' Insurance Co. Ltd. v. Sardul Singh Caveeshgar & Ors., AIR 1961 Punj. 87 and P.P. Front, New Delhi v. K. K. Birla, [1984] Cr. L.J. 545 are not relevant.*

***65.** It appears to us that there is good deal of force in the argument that-section 411A of the old Code which corresponds to section 374 of the new Code contained the expression 'original jurisdiction'. The new Code abolished the original jurisdiction of High Courts but retained the extraordinary original criminal jurisdiction conferred by clause 24 of the Letters Patent which some of the High Courts had.*

***66.** The right of appeal is, therefore, confined only to cases decided by the High Court in its Letter Patent jurisdiction which in terms is `extraordinary original criminal jurisdiction'.*

***67.*** *By the time the new Code of Criminal Procedure 1973 was framed, Article 21 had not been interpreted so as to include one right of appeal both on facts and law.*

***74.*** *If a discrimination is brought about by judicial perception and not by executive whim, if it is unauthorised by law, it will be in derogation of the right of the appellant as the special procedure in Anwar Ali Sarkar's case (supra) curtailed the rights and privileges of the accused. Similarly, in this case by judicial direction the rights and privileges of the accused have been curtailed without any justification in law. Reliance was placed on the observations of the seven Judges Bench in Re: Special Courts Bill, 1978 (supra). Shri Jethmalani relied on the said observations therein and emphasised that purity in public life is a desired goal at all times and in all situations and ordinary Criminal Courts due to congestion of work cannot reasonably be expected to bring the prosecutions to speedy termination. He further submitted that it is imperative that persons holding high public or political office must be speedily tried in the interests of justice. Longer these trials last, justice will tarry, assuming the charges to be justified, greater will be the impediments in fostering democracy, which is not a plant of easy growth. All this is true but the trial even of person holding public office though to be made speedily must be*

*done in accordance with the procedure established by law. The provisions of section 6 read with section 7 of the Act of 1952 in the facts and circumstances of this case is the procedure established by law; any deviation even by a judicial direction will be negation of the rule of law.*

***81.*** *This case has caused us considerable anxiety. The appellant accused has held an important position in this country, being the Chief Minister of a premier State of the country. He has been charged with serious criminal offences. His trial in accordance with law and the procedure established by law would have to be in accordance with the 1952 Act. That could not possibly be done because of the directions of this Court dated 16th February, 1984, as indicated above. It has not yet been found whether the appellant is guilty or innocent. It is unfortunate, unfortunate for the people of the State, unfortunate for the country as a whole, unfortunate for the future working of democracy in this country which, though is not a plant of an easy growth yet is with deep root in the Indian polity that delay has occurred due to procedural wrangles. The appellant may be guilty of grave offences alleged against him or he may be completely or if not completely to a large extent, innocent. Values in public life and perspective of these values in public life, have undergone serious changes and erosion during the last*

*few decades. What was unheard of before is common place today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of the cross-roads of values. It is, for the sovereign people of the country to settle those conflicts yet the Courts have vital roles to play in such matters. With the avowed object of speedier trial the case of the appellant had been transferred to the High Court but on grounds of expediency of trial he cannot be subjected to a procedure unwarranted by law, and contrary to the constitutional provisions. The appellant may or may not be an ideal politician. It is a fact, however, that the allegations have been brought against him by a person belonging to a political party opposed to his but that is not the decisive factor. If the appellant Shri Abdul Rehman Antulay has infringed law, he must be dealt with in accordance with the law. We proclaim and pronounce that no man is above the law, but at the same time reiterate and declare that no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it. This Court? in its anxiety to facilitate the parties to have a speedy trial gave directions on 16th February, 1984 as mentioned hereinbefore without conscious awareness of the exclusive jurisdiction of the Special Courts under the 1952 Act and*

*that being the only procedure established by law, there can be no deviation from the terms of Article 21 of the Constitution of India. That is the only procedure under which it should have been guided. By reason of giving the directions on 16th February, 1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or other vise the injustice noticed will remain forever a blot on justice. It has been said long time ago that "Actus Curiae Neminem Gravabit"-an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law.*

***83.*** *This passage was quoted in the Gujarat High Court by D.A. Desai, J. speaking for the Gujarat High Court in Vrajlal v. Jadavji (supra) as mentioned before. It appears that in giving directions on 16th February, 1984, this Court acted per incuriam inasmuch it did not bear in mind consciously the consequences and the provisions of sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in Anwar Ali Sarkar's case*

*(supra) which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the hand-maids of justice and not the mistress of the justice. Ex debite justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."*

*Article 21 as recently interpreted safeguards one right of appeal on facts and law. The trial by High Court in the present case cannot be deemed to be one under its 'extraordinary original criminal jurisdiction' which is confined to cases decided under Letters Patent jurisdiction. Therefore a right of appeal as of right is not available to the appellant under Section 374, CrPC.*

***"64.** The right of appeal under section 374 is limited to Clause 24 of Letters Patent. It was further submitted that the expression 'Extraordinary original criminal jurisdiction' under section 374 has to be understood having regard to the language used in the Code and other relevant statutory provisions and not with reference to decisions wherein Courts described jurisdiction acquired*

*by transfer as extraordinary original jurisdiction. In that view the decisions referred to by Shri Jethmalani being Kavasji Pestonji Dalal v. Rustomji Sorabji jamadar & Anr., AIR 1949 Bom. 42, Sunil Chandra Roy & Anr. v. The State, AIR 1954 Cal. 305, Sasadhar Acharjya & Anr. v. Sir Charles Tegart & Ors., [1935] Cal. Weekly Notes 1088, Peoples' Insurance Co. Ltd. v. Sardul Singh Caveeshgar & Ors., AIR 1961 Punj. 87 and P.P. Front, New Delhi v. K. K. Birla, [1984] Cr. L.J. 545 are not relevant.*

***65.** It appears to us that there is good deal of force in the argument that-section 411A of the old Code which corresponds to section 374 of the new Code contained the expression 'original jurisdiction'. The new Code abolished the original jurisdiction of High Courts but retained the extraordinary original criminal jurisdiction conferred by clause 24 of the Letters Patent which some of the High Courts had.*

***66.** The right of appeal is, therefore, confined only to cases decided by the High Court in its Letter Patent jurisdiction which in terms is `extraordinary original criminal jurisdiction'.*

***67.*** *By the time the new Code of Criminal Procedure 1973 was framed, Article 21 had not been interpreted so as to include one right of appeal both on facts and law."*

*The creation of a right to an appeal is an act which requires legislative authority, neither an inferior court nor the superior Court nor both combined can create such a right, it being one of limitation and extension of jurisdiction.*

***"57.*** *In aid of the submission that procedure for trial evolved in derogation of the right guaranteed under Article 21 of the Constitution would be bad, reliance was placed on Attorney General of India v. Lachma Devi and others, [1985] 2 Scale 144. In aid of the submission on the question of validity our attention was drawn to 'Jurisdiction and Illegality' by Amnon Rubinstein (1965 Edn.). The Parliament did not grant to the Court the jurisdiction to transfer a case to the High Court of Bombay. However, as the superior Court is deemed to have a general jurisdiction, the law presumes that the Court acted within jurisdiction. In the instant case that presumption cannot be taken, firstly because the question of jurisdiction was not agitated before the Court, secondly these directions were given per incuriem as mentioned*

*hereinbefore and thirdly the superior Court alone can set aside an error in its directions when attention is drawn to that error. This view is warranted only because of peculiar facts and circumstances of the present case. Here the trial of a citizen in a Special Court under special jurisdiction is involved, hence, the liberty of the subject is involved. In this connection, it is instructive to refer to page 126 of Rubinstein's aforesaid book. It has to be borne in mind that as in Kuchenmeister v. Home office, [1958] 1 Q.B. 496 here form becomes substance. No doubt, that being so it must be by decisions and authorities, it appears to us patently clear that the directions given by this Court on 16th February, 1984 were clearly unwarranted by constitutional provisions and in derogation of the law enacted by the Parliament. See the observations of Attorney General v. Herman James Sillem, [1864] 10 H.L.C. 703, where it was reiterated that the creation of a right to an appeal is an act which requires legislative authority, neither an inferior Court nor the superior Court or both combined can create such a right, it being one of limitation and extension of jurisdiction. See also the observations of Isaacs v. Roberston, [1984] 3 A.E.R. 140 where it was reiterated by Privy Council that if an order is regular it can be set aside by an appellate Court; if the order is irregular it can be set aside by the Court that*

*made it on the application being made to that Court either under the rules of that Court dealing expressly with setting aside orders for irregularity or ex debito justitiae if the circumstances warranted, namely, violation of the rules of natural justice or fundamental rights. In Ledgard v. Bull, 13 I.A. 134, it was held that under the old Civil Procedure Code under section 25 the superior Court could not make an order of transfer of a case unless the Court from which the transfer was souht to be made, had jurisdiction to try. In the facts of the instant case, the criminal revision application which was pending before the High Court even if it was deemed to be transferred to this Court under Article 139A of the Constitution it would not have vested this Court with power larger than what is contained in section 407 of Criminal Procedure Code. Under section 407 of the Criminal Procedure Code read with the Criminal law Amendment Act, the High Court could not transfer to itself proceedings under sections 6and 7 of the said Act. This Court by transferring the proceedings to itself, could not have acquired larger jurisdiction. The fact that the objection was not raised before this Court giving directions on 16th February, 1984 cannot amount to any waiver. In Meenakshi Naidoo v. Subramaniya Sastri, 14 I.A. 160 it was held that if there was inherent incompetence in a High Court to deal with all questions*

*before it then consent could not confer on the High Court any jurisdiction which it never possessed."*

*In this case no appointment of a High Court judge, as a Special Judge, has in fact been made, it is not possible to take the view that the statutory provisions permit the conferment of a jurisdiction to try his case on a High Court Judge as a Special Judge.*

***197.*** *Before dealing with these contentions, it may be useful to touch upon the question whether a judge of a High Court can be appointed by the State Government as a special judge to try offences of the type specified in section 6 of the 1952 Act. It will be seen at once that not all the judges of the High Court (but only those elevated from the State subordinate judiciary) would fulfill the qualifications prescribed under section 6(2) of the 1952 Act. Though there is nothing in ss. 6 and 7 read together to preclude altogether the appointment of a judge of the High Court fulfilling the above qualifications as a special judge, it would appear that such is not the (atleast not the normal) contemplation of the Act. Perhaps it is possible to argue that, under the Act, it is permissible for the State Government to appoint one of the High Court Judges (who has been a Sessions Judge) to be a Special Judge under*

*the Act. If that had been done, that Judge would have been a Special Judge and would have been exercising his original jurisdiction in conducting the trial. But that is not the case here. In response to a specific question put by us as to whether a High Court Judge can be appointed as a Special Judge under the 1952 Act, Shri Jethmalani submitted that a High Court Judge cannot be so appointed. I am inclined to agree. The scheme of the Act, in particular the provision contained in ss. 8(3A) and 9, militate against this concept. Hence, apart from the fact that in this case no appointment of a High Court Judge, as a Special Judge, has in fact been made, it is not possible to take the view that the statutory provisions permit the conferment of a jurisdiction to try this case on a High Court Judge as a Special Judge."*

*Parliament did not grant to the High Court the jurisdiction to transfer a case to itself. No presumption can be drawn that the superior court is deemed to have a general jurisdiction and it acted within it, because : firstly, the question of jurisdiction was not agitated before the Court, secondly, these directions were given per incuriam and thirdly, the superior Court alone can set aside an error in its directions when attention is drawn to that error. This view is warranted only because of peculiar facts and*

*circumstances of the present case. Here the trial of a citizen in a Special Court under special jurisdiction is involved, hence, the liberty of the subject is involved.*

***57.*** *In aid of the submission that procedure for trial evolved in derogation of the right guaranteed under Article 21 of the Constitution would be bad, reliance was placed on Attorney General of India v. Lachma Devi and others, [1985] 2 Scale 144. In aid of the submission on the question of validity our attention was drawn to 'Jurisdiction and Illegality' by Amnon Rubinstein (1965 Edn.). The Parliament did not grant to the Court the jurisdiction to transfer a case to the High Court of Bombay. However, as the superior Court is deemed to have a general jurisdiction, the law presumes that the Court acted within jurisdiction. In the instant case that presumption cannot be taken, firstly because the question of jurisdiction was not agitated before the Court, secondly these directions were given per incuriem as mentioned hereinbefore and thirdly the superior Court alone can set aside an error in its directions when attention is drawn to that error. This view is warranted only because of peculiar facts and circumstances of the present case. Here the trial of a citizen in a Special Court under special jurisdiction is involved, hence, the liberty of the subject is involved. In*

*this connection, it is instructive to refer to page 126 of Rubinstein's aforesaid book. It has to be borne in mind that as in Kuchenmeister v. Home office, [1958] 1 Q.B. 496 here form becomes substance. No doubt, that being so it must be by decisions and authorities, it appears to us patently clear that the directions given by this Court on 16th February, 1984 were clearly unwarranted by constitutional provisions and in derogation of the law enacted by the Parliament. See the observations of Attorney General v. Herman James Sillem, [1864] 10 H.L.C. 703, where it was reiterated that the creation of a right to an appeal is an act which requires legislative authority, neither an inferior Court nor the superior Court or both combined can create such a right, it being one of limitation and extension of jurisdiction. See also the observations of Isaacs v. Roberston, [1984] 3 A.E.R. 140 where it was reiterated by Privy Council that if an order is regular it can be set aside by an appellate Court; if the order is irregular it can be set aside by the Court that made it on the application being made to that Court either under the rules of that Court dealing expressly with setting aside orders for irregularity or ex debito justitiae if the circumstances warranted, namely, violation of the rules of natural justice or fundamental rights. In Ledgard v. Bull, 13 I.A. 134, it was held that under the old Civil Procedure*

*Code under section 25 the superior Court could not make an order of transfer of a case unless the Court from which the transfer was souht to be made, had jurisdiction to try. In the facts of the instant case, the criminal revision application which was pending before the High Court even if it was deemed to be transferred to this Court under Article 139A of the Constitution it would not have vested this Court with power larger than what is contained in section 407 of Criminal Procedure Code. Under section 407 of the Criminal Procedure Code read with the Criminal law Amendment Act, the High Court could not transfer to itself proceedings under sections 6and 7 of the said Act. This Court by transferring the proceedings to itself, could not have acquired larger jurisdiction. The fact that the objection was not raised before this Court giving directions on 16th February, 1984 cannot amount to any waiver. In Meenakshi Naidoo v. Subramaniya Sastri, 14 I.A. 160 it was held that if there was inherent incompetence in a High Court to deal with all questions before it then consent could not confer on the High Court any jurisdiction which it never possessed."*

*The appellant, in consequence of the impugned direction, isbeing tried by a court which has no jurisdiction - and*

*which cannot beempowered by the Supreme Court - to try him.*

***"208.** It follows from the above discussion that the appellant, in consequence of the impugned direction, is being tried by a 'Court which has no jurisdiction-and which cannot be empowered by the Supreme Court-to try him. The continued trial before the High Court, therefore, infringes Article 21 of the Constitution."*

*By the change of the forum of the trial the accused has been prejudiced. By this process he misses a forum of appeal because if the trial was handled by a Special Judge, the first appeal would lie to the High Court and a further appeal by special leave could come before the Supreme Court. If the matter is tried by the High Court there would be only one forum of appeal, being the Supreme Court, whether as of right or by way of special leave.*

- **PER INCURIAM**

*"Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step m the*

*reasoning on which it is based, is found, on that account to be demonstrably wrong. If a decision has been given 'per incuriam' the court can ignore it.*

***"42.** It appears that when this Court gave the aforesaid directions on 16th February, 1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions of law and the decision in Anwar Ali Sarkar's case (supra). See Halsbury's Laws of England, 4th End, Vol. 26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15; Dias on Jurisprudence, 5th Edn., pages 128 and 130; Young v. Bristol Aeroplane Co. Ltd., [1944] 2 AER 293 at 300. Also see the observations of Lord Goddard in Moore v. Hewitt, [1947] 2 A.E.R. 270 at 272-A and Penny v. Nicholas, [1950] 2 A.E.R. 89, 92A. "per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See Morelle v. Wakeling, [1955] 1 All E.R. 708, 718F. Also see State of Orissa v. The Titaghur Paper Mills Co. Ltd., [19851 3 SCR. We are of the opinion that in view of the clear provisions of section 7(2) of the Criminal Law Arnendment Act, 1952 and*

*Articles 14 and 21 of the Constitution, these directions were legally wrong.*

***47.*** *In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16th February, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper- book. He argued that since the transfers have been made under section 407, the procedure would be that given in section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of April 5, 1985 which was made in the presence of the appellant and his Counsel as well as the*

*Counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant. It is a settled rule that if a decision has been given per incuriam the Court can ignore it. It is also true that the decision of this Court in the case of The Bengal Immunity Co. Ltd. v. The State of Bihar & Ors. [1955] 2 SCR 603 at 623 was not regarding an order which had become conclusive inter-parties. The Court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties."*

*In giving directions on February 16, 1984, the Supreme Court acted per incuriam inasmuch as it did not bear in mind consciously the Consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in Anwar Ali Sarkar case, which was not adverted to by the Court. There was no argument, no submission and no decision on these aspects at all. There was no prayer in the appeal which was pending before the Court for the directions given. The Constitution*

*Bench of the Supreme Court was not called upon and did not decide the express limitation on the power conferred by Section 407 of the Code which includes offences by public servants mentioned in the 1952 Act to be overridden in the manner sought to be followed as the consequential direction of the Court. The Supreme Court did not have jurisdiction to transfer the case to itself.*

***39.*** *Shri Jethmalani sought to urge before us that the order made by the Court was not without jurisdiction or irregular. We are unable to agree. It appears to us that the order was quite clearly per incuriam. This Court was not called upon and did not decide the express limitation on the power conferred by section 407 of the Code which includes offences by public servants mentioned in the 1952 Act to be overridden in the manner sought to be followed as the consequential direction of this Court. This Court, to be plain, did not have jurisdiction to transfer the case to itself. That will be evident from an analysis of the different provisions of the Code as well as the 1952 Act. The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no Court. whether superior or inferior or both combined can enlarge the jurisdiction of a Court or divest*

*a person of his rights of revision and appeal. See in this connection the observations in M.L. Sethi v. R.P. Kapur (supra) in which Justice Mathew considered Anisminic, [1969] 2 AC 147 and also see Halsbury's Laws of England, 4th Edn. Vol. 10 page 327 at para 720 onwards and also Amnon Rubinstein 'Jurisdiction and Illegality' (1965 Edn. pages 16-50). Reference may also be made to Raja Soap Factory v. S. P. Shantaraj, [1965] 2 SCR 800.*

***55.****Shri Jethmalani urged that the directions given on 16th February, 1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created undersection 7(1) of the 1952 Act read with section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions. Furthermore, in giving such directions, this Court did not advert to or consider the effect of Anwar Ali Sarkar's case (supra) which was a binding precedent. A mistake on the part of the Court shall not cause prejudice to any one. He further added that the primary duty of every Court is to adjudicate the cases arising between the parties. According to him, it*

*is certainly open to a larger Bench to take a view different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a corrupt Chief Minister before a High Court, instead of a Judge designated by the State Government was not so injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does the impugned order promote justice? and (2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions;*

*(i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.*

*(ii) The right of revision to the High Court under section 9 of the Criminal Law Amendment Act.*

*(iii)The right of first appeal to the High Court under the same section.*

*(iv) The. right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary."*

***68.*** *Shri Ram Jethmalani made elaborate submissions before us regarding the purpose of the Criminal Law Amendment Act and the constitution of the Special Court. In our opinion, these submissions have no relevance and do not authorise this Court to confer a special jurisdiction on a High Court not warranted by the statute. The observations of this Court in Re The Special Courts Bill, 1978, [1979] 2 SCR 476 are not relevant for this purpose. Similarly, the observations on right of appeal in V. C. Shukla v. Delhi Administration, [1980] 3 SCR 500, Shri Jethmalani brought to our notice certain facts to say that the powers given in the Criminal Law Amendment Act were sought to be misused by the State Government under the influence of the appellant. In our opinion, these submissions are not relevant for the present purpose. Mr. Jethmalani submitted that the argument that in so far as section 407 purports to authorise such a transfer it stands repealed by section 7(1) of the Criminal Law Amendment Act is wrong. He said it can be done in its extraordinary criminal jurisdiction. We are unable to accept this submission. We are also unable to accept the submission that the order of transfer was made with full knowledge of section 7(1) of the Criminal Law Amendment*

*Act and the so- called exclusive jurisdiction was taken away from Special Judges and the directions were not given per incuriam. That is not right. He drew our attention to the principles of interpretation of statutes and drew our attention to the purpose of section 7(1) of the Act. He submitted that when the Amending Act changes the law, the change must be confined to the mischief present and intended to be dealt with. He drew us to the Tek Chand Committee Report and submitted that he did not wish that an occasional case withdrawn and tried in a High Court was because of delay in disposal of corruption cases. He further submitted that interference with existing jurisdiction and powers of superior Courts can only be by express and clear language. It cannot be brought about by a side wind.*

***70.*** *Shri Jethmalani highlighted before us that it was for the first time a Chief Minister had been found guilty of receiving quid pro quo for orders of allotment of cement to various builders by a Single Judge of the High Court confirmed by a Division Bench of the High Court. He also urged before us that it was for the first time such a Chief Minister did not have the courage to prosecute his special leave petition before this Court against the findings of three Judges of the High Court. Shri Jethmalani also urged that it was for the first time this Court found that a*

*case instituted in 1982 made no progress till 1984. Shri Jethmalani also sought to contend that section 7(1) of the 1952 Act states "shall be triable by Special Judges only", but does not say that under no circumstances the case will be transferred to be tried by the High Court even in its Extraordinary original Criminal Jurisdiction. He submitted that section 407(1)(iv) is very much in the statute and and it is not repealed in respect of the cases pending before the Special Judge. There is no question of repealing section 407(1)(iv). Section 407 deals with the power of the High Court to transfer cases and appeals. Section 7 is entirely different and one has to understand the scheme of the Act of 1952, he urged. It was an Act which provided for a more speedy trial of certain offences. For this it gave power to appoint Special Judges and stipulated for appointment of Special Judges under the Act. Section 7 states that notwithstanding anything contained in the Code, the offences mentioned in sub-section (1) of section 6 shall be triable by Special Judges only. By express terms therefore, it takes away the right to transfer cases contained in the Code to any other Court which is not a Special Court. Shri Jethmalani sought to urge that the Constitution Bench had considered this position. That is not so. He submitted that the directions of this Court on 16th February, 1984 were not given per*

*incuriam or void for any reason. He referred us to Dias on jurisprudence, 5th Edition, page 128 and relied on the decision of Milianges v. George Frank (Textiles) Ltd., [1975] 3 All E.R. 801 at 821. He submitted that the per incuriam rule A does not apply where the previous authority is alluded to. It is true that previous statute is referred to in the other judgment delivered on the same date in connection with different contentions. Section 7(1) was not referred to in respect of the directions given on 16th February, 1984 in the case of R.S. Nayak v. A.R. Antulay(supra). Therefore, as mentioned hereinbefore the observations indubitably were per incuriam. In this case in view of the specific language used in section 7, it is not necessary to consider the other submissions of Shri Jethmalani, whether the procedure for trial by Special Judges under the Code has stood repealed or not. The concept of repeal may have no application in this case. It is clear that words should normally be given their ordinary meaning bearing in mind the context. It is only where the literal meaning is not clear that one resorts to the golden rule of interpretation or the mischief rule of interpretation. This is well illustrated from the observations of Tindal, C.J. in Sussex Peerage Claim, [18441 11 Cl & Fin 85 at 143. He observed:*

*"The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Pyer,* ***Stewell v. Lord Zouch, [1569] 1 Plowd 353 at 369,*** *is a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress".*

***73.*** *Dealing with the submission that the order of the Constitution Bench was void or non-est and it violated the principles of natural justice, it was submitted by Shri Jethmalani that it was factually incorrect. Inspite of the submissions the appellant did not make any submission as to directions for transfer as asked for by Shri Tarkunde. It was submitted that the case should be transferred to the High Court. The Court merely observed there that they had given ample direction. No question of submission arose after the judgment was delivered. In any case, if this*

*was bad the fact that no objection had been raised would not make it good. No question of technical rules or res judicata apply, Shri Jethmalani submitted that it would amount to an abuse of the process of the Court. He referred us to Re Tarling, [1979] 1 All E.R. 981 at 987; Ali v. Secretary of State for the Home Department, [1984] 1 All E.R. 1009 at 1014 and Seervai's Constitutional Law, Vol. 1, pages 260 to 265. We are of the opinion that these submissions are not relevant. There is no abuse of the process of the Court. Shri Jethmalani submitted that there was no prejudice to the accused. There was prejudice to the accused in being singled out as a special class of accused for a special dispensation without room for any appeal as of right and without power of the revision to the High Court. There . prejudice in that. Reliance placed on the decision of this Court in Ramesh Chandra Arora v. The State, [1960] 1 S.C.R. 924 at 927 was not proper in the facts of this case.*

***83.*** *This passage was quoted in the Gujarat High Court by D.A. Desai, J. speaking for the Gujarat High Court in Vrajlal v. Jadavji (supra) as mentioned before. It appears that in giving directions on 16th February, 1984, this Court acted per incuriam inasmuch it did not bear in mind consciously the consequences and the provisions of sections 6 and 7 of the 1952 Act and the binding nature*

*of the larger Bench decision in Anwar Ali Sarkar's case (supra) which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the hand-maids of justice and not the mistress of the justice. Ex debite justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."*

*The impugned direction [or transfer was a suo motu direction of the Court. This particular aspect of the matter had not been argued and counsel did not have an opportunity of pointing out the legal bar against transfer and the Court did not take note of the special provisions in Section 7(1) of the 1952 Act. If this position had been appropriately placed, the direction for transfer from the court of exclusive jurisdiction to the High Court would not have been made by the Constitution Bench. It is appropriate to presume that the Supreme Court never intends to act contrary to law.*

***94.*** *Brother Mukharji in his elaborate judgment has come to the conclusion that the question of transferring the case from the court of the special Judge to the High Court was not in issue before the five- Judge Bench. Mr. Jethmalani in course of the argument has almost accepted the position that this was not asked for on behalf of the complainant at the hearing of the matter before the Constitution Bench. From a reading of the judgment of the Constitution Bench it appears that the transfer was a suo motu direction of the court. Since this particular aspect of the matter had not been argued and counsel did not have an opportunity of pointing out the legal bar against transfer, the learned Judges of this Court obviously did not take note of the special provisions in section 7(1) of the 1952 Act. I am inclined to agree with Mr. Rao for Antulay that if this position had been appropriately placed, the direction for transfer from the court of exclusive jurisdiction to the High Court would not have been made by the Constitution Bench. It is appropriate to presume that this Court never' intends to act contrary to law."*

*The majority took the view that an order made without jurisdiction is not a valid one and can be ignored, overlooked or brushed aside depending upon the situation. I do not propose to delve into that aspect in my separate*

*judgment.*

***97.*** *One of the well-known principles of law is that decision made by a competent court should be taken as final subject to further proceedings contemplated by the law of procedure. In the absence of any further proceeding, the direction of the Constitution Bench of 16th of February, 1984 became final and it is the obligation of everyone to implement the direction of the apex Court. Such an order of this Court should by all canons of judicial discipline be binding on this Court as well and cannot be interfered with after attaining finality. Brother Mukharji has referred to several authorities in support of his conclusion that an order made without jurisdiction is not a valid one and can be ignored, overlooked or brushed aside depending upon the situation. I do not propose to delve into that aspect in my separate judgment."*

*Section 7(1) of the 1952 Act creates a condition which is sine qua non for the trial of offences under Section 6(1) of the said Act. The condition is that notwithstanding anything contained in the Code of Criminal Procedure or any other law, the said offences shall be triable by Special Judges only. By express terms, therefore, it takes away the right to transfer cases contained in the Code to*

*any other court which is not a Special Court and this is notwithstanding anything contained in Sections 406 and 407 of the Code.*

***24.*** *Section 7(1) of the 1952 Act creates a condition which is sine qua non for the trial of offences under section 6(1) of the said Act. The condition is that notwithstanding anything contained in the Code of Criminal Procedure or any other law, the said offences shall be triable by Special Judges only. (Emphasis supplied). Indeed conferment of the exclusive jurisdiction of the Special Judge is recognised by the judgment delivered by this Court in A.R. Antulay v. Ramdas Sriniwas Nayak and another, [1984] 2 S.C.R. 914 where this Court had adverted to section 7(1) of the 1952 Act and at page 931 observed that section 7 of the 1952 Act conferred exclusive jurisdiction on the Special Judge appointed under section 6 to try cases set out in section 6(1)(a) and 6(1)(b) of the said Act. The Court emphasised that the Special Judge had exclusive jurisdiction to try offences enumerated in section 6(1)(a) and (b). In spite of this while giving directions in the other matter, that is, R.S. Nayak v. A.R. Antulay, [1984] 2 S.C.R. 495 at page 557, this Court directed transfer to the High Court of Bombay the cases pending before the Special Judge. It is true that section*

*7(1) and Section 6 of the 1952 Act were referred to while dealing with the other matters but while dealing with the matter of directions and giving the impugned directions, it does not appear that the Court kept in mind the exclusiveness of the jurisdiction of the Special Court to try the offences enumerated in section 6.*

***34.** Section 7 of the 1952 Act provides that notwithstanding anything contained in the Code of Criminal Procedure, or in any other law the offences specified in sub-section (1) of section 6 shall be triable by Special Judges only. So the law provides for a trial by Special Judge only and this is notwithstanding anything contained in sections 406 and 407 of the Code of Criminal Procedure, 1973. Could it, therefore, be accepted that this Court exercised a power not given to it by Parliament or the Constitution and acted under a power not exercisable by it? The question that has to be asked and answered is if a case is tried by a Special Judge or a court subordinate to the High Court against whose order an appeal or a revision would lie-to the High Court, is transferred by this Court to the High Court and such right of appeal or revision is taken away would not an accused be in a worse position than others? This Court in R.S. Nayak v. A.R. Antulay, [1984] 2 S.C.R. 495 did not refer either to section*

*406 or section 407 of the Code. It is only made dear that if the application had been made to the High Court under section 407 of the Code, the High Court might have transferred the case to itself.*

***68.** Shri Ram Jethmalani made elaborate submissions before us regarding the purpose of the Criminal Law Amendment Act and the constitution of the Special Court. In our opinion, these submissions have no relevance and do not authorise this Court to confer a special jurisdiction on a High Court not warranted by the statute. The observations of this Court in Re The Special Courts Bill, 1978, [1979] 2 SCR 476 are not relevant for this purpose. Similarly, the observations on right of appeal in V. C. Shukla v. Delhi Administration, [1980] 3 SCR 500, Shri Jethmalani brought to our notice certain facts to say that the powers given in the Criminal Law Amendment Act were sought to be misused by the State Government under the influence of the appellant. In our opinion, these submissions are not relevant for the present purpose. Mr. Jethmalani submitted that the argument that in so far as section 407 purports to authorise such a transfer it stands repealed by section 7(1) of the Criminal Law Amendment Act is wrong. He said it can be done in its extraordinary criminal jurisdiction. We are unable to*

*accept this submission. We are also unable to accept the submission that the order of transfer was made with full knowledge of section 7(1) of the Criminal Law Amendment Act and the so- called exclusive jurisdiction was taken away from Special Judges and the directions were not given per incuriam. That is not right. He drew our attention to the principles of interpretation of statutes and drew our attention to the purpose of section 7(1) of the Act. He submitted that when the Amending Act changes the law, the change must be confined to the mischief present and intended to be dealt with. He drew us to the Tek Chand Committee Report and submitted that he did not wish that an occasional case withdrawn and tried in a High Court was because of delay in disposal of corruption cases. He further submitted that interference with existing jurisdiction and powers of superior Courts can only be by express and clear language. It cannot be brought about by a side wind.*

***70.*** *Shri Jethmalani highlighted before us that it was for the first time a Chief Minister had been found guilty of receiving quid pro quo for orders of allotment of cement to various builders by a Single Judge of the High Court confirmed by a Division Bench of the High Court. He also urged before us that it was for the first time such a Chief Minister did not have the courage to prosecute his special*

*leave petition before this Court against the findings of three Judges of the High Court. Shri Jethmalani also urged that it was for the first time this Court found that a case instituted in 1982 made no progress till 1984. Shri Jethmalani also sought to contend that section 7(1) of the 1952 Act states "shall be triable by Special Judges only", but does not say that under no circumstances the case will be transferred to be tried by the High Court even in its Extraordinary original Criminal Jurisdiction. He submitted that section 407(1)(iv) is very much in the statute and and it is not repealed in respect of the cases pending before the Special Judge. There is no question of repealing section 407(1)(iv). Section 407 deals with the power of the High Court to transfer cases and appeals. Section 7 is entirely different and one has to understand the scheme of the Act of 1952, he urged. It was an Act which provided for a more speedy trial of certain offences. For this it gave power to appoint Special Judges and stipulated for appointment of Special Judges under the Act. Section 7 states that notwithstanding anything contained in the Code, the offences mentioned in sub-section (1) of section 6 shall be triable by Special Judges only. By express terms therefore, it takes away the right to transfer cases contained in the Code to any other Court which is not a Special Court. Shri Jethmalani sought to*

*urge that the Constitution Bench had considered this position. That is not so. He submitted that the directions of this Court on 16th February, 1984 were not given per incuriam or void for any reason. He referred us to Dias on jurisprudence, 5th Edition, page 128 and relied on the decision of Milianges v. George Frank (Textiles) Ltd., [1975] 3 All E.R. 801 at 821. He submitted that the per incuriam rule A does not apply where the previous authority is alluded to. It is true that previous statute is referred to in the other judgment delivered on the same date in connection with different contentions. Section 7(1) was not referred to in respect of the directions given on 16th February, 1984 in the case of R.S. Nayak v. A.R. Antulay(supra). Therefore, as mentioned hereinbefore the observations indubitably were per incuriam. In this case in view of the specific language used in section 7, it is not necessary to consider the other submissions of Shri Jethmalani, whether the procedure for trial by Special Judges under the Code has stood repealed or not. The concept of repeal may have no application in this case. It is clear that words should normally be given their ordinary meaning bearing in mind the context. It is only where the literal meaning is not clear that one resorts to the golden rule of interpretation or the mischief rule of interpretation. This is well illustrated from the*

*observations of Tindal, C.J. in Sussex Peerage Claim, [18441 11 Cl & Fin 85 at 143. He observed:*

*The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Pyer, Stewell v. Lord Zouch, [1569] 1 Plowd 353 at 369 is a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress".*

*If a case could be transferred under Section 406 of the Code from a Special Judge it could only be transferred to another Special Judge or a court of superior jurisdiction but subordinate to the High Court. No such court exists. Therefore, under this section the power of transfer can only be from one Special Judge to another Special Judge.*

***28.*** *It is obvious that if a case could be transferred under section 406 of the Code from a Special Judge it could only be transferred to another Special Judge or a court of superior jurisdiction but subordinate to the High Court. No such court exists. Therefore, under this section the power of transfer can only be from one Special Judge to another Special Judge. Under section 407 however, corresponding to section 526 of the old Code, it was submitted the High Court has power to transfer any case to itself for being tried by it."*

*Therefore, the order of the Supreme Court transferring the cases to the High Court on February 16, 1984, was not authorised by law, namely, Section 7(1) of the 1952 Act. The Court, by its directions, could not confer jurisdiction on the High Court of Bombay to try any case for which it did not possess such jurisdiction under the scheme of the 1952 Act. [It seems this aspect of Section 7 was not present in the mind of the Court while passing the impugned directions.*

***38.****While applying the ratio to the facts of the present controversy, it has to be borne in mind that section 7(1) of the 1952 Act creates a condition which is sine qua non for the trial of offenders under section 6(1) of that Act. In this*

*connection, the offences specified under section 6(1) of the 1952 Act are those punishable under sections 161, 162, 163, 164 and 165A of the Indian Penal Code and section 5 of the 1947 Act. Therefore, the order of this Court transferring the cases to the High Court on 16th February, 1984, was not authorised by law. This Court, by its directions could not confer jurisdiction on the High Court of Bombay to try any case which it did not possess such jurisdiction under the scheme of the 1952 Act. It is true that in the first judgment in A.R. Antulay v. Ramdas Sriniwas Nayak and another, [1984] 2 S.C.R. 914 when this Court was analysing the scheme of the 1952 Act, it referred to sections 6 and 7 at page 931 of the Reports. The arguments, however, were not advanced and it does not appear that this aspect with its remifications was present in the mind of the Court while giving the impugned directions."*

*In this case in view of the specific language used in Section 7 of the Criminal Law Amendment Act, it is not necessary to consider the other submissions viz. whether the procedure for trial by Special Judges under the Code has stood repealed or not. The concept of repeal may have no application in this case. It is clear that words should normally be given their ordinary meaning bearing in mind*

*the context. It is only where the literal meaning is not clear that one resorts to the golden rule of interpretation or the mischief rule of interpretation.*

***70.*** *Shri Jethmalani highlighted before us that it was for the first time a Chief Minister had been found guilty of receiving quid pro quo for orders of allotment of cement to various builders by a Single Judge of the High Court confirmed by a Division Bench of the High Court. He also urged before us that it was for the first time such a Chief Minister did not have the courage to prosecute his special leave petition before this Court against the findings of three Judges of the High Court. Shri Jethmalani also urged that it was for the first time this Court found that a case instituted in 1982 made no progress till 1984. Shri Jethmalani also sought to contend that section 7(1) of the 1952 Act states "shall be triable by Special Judges only", but does not say that under no circumstances the case will be transferred to be tried by the High Court even in its Extraordinary original Criminal Jurisdiction. He submitted that section 407(1)(iv) is very much in the statute and and it is not repealed in respect of the cases pending before the Special Judge. There is no question of repealing section 407(1)(iv). Section 407 deals with the power of the High Court to transfer cases and appeals. Section 7 is entirely different and one has to*

*understand the scheme of the Act of 1952, he urged. It was an Act which provided for a more speedy trial of certain offences. For this it gave power to appoint Special Judges and stipulated for appointment of Special Judges under the Act. Section 7 states that notwithstanding anything contained in the Code, the offences mentioned in sub-section (1) of section 6 shall be triable by Special Judges only. By express terms therefore, it takes away the right to transfer cases contained in the Code to any other Court which is not a Special Court. Shri Jethmalani sought to urge that the Constitution Bench had considered this position. That is not so. He submitted that the directions of this Court on 16th February, 1984 were not given per incuriam or void for any reason. He referred us to Dias on jurisprudence, 5th Edition, page 128 and relied on the decision of Milianges v. George Frank (Textiles) Ltd., [1975] 3 All E.R. 801 at 821. He submitted that the per incuriam rule A does not apply where the previous authority is alluded to. It is true that previous statute is referred to in the other judgment delivered on the same date in connection with different contentions. Section 7(1) was not referred to in respect of the directions given on 16th February, 1984 in the case of R.S. Nayak v. A.R. Antulay(supra). Therefore, as mentioned hereinbefore the observations indubitably were per incuriam. In this case in*

*view of the specific language used in section 7, it is not necessary to consider the other submissions of Shri Jethmalani, whether the procedure for trial by Special Judges under the Code has stood repealed or not. The concept of repeal may have no application in this case. It is clear that words should normally be given their ordinary meaning bearing in mind the context. It is only where the literal meaning is not clear that one resorts to the golden rule of interpretation or the mischief rule of interpretation. This is well illustrated from the observations of Tindal, C.J. in Sussex Peerage Claim, [18441 11 Cl & Fin 85 at 143. He observed:*

*"The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Pyer, Stewell v. Lord Zouch, [1569] 1 Plowd 353 at 369 is a key to open*

*the minds of the makers of the Act, and the mischiefs which they intend to redress".*

***71.*** *This passage states the commonly accepted view concerning the relationship between the literal and mischief rules of interpretation of statutes. Here there is no question as to what was the previous law and what was intended to be placed or replaced as observed by Lord Wilberforce in 274 House of Lords Debate, Col. 1294 on 16th November, 1966, see Cross; Statutory Interpretation, second edition, page 36. He observed that the interpretation of legislation is just a part of the process of being a good lawyer; a multi-faceted thing, calling for many varied talents; not a subject which can be confined in rules. When the words are clear nothing remains to be seen. If words are as such ambiguous or doubtful other aids come in. In this context, the submission of controversy was whether the Code repealed the Act of 1952 or whether it was repugnant or not is futile exercise to undertake. Shri Jethmalani distinguished the decision in Chadha's case, which has already been discussed. It is not necessary to discuss the controversy whether the Chartered High Courts contained the Extraordinary original Criminal Jurisdiction by the Letters Patent."*

*However, wide and plenary the language of the article, the directions given by the court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute. If the provisionsof the 1952 Act read with Article 139- A and Sections 406- 407 of theCrPC do not permit the transfer of the case from a Special Judge tothe High Court, that effect cannot be achieved indirectly.*

***206.*** *The reliance placed in this context on the provisions contained in articles 140 and 142 of the Constitution and S. 401 read with S. 386 of the Cr.P.C. does not also help. Article 140 is only a provisions enabling Parliament to confer supplementary powers on the Supreme Court to enable it to deal more effectively to exercise the jurisdication conferred on it by or under the Constitution. Article 142 is also not of much assistance. In the first place, the operative words in that article, again are "in the exercise of its jurisdiction." The Supreme Court was hearing an appeal from the order of discharge and connected matters. There was no issue or controversy or discussion before it as to the comparative merits of a trial before a special judge vis-a-vis one before the High Court. There was only an oral request said to have been made, admittedly, after the judgment was announced. Wide as the powers under article 141 are, they do not in my view,*

*envisage an order of the type presently in question. The Nanavati case (1961 SCR 497, to which reference was made by Sri Jethmalani, involved a totally different type of situation. Secondly, it is one of the contentions of the appellant that an order of this type, far from being necessary for doing complete justice in the cause or matter pending before the Court, has actually resulted in injustice, an aspect discussed a little later. Thirdly, however wide and plenary the language of the article, the directions given by the Court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute. If the provisions of the 1952 Act read with article 139-A and Ss.406-407 of the Cr.P.C. do not permit the transfer of the case from a special judge to the High Court, that effect cannot be achieved indirectly. it is, therefore, difficult to say, in the circumstances of the case, that the Supreme Court can issue the impugned direction in exercise of the powers under Article 142 or under s. 407 available to it as an appellate court."*

*Constitution of India -Articles 136 and 134 Supreme Court's order suo motu directing withdrawal of case against accused from Special Judge and transfer thereof to High Court, without affording any opportunity of hearing to the accused - Whether liable to be set aside by the Court in fresh appeal on ground of violation of*

*principles of natural justice - Whether conduct and lapses on the part of the accused himself in not availing opportunities to be taken into account*
*Natural Justice - Audi alteram partem - Degree of compliance required varies from case to case -Whether substantial injustice caused to be seen (Per Ranganathan, J.)*

*The directions dated February 16, 1984 have been issued without observing the principle of audi altcram partem. The directions at SCC p. 243 (SCR p. 557) were certainly without hearing though in the presence of the parties.*

***47.** In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16th February, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation*

*of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper- book. He argued that since the transfers have been made under section 407, the procedure would be that given in section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of April 5, 1985 which was made in the presence of the appellant and his Counsel as well as the Counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant. It is a settled rule that if a decision has been given per incuriam the Court can ignore it. It is also true that the decision of this Court in the case of The Bengal Immunity Co. Ltd. v. The State of Bihar & Ors. [1955] 2 SCR 603 at 623 was not regarding an order which had become conclusive inter-parties. The Court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different*

*view from one previously taken in a different case between different parties.*

***59.*** *Here the appellant has a further right under Article 21 of the Constitution-a right to trial by a Special Judge under section 7(1) of the 1952 Act which is the procedure established by law made by the Parliament, and a further right to move the High Court by way of, revision or first appeal under section 9 of the said Act. He has also a right not to suffer any order passed behind his back by a Court in violation of the basic principles of natural justice. Directions having been given in this case as we have seen without hearing the appellant though it appears from the circumstances that the order was passed in the presence of the counsel for the appellant, these were bad.*

***77.*** *The directions given by the order of 16th February, 1984 at page 557 were certainly without hearing though in the presence of the parties. Again consequential upon directions these were challenged ultimately in this Court and finally this Court reserved the right to challenge these by an appropriate application."*

***II. SUPREME COURT'S POWER OF INTERFERENCE WITH ITS EARLIER ORDER***

*An order of the Court, be it administrative or judicial, which is given per incuriam and in violation of certain*

*constitutiona1 limitations and in derogation of the principles of natural justice, can always be remedied by the Court ex debito justitiae . It can do so in exercise of its inherent jurisdiction in any proceeding_pending before it without insisting on the formalities of a review application. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity.*

***47.*** *In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16th February, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram*

*partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper- book. He argued that since the transfers have been made under section 407, the procedure would be that given in section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of April 5, 1985 which was made in the presence of the appellant and his Counsel as well as the Counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant. It is a settled rule that if a decision has been given per incuriam the Court can ignore it. It is also true that the decision of this Court in the case of The Bengal Immunity Co. Ltd. v. The State of Bihar & Ors. [1955] 2 SCR 603 at 623 was not regarding an order which had become conclusive inter-parties. The Court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.*

***48.*** *According to Shri Jethmalani, the doctrine of per incuriam has no application in the same proceedings. We are unable to accept this A contention. We are of the opinion that this Court is not powerless to correct its error which has the effect of depriving a citizen of his fundamental rights and more so, the right to life and liberty. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or Article 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the fundamental rights of a citizen or any legal right of the petitioner. See the observations in Prem Chand Garg v. Excise Commissioner, U.P. Allahabad, [1963] Supp. 1 S.C.R. 885.*

***50.*** *This Court by majority held that Rule 12 of order XXXV of the Supreme Court Rules was invalid in so far as it related to the furnishing of security. The right to move the Supreme Court, it was emphasised, under Article 32 was an absolute right and the content of this right could not be circumscribed or impaired on any ground and an order for furnishing security for the respondent's*

*costs retarded the assertion or vindication of the fundamental right under Article 32 and contravened the said right. The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the Court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J. speaking for the majority of the Judges of this Court said that Article F 142(1) did not confer any power on this Court to contravene The provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At page 899 of the Reports, Gajendragadkar, J. reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice." But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed*

*by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws (Emphasis A supplied). The Court therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32. It follows, therefore, that the directions given by this Court on 16th February, 1984, on the ground of expeditious trial by transferring Special Case No. 24 of 1982 and Special Case No. 3 of 1983 pending in the Court of Special Judge, Greater Bombay, Shri S.B. Sule, to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court was contrary to the relevant statutory provision, namely, section 7(2) of the Criminal law Amendment Act, 1952 and as such violative of Article 21 of the Constitution. Furthermore, it violates Article 14 of the Constitution as being made applicable to a very special case among The special cases, without any guideline as to which cases required speedier justice. If that was so as in Prem Chand Garg's case, that was a mistake of so great a magnitude that it deprives a man by being treated differently of his fundamental right for defending himself in a criminal trial in accordance with law. If that was so then when the attention of the Court is drawn the Court has always the power and the*

*obligation to correct it ex debito justitiae and treat the second application by its inherent power as a power of review to correct the original mistake. No suitor should suffer for the wrong of the Court. This Court in Prem Chand Garg's case struck down not only the administrative order enjoined by Rule 12 for deposit of security in a petition under Article 32 of the Constitution but also struck down the judicial order passed by the Court for non- deposit of such security in the subsequent stage of the same proceeding when attention of the Court to the infirmity of the rule was drawn. It may be mentioned that Shah, J. was of the opinion that rule 12 was not violative. For the present controversy it is not necessary to deal with this aspect of the matter.*

***55.** Shri Jethmalani urged that the directions given on 16th February, 1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created undersection 7(1) of the 1952 Act read with section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions.*

*Furthermore, in giving such directions, this Court did not advert to or consider the effect of Anwar Ali Sarkar's case (supra) which was a binding precedent. A mistake on the part of the Court shall not cause prejudice to any one. He further added that the primary duty of every Court is to adjudicate the cases arising between the parties. According to him, it is certainly open to a larger Bench to take a view different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a corrupt Chief Minister before a High Court, instead of a Judge designated by the State Government was not so injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does the impugned order promote justice? and (2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions;*

*(i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.*

*(ii) The right of revision to the High Court under section 9 of the Criminal Law Amendment Act.*

*(iii)The right of first appeal to the High Court under the same section.*

*(iv) The. right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary."*

***75.*** *Our attention was drawn to Article 145(e) and it was submitted that review can be made only where power is expressly conferred and the review is subject to the rules made under Article 145(e) by the Supreme Court. The principle of finality on which the Article proceeds applies to both judgments and orders made by the Supreme Court. But directions given per incuriam and in violation of certain constitutional limitations and in derogation of the principles of natural justice can always be remedied by the court ex debite justitiae. Shri Jethmalani's submission was that ex debite justitiae, these directions could not be recalled. We are unable to agree with this submission.*

*The basic fundamentals of the administration of justice are that no man should suffer because of the mistake of the court. No man should suffer a wrong by technical*

*procedure of irregu1arities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, the court must do justice to him. If a man has been wronged, so 1ong as it lies within the human machinery of administration of justice, that wrong must be remedied.*

***50.*** *This Court by majority held that Rule 12 of order XXXV of the Supreme Court Rules was invalid in so far as it related to the furnishing of security. The right to move the Supreme Court, it was emphasised, under Article 32 was an absolute right and the content of this right could not be circumscribed or impaired on any ground and an order for furnishing security for the respondent's costs retarded the assertion or vindication of the fundamental right under Article 32 and contravened the said right. The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the Court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J. speaking for the majority of the Judges of this Court said that Article F 142(1) did not*

*confer any power on this Court to contravene The provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At page 899 of the Reports, Gajendragadkar, J. reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice." But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws (Emphasis A supplied). The Court therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32. It follows, therefore, that the directions given by this Court on 16th February, 1984, on the ground of expeditious trial by transferring Special Case No. 24 of 1982 and Special Case No. 3 of 1983 pending in the Court of Special Judge, Greater Bombay, Shri S.B. Sule, to the High Court of Bombay with a request*

*to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court was contrary to the relevant statutory provision, namely, section 7(2) of the Criminal law Amendment Act, 1952 and as such violative of Article 21 of the Constitution. Furthermore, it violates Article 14 of the Constitution as being made applicable to a very special case among The special cases, without any guideline as to which cases required speedier justice. If that was so as in Prem Chand Garg's case, that was a mistake of so great a magnitude that it deprives a man by being treated differently of his fundamental right for defending himself in a criminal trial in accordance with law. If that was so then when the attention of the Court is drawn the Court has always the power and the obligation to correct it ex debito justitiae and treat the second application by its inherent power as a power of review to correct the original mistake. No suitor should suffer for the wrong of the Court. This Court in Prem Chand Garg's case struck down not only the administrative order enjoined by Rule 12 for deposit of security in a petition under Article 32 of the Constitution but also struck down the judicial order passed by the Court for non- deposit of such security in the subsequent stage of the same proceeding when attention of the Court to the infirmity of the rule was drawn. It may be mentioned*

*that Shah, J. was of the opinion that rule 12 was not violative. For the present controversy it is not necessary to deal with this aspect of the matter.*

***62.*** *We are further of the view that in the earlier judgment the points for setting aside the decision, did not include the question of withdrawal of the case from the Court of Special Judge to Supreme Court and transfer it to the High Court. Unless a plea in question is taken it cannot operate as res judicata. See Shivshankar Prasad Shah and others v. Baikunth Nath Singh and others, [1969] 1 S.C.C. 718, Bikan Mahuri and others v. Mst. Bibi Walian and others, A.I.R. 1939 Patna 633. See also S. L. kapoor v. Jagmohan and others, [1981] 1 S.C.R. 746 on the question of violation of the principles of natural justice. Also see Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 621 at pages 674-68 1. Though what is mentioned hereinbefore in the Bengal Immunity Co. Ltd. v. The State of Bihar and others(supra), the Court was not concerned with the earlier decision between the same parties. At page 623 it was reiterated that the Court was not bound to follow a decision of its own if it was satisfied that the decision was given per incuriam or the attention of the Court was not drawn. It is also well settled that an elementary rule of justice is that no party should suffer by mistake of the Court. See Sastri Yagnapurushadji and others v. Muldas*

*Bhudardas Vaishya and another, [1966] 3 S.C.R. 242, Jang Singh v. Brijlal, l 1964] 2 S.C.R. 145, Bhajahari Mondal v. The State of West Bengal, [1959] S.C.R. 1276 at 1284-1286 and Asgarali N. Singaporawalla v. The State of Bombay, [1957] S.C.R. 678*

***83.*** *This passage was quoted in the Gujarat High Court by D.A. Desai, J. speaking for the Gujarat High Court in Vrajlal v. Jadavji (supra) as mentioned before. It appears that in giving directions on 16th February, 1984, this Court acted per incuriam inasmuch it did not bear in mind consciously the consequences and the provisions of sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in Anwar Ali Sarkar's case (supra) which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the hand-maids of justice and not the mistress of the justice. Ex debite justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."*

*The irregularity committed by the Constitution Bench in giving the impugned decision has to be corrected not on construction or misconstruction of a statute but because of non-perception of certain provisions and certain authorities which would amount to derogation of the constitutional rights of the citizen. It is proper for the Court to act ex debito justitiae in favour of the appellant whose fundamental rights are infringed.*

***76.*** *The Privy Council in Isaacs v. Robertson, [1984] 3 A.E.R. 140 held that orders made by a Court of unlimited jurisdiction in the course of contentious litigation are either regular or irregular. If an order is regular it can only be set aside by an appellate Court; if it is irregular it can be set aside by the Court that made it on application being made to that Court either under rules of Court dealing expressly with setting aside orders for irregularity or ex debite justitiae if the circumstances warranted, namely, where there was a breach of the rules of natural justice etc. Shri Jethmalani urged before us that Lord Diplock had in express terms rejected the argument that any orders of a superior Court of unlimited jurisdiction can over be void in the sense that they can be ignored with impunity. We are not concerned with that. Lord Diplock delivered the judgment. Another Judge who sat in the*

*Privy Council with him was Lord Keith of Kinkel. Both these Law Lords were parties to the House of Lords judgment in Re Racal Communications Ltd . case [1980] 2 A.E.R. 634 and their Lordships did not extend this principle any further. Shri Jethmalani submitted that there was no question of reviewing an order passed on the construction of law. Lord Scarman refused to extend the Anisminic principle to superior Courts by the felicitous statement that this amounted to comparison of incomparables. We are not concerned with this controversy. We are not comparing incomparables. We are correcting an irregularity committed by Court not on construction or misconstruction of a statute but on non-perception of certain provisions and certain authorities which would amount to derogation of the constitutional rights of the citizen.*

***60. .****In Nawabkhan Abbaskhan v. The State of Gujarat, [1974]3 S.C.R. 427, it was held that an order passed without hearing a party which affects his fundamental rights, is void and as soon as the order is declared void by a Court, the decision operates from its nativity. It is proper for this Court to act ex debito justitiae, to act in favour of the fundamental rights of the appellant."*

*Having regard to the enormity of the consequences of the error to the appellant and by reason of the fact that the directions were given suo motu, there is nothing to detract the power of the Court to review its judgment ex debito justitiae in case injustice has been caused and to rectify and recall that injustice, in the peculiar facts and circumstances of this case. In doing so even if there are any technicalities the Supreme Court should not feel shackled and decline to rectify that injustice or otherwise the injustice noticed will remain forever a blot on justice.*

***41.*** *In the aforesaid view of the matter and the principle reiterated, it is manifest that the appellant has not been ordered to be tried by a procedure mandated by law, but by a procedure which was violative of Article 21 of the Constitution. That is violative of Articles 14 and 19 of the Constitution also, as is evident from the observations of the 7 Judges Bench judgment in Anwar Ali Sarkar's case (supra) where this Court found that even for a criminal who was alleged to have committed an offence, a special trial would be per se illegal because it will deprive the accused of his substantial and valuable privileges of defences which, others similarly charged, were able to claim. As Justice Vivian Bose observed in the said decision at page 366 of the report, it matters not whether it was done in good faith, whether it was done for the*

*convenience of Government, whether the process could be scientifically classified and labelled, or whether it was an experiment for speedier trial made for the good of society at large. Justice Bose emphasised that it matters not how lofty and laudable the motives were. The question which must be examined is, can fair minded, reasonable, unbiased and resolute men regard that with equanimity and call it reasonable, just and fair, regard it as equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the conditions which are obtained in India today. Judged by that view the singling out of the appellant in this case for a speedier trial by the High Court for an offence of which the High Court had no jurisdiction to try under the Act of 1952 was, in our opinion, unwarranted, unprecedented and the directions given by this Court for the said purpose, were not warranted. If that is the position, when that fact is brought to our notice we must remedy the situation. In rectifying the error, no procedural inhibitions should debar this Court because no person should suffer by reason of any mistake of the Court. The Court, as is manifest, gave its directions on 16th February, 1984. Here no rule of res judicata would apply to prevent this Court from entertaining the grievance and giving appropriate directions. In this connection, reference may be made to*

*the decision of the Gujarat High Court in Soni Vrajlal Jethalal v. Soni Jadavji Govindji and others, A.I.R. 1972 Guj. 148. Where D.A. Desai, J. speaking for the Gujarat High Court observed that no act of the court or irregularity can come in the way of justice being done and one of the highest and the first duty of all Courts is to take care that the act of the Court does no in jury to the suitors.*

***47.*** *In our opinion, we are not debarred from re-opening this question and giving proper directions and correcting the error in the present appeal, when the said directions on 16th February, 1984, were violative of the limits of jurisdiction and the directions have resulted in deprivation of the fundamental rights of the appellant, guaranteed by Articles 14 and 21 of the Constitution. The appellant has been treated differently from other offenders, accused of a similar offence in view of the provisions of the Act of 1952 and the High Court was not a Court competent to try the offence. It was directed to try the appellant under the directions of this Court, which was in derogation of Article 21 of the Constitution. The directions have been issued without observing the principle of audi alteram partem. It is true that Shri Jethmalani has shown us the prayers made before the High Court which are at page 121 of the paper- book. He argued that since the transfers have been made under section 407, the procedure would*

*be that given in section 407(8) of the Code. These directions, Shri Jethmalani sought to urge before us, have been given in the presence of the parties and the clarificatory order of April 5, 1985 which was made in the presence of the appellant and his Counsel as well as the Counsel of the State Government of Maharashtra, expressly recorded that no such submission was made in connection with the prayer for grant of clarification. We are of the opinion that Shri Jethmalani is not right when he said that the decision was not made per incuriam as submitted by the appellant. It is a settled rule that if a decision has been given per incuriam the Court can ignore it. It is also true that the decision of this Court in the case of The Bengal Immunity Co. Ltd. v. The State of Bihar & Ors. [1955] 2 SCR 603 at 623 was not regarding an order which had become conclusive inter-parties. The Court was examining in that case only the doctrine of precedents and determining the extent to which it could take a different view from one previously taken in a different case between different parties.*

***79.** We do not labour ourselves on the question of discretion to disobey a judicial order on the ground of invalid judicial order. See discretion to Disobey by Mertimer R. Kadish and Sanford H. Kadish pages 111 and 112. These directions were void because the power was*

*not there for this Court to transfer a proceeding under the Act of 1952 from one Special Judge to the High Court. This is not a case of collateral attack on judicial proceeding; it is a case where the Court having no Court superior to it rectifies its own order. We recognise that the distinction between an error which entails absence of jurisdiction and an error made within the jurisdiction is very fine. So fine indeed that it is rapidly being eroded as observed by Lord Wilberforce in Anisminic Ltd. v. Foreign Compensation Commissioner, [1959] 1 All E.R. 208 at 244. Having regard to the enormity of the consequences of the error to the appellant and by reason of the fact that the directions were given suo motu, we do not find there is anything in the observations of Ittavira Mathai v. Varkey Varkey and another, [19641 1 S.C.R. 495 which detract the power of the Court to review its judgment ex debite justitiae in case injustice has been caused. No court, however, high has jurisdiction to give an order unwarranted by the Constitution and, therefore, the principles of Bhatia Co- operative Housing Society Ltd. v. D. C. Patel, [1953] S.C.R. 185 at 190 would not apply.*

***80.*** *ln giving the directions this Court infringed the Constitutional safeguards granted to a citizen or to an accused and injustice results therefrom. It is just and*

*proper for the Court to rectify and recall that in justice, in the peculiar facts and circumstances of this case.*

***81.*** *This case has caused us considerable anxiety. The appellant accused has held an important position in this country, being the Chief Minister of a premier State of the country. He has been charged with serious criminal offences. His trial in accordance with law and the procedure established by law would have to be in accordance with the 1952 Act. That could not possibly be done because of the directions of this Court dated 16th February, 1984, as indicated above. It has not yet been found whether the appellant is guilty or innocent. It is unfortunate, unfortunate for the people of the State, unfortunate for the country as a whole, unfortunate for the future working of democracy in this country which, though is not a plant of an easy growth yet is with deep root in the Indian polity that delay has occurred due to procedural wrangles. The appellant may be guilty of grave offences alleged against him or he may be completely or if not completely to a large extent, innocent. Values in public life and perspective of these values in public life, have undergone serious changes and erosion during the last few decades. What was unheard of before is common place today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of*

*the cross-roads of values. It is, for the sovereign people of the country to settle those conflicts yet the Courts have vital roles to play in such matters. With the avowed object of speedier trial the case of the appellant had been transferred to the High Court but on grounds of expediency of trial he cannot be subjected to a procedure unwarranted by law, and contrary to the constitutional provisions. The appellant may or may not be an ideal politician. It is a fact, however, that the allegations have been brought against him by a person belonging to a political party opposed to his but that is not the decisive factor. If the appellant Shri Abdul Rehman Antulay has infringed law, he must be dealt with in accordance with the law. We proclaim and pronounce that no man is above the law, but at the same time reiterate and declare that no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it. This Court? in its anxiety to facilitate the parties to have a speedy trial gave directions on 16th February, 1984 as mentioned hereinbefore without conscious awareness of the exclusive jurisdiction of the Special Courts under the 1952 Act and that being the only procedure established by law, there can be no deviation from the terms of Article 21 of the Constitution of India. That is the only procedure under*

*which it should have been guided. By reason of giving the directions on 16th February, 1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or other vise the injustice noticed will remain forever a blot on justice. It has been said long time ago that "Actus Curiae Neminem Gravabit"-an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law."*

*Here no rule of res judicata would apply to prevent the Court from entertaining the grievance and giving appropriate directions. In the earlier judgment the points for setting aside the decision did not include the question of withdrawal of the case from the Court of Special Judge to Supreme Court and transfer of it to the High Court. Unless a plea in question is taken it cannot operate as res judicata.*

***62.*** *We are further of the view that in the earlier judgment the points for setting aside the decision, did not include the question of withdrawal of the case from the Court of Special Judge to Supreme Court and transfer it to the High Court. Unless a plea in question is taken it cannot operate as res judicata. See Shivshankar Prasad Shah and others v. Baikunth Nath Singh and others, [1969] 1 S.C.C. 718, Bikan Mahuri and others v. Mst. Bibi Walian and others, A.I.R. 1939 Patna 633. See also S. L. kapoor v. Jagmohan and others, [1981] 1 S.C.R. 746 on the question of violation of the principles of natural justice. Also see Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 621 at pages 674-68 1. Though what is mentioned hereinbefore in the Bengal Immunity Co. Ltd. v. The State of Bihar and others(supra), the Court was not concerned with the earlier decision between the same parties. At page 623 it was reiterated that the Court was not bound to follow a decision of its own if it was satisfied that the decision was given per incuriam or the attention of the Court was not drawn. It is also well settled that an elementary rule of justice is that no party should suffer by mistake of the Court. See Sastri Yagnapurushadji and others v. Muldas Bhudardas Vaishya and another, [1966] 3 S.C.R. 242, Jang Singh v. Brijlal, l 1964] 2 S.C.R. 145, Bhajahari Mondal v. The State of West Bengal, [1959] S.C.R. 1276*

*at 1284-1286 and Asgarali N. Singaporawalla v. The State of Bombay, [1957] S.C.R. 678"*

*But the Supreme Court being the apex court, no litigant has any Opportunity of approaching any higher forum to question its decisions.*

*Therefore once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Mistake of the court can be corrected by the court itself without any fetters.*

***104.** To err is human, is the off-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both."*

Contempt on the face of the Court is taken then it is duty of the Judge taking cognizance to inform alleged contemnor that he is having right to try the contempt proceeding before other Judge.

The concerned party can apply orally or by an application under Section **14(2)** of the Contempt of Court's Act.

Section **14(2)** of Contempt of Court's Actreads as under;

> ***"14 (2)*** *Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof."*

In **Mohd. Zahir Khan Vs. Vijai Singh AIR 1992 SC 642: 1992 SCC (Cri.) 526**it is ruled as under**;**

> ***"5.*** *Before proceeding with the matter we informed the contemner that under* ***Section 14 (2) of the Contempt of Courts Act, 1971 he had an option to have the charge against him heard by some judge or judges other than the judge or judges in whose presence or hearing he is alleged to have committed contempt. We felt it necessary to do so***

***since his written reply was silent in this behalf. We thought it our duty to inform him of this provision.*** *He stated that we may dispose of the matter ourselves and he did not desire it to be placed before any other Judge or Judges."*

## CHAPTER 162

RECUSAL OF A JUDGE: SECTION 14(2) & SECTION 15 OF CONTEMPT OF COURTS ACT, 1971

### RECUSAL OF A JUDGE: SECTION 14(2) & SECTION 15

The proceedings under Section 14 should be conducted by the same Court (Judge) before whom the Contempt was committed. But as per section **14(2)** of the Act the alleged contemnor can ask for recusal. It is duty of the Judge to point it out.

In **Suo Motu (Court on it own Motion Vs. Satish Mahadeorao Uke 2019 SCC OnLine Bom 5164** it is ruled as under;

> *"Satish Mahadeorao Uke-respondent (Contemner), relying on Section 14(2) of the Contempt of Courts Act, 1971, has requested that the charge against him be tried by a Bench comprising of Judges other than both of us (Z.A.Haq and V.M.Deshpande, JJ). Judgment delivered in the case of Mohd. Zahir Khan Vs. Vijai Singh, reported in AIR 1992 SC 642 is also relied upon. We find that sub-section(2) of Section 14 of the Contempt of Courts Act, 1971 gives such right to the person who is charged for contempt in the circumstances mentioned in sub-section (1) of Section 14 of Contempt of Courts Act, 1971. We are of the opinion that it is in the interest of justice that the request made by Satish Mahadeorao Uke respondent (Contemner) requires consideration.*
>
> *Hence, Registry is directed to place the papers (including the order passed on 21st November 2018) before the Hon'ble the Chief Justice of High Court of Judicature at Bombay for appropriate directions. "*

Hon'ble Supreme Court in **Tarak Singh Vs. Jyoti Basu (2005 ) 1 SCC 201** ruled as under;

> ***"7. On the same day, i.e. on 20.6.1986, Justice Banerjee made an application before the Chief Minister for allotment of a plot of land in Salt Lake City. It is not clear whether the application was made before he took cognizance of the matter or after. If made before he should have reused himself from the case. If he dealt with the matter first he should not have made the application. But, instead, the learned Judge kept the matter with him, pursued it and passed subsequent orders till the allotment order was made in his favour from the discretionary quota of the Chief Minister and even thereafter.***
>
> *On 8.6.1987 following order was passed:*
>
> *"Let the main matters appear in the list as for orders on Thursday next at 3 p.m. In the meantime there will be an interim order as follows:*
>
> *No further allotment of any land in the Salt Lake City Area will be made without the leave of this Court.*
>
> *Petitioners are directed to serve a copy of the writ appeal along with the copy of the above application*

*and a plain copy of this order upon the Learned Advocate General forthwith.*

*Let a plain copy of this order, duly counter signed by an Officer of this Court be given to the Learned Advocate for the parties."*

*On 11.6.1987 following order was passed:*

*"Let the main writ application come up for hearing on June 17, 1987 at 2 p.m. In the meantime the interim order passed on June 8, 1987 is varied to the extent that the said order will not prevent the Chief Minister to make allotment of plot in Salt Lake City Area from its own Quota according to his own discretion.*

*Let the plain copy of this order duty countersigned by an Officer of this Court be given to the Learned Advocates for the parties appearing."*

*On 17.6.1987 following order was passed.*

*"Let the application for taking additional ground and acceptance of additional evidence filed in Court today be kept in record. Let the affidavit in opposition, if any, to the said application affirmed by Sudhir Chandra De on June 16, 1987, if any, be filed within three weeks from date, reply if any, one week thereafter and <u>let the application come up for hearing on July 16, 1987 at 2 p.m."</u>*

***(emphasis supplied)***

In **Fakruddin Vs. Principal, Consolidation Training Institute (1995) 4 SCC 538 : 1995 SCC (Cri.) 809** it is ruled as under;

> ***"RECUSAL OF A JUDGE - Natural justice – Bias – Judge of High Court deciding a case despite being apprised of fact that he was a counsel for one of the parties before his appointment as Judge- Such practice neither justified nor healthy- irrespective of merits of the case, order of the High Court set aside and the case remitted to the High Court for deciding it fresh on merits in accordance with law.Confidence and faith in the institution rests on basic structure that Justice should not only be done but seem to be done. The propriety is practised and observed to exclude even the remotest possibility of any misgiving or doubt about the impartiality of the judge as even if he is just and fair and his decision is correct yet it may not be satisfying.***
>
> ***2****. Justice should not only be done but seem to be done. That is the basic structure on which confidence and faith in the institution rests. The judiciary from the bottom in the hierarchy to the*

*apex at the top Commands' respect because of its impartiality and objectivity. When a judge directs a case to be listed before another Court or Bench, as he knows one or the other party, it is not because any statutory law precludes him from hearing and deciding it but the propriety is practised and observed to exclude even the remotest possibility of any misgiving or doubt about the impartiality of the judge as even if he is just and fair and his decision is correct yet it may not be satisfying.*

***3.*** *What happened in this case is not only unfortunate but to compound it further the learned Judge even when apprised that he was the counsel for the respondent when he was at the bar did not observe that minimum norm which is expected to be observed even by quasi-judicial authorities.*

***4.*** *The dispute related to allotment of Chaks' in consolidation proceedings. Such a dispute does not raise any question of title. No exception, therefore, could be taken to the order passed by the High Court dismissing the writ petition in limine. But what has compelled us to interfere with the order of the High Court is that it was decided by a Bench of which one of the judges was a counsel for the*

*respondents before his elevation. It may happen at times that a judge who had appeared for a party, before his elevation may have forgotten about it. An order passed in ignorance of such factual error may not be taken notice of. But where it was specifically pointed out, as claimed in the Special Leave Petition, that the learned Judge was apprised of it and yet he chose to decide the case, is neither justified nor healthy for the institution. The result of the decision is immaterial. May be that another Bench hearing the case may have come to same conclusion. In fact this Court might have refused to interfere with the order relating to allotment of 'Chakas', but it is not the correctness or otherwise of the order but the sense of justice, the public glare in which a judge is exposed every moment which is more important. A decision of a case one or other way may affect an individual but a decision by a judge who had appeared for one of the parties irrespective of the stakes, the result and the consequences is of much significance from asocial point of view. Therefore, irrespective of the merits of the case we set aside the order passed by the High Court and remit the case back to the High Court for deciding it afresh on merits in accordance*

*with law. Any observation made in this order shall not be taken as deciding the rights of parties."*

Calcutta High Court in **Kanishk Sinha Vs. Union of India, 2019 SCC OnLine Cal 2341** it is ruled as under;

*"After having heard the submissions of the petitioner it appears that his contention is that if a Hon'ble Judge has a friend on facebook who is a member of the Bar that is a reason for him to rescue from the case.*

*If that is the view of the petitioner it will not be proper for me to take up this matter and release this matter on personal ground."*

Hon'ble Supreme Court in **Zahira Shaikh Vs. State (2006) 3 SCC 374** had ruled as under;

***"22.** The complex pattern of life which is never static requires a fresher outlook and a timely and vigorous moulding of old precepts to some new conditions, ideas and ideals. **If the Court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which justice delivery system stands. People for whose benefit the Courts exists shall start doubting the efficacy of the system. Justice must be rooted in***

***confidence and confidence is destroyed when right minded people go away thinking that "the Judge was biased".*** *(Per Lord Denning MR in Metropolitan Properties Ltd. v. Lannon (1968) 3 All ER 304 (CA).* ***The perception may be wrong about the judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Ceaser's wife should be above suspicion*** *(Per Bowen L.J. in Lesson v. General Council of Medical Education (1890) 43 Ch.D. 366).*

***23.*** *By not acting in the expected manner a judge exposes himself to unnecessary criticism. At the same time the Judge is not to innovative at pleasure. He is not a Knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness, as observed by Cardozo in "The Nature of Judicial Process".*

***24.*** *It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep promise to justice and it cannot stay petrified and sit non-challantly.* ***The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection loose hope*** *(See Jennison v. Backer (1972 (1) All ER 1006). Increasingly, people*

*are believing as observed by SALMON quoted by Diogenes Laertius in "Lives of the Philosophers" laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away". Jonathan Swift, in his "Essay on the Faculties of the Mind" said in similar lines: "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through".*

Contempt on the face of the Court is taken then it is duty of the Judge taking cognizance to inform alleged contemnor that he is having right to try the contempt proceeding before other Judge.

The concerned party can apply orally or by an application under Section **14(2)** of the Contempt of Court's Act.

Section **14(2)** of Contempt of Court's Act reads as under;

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

*that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof."*

In **Mohd. Zahir Khan Vs. Vijai Singh AIR 1992 SC 642: 1992 SCC (Cri.) 526**it is ruled as under**;**

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

**CASE LAWS FROM 406,407,408,409 OF Cr.P.C**

Hon'ble Supreme Court of India in the case of **Kanaklata Vs. State of (NCT) of Delhi and Ors.(2015 ) 6 SCC 617** it is ruled as under;

> *"The present appears to be one such case where despite the safeguards provided by the High Court's observations, the apprehension of the complainant continues to subsist. We do not think that such apprehension is wholly misconceived nor can it be dubbed as forum shopping in disguise. The earlier order passed by the trial Court is so strongly worded that it could in all likelihood give rise to a reasonable apprehension in the mind of the complainant which cannot be lightly brushed aside. We must hasten to add that we are not in the least suggesting that the Presiding Officer of the trial Court is totally incapable of adopting a fair approach while passing a fresh order but then the question is not whether the Judge is biased or incapable of rising above the earlier observations made by her. The question is whether the apprehension of the complainant is reasonable for us to direct a transfer. Justice must not only be done but must seem to have been done. A lurking suspicion in the mind of the complainant will leave him with a brooding sense of having suffered injustice not because he had no case, but because*

*the Presiding Officer had a preconceived notion about it. On that test we consider the present to be a case where the High Court ought to have directed a transfer. In as much as it did not do so, we have no option but to interfere and direct transfer of the case to another Court."*

Hon'ble High Court in the case of **Prem Kishan Vs.Bundu and Ors. AIR 2003 Raj 62** it is ruled as under;

***"If the petitioner has gathered the impression that the Presiding Officer of the trial Court is biased, which reflects from the various order sheets of the trial Court, then there cannot be any sound and justifiable reason for not transferring the case to any other Court situated at the very same place.***

*The learned District Judge on the application seeking transfer, sought comments from the Presiding Officer of the trial Court who submitted its comments wherein it is specifically mentioned as under :--*

*(Vernacular matter omitted ..... Ed.)*

*Thus, from the comments submitted by the Presiding Officer of the trial Court, it also appears that he has*

*exceeded his jurisdiction in commenting in the manner it has been commented. The apprehension of the petitioner that the Presiding Officer of the trial Court is biased, is well founded and gets more strengthen from the above comments submitted by him. Normally the trial Judge ought not to have any objection if the matter is transferred to any other Court.*

*Considering all the facts and circumstances of the case, in my considered opinion, the order of the learned District Judge suffers from illegality inasmuch as no valid reasons have been assigned for rejecting the transfer application.*

*Accordingly, this revision petition is allowed and the order impugned dated 3-5-2001 of the learned District Judge, Bhilwara is set aside. The learned District Judge. Bhilwara is directed to transfer Civil Misc. Case No. 45/92 from the Court of Additional Civil Judge (Junior Division) No. 1, Bhilwara to any other Court situated at Bhilwara with prior notice to the non-petitioner-defendants. "*

Hon'ble High Court in the case of **Rajinder Singh Vs. State 2004 Cri.L.J 4023** it is ruled as under;

*"Criminal - fair trial - Section 304 Criminal Procedure Code, 1973 - breach of mandatory provision of Section 304 amounts to violation of fundamental principle of judicial procedure - there is denial of opportunity to some of accused persons to cross-examine prosecution witness also denial of opportunity to some of accused persons to adduce evidence in support of their case - non-compliance with provision of Section 313 be not putting incriminating circumstances and asking irrelevant question mars the trial - case to be rewarded back for fresh decisions.*

*It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done MANU/SC /0001/ 1957: [1957]1SCR575 . Confidence in the administration of justice is an essential element of good Government, and reasonable apprehension of failure of justice in the mind of the litigant public should, therefore, be taken into serious consideration. Courts should not fail to remember that it is their duty no less to preserve an outward appearance of impartiality than to maintain the internal freedom from business. Transfer in certain cases is made not because the party approaching*

*the Court will not have a fair and impartial trial but because the party has reasonable apprehension that it will not have such a trial. Examination of the accused under Section 313 Cr.PC amounting to lengthy cross-examination, refusal to give opportunity to cross-examine the witnesses etc. are some of the instances where transfer of a case is justified. When the whole procedure was extremely arbitrary and in direct contravention of law and the Judge displayed plenty of zeal and want of judicial spirit, the apprehension entertained by a party that it will not have a fair trial is justified. In the case on hand, the way the ld. Judge dealt with the case, the manner in which questions were put to different accused persons during their examination under Section 313 Cr.PC and some observations made in the orders lead to suggest that he has already formed an idea not conducive to fair trial, and in fact some of the ld. counsels during argument before this Court expressed their apprehension in this regard. In such circumstances, it is desirable that the case should be dealt with by a Judge other than Mr. LA. Shah. "*

Hon'ble Supreme Court of India in the case of **Pushpa Devi Saraf Vs. Jai Narain Parasrampuria MANU/SC/0209/1992; (1992) 2 SCC 676**it is ruled as under;

> *"Civil - Transfer of Suit - High Court dismissed application for transfer of suit - Hence, this Appeal - Whether, High Court was right in dismissing application for transfer of suit - Held, Presiding Officer had been unduly affected by allegations leveled against him, as would be evident from his report - Thus,* ***in interest of Presiding Officer himself, suit might be sent to another court -*** *Therefore, it was requested District Judge to transfer suit to such other Additional District Judge, as he may designate in this behalf - Hence, Transferee-Court should proceed with suit expeditiously - Appeal allowed.*

## CHAPTER 163

WHEN ANY APPLICATION FOR TRANSFER IS MADE TO THE CHIEF JUSTICE THEN THE JUDGE HEARING THE CASE SHOULD ADJOURN THE MATTER TILL TRANSFER APPLICATION IS DECLARED BY THE HIGHER AUTHORITIES LIKE CHIEF JUSTICE.

In **Court On Its Own Motion Vs. Arvind Krishna Waghmare2019 SCC OnLine Bom 1201**it is observed as under;

> *"**1**.Pursis (Stamp No. 2261/2019) dated 18th April, 2019 signed by the respondent Nos.1 to 5 is placed on record stating that they want to withdraw Pursis (Stamp No. 1733/2019) dated 20thMarch, 2019, Pursis ( Stamp No. 1945/2019 dated 3rd April, 2019 and Criminal Application (APPCP) No. 10 of 2019, with liberty to approach the Hon'ble the Chief Justice on the administrative side. By the above referred pursis and criminal applications, the respondents requested that one of us (Z.A. Haq, J.) should recuse and should not hear the criminal contempt petition,*
>
> ***2.** Respondent No.1 states that the respondents will require about 30 days to seek orders.*
>
> ***3.** Pursis (Stamp no. 1733/2019) dated 20th March, 2019, Pursis (Stamp No. 1945/2019) dated 3rd April, 2019 and Criminal Application (APPCP) No. 10 of 2019 are disposed as withdrawn with liberty as prayed for.*
>
> ***4.** On the request made by the respondent, list the matter for further consideration / hearing on 12th June, 2019."*

In **Chandrashekhar Jagannath Acharya Vs. Rohini Chandrashekhar Acharya 2019 SCC OnLine Bom 104,** is ruled as under;

> ***''5.*** *The main ground on which recall is sought is that the appellant was forced into giving the aforesaid undertaking. An application has also been made by the advocate for the appellant (and not appellant himself) to the* ***Hon'ble the Chief Justice (on the administrative side) for having this matter transferred from this bench to another bench. This application is dated 23.01.2019 and was filed in the Registry only today morning. In order to enable the Hon'ble the Chief Justice to take decision on the application made by the Advocate for the appellant, we stand this matter over till a decision is taken by the Hon'ble the Chief Justice on the application filed by the advocate for appellant dated 23.01.2019.''***

In **Dr. Santosh Shetty Vs. Mrs. Ameeta Santosh Shetty 2017 SCC OnLine Bom 9938** it is ruled as under ;

> ***2****……there is a transfer application signed and affirmed by the appellant - husband in which there is a prayer that the Family Court Appeal along with interim applications therein should be placed before any other appropriate Bench other than the Bench headed by one of us (A.S. Oka, J.). In fact, in the application, the contention is that a Bench consisting of one of us (A.S. Oka, J.) should not*

*hear the Family Court Appeal and the Applications therein in view of various allegations made therein.*

***3.*** *When the submissions were heard on the earlier date, it was not pointed out to us that such transfer application has been filed. We did not notice the same as the same was in the second part.*

***4.*** *The transfer application has not been numbered and it is affirmed by the appellant - husband on 1st March, 2017. It appears that the said transfer application was never placed before the Hon'ble the Chief Justice.*

***5.*** *So long as the said application is pending, it will not be appropriate for this Bench to hear and decide the Civil Application No. 71 of 2017 and Civil Application No. 72 of 2017 which have been assigned to this Bench.*

***6.*** *We direct the Registry to place the transfer application before the Hon'ble the Chief Justice. There is a remark put on the index of the said application that the transfer application is presented before the Administrative Side.''*

In **Dr. L.P. Mishra (1998) 7 SCC 379 (Full Bench)** it is ruled as under;

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

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

***12**. For the foregoing conclusions, the Criminal Appeal No. 483 of 1994 and other connected criminal appeals filed by the contemners are partly allowed. The impugned order dated 15th July, 1994 passed by the High Court in Criminal Misc. Case*

*No. 2058 (C) of 1994 is set aside and the proceedings are remitted to the principal seat of the Allahabad High Court, Allahabad. The Registry is directed to send the copy of this order to the learned Chief Justice of Allahabad High Court for appropriate action. All the criminal appeals to stand disposed of accordingly."*

In **Court own its own motion Vs. Nilesh C. Ojha 2019 SCC OnLine Bom 3908** it is ruled as under;

*"This Contempt petition is registered on reference as per the order passed on Criminal Application No. 1103/2018 in Criminal Appeal No. 534/2018 on 2nd November 2018. As the above order was passed by me (Z.A. Haq J.), as per judicial proprietary, it would not be appropriate for me to take up this matter.*

*Hence, office is directed to place the matter before the Bench of which Z.A. Haq J. is not a member. (Z.A. HAQ, J.)*

*In view of the above order, office to take appropriate steps in the matter."*

Adv. Arvind P. Datar & Rahul Unnikrishnan while commenting on Justice Arun Mishra's order of recusal in their article had quoted as under:

*"Sir Stephen Sedley, a former Judge of the Court of Appeal of England and Wales, puts it-*

*"independence and impartiality are the twin pillars without which justice cannot stand, and the purpose of recusal is to underpin them".*

The law relating to judicial recusal is based on the fundamental proposition that a court should be fair and impartial: public confidence in the institution is supreme. In Justice Hammond's seminal book "Judicial Recusal", the law of recusal is classified into two parts: automatic disqualification and bias.

## CHAPTER 164

AUTOMATIC DISQUALIFICATION OF A JUDGE FROM A CASE.

Automatic disqualification includes disqualification for pecuniary interest, and connection with the cause of a party to the litigation. An example for disqualification for pecuniary interest is the case of Dimes v. Proprietors of Grand Junction Canal (1852) 10 ER 301, wherein Lord Cottenham owned shares of the Grand Junction Canal Company in whose favour he ruled. To deal with cases of insignificant pecuniary interests, an exemption to this rule developed subsequently, which came to be known as de Minimis rule.

The second category under automatic disqualification is dealt with, in detail, in the infamous case of R v. Bow Street Metropolitan Stipendiary Magistrate & Ors, ex p Pinochet Ugarte (No. 2) [2000] 1 AC 119 (HL). Here, the issue was that Amnesty International was an

intervener in the extradition proceedings against the former Chilean dictator Augusto Pinochet, and the parties were not aware that Lord Hoffmann was both a director and chairman of Amnesty International Charity Limited, a body which was closely linked with Amnesty International.

Significantly, Lord Hoffmann received no fees for being a director and it was expressly agreed that there was no actual bias on the part of Lord Hoffmann. Holding that bias need not only be pecuniary or proprietary, the House of Lords set aside its earlier order on the mere link between Lord Hoffmann and a subsidiary charity institution of Amnesty International. The public's confidence in the integrity of the administration of justice would be shaken if the earlier judgement was allowed to stand. It is submitted that there are various observations in this judgment that would apply to a case where a judge has expressed his views in an earlier case.

**APPARENT BIAS**

The law relating to bias developed through a myriad of single instance, fact-specific cases. In AWG Group Ltd v. Morrison [2006] 1 WLR 1163, the Court of Appeal summarized the principle as follows:

> *"The test for apparent bias now settled by a line of recent decisions of this court and of the House of Lords is that, having ascertained all the circumstances bearing on the suggestion that the judges was (or would be) biased, the court must*

> *ask* ***''whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility … that the tribunal was biased".*** *(emphasis added)*

To quote Justice Michael Kirby, a former judge of the Australian High Court-

> *"The judges in question might feel (or even might actually be) impartial in their own minds. However, they would lack an* ***imperative requirement****, essential to the authority and acceptability of judgments, orders and decisions.": the imperative requirement being a "manifestly independent decision making" process.*

Theoretically, a judge can always be persuaded to change his views, but the law of recusal is not dependent on what is theoretically possible but on what will enhance the confidence of the litigants in the justice delivery system.

In the US, even an extra-judicial comment by a judge has been held to be a ground for recusal. The recitation of the Pledge of Allegiance in public schools was challenged by a parent on the ground that the expression "under God" violated the First Amendment's Establishment Clause. The Federal trial court and, in appeal, the US Court of Appeal for the Ninth Circuit held that such mandatory recitation was unconstitutional. In a public meeting, Justice Antonin Scalia of the US Supreme Court made a speech expressing his views on the Establishment Clause and also criticized the view of the Ninth Circuit

decision. In the appeal to the Supreme Court against the Ninth Circuit decision, there was an application for the recusal of Justice Scalia on the ground that he had already made an analysis of the Establishment Clause and reached his conclusion. The US Supreme Court granted certiorari to hear the appeal, but Justice Scalia rightly recused himself from the case. [See Elk Grove Unified School District v. Newdow, (2004) 124 S Ct. 2301]

In the famous US v. Microsoft Corporation (2001) 253 F 3d 34, an appellate court set aside the order of the trial judge who had given press interviews expressing his views on the merits of the case; the trial court order was set aside and the matter was remanded for hearing by a different judge even though the trial judge (Judge Jackson) continued to maintain that there was no bias in his mind.

Reference can also be made to a decision of the High Court of Australia (equivalent to the Indian Supreme Court) in Kartinyeri v. Commonwealth (1998) 152 ALR 540. The legal issue was whether certain provisions of a statute were violative of the Australian constitution. Justice Callinan was a member of the High Court bench, and a plea was made that he was disqualified because, as a member of the Bar he had earlier given a joint opinion that the Act, then at the stage of a Bill, was valid. Justice Callinan, in a reasoned order, gave reasons as to why he was not biased. A review petition was filed once again requesting that Justice Callinan should not be on the bench.

The Chief Justice of Australia directed that the review petition would be heard by a bench without Justice Callinan. There was a happy turn of events because Justice Callinan decided to withdraw from the main case and a detailed order in the review petition was not necessary. His conduct was hailed as a wise move. (See Hammond, page 113)

In Davidson v. Scottish Ministers (No.2) [2004] UKHL 34, the House of Lords ruled that if a judge had taken part in the drafting or promotion of a legislation in the Parliament, there was a risk of "apparent bias" because a fair minded and informed observer would conclude that there was a real possibility that the judge would subconsciously avoid reaching a contrary conclusion. As Hammond points out, a judge should not participate in a case in an area where he or she helped to create the law. The same principle would apply if a judge has given an elaborate opinion on the merits of certain legal provisions and he is later asked to preside over the Bench which would go into the correctness of his own decision.

Hammond also mentions the need to avoid "confirmation bias" which "inclines us to look for confirming evidence of an initial hypothesis, rather than falsifying evidence that would disprove it". He quotes the great judge Learned Hand, who, in a lecture, said:

> *"You must have impartiality. What do I mean by impartiality? I mean you mustn't introduce yourself, your own preconceived*

*notions about what is right. You must try, as far as you can, it is impossible for human beings to do so absolutely, but just so far as you can, not to interject your own personal interests, even your own preconceived assumptions and risks."*

Hammond also points out that it is not merely impartiality that is important but also objectivity. If a litigant has reasonable grounds to believe that a particular judge has formed strong views on a subject, he is highly likely to doubt the objectivity of that judge. Finally, it is extremely important to note that it is not the faith of the judge in his own independence or impartiality that is relevant. We cannot forget that it is the litigant's faith in the judicial system that is important. If the request for recusal is not a ruse for forum shopping but is based on valid or plausible reasons, recusal should be the norm. Perhaps, the best route to follow when answering the question: to recuse or not to recuse?- is to follow the words of Justice Venkatachaliah in **Ranjit Thakur v, Union of India (1987) 4 SCC 611:**

*"The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him."*

***********************************

## CHAPTER 165

ALL RULES OF COURT ARE NOTHING BUT PROVISIONS INTENDED TO SECURE PROPER ADMINISTRATION OF JUSTICE. IT IS, THEREFORE, ESSENTIAL THAT THEY SHOULD

BE MADE TO SERVE AND BE SUBORDINATE TO THAT PURPOSE.

PROCEDURE IS THE HANDMAID AND NOT A MISTRESS OF LAW, INTENDED TO SUBSERVE AND FACILITATE THE CAUSE OF JUSTICE AND NOT TO GOVERN OR OBSTRUCT IT.

Seven Judge Bench in **A.R. Antulay Vs. R.S. Nayak (1988) 2 SCC 602,** it is ruled as under;

> *''**102.** This being the apex Court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in 1917 A.C. 170 stated:*
>
> > *"All rules of court are nothing but provisions intended to secure proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose."*
> >
> > *This Court in Gujarat v. Ram Prakash, [1970] 2 SCR 875 reiterated the position by saying*
> >
> > *"Procedure is the handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it, like all rules of procedure, this rule demands a construction which would promote this cause.''*

## CHAPTER 166

POLICE CANNOT INVESTIGATE AN FIR NOT DISCLOSE A COGNIZABLE OFFENCE.

Explaining the often misunderstood Privy Council judgment in the case of **Emperor vs Khwaja Nazir Ahmed (1944)**, the SC said that the police cannot investigate an FIR which does not disclose the commission of a cognizable offence.

A constitution bench of the SC, in the case of **Lalita Kumari vs Govt. of U.P.& Ors. (2013),** held that the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to the commission of a cognizable offence. A police officer can foreclose an FIR before an investigation under Section 157 of the code, if it appears to him that there is no sufficient ground to investigate the same.

## CHAPTER 167

340 AGAINST POLICE OFFICER

In the case of **Pavan Talkies, Nizamabad Vs. Sri Rajesh Kumar, IPS, Superintendent of Police, Nizamabad and others 2008 SCC OnLine AP 575** it is ruled as under;

> ***"Section 340 of Cr.P.C. against IPS police officers violating the orders of court and then creating false evidence to misled the Court. IPS officer sentenced under contempt for 2 weeks imprisonment and fine of Rs. 2000/-.***
>
> ***The Registrar of the High Court is directed to exercise provisions of section 340 of Cr.P.C. to launch prosecution against the IPS police officer and others.***

***4…..Petitioner requested respondent No. 1 not to remove the equipment, he stated that he knows how to deal with these cases and the orders passed by the Court and that the Judge does not know about the rule of audi altem patrum (sic. audi alterem partem) as the Court passed the interim order without hearing the respondents and that he knows how to get the said order vacated.*** *It is also alleged that respondent No. 1 further commented that this type of orders are being passed everyday by the Court and that respondent No. 1 threatened him that if he did not co-operate in the equipment being taken away, he will not only seize the equipment, but do away with him in the name of encounter. The petitioner also made similar allegations against respondent No. 1, who allegedly made disparaging remarks against the Judges and the interim order. He also stated that respondent No. 2 (mistakenly mentioned as first respondent) stated that he is bound by the order of the Superintendent of Police (respondent No. 1) and not the orders of the Court. The licensee further alleged that the theatre association committee member along with its President Sri Narayana Rao were present at the time of incident, that respondent No. 2 called all of them to the police station by saying that he will give a written endorsement and copy of panchanama and that when they approached respondent No. 2, he declined to give any receipt. The licensee also stated that respondent No. 3, who was allegedly deputed by respondent Nos. 1 and 2, also used filthy*

*language and executed the work of removal of the projectors with the help of his subordinates and labour and used derogatory statement about the Court and its order. It is further stated that the press and electronic media of Nizamabad reported the incident on 26.04.2008. He alleged that respondent No. 1 sent* ***the police constables and threatened him to withdraw the case in the High Court and that he behaved like an ordinary rowdy sheeter****.*

***57.*** *On the analysis of the pleadings and* ***evidence as discussed above, there can be no escape from the conclusion that the projectors were seized on 25.04.2008 - a day after passing of the interim order by this Court. It is further evident that the respondents have made a misleading statement before the Court through the learned Assistant Government Pleader for Home on 24.04.2008 that the police have not locked and sealed the petitioner theatre, that when the learned counsel for the petitioner contradicted the said statement by saying that after switching off the lights on 23.04.2008, the police locked the premises again and took away the keys with them****, this Court permitted the petitioner to use the premises, if necessary by breaking open the lock. The respondents have not disputed the claim of the petitioner that on 25.04.2008 the said order of this Court was widely published in the local newspapers.* ***Obviously with a view to frustrate order dated 24.04.2008 passed by this***

***Court*** *and to prevent the petitioner from running the theatre, the respondents seized the projectors on 25.04.2008.*

***71. For the reasons given above, I hold that the respondents have committed grave contempt of order dated 24.04.2008 passed in WPMP No. 11914 of 2008 in W.P. No. 8988 of 2008 and accordingly they are convicted for committing civil contempt within the definition of Section 2(b) of the Contempt of Courts Act, 1971.***

***73.*** *In Anil Ratan Sarkar (2 supra), the Supreme Court, while dealing with a case of brazen contempt, held:*

> *"In the contextual facts there cannot be any laxity, as otherwise the law courts would render themselves unless and their order to utter mockery. Feeling of confidence and proper administration of justice cannot but be the hallmark of Indian jurisprudence and contra-action by courts will lose its efficacy. Tolerance of law courts there is, but not without limits and only up to a certain point and not beyond the same."*

***74.*** *In B.M. Bhattacharjee (Major General) v. Russel Estate Corporation [(1993) 2 SCC 533.] , the Supreme Court observed that all the officers of the Government must be presumed to know that under the constitutional scheme obtaining in this country, orders of the Courts have to be obeyed implicitly and that orders*

*of the Apex Court for that matter any Court - should not be trifled with.*

***75.*** *In T.N. Godavarman Thirumulpad (102) v. Ashok Khot [2006 (5) SCJ 662 : 2006 (6) ALT 20.4 (DN SC) : (2006) 5 SCC 1.] , the Supreme Court, while finding a Minister and highly placed forest officers guilty of deliberately flouting its orders, held:*

> *"That apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness."*

***76.*** *The Apex Court relied on a passage from its judgment in L.D. Jaikwal v. State of U.P. [(1984) 3 SCC 405.] , which is reproduced below:*

> *"We are sorry to say we cannot subscribe to the "slap-say sorry and forget" school of thought in administration of contempt jurisprudence. Saying "sorry" does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to "say" sorry - it is another to "feel" sorry."*

***77.*** *While refusing to accept the apologies, the Supreme Court held as under:*

*"This is a case where not only right from the beginning attempt has been made to overreach the orders of this Court but also to draw red herrings. Still worse is the accepted position of inserting a note in the official file with oblique motives. That makes the situation worse. In this case the contemnors deserve severe punishment. This will set an example for those who have a propensity for disregarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month's simple imprisonment in each case would meet the ends of justice."*

***78.*** *Though each of the respondents, who filed identical counter-affidavits, tendered unconditional apology, I am absolutely unconvinced with their bona fides. Not only that the respondents are guilty of contumacious conduct of flouting this Court's order with the sole intention of preventing the licensee from running the theatre without there being any order passed by the competent authority in this regard, they have fabricated Ex. R2 notice, Ex. R4-the list of property sent to the Magistrate, and panchanama under which the projectors were seized and tried to mislead this Court into accepting their theory that the projectors were seized on 18.04.2008.* ***Thus, far from mitigating their heinous act, they compounded their misdeed by coming out***

***with a blatantly false version, which does not befit the status of the respondents as public servants in general and respondent No. 1, who is an IPS Officer, in particular. Their act has the undoubted effect of bringing down the majesty of law and creating lurking doubts in the society about the efficacy of the order of a constitutional Court.***

***79. After giving my earnest consideration, I am of the view that custodial sentence alone is appropriate which commensurate with the gravity of act committed by the respondents. Accordingly, each of the respondents is sentenced to simple imprisonment for a period of two weeks and to pay a fine of Rs. 2,000/- (Rupees Two thousand only) and in default of payment of fine, they shall undergo simple imprisonment for another period of two weeks****.*

***80.*** *As far as R.W. 3 is concerned, though he was a party to the writ petition, he is not made a party to the contempt case because he did not participate in the seizure of projectors on 25.04.2008,* ***but he examined himself as R.W. 3 and went out of his way to support the respondents by trying to establish that the projectors were seized on 18.04.2008. He is also very much part of the concerted effort of the respondents to fabricate Exs. R2 and R4 and the purported panchanama dated 18-4-2008 and give false evidence****. Similarly, R.Ws. 1 and 2, who are Government servants, aided and abetted the respondents to set up a false plea by being parties to fabrication of Ex. R. 2 and the*

*purported panchanama* ***and giving false evidence before this Court. The Registrar (Vigilance) is hereby appointed under Section 340 of the Code of Criminal Procedure, 1973 to file a complaint against R.Ws. 1 to 3 before the jurisdictional Magistrate to prosecute them for the offences committed by them. After taking action, he shall report to this Court within four weeks from today."***

## CHAPTER 168

ACTION AGAINST OFFICIALS OF MHADA & MUNICIPAL CORPORATION INVOLVED IN CONNIVANCE WITH BUILDER TO DEPRIVE THE RIGHTS OF POOR CITIZEN.

In **Prabhawati Tokersi Chheda Vs. MHADA 2002 SCC OnLine 205** it is ruled as under;

> ***"Perjury – Action against chief Officer of MHADA's Building Repair & Reconstruction Board – And Officer of Respondent No. 4 i.e. Municipal Corporation of Briham Mumbai are responsible in dereliction of duty in not taking steps to get the injunction vacated when***

***granted by the City Civil Court. Direction issued for action against all concerned.***

***Respondent No. 5 found to be guilty of not disclosing complete facts. The Advocate General was directed to verify the record and take steps as to whether any action for misleading the court and perjury be taken for purposefully not disclosing the facts and misleading the Court to pass different order from time to time.***

***97.*** *…….Obviously higher officers of Respondent 3 and particularly the Chief Officer of Respondent 3 who wrote the letter dated 4-12-1997 to the police have connived at all this.*

***98.*** *The officers of Respondent 4 are equally responsible in this dereliction of duty. They have taken no steps to get the injunction vacated when granted by the City Civil Court nor have they taken any action when flats were amalgamated including those from different floors. It is difficult to accept that these actions on the part of the officers of Respondents 1, 2, 3 and 4 are very innocent actions. Scanty affidavits were filed on behalf of Respondents 3 and 4 leaving everything to be done by the Court. Fortunately, for the petitioner, the file containing relevant papers was relied upon by Respondent 3 and offered for inspection which disclosed deception played by*

*Respondent 5 almost amounting to fraud. And fraud avoids even judicial acts "ecclesiastical or temporal" as observed by Chief Justice Edward Coke of England three centuries ago and as quoted by the Apex Court in S.P. Chengalvaraya Naidu v. Jagannath. In the present case, we are concerned with the acts of an agent of the State with whom the officers of the public authorities concerned have obviously connived.*

*There was a report of the Divisional Executive Engineer on record that none of the erstwhile occupants were being rehoused and yet no effective steps were taken by Respondent 3. In spite of the report of the Divisional Engineer no effective steps were taken to contact the erstwhile tenants except inquiry at the transit camp. The then Chief Officer of Respondent 3 did nothing of the sort but for the sake of record only wrote to the police that he was asking BMC not to grant further occupation certificate which hardly meant anything. The landlord kept on flouting undertakings given to courts thinking clearly that nothing will happen to him. And the officers of Respondents 1 to 4 remained at ease as silent spectators. No assistance whatsoever is rendered by the public officers concerned in this matter. However, we cannot but observe that the entire conduct of all the respondents is*

*disgusting to say the least. This is all in the name of a welfare scheme.*

***99.*** *……Since Respondents 1, 2 and 3 are authorities and Board under the overall supervision of the State Government, we are of the view that the Housing Secretary of the State of Maharashtra ought to hold an enquiry and find out as to why the then Chief Officer of Respondent 3 did not take necessary action even at that stage as pointed out above when the Divisional Executive Engineer had reported after the police complaints that nameplates of none of the original tenants were seen on the premises and that the premises appeared not to have been occupied at that time. The Chief Officer of Respondent 3, who replied to the inquiry from the Police Department by his letter dated 4-12-1997 along with the officers concerned, if held responsible for dereliction of duty must face the consequences.*

***100.*** *The Municipal Commissioner of Greater Mumbai must also thereafter hold an inquiry as to how no appropriate action has been taken in this matter to defend the suit properly and as to how the amalgamation of some of the flats on different floors has been permitted or no action taken in that behalf. If he forms an opinion that what has been done is illegal, he must as well take action*

*against those who are responsible and also with respect to the premises on the site. The Municipal Commissioner must also examine as to what action can be taken against the Architect Kamlesh Kothari if he is of the opinion that this Architect Kothari has fabricated the plans for proceeding with the construction on the 7th and 8th floors.*

***101.*** *We are of the view that Respondent 5 did not place full facts before the Court, particularly with respect to the other suits when an order was passed to keep one tenement vacant on the 8th floor. Prima facie his action appears deliberate and he must as well face the consequences.*

***102.*** *In the circumstances, we pass the following order:*

*Order*

*(a) Respondent 3 will take steps to find out as to whether the tenements constructed are in excess of 300 sq ft, and if so, whether they can be split and the excess space can be purchased by Respondent 3 at the rate of Rs. 235 sq ft (as per the letter of intent) or at the presently prevalent rate of Repair Board for such arrangements or whether the construction ought to be left as it is for valid reasons and in that case on what terms and consequences for Respondent 5 and others responsible for this situation.*

*(b) Respondent 3 will examine the position and take necessary steps including that of filing of a suit against Respondent 5 and against all illegal occupants to recover possession of the premises concerned at the aforesaid rate with a view to allot them to the tenants of the dilapidated buildings staying in transit camp. In that event it will be open for the present occupants like Respondent 7 to recover the amounts paid by them (in excess) from Respondent 5, in accordance with law. In the event Respondent 3 decides that such a course is not desirable, he must record the reasons for the same and in that case ought to consider as to what action could be taken against Respondent 5 and others responsible for this situation.*

*(c) We direct the Secretary (Housing), State of Maharashtra to look into the question of dereliction of duty on the part of the then Chief Officer of Respondent 3 (and all other officers concerned) who wrote the letter dated 4-12-1997 to the police authorities concerned and for their failure to take proper action either to rehouse the erstwhile tenants of this building or to house the tenants of the other dilapidated buildings by taking over the premises at the rate of Rs. 235 per sq ft and/or offering them at that rate to such other tenants in transit camp. He must also consider issuance of appropriate guidelines so that such incidents do not recur.*

*(d) We direct the Municipal Commissioner of Respondent 4 to examine as to whether there was any inaction on the part of his officers at the stage of approval of the plans and in defending Suit No. 5920 of 1999 filed against the BMC and in getting the injunction vacated, and to take appropriate steps against the persons concerned. We direct the Municipal Commissioner to consider taking appropriate action against the architect, who according to the BMC, fabricated the plans of the building for proceeding with the construction of 7th and 8th floors. We further direct him to find out as to how the amalgamation of the flats on different floors was permitted and to take action against the officers and the occupants as well as Respondent 5 for that purpose.*

*(e) We direct the Receiver, High Court, Bombay, appointed vide our order dated 19-9-2001 to take possession of Flat No. 10, 5th floor (if necessary with police help), and to place the petitioner in possession thereof. In the event Respondent 3 decides to recover the space in excess of 250 sq ft, the petitioner will also be entitled to recover the amount due to her from Respondent 5. It will be open for Respondent 7 (and 6) or his son Kamlesh to recover the amounts paid by them to Respondent 5 by taking appropriate steps in accordance with law.*

*(f) We direct the Prothonotary and Senior Master, High Court, Bombay, to forward a copy of this judgment to the Advocate General, State of Maharashtra, to examine and to take steps as to whether any appropriate action for breach of orders, misleading the Court and for perjury could be initiated against Respondent 5 for purposefully not disclosing the facts and misleading the Court to pass different orders from time to time.*

*(g) A copy of this judgment to be forwarded to the Secretary (Housing), the present Chief Officer of Respondent 3 and to the Municipal Commissioner forthwith.*

*(h) The Secretary (Housing), the Chief Officer of Respondent 3, and the Municipal Commissioner to file a report in this Court with respect to the actions taken on or before 30-6-2002. The learned Advocate General is also requested to take his decision by that date.*

***2.*** *Respondent 1 to the petition is the Maharashtra Housing and Area Development Authority (shortly known as "MHADA"), which is a statutory Authority constituted under the Maharashtra Housing and Area Development Act, 1976 ("MHAD Act" for short). Respondent 2 is the Regional Housing and Area Development Board for the Mumbai area, constituted under the MHAD Act and*

*Respondent 3 is the Building, Repair and Reconstruction Board for Mumbai area also constituted under the same MHAD Act. Out of these three public bodies, we are more concerned with Respondent 3 in the present matter. Respondent 4 is the Municipal Corporation of Brihan Mumbai. Respondent 5 is the landlord of the building and Respondents 6 and 7 are the persons in whose favour an interest has been allegedly created by Respondent 5 in the same flat in the reconstructed building, to which the petitioner is having a claim. Ms Usha Purohit has appeared for the petitioner. Mr DMello appeared for Respondents 1 to 3. Ms Savla appeared for Respondent 4. Mr Doctor and Ms Sidhwa appeared for Respondent 5 and Mr Abhyankar for Respondents 6 and 7.*

***Dereliction of responsibility by Respondents 1 to 3***

***80.*** *……He reported at that time that all the tenements in the said building were not occupied. This was on the basis of inspection done on 4-9-1997 and 11-9-1997. Surely that was an occasion for Respondents 1 to 3 to wake up. They had a responsibility to the ousted occupants. It was expected of them to move into the matter immediately and call upon Respondent 5 to explain as to what had happened to the persons who were expected to be rehoused, for whom all the documents were entered into*

*and whose names also figured as the members of the proposed housing society as forwarded by his architect as recently as in November 1996 to seek clearance for occupation certificate upto 4th floor. It is most shocking, to say the least, that Respondent 3 made only a perfunctory inquiry and informed the police on 4-12-1997 that the Municipal Engineer concerned is asked not to grant further occupation certificate to the newly constructed building until intimation. It is relevant to note that in the meanwhile the occupation certificate for the first four floors had already been issued by Respondent 4 as per the earlier request of Respondent 5 to Respondents 1 to 3. Surely, Respondents 1 to 3 could have moved into the matter immediately if there was any genuine intention to take steps. When it was reported by their Divisional Engineer that building was not occupied though the name plates of some third persons appeared, surely they could have filed suit and taken an injunction as also sought appointment of receiver inasmuch as the entire occupation was in breach of what was agreed with Respondents 1 to 3. It is obvious that Respondents 1 to 3 did not want to do anything of the kind. They should have done the checking at the time of giving clearance for the occupation certificate and, in any case, when the report of the Division Engineer was available, they ought to have taken*

*protective steps. There is a complete failure on their part in discharging the responsibility.*

***As to alternative remedy***

***88.*** *It was submitted by Miss Sidhwa, learned counsel appearing for Respondent 5, and Mr Abhyankar for Respondent 7, that the agreement of August 1994 and the one of January 1995 were essentially a matter of contract between the petitioner and Respondent 5. The petitioner was a tenant of the property and if that was so, her remedy was to approach the Court of Small Causes under the Bombay Rent Act. It was submitted that, in any case, the petitioner had availed of another remedy by approaching the City Civil Court and without exhausting that she had filed the present writ petition. Miss Sidhwa had relied upon the judgment of the Apex Court in State of H.P. v. Raja Mahendra Pal in this behalf. But it is material to note that this very judgment lays down that although powers under Art. 226 of the Constitution are not to be invoked for enforceability of mere contractual rights when there is an alternative remedy, the said judgment makes it clear that this proposition does not debar the Court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding existence of an alternative efficacious remedy. It has also been held*

*by the Apex Court time and again that the rule of exhaustion of an alternative remedy is a matter of discretion for the Court and not a rule of exclusive. We cannot therefore reject this petition on such a ground*

## CHAPTER 169

DIRECTION FOR VERIFICATION OF PLEADING FROM JAIL AUTHORITY IF PETITIONER IS IN JAIL.

In **Laxmibai w/o. Vishnu Bhopi Vs. The State of Maharashtra** it is ruled as under;

*"We therefore direct the Registry not to accept any petition and/or Appeal without verification/affidavit of the convict or his relative.* ***In so far as convicts, who are undergoing imprisonment in jail, are concerned, we permit them to get verified the pleadings/averments in the Petition/Appeal before the Superintendent of the concerned Jail. In addition to this, the vakalatnama duly signed and stamped by the jail authority should also be produced.****"*

## CHAPTER 170

IMPORTANT CASE LAWS ON INVESTIGATION BY POLICE AND DIRECTION BY THE COURT.

In the case of **Sajji Kumar Vs. State of Goa 2006 ALL MR (Cri) 840** it is ruled as under;

> ***"S. 154 – FIR – Evidentiary value of –*** *FIR by itself cannot be used as a substantive piece of evidence and it can only be used as a contradiction or corroboration thereof.* ***(Para 6)"***

In the case of **Patai @ Krishna Kumar Vs. State of U.P. 2010 Cri. L.J. 2815** it is ruled as under;

> ***S. 154- FIR _ Found to be in neat and clean handwriting*** *– cannot always lead to the conclusion that the said report was prepared by the police officer or at his dictation* ***(Para 22)".***

In the case of **Sadashiv Jaywanta Shinde Vs. State of Maharashtra 2001 ALL MR (Cri) 540** it is ruled as under;

> ***"S. 154 – FIR – It can be used to corroborate or contradict the information only and not other witnesses.***
>
> *It is settled position that First Information Report cannot be used as a substantive or primary piece of*

*evidence of the truth of its contents. Being a previous statement, it can, strictly speaking; be only used to corroborate or contradict the maker of it. It can be used to corroborate or discredit the informant only and not witnesses other than informant.* ***(Para 15)"***

In the case of **Subhash Narayan Koli @ Saindane Vs. State of Maharashtra 2010 ALL MR (Cri) 3597** it is ruled as under;

***"S. 154 – FIR – Second FIR –*** *Held, there cannot be second F.I.R. in respect of same cognizable offence and same incident or occurrence. 2001 Cri. L.J. 3329 – Rel. on.* ***(Para 10)****"*

In the case of **Kishore Gopaldas Thawani Vs. The State of Maharashtra 2000 ALL MR (Cri) 20** it is ruled as under;

***"S. 154 – FIR – What constitutes – Document produced*** *as FIR was on plain paper and not in prescribed from – No time or C.R. No. mentioned – No acknowledgement of any Officer endorsed on document to show that document was treated as FIR – Such discrepancies remained unexplained – Court cannot rely on document as FIR* ***(Para 5)"***

In the case of **Sunil Kumar Vs. State of Madhya Pradesh 1997 ALL MR (Cri) 644 (S.C)** it is ruled as under;

> ***"S. 154 – FIR – What constitutes – Information on telephone to police station about cognizable offence*** *– Information recorded in daily diary – Assailants not named but investigation commenced on its basis – Can be treated as FIR."*

In the case of **Sheikh Meheboob alias Hetak Vs. State of Maharashtra 2005 ALL MR (Cri) S.C.S.N. 30** it is ruled as under;

> ***"S.154 – Non- Production of FIR – Murder case*** *– Written report about incident made by father of deceased son to police – Application for its production by accused – Report not produced – No explanation forthcoming – It could be said that it was suppressed by prosecution.* ***(Para 7)"***

In the case of **Ramesh Boburao Devaskar vs. State of Maharashtra 2008 ALL MR (Cri) 293 (S.C.)** it is ruled as under;

> ***"S. 154 – Penal Code (1860), S. 302 Fir – Murder case*** *– FIR cannot be lodged after inquest has been held.* ***(Para 14)"***

In the case of **Ptiya Gunaji Gaokar vs. State of Maharashtra 2014 ALL MR (Cri) 4200** it is ruled as under;

> ***"S. 154 – Penal Code (1860), Ss. 354, 354A – Non registration of FIR*** *– Ground that allegation appear to be*

*false – Not a case that allegation do not disclose a cognizable offence – Non registration not justified – Truth or falsity of allegations should not be looked into at time of FIR as per law laid down by SC in 2014 ALL SCR 1893 – Direction issued for registration of FIR. 2014 ALL SCR 1893 Foll.* ***(Paras 10, 14, 17)"***

In the case of **Raj Pal Singh Vs. Central Bureau of Investigation 2015 ALL MR (Cri) Journal 515** it is ruled as under;

***"S.154 – Second FIR – On same allegations*** *for same cause at different police station – Not permissible. 2014 ALL MR (Cri) 5226 (S.C.), 2013 AIR SCW 2353, Rel. on.* ***(Para 29)"***

In the case of **Ganseh Vs. Sharanappa 2014 ALL MR (Cri) 392 (S.C.)** it is ruled as under;

***"Ss. 154, 2(d), 200 – Words 'informant' and 'complainant' – Carry different meanings and are not interchangeable.***

*In a case registered under Section 154 of the Code, the State is the prosecutor and the person whose information is the cause of lodging the report is the informant. This is obvious from sub-section (2) of Section 154 of the Code which, inter alia provides for giving a copy of the information of the 'informant' and not to*

*'complainant'. However the complainant is the person who lodges the complaint. The word 'complaint' is defined under Section 2(d) of the Code to mean any allegation made orally or in writing to a Magistrate and the person who makes the allegation is the complainant, which would be evident from Section 200 of the Code, which provides for examination of the complainant in a complaint-case. Therefore, these words carry different meanings and are not interchangeable. In short, the person giving information, which leads to lodging of the report under Section 154 of the Code is the informant and the complaint is the complainant.* ***(Para 11)"***

In **Sakiri Vasu Vs. State of U. P. 2008 ALL MR (Cri) N.O.C. 67** it is ruled as under;

***"Ss. 154, 156 – FIR – Grievance that police station is not registering FIR –*** *Complainant can approach Superintendent of Police under S. 154(3) by application in writing – If that also does not work he can approach the court by application under S. 156(3) – Magistrate can then direct proper investigation and monitor the investigation to ensure proper investigation 2007 ALL SCR 2430 – Rel. no.* ***(Paras 11, 13, 15)"***

In the case of **State of Haryana vs. Ch. Bhajan Lal 2013 ALL SCR (O.C.C.)** it is ruled as under;

> ***"Ss. 154, 156 – FIR against former Chief Minister and Minister in Central Govt. –*** *SP departing from normal rule and hastily ordered SHO to investigate the serious allegations on the date of registration on the date of registration of the case itself – Held, SP exhibited over enthusiasm, presumably to please 'Some one', however, his conduct can never serve as a ground for quashing the FIR.* ***(Para 83)"***

In the case of **Tukaram Babu Patil Vs. State of Maharashtra. 1996 (2) ALL MR 507** it is ruled as under;

> ***"Ss.154, 156, 157 – FIR – It should be forwarded to Magistrate forthwith*** *- Unexplained delay in sending FIR to Magistrate – Effect. AIR 1980 SC 638 Referred."*

In the case of **Haroon Mahatab Jamadar & Ors. Vs. State Of Maharashtra 1999 (3) Mh. L.J. 376** it is ruled as under;

> "***Ss. 154, 157 – Evidence Act (1872), S. 3 – FIR – When ante-timed*** *- Mere delay in sending a copy of FIR to Magistrate does not permit Court to construe that FIR was ante-timed – Circumstances which show that FIR was ante-timed have to be elicited from cross-examination of prosecution witnesses to infer that FIR was ante-timed."*

In the case of **Ramesh Baburao Devaskar Vs. State of Maharashtra 2008 ALL MR (Cri) 293 (S.C.)** it is ruled as under;

*"**Ss. 154, 157 – FIR** – FIR should be sent to nearest Magistrate without undue delay. **(Para 16)"***

In the case of **Siddhappa Andappa Andolgi Vs. State of Maharashtra 2008 ALL MR (Cri) 2625** it is ruled as under;

*"**Ss. 154, 157 – FIR – Inference as to antedated FIR** – Before an inference is drawn that F.I.R. is antedated, some circumstances have to be shown either from the cross-examination of the relevant witness or from material appearing on record that would probabalise such an inference.n2004 Cri. L.J. 2001 – Rel. on. **(Para 11)"***

In the case of **People's Union for Civil Liberties Vs. State of Maharashtra 1999 ALL MR (Cri) 877** it is ruled as under;

*"**Ss. 154, 157 – FIR – Three months delay in sending copy of FIR to the Magistrate** – Is in utter disregard of provisions of S. 157. **(Para 77)"***

In the case of **Alla China Apparao Vs. State of Andhra Pradesh 2003 ALL MR (Cri) 383 (S.C)** it is ruled as under;

*"**Ss. 154, 157 – FIR recorded without delay but delay in sending to Magistrate – Effect.***

*Where first information report is shown to have actually been recorded without delay and investigation started on its basis, if any delay is caused in sending the same to the*

*Magistrate which the prosecution fails to explain by furnishing reasonable explanation, what would be its effect upon the prosecution case. Ipso facto the same cannot be taken to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same may affect veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of manipulation in the first information report by falsely roping in the accused persons after due deliberations.* ***(Para 9)"***

In the case of **Dnyandeo Krishna Choudhary Vs. State of Maharashtra 1999 ALL MR (Cri) 284** it is ruled as under;

*"**Ss. 154, 157 – Information received at police station disclosing commission of cognizable offence** – Police Officer must register case and proceed further under Code – Cannot consider truth or falsehood of case.* ***(Paras 14, 16, 17, 20)"***

In the case of **Ashok Debbarma @ Achak Debbarma Vs. State of Tripura 2014 ALL MR (Cri) 1521 (S.C.)** it is ruled as under;

> *"**Ss. 154, 161 – Complaint by witness – Whether FIR or statement u/s. 161 Cr.P.C.** – Written complaint given by a witness to Investigating Officer during course of investigation – Though the complaint was treated as FIR, fact remains that even before such complaint, investigation was started on basis of information already received – Held, complaint of witness should be treated as statement u/s.161 Cr.P.C. and not as FIR. **(Para 11)"***

In the case of **Babar Mohan Dubala Vs. State of Maharashtra 2006 ALL MR a (Cri) N.O.C. 198** it is ruled as under;

> *"**Ss. 154, 161 – FIR and statement under S. 161** – Statement can be used only for purpose of contradicting witness whereas FIR can also be used to support witness. **(Para 6)"***

In the case of **Upkar Singh Vs. Ved Prakash 2004 ALL MR (Cri) 3118 (S.C.)** it is ruled as under;

> *"**Ss. 154, 161, 162 – FIR – Police refusing to register counter complaint** – Court can direct police, at any stage, to register counter complaint and investigate it – Same is not hit by S.161 or 162. AIR 1980 SC 326 Rel. on. **(Paras 16, 19, 22, 24)"***

In the case of **Pradeep Narayanrao Rajgure Vs. State of Maharashtra 2004 ALL MR (Cri) 1308** it is ruled as under;

> *"**Ss. 154, 162 – FIR – What is** – Station Diary entry made on oral report of informant at 00.05 hrs. – Entry disclosing with reasonable certainty commission of cognizable offence – Crime by four persons – Can be treated as FIR – Subsequent statement of the informant recorded at 00.30 hrs. – Cannot be treated as FIR but it shall only be statement recorded in the course of investigation under S. 162 of Cr.P.C. 1993 Cri. L.J. 3684, 1996(2) Crimes 309 - Referred to. **(Para 10)"***

In the case of **Khedu Mohton Vs. State of Bihar 2013 ALL SCR (O.C.C.) 142** it is ruled as under;

> *"**Ss. 154, 173 – Penal Code (1860), Ss. 379, 149, 143 – Delay in lodging FIR** – Duty of prosecution to satisfactorily explain the delay – Failure would be a circumstances of considerable importance. **(Para 5)"***

In the case of **Nirmal Singh Kahlon Vs. State of Punjab 2009 Cri. L. J 958,** it is ruled as under;

> ***"Ss. 154, 173(8), 36 – Police Act (1861), S.3 – Second FIR** – First FIR lodged at the instance of State Vigilance Officer in respect of irregularities noticed in recruitment of Panchayat Secretaries – In writ filed by candidates alleging large scale scam in recruitment and having a wide ramification as former Minister of State was involved*

*High Court directed investigation by CBI – Second FIR by CBI was on a wider canvass involving a large number of officers – Second FIR, held, was maintainable – S. 173(8) was not attracted. Delhi Special Police Establishment Act (1946), S. 6 (**Paras 53, 59)"***

In the case of **Sanjeev Bishnudev Mishra Vs. State of Maharashtra 2014 ALL MR (Cri) 5028,** it is ruled as under;

***"Ss. 154, 177, 186 – FIR – Place of registration –*** *Principal offence of octroi evasion committed within jurisdiction of Police Station "A" – However, incriminating materials such as forged documents and seal found within jurisdiction of police Station "B" – Forgery of documents is not only a means to commit offence but that itself is an offence – Therefore, Police Station "B" would have jurisdiction to register the offence and conduct investigation **(Paras 7, 8, 33)"***

In the case of **Pundlik Tanbaji Vs. State of Maharashtra 2011 ALL MR (Cri) 2847,** it is ruled as under;

***"Ss. 154, 482 – Penal Code (1860), S. 304-A – Quashing of FIR*** *– No case even prima facie to fasten criminal liability on the applicant for the alleged offence punishable under S. 304-A of I.P.C – In such facts– situation, if the proceedings in question are not quashed*

*and set aside it would be nothing but sheer harassment to the applicant – It is futile to continue such prosecution – Hence, F.I.R for the offence under 304–A of I.P.C. registered against the applicant quashed and set aside. AIR 1999 SC 2115 – Ref. to.* ***(Para 8)"***

In the case of **Ajay Yogindra Mafatlal Vs. State of Maharashtra 2010 ALL (Cri) 1163** it is ruled as under;

***"Ss. 154, 482 – Penal Code (1860), Ss. 504, 506, Part-II – FIR – Quashing of*** *– F.I.R. registered for the offences under Ss. 504, 506, Part-II of I.P.C – Offences alleged are non-cognizable and bailable – Police cannot take any cognizable and hold investigations – Criminal proceedings quashed and set aside – However, it was open to complainant to file an appropriate complaint before the concerned Magistrate* ***(Para 3)".***

In the case of **State Vs. N. S. Gnaneswaran (2013) Cri L. J. 3619,** it is ruled as under;

***"S. 154(2) – FIR – Supply of copy of FIR –*** *Provisions of S. 154(2) are merely directory and not mandatory as it prescribes only duty to give copy of FIR to informant.* ***(Para 17)"***

In the case of **Balaji Bhujangrao Suryawanshi Vs. State of Maharashtra 2014 ALL MR (Cri) 994** it is ruled as under;

> ***"S. 156(3) – Constitution of India, Art. 227 – Prayer for order of investigation*** *– Applicant had no intention to get examined on oath – Magistrate however ordered examination of complainant u/s. 200 of Cr.P.C. – Held, Magistrate should have decided whether or not case for ordering investigation u/s. 156(3) had been made out – And ought not to have adopted third course i.e. order of examination on oath – Order needs to be quashed.* ***(Para 5)"***

In the case of **Narayandas Hiralalji Sarda Vs. State of Maharashtra 2008 ALL MR (Cri) 2737** it is ruled as under;

> ***"S. 156(3) – Filing of Complaint*** *– Magistrate not examining complainant on oath but only perused complaint and documents – magistrate being of opinion that it was necessary to have detailed investigation by police into allegations made in complaint, directed police to register offence and to submit report – Said order being passed under S. 156(3), cannot be said to be illegal.* ***(Para 14)"***

In the case of **Priyanka Srivastava Vs. State of U.P. AIR 2015 SC 1758** it is ruled as under;

> ***"S. 156(3) – Jurisdiction u/s. 156(3) – Cannot be involved in a routine manner*** *– In order to make*

*applicants who are seeking invocation of authority of Magistrate, more responsible – Court directed applications u/s. 156(3) to be supported by an affidavit duly sworn by applicant.* ***(Paras 26, 27)"***

**ON SECTION 155**

In the case of **Vithal Puna Koli (Shrisath) Vs. State of Maharashtra 2006 ALL MR (Cri) 3021** it is ruled as under;

> ***"S.155 – Investigation – Non-cognizable offence*** *– Police investigating non-cognizable case without any orders from the Competent Magistrate – Registration of offence as well as investigation into the same are liable to be quashed. 2006 ALL MR (Cri) 1589 – Rel. on* ***(Para 7)"***

In the case of **Mukesh laxman Das Talreja Vs. The Inspector of Police 2006 ALL MR (Cri) 1589** it is ruled as under;

> ***"S.155(2) – Information as to non-cognizable cases and investigation of such cases*** *– Permission under S.155(2) – Provision of obtaining permission under S.155(2) mandatory – Non-compliance of said provision – Entire investigation liable to be set aside. 1992 Supp (1) SCC 355 : 1992 SCC (Cri) 426 – Followed* ***(Para 6)."***

In the case of **Mahadeo Eknath Mankar Vs. State of Maharashtra 2009 ALL MR (Cri) 1177** it is ruled as under;

> ***"S.155(2) – Investigation carried out without permission under S.155(2)*** *– Cannot be validated subsequently – Such permission would not operate retrospectively. 1979 (2) Kar. L.J. 449, 1999 Cri. L.J. 1512 – Ref. to.* ***(Para 7)"***

In the case of **Chandra Ratnaswami Vs. K. C. Palanisamy 2013 AIR 2013 SC 1952** it is ruled as under;

> ***"S.156 – Constitution of India, Art. 21 – Criminal investigation*** *– Power of police not unlimited – Should not result in destroying personal freedom of a citizen.* ***(Para 51)"***

In the case of **Nirmal Singh Kahlon Vs. State of Punjab AIR 2009 SC 984** it is ruled as under;

> ***"S.156 – Constitution of India, Art. 21 – Fair investigation and fair trial*** *– Accused and victim of a crime are both equally entitled to fair investigation.* ***(Para 27)"***

In the case of **Vijay Kumar Thakur Vs. State of Karnataka 2013 ALL MR (Cri) 2636 (S.C.)** it is ruled as under;

> ***"S.156 – Constitution of India, Art. 32 – Directions for investigation*** *– Main prayer in writ petition for issuance of direction to Director, CBI for conducting investigation into complaint filed by petitioner – Modification sought*

*for investigation by CID instead of CBI – State CID, which is headed by the officer of rank of D.G.P directed to conduct proceedings and impartially investigation into complaint.* ***(Para 5)"***

In the case of **Bharti Tamang Vs. Union of India 2014 Cri. L.J. 156** it is ruled as under;

***"S.156 – Defective investigation – Petition against*** *– Case relating to murder of petitioner's husband due to political rivalry – Petitioner seeks for handling of the case by prosecuting agency (CBI) with utmost earnestness against all accused involved in crime – There was serious lapse in apprehending many of accused and absconding of prime accused – Circumstances give room to suspicion as to genuineness with which prosecution was being carried out – Held, grievance expressed by petitioner can be redressed and interest of public at large can be duly safeguarded by issuing appropriate directions in petition and by monitoring the same.* ***(Para 40, 41)"***

In the case of **State of Maharashtra Vs.Shivaji Narayan Suryavanshi 1997 ALL MR (Cri) 342** it is ruled as under;

***"S.156 – FIR – FIR running into two full-scaped typed sheets giving a coherent account of the incident*** *– It is*

*difficult to believe that it was dictated by a person with 73% burn injuries on vital parts of the body."*

In the case of **State of Maharashtra Vs. Wafati Babu Qureshi 1997 ALL MR (Cri) 518** it is ruled as under;

> ***"S.156 – FIR – Infirmities*** *– Endorsement of doctor absent on copy supplied to defence counsel – Copy not made available to informant and sent after a long delay to Magistrate – FIR recorded within four hours of the assault in which deceased had received several factures and was immediately operated after giving anesthesia – Held no reliance could be placed on the FIR."*

In the case of **Sanjeev Bishnudev Mishra Vs. State of Maharashtra 2014 ALL MR (Cri) 5028** it is ruled as under;

> ***"S.156 – Investigation – Challenge*** *– Ground that the Police Officer lodging FIR had himself conducted investigation – Record reveals that informant officer was a party to raid and signed seizure and arrest panchanama – Held, for said reason informant officer cannot be called as investigation officer – Investigation was entrusted to some other officer – Investigation therefore, not vitiated. (1996) 1 SCC 709, (1998) Supp. SCC 482 Disting.* ***(Paras 26, 27)"***

In the case of **Sarvsheel Mago Vs. State of Haryana 2008 ALL MR (Cri) 1974 (S.C.)** it is ruled as under;

> ***"S.156 – Investigation by CBI*** *– Complainant harassed as his car was searched constantly on as many as three occasions without any objectionable material being found – Complained that authorities were not doing their statutory duties of looking into his complaint and registering the same under the influence of respondents – Various cases pending between appellant and respondents – Direction issued to conduct investigation under supervision of D.I.G. – Court, however, unable to find any thing irregular, suspicious, mala fide in the investigation being conducted – Prayer to hand over investigation to CBI rejected.* ***(Para 12)"***

In the case of **Ramesh Kumari Vs. State (N.C.T. of Delhi). 2006 ALL MR (Cri) 1187** it is ruled as under;

> ***"S.156 – Investigation of case*** *– Allegations against police personnel – Case should be registered and investigated by independent agency like CBI.* ***(Para 8)"***

In the case of **Jai Padmavati Automobile Finance Vs. Police Inspector 2015 ALL MR (Cri) 976** it is ruled as under;

> ***"Ss. 156, 102 – Investigation and seizure – Without registration of FIR*** *– Legality – Police Inspector*

*proceeded and caused investigation, without registering FIR – Custody of subject vehicle was taken from petitioner – Same was handed over to some other person – No explanation was given in what capacity or under which provision of law said activity was done – Inquiry shall be initiated in order to ascertain liability of concerned Police Inspector as his said activity is illegal.* ***(Para 7)"***

In the case of **Kotak Mahindra Bank Ltd. Vs. Nobiletto Finlease & Investment Private Ltd. 2005 ALL MR (Cri) 1983** it is ruled as under;

***"Ss. 156, 154 – Bombay Police Manual (1959), R.113 – FIR –Preliminary enquiry prior to recording of FIR*** *– Holding preliminary enquiry would depend upon the facts of each case and it may not apply as a general rule in each and every case – Officer holding such an enquiry shall record the information in station diary.* ***(Para 10)"***

In the case of **Kotak Mahindra Bank Ltd. Vs. Nobiletto Finlease & Investment Private Ltd. 2005 ALL MR (Cri) 1983** it is ruled as under;

***"Ss. 156, 154 – Bombay Police Manual (1959), R.113 – Penal Code – (1860), Ss. 406, 420 – Criminal breach of trust or cheating –*** *Investigation on the complainant filed u/s. 406 or 420 – In case of criminal breach of trust or*

*cheating, for asserting truthfulness of allegations, primarily it would be necessary to ascertain the same by asking the complainant to disclose cogent materials regarding ingredients of such offence by the accused.* ***(Para 12)"***

In the case of **Pandharinath Narayan Patil Vs. State of Maharshtra 2015 ALL MR (Cri) 2222** it is ruled as under;

***"Ss. 156, 154 – Cognizance of offence – Justification*** *– Respondent did not filed any application u/S. 154 before Magistrate but forwarded a copy of compliant on his letterhead, addressed to several authorities and called upon magistrate to act upon it – Magistrate passed order mechanically without referring case for preliminary inquiry, without examining the facts of case and nature of allegations and without ascertaining whether information revealed any cognizable offence – Such casual approach, not justified. 2014 ALL MR SCR 1893 Foll.* ***(Para 17)"***

In the case of **TilakNagar Industries Ltd. Vs. state of A.P. 2012 ALL MR (Cri) 721 (S.C.)** it is ruled as under;

***"Ss. 156, 155, 190 – Investigation – Complaint filed against appellant company*** *for offences under Ss. 504, 503 and 34 of Penal Code – FIR and accompanying material not disclosing commission of offences – No*

*investigation can be carried on without order of Magistrate in view of mandate of S.155(2) – Since complaint does not disclose commission of cognizable offence order of Magistrate taking cognizance and directing investigation hence, quashed.* ***(Paras14, 15)"***

In the case of **Tukaram Babu Patil Vs. State of Maharashtra 1996 (2) ALL MR 507** it is ruled as under;

***"Ss. 156, 157 – Investigation – Unexplained delay on part of police in examining important witness*** *– It creates doubt about veracity of statement by witness.* ***(Paras 15, 16)"***

In the case of **Narmada Bai Vs. State of Gujrat AIR 2011 SC 1804** it is ruled as under;

***"Ss. 156, 173 – Investigation*** *– Accused persons do not have a say in the matter of appointment of investigation agency.* ***(Para 36)"***

In the case of **Vimal Ashok Thakre Vs. In – charge, Police Station Officer, Nagpur 2011 Cri. L.J. 139** it is ruled as under;

***"Ss. 156, 173 – Investigation – Disclosure of information to media by police officer*** *– Police Commissioner making available copies of medical report of victim to media*

*during press conference – Not Permissible – Held, It is not necessary for investigating agency to satisfy public that investigation is carried out properly by making available documents forming part of investigation – Investigation of any crime has to be in secrecy – Investigating agency is not entitled to divulge any information gather during course of investigation to public on three counts i.e., principle, authority and propriety.* ***(Para 19)"***

In the case of **Narmada Bai vs. State of Gujarat AIR 2011 SC 1804** it is ruled as under;

***"Ss. 156, 173 – Investigation*** *– When Court feels that investigation is not in proper direction as high police officials are involved, it is open to court to hand over investigation to independent and specialised agency like CBI.* ***(Para 11)"***

In the case of **Azija Begum Vs. State of Maharashtra 2012 ALL MR (Cri) 727** it is ruled as under;

***"Ss. 156, 173(8) – Constitution of India, Arts.136, 227 – Investigation*** *– FIR lodge by wife of deceased for alleged offences of kidnapping and murder and on that basis investigation was undertaken – Magistrate though satisfied that matter required further investigation but handedover investigation to same police authorities –*

*High Court passed cryptic order in a writ petition against order of Magistrate – Fair and proper investigation is always conclusive to ends of justice and for establishing rule of law and maintaining proper balance in law and order – Supreme Court directed respondent, Addl. Director General of Police State CID to order a proper investigation in matter by deputing a senior officer from his Organization.* ***(Paras 13, 14)"***

In the case of **Naresh Kavarchand Khatri Vs. State of Gujarat 2008 ALL MR (cri) 2928 (S.C.)** it is ruled as under;

***"Ss. 156, 177, 178, 181 – Investigation by police*** *– Soon after investigation was started application for transfer was made to High Court – Neither any notice issued nor informant impleaded as party – Investigation has to be carried out on basis of allegation made, first informant is required to be examined, statement of witness are required to be taken and accused is also required to be interrogated – Without doing this in undue haste High Court ought not have exercised its jurisdiction and transferred the case.* ***(Para 6)"***

In the case of **Asit Bhattacharjee Vs. hanuman Prasad Ojha 2007 ALL MR (Cri) 2052 (S.C.)** it is ruled as under;

> ***"Ss. 156, 178, 181(4) – Investigation – Offences taking place in several States*** *– Offence was required to be investigated in different States – Case handed over to State C.B. CID.* ***(Paras 36, 37)"***

In the case of **Shalu Agarwal V. State of Maharashtra 2014 ALL MR (Cri) 4869** it is ruled as under;

> ***"Ss. 156, 181 – Investigation – Powers vested in investigating authorities u/s. 156(1)*** *– Do not restrict jurisdiction of investigating agency to investigate complaint even if it did not have territorial jurisdiction to do so – Merely because criminal proceedings in State of Punjab are referred to in complaint – It does not mean that complaint cannot be filed at Mumbai.* ***(Paras 34, 35, 36, 37)"***

In the case of **Hassan Mohammad Issak Maniyar Vs. Harun Gulab Maniyar 2014 ALL MR (Cri) 888** it is ruled as under;

> ***"Ss. 156, 190, 200, 202 – Power to direct investigation*** *– Once Magistrate takes cognizance of complainant under S.190(1)(a) i.e. having recorded verification statement of complainant – Cannot revert back to re-cognizance stage and pass an order directing investigation under S.156(3).* ***(Paras 14, 15, 18)"***

In the case of **Mona Panwar Vs. The Hon'ble High Court of Judicature At Allahabad through its Registrar 2011 ALL MR (Cri) 1015 (S.C.)** it is ruled as under;

> ***"Ss. 156, 190, 202 – Procedure under*** *– Complaint about ravishing chastity of daughter-in-law by her father-in-law – Police refused to register FIR and no action was taken on application to superintendent of Police – Complainant approached Judicial Magistrate to register her complaint and investigate case against accused under S. 156(3) – She filed her own affidavit, copy of application to Supdt. of Police and medical report in support – Magistrate called report from Police Station – Report indicated that no case was registered on basis of complaint made – Magistrate directed that application under S.156(3) be registered as complaint and directed Registry to present the complaint for recording statement of complainant under S.202 – Held, judicial discretion exercised by Magistrate was neither arbitrary nor perverse and High Court was not justified in interfering with the order.* ***(Para 10)"***

In the case of **Satish Dwarkaprasad Sharma Vs. State of Maharashtra 2011 ALL MR (Cri) 2809** it is ruled as under;

> ***"Ss. 156, 200 – Direction to investigate offence*** *– Application to set aside – Ground that Court had to record statement of complainant u/s. 200 instead of directing*

*investigation u/s. 156 (3) – Held, on receipt of a private Complaint Court is not oblige to record statement u/s. 200 forthwith – Instead, Court can direct investigation before taking cognizance – Procedure u/s. 200 comes only when court decides to take cognizance & proceed further – Impugned order not interfered with AIR 2006 SC 705; 2010 (1) Mh. L.J. 421 Relied on.* ***(Para 7)"***

In the case of **Ramesh Bandodkar Vs. Nilconta Amonkar 1997 (2) Goa. L.T. 193** it is ruled as under;

***"Ss. 156, 200, 202, 203 – Private complaint – Investigation by Police*** *– Examination by complainant & his witness – Complainant willing to produce further evidence – Request disallowed – Complaint dismissed by trail Court – Dismissal incorrect – Order set aside* ***(Para 3)"***

In the case of **Murad abdul Mulani Vs. Salma Babu Shaikh 2015 ALL SCR 2874** it is ruled as under;

***"Ss. 156, 386 – Constitution of India, Art.134 – Shoddy investigation*** *– Direction to initiate criminal prosecution – against investigating officers – Death of victim, a young girl in suspicious circumstances – FIR lodged implicating accused for abetment of suicide – Dying declaration of deceased not taken into consideration – High Court*

*directed State Govt. to take disciplinary action against officials entrusted with investigation – Direction also issued to initiate criminal prosecution against investigating officers – Appeal against – Considering fact that occurrence took place almost a decade ago – Order passed by High Court modified – Supreme Court directed appellants to be examined by Home Secretary of State Govt.* ***(Paras 8, 9)"***

In the case of **Divine Retreat Centre Vs. State of Kerala 2008 ALL MR (Cri) 1300 (S.C.)** it is ruled as under;

***"Ss. 156, 482 – High Court in exercise of its whatsoever jurisdiction*** *cannot direct investigation by constituting a special Investigation Team on strength of anonymous petitions. Constitution of India, Art. 226.* ***(Para 43)"***

In the case of **Divine Retreat Centre Vs. State of Kerala 2008 ALL MR (Cri) 1300 (S.C.)** it is ruled as under;

***"Ss.156, 482 – Investigation – Direction to initiate on basis of allegations made in anonymous petition*** *– Person against whom investigation is directed is entitled to opportunity of hearing.* ***(Paras 44, 45)"***

In the case of **Divine Retreat Centre Vs. State of Kerela 2008 ALL MR (Cri)1300 (S.C.)** it is ruled as under;

> ***"Ss. 156, 482 – Investigation – High Court in exercise of its inherent jurisdiction*** *cannot change Investigating Officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on basis of complaints or anonymous petitions addressed to a named Judge.* ***(Paras 33, 34)"***

In the case of **Shalu Agarwal Vs. State of Maharashtra 2014 ALL MR (Cri) 4869** it is ruled as under;

> ***"Ss. 156, 482 – Investigation – Quashing of*** *– FIR lodged alleging petitioners conspired with police officers and medical officers to file false complaint against respondent – Composite private complaint filed alleging offences punishable under Penal Code as well as offences punishable under Prevention of Corruption Act – Petitioners not prejudiced by mere reference to S.211 of Penal Code in FIR – Allegations in complaint are based on development post registration of FIR in State of Punjab and events taking place in Mumbai – Matter is at initial stage and Magistrate is yet to take cognizance – Allegations in complaint are not only serious but prima facie disclosing commission of cognizable offence – Complaint cannot be quashed.* ***(Paras 41, 42, 45)"***

In the case of **Chandrapal Vs. State of U.P. 2009 ALL MR (Cri) JOURNAL 266** it is ruled as under;

> ***"S.156(3) – Application for registration of FIR and investigation of case*** *– Magistrate to examine whether a prima facie commission of offence is made out or not – In purely Civil dispute refusal to register FIR is not improper.* ***(Para 4)"***

In the case of **Dilawar Singh Vs. State of Delhi 2007 ALL SCR 2430** it is ruled as under;

> ***"S.156(3) – Cognizance of offence – Investigation*** *– Any Judicial Magistrate, before taking cognizance of the offence, can order investigation u/s. 156(3) of Cr.P.C. – If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. 2001 ALL MR (Cri) 775 (S.C.), AIR 1961 SC 986 – Ref. to.* ***(Para 17)"***

## CHAPTER 172

WHENEVER A THING IS PROHIBITED, IT IS PROHIBITED WHETHER DONE DIRECTLY OR INDIRECTLY

In **Noida Entrepreneurs Assocn vs Noida & Ors. (2011) 6 SCC 508,** it is ruled as under;

> *''It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud", which means" "whenever a thing is prohibited, it is prohibited whether done directly or indirectly". (See: Swantraj & Ors. v. State of Maharashtra, AIR 1974 SC 517; Commissioner of Central Excise, Pondicherry v. ACER India Ltd., (2004) 8 SCC 173; and Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors., JT (2010) 11 SC 273).*

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## CHAPTER 173

DUTY AND LIMITS ON JURISDICTION OF CHIEF MINISTER

In the case of **State of Maharashtra Vs. Sarangdharsingh Shivdassingh Chavan (2011) 1 SCC 577** while declaring the circular issued by the Chief Minister of Maharashtra and imposing cost of Rs. 10 Lac on state, it is ruled as under;

> *"**Criminal Procedure Code, 1973 – Ss. 156, 154 and 157 – FIR and investigation – Interference by Chief Minister***

***of State (CM) –Instructions and interference, held (per curiam), illegal, unwarranted, against equality and social justice.***

***46.*** *This Court is extremely anguished to see that such an instruction could come from the Chief Minister of a State which is governed under a Constitution which resolves to constitute India into a socialist, secular, democratic republic. The Chief Minister's instructions are so incongruous and anachronistic, being in defiance of all logic and reason, that our conscience is deeply disturbed. We condemn the same in no uncertain terms.*

***56……. Article 164(3) lays down that the Governor shall before a Minister enters upon his office, administer to him the oath of office and secrecy according to the form set out in the Third Schedule, in terms of which, the Minister is required to take oath that he shall discharge his duties in accordance with the Constitution and the law without fear or favour, affection or ill will.***

***Some members of the political class who are entrusted with greater responsibilities and who take oath to do their duties in accordance with the Constitution and the law without fear or favour, affection or ill will, have by their acts and omissions demonstrated that they have no respect for a system based on the rule of law.***

***If the Chief Minister was impelled by motives of personal ill will against the road transport operators in the western part of Kurnool and he gave the direction to the Corporation to change the order of the districts as originally planned by them and instead take up Kurnool first in order to prejudicially affect his political opponents, and the Corporation carried out his directions it does not need much argument to show that the resultant scheme framed by the Corporation would also be vitiated by mala fides notwithstanding the interposition of the semi-autonomous Corporation****.*

*The law does not accord any special treatment to any person in respect of any complaint having been filed against him when it disclose the commission of any cognizable offence. It is a vital component of the rule of law. (Para 31)*

***39.*** *The aforesaid action of the Chief Minister is completely contrary to and inconsistent with the constitutional promise of equality and also the Preambular resolve of social and economic justice. As the Chief Minister of the State Mr Deshmukh has taken a solemn oath of allegiance to the Constitution but the directions which he gave are wholly unconstitutional and*

*seek to subvert the constitutional norms of equality and social justice.*

***40.*** *The argument that some of the cases in which complaints were filed against the family of Sananda, were investigated and charge-sheets were filed, is a poor consolation and does not justify the issuing of the wholly unauthorised and unconstitutional instructions to the Collector. It is not known to us in how many cases investigation has been totally scuttled in view of the impugned directions.*

***41.*** *……**How can the subordinate police officers carry on investigation ignoring such instructions of the Chief Minister? Therefore, the instructions of the Chief Minister have completely subverted the rule of law**.*

***48.*** *We dismiss this appeal with costs of Rs. 10,00,000 (rupees ten lakhs) to be paid by the appellant in favour of the Maharashtra State Legal Services Authority. This fund shall be earmarked by the Authority to help the cases of poor farmers. Such costs should be paid within a period of six weeks from date.*

***49.…Would like to separately record my views on the crucial issue of Ministerial interference in the***

***functioning of the authorities entrusted with the task of enforcing the laws enacted by the legislature****.*

***55.*** *Under the Constitution, the executive power of the State vests in the Governor and is required to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution [Article 154(1)].* ***Article 163 mandates that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under the Constitution required to exercise his functions or any of them in his discretion.***

***57.*** ***The judgment of the Constitution Bench in C.S. Rowjee v. State of A.P. [AIR 1964 SC 962 : (1964) 6 SCR 330] is an illustration of the misuse of public office by the Chief Minister for political gain.*** *The schemes framed by the Government of Andhra Pradesh under Chapter IV-A of the Motor Vehicles Act, 1939 for nationalisation of motor transport in certain areas of Kurnool District of Andhra Pradesh were challenged by filing writ petitions under Article 226 of the Constitution. The High Court repelled the challenge to the validity of the schemes and also negatived the argument that the same were vitiated due to mala fides of the then Chief Minister of the State.*

*This Court allowed the appeals and quashed the scheme and declared that the schemes are invalid and cannot be enforced. While examining the issue of mala fide exercise of power, the Constitution Bench stuck a note of caution by observing that allegations of mala fides and of improper motives on the part of those in power are frequently made and sometimes without any foundation and, therefore, it is the duty of the Court to scrutinise those allegations with care so as to avoid being in any manner influenced by them if they are not well founded.*

***58.*** *The Court in C.S. Rowjee [AIR 1964 SC 962 : (1964) 6 SCR 330] then noted that the scheme was originally framed by the Corporation on the recommendations of the Anantharamakrishnan Committee, but was modified at the asking of the Chief Minister so that his opponents may be prejudicially affected and proceeded to observe: (AIR pp. 972-73, paras 28-30)*

> *"28. ... The first matter which stands out prominently in this connection is the element of time and the sequence of dates. We have already pointed out that the Corporation had as late as March 1962 considered the entire subject and had accepted the recommendation of the Anantharamakrishnan Committee as to the order in which the transport in*

*the several districts should be nationalised and had set these out in their administration report for the three year period 1958 to 1961. It must, therefore, be taken that every factor which the Anantharamakrishnan Committee had considered relevant and material for determining the order of the districts had been independently investigated, examined and concurred in, before those recommendations were approved. It means that up to March-April 1962 a consideration of all the relevant factors had led the Corporation to a conclusion identical with that of the Anantharamakrishnan Committee. The next thing that happened was a conference of the Corporation and its officials with the Chief Minister on 19-4-1962. The proceedings of the conference are not on the record nor is there any evidence as to whether any record was made of what happened at the conference. But we have the statement of the Chief Minister made on the floor of the State Assembly in which he gave an account of what transpired between him and the Corporation and its officials. We have already extracted the relevant portions of that speech from which the following points emerge: (1) that the Chief Minister claimed a right to lay*

*down rules of policy for the guidance of the Corporation and, in fact, the learned Advocate General submitted to us that under the Road Transport Corporation Act, 1950, the Government had a right to give directions as to policy to the Corporation; (2) that the policy direction that he gave related to and included the order in which the districts should be taken up for nationalisation; and (3) that applying the criteria that the districts to be nationalised should be contiguous to those in which nationalised services already existed, Kurnool answered this test better than Chittoor and he applying the tests he laid down, therefore suggested that instead of Chittoor, Kurnool should be taken up next. One matter that emerges from this is that it was as a result of policy decision taken by the Chief Minister and the direction given to the Corporation that Kurnool was taken up for nationalisation next after Guntur. It is also to be noticed that if the direction by the Chief Minister, was a policy decision, the Corporation was under the law bound to give effect to it (vide Section 34 of the Road Transport Corporation Act, 1950). We are not here concerned with the question whether a policy decision contemplated by Section 34 of the Road*

*Transport Act could relate to a matter which under Section 68-C of the Act is left to the unfettered discretion and judgment of the Corporation, where that is the State undertaking, or again whether or not the policy decision has to be by a formal government order in writing for what is relevant is whether the materials placed before the Court establish that the Corporation gave effect to it as a direction which they were expected to and did obey.* ***If the Chief Minister was impelled by motives of personal ill will against the road transport operators in the western part of Kurnool and he gave the direction to the Corporation to change the order of the districts as originally planned by them and instead take up Kurnool first in order to prejudicially affect his political opponents, and the Corporation carried out his directions it does not need much argument to show that the resultant scheme framed by the Corporation would also be vitiated by mala fides notwithstanding the interposition of the semi-autonomous Corporation.***

***60.*** *This Court in Chandrika Jha [(1984) 2 SCC 41] prefaced consideration of the question of interference by the Chief Minister with the statutory functions of the Registrar under Bye-law 29 by*

*making the following observations: (SCC p. 44, para 4)*

*"4. The case illustrates an unfortunate trend which has now become too common these days in the governance of the country."*

*"12…**Under the Cabinet system of Government the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information which is available to the Minister in charge of any department and may issue necessary directions for carrying on the general administration of the State Government.***

***Neither the Chief Minister nor the Minister for Cooperation or Industries had the power to arrogate to himself the statutory functions** of the Registrar under Bye-Law 29. **The act of the then Chief Minister in extending the term of the Committee of management from time to time was not within his power. Such action was violative of the provisions of the Rules and the bye-laws framed thereunder. The action of the Chief Minister meant the very negation of the beneficial measures contemplated by the Act.***

***63. This Court in Shivajirao Patil [(1987) 1 SCC 227]***

*"50…**It leaves a great deal of suspicion that tampering was done to please Shri Patil or at his behest. It is true that there is no direct evidence. It is also true that there is no evidence to link him up with tampering. Tampering is established. The relationship is established. The reluctance to face a public enquiry is also apparent. Apparently Shri Patil, though holding a public office does not believe that 'Caesar's wife must be above suspicion'. The facts disclose a sorry state of affairs.***

***51. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even beforecleaning the physical atmosphere. The pollution in our values and standards in (sic is) an equally grave menace as the pollution of the environment. Where such situations cry out the courts should not and cannot remain mute and dumb."***

*(emphasis supplied)*

***64…**11.* ***<u>The Minister holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy.</u>*** *The acts done and duties performed are public acts or duties as the holder of public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by the rule of law, power is conferred on the holder of the public office or the authority concerned by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. …*

*12. … If the Minister, in fact, is responsible for all the detailed workings of his department, then clearly ministerial responsibility must cover a wider spectrum than mere moral responsibility: for no*

*Minister can possibly get acquainted with all the detailed decisions involved in the working of his department. ...*

***

*14.* ***The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same."***

*(emphasis supplied)*

***66…No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."***

*(emphasis supplied)*

***68….These are liberties secured by restraints, justice under law, order that provides opportunity, the economy of the good life. From the beginning of human history government has been recognized as the overall holder and regulator of power, maintaining order by limiting all other expressions of power and thereby turning permitted powers into rights. In every age the abuse of power by governments has led to disasters and uprisings, oppressions and vainglorious wars, and sometimes to experiments in the control of power, seeking to make it responsible, or more responsible, subject in some manner to the will of the people, of the majority or those who represented them."***

***69. Shri Dilip Kumar Sananda, a Member of the Legislative Assembly approached the Chief Minister for a special treatment. The Chief Minister, without verifying the truthfulness or otherwise of the assertion of Shri Dilip Kumar Sananda that false complaints were being lodged against his family members, issued instructions that complaints against the MLA concerned and his family members should be first placed before the District Anti-Moneylending Committee, which should obtain legal opinion of the District***

***Government Pleader and then only take decision on the same and take appropriate legal action.***

***70.*** *The camouflage of sophistry used by Shri Vilasrao Deshmukh in the instructions given by him and the affidavit filed before this Court is clearly misleading. The message to the authorities was loud and clear i.e. they were not to take the complaints against Sananda family seriously and not to proceed against them. The District Magistrate, the District Superintendent of Police and officers subordinate to them were bound to comply with the same in their letter and spirit. They could disregard those instructions at their own peril and none of them was expected to do so."*

## CHAPTER 174

EVEN IF THE VICTIM DUE TO COMPROMISE OR ANY REASON DOES NOT WANT TO PURSUE THE PROSECUTION AGAINST GUILTY, THE COURT CANNOT EXONERATE THE ACCUSED AND CONSPIRATORS AS THE OFFENCES ARE AGAINST ADMINISTRATION OF JUSTICE.

That, whenever the proceedings are covered under Sec. 340 r/w. 195 of Cr. P. C. then the role of victims is at the most of a witness and none more than it.

In **Samson Arthur Vs. Quinn Logistic India Pvt. Ltd. 2015 SCC OnLine Hyd 403** it is ruled as under;

> ***"58**. Sri. S. Ravi, Learned Senior Counsel appearing on behalf of the appellants, would submit that it was now apparent that the principal warring parties namely IRBC and Mr. Sean Quinn were in the process of settling their disputes by mediation; the latest information, published on 01.07.2015, shows that a retired Judge Mr. Justice Joseph Finnegan had agreed to act as a mediator in the long running dispute between the Quinn family and IBRC; a copy of the publication was being annexed; the litigation in India is just an offshoot of the litigation in Ireland between IBRC and the Quinn family; it is not as if IBRC has lent any separate money to QLI apart from what it is seeking to recover in the proceedings in Ireland; IBRCs effort appeared only to secure all the assets of Mr. Sean Quinn all over the world; the Supreme Court has, in Gian Singh v. State of Punjab, CBI v. Narendra Lal Jain, and Nikhil Merchant v. CBI, held that, even where certain offences may not be compoundable in terms of Section 320 Cr.P.C., the Court may, in the interest of justice, quash such complaints; and in the peculiar circumstances of this case, since the complaint is emanating from the High Court itself, which would also ultimately exercise the jurisdiction under Section 482 Cr.P.C. against the very*

*complaint that would be instituted in the Court of the Magistrate, this was a fit case wherein, in the alternative, this Court could consider permitting the compounding of the alleged offences.*

***59.*** *Sri. S. Niranjan Reddy, Learned Counsel for the respondent-company, would submit that, for compounding of offences punishable under the India Penal Code, a complete scheme is provided under Section 320 Cr. P.C; Section 320(1) provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column (3) of the said table; Section 320(2) provides that the offences, mentioned in the table, can be compoundable by the victim with the permission of the court; as against this, sub-section (9) specifically provides that no offence shall be compoundable expect as provided by this section; in view of the aforesaid legislative mandate, only offences, which are covered by Table 1 or Table 2 as stated above, can be compounded; the rest of the offences punishable under the IPC cannot be compounded; Section 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 and Section 463, 471, 475 or 476 for which punishment, under Section 340 read with Section 195 Cr.P.C, can be made, have been omitted from Section 320, and are hence not compoundable.*

***60.*** *In Nikhil Merchant11, the Supreme Court held that, in the case before it, the disputes between the Company and the Bank had been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank had been cleared, and the Bank did not appear to have any further claim against the Company; what, however, remained was the fact that certain documents were alleged to have been created by the appellant in order to avail credit facilities beyond the limits to which the Company was entitled; the dispute involved before it had the overtones of a civil dispute with certain criminal facets; the question, which was required to be answered, was whether the power, which independently lay with it to quash criminal proceedings pursuant to the compromise arrived at, should be exercised?; on an overall view of the facts, keeping in mind the decision in B.S. Joshi v. State of Haryana and the compromise arrived at between the Company and the Bank, as also the consent terms in the suit filed by the Bank, they were satisfied that this was a fit case where technicalities should not be allowed to stand in the way of the quashing of the criminal proceedings since, in their view, continuance of the same, after the compromise arrived at between the parties, would be a futile exercise.*

***61.*** *In Gian Singh9 the Supreme Court held that the power of the High Court in quashing a criminal proceeding or FIR or complaint, in the exercise of its inherent jurisdiction, is distinct and different from the power given to a criminal court for compounding the offences under Section 320 Cr.P.C; in what cases power, to quash the criminal proceeding or complaint or FIR, may be exercised, where the offender and the victim have settled their dispute, would depend on the facts and circumstances of each case, and no category can be prescribed; however, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime; heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be quashed even though the victim or victims family and the offender have settled the dispute; such offences were not private in nature, and had a serious impact on society; similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc cannot provide any basis for quashing criminal proceedings involving such offences; but criminal cases having a civil flavour stand on a different footing for the purposes of quashing, particularly offences arising*

*from commercial, financial, mercantile, civil, partnership or such like transactions or offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong was basically private or personal in nature, and the parties had resolved their entire dispute; in this category of cases, the High Court could quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction was remote and bleak, and continuation of the criminal case would put the accused to great oppression and prejudice, and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim; the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether, to secure the ends of justice, it is appropriate that the criminal case is put to an end; if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding; and it cannot be said that B.S. Joshi12, Nikhil Merchant11 and Manoj Sharma v. State were not correctly decided.*

***62.*** *In Narendra Lal Jain10, the Supreme Court held that the civil liability of the respondents to pay the amount to the Bank had already been settled amicably; no subsisting grievance of the Bank in this regard had been brought to the notice of the Court; while the offence under Section 420 IPC was compoundable, the offence under Section 120-B IPC is not; to the latter offence the ratio laid down in B.S. Joshi12 and Nikhil Merchant11 would apply if the facts of the given case would so justify; having regard to the fact that the liability, to make good the monetary loss suffered by the Bank, had been mutually settled between the parties, and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its power under Section 482 CrPC; they did not see how such exercise of power can be faulted or held to be erroneous; and continuance of a criminal proceeding, which was likely to become oppressive or may partake the character of a lame prosecution, would be a good ground to invoke the extraordinary power under Section 482 CrPC.*

***63.*** *It is for the first time, in the present appeal, that this submission, of the dispute between Mr. Sean Quinn and IRBC being referred to mediation, is made. The mere fact that the dispute between Mr. Sean Quinn and IRBC has been referred to mediation does not necessitate the conclusion that the parties would arrive at an amicable*

*settlement justifying compounding of the offences alleged against the appellants. It is also debatable whether the appellate Court, under Clause 15 of the Letters Patent, can compound these offences simultaneously exercising jurisdiction under Section 482 Cr.P.C. It must also be borne in mind that the submission, urged on behalf of the respondent-company, if true, would mean that the appellants have sought to misuse the process of the Company Court, and have obtained orders from the Company Court misrepresenting and suppressing material facts. False averments, which interfere with the administration of justice, cannot be ignored or brushed aside, and are matters which ought to be examined by the Magistrate under Section 340 Cr.P.C."*

Hon'ble Delhi High Court in **Ranbir Singh Vs. State 1990 (3) Crimes 207** it is ruled as under;

***''Even if there had been a compromise between Applicant and Mr. Siddiqui, the same would have been of no consequence. We are actually dealing with a very serious matter of the forging of the judicial records of the High Court. The allegations of such forgery and other allied offences are against an Advocate.***

*(5) Mr. Siddiqui has also argued that there had also been a compromise between him and Mr. Saini in proceedings pending in the revision petition in the court of Sh.Lokeshwar Pd. Addl. Sessions Judge, Delhi. According to the compromise both of them had decided to withdraw their cases' against each other. He has filed an affidavit of Sh. R.C.Chopra, Advocate in which he has sworn that Mr Saini had undertaken at that time that he will withdraw his petition which he had filed before this Court i.e. the present criminal petition. It is not necessary for me to go into the merits of that argument or the alleged compromise.* ***I am of the view that even if there had been such a compromise between Mr. Saini and Mr. Siddiqui, the same would have been of no consequence. We arc actually dealing with a very serious matter of the forging of the judicial records of the High Court. The allegations of such forgery and other allied offences are against an Advocate. A very heavy responsibility is cast upon Advocates. They are the custodians of the liberty of citizens. Infact, the Courts may be inclined some time to forego the commission of such offences by ordinary litigants. But in case of an Advocate, it seems very difficult to over look the commission of***

***such serious offences. It is only through the agency of the- Advocates that the courts function smoothly. In fact, they are part and parcel of the system of the Administration of justice and if such offences committed by Advocates are not dealt with properly, the faith of the common man may be very adversely affected in the very system of Administration of justice. This action of Mr. Siddiqui also amounts to gross professional misconduct. It is not the professional duty of an Advocate to fabricate false evidence in order to get some benefit to his client. His position is like a bridge between his client and the court for the removal of the traces of any injustice which might have been suffered by his client either before coming to the court or during the trial of his case. It does not enable to transcend the lawful limitations imposed upon him by the very nature of the ethics of the legal profession. If any such crossing of the permissible limits by a lawyer is brought to the notice of the court, certainly it becomes the incumbent duty of the court to rise to the occasion, and in the interest of orderliness in Society in which we live, it painfully has to take steps in order to halt the downward trend of long***

***accepted values. In all humility, therefore, it is noted with regret that the conscience of this Court has been deeply hurt by the commission of such an act by a brother Advocate.***

*(6) Another fact convassed by Mr, Siddiqui that Mr. Saini had been giving discharges to some debtors of the father of Mr. Siddiqui would not be a relevant consideration in this matter. If Mr. Saini is guilty of any such acts of commission or omission, the remedy of Mr. Siddiqui lies somewhere else and not in these proceedings before this Court.* ***The only point involved in these proceedings is as to whether Mr. Siddiqui is guilty of tampering with the records of this Court for deriving and unlawful gain. This fact is prima facie found to be established as discussed earlier.***

*(7)* ***It now remains to be seen as to what offences prima fade appear to have been committed by Mr. Siddiqui. He seems to be guilty firstly under Section 193 of the Code. The government of the charge under this Section is against one who fabricates false evidence for the purpose of being used in. any stage of the Judicial proceedings. Prima face there is no doubt that this second***

***revision petition had been filed by Mr. Siddiqui and it was during pendency of the judicial proceedings in the second revision petition that fabrication of false evidence by substituting one page for the other prima fade appears to have been committed by Mr. Siddiqui. He is also shown to have issued false certificate of non filing of the revision petition in the Supreme Court India or in the High Court relating to a very material fact. Under the relevant rules he is required to issue such certificate of non filing. Prima fade he appears to have appended this false certificate knowing or believing that such certificate is false in a material respect. This covers his action under Section 197 of the Code also. He also used this certificate as true knowing it to be false. It was only on the basis of this certificate that the revision petition was admitted by me on the point of sentence. If he had disclosed the true fact of earlier having filed a criminal revision petition, I would not at all have been inclined to entertain this revision petition. Therefore, his action is also covered under Section 198 of the Code prima fade. This certificate can also be called a declaration.***

***Therefore, it will also fall within the mischief of Sections 199 and 200 of the Code.''***

## CHAPTER 175

DUTY OF THE COURT TO CORRECT THE RECORD.

In **Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd. (2019) 3 SCC 203** it is ruled as under;

***"13….The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only power, but a duty to correct it…….....***

***10.*** *Insofar as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:*

*"215. High Courts to be courts of record.—*
*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."*

*It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognized in several of our judgments.''*

## CHAPTER 176

EQUITY CANNOT OVERRIDE THE LAW

In **Asha Ranjan Vs. State of Bihar 2017(2)Scale 709,** it is ruled as under;

*"On equitable considerations court cannot ignore or overlook the provisions of the statute, and that equity must yield to law. There can be no doubt that equity cannot override law"*

# CHAPTER 177

## ORDER PASSED BY CIVIL JUDGE

| | |
|---|---|
| **Petition No. – 2050 of 2010**<br>Family Court, Bandra<br>Mr. Niraj Shah<br>Vs.<br>Mrs.Nikita Shah | Order passed under Section 340, Cr.P.C by Family Court, Bandra. |
| **CIVIL COURT THANE**<br>Oder passed by Civil Judge Thane on Application u/sec 340 of Cr.P.C<br>Devendra Shah<br>Vs.<br>Raj Shah | As per Civil Manual par 337 (i) application u.sec 340 of Cr.P.C has to be registered as Misc Judicial Proceedings. |
| **CIVIL COURT PUNE**<br>Kevin A. Pinto<br>Vs.<br>Sameer Chavan | Oder passed by J.M.F.C , Pune against Advocate. |
| **IN THE COURT OF CIVIL JUDGE**<br>(Sr. Division ) , Pune<br>Order below Exh. 43 in M.A No. 946/2012<br>Haresh Milani<br>Vs. | During Inquiry Under Section 340 of Cr.P.C Court can call summon any Witness/Public Servant. |

| | |
|---|---|
| Union of India | |
| **IN THE COURT OF CIVIL JUDGE**<br>(Sr. Division) , Pune<br>Order below Exh. 48 in M.A No. 946/2012<br>Haresh Milani<br>Vs.<br>Union of India | The Accused have no right to pray for stay of proceeding under sec 340 of Cr. P.C. |
| **IN THE COURT OF CIVIL JUDGE**<br>(Sr. Division) , Pune<br>Order below Exh. 1 in M.A No. 946/2012<br>HareshMilani Vs. Union of India | The Accused have no right to Participate in the enquiry/proceeding under sec 340 of Cr.P.C. |

## CHAPTER 178

BAR UNDER SEC. 195 OF CR. P. C. IS FOR PROTECTION OF INNOCENT FROM MISCHIEVOUS LITIGANTS. COMPLAINT FROM COURT IS NECESSARY. PRIVATE COMPLAINT AND INVESTIGATION CAN BE QUASHED.

In the case of **Padmakar Balkrishna Samant Vs. State of Maharashtra 1996(2) ALL MR 268** it is ruled as under;

> ***"- Ss. 195, 340 - Scope - Prosecution for perjury*** *- Private Prosecution is absolutely barred – Sections are intended to prevent indiscriminate prosecution." (Para 12)*

In the case of **M/s Bandekar Brothers Pvt. Ltd. Vs. Prasad Vassudev Keni 2020 Cri.L.J. 4515** it is ruled as under;

> ***"Penal Code (45 of 1860), S. 191, S. 192 – Criminal P.C. (2 of 1974), S. 190, S. 195 – Giving/fabricating false evidence – Private complaint – Maintainability – Private complaint filed for offences under Ss. 191 and 192 is not maintainable, even if false evidence is created outside Court premises.***
>
> *S.195 of CrPC states that in offences covered by it, no Court shall take cognizance except upon*

*complaint in writing of public servant, insofar as offences mentioned in sub-clause (1)(a) are concerned, and by complaint in writing of 'Court' as defined by sub-section (3), insofar as offences delineated in sub-clause (1) (b) are concerned. Where facts mentioned in a complaint attracts provisions of Ss. 191 to 193 of the IPC, S.195(1)(b)(i) of CrPC applies. Once these sections of IPC are attracted, offence should be alleged to have been committed in, or in relation to, any proceeding in any Court. Offence punishable under these sections does not have to be committed only in any proceeding in any Court but can also be an offence alleged to have been committed in relation to any proceeding in any Court. Contrasted with S. 195(1)(b)(i), S. 195(1)(b)(ii) of CrPC speaks of offences described in S. 463, and punishable under Ss 471, 475 or 476 of the IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. What is conspicuous by its absence in S. 195(1)(b)(ii) are the words 'or in relation to', making it clear that if provisions of S. 195(1)(b)(ii) are attracted, then offence alleged to have been committed must be committed in respect*

*of document that is custodia legis, and not an offence that may have occurred prior to document being introduced in court proceedings.*

*Thus, When Section 195(1)(b)(i) of the CrPC is attracted, the ratio of judgment reported in AIR 2005 SC 2119 which approved AIR 1998 SC 1121, is not attracted, and that therefore, if false evidence is created outside Court premises attracting Ss. 191/192 of the IPC, aforesaid ratio would not apply so as to validate a private complaint filed for offences made out under these sections."*

In the case of **Abdul Rehman Vs. K.M. Anees-ul-Haq 2012 ALL MR (Cri) 362,** it is ruled as under;

*"- **S. 195 – Offence under Ss. 211, 500 IPC** – Respondent granted anticipatory bail in complaint disclosing offence under S. 406 IPC r.w. Ss. 3, 4 of Dowry Prohibition Act – Offences under S. 211 alleged to have been committed related to these proceedings – Bar contained in S. 195, held, was attracted. Complaint from court" (Paras 14, 15, 16)*

In the case of **Sampat Narayan Hake Vs. State of Maharashtra 2013 ALL MR (Cri) 640,** it is ruled as under;

> *"- **S. 195 – Penal Code (1860), S. 176 – Omission to give notice or information to public servant by person legally bound to give it** – Cognizance – Cognizance of offence punishable under section 176 IPC cannot be taken in absence of a complaint in writing made by the public servant concerned, in view of the specific bar created by sub-section (1) of section 195 of the Cr.P.C." (Para 21)*

In the case of **C. P. Kotwal Vs. Shri. Ali Ashad 2003 ALL MR (Cri) 1212,** it is ruled as under;

> *"- **Ss. 195, 156(3) – Offence of filing forged documents** – Complaint has to be filed by relevant Court and not by an individual – Filing of private complaint – Magistrate directing police officer concerned to make investigation under S. 156(3) – Direction being without jurisdiction, liable to be quashed." (Paras 11 to 13)*

In the case **Gopalakrishna Menon Vs. D. Raja Reddy (1983) 4 SCC 240** it is ruled as under;

> ***"Criminal Procedure Code, 1973 – Section 195(1)(b)(ii) – Offence punishable under Section 467 IPC is "offence described in Section463 of IPC" snd hence cannot be taken cognizance of in absence of a written complaint by court Held,***

> ***Section 195(1)(b)(ii) Cr. P. C. use two different expression viz. "offence described in regard to Section 463 IPC and 'punishable' in regard to Section 471, 475 or 476 IPC. The opening Section 463 of Chapter XVIII IPC defines the offence of forgery and Section 467 IPC punishes forgery of a particular category. Thus the offence punishable under Section 467 is an "offence Appeal by special leave from the Judgment and Order dated November 8 1982, of the Andhra Pradesh High Court in Criminal Miscellaneous Petition No. 1936 of 1982 described in Section 463" within the meaning of Section 195(1)(b)(ii) Cr. P.C. Therefore, in absence of a complaint from the appropriate civil court prosecution under Section 467, IPC on the basis of a private complaint would not be maintainable."***

In the case of **C. P. Kotwal Vs. Shri. Ali Ashad 2003 ALL MR (Cri) 1212,** it is ruled as under;

> *"- **Ss. 195, 211 – Offence of filing forged documents** – Complaint has to be in writing and has to be filed by relevant court – It cannot be filed by private complainant." (Paras 9, 10*

In the case of **Tukaram Annaba Chavan Vs. Machindra Yashwant Patil Vs. 2001 AIR SCW 660** it is ruled as under;

> *"- **S. 195 (1)(a) - Complaint filed by Charity Commissioner for offences** of filing forged documents and making use of the said documents before the Assistant Charity Commissioner - Magistrate issuing summons to be accused – Held, it is proper that the Criminal case should remain suspended till the proceeding before the Assistant Charity Commissioner is disposed of by him"*

In the case of **P.D. Lakhani Vs. State of Punjab 2008 AIR SCW 3357,** it is ruled as under;

> ***"- S.195(1)(a) – Contempt of public servant - Complaint as to –** Complaint to be filed only by the public servant concerned or his superior officer – It, therefore, cannot be done by an inferior officer." (para 12, 13)*

In the case of **P.D. Lakhani Vs. State of Punjab 2008 AIR SCW 3357,** it is ruled as under;

> *"- **S. 195(1)(a) – Contempt of Public servant – Complaint as to** – Complaint to be made by the concerned public servant or his superior officer – Otherwise, it cannot be entertained by the*

*Magistrate – Held, power to lodge the complaint in absence of express provision in the statute cannot be delegated." (1994) 4 SCC 95 and (1962) 2 SCR 812 – Ref. to (Para 13)*

In the case of **Satish Dhond Vs. State of Goa 2006 ALL MR (Cri) 1412** it is ruled as under;

***Ss. 195(1)(a), 195(1)(b)(ii) – Constitution of India, Art. 194 Disqualification petition*** *– Speaker functions as a Tribunal and not as a Court – Assuming Speaker was a Court, Primary Membership From was not forged or fabricated subsequent to its production before the Speaker – Hence S. 195(1)(b)(ii) was clearly inapplicable to case of accused. (Para 14).*

In the case of **Ramkrushan Wamanrao Jogdand Vs. State of Maharashtra 2014 ALL MR (Cri) 4104** it is ruled as under;

***Ss. 195(1)(b), 340 – Penal Code (1860), Ss. 191, 192, 417, 418, 420, 465, 468, 471 – Bombay Public Trust Act (1950), S. 22 – False evidence-*** *Bar under S. 195(1)(b) of Cr. P.C. – Applicability – Allegation that petitioners produced forged and fabricated affidavits before Asst. Charity Commissioner in an enquiry under BPT Act – Not a case that offence*

*was committed when the document was in custodia legis – Bar under S. 195(1)(b) of Cr. P.C. would not apply – Contention that Asst. Charity Commissioner alone can file such a complaint, not tenable – No interference with the order issuing process against petitioners. (Para 13, 14)*

In the case **Subhash Ramchandra Durge Vs. Deepak Annasaheb Gat. 2000 ALL MR (Cri) 1548** it is ruled as under;

***S. 195(1)(b)(i) - Complaint under S. 211 IPC -*** *Complaint has to be in writing and has to be filed by relevant court – It cannot be filed by private complainant.*

In the case of **Annasaheb Ramchandra Kunnure Vs. Parvati Parihar 1998 ALL MR (Cri) 1504** it is ruled as under;

***S. 195(1)(b)(i) – Penal Code (1860), S. 193 – Offence under S. 193 – Prosecution of –*** *Affidavit in question sworn in before Magistrate – Accused need not be prosecuted at the instance of Magistrate himself.*

In the case of **Kailash Mangal Vs. Ramesh Chand 2015 ALL MR (Cri) 3702 S.C.** it is ruled as under;

***-S. 195(1)(b)(i) –Penal Code (1860), S. 193 – Submission of false evidence –*** *Prosecution based on private complaint – Maintainability – Allegation that accused submitted false affidavit before civil court projecting himself as the only LR of deceased defendant – Thus, offence was committed when document was in custodia legis – Complaint had to be filed by Judge of the court – Private complaint filed by aggrieved brother of accused, not maintainable – Consequently, conviction of accused also sustainable.*

In the case of **Manoj Suresh Deware Vs. State of Maharashtra 2014 ALL MR (Cri) 3145** it is ruled as under;

***- S. 195(1)(b)(ii) – Penal Code (1860), Ss. 465, 471 – u/S. 195(1)(b)(ii) –*** *Against taking of cognizance of offences punishable u/Ss. 465 and 471 of IPC – Applicability – Process issued against accused for offence of false evidence u/s. 193 as also for forgery u/Ss. 465 and 471 – All offences alleged on basis of same facts – Object of forgery, as per complainant herself, was to give the false evidence in court – Held, in such a case, offence of forgery cannot not be separated from offence of giving false evidence –*

*Bar S. 195(1)(b)(ii) would be attracted - Said bar cannot be circumvented on ground that forgery in question had been committed before submitting document in Court.*

In the case of **P. Swaroop Rani Vs. M. Hari Narayan AIR 2008 SC 1884** it is ruled as under;

***- S. 195(1)(b)(ii) – Prosecution relating to documents given in evidence –*** *Power of High Court to – Criminal proceeding initiated based on observation made by Civil Court in a suit for specific performance – High Court stayed the investigation of criminal so initiated – Appeal – Supreme Court held civil proceeding and criminal proceedings can proceed simultaneously – Whether the civil proceeding and criminal proceeding shall be stayed depend upon the fact and circumstance of each case – Possession over subject property was not in question – Impugned order cannot be sustained – Appeal allowed. (Para 13, 16, 17)*

In the case of **Kavita Surendra Garg Vs. B. S. Verma 1999 ALL MR (Cri) 1000** it is ruled as under;

***- S. 195(a)(iii)- offence of making false statement punishable under S. 182 Penal Code –*** *Statement*

*alleged to have been made during search of premises conducted by I.T. authorities – Complaint filed by person who was not conducting search or was superior officer of such person – Complaint is not maintainable. (Para 4)*

In **Maharaji v. Rama Shanker 1982 SCC OnLine All 762** it is ruled as under;

***"8.*** *From the averments in the complaint in the instant case, it is clear that the offences under Sections 419 and 420, IPC were committed in the course of the same transaction in which the other offences namely under Sections 467, 120-B and 109, IPC were committed. Hence, the complaint cannot be split up and cannot be allowed to proceed in respect of offences under Sections 419 and 420, IPC.*

***9.*** *In view of what has been said above, the criminal proceedings on the basis of the criminal complaint filed by Rama Shanker, O.P. No. 1 cannot be allowed to proceed. They constitute an abuse of the process of court and deserve to be quashed. The application is allowed. The criminal proceedings in criminal case no. 168 of 1980 Rama Shanker v. Smt. Maharaji pending in the court of Munsif-Magistrate, V, Allahabad are quashed."*

In **Kodati Ramana @ Venkata Rama Rao Vs. The Station House Officer Penpahed 1991 SCC OnLine AP 173** it is ruled as under;

> ***"Criminal Procedure Code, 1973 Sec. 156 (3) and 195 — Indian Penal Code 1860 Secs. 192, 193 and 465 to 467 — A complaint filed by a party on allegation of offences under Sees. 192, 193 and Sec. 465 to 467 can not be taken cognizance of unless the complaint is filed by court or any person on behalf of the court — The High Court is having jurisdiction to quash the investigation in a Criminal case in appropriate cases.***
>
> *Held : As per section 195 (1) (b) (i) Cr. P C, no Court shall take cognizance of offences punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 IPC when such offences are alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court or some other Court, to which that Court is subordinate.* ***(Para 8)***
>
> *The Magistrate has no jurisdiction to take cognizance of offences under sections 192, 193 and 465 to 467 and consequently, he has no jurisdiction to refer the case under section 156 (3) Cr P C. to the police for investigation. The private complaint which was referred to the police for investigation is, therefore, held not*

*maintainable in respect of offences under sections 192, 193 and 465 to 467 IPC.* ***(Para 20)***

*Generally the courts will be reluctant to quash the investigation and the FIRs, but, the same in exceptional circumstances, it cannot be a bar to quash the investigation or the FIRs.* ***(Para 20)****"*

In the case of **Dr. S. L. Goswami Vs. The High Court of Madhya Pradesh at Jabalpur (1979) 1 SCC 373** it is ruled as under;

***"Criminal Procedure Code, 1898 – Section 195(1)(c) – Scope – Held, offence under Section 466, IPC is covered by the expression "offences described in Section 463" - Penal Code, 1860, Sections 120-B and 466. (Para 7)***

***Criminal Procedure Code, 1898 – Section 195(1)(c) – Offence of forgery committed after the close of the proceedings not covered – Offence must relate to the complainant court. (Para 8)***

*The appellant was committed under Section 466 r/w Section 120-B, IPC for having conspired with two others and tampered with the record of court proceedings while a paper book was being prepared in the Supreme Court section of the High Court in connection with his appeal to the Supreme Court.*

*Their revision petition to the High Court Raving failed, they appealed by special leave and contended : The Magistrate erred in taking cognizance of an offence under Section 466 r/w Section 120-B, IPC, without sanction of the Government under Section 196-A(2) of the CrPC ; and (2) the offence, if any, was not committed in any court in respect of a document produced or given in evidence in such proceeding as required under Section 195(1)(c), CrPC, 1898. Allowing the appeal the Supreme Court*

*Held :*

*(1) The view expressed by the Supreme Court in Govind Mehta case is not correct. If Section 195(1)(c) could be held applicable to Section 465 even though it is not specifically mentioned, then on the same reasoning Section 466 should also be held to come within the purview of Section 195(1)(c). Section 466 deals with an aggravated form of forgery and is therefore an "offence described in Section 463", as the expression is used in Section 195(1)(c). (Para 7)*

*(2) On facts, as required under Section 195(1)(c), it has not been established that the forged document*

*was produced or given in evidence in a proceeding before the High Court, the complainant herein. It was while the paper book was being prepared by the High Court in connection with the appellant's appeal to the Supreme Court that the appellant entered into a conspiracy and tampered with the evidence of one of the defence witnesses which is a record of the Court. The appellant was a party to a proceeding in the High Court when the appeal was heard but the document complained of as having been tampered with i.e. the evidence of the defence witness, was not produced or given in evidence in the appeal before the High Court. The document was certainly not produced or given in evidence in the High Court proceedings. The alleged tampering was after the hearing of the appeal was concluded. No doubt, the tampering was in a proceeding in relation to the preparation of the record whether such tampering would be in relation to a proceeding in Supreme Court in respect of a document produced or given in evidence before it does not arise for consideration before us as the complaint in the case is filed only by the High Court.*

*The requirement of Section 195(1)(c) not having been satisfied a complaint by the court in writing is*

*not necessary. Equally, under sub section (4) to Section 195 relating to criminal conspiracy to commit such offence a complaint by the court is not necessary. Therefore, Section 196-A(2) is attracted and a complaint by the State Government or the Chief Presidency Magistrate or a District Magistrate empowered in this behalf by the State Government in writing consenting to the initiation of the proceedings for an offence under Section 120-B, Indian Penal Code, is necessary.*

***7…..Section 466 should also be held to come within the purview of Section 195(1)(c) of the Criminal Procedure Code, as the offence under Section 463 is dealt with in Section 466. Section 463 of the Penal Code, 1860, defines forgery. The elements of forgery are: (1) The making of a false document or part of it; (2) Such making should be with such intention as is specified in the section. Section 464 states when a person is said to make a false document which is one of the requirements under Section 463. Section 465 provides the punishment for an offence under Section 463. Section 466 is an aggravated form of forgery in that the forgery should relate to a document specified in the section. One of the documents***

***specified is a document purporting to be a record or proceeding of or in a Court of Justice.''***

In the case of **Narvdeshwar Tiwari Vs. State of U.P. 1986 SCC OnLine All 606** it is ruled as under;

***"Cr.P.C. Section 195 – No cognizance on private complaint – Complaint by court is necessary.***

***5.*** *It is clear from the facts stated above that the complaint has been filed by Sri Vibhuti Lal Srivastava with the allegation that the petitioners along with two others have entered into a conspiracy in forging the Caste Certificate wherein the seal and signatures of the complainant have been forged. The complaint further says that the accused including the petitioners obtained the sale deed after producing the forged Caste Certificate in the court and obtained on the basis thereof permission in writing of the Settlement Officer (Consolidation). As provided under S. 195(1)(b)(ii), (iii) no court can take cognizance of any offence described in S. 463 or punishable under Ss. 471/475 and 476 except on the complaint in writing of that court or of some other court to which that court is subordinate. Again no court can take cognizance of any criminal conspiracy to commit or attempt to*

*commit or the attempt of aforesaid offences except on the complaint in writing of that court or of some other court to which that court is subordinate. Section 463 I.P.C. defines forgery and S. 195(1)(b)(ii) prohibits a Magistrate from taking cognizance of any offence described in S. 463 except on the complaint in writing of that court. Section 467 provides punishment for forgery of valuable security, will etc. and S. 468 lays down punishment for forgery for purposes of cheating. Thus Ss. 467 and 468 provide punishment for cheating of the kind mentioned therein. As mentioned above S. 195(1)(b)(ii) prohibits a Magistrate from taking cognizance of any offence described in S. 463 and in view of the aforesaid discussion Ss. 467 and 468 are offences of the nature described in S. 463. So the Magistrate could not take cognizance of the offences under Ss. 467, 468 and 471 on the complaint of Vibhuti Lal Srivastava opposite party No. 2. The court could take cognizance on the complaint filed by Settlement Officer (Consolidation) or of some other court to which the court of Settlement Officer Consolidation is subordinate. I therefore agree with the learned counsel for the petitioner that the complaint filed by Vibhuti Pd. Srivastava against*

*petitioners under Ss. 467, 468 and 471 is not maintainable and the Magistrate could not take cognizance on his complaint in view of the provisions of S. 195(1)(b)(ii)(iii). The court below has grievously erred in taking cognizance of these offence against the petitioners and summoning them on a complaint of Sri Vibhuti Lal Srivastava. The facts stated in the complaint do not in the least make out separate and distinct offences against the petitioners under Ss. 419 and 420 I.P.C. As observed in State of U.P. v. Suresh Chandra Srivastava, 1984 All Cri C 306.: (1985 All LJ 505 (SC)) the law is now well settled that where an accused commits some offences which are separate and distinct from those contained in S. 195, then S. 195 will affect only the offences mentioned therein, unless such offences form an integral part so as to amount to offences committed as a part of the same transaction in which case the other offences also would fall within the ambit of S. 195 of the Code. In the instant case from the facts stated in the complaint no separate and distinct offence under Section 419/420 I.P.C. is made out against the petitioner.*

***3.*** *He produced a Caste Certificate purporting to have been issued by Sri Vibhuti Lal Srivastava, Pradhan of the village and the Settlement Officer (Consolidation) therefore granted the permission and Subrati executed a sale deed. Vibhuti Lal Srivastava opposite party No. 2 has filed a complaint in the court of Special Judicial Magistrate Gorakhpur against petitioners and two others to wit Subrati and Santoo Dube under Ss. 419/420/468/467/471 IPC with the allegation that the accused named in the complaint have after entering into a conspiracy, forged the Caste Certificate and obtained the sale deed. He further alleged in the complaint that the seal of Gram Pradhan as well as his signatures, both have been forged and on the basis of the forged document filed by the accused, permission was obtained by misguiding the court. It so appears that after examining one witness the learned Magistrate summoned the accused and hence this petition."*

## CHAPTER 179

SECTION 340 CR. P.C. – THERE IS SPECIFIC PROCEDURE WHICH IS TO BE FOLLOWED – NO SPECIFIC REASONS HAVE BEEN MENTIONED FOR NOT INITIATING THE ACTION – THE TRAIL COURT IS DIRECTED TO DECIDE THE APPLICATION.

In **Sunny Bhumbla Vs. Shashi 2010 SCC OnLine P&H 1054** it is ruled as under;

> ***Section 340 of the Cr.P.C. - There is specific procedure which is to be followed while disposing of an application moved under Section 340 of the Criminal Procedure Code - the impugned order is absolutely silent as to whether or not inquiry was held - no specific reasons have been apportioned for not initiating the action on the basis of the alleged affidavit. The said application having been moved under the provisions of the Code of Criminal Procedure was required to be disposed of separately - The trial Court is directed to decide the application under discussion in accordance with law.***
>
> *Petition moved under Section 9 of the Hindu Marriage Act - she had not mentioned about the source of income as well as employment in the earlier affidavit. Thereafter the appellant moved an application under Section 195 of Cr.P.C.*

*for initiating proceedings against the respondent for submitting a false affidavit before the learned trial Court, in order to get more maintenance from the appellant - no specific reasons have been apportioned for not initiating the action on the basis of the alleged affidavit. The said application having been moved under the provisions of the Code of Criminal Procedure was required to be disposed of separately. It was not desirable on the part of the learned trial Court to decide the said application in a slip shod manner by making mere passing reference to the alleged affidavit. In the application moved under Section 340 of the Cr.P.C. if the Court deems fit, the inquiry has to be held whereas in the present one, the impugned order is absolutely silent as to whether or not inquiry was held. There is specific procedure which is to be followed while disposing of an application moved under Section 340 of the Criminal Procedure Code - The trial Court is directed to decide the application under discussion in accordance with law.*

## CHAPTER 180

FALSE EVIDENCE, AFFIDAVIT- PROSECUTION INITIATED.

Calcutta High Court in the case of **Parsanna Kumar Roy Karmakar Vs. State of west Bengal and Ors. (1997) 1 Cal LT 476 (HC)** it is ruled as under;

> *''Forgery – Impersonation – Forged memo of appeal etc. – High Court directed prosecution under section 182, 191,192,193,199,200,205,463,466,471 of I.P.C''*

Hon'ble Delhi District Court in State Vs. Mohan Singh it is ruled as under;

> *''Complaint filed by Registrar of Supreme court – Tempering of Court Records – Accused convicted under section 193, 466 of IPC – Each year's imprisonment.''*

In **Ranbir Singh Vs. The State 1990 (3) Crimes 207,** it is ruled as under;

> *''Prosecution of advocate under section 193,197,198,199,200 of I.P.C – For false affidavit – Registrar of the Court directed to file complaint before Magistrate.''*

Hon'ble Orrisa High Court in **Manoranjan Khatua Vs. State of Orissa 1990 Cri.L.J.1583** it is ruled as under;

*I.P.C Section 466,471 – Charge against advocate for impersonation – Written complaint from the court is necessary.*

Hon'ble Karnataka High Court in **Advocate General Vs. Chidambar and Anr. 2004 Cri.L.J. 493** it is ruled as under;

*''Impersonation – Bringing some other persons and presenting before the Court is criminal contempt – Registrar of High Court directed to file complaint.''*

Hon'ble High Court in **Koppala Venkataswami Vs. S.L.Chetti And Ors.AIR 1959 AP 204** it is ruled as under;

*Cr.P.C. – Section 476 – Forgery- Suit on forged contract – Party found to have committed forgery – Such person is danger to the society – Complaint should be made.*

In **Uttar Pradesh Resident Employees Cooperative Housing Board Society &Ors Vs. NOIDA & Another(2010) 3 SCC (Cri) 586, i**t is ruled as under;

*Contempt of Courts Act – Section 2 (c ) – Criminal Contempt section 12- Filing false affidavit intentionally is a criminal contempt.*

In **Suresh Chandra Sharma Vs. State of M.P. 2009 Cri. L.J. 4288 (SC)** it is ruled as under;

*I.P.C. 194 – Fabrication of records by Police for procuring conviction – Certified copies showing*

*timing – Investigation papers not showing timing- Accused guilty.*

## CHAPTER 181

CIVIL COURT CAN SUMMON A WITNESS IN ENQUIRY U/S 340 & DIRECT TO REGISTER F.I.R

Hon'ble Madras High Court in the Case **N. Natrajan Vs. The Executive Officer MANU/TN/0811/2015,** it is ruled as under;

*"Forged document produced in Court-Appellate court can summon any witness as Court Witness to verify it- the City Civil Court has got power to abuse a direction to a party or to a witness to forward a complaint to the police- so that the fraud and forgery could be investigated."*

## CHAPTER 182

ADVOCATES – PROFESSIONAL MISCONDUCT – DUTY TOWARDS THE COURT

Hon'ble Supreme Court in the Case of **M. Veerbhadar Rao Vs. Tek Chand AIR 1985 SC 28** it is ruled as under;

*"Advocates Act 1961- Sections 38,35- Advocate counter signing the affidavit should be suspended for five years."*

Hon'ble Delhi High Court in the Case of **M/S Nova Vision Electronics Pvt. Vs. State and Anr 2011 Cri.LJ 868** it is ruled as under;

*"Submission by advocate by suppressing material facts – Cost of Rs 10,000 imposed"*

Hon'ble Sind High Court in the Case of **Ganwar s/o Bangul Ganwar s/o Bangul Vs. Emperor AIR 1944 SINDH 155** it is ruled as under;

*"Advocates duty to take some steps to verify the truth of allegations he is instructed to make."*

## CHAPTER 183

PROSECUTION AGAINST ADVOCATES

In **Ranbir Singh Vs. The State 1990 (3) Crimes 207,** it is ruled as under;

*''Prosecution of advocate under section 193,197,198,199,200 of I.P.C – For false affidavit – Registrar of the Court directed to file complaint before Magistrate.''*

Hon'ble Orrisa High Court in **Manoranjan Khatua Vs. State of Orissa 1990 CRI.L.J 1583,** it is ruled as under;

*I.P.C Section 466,471 – Charge against advocate for impersonation – Written complaint from the court is necessary.*

In **Sanyogita Shivnath Nandedkar Vs. Suprabha Rajendra Junghare 2004 ALLMR (CRI) 2296** it is ruled as under;

*''Tampering of Court records- The Connivance of Advocate for the party and court staff is doubtful- Enquiry ordered through District and Sessions Judge''*

In **Ahmad Ahmad Ashrab, Vakil Vs. State 1926 SCC OnLine ALL 365**it is ruled as under;

*A) Indian Penal Code, Sec. 466, 193 – 10 years imprisonment to defendants and Lawyer for filling false reply to defeat the lawful claim of the plaintiff. – Practitioner Suspended.*

*In the suit filed by the plaintiff, the defendant used forged documents. Jokhul Lal having only four sons. But defendants tried to create confusion to show that he had fifth. This forgery was carried out by ganjeshri. Based on the aforesaid false documents a document, which was answer to the application for review, was prepared and filed in the court. The said document /reply was signed by Vakil, Ahmad Ashrat.*

*B) I.P.C. 466, 193 – A Defendant was sentenced to two rigorous imprisonment of 5 years for filling document containing false statement – Held, If Legal practitioner signs a document it is presumed that he fixes signatory with knowledge of contents –*

*A Vakil so signing cannot plead that he did not know the contents – A man who signs his name to a document makes himself responsible in every way – He is bound to answer for every word, line, sentence and paragraph, and it will be no defence that somebody else wrote it and he only signed it – signature implies association and carries responsibility – He will be bound by all the implications arising from it just as much as if he had written every word – Practitioners must realize that if they associate themselves with statements which they know to be dishonest and untruthful for the purpose of misleading the Court then they should be punished - practitioner suspended.''*

**CHPTER 184**

FAKE ADDRESS GIVEN - PROSECUTION AS PER SECTION 340 OF CR.P.C IS MUST**.**

In **Abhishek Dubey Vs. Archana Tiwari** the Hon'ble Delhi High Court in Cri. Rev. Petition No. 944 of 2019 in order dated **15.10.2019** it is ruled as under;

*"The Petitioner has admitted before the Trial Court, that he is staying on rent on the 2nd Floor of House Number 2, Shriram Puram Maharishi Tiraha, IIM Road, Lucknow, which belongs to an Advocate, namely, Dharmendra Mishra, appearing on behalf of the petitioner in Lucknow Court. Thus, the petitioner has committed*

*perjury by stating the said fact before the Trial Court whereas he is not residing there and the address is fake. Accordingly, I hereby direct the Trial Court to issue proceedings against the petitioner under Section 340 Cr.P.C.*

In **Indresh Shamsunder Advani Vs. Gopi Tarachand Advani (Smt.) 2005 (1) BomCR 918** had ruled that;

***'20.*** *It is then rightly contended on behalf of the defendant that the affidavit filed before this Court on behalf of the plaintiff dated 25th March, 2004 mentions that the plaintiff was resident of 95/1, Garden View', Oomar Park, Bhulabhai Desai Road, Bombay - 400 026. However, this statement is false and its falsity is evinced by the permanent address of the plaintiff mentioned in his passport No. A 1 740845 as B/2, Shangrila Apartment, St. Mary's Colony, Miramar, Panjim, Goa. The contents of the passport being public document, will have to be given credence in preference to the statement made on affidavit. From the details mentioned in the passport of the plaintiff, it is clear that the statement made on affidavit before this Court that the plaintiff was resident of 95/1, Garden View, Oomar Park, Bhulabhai Desai Road, Mumbai is false and the plaintiff knew and believed the same to be false. The appropriate course, in such a situation, in my view, is to direct the Registry of this Court to file a complaint in writing before the appropriate forum as is required by Section 195(l)(b) of the Criminal Procedure Code,*

*1973 for the plaintiffs have made aforesaid false statements on oath in the proceedings before this Court, which is punishable under Chapter XI of the Indian Penal Code. The Registry of this Court shall draw a complaint in this behalf regarding the aforesaid four false statements made on affidavit in the proceedings before this Court and file the same before the appropriate Court, competent to try and decide the criminal action against the respondents/ plaintiff.*

***17.** Taking overall view of the matter, I am more than convinced that the defences taken on behalf of the respondents/plaintiff are only smoke screen created to take refuge thereunder, so as to justify their illegitimate actions taken with purpose, to sub serve their ulterior design……..''*

Hon'ble High Court in the case of similar nature in the case between **Sugesan Finance Investment Vs. MuljiMetha1989 SCC OnLine Mad 112,** had ruled as under;

***"Application under sec 340 has to be decided urgently. –***

***It is expedient in the interests of justice to set the criminal law in motion as prayed for by the applicants in regard to the above said first charge of giving fictitious address of plaintiff. Offences prima facie disclosed are under Ss. 191, 193 and 199 of the Penal Code, 1860.***

*Larger interest of administration of Justice also demands that a fuller probe is made by the Criminal Court in this matter as to whether the alleged offences have been committed by the respondent, so that such alleged bad practice to get the desired result is not resorted to by other litigants.*

**CHAPTER 185**

FALSE RAPE CHARGE

In the case of **Bimla Devi Vs. State of Haryana MANU/PH/0012/ 2017,** it is ruled as under;

***"FALSE CHARGE OF RAPE – WOMAN PROSECUTED FOR PERJURY".***

***3.*** *On the basis of complaint made by the petitioner, FIR No. 717 dated 30.07.2014 was registered against one Krishan Lal under Sections 342, 366, 376, 506 and 509 IPC at Police Station City, Karnal. She was produced before the Magistrate and her statement under Section 164 Cr.P.C. was recorded on 31.07.2014 wherein also she accused Krishan Lal of confining and raping her. During trial, she appeared in the Court as PW3 on 22.10.2014 and turned hostile. She claimed that nothing was done to*

*her by Krishan Lal and she made statement under Section 164 Cr.P.C. under police pressure.*

***17.*** *Adverting to the facts of present case, in reply to the notice for perjury, the petitioner took the stand that she and her three children were put under the fear of death and constrained with the circumstances she had to resile from her previous statement. The Addl. Sessions Judge came to the conclusion that one of her statement given in the Court is incorrect and it would be expedient in the interest of justice to issue notice to the petitioner for perjury. Her reply was sought, which the petitioner had filed. After prima facie satisfying, an opinion was formed by the Addl. Sessions Judge to forward the petitioner for trial under Section 193 IPC to elicit the truth.*

***18.*** *The facts in B.K. Uppal's case are not applicable to the present case. Even otherwise, in that case the complaint under Section 340 Cr.P.C. was filed against the investigating officer for fabricating and producing false evidence in the Court without affording him the opportunity of hearing, which is not the situation in the case in hand. It is not that she was not afforded any opportunity of hearing. She was given due opportunity to file reply which she filed. She was heard and thereafter order was passed.*

***19.*** *The petitioner cannot derive any help from KTMS Mohd. and Madan Lal's case as she still have to prove before the trial Court under what circumstances she was forced to make the statement and whether such deposition was against her wishes.*

***20.*** *There are no grounds for quashing. The petition is dismissed. Whatever has been said hereinabove is without prejudice to the case on merits. The petitioner will be at liberty to raise all the pleas before the appropriate forum and at the appropriate stage.***"**

**See Also – 1. Perumal VS Janaki (2014) 5 SCC 377**

**2. Pradeep Kr Vs. State Bail No. 7754 of 2020 order dated 22.02.2021**

## CHAPTER 186

DUTY AND OBLIGATION OF JUDGES AS PER RELIGIOUS PRINCIPLES.

In the case of **Zahira Habibullah Sheikh Vs. State of Gujarat (2006) 3 SCC 374** it is ruled as under;

*The case at hand immediately brings into mind two stanzas (14 and 18) of the eighth chapter of Manu Samhita dealing with role of witnesses. They read as follows:*

*Stanza 14*

यत्र धर्मों ह्यधर्मेण सत्यं यत्रानृतेन च ।
हन्यते प्रेक्षमाणानां हतास्तत्र सभासदः ।।

*"Jatro dharmo hyadharmena*

*Satyam jatranrutenacha*

*Hanyate prekshyamananam*

*Hatastrata sabhasadah"*

*[Where in the presence of judges "dharma" is overcome by "adharma" and "truth" by "unfounded falsehood", at that place they (the judges) are destroyed by sin.]*

*Stanza 18*

पादोऽधर्मस्य कर्तारं पादः साक्षिणमृच्छति ।
पादः सभासदः सर्वान् पादो राजानमृच्छति ।।

*"Padodharmasya kartaram*

*Padah sakshinomruchhati*

*Padah sabhasadah sarban*

*Pado rajanmruchhati"*

*[In the adharma flowing from wrong decision in a court of law, one-fourth each is attributed to the person committing the adharma, witness, the judges and the ruler.]*

In the case of **Rupa Ashok Hurra and Ors. Vs. Ashok Hurra and Ors. AIR 2002 SC 1771** it is ruled as under;

> ***"42....****Almighty alone is the dispenser of absolute justice — a concept which is not disputed but by a few. We are of the view that though Judges of the highest court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error.***"**

## CHAPTER 187

THE COURT CANNOT TRAVEL BEYOND OBSERVATION 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 VIEW ON SUCH ISSUE.

In **Som Mittal Vs. Government of Karnataka (2008) 3 SCC 574** it is ruled as under;

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

***11.*** *The subject matter of an appeal, whether civil or criminal, is the correctness of the decision of the court below. There is no question of appellate court travelling beyond and making observations alien to the case. Any opinion, observation, comment or recommendation de hors the subject of the appeal, may lead to confusion in the minds of litigants, members of public and authorities as they will not know how to regulate their affairs, or whether to act upon it. Another aspect that requires to be kept in view is the fact that even when it becomes necessary for a court for whatsoever reason, to decide or comment upon an issue not raised by the parties, it may do so only after notifying the parties concerned so that they can put forth their views on such issue.''*

## CHAPTER 188

WHEN OFFENCES ARE NON BAILABLE AND SERIOUS THEN THE COURT WHILE DIRECTING THE ACTION UNDER SECTION 340 OF CR. P.C CAN ALSO COMMIT ACCUSED TO CUSTODY AS PER SECTION 340 (1) (D) OF CR.P.C . AND CAN ALSO ISSUE NON - BAILABLE WARRANTS.

Section 340(1) (d) of Cr. P.C reads as under;

> ***''340(d)*** *take sufficient security for the appearance of the accused before such Magistrate, or* ***if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and''***

In **Arvindervir Singh vs State Of Punjab & Anr. (1998) 6 SCC 352** it is ruled as under;

> ***Section 340 of Cr. P. C. – Action under sec 193, 194, 211 and 218 IPC for filing false charge sheet against the innocent – Creating false evidence in the statement recorded during investigation- On the direction given by the Supreme Court the CBI*** *submitted report and recommended* ***action under sec 193, 194, 211 and 218 IPC against Police officer. Supreme Court forthwith directed the release of victim from jail – The SC accepted the report and directed CBI to file challan against accused. – On the report by CBI the Designated Court took the cognizance and issued process with non-bailable warrant against the appellant who is Senior Inspector. In pursuance to said process the accused came to be arrested and confined in custody.***
>
> ***BRIEF FACTS***

*The Bar Association filed Writ before HC for taking action against those involved in false implication of innocents - High Court did not accepted the same but Supreme Court directed CBI to submit the report— on the basis of report by CBI, the Supreme Court directed the forthwith release of innocent the Designated Court at Chandigarhtaken cognizance of those offences and issued process and issued non-bailable warrant against the appellant. Designated Court at Nabha issued process pursuance to which the accused came to be arrested and confined in custody.*

*The accused police officer challenged said order on the ground of non compliance of procedure laid down in Sec 195, 340 of Cr PC. The complaint should have been filed by the officer of the court and not by*

*the CBI. The matter referred to Full Bench. The Full Bench of Supreme Court partly allowed the Appeal of accused but did not quashed the proceedings. . The Designated Court at Chandigarh was directed to complete the trial as expeditiously as possible.*

***It was observed by the Full Bench as under;***

***"****We, therefore, partly allow this appeal, quash the taking of cognizance by the Designated Court of the offences under Sections 193, 194, 211 and 218 IPC*

*and direct that court to make a complaint in writing to a magistrate having jurisdiction in respect of those offences. The CBI is also directed to file an additional challan against the appellant and the other three police officers as directed by this Court by its judgment in the case of Punjab and Haryana High Court Bar Association (supra). The State government is also directed to comply with the direction given in that case and as clarified by us. The Designated Court at Chandigarh will then complete the trial as expeditiously as possible."*

*In the report submitted by C.B.I. following actions were recommended:-*

*"(i)* ***Harpreet Singh @ Lucky s/o Gurmit Singh Saini, r/o Village Bahadurpur, who is presently facing trial in case FIR No. 10/93 of PS Sadar, Ropar in the Designated Court, Nabha has been falsely implicated in the case.***

*(ii)* ***SI Avindervir Singh, ASI Darsahan Singh, Inspector Balwant Singh and DSP Jaspal Singh are prima facie responsible for the false implication of Harpreet Singh @ Lucky in the aforesaid case an are liable for prosecution for offences under Sections 193, 194, 211 and 218 IPC.***

*(iii)* ***The State Government of Punjab is to be requested for taking suitable action against Shri Sanjiv Gupta, DIG, Punjab Police for his lack of supervision."***

*In the final report the CBI had also suggested that the concerned Designated Court be directed to file a complaint as required by Section 195 Cr.P. C. for prosecuting the appellant and A.S.I. Darshan Singh, Inspector Balwant Singh and D.S.P. Jaspal Singh under Sections 193, 194,211 and 218 IPC. Allowing the appeal on 10.5.96, this* ***Court directed that Harpreet Singh @ Lucky be released from jail forthwith,*** *transferred the trial from the Designated Court at Nabha to the Designated Court at Chandigarh and directed the C.B.I. to file necessary challan in accordance with the Code of Criminal Procedure, before trial court at Chandigarh. A consequential order was also passed by the Designated Court for the release of Harpreet Singh on 16.5.96.*

## CHAPTER 189

THE MAGISTRATE WHILE ISSUING PROCESS IN PROCEEDINGS AS PER SECTION 343,195, 340,204 ETC. OF CR. P. C HAS TO ISSUE NON- BAILABLE WARRANTS AGAINST

THE ACCUSED AND WHEN SUCH ACCUSED APPEARS OR BOUGHT BEFORE THE COURT THEY SHOULD NOT BE GRANTED BAIL WHEN THE OFFENCES ARE SERIOUS, NON-BAILABLE AND AN ATTEMPT TO HARASS THE INNOCENT AND ALSO WHEN THE ACCUSED ARE PUBLIC SERVANT AND POLICE OFFICER.

OR

WHEN THE LAWFUL CLAIM IN A SUIT IS OPPOSED ON FORGED DOCUMENTS THE ACCUSED SHOULD NOT BE GRANTED BAIL.

1. Dilip @ Dinesh Shivabhai Patel & 1 Vs. State of Gujarat **2011 SCC OnLine Guj 75222.**

2. Ashok Kumar Sarogi Vs State of Maharashtra **2016 ALLMR (Cri) 3400**

3. Arvindervir Singh vs State Of Punjab & Anr. (1998) 6 SCC 352.

## CHAPTER 190

FAULTY INVESTIGATION - DUTY OF THE POLICE TO CONDUCT INVESTIGATION FROM THE DEFENCE SIDE ALSO.

POLICE OFFICER DOING ONE SIDED INVESTIGATION TO FRAME/ FALSELY IMPLICATE THE INNOCENT AND TO HELP THE BOGUS COMPLAINANT ARE LIABLE TO BE PUNISHED

SEVERELY UNDER SECTION 196,195, 218,211,230,120 (B) ETC. OF INDIAN PENAL CODE.

NO BAIL SHOULD BE GRANTED TO SUCH POLICE OFFICERS AND THEY SHOULD BE TRIED AS UNDER TRIAL PRISONERS.

THE POLICE OFFICER GIVING FALSE STATEMENT OR REPORT TO SAVE GUILTY POLICE OFFICER SHOULD BE LIABLE FOR ACTION UNDER IPC.

**See following judgments -**

1. Babubhai Vs. State 2011 (1) SCC (Cri) 336
2. Jugal Kishore Vs. State 1990 CRI. L. J. 2257
3. Modh. Zakir Vs. State 2020 ALL MR[Cri.] 264
4. Arvindervir Singh vs State Of Punjab & Anr. (1998) 6 SCC 352
5. State of Maharashtra Vs. Mangesh S/O Shivajirao Chavan 2020 SCC OnLine Bom 672
6. Modh Zahid Vs. State 1981 Cri.L.J. 2908
7. Kapol Co-op. Bank Ltd. Vs. State of Maharashtra 2005 Cri. L. J. 765
8. Ramprasad Vishwanath Gupta Vs. Prakash Ganpat Kadam & Anr.2011 ALL MR (Cri) 1122
9. Prakash Kadam & Others V. Ramprasad Vishwanath Gupta & Anr. 2011 (6) SCC 189
10. Harvinder Singh Vs. State 2015 III AD (Delhi) 210
11. State of Gujrat v. Kishanbhai (2014) 5 SCC 108

In **State of Maharashtra Vs. Mangesh S/O Shivajirao Chavan 2020 SCC OnLine Bom 672** it is ruled as under;

> ***21.*** *The Hon'ble Supreme Court in Manohar Lal vs. Vinesh Anand and others reported in 2001 AIR SCW 1590 has held that to prosecute the offender is a social need and concept of locus standi is foreign to criminal jurisprudence. In para no. 5, it is observed thus:-*
>
> *"5. Before adverting to the matter in issue and the rival contentions advanced one redeeming feature ought to be noticed here pertain to Criminal jurisprudence: To pursue an offender in the event of commission of an offence, is to sub-serve a social need Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus the doctrine of locus-standi is totally foreign to criminal jurisprudence.*
>
> ***24****. Considering the facts of the present case, in the light of exposition of law in the above referred judgment by the Hon'ble Supreme Court,* ***prima-facie it is clear from the record that PW 22, being a public officer was duty bound in law to protect***

***the deceased who was in his custody***. *In his presence, in the Court premises, the deceased was brutally attacked with weapons and murdered. PW 22 while deposing before the Court has resiled from his previous statement and tried to support the defence. Thus, a prima-facie case is made out against PW 22 for perjury and it is expedient in the interests of justice to launch prosecution for perjury against PW 22.*

***25***. *In the present case, since this Court being an appellate Court has exercised the power suo motu and issued show cause notice for perjury to PW 22, the same was justified in terms of Sections 195 and 340 of the Code of Criminal Procedure. This Court not only has the authority to exercise such jurisdiction but also has an obligation to exercise such power in appropriate cases.* ***Looking to the facts of the present case, in our considered opinion, this is a fit case to exercise such jurisdiction, so as to maintain the majesty of judicial process and the purity of legal system. This obligation has become more profound as the allegations of commission of perjury are made against a public servant. He has deliberately given false evidence before the Court so as to help the***

***accused persons. Since this offence is committed against public justice, this Court was justified in exercising the jurisdiction by issuing show cause notice for perjury against PW 22.***

***26.*** *In the fact situation of the case, this Court cannot be a silent spectator where stinking facts warrants interference in order to serve the interests of justice. If this Court remains oblivious to the patent facts on record, it would tantamount to failure in performing its obligation under the law. In this view of the matter, we are unable to accept the contentions of PW 22 that it is only trial Court before which the evidence is recorded can issue notice under Section 340 of the Code of Criminal Procedure."*

In **Prakash Kadam & Others V. Ramprasad Vishwanath Gupta & Anr. 2011 (6) SCC 189** it is ruled as under;

***WHEN POLICE ARE ACCUSED :-***

***A. Criminal Procedure Code, 1973 — Ss. 439(2) and 437(5) Bail — Cancellation of —Police acting as contract killers — Accused policemen allegedly killed deceased in a false police encounter at behest of third person — Held, position and standing of accused, etc. are factors other than misuse of bail to be considered for***

***bail cancellation — Witnesses can have no security to their life if policemen who are supposed to uphold and protect law become predators — In the circumstances of case, held, High Court rightly cancelled bail as there exists prima facie case against accused policemen which disentitles them to bail — Human and Civil Rights.***

***B. Constitution of India — Art. 21 — Fake encounter killing(s) by police — Death sentence warranted — Held, where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare.***

***c. Rule of Law – Anarchy – Matsyanayaya – larger fish devouring the smaller ones or the strong despoiling the weak – Observed, the country is heading towards such a state of lawlessness. [Paras 30 to 33]***

*31. Thus in the Shanti Parva of Mahabharat Vol. 1 it is stated:- "Raja chen-na bhavellokey Prithivyaam dandadharakah Shuley matsyanivapakshyan durbalaan balvattaraah"*

*32. This shloka means that when the King carrying the rod of punishment does not protect the earth then the strong persons destroy the weaker ones, just like in water the big fish eat the small fish. In the Shantiparva of Mahabharata Bheesma Pitamah tells Yudhishthir that there is nothing*

*worse in the world than lawlessness, for in a state of Matsyayaya, nobody, not even the evil doers are safe, because even the evil doers will sooner or later be swallowed up by other evil doers.*

In **Ramprasad Vishwanath Gupta Vs. Prakash Ganpat Kadam & Anr.2011 ALL MR (Cri) 1122** it is ruled as under;

***Criminal P.C. (1973), S.439 - Cancellation of bail - Police Officers and staff engaged by some private persons to kill their opponent - Police Officers and staff acting as contract killers - Strong apprehension in mind of witnesses about their own safety - Held, very strong reasons and circumstances exist in the present case for cancellation of bail.***

*In the present case, Sessions Judge either missed the important material or he misread the same while granting bail to these accused persons. It is a very serious case wherein prima facie, some police officers staff were engaged by some private persons to kill their opponent i.e. Ramnarayan Gupta; the police officers and the staff acted contract killers for them. If such police officer and staff can be engaged as contract killers to finish some person, there may be very strong apprehension in the mind of the witnesses about their own safety. If the police officers and*

*staff could kill a person at the behest of .third person it will not be difficult for them to kill the important witnesses or their relatives to bring pressure on them at the time of trial of the a to save themselves. This aspect has been completely ignored by the learned Sessions Judge while granting bail to the accused persons. Very strong reasons and circumstances exist in the present case due to which cancellation of bail is absolutely necessary] the interest of justice. 2006 ALL MR (Cri): (S.C.) and (2004)13 SCC 617 - Re on.*

In **Babubhai Vs. State of Gujarat 2011 (1) SCC (Cri) 336** it is ruled as under;

*''A) Cr. P.C. – S. 482 – Tainted investigation – Quashing of investigation which is tainted and biased, suffers from irregularities and conducted in malafide exercise of power by police causing serious prejudice and harassment to any party then such investigation is vitiated and any other order passed by investigating agency on basis of such vitiated investigation is liable to be quashed – charge sheet is quashed.*

*B) Article 20, 21 of the constitution – Fair investigation – Investigation must be fair, transparent and judicious – Police cannot be permitted to harass any party on basis of tainted investigation – Such tainted investigation has to be*

*quashed- fresh investigation may be ordered from other investigation agencies.''*

In **Jugal Kishore Vs. State of M.P. 1990 Cri. L. J. 2257** it is ruled as under;

***A] One sided Investigation –*** *Police is bound to investigate the plea of accused also – A dishonest, unfair or one sided investigation violate the constitutional guarantee and justify interference by Court of Law – Such proceeding has be quashed*

***B]*** *To put an accused person to long lasting trial on an incomplete and one sided investigation and promise to consider full facts only when they are brought before the court at defence stage amounts to ignoring default of the I.O. and clothe him with the authority to harass accused. It may even amount to judicial sanction of substitution of rule of law by the Police Raj, and subversion of our constitutional ideals. These consequences deserve notice of the Session Judge while interpreting his own authority and jurisdiction in the matter.''*

Hon'ble Supreme Court in the case of **State of Gujrat v. Kishanbhai (2014) 5 SCC 108** given directions to Home Departments of all states as under;

*'' We have declared the accused-respondent innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams- If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long drawn litigation, spanning over a decade, or more. The expenses incurred by an accused in his defence can dry up all his financial resources – ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over- In a large number of such petitions, the main contention is of false implication. Likewise, many petitions seeking quashing of criminal proceeding (filed under Section 482 of the Code of Criminal Procedure) come up for hearing day after day, wherein also, the main contention is of fraudulent*

*entanglement/involvement. In matters where prayers for anticipatory bail or for bail made under Sections 438 and 439 are denied, or where a quashing petition filed under Section 482 of the Code of Criminal Procedure is declined, the person concerned may have to suffer periods of incarceration for different lengths of time. They suffer captivity and confinement most of the times (at least where they are accused of serious offences), till the culmination of their trial. In case of their conviction, they would continue in confinement during the appellate stages also, and in matters which reach the Supreme Court, till the disposal of their appeals by this Court. By the time they are acquitted at the appellate stage, they may have undergone long years of custody. When acquitted by this Court, they may have suffered imprisonment of 10 years, or more. When they are acquitted (by the trial or the appellate court), no one returns to them; what was wrongfully taken away from them. The system responsible for the administration of justice, is responsible for having deprived them of their lives, equivalent to the period of their detention. It is not untrue, that for all the wrong reasons, innocent persons are subjected to suffer the ignominy of criminal prosecution and to suffer shame and humiliation. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the*

*bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal prosecution - We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.''*

In **Bhagwan Singh Vs. State of Punjab (1992) 3 SCC 249** it is ruled as under;

*"If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure.*

*If police officers who have to provide security and protection to the citizens indulge in such methods they are*

*creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher."*

In **Harvinder Singh Vs. State 2015 III AD (Delhi) 210** it is ruled as under;

***A] Quashing of Charge Sheet- Section 406,409,420,201,r/w120 (B) of IPC- Absence of legal evidence- In criminal law there is no vicarious liability – Malafides of the I.O. to falsely implicate the accused –The I.O. deliberately did not investigated the complaints of accused and did not placed those complaints on record alongwith the Charge-Sheet –Investigation is not – The Charge Sheet does not contain any legally admissible evidence to make any case against the accused. It appears that falling short of legally convertible evidence to sustain implication of the petitioner, investigating agency seems to be bent on implicating the petitioner and has gone to the extent of making feeble attempt to rely upon the changed version.*** *Investigating agency has taken shelter of mere suspicion to conclude the cheating. The Law does not authorise the trial court to issue summoning of a person as an accused on mere suspicion of the investigating agency.* ***The conclusion of I.O. is belied from the material on record. Charge- Sheet quashed – Action directed against I.O. A criminal trial cannot be allowed to assume the***

***character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused.(Para 21)***

***This Court can't refuse to invoke its powers to quash criminal case if the material on record is not sufficient enough to put the criminal law into motion.***

***B] Section 204 of Criminal Procedure Code - Duty of Magistrate while issuing process-***

***It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusation made and a case where there is legal evidence, which on appreciation, may or may not support the accusation. The judicial process should not be an instrument of oppression, or needless harassment. The Court should be circumspect and judicious in exercising***

***discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to needlessly harass any person. (Para 32)***

*It is astonishing to take note of the fact that despite thorough investigation into the matter for three years and by three different investigating officers of Inspector rank as well as deployment of the Chartered Accountant instead of coming up with formidable evidences in this regard, investigating agency has taken shelter of mere suspicion to conclude that property has been purchased from the cheated funds. In the absence of any enabling provision for presumption against accused, the Law does not authorise the trial court to issue summoning of a person as an accused on mere suspicion of the investigating agency.* ***(Para 39)***

*Hon'ble Apex Court in* ***'State of Kerala Vs. P. Sugathan & Anr.' MANU/SC/0601/2000 : (2000) 8 SCC 203****:-*

> *"12. ..... A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for*

*the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy."*

***Applying the aforesaid legal principles, it is observed that there is no evidence collected by the prosecution even to prima facie infer that the petitioner was part of any agreement with other accused persons either to do any illegal act or legal act through illegal means, to sustain his summoning as co-accused. Surprisingly, with such intricate factual matrix, the learned trial Court has passed a single line summoning order, which even does not convince this Court that the learned trial Court has applied its mind to the facts to convince itself about existence of prima facie evidence about complicity of the petitioner.*** *It is apparent that while summoning the petitioner as an accused, trial Court has completely ignored the parameters set out by the Hon'ble Apex Court for summoning of an accused as enunciated in the judgment of 'Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.' MANU/SC/1090/1998 : (1998) 5 SCC 749, wherein the law regarding summoning of an accused was considered and it was held:*

*"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the*

*criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."* ***.(Para 51)***

*It does not sound to the prudence that a person would be managing affairs of a company without even being a functionary, authorised signatory, authorised representative or a participant in the Board of Directors of a Company. Had there been a semblance of truth in the conclusion of the investigating agency regarding the petitioner being incharge of the accused company, he would have at least procured authorization to represent the accused company which is also completely missing in the present case.* ***(Para 34)***

*As per the charge sheets Ms. Madhu Singh (Managing Director of accused company) along with others induced innocent investors for investment in aforementioned residential project of the accused company, in defiance of rules and regulations embedded in their agreement.* ***(Para 5)***

*Mr. Kohli has further contended that the conclusion of the investigating agency that the property in question was sold at less than the prevailing market price itself is belied from the prevailing circle rates of the area.* ***(Para 36)***

*I find substance in submissions of Mr. Kohli that reliance on the valuation report to assert that the property in question was sold at a cheaper price is completely ill founded.* ***(Para 37)***

***[C]*** *Hon'ble Apex Court in the matter of 'Satish Mehra v. State of N.C.T. of Delhi and Anr.' (2012) 13 Supreme Court Cases 614 can be safely placed for invoking inherent powers of this Court for quashing proceedings qua the petitioner. Relevant para of the judgment is reproduced herein below:-*

*"19. The view expressed by this Court in Century Spg. case and in L. Muniswamy's case to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage.* ***The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an***

***accused under Article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spg. and Muniswamy.*** *It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not.*

***20.*** *In such a situation to hold either of the appellant-accused to be, even prima facie, liable for any of the alleged wrongful acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record.*

*(Emphasis supplied)*

***[D] Malafides of I.O:-***

*58. During the course of hearing,* ***lot of details have surfaced showing deliberate attempt on the part of investigating officer to implicate the present petitioner.*** *Under normal circumstances this court would have expressed its displeasure on the conduct with a warning to the erring official's but when the abuse is of a wider magnitude, I deem it appropriate to take serious note of the same.* ***When the power is given to the investigating agency,***

***it carries inbuilt responsibility on the officials of the Police force to use the power diligently for detection of crime and not for victimisation of a person for extraneous considerations. It is apparent from record that since the deployment of Inspector Ajay Kumar as an investigating officer, the petitioner has been deliberately targeted. Despite knowing about the frivolity in the claim of Mr. Harjit Singh regarding his being strategic buyer, investigating officer kept on shielding him and eventually facilitated accused Ms. Madhu Singh and others to misappropriate proceeds due to the accused company in terms of the Agreement dated 05.02.2011. Had the intent of the investigating officer been fair, he would have acted on the complaints of the petitioner as well and would have placed all relevant material on the record for perusal of the learned Magistrate for imparting fair opportunity to the court to examine the entire matter independently. Whereas, in the present matter there exist sufficient evidence, records and documents pointing towards innocence of the petitioner, which have been deliberately concealed to implicate and procure summoning of the petitioner.***

*45. In Maksud Saiyed's case (supra) the Apex Court observed as under:*

*"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of*

*Criminal Procedure, the Magistrate is required to apply his mind.* ***The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company.*** *The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities....."*

*(Emphasis supplied)*

*In Thermax Ltd. & ors. v. K.M. Jony & ors.' 2011 X AD (S.C.) 189, Hon'ble Supreme Court reiterated the principles laid down in the aforesaid judgment of Maksud Saiyed.* ***.(Para 46)***

*Sight of the fact can also not be lost that the version of Mr. Harjit Singh has come as a counter blast to the complaint of the petitioner, who has exposed fraudulent acts of Mr. Harjit Singh in concealing 'Agreement' while stepping in as a 'Strategic Buyer' for the same project under a different name and style with an intention to mislead the court.* ***.(Para 48)***

*Perusal of statements of the informants under section 161 Cr.P.C. does not make out any specific act attributable to the petitioner, which could justify implication of the petitioner as an accused.*

*There is no presumption in favour of existence of conspiracy. The prosecution cannot be absolved of the responsibility of bringing sufficient circumstances pointing towards existence of an agreement amongst the conspirator to do an 'illegal act' or 'a legal act through illegal means'. Apart from commission of 'Acts,' prosecution is also casted with a responsibility to bring evidence on record suggesting that the same has been committed in pursuance of 'an agreement' made between the accused persons who were parties to the alleged conspiracy. It is a well settled proposition of law that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence.* ***.(Para 49)***

In **Arvinder Singh Bagga v. State of UP (1995) SCC (Cri) 1156. AIR 1996 SC 1925** it is ruled as under;

***''A under trial prisoner was brutally beaten by Police who died up -*** *– Bar Association send letter to Supreme Court – Treated as writ – Court called report from S.P. – S.P. Shri A.K. Sinha Kasshyap filed a false report to save guilty police officer – Court not satisfied with reply called*

*report from C.B.I. – C.B.I. pointed out the disdendful role played by S.P. said to be against all tenents of law and morality - an accused who was arrested in healthy condition was a dead person at the hands of police and the attending doctors. They neither gave him food nor proper medical treatment throughout this period.* ***The inevitable result was the death of deceased Nurul Haque at the hand of the Police to which all others including doctors and the Magistracy lent support.*** *– The report and affidavit submitted by S.P. ound to be false/ fabricated – Supreme Court issued a Show cause notice to S.P – In reply to the notice S.P. again try to mislead to court and try to justified his illegal acts – S.P. is guilty of Contempt of Court sentenced to imprisonment for three months.''*

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

*A] Cri. P.C. Sec. 197 – Sanction for prosecution of High Court Judge – Accused are Additional High Court Judge, Suprintendant of Police Sanjeev Bhatt and others – The accused hatched conspiracy to falsely implicate a shop owner in a case under N.D.P.S. Act and when shop owner submitted to their demands he was discharged – Complaint u.s. 120-B, 195, 196, 342, 347, 357, 368, 388, 458, 482, I.P.c. and Sec. 17, 58 (1), (2) of NDPS Act – Held – there is no connection between official duty and*

*offence – No sanction is required for prosecution – Registration of F.I.R. and investigation legal and proper.*

*B] Cri. P.C. Sec. 156 – Investigation against accused Addl. High Court Judge – Whether prior consultation with Chief Justice is necessary prior filling of F.I.R. against a High Court Judge as has been laid down by Supreme Court in K. Veerswami's case (1991) (3) SCC 655) – Held – In K. Veerswami's case Supreme Court observed that the Judges are liable to be dealt with just the same as any other person in respect of criminal offence and only in offence regarding corruption the sanction for criminal prosecution is required – the directions issued by Hon'ble Supreme Court are not applicable in instant case.*

*C] The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of city Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a questionnaire through the registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial*

*Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner in view of the facts of the case.*

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

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

*attitude – Legal maxim Necessiatas sub lege Non contineture Quia Qua Quad Alias Non Est Lictum Necessitas facit Lictum, Means necessity is not restrained by laws – Since what otherwise is not lawful necessity makes it lawful – Proceeding proper cannot be quashed.*

## CHAPTER 191

HELP OF 340 FOR GETTING BAIL TO INNOCENTS- FILING OF APPLICATION UNDER SECTION 340 OF CR. P. C WILL COME UNDER CATEGORY OF CROSS CASE AGAINST FALSE IMPLICATION AND IT IS A GROUND FOR GETTING ANTICIPATORY OR REGULAR BAIL TO INNOCENT WHO IS FALSELY IMPLICATED. INVESTIGATION CAN BE TRANSFERRED TO OTHER AGENCY LIKE CID OR CBI.

In **Suresh Sehgal Vs. State of Punjab 2011 CRI. L. J. (NOC) 398 (P. & H.)** it is ruled as under;

> ***''Criminal P. C. (2 of 1974) - S. 438 Anticipatory bail - Serious allegations by petitioner against ACP for threatening him to falsely implicate him in case of cheating - Story set up by police and complainant does not inspiring confidence – Held, Bail granted to Petitioner and investigation transeferred to crime Branch.''***

Hon'ble Court in **Somesh Das Vs. State of Chhattisgarh 2004 CRI. L. J. 680** it is ruled as under;

> ***''Criminal P.C. (2 of 1974), S.438 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), S.18, S.3(1)(x) -***

> ***ANTICIPATORY BAIL - - If complaint is found to be false, anticipatory bail cannot be denied - Complaint lodged after delay of 14 days - It raises doubt about genuineness of complaint - Further there was dispute going on between accused official and complainant - In such circumstances, accused entitled to anticipatory bail.''***

**In Ashish Pateliya v. State of Chattisgarh, 2003 (2) Crimes 367 (368) (Chhatt)** it is ruled as under;

> ***''Cross** case -In cross-cases where both the parties have received serious injuries, FIR has been filed, the usual practice is to grant bail to the accused persons in both the cases. Where in cross cases registered under Ss. 307/34, IPC one party had been released on bail, the accused in other case was also held entitled to be released on bail.''*

Anticipatory Bail – Malafides of Police Illegal demand by police to accused to pay Rs.1,50,000/- - The case not only one of false implication but also discloses the high handed activities of the police officers – Accused entitled to get anticipatory bail – The entire investigation will have to be handed over to some independent agency such as Crime Branch C.I.D. for proceeding against the concerned police officers. **[Sureshkumar Ishwarlal Chordiya –Vs- State of Maharashtra 2005 All.M.R.(Cri.) 1952]**

Anticipatory Bail - Cr. P.C. Section 438 – Offences under Section 452, 323, 294 and 506 of I.P.C. – Plea that applicant had earlier lodged complaint against police and to take revenge police wanted to arrest applicant – Fit case for protection of anticipatory bail to accused. **[Mohd. Amin Memon –Vs- State of Chattisgarh 2005 (2) Crimes 299 (Chh)]**

In **Pravinbhai Kashirambhai Patel Vs. State of Gujarat 2010 (3) SCC (Cri) 469** it is ruled as under;

> ***''Cr. P.C. – S. 438 – Anticipatory Bail – Case of Complainant doughtful -Different versions given in different complaints – I.P.C. - Section 395, 397, 467, 468 and 471 – Grant of anticipatory bail to accused justified.''***

**In M.P.Lohia Vs. State of West Bengal 2005 Cri. L. J. 1416** it is ruled as under;

> ***A] Cr. P.C. – Section 438 – Anticipatory Bail – I.P.C. – 304 – B, 406, 498 – A, 34 – Accused and Complainant relying on documentary evidence – Bail should be granted - Wife Committing Suicide – Allegation of demand of dowry made by her parents – Accused taking defence that she was suffering mental illness- Both sides relying on documentary evidence – Held - accused relying on documentary evidence genuineness of that***

***document can be decided by the trial court- however in such case the accused are entitled to be released on anticipatory bail.***

***B] Media Trial – Supreme Court condemned the act of publishing and holding of media trials of the matters which is subjudice before Court.***

In **Meghraj Taword Vs Kapoor Chandra Kulish, 1987 (1) Raj L.R. 204** it has been ruled that;

> *"A news item regarding any decision or proceeding of the Court when published it should be kept in mind that contentions of both the parties should be fairly described to give balanced view points of each of the parties as placed before the Court by them in their petitions and the replies; arguments advanced by learned counsel appearing for both the parties should also be properly described so that reader is in a position to understand the viewpoints placed before the Court by both the counsels; and the facts and material on which the Court basis its decision in the matter should also be described in the news item so that the readers are in a position to understand why the Court took a particular view while deciding the matter."*

In **Narmada Bachao Andolan v. Union of India & Ors., (1999) 8 SCC 308,** Supreme Court had made it clear that;

> "…***vicious stultification and vulgar debunking cannot be permitted to pollute the stream of justice***. *Indeed under our Constitution there are positive values like right to life, freedom of speech and expression, but* ***freedom of speech and expression does not include freedom to distort orders of the court and present incomplete and a one-sided picture deliberately, which has the tendency to scandalise the court****. Whatever may be the motive of Ms Arundhati Roy, it is quite obvious that she decided to use her literary fame by misinforming the public and projecting in a totally incorrect manner. "*

The law made the unlawful publication as offence under contempt which is as under;

> *"Prejudicing the public in favor of or against a party in a pending case by writing an article in the Press is contempt. The reason is that such articles tend to prejudice the mind of the court, to deter the witness from giving evidence, to induce a party to abandon his defense and to possibly affect the decision of the court, though as a rule courts are not affected. Such writings tend to prejudice the public opinion by incubating the public with definite opinion about the matter. The result may be that public confidence in court might be lost if the result was otherwise than the opinion formed."*

The law of contempt throws a ring of protection around the entire course of litigation. Party, witness, Judge or counsel are all integral parts of that process. Anything which tends to impair the legitimate freedom of any of these cannot but result in obstructing the course of justice.

For a person to be held responsible for publication of an article which interferes with the course of justice, the following parameters are set:

> *"a) That something has been published which is either clearly intended or at least is calculated to prejudice a trial which is pending;*
>
> *b) That the offending article was published with the knowledge of the pending cause or with the knowledge that the cause was imminent; and*
> *c) That the matter published tended substantially to interfere with the due course or was calculated to create prejudice in the public mind."*

It has to be borne in mind that an offending act, though not influencing the Judge's mind, may affect the conduct of parties to the proceeding which is likely to affect the course of true justice **[Awadh Narain Singh Vs. Jwala Prasad, AIR 1956 Pat 321 (DB)]**

The Hon'ble Court in **Rao Harnarain v. Gumori Ram: AIR 1958 Punjab 273** has stated that "liberty of the press is subordinate to

administration of justice". The plain duty of journalist is the reporting and not the adjudication of cases. The Orissa High Court in **Bijoyananda v. Bala Kush, AIR 1953 Orissa 249** has observed as under:-

> *"The responsibility of the press is greater than the responsibility of an individual because the press has a larger audience. The freedom of the press should not degenerate into a licence to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons."*

The Supreme Court has even observed that the press or the Journalists enjoy no special right of freedom of expression and guarantee of this freedom was the same as available to every citizen. The press does not enjoy any special privilege or immunity from law.

Press Council has issued Norms of Journalistic Conduct in 2010. It is noticed that the fundamental objective of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased and decent manner and language.

The media cannot lose sight of its privileges, duties and obligations. Media is mandated to follow certain ethics in collecting and

disseminating the information that is to ensure authenticity of news, use of restrained and socially acceptable language for ensuring objectivity and fairness in reporting and keeping in mind its cascading effect on the society and on the individuals and institutions.

While considering the Journalistic Norms in the light of trial by media, it is noticed that in a conflict between fair trial and freedom of speech, fair trial has to necessarily prevail because any compromise of fair trial for an accused will cause immense harm and defeat justice delivery system. The media person, thus, should be duly trained and imparted basic knowledge about functioning of the courts and basic processes of law. In this regard, following guidelines have been laid down:-

> ***"i.*** *An accused is entitled to the privilege of presumption of being innocent till guilt is pronounced by the Court.*
> ***ii.*** *The media reports should not induce the general public to believe in the complicity of the person indicted as such kind of action brings undue pressure on the course of fair investigation by the police.*
>
> ***iii****. Victim, Witnesses, Suspects and accused should not be given excessive publicity as it amounts to invasion of their privacy rights.*
>
> ***iv****. Identification of witnesse by the newspapers/media end anger the to come under pressure from both, the accused*

*or his associates as well as investigative agencies. Thus, media should not identify the witnesses as they may turn hostile succumbing to the pressure.*

***v.*** *The media is not expected to conduct its own parallel trial or foretell the decision putting undue pressure on the judge, the jury or the witnesses or prejudice a party to the proceedings.*

*Media having reported an initial trial is advised to follow up the story with publication of final outcome by the court, whenever applicable."*

In **Bashishth Singh & Anr. Vs. State of Bihair 2001(3) Crimes 188 (SC)** it is ruled as under;

*''Criminal Procedure Code, 1973- Section 439 - Appellants Involved in case for which there was counter case—Appellants could be released on ball on bond of Rs. 25000/- with surety. (Para 1)''*

In **Suresh Krishanrao Pol Vs. State Of Maharashtra 2009 ALL MR [Cri.] 3289** it is ruled as under;

***Cr. P.C. – Section 438 – Anticipatory Bail – Murder Case – I.P.C. 302, 34 – Role played by accused is factor to be considered - There is no allegations against petitioner that he hit the deceased with dangerous weapons – Anticipatory bail granted.***

In **Arvindervir Singh vs State Of Punjab & Anr. (1998) 6 SCC 352** it is ruled as under;

> ***Section 340 of Cr. P. C. – Action under sec 193, 194, 211 and 218 IPC for filing false charge sheet against the innocent – Creating false evidence in the statement recorded during investigation- On the direction given by the Supreme Court the CBI*** *submitted report and recommended* ***action under sec 193, 194, 211 and 218 IPC against Police officer. Supreme Court forthwith directed the release of victim from jail – The SC accepted the report and directed CBI to file challan against accused. – On the report by CBI the Designated Court took the cognizance and issued process with non-bailable warrant against the appellant who is Senior Inspector. In pursuance to said process the accused came to be arrested and confined in custody.***
>
> ***BRIEF FACTS***
>
> ***The Bar Association filed Writ before HC for taking action against those involved in false implication of innocents - High Court did not accepted the same but Supreme Court directed CBI to submit the report— on the basis of report by CBI****, the Supreme Court directed the forthwith release of innocent* ***the Designated Court at Chandigarhtaken cognizance of those offences and***

***issued process and issued non-bailable warrant against the appellant. Designated Court at Nabha issued process pursuance to which the accused came to be arrested and confined in custody.***

***The accused police officer challenged said order on the ground of non compliance of procedure laid down in Sec 195, 340 of Cr PC. The complaint should have been filed by the officer of the court and not by***

***the CBI. The matter referred to Full Bench. The Full Bench of Supreme Court partly allowed the Appeal of accused but did not quashed the proceedings. . The Designated Court at Chandigarh was directed to complete the trial as expeditiously as possible.***

***It was observed by the Full Bench as under;***

*"We, therefore, partly allow this appeal, quash the taking of cognizance by the Designated Court of the offences under Sections 193, 194, 211 and 218 IPC and direct that court to make a complaint in writing to a magistrate having jurisdiction in respect of those offences. The CBI is also directed to file an additional challan against the appellant and the other three police officers as directed by this Court by its judgment in the case of Punjab and Haryana High Court Bar Association (supra). The State government is also directed to comply with the direction*

*given in that case and as clarified by us. The Designated Court at Chandigarh will then complete the trial as expeditiously as possible."*

*In the report submitted by C.B.I. following actions were recommended:-*

*"(i)* ***Harpreet Singh @ Lucky s/o Gurmit Singh Saini, r/o Village Bahadurpur, who is presently facing trial in case FIR No. 10/93 of PS Sadar, Ropar in the Designated Court, Nabha has been falsely implicated in the case.***

*(ii)* ***SI Avindervir Singh, ASI Darsahan Singh, Inspector Balwant Singh and DSP Jaspal Singh are prima facie responsible for the false implication of Harpreet Singh @ Lucky in the aforesaid case an are liable for prosecution for offences under Sections 193, 194, 211 and 218 IPC.***

*(iii)* ***The State Government of Punjab is to be requested for taking suitable action against Shri Sanjiv Gupta, DIG, Punjab Police for his lack of supervision."***

*In the final report the CBI had also suggested that the concerned Designated Court be directed to file a complaint as required by Section 195 Cr.P. C. for prosecuting the appellant and A.S.I. Darshan Singh, Inspector Balwant Singh and D.S.P. Jaspal Singh under Sections 193, 194,211 and 218 IPC. Allowing the*

*appeal on 10.5.96, this* ***Court directed that Harpreet Singh @ Lucky be released from jail forthwith,*** *transferred the trial from the Designated Court at Nabha to the Designated Court at Chandigarh and directed the C.B.I. to file necessary challan in accordance with the Code of Criminal Procedure, before trial court at Chandigarh. A consequential order was also passed by the Designated Court for the release of Harpreet Singh on 16.5.96.*

## CHAPTER 192

FALSITY OF THE POLICE CASE IS PRIMA FACIE PROVED FROM THE MATERIAL AVAILABLE ON RECORD THEN THE COURT HEARING THE MATTER EVEN IN THE INHERENT POWER UNDER 482 OF CR. P.C. OR ARTICLE 226 & 32 OF CONSTITUTION OF INDIA CAN DIRECT FORTHWITH RELEASE OF THE ACCUSED EVEN IF HIS EARLIER BAIL APPLICATIONS WERE REJECTED.

In **Arvindervir Singh vs State Of Punjab & Anr. (1998) 6 SCC 352**, it is ruled as under;

> ***Section 340 of Cr. P. C. – Action under sec 193, 194, 211 and 218 IPC for filing false charge sheet against the innocent – Creating false evidence in the statement recorded during investigation- On the direction given by the Supreme Court the CBI*** *submitted report and recommended* ***action under sec 193, 194, 211 and 218 IPC against Police officer. Supreme Court forthwith directed the release of victim from jail – The SC accepted the report and directed CBI to file challan against accused. – On the report by CBI the Designated Court took the cognizance and issued process with non-bailable warrant against the appellant who is Senior Inspector. In pursuance to said process the accused came to be arrested and confined in custody.***

***BRIEF FACTS***

***The Bar Association filed Writ before HC for taking action against those involved in false implication of innocents - High Court did not accepted the same but Supreme Court directed CBI to submit the report— on the basis of report by CBI****, the Supreme Court directed the forthwith release of innocent* ***the Designated Court at Chandigarhtaken cognizance of those offences and issued process and issued non-bailable warrant against the appellant. Designated Court at Nabha issued process pursuance to which the accused came to be arrested and confined in custody.***

***The accused police officer challenged said order on the ground of non compliance of procedure laid down in Sec 195, 340 of Cr PC. The complaint should have been filed by the officer of the court and not by***

***the CBI. The matter referred to Full Bench. The Full Bench of Supreme Court partly allowed the Appeal of accused but did not quashed the proceedings. . The Designated Court at Chandigarh was directed to complete the trial as expeditiously as possible.***

***It was observed by the Full Bench as under;***

*"We, therefore, partly allow this appeal, quash the taking of cognizance by the Designated Court of the offences under Sections 193, 194, 211 and 218 IPC and direct that court to make a complaint in writing to a magistrate having jurisdiction in respect of those offences. The CBI is also directed to file an additional challan against the appellant and the other three police officers as directed by this Court by its judgment in the case of Punjab and Haryana High Court Bar Association (supra). The State government is also directed to comply with the direction given in that case and as clarified by us. The Designated Court at Chandigarh will then complete the trial as expeditiously as possible."*

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*(ii)* ***SI Avindervir Singh, ASI Darsahan Singh, Inspector Balwant Singh and DSP Jaspal Singh are prima facie responsible for the false implication of Harpreet Singh @ Lucky in the aforesaid case an are liable for prosecution for offences under Sections 193, 194, 211 and 218 IPC.***

*(iii)* ***The State Government of Punjab is to be requested for taking suitable action against Shri Sanjiv Gupta, DIG, Punjab Police for his lack of supervision."***

*In the final report the CBI had also suggested that the concerned Designated Court be directed to file a complaint as required by Section 195 Cr.P. C. for prosecuting the appellant and A.S.I. Darshan Singh, Inspector Balwant Singh and D.S.P. Jaspal Singh under Sections 193, 194,211 and 218 IPC. Allowing the appeal on 10.5.96, this* ***Court directed that Harpreet Singh @ Lucky be released from jail forthwith,*** *transferred the trial from the Designated Court at Nabha to the Designated Court at Chandigarh and directed the C.B.I. to file necessary challan in accordance with the Code of Criminal Procedure, before trial court at Chandigarh. A consequential order was also passed by the Designated Court for the release of Harpreet Singh on 16.5.96.*

In **Arnab Manoranjan Goswami Vs. State of Maharashtra 2020 SCC OnLine SC 964,** it is ruled as under;

***71.*** *While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the*

*precedents of this Court. These factors can be summarized as follows:*

*(i) The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;*

*(ii) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses;*

*(iii) The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;*

*(iv) The antecedents of and circumstances which are peculiar to the accused;*

*(v) Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and*

*(vi) The significant interests of the public or the State and other similar considerations.*

***75.*** *Mr. Kapil Sibal, Mr. Amit Desai and Mr. Chander Uday Singh are undoubtedly right in submitting that the procedural hierarchy of courts in matters concerning the grant of bail needs to be respected. However, there was a failure of the High Court to discharge its adjudicatory*

*function at two levels - first in declining to evaluate prima facie at the interim stage in a petition for quashing the FIR as to whether an arguable case has been made out, and secondly, in declining interim bail, as a consequence of its failure to render a prima facie opinion on the first. The High Court did have the power to protect the citizen by an interim order in a petition invoking Article 226. Where the High Court has failed to do so, this Court would be abdicating its role and functions as a constitutional court if it refuses to interfere, despite the parameters for such interference being met. The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions.*

***J Human liberty and the role of Courts***

***74.*** *Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make*

*such orders as are necessary to give effect to the provisions of the CrPC "or prevent abuse of the process of any Court or otherwise to secure the ends of justice". Decisions of this court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one - and a significant - end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post-Independence, the recognition by Parliament*[37] *of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs*

*through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the*

*spectrum - the district judiciary, the High Courts and the Supreme Court - to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum - the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.*

***80.*** *The data on the NJDG is available in the public realm. The NJDG is a valuable resource for all High Courts to monitor the pendency and disposal of cases, including criminal cases. For Chief Justices of the High Courts, the information which is available is capable of being utilized as a valuable instrument to promote access to justice, particularly in matters concerning liberty. The Chief Justices of every High Court should in their administrative capacities utilize the ICT tools which are placed at their disposal in ensuring that access to justice is democratized and equitably allocated. Liberty is not a gift for the few. Administrative judges in charge of districts must also use*

*the facility to engage with the District judiciary and monitor pendency. As the data on the NJDG makes clear, there is a pressing need for courts across the judicial hierarchy in India to remedy the institutional problem of bail applications not being heard and disposed of with expedition. Every court in our country would do well to remember Lord Denning's powerful invocation in the first Hamlyn Lecture, titled 'Freedom under the Law'[43]:*

> *"Whenever one of the judges takes seat, there is one application which by long tradition has priority over all others. The counsel has but to say, 'My Lord, I have an application which concerns the liberty of the subject', and forthwith the judge will put all other matters aside and hear it. …"*

***81.** It is our earnest hope that our courts will exhibit acute awareness to the need to expand the footprint of liberty and use our approach as a decision-making yardstick for future cases involving the grant of bail.*

## CHAPTER 193

ANTICIPATORY BAIL IN FALSE IMPLICATION BY POLICE.

In **Sureshkumar Ishwarlal Chordiya Vs. State 2005 ALL MR (Cri) 1952** it is ruled as under;

> ***"Criminal P.C. (1973), Ss. 438, 173 – Anticipatory bail – Grant of – Case not only one of falsely implicating the applicant accused, but also exposes the illegal and high handed activity of the concerned police officers involved in the process – Held, applicant not only entitled for anticipatory bail, but the entire investigation will have to be entrusted to some independent agency instead of allowing the present police force to continue with the same. (Para 10)"***

## CHAPTER 194

"BAIL – FALSE COMPLAINT – ILLEGAL CUSTODY – THE VICTIM LADY FILED NOTARY AFFIDAVIT STATING THAT COMPLAINT WAS FALSE.

In the case of **Pradeepkumar Vs. State of Kerala** in order dated **23.11.2020** it is ruled as under;

***Bail Granted***

*While granting bail the court observed as under;*

***7.*** *I am surprised, after reading this affidavit. The registration of the above case was widely covered by the media in the State. Almost all the people in Kerala knows about this case. The allegation is that a Health Inspector committed rape on a lady when she approached him for getting certificate for Covid-19 negative. After reading the first information statement given by the victim, this Court also refused bail to the petitioner because the allegation in the statement was so serious. She even stated that her both hands were tied at her back and the mouth was blocked with a dothi. Thereafter there was a forceful rape. Now this victim is deposing before this Court in a notary attested affidavit that there is no such incident and it was a concensual sexual intercourse. It is stated in the affidavit that she gave such a statement to the police because of the pressure from her relatives.*

***8.*** *It is an admitted fact that the petitioner is in custody for the last 77 days. If the averments in the affidavit of the victim is accepted, the petitioner is in illegal custody for the last 77 days. This should be taken very seriously. Nobody should make such false complaint against a person. The petitioner was working as a Junior Health Inspector. Hundreds and hundreds of health workers are working in the State against the*

*pandemic Covid-19. In such a situation, this particular incident gave a black mark to the health workers in the State. It even affected their morale. Now this victim is coming before this Court and saying that it was a concensual sexual intercourse and there was no forceful sex as stated in the FI statement. The personal liberty of a citizen is his fundamental right under Article 21 of the Constitution of India. This is a fit case in which the petitioner should be released on bail forthwith. Not only that, according to me, the contents of the affidavit is to be looked into by the Director General of Police of the State and take appropriate action in accordance to law against the alleged victim or relatives of the victim in accordance to law. If sexual intercourse was with the consent of a lady, no prima facie case is made out. Admittedly the victim in this case is major. Of course, the action of the petitioner may not be acceptable morally but that is not a reason to punish him like this. The allegation in the first information statement in this case tarnished the image of health workers in the state. If anybody is responsible for the same, the law of the land should act swiftly.*

***9.*** *Considering the entire facts and circumstances of this case, this Bail Application is allowed with the following directions:*

*1. Petitioner shall be released on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.*

*2. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall co-operate with the investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.*

*3. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing in the wake of Covid 19 pandemic.*

*Registry will forward a copy of this order to the Director General of Police. The Director General of Police will authorise a senior officer to conduct an enquiry on Annexure A4 affidavit. Thereafter, the*

*Director General of Police will take appropriate action based on that report in accordance to law. I don't want to make any observation about the merit of the case. The criminal justice delivery system cannot go like this. Based on a false complaint, a person is in jail for about 77 days. This Court cannot shut its eye in such situations. The Director General of Police should take this case very seriously and do the needful and file a report based on the enquiry before the Registrar General of this Court within three months. I make it clear that, the enquiry officer will conduct the enquiry untrammelled by any observations in this order."*

## CHAPTER 195

BAIL IS RULE ARREST SHOULD BE THE LAST OPTION.

In the case of **Shavez Vs. State of Uttar Pradesh Criminal Misc. ABA U/S 438 Cr. P.C. No. 9677 of 2020 The Hon'ble Allahabad High Court** had ruled as under;

***"****The courts have repeatedly held that arrest should be the last option for the police and it should be restricted to those exceptional cases where arresting the accused is imperative or his custodial interrogation is required. Irrational and indiscriminate arrests are gross violation of human rights. In the case of* ***Joginder Kumar v. State of***

***Uttar Pradesh*** ***AIR 1994 SC 1349*** *the Apex Court has referred to the third report of National Police Commission wherein it is mentioned that arrests by the police in India is one of the chief source of corruption in the police. The report suggested that, by and large, nearly 60 percent of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2 percent of expenditure of the jails. Personal liberty is a very precious fundamental rights and it should be curtailed only when it becomes imperative. According to the peculiar facts and circumstances of the peculiar case the arrest of an accused should be made.*

*Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court."*

## CHAPTER 196

BAIL CONDITION FOR OFFENCE RELATED WITH SEC. 340 OF CR. P. C.

In the case of **Parvez Noordin Lokhandwalla v. State of Maharashtra (2020) 10 SCC 77** it is ruled as under;

> ***"3.*** *The genesis of the present case arises from a private complaint which was filed in January 2014 by Mehraj Rajabali Merchant in the Court of JMFC, Thane alleging that* ***the appellant has fabricated a power of attorney dated 19-12-2011 by forging the signature of his brother, Shalin Lokhandawalla.*** *On 10-4-2014, JMFC passed an order, by which he directed an investigation under Section 156(3) of the Code of Criminal Procedure, 1973 ("CrPC") in terms of the following directions:*
>
> > *"1. The Kapurbavdi Police Station is directed to register the crime and investigate into the matter.*
> >
> > *2.* ***Further it is hereby directed to submit the report before the court for taking action, if any, under Section 340 CrPC.****"*

***4.*** *A first information report was registered against the appellant on 22-4-2014 in which the appellant is alleged to be involved in offences punishable under Sections 420, 467, 468, 469, 470, 471 and 474 of the Penal Code, 1860 ("IPC") read with the provisions of Section 34.*

***7. <u>The appellant arrived in India on 10-1-2020. He was arrested on 21-2-2020 at the point of departure in Mumbai in pursuance of a lookout notice which appears to have been issued on the basis of the FIR dated 22-4-2014</u>****.*

***22****.....The lodging of an FIR should not in the facts of the present case be a bar on the travel of the appellant to the US for eight weeks to attend to the business of revalidating his Green Card. The conditions which a court imposes for the grant of bail — in this case temporary bail — have to balance the public interest in the enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation*

*and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case.*

***25****....The record indicates the large amount of litigation between the family of the appellant and the complainant. Notwithstanding or perhaps because of this, the appellant has frequently travelled between the US and India even after the filing of the complaint and the FIR. We accordingly are of the view that the application for modification was incorrectly rejected by the High Court and the appellant ought to have been allowed to travel to the US for a period of eight weeks.*

***26.*** *We accordingly permit the appellant to do so, subject to his furnishing an undertaking to this Court before the date of travel that he will return to India after the expiry of a period of eight weeks and that he shall be available on all dates of hearing before the court of criminal jurisdiction, unless specifically exempted from personal appearance.*

*The undertaking shall be filed in this Court before the appellant undertakes travel. On the return of the appellant after eight weeks and if it becomes necessary for him to travel to the US, the appellant shall apply to the court concerned for permission to travel and any such application shall be considered on its own merits by the competent court. The appellant shall travel only upon the grant of permission and subject to the terms imposed. The passport of the appellant shall be handed over to the appellant to facilitate his travel, subject to the condition that he shall deposit it with the investigating officer immediately on his return."*

## CHAPTER 197

BAIL IN FALSE CASE - ACT OF SESSION JUDGE DENYING BAIL IS STRONGLY CRITICIZED. SESSION JUDGE WAS DIRECTED TO READ THE CASE LAWS OF BAILS AND TO SUBMIT A WRITTEN SYNOPSIS ON BAIL.

In the case of **Amarjit Singh Vs. State of Punjab and Another 2021 SCC OnLine P&H 184** it is ruled as under;

***"42.*** *Though, the trial Court has rightly observed that once the cognizance has been taken, the Court*

*cannot recall the summoning order, however, it has ignored the fact that the application was moved by the petitioners to dismiss the protest petition in view of the fact that the summoning order was procured by the complainant by playing fraud with the Court as the son of the complainant is alive and therefore, nothing precluded the trial Court to dismiss the protest petition.*

***43.*** *Further observation made by the Magistrate that since the offenceswere triable by the Court of Magistrate/Court of Sessions, though are correct but the Magistrate, in exercise of power under Section 239 Cr.P.C, in order to prevent any injustice to the petitioners could have allowed the application and discharge them by dismissing the protest petition.*

***44.*** *The Magistrate, while dismissing the application vide impugned order dated 02.12.2020 even again issued Non-bailable Warrants against the petitioners. This part of the order is also illegal as in view of provision of Section 87 of Cr.P.C, the Magistrate can withdraw Warrants as per the information supplied and also in view that the petitioners through counsel had already appeared. The proper course was to direct the counsel for the*

*petitioners to furnish bail/surety bonds as they intended to appear before the Magistrate, but for dismissal of anticipatory bail by the Additional Sessions Judge, they apprehended arrest for no fault.*

***45.*** *However, the Additional Sessions Judge having failed to exercise the jurisdiction under Section 438 Cr.P.C, in dismissing the anticipatory bail application of the petitioners despite the fact that it was brought to his notice that they are being prosecuted in pursuance to a fraud committed by the complainant, has passed a totally illegal order.*

***46.*** *Accordingly, this petition is allowed, the protest petition dated 20.01.2012 filed in case No. 45 dated 21.11.2011 under Sections 302/201 IPC read with Section 34 IPC as well as the impugned summoning order dated 07.12.2017 passed by the Judicial Magistrate I$^{st}$ Class, Ludhiana and the order dated 02.12.2020 passed by the Judicial Magistrate I$^{st}$ Class, Ludhiana, refusing to dismiss the protest petition are set-aside and the petitioners are discharge in FIR No. 115 dated 21.08.2010 registered under Sections 302, 201, 34 IPC at Police Station Dehlon, Ludhiana, District Ludhiana.*

***47.*** *Considering the fact that the petitioners are subjected to unwanted and unnecessary criminal prosecution for a period of last 15 years, it is directed that the State Legal Services Authority, Punjab through District Legal Services Authority, Ludhiana, will pay the costs of Rs. 50,000/- each to all the 03 present petitioners namely Amarjit Singh, Jaswant Singh and Kabal Singh within a period of 04 months from today.*

***48.*** *It will be open for the prosecution to initiate the proceedings under Section 340 Cr.P.C. against CW-1 Satpal Singh, CW-2 Gurdial Singh and CW-4 Naginder Singh i.e. the complainant.*

***49.*** *It will also be open for the prosecution to recover the amount of Rs. 2.00 lacs from the complainant namely Naginder Singh or his legal representatives and to recover the costs of Rs. 50,000/- each from CW-1 Satpal Singh, CW-2 Gurdial Singh and CW-4 Naginder Singh or their LRs, after paying the same to the petitioners. Considering the fact that the Additional Sessions Judge, has failed to exercise its jurisdiction, it is directed that he will go through at least 10 judgments of the Hon'ble Supreme Court including the 02 Constitutional Bench Judgments i.e.*

*"Gurbaksh Singh Sibbia v. State of Punjab", (1980) 2 SCC 565 : AIR 1980 SC 1632 and "Sushila Aggarwal v. State (NCT of Delhi)", (2020) 1 RCR (Cri) 833, wherein the Hon'ble Supreme Court has interpreted the provisions of Section 438 Cr.P.C.*

***50.*** *The Additional Sessions Judge-I, Ludhiana, will submit the written synopsis on the exercise of jurisdiction by a Judge under Section 438 Cr.P.C, after going through the judgments, within a period of 30 days to the Director, Chandigarh Judicial Academy.*

***51.*** *Disposed of."*

## CHAPTER 198

FORGERY IN BAIL APPLICATION COURT DIRECTED IMMEDIATE ARREST OF THE ACCUSED.

In **Chandramani Kanhar Vs. State** in **I. A. No. 982 of 2020** vide its order dated **21.12.2020** Hon'ble Orissa High Court it is ruled as under;

***"Forged medical certificate produced to get bail – Court ordered investigation through DCP. – The report revealed that the certificate were forged and fabricated – Court ordered Trail Magistrate to take steps to immediately arrest the people responsible for filing affidavit***

*It appears that the aforesaid order dated 16.12.2020 was communicated by the learned Registrar (Judicial) of this Court to the learned trial Court and in pursuance of such order, Gumesh Mallik, aged about sixty years, son of late Pisu Mallik, At- Sunakhadu, P.S.- Phiringia, Dist.- Kandhamal who has sworn the affidavit in the interim application was arrested and produced before the learned trial Court by the Inspector in-charge of Phulbani Town police station today. The deponent Gumesh Mallik stated that he has been appraised about the reason of his arrest in connection with this proceeding.*

*This is an application for interim bail filed by the petitioner on the ground that his wife is suffering from multiple types of diseases and the doctor advised her to take complete rest due to COVID-19 pandemic. A medical prescription and medical fitness certificate were annexed to the interim application. During course of argument, it was found that those were the medical documents of one patient namely Santosini Kanhar, who is aged about twenty five years and she is a female and it was submitted that Santosini Kanhar is the wife of the petitioner.*

*Since the learned counsel for the State raised doubt about the authenticity of the medical documents annexed to the interim application, as per order dated 09.12.2020, the*

*Deputy Commissioner of Police, Cuttack was directed to depute a responsible Senior Police Officer in the rank of Deputy Superintendent of Police to enquire into the matter by examining the doctor concerned, the O.P.D. register etc. and furnish a report to this Court regarding the authenticity of such documents through the learned counsel for the State in a sealed cover.*

*During enquiry, it is ascertained that, there is no doctor in any rank working in the Department of Medicine, S.C.B. Medical College, Cuttack as "Dr. S.K. Bhol".*

*From the above facts as ascertained during enquiry, it is concluded that, the medical documents enclosed with interim application have been forged and fabricated."*

*Court then as per the order dated 16.12.2020 held as follows:-*

> *"....it is apparent from the report furnished that forged medical certificates stated to have been issued by the Associate Professor, Department of Medicine, S.C.B. Medical College and Hospital, Cuttack have been annexed to the interim application to get interim bail for the petitioner in a case which involves seizure of commercial quantity of ganja. In this interim application, one Gumesh*

*Mallik, aged about sixty years, son of late Pisu Mallik, At- Sunakhadu, P.S.- Phiringia, Dist.- Kandhamal has sworn the affidavit and he has mentioned that he is a relative of the petitioner.* ***Immediate steps shall be taken to arrest the deponent Gumesh Mallik and to produce him before the learned trial Court*** *i.e. learned Sessions Judge -cum- Special Judge, Phulbani in C.T. Case No.29 of 2020 arising out of Phulbani Town P.S. Case No.83 of 2020 on 21.12.2020 at 11.00 a.m. positively by the Inspector in-charge of Phulbani Town police station. The learned trial Court shall make necessary arrangement so that the said deponent will appear in the proceeding on the date and time as stipulated through Video Conferencing. List this matter on 21.12.2020. The file be placed before the Registrar (Judicial) of this Court who shall communicate the order to the learned trial Court immediately."*

*As per section 2(c) of the Contempt of Courts Act, 1971, 'criminal contempt' means, inter alia, the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which interferes or tends to interfere*

*with, or obstructs or tends to obstruct, the administration of justice in any other manner.*

*Law is well settled that anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice. If a forged and fabricated document is filed in Court to get some relief, the same may amount to interference with the administration of justice. The obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. The fabrication and production of false document can be held to be interference with the due course of justice. Any interference in the course of justice, any obstruction caused in the path of those seeking justice are an affront to the majesty of law and therefore, the conduct is punishable as contempt of Court. Law of contempt is only one of many ways in which the due process of law are prevented to be*

*perverted, hindered or thwarted to further the cause of justice. Due course of justice means not only any particular proceeding but broad stream of administration of justice. Therefore, due course of justice used in section 2(c) or section 13 of the Contempt of Courts Act, 1971 are of wide import and are not limited to any particular judicial proceeding. Due process of law is blinkered by acts or conduct of the parties to the litigation or witnesses or generate tendency to impede or undermine the free flow of the unsullied stream of justice by blatantly resorting, with impunity, to fabricate Court proceedings to thwart fair adjudication of dispute and its resultant end. If the act complained of substantially interferes with or tends to interfere with the broad steam of administration of justice, it would be punishable under the Contempt of Courts Act, 1971. If the act complained of undermines the prestige of the Court or causes hindrance in the discharge of due course of justice or tends to obstruct the course of justice or interferes with due course of justice, it is sufficient that the conduct complained of constitutes contempt of Court and liable to be dealt with in accordance with the Contempt of Courts Act, 1971.*

*It has become increasingly a tendency on the part of the parties either to produce fabricated evidence as a part of the pleadings or record or to fabricate the Court record itself for retarding or obstructing the course of justice or judicial proceedings to gain unfair advantage in the judicial process. This tendency to obstruct the due course of justice or tendency to undermine the dignity of the Court needs to be severely dealt with to deter the persons having similar proclivity to resort to such acts or conduct. In an appropriate case, the mens rea may not be clear or may be obscure but if the act or conduct tends to undermine the dignity of the Court or prejudice the party or impedes or hinders the due course of judicial proceedings or administration of justice, it would amount to contempt of the Court. (Ref:* ***Chandra Shashi -Vrs.- Anil Kumar Verma reported in (1995)1 S.C.C. 421***, ***Ram Autar Shukla -Vrs.- Arvind Shukla reported in 1995 Supp(2) S.C.C. 130****).*

*In view of the enquiry report furnished by the Deputy Commissioner of Police, Cuttack as per order dated 09.12.2020, prima facie it appears that the deponent Gumesh Mallik has committed contempt of Court. Let the deponent file show cause*

*as to why necessary action shall not be taken against him for committing criminal contempt of Court under the provisions of the Contempt of Courts Act, 1971. A true copy of application in I.A. No.982 of 2020 along with the annexed documents, order dated 09.12.2020 of this Court, report of D.C.P., Cuttack, order dated 16.12.2020 of this Court and today's order be handed over to the deponent by the learned trial Court for the purpose of preparing and filing the show cause. The file be placed before the learned Registrar (Judicial) to send the aforesaid documents immediately to the learned trial Court to do the needful. The deponent Gumesh Mallik shall be provided opportunity to meet an advocate of his choice by video conferencing to prepare the show cause and file the same by 04.01.2021. The deponent Gumesh Mallik shall be detained in judicial custody until further orders.*

*In view of section 18 of the Contempt of Courts Act, 1971, the matter be placed before the Hon'ble Chief Justice for passing necessary order."*

## CHAPTER 199

EVEN IF NO STAY GRANTED BY THE HIGHER COURT, THE SUBORDINATE COURT SHOULD NOT PROCEED.

Seven Judges Constitution Bench in **L. Chandra Kumar Vs. Union of India (1997)3 SCC 261** had ruled that, when the legality and validity of any proceeding is challenged before the higher court and even if no stay is granted then the sub-ordinate court should be slow to proceed against the said person.

It was further ruled that not granting the stay by itself is not enough to speed up the proceedings against a person.

Same rule is followed in a recent judgment in Suresh **Poddar Vs. Dhani Ram (2002)1 SCC 766**

**See Also -**

1. Vinay Vivek Arhana Vs. State of Maharashtra 2019 SSC OnLine Bom 13060
2. Kishor Bhikansingh Rajput Vs. Preeti 2007 (3) Bom. C.R. 279
3. Mohinder Kumar Vs. State of Haryana (2001) 10 SCC 605
4. S. Abdul Karim Vs. M.K. Prakash (1976) 1 SCC 975

## CHAPTER 200

## EVERYONE'S RELIGIOUS DUTY TO RAISE VOICE AGAINST INJUSTICE DONE TO ANYONE

That, apart from my constitutional duties as per Art. 51 (A)(h) of the Constitution of India, everyone has an additional duty to help the oppressed.

That, actually your personal view about anyone may not be good.

But so far as injustice to him is concerned it is a clear case of gross injustice against him and two others. And therefore the religious teaching tells everyone to fight against said injustice. **Voltaire expressed a democrat's faith when he told, an adversary in arguments : "I do not agree with a word you say, but I will defend to the death your right to say it".**

I am guided by the following verses of Holy Quran, Holy Vedas, Holy Gita & Hadees.

**i)** If you choose to remain silent at the time of injustice then you have taken the side of the oppressor.

**ii)** One days justice is equivalent to the 60 years of worship.

**iii)** It is noblest worship to raise voice against injustice as done by Prophet Moses by taking open stand against injustice of King Pheron.

**iv)** It is bounden duty of real Muslim to fight for the rights of poor and weaker section of the society. Those who do this are the

people of right side and will be blessed with the success and prosperity in this world & life after death.

That All Mighty Allah in Holy Quran had said that the Muslims have to respect 'Adi Grantha's i.e. Holy Vedas, Holy Gita' and to respect all earlier Messengers of God to take guidance from them.

Full Bench of Supreme Court in **Maria Margarida's case AIR 2012 SC 1727** referred to '***mantra from the ancient scripture Mundaka Upanishad***' as 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.

So I am also guided by following verses of Adi Granthas;

If you don't do war against oppressor then such man will loose reputation and will gain sin also. Such humiliation is worst than the death. **[ Gita: 2:33,34]**

***2:33.*** *अथचैत्त्वमिमंधर्म्यंसंग्रामंनकरिष्यसि।ततःस्वधर्मंकीर्तिंचहित्वापापम वाप्स्यसि।*

> ***"If, however, you refuse to fight this righteous war, abandoning your social duty and reputation, you will certainly incur sin."***

***2:34.अकीर्तिंचापिभूतानिकथयिष्यन्तितेव्ययाम्।सम्भावितस्यचाकी र्तिर्मरणादतिरिच्यते***

> ***"People will speak of you as a coward and a deserter. For a respectable person, infamy is worse than death."***

It is religious duty to take part in the war against injustice. [2:31]

This Hon'ble Court in **Zahira Habibullah Sheikh Vs. State (2006) 3 SCC 374** it is ruled as under;

> **"***The case at hand immediately brings into mind two stanzas (14 and 18) of the eighth Chapter of Manu Samhita dealing with role of witnesses. They read as follows:*
>
> *"Stanza 14"*

*"यत्रधर्मोंह्यधर्मेणसत्यंयत्रानृतेनच।*

*हन्यतेप्रेक्षमाणानांहतास्तत्रसभासदः"*

*"Yatro Dharmoh yadhar mena Satyam Jatranrutenacha Hanyate Prekshyamananam Hatastrata Sabhasadah"*

*(Where in the presence of Judges "dharma" is overcome by "adharma" and "truth" by "unfounded falsehood", at that place they (the Judges) are destroyed by sin.)*

*"Stanza 18"*

*"पादोधर्मस्यकर्तारंपादःसाक्षिणमृच्छति।*

*पादःसभासदः सर्वन्पादोराजानमृच्छति."*

*"PadodharmasyaKartaramPadahsakshinomruchhati*

*PadahSabhasadahSarbanPadoRajanmruchhati"*

*(In the adharma flowing from wrong decision in a Court of law, one fourth each is attributed to the person committing the adharma, witness, the judges and the ruler".)"*

In **State Vs. Suo motu Contempt against Dr. Suman Lal 2009 SCC OnLine Pat 57** it is read as under;

> *The oath of office which I have taken reminds me not to deter from my duty and uphold the law. Our Dharma Shastras and Smritis with one voice laid down that dispensation of Justice is the highest Dharma of Judges. Manu Smriticautions the Judge as follows:*
>
> *" धर्मोविद्वस्त्वधर्मेण सभायत्रोपतिठवेI*
> *शल्यचास्यनकृन्तन्तिविद्वास्वत्रसभासदःII*
> *यत्रधर्मोहाधर्मेणसत्ययत्रानृतेनचI*
> *हन्यतेप्रेक्षमाणाना हवास्वत्र सभासदः II"*
>
> *"In a case where Dharma (Justice) has been injured or made to suffer at the hands of Adharma and still the Judges fail to remove the injustice, such Judges are sure to suffer for their act or omission which is Adharma."*

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 :*
>
> *"**सनैवव्यभवतक्षोयोरूपमत्यधर्मतदेतन्क्षत्रस्यक्षत्रयद्दर्मस्तत्मा द्वनास्तिअथोअबलोयान्तलीयासंमाशसतेधर्मनेयथाराजा.एवं***

***योवैसधर्मःसत्यवैतत्तस्मात्सव्यवदन्तमाहुधर्मवदतीतिधर्मवाव दन्तसत्यंवदतोत्येतद्ध्येवैतमदमयभवति."***

*"SanaibVyabhawatchhreyoRupamatyasrijatDharmamJad etatkshtrasyaKshatramYaddharmastasmadDharmatParam NastiAthoAbaliyanSamashasteDharmenYathaRagya.Aida myobaisaDharmah Satyam baitattasmatSaryam.BadantmahurDharmamwabadntnam. Satyam bad utityetadhyaibaitadubhayambhawati."*

*(**There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) 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 :*

***नत्वहंकामयंराज्ययांनस्वर्ग नपुनर्भवम|कागद्येदुःश्वतप्ताना प्राणिनांभातिनाशनम्||***

*Natwaham Kamaya Rajyam Na Swargam Na PunarbhawamKamyeDukhTaptanamPraninamArtnashna m.*

*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* **"धर्मविजय"** *"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* **"यतोधर्मस्ततोजयः** *"YatoDharmastatoJayah (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 AshramaVasikaParva 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.***"**

Similar principle is laid down by All Mighty God in Holy Quran. Prophet Muhammad said;

***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 anyone dojustice to anyone or help anyone in getting justice then it is equivalent to at least 60 years of worship. But if I keep silence at the time of injustice despite of my ability to stop or protest it, means that I have choosen the side of oppressor. My silence will destroy my worship and you are equally guilty as that of oppressor.*

***"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)***

*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)***

***"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.)***

***(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: MusnadAḥmad 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.*

*Harassing, false implication ,passing orders against law, deliberately arresting, abducting and torturing people for criticizing government's policies 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]*

*"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)*

*"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)*

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.]**

## CHAPTER 201

WORDS ON JUSTICE AND TRUTH

The New American Standard Bible:

***"You shall not bear false witness against your neighbor.***

**Deuteronomy 16:19**

"You shall not distort justice; you shall not be partial, and you shall not take a bribe, for a bribe blinds the eyes of the wise and perverts the words of the righteous."

**Isaiah 10:1-3**

"Woe to those who enact evil statutes And to those who constantly record unjust decisions, So as to deprive the needy of justice And rob the poor of My people of their rights, So that widows may be their spoil And that they may plunder the orphans. Now what will you do in the day of punishment, And in the devastation which will come from afar? To whom will you flee for help? And where will you leave your wealth?"

**Micah 2:1-3**

"Woe to those who scheme iniquity, Who work out evil on their beds! When morning comes, they do it, For it is in the power of their hands.

They covet fields and then seize them, and houses, and take them away They rob a man and his house, A man and his inheritance. Therefore thus says the LORD, "Behold, I am planning against this family a calamity From which you cannot remove your necks; And you will not walk haughtily, For it will be an evil time.

**********

**Brihandaranvaka Upanishad:**

**1.4.xiv**

"Nothing is higher than Dharma. The weak overcomes the stronger by Dharma, as over a king. Truly the Dharma is the Truth (Satya); therefore, when a man speaks the Truth, they say, "He speaks the Dharma"; and it he speaks Dharma, they say, "He speaks the Truth!" For both are one."

**********

**THE HOLY QURAN:**

**Surat An-Nisa 4:135**

*"Oyou who believe, be persistently standing firm in justice as witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both. Follow not your desires, lest you not be just. If you distort your testimony or refuse to give it, then Allah is aware of what you do."*

**Surat Al-Ma'idah 5:8**

"O you who believe, be persistently standing firm for Allah as witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just, for that is nearer to righteousness. Fear Allah, for verily, Allah is aware of what you do."

**Musnad Ahmad 12140**

"Beware of the supplication of the oppressed, even if he is an unbeliever, for there is no Screen between it and Allah."

## CHAPTER 202

JUDGE/PERSON HAVING PERSONALLY INTERESTED CANNOT EVEN SIT WITH THE JUDGES DECIDING THE CASE

In an earlier decision of Seven Judge bench in **Mineral Development Ltd. v. State of Bihar AIR 1960 SC 468,** it was held that as there was political rivalry between the petitioner and the Minister, who had also filed a criminal case against the petitioner, therefore the Minister could not have taken part in the in either initiating the enquiry or in cancelling the licence.

Supreme Court has already, innumerable times, beginning with its classic decision of Constitution Bench in **A.K. Kraipak v. Union of India (1969) 2 SCC 262** laid down the need of 'fair play' or 'fair

hearing'. The hearing has to be by a person sitting with an unbiased mind. To the same effect is the decision in S.P. Kapoor (Dr) v. State of Himachal Pradesh **AIR 1981 SC 2181.**

## CHAPTER 203

ADVERSE REMARKS EXPUNGING

In the case of **Balaji Associates Vs. State 2020 (1) ALL MR 410 (S.C.)** it is ruled as under;

> ***"(B) Advocates – Adverse remarks – Expunging of – Certain adverse remarks passed by High Court against advocate – Found to be uncalled for and unnecessary – Hence, liable to be expunged from record.***
>
> *20. Our attention has been drawn to certain adverse remarks passed by the High Court against the advocate, who appeared before it for the appellant herein, as contained in line numbers 1 to 7 and 76 to 79 of paragraph 5 of the impugned judgment. In our considered opinion, such adverse remarks were uncalled for, unnecessary and therefore, the same stand expunged from the record."*

In the case of **Prestiage Lights Ltd. Vs. State Bank of India (2007) 8 SCC 449** it is ruled as under;

***"Practice and Procedure – Admission – Failure to deny allegation of the other party – Effect – Civil Procedure Code, 1908 – Or. 8 Rr. 3 and 5 – Applicability – Evidence Act, 1872, S. 58.***

***"14….****There was no rejoinder by the appellant Company. Thus, there is a word against word. Moreover, this Court cannot be oblivious of the fact that it was only after the order dated 24-10-2005 passed by this Court that in rejoinder-affidavit filed in November 2005, such a statement was made."*

## CHAPTER 204

WHEN POLICE OFFICERS ARE ACCUSED THEN INVESTIGATION OFFICER CANNOT DISCHARGE THEM BY DOING THE FUNCTION OF COURT. INVESTIGATION OFFICER IS BOUND TO NAME THOSE ACCUSED POLICE OFFICERS IN THE CHARGE-SHEET.

In the case of **Sandeep Rammilan Shukla Vs. State of Maharashtra 2009 ALL MR (Cri) 2991** it is ruled as under;

***"37****.....Merely because they are officers of police department, does not mean that when serious allegations of bribery and corruption are made against them, they must not be proceeded in accordance with law. They are all the more*

*answerable and accountable in law. It is no answer that the petitioner has an alternate remedy to approach the competent criminal court and bring to its notice the aforenoted material. The criminal court, will, then initiate further steps in accordance with law. Once, the inaction and reluctance of the prosecution in proceeding against police officers is brought to our notice, we would be failing in our duty, if we do not direct that the Respondent - State must file a further report (Additional Charge-sheet) in the concerned criminal court against the Police Officers in question.*

***38****.... The Police force cannot take over this function of Court of law. They would be over-stepping their limits if they are permitted to usurp the functions of a Court of Law. In the instant case, the whole emphasis in the arguments of the learned Counsel for the State is that the prosecuting agency is convinced that the Police Officers are not guilty of commission of any offence. We are afraid that this is not the manner in which the matter can be viewed and decided.*

***39****.... They must not abdicate their duties and act at the commands of any higher ups or outside forces. This is the apprehension which is expressed before*

*us by the petitioner and also substantiated by the records. Therefore, we are left with no alternative but to issue the following directions. We hope that in future, the police force will not compel us to make the above observations and also direct stringent action whenever we find that Rule of Law is brazenly and openly flouted.*

***40**… We dispose of this petition with a direction to ACB to name the above police officers as accused in the subject C.R. and file a further report against them in accordance with law. However, it is clarified that our observations shall not be construed as expression of any opinion on the merits of the charges…."*

## CHAPTER 205

**A]** NECESSITY OF MAINTAINING FINE BALANCE BETWEEN PROSECUTING GUILTY OFFICER AND PROTECTING INNOCENT OFFICER FROM VEXATIOUS, FRIVOLOUS AND MALA FIDE PROSECUTION, EXPRESSED - DUTY OF COURTS PERTAINING THERETO.

**B]** ILLEGAL DETENTION - IN FALSE VIGILANCE CASES AT INSTANCE OF THE THEN CM OF RESPONDENT STATE.

A LUMP SUM OF RS 10 LAKHS AWARDED AS COMPENSATION.

In the case of **Ram Lakhan Singh Vs. State (2015) 16 SCC 715,** it is ruled as under;

> ***"A. Constitution of India - Arts. 21 and 32 – Compensation for loss of professional career, reputation, great mental agony, heavy financial loss and defamation – Illegal detention by respondent authorities after implicating petitioner Indian Forest Service in false vigilance cases at instance of the then CM of respondent State and dishonouring of High Court's directions, alleged.***
>
> *- No material brought on record to prove allegations against petitioner of owning disproportionate assets, illegal mining, auction of tendu leaves causing loss of revenue to Government and undue gain to purchasers - Averments made by petitioner that his case was never referred to Vigilance Committee and consequently no vigilance enquiry was ever initiated against him remained undisputed and Additional Advocate General expressing no objection for declaring that all actions taken and complaints lodged against petitioner were void and non est in law - Held, though Supreme Court is reluctant in determining or granting compensation while exercising*

*jurisdiction under Art. 32, but considering that though involvement of CM in initiating proceedings as alleged was not proved, but initiation of vigilance proceedings and statements made before High Court by officers of respondent State led to arrest of petitioner causing him great financial loss, mental agony, loss of reputation, incarceration of about 11 days in jail, legal battle for about 10 yrs before various forums, absence of any proved charges against petitioner, etc. a lump sum of Rs 10 lakhs awarded as compensation - Tort Law - Malicious prosecution/Wrongful prosecution/Imprisonment - Prevention of Corruption Act, 1988, Ss. 13(1)(e) and 13(2) (Paras 9, 13 and 14)*

***B. Public Accountability, Vigilance and Prevention of Corruption - Public Authorities/ Functionaries/ Government Servant's Duties - Role and responsibilities, explained - Necessity of maintaining fine balance between prosecuting guilty officer and protecting innocent officer from vexatious, frivolous and mala fide prosecution, expressed - Duty of courts pertaining thereto (Paras 10 to 12)***

***10.*** *A public servant in a democracy should be a guardian of morals. He is entrusted with higher responsibilities of a public office and they contribute their best for the just and humane society. We feel that for effective functioning of a democracy, the role of Executive is very important. Civil servants and public officials are expected to maintain and strengthen the public's trust and confidence by demonstrating the high standards of professional competence, efficiency and effectiveness by upholding the Constitution and rule of law, keeping in mind the advancement of public good at all times. Public employment being a public trust, the improper use of the public position for personal advantage is considered as a serious breach of trust. With the changing times, the role of Executive and expectation of the citizens in governance also underwent tremendous change.*

***11.*** *Dishonesty and corruption are biggest challenges for any developing country. If the public servant indulges in corruption, the citizens who are vigilant in all aspects take note of this seriously and develop a sense of distress towards the Government and its mechanism, on a whole it sends a very alarming message to the society at large and to the*

*common man in particular. In any civilized society, the paramount consideration is the welfare of the society and corruption is the biggest hindrance in that process. If the corrupt public servant is not punished, then it will have a negative impact on the honest public servants who will be discouraged and demoralized. Some upright officers resist corruption but they cannot alone change the system which victimizes them through frequent punitive transfers, threat to their families and fabricating, foisting false cases.*

***12.*** *In such a scenario, until and unless we maintain a fine balance between prosecuting a guilty officer and protecting an innocent officer from vexatious, frivolous and mala fide prosecution, it would be very difficult for the public servant to discharge his duties in free and fair manner. The efficiency of a public servant demands that he should be free to perform his official duties fearlessly and without any favour. The dire necessity is to fill in the existing gap by protecting the honest officers while making the corrupt officers realize that they are not above law. The protection to an honest public servant is required not only in his interest but in the larger interest of society. This Court time and again*

*extended assurance to the honest and sincere officers to perform their duty in a free and fair manner towards achieving a better society."*

## CHAPTER 206

WHEN A FORUM/COURT HAS NO JURISDICTION,IT IS THE OBLIGATION OF THE APPELLATE FORUM/COURT SO TO HOLD AND SET ASIDE THE ORDER UNDER APPEAL.

In the case of **State of Gujarat Vs. Rajesh Kumar Chimanlal Barot (1996) 5 SCC 477**, it is ruled as under;

"**5**. *We find this very difficult to appreciate. If a court does not have jurisdiction, it does not have jurisdiction, regardless of the fact that one of the parties involved is a Gram Panchayat or the period involved is very short or the amount involved is very small. If a court does not have jurisdiction, it is the obligation of the appellate court so to hold and to set aside the order under appeal."*

## CHAPTER 207

IF THE PRIVATE COMPLAINT U.SEC 211,500 ETC OF IPC IS FILED PRIVATELY THEN THE HIGHER COURT CAN TRANSFER IT TO THE COURT HEARING THE CASE ON CHARGE SHEET.

In **Abdul Rehman & Ors vs K.M.Anees-Ul-Haq (2011) 10 SCC 696,** it is ruled as under;

> *" 16. It was next argued by learned counsel for the respondent that while an offence under Section 211 IPC cannot be taken cognizance of, there was no room for interfering with the proceedings in so far as the same related to the commission of an offence punishable under Section 500, since the bar of Section 195 Cr.P.C. was not attracted to the proceedings under Section 500 IPC. The argument though attractive does not stand closer scrutiny. The substance of the case set up by the respondent is that the allegations made in the complaint lodged with CAW Cell accusing him of an offence punishable under Section 406 and Sections 3 and 4 of the Dowry Prohibition Act were false which according to the respondent tantamounts to commission of an offence punishable under Section 211 IPC apart from an offence punishable under Section 500 IPC. The factual matrix for both the offences is however one and the same. Allowing the respondents to continue with the prosecution against*

*the appellants for the offence punishable under Section 500 IPC would not, in our opinion, subserve the ends of justice and may result in the appellants getting vexed twice on the same facts. We are doubtless conscious of the fact that any complaint under Section 500 IPC may become time barred if the complaint already lodged is quashed. That is not an insurmountable difficult; and can be taken care of by moulding the relief suitably. It would, in our opinion, be appropriate if the orders passed by the Metropolitan Magistrate and that passed by the High Court are set aside and the complaint filed by the respondent directed to be transferred to the Court dealing with the charge sheet filed against the respondent. The said court shall treat the complaint as an application for filing of a complaint under Section 211 of the IPC to be considered and disposed of at the final conclusion of the trial; having regard to the provisions of Section 340 of IPC and the finding regarding guilt or innocence of the respondent as the case may be recorded against him. The respondent shall also have the liberty to proceed with the complaint in so far as the same relates to commission of the offence punishable under Section 500 of the IPC depending upon whether there is any room for doing so in the light of the findings which the court may record at the conclusion of the trial against the respondent.*

*17. In the result these appeals are allowed, and order dated 3rd February, 2003 passed by the Metropolitan Magistrate and that passed by the High Court dated 26th February, 2008 are quashed. Criminal complaint No.180/1 of 2002 filed by the respondent shall stand transferred to the Court of competent jurisdiction seized of the charge- sheet filed against the respondents, for such orders as the Court may deem fit at the conclusion of the trial of the respondent having regard to the observations made above."*

## CHAPTER 208

ORDER WITHOUT JURISDICTION ID NULLITY. EVEN IF IT PASSED BY THE CONSENT OF THE PARTIES.

In the case of **Harshad Chimanlal Modi Vs. DLF Universal Ltd. & Anr (2005) 7 SCC 791** it is ruled as under;

*"The submission that the parties had agreed that the Delhi Court alone had jurisdiction in the matters arising out of the transaction also has no force. Such an agreement is not hit by Section 28 of the Contract Sct, 1872, nor can such a contract be said to be against public policy. It is legal, valid and enforceable. However, such a provision would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed*

*to submit to the jurisdiction of one court. A clause vesting jurisdiction on a court which otherwise does not have jurisdiction to decide the matter, would be void as being against the public policy. Hence, even if there is an agreement between the parties to the contract, it has no effect and cannot be enforced.*

*Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.*

*Further, neither consen nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. Hence, even though the plaintiff is right in submitting that the defendants had agreed to the jurisdiction of the Delhi Court and in the original written statement, they had admitted that the Delhi Court had jurisdiction and even after the amendment in the written statement, the paragraph relating to jurisdiction had remained as it was i.e. the Delhi Court had jurisdiction, it cannot take away the right of the defendants to challenge the jurisdiction of the court nor can it confer jurisdiction*

*on the Delhi Court, which it did not possess. (Paras 30, 32 and 37)*

*Where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing. A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice. (Para 32)*

***D. Civil Procedure Code, 1908 - Or. 21 Rr. 32, 34 and 35 –Execution of decree under - Presupposition - Held, said rules presuppose a decree passed in accordance with law - Only thereafter can such decree be executed in the manner laid down. (Para 38)***

*37. In the instant case, the Delhi Court has no jurisdiction since the property is not situate within the jurisdiction of that court. The trial court was, therefore, right in passing an order returning the plaint to the plaintiff for presentation to the proper court. Hence, even though the plaintiff is right in submitting that the defendants had agreed to the jurisdiction of the Delhi Court and in the original written statement, they had admitted that the Delhi Court had jurisdiction and even after the*

*amendment in the written statement, the paragraph relating to jurisdiction had remained as it was i.e. the Delhi Court had jurisdiction, it cannot take away the right of the defendants to challenge the jurisdiction of the court nor can it confer jurisdiction on the Delhi Court, which it did not possess. Since the suit was for specific performance of agreement and possession of immovable property situated outside the jurisdiction of the Delhi Court, the trial court was right in holding that it had no jurisdiction.*

*38. The learned counsel for the appellant drew our attention to Rule 32 of Order 21 of the Code which relates to execution. It, however, presupposes a decree passed in accordance with law. Only thereafter can such decree be executed in the manner laid down in Rule 32, 34 or 35 of Order 21. Those provisions, therefore, have no relevance to the question raised in the present proceedings.*

*39. For the foregoing reasons, in our opinion, no case has been made out by the appellant against the order passed by the trial court and confirmed by the High Court. The appeal, therefore, deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs."*

In the case of **Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136** it is ruled as under;

> ***"B. Courts, Tribunals and Judiciary - Jurisdiction -- Held, jurisdiction of courts/forums cannot be conferred by consent of parties or acquiescence or waiver - Hence merely because State had not objected to maintainability of consumer complaint in regard to a pure service dispute, did not mean that Consumer Forum thereby stood clothed with power to entertain complaints re service matters against the State - If a court having no jurisdiction over a matter passes a decree, it would amount to nullity Estoppel, Acquiescence and Waiver - Acquiescence Jurisdiction cannot be conferred upon a court/tribunal by acquiescence or waiver, if it otherwise does not have jurisdiction.***
>
> *Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Furthermore an issue as to lack of subject matter jurisdiction can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and*

*unenforceable / in executable once the forum is found to have no jurisdiction. Similarly, if a court/ tribunal inherently lacks jurisdiction, acquiescence of a party should not equally be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. A decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, the remedy has to be sought only under the provisions of that Act and the common law court has no jurisdiction. The law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever in case such an authority does not have jurisdiction on the 1 subject matter. (Paras 9 to 11)"*

In the case of **Zuari Cement Ltd. v. ESI Corpn., (2015) 7 SCC 690** it is ruled as under;

***A. Practice and Procedure - Jurisdiction/Jurisdictional Error/ Territorial Jurisdiction -Acquiescence or consent - Relevance, to jurisdictional issue - Held, parties cannot by acquiescence or consent, agree to vest jurisdiction in court which it does not have*** *- On facts held, neither order of High Court nor act of respondent Corporation subjecting itself to jurisdiction of ESI Court which it did not have, would confer jurisdiction upon ESI Court to*

*determine question of grant and validity of exemption from operation of ESI Act, which powers are vested with appropriate Government and High Court under Art. 226 of Constitution, respectively High Court erred in directing appellant to approach ESI Court for claiming relief of exemption - Besides, objection as to want of jurisdiction can be raised at any stage when court lacks jurisdiction - Fact that parties earlier acquiesced in proceedings inconsequential Moreover, want of jurisdiction renders order passed by court/tribunal nullity or non est - Thus, order passed by ESI Court granting – No exemption and consequently setting aside demand notices non est – interference with impugned order setting aside order of ESI Court called for - Labour Law Employees' State Insurance Act, 1948, Ss. 74, 75(1)(8) and 87* ***(Paras 10 to 17)***

***12.*** *... Contrary to the scheme of the statute, the High Court, in our view, cannot confer jurisdiction upon the ESI Court to determine the issue of exemption. The ESI Corporation, of course, did not raise any objection and subjected itself to the jurisdiction of the ESI Court. The objection as to want of jurisdiction can be raised at any stage when the Court lacks jurisdiction, the fact that the parties earlier acquiesced in the proceedings is of no consequence.*

***14.*** *As per the scheme of the Act, the appropriate Government alone could grant or refuse exemption. When the statute prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In State of Jharkhand v. Ambay Cements [(2005) 1 SCC 368] , it was held that: (SCC p. 378, para 26)*

> *"26. ... It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way."*

***15.*** *In Babu Verghese v. Bar Council of Kerala [(1999) 3 SCC 422] , it was held as under: (SCC pp. 432-33, paras 31-32)*

> *"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [(1875) LR 1 Ch D 426 : 45 LJ Ch 373] , which was followed by Lord Roche in Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253 (2)] , who stated as under: (Nazir Ahmad case [(1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253 (2)] , IA pp. 381-82)*

*'... where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.'*

*32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [AIR 1954 SC 322 : 1954 Cri LJ 910] , and again in Deep Chand v. State of Rajasthan [AIR 1961 SC 1527 : (1961) 2 Cri LJ 705] . These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] and the rule laid down in Nazir Ahmad case [(1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253 (2)] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."*

***16.*** *Where there is want of jurisdiction, the order passed by the court/tribunal is a nullity or non est. What is relevant is whether the court had the power to grant the relief asked for. The ESI Court did not have the jurisdiction to consider the question of grant of exemption, order passed by the ESI Court granting exemption and consequently setting aside the demand notices is non est. The High Court, in our view, rightly set aside the order of the ESI Court and the impugned judgment [ESI*

*Corpn. v. Zuari Cement Ltd., 2007 SCC OnLine AP 674 : (2007) 115 FLR 1141] does not suffer from any infirmity warranting interference.*

## CHAPTER 209

FAIR AND FAST JUSTICE BILL FOR BETTER RESULT AND BETTER JUSTICE.

# TO BE PRODUCED IN LOKSABHA

# FAIR & FAST JUSTICE BILL - 2021 (FFJB)

**For Judiciary & Police Department**

[Brief Summary of Proposed Bill]

**Signature Campaign of 1 Crore**

**Citizen & lawyers**

- ✓ Setting up Special Courts for punishing judges for passing illegal orders, with imprisonment of 7 years to life imprisonment.
- ✓ Special Vigilance Police for Prosecution of Police.
- ✓ Time bound results in all cases within 6 months to 1 year.

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# INDIAN BAR ASSOCIATION

*"Don't See Who Is Right, See What Is Right"*

## Drafted By

Adv. Nilesh C. Ojha

# CRIMINAL CASES THAT HAVE BEEN INSTITUTED AGAINST THE JUDGES

1. The Former Supreme Court Justice Markandey Katju said that at least 50% of the judges in Indian courts are corrupt**.[14 April 2015]**
2. One FIR was registered against the High Court Judge Raman Lal for having falsely implicated an innocent person in a false Criminal case and the said FIR was justified and ratified by the High Court**.[2001 Cr. LJ 800]**
3. A defamation case under section 500, IPC was filed against a judge for having used defamatory and insulting word against an advocate and the case against said judges held to be legal and justified by the Supreme Court holding that it was not the part of official duty or work of the judge ot defame or insult any person and further holding that in such case previous sanction to prosecute such a judge was not required and that a case can be directly filed in the court**.[ AIR 1983 SC 64]**
4. A Principal District Judge had filed criminal case under section 167,471,474 and 466 of IPC, against a judge who interfered and tampered with the Roznama of a case and the case against said Judge was found to be legal, proper and justified by the Supreme Court**.[AIR 1971 SC 1708]**
5. A case under section 504, IPC filed against a judge who used abusive word against a person was found to be legal ,proper and justified by the Supreme Court holding that in such cases previous sanction to prosecute such a judge is not required and that a case can be directly filed in the court against the judge**.[1993 Cri. LJ 499]**

6. A sitting Judge of Delhi High Court, who passed an order by obtaining illegal gratification (bribe ) was arrested by C.B.I. and was in police custody for 13 days and thereafter released on bail**.[2003 DRJ(70)327]**
7. A Judge from Maharashtra Judiciary namely S.B.Nikkam, was held guilty of contempt of Supreme Court for having failed to take action against a police officer who handcuffed an accused. The judge was not punished as he tendered apology. However Supreme Court ordered to record its strong disapproval in service book of said Judge**.[AIR 1996 SC 2299**]
8. A sitting High Court Judge was held guilty of the contempt by the Supreme Court for acting against order of the Supreme Court**.[(2010) 6 SCC 417]**
9. While holding a judge guilty of wrongful confinement by not granting bail and illegally detaining a person in custody, the High Court held that no protection from prosecution can be granted to such judges.**[AIR 1969 PAT 194]**
10. A CBI Court Judge was arrested for accepting bribe of Rs.10 Crores, in the case of Janardan Reddy and the Supreme Court with pain warned to keep the Judiciary away from corruption.[ **TNN 20 FEB 2015(36PG)**
11. **Corrupt Judges should be thrown out:-** While responding to a casewhere a judges had extended unwarranted relied to a person despite contrary order of Supreme Court, the Supreme Court not only refused to expunge those remarks but reiterated that they were true.**[Mail Today 11 MAY 2011]**
12. The High Court of Allahabad had filed an application seeking to expunge certain remarks against the corrupt and unethical conduct of High Court Judges of Allahabad, but Supreme Court not only refused to expunge those remarks but reiterated that

they were true.**[i) The Hindu, Chennai 10 Dec. 2010, 30th march,2013][ii) Hindustan Times 12 Dec,2010]**

13. The investigation of five corrupt High Court Judges of Allahabad conducted by IB, the then CJI S.H. Kapadiya said that they were corrupt but however no action was taken against them. The former SC Judge Justice Markandey Katju had written a blog on this incident. [TIMES OF INDIA] CJI Kapadiya is also liable to punishment for offences under section 218 and 201 of IPC for saving accused Judges and not initiating criminal prosecution as required by law against said corrupt Judges.
14. The Senior counsel Shanti Bhushan, Ex. Law Minister, Govt of India and Prashant Bhushan had submitted affidavits in Supreme Court informing that eight chief justices of Supreme Court were corrupt. While no action is being taken against the corrupt judges, the voice of Bhushan is being tried to be curbed down by issuing notice to him. Whether this is democracy?**[TNN 17 Sep. 2010]**
15. The former SC Judge Justice Markandey Katju informed that the Government pressurized Supreme Court collegiums to rpomeote one corrupt Judges of Madras High Court to Supreme Court and the very corrupt jidge was so promoted/ elevated to Supreme Court. **[ 20 July 2014, 21 July 2014, TOI]**
16. The Chief Justice of Karnataka High Court namely P.D. Dinkaran whose corruption was exposed and found to be true was left scot free b only transferring to other High Court. He resigned later, but no action and criminal prosecution was taken against him.
17. Kolkata High Court Judge Soumitra Sen was involved in the misappropriation and corruption of Rs. 22.83 lakh but he was only put to impeachment in Rajysabha but no action was taken

under criminal law i.e. Section 409 IPC. Why?**[17 AUGUST 2011]**

18. The Supreme Court Judge namely V. Ramaswamy faced only impeachment but no punishment was given to him under criminal law.
19. A three judges bench of Supreme Court whimsically and hurriedly dismissed a petition filed by advocate Shanti Bhushan in the matter of corruption of 1000 Crore Rupees by Supreme Court Judge Justice Prasad. The President of Supreme Court Bar Association Advocate Dushyant Dave Has also written about this incident in his blog.**[14 April 2015]**
20. CBI filed a charge sheet against six judges of High Court in the matter of corruption of Rupees 6.8Crore of PF Scam.**[Mail Today 4 July, 2010]**
21. CBI Court framed charges against six Judges.**[27 November 2013] (37PG)**
22. In the matter of bribe of 10 lakh rupees, the CBI, filed a charge-sheet against the Punjab and Haryana High Court Judge Nirmal Yadav and CBI Court also framed charges in the case. **[The Hindu 18 Jan. 2014]**
23. Bombay High Court issued notice to magistrate and sessions judge calling their explaination for not giving bail to a woman accused**. [Cri. Writ Petition No. 92 of 2009, Order dated 17th Jan, 2009 Adv. Rajesh Panchal]**
24. A misinterpretation of Higher Court order i.e. Supreme Court order is contempt by the said judge. The registrar directed to take action against the said Judge**.[AIR 2001 SC 1975]**
25. A Judge issued non-bailable warrant in the disposed of case. The victim was granted compensation of Rs.25,000**/-[2001 ALL MR (Cri.)173]**

26. If judge interpolates the records of a pending case then he is guilty of offence u.sec.466,471,474,471 of IPC.
    1. 1928 I.L.R. (52) mad 347
    2. AIR 1940 Lah 292
    3. AIR 1971 SC 1708
27. Court cannot deny hearing of a case only because the person had made complaint against judges. **[(2002) 8 SCC 715]'**
28. If the judge does not grant bail to the accused when case laws of supreme court and High court are shown to him then apart from departmental action the said judge will also be liable for prosecution under contempt of Court's Act**.[2012 ALL MR (Cri.)271]**
29. The judges have no discretion when the case law is clear. It is the duty of Higher courts to make the law more predictable. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients Subordinate courts would find themselves in embarrassing position it choose between the conflicting decisions. The general public would be in dilemma to obey or not to obey or nor obey such law and ultimately falls in to disrepute**.[AIR 1990 SC 261]**
30. The judges was held guilty of contempt of court for giving unwanted relief to accused **[1993 Cri.L.J.816]**
31. The Judgement of other high court is also binding. Bombay High Court ordered action against a judge. The said judge had taken a stand that kerala High Court case laws is not binding on him.**(2011(4) AIR Bom R 238) [2011 (4) AIR BOM R 238]**
32. All the judges including judges of High court would be guilty of Judicial Adventurism for passing order by ignoring law settled by Supreme Court. It would be judicial impropriety for sub-ordinate courts including High courts to ignore the settled decisions. The

tendency of the subordinate courts is not applying the settled principles and passing whimsical order granting wrongful and unwarranted relief to one of the parties is strongly deprecated. Such tendency should be stopped**.[AIR 1997 SC 2477]**

33. If Misconduct of passing whimsical order by public officer is proved then damages to be recovered from erring official. When court directs recovery of compensation or payment of damages against state then the ultimate sufferer is the common man. Government money is the tax payers money which should not be paid for inaction of those who are entristed under the Act to discharges their duties in accordance with the law**.[AIR 1994 SC 787]**

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The Supreme Court has set up an In-house Committee to take action against High Court and Supreme Court Judges but why has so far no action against any judge been taken by this committee? This shows that only independent commission may perhaps take action against such judges. This further proves that Special Judicial Commission is utmost required to take action and punish the corrupt judges otherwise these corrupt judges would keep corrupting and we will have to suffer injustice. Those who are rich, influential and mighty, will use the judiciary and then law and order situation in the country would be dilapidated and our country would become slave once again.

# THE PROPOSAL OF NEW LAW TO INITIATE ACTION AGAINST THE INCOMPETENT AND CORRUPT JUDGES

## -: Role :-

***(Why is this new law required…?)***

The judicial system in our country appears to have become dilapidated due to many false, frivolous claims and criminal cases. Owing to pressure of mighty, rich, powerful and political persons, the corrupt police officers falsely implicate any innocent into criminal cases. Thereafter, the judicial officers who are corrupt, lacking knowledge or having criminal mentality, continue to cause injustice to such poor and innocent people. On the other hand, the cases of honest and integral citizens are being delayed and perhaps that is why it is said that justice delayed is justice denied. People regard judicial officers as the God of Justice and accordingly respect them. Having said that, some corrupt judicial officers are serving to benefit the dishonest and betrayers of our Nation.

For example, there are some incidents which have come to the fore where the corruption of judicial officers is unearthed. The latest and living example is from Mumbai where Mr. Gopal Shete was falsely implicated in serious charge of Rape and sentenced to 7 years rigorous imprisonment. After that Bombay High Court found that the case against him was false. Another case is of the state of Haryana where with intent to grab the land of a common/middle group family, a builder in connivance with police officer got Darshan Singh implicated into false case of murder of one person. However, subsequently it came to be disclosed that in whose murder case the aforesaid family members were convicted and sent to jail, was living. However, despite this, the

Sessions Judge sentenced them to imprisonment of life. The members of aforesaid unfortunate family spent many years in the jail because they didn't have money to engage a competent lawyer to defend themselves. When this case was taken into High Court, then High Court, having seen the evidence, ordered to prosecution against Police u/s 194 of IPC.

Looking at the difference between the justice to poor and justice to rich, it appears that the law is becoming blind and that the time has come to open its eyes. It is to be recalled that at one hand the hooligans like Sidhram Mhetre or Padamsinh Patil procure the bail in the real murders cases. Sidhram Mhetre was granted anticipatory bail in the murder case, because he was a minister. Padamsinh Patil was granted bail within a month of his arrest and was forthwith released whereas the aforesaid innocent unfortunate family continued to languish in jail even in a false murder case, for they did have power of richness. In fact this is violation of Article 14 of the Constitution of India, under which every citizen is entitled to equality before law and equal protection of law and during the due process of law no person shall be discriminated against on the ground of his caste or religion. However, despite this mandate, it is being seen that there is Goonda Kanooni Raj (sic) entailed by rich or particular section of the society, upon the poor and helpless people. Is it not a Judicial Terrorism?

In the above case, the Govt or the Judiciary has not taken any steps to rehabilitate those innocent family members who spent years in jail in a false case due to Tughlaki orders of Session Judge. It is clear that the Judge of Session Court are guilty of passing wrong orders but no such action under Sections 194, 211, and 220 of IPC has been initiated against them as was taken against police in case of **Darshan Singh vs State 1985 CrLJ 71 (NOC) (DB)** or as was taken in the case reported in **Kamlar Bhavsar's case 2002 All MR (Cri) 2642.** Why the

prosecution under section 218 of IPC was not launched against the High Court judges for having saved guilty Sessions Judges? Now mysterious question is lingering over this subject.

This did not happen, because for today a judge does not wish to take action against other judge and taking undue advantage of this, some of the judges are doing open corruption in our country. The guilty ones are let scot free by accepting money whereas the innocents are being sentenced. Even if any honest citizen or advocate wishes to raise voice for truth, the corrupt, inefficient and egoist judges gag their voice by threatening and saying **"I will pass any such order as pleases me, none is my master." 'You can move higher court, at the most my order may be set aside (but no action).'**

The majority of poor people don't afford to challenge such wrong orders in the higher court and even if they do, then they have to compromise with corrupt, mighty, hooligans and rich people just because they don't afford the big lawyers and the expenditure of higher courts and thereafter they have to keep crying on their fate for the rest of their life. If any time the higher court mistakenly catches the wrong done by the court below, then only the wrong order is merely reversed without taking any action against a judge guilty of passing a wrong order. That apart, if it is established in the higher court that there has been corruption of crores in the court below while passing such wrong order, then the judge in the court below is merely suspended. But, whether merely suspending a judge is justice? Not at all…

If we recall an incident of last year where the Chief Justice of Bombay High Court, Mohit Shah had benefited Rs 10,000 Crores to the Essra Oil Company and this very order was set aside by the Supreme Court. Thereapart, the Chief Justice of Supreme Court, Altmash Kabir had given the orders of inquiry of Chief Justice of Bombay High Court, Mohit Shah, stating that he was unfit, corrupt and counter-productive to the

judiciary and written report of the same was submitted to the President. Thus, our hard earned money paid as tax to Govt, was being given to Chief Justice of Bombay High Court, Mohit Shah, who was found to be corrupt and unfit, he was given other facilities as salary and other perks like Police Protection, residence and other rich perks were also given to such corrupt, unfit and undeserving person appointed as Chief Justice of Bombay High Court. Who is responsible for this?

## WHY DID THE INHOUSE COMMITTEE OF SUPREME COURT NOT ASK MOHIT SHAH TO RESIGN FROM THE POST?

There are many such examples showing as to how the citizenry is being fooled and how the corrupt judges, officers and ministers are ruling on the strength of money received from people by imposing taxes after taxes on them whereas the poor people are crying for basic amenities as well as justice and the instead of giving justice to poor, the dates after dates are given to the poor people. On the other hand, in the case of Salman Khan, within two hours the appeal is filed in High Court and at 5.00, bail is granted to him. On the Contrary the poor Gopal Shete's appeal was heard after 5 years when he was in jail. When the court is closed at 5.00 pm for poor people, it is surprising that the Supreme Court doors are opened at 3.00AM for dangerous terrorist like Yakub Menon and the hearing take place. Similarly, poor people are arrested even in trivial cases , whereas in the case of rich, even the case is not registered let investigation alone. The poor ones are mandated to disclose the source of even 1000/- Rupees whereas some of the officers and judges don't feel answerable to disclose their wealth as per the law but instead, using the law as their tool ,amass the wealth of crores of rupees without any problems. It is to be seen that as per the Constitution , the people are the master and rest all the officers like collector or peon,police or judges are the "**Public Servants"** appointed

by the people. But, here , the servant is regarding himself as master and then insulting the original master. Servant is illegally ordering the people, the real master and we are not even opposing it. That is why these kind of servants are treating us like slaves and then ruling over us. If we don't take timely cognizance of all these things, then our coming generation will also be slaves of few such corrupt and tyrant servants. It is clear that the rule of such corrupt mighty ones would be more dangerous than that of British or Moghuls. Therefore ,the time has come to show the servants his original place. Nothing can substantially change only because of the thoughts of our Prime Minister Shri. Narendra Modi or Chief Minister of Delhi Shri. Arvind Kejriwal , as long as rule of law and justice delivery system, don't become transparent and stringent, the progress of our Nation is not possible. That is why we need to have a transparent and strict law.

If our present Fair and Fast Justice Bill is converted into law of this land, then whosoever may the ruling party, no political leader, judge or police or other would ever dare to do corruption of injustice. Besides ,Nationalist leaders of our country like Prime Minister Shri. Narendra Modi or Chief Minister of Delhi Shri. Arvind Kejriwal , shall have more time and energy towards progress of our nation. Moreover, the people of the country shall be happy to have the justice. Bharat would again become a leading country in the world by overcoming the menaces like corruption and terrorism. And this is our **'Humanist Global India Mission'.** We are not to be understood as advocating for any political leader but we are displaying an outlook that every common people can understand.

# FAIR AND FAST JUSTICE BILL 2021

## [ NEED FOR SUCH LAW AND THE PROPOSED PROVISIONS ]

**Agar ho roshni ki chah to hamare sath chaliye I (sic)**

**Agar sata rahi hai gulami to hamare sath chaliye I (sic)**

1. The total strength of all the judges working in all the Court should be doubled.(i.e. if for the present , the strength is 10,000; it should be paid Rs. 3 lacs per month);
2. The salary of all the Judges should be increased by three times(i.e. if for the present, a particular judge is paid salary of Rs. 1 lacs per month, he should be paid Rs. 3 lacs per month);
3. The salary of a Judge of High Court and Judge of Supreme Court should be fixed at Rs. 10 lacs per month; The salary of the Chief Justice of India High Court of a particular State should be Rs. 12 lacs; Similarly salary of the Chief Justice of India(Supreme Court), should be Rs. 15 lacs per month. Salary of the Hon'ble President of India should be Rs.20 lacs per month.
4. In all the courts, right upto the Supreme court of India , they should be under surveillance / vigilance and scanner. Audio/ video recording facility should be made compulsorily in all the court halls, as well as to the residential premises of all Judges.

5. The vehicles and mobile phones of all the Hob'ble judges should be under surveillance (vehicles should be fitted with GPRS system ). None of the Hon'ble judges should be permitted to use their private vehicles.
6. By amending Section 219 of the IPC , a provision should be incorporated as '219(a)", whereby a provision should be incorporated/made for punishing the judges who are found guilty of corruption. The punishment for such offences should be prescribed minimum for a period of 5 years, and extended to life Imprisonment.
7. Any person related to the judge should not be permitted to undertake the work of legal nature in that particular deparmebt, i.e he should not be permitted to practice as an Advocate /Lawyers in that particular department. Any advocate or the Judge found violating this provision, should be dealt with Section 219(a) of the IPC(Cognizable –Non-Bailable), and the punishment under this Section will be minimum of 2 years, which terms may be extended to maximum of 10 years.
8. It shall be mandatory that all the Articles/ Sections of the Constitution of India and more particulars, Article 14 which provides for Equal Before Law and Equal Protection before Law even procedural law (AIR 1956 Bom 695), should be strictly made applicable to all. Any person found violating the same or even a judge or any authority found indulged in discriminatory treatment or practice would be liable for punishment under section 219(a) of the IPC, and such individual would be liable to undergo imprisonment for 10 years. The minimum punishment for such discrimination should be of 5 years.

**Example(A):** If in a case of a poor person, he is given date after a period of two months, and in a similar matter relating to a rich person, is given the short date or prior to that and the proceedings are taken up, the same should be treated as judicial discrimination.

**Example(B):** If in a case on one hand where a Senior and Influential Advocate is advancing his arguments and the same is heard and considered minutely, and on the other hand the arguments of junior Advocate is not heard in the very same manner, and further to ignore the case law cited by the junior lawyer or any argument advanced on some important point, and further to arrive to a one sided decision, would also result into discrimination.

**(Srirang Waghmare (2019) SCC OnLine SC 1237, Vijay Shekhar v/s Union of India (2004) 4 SCC 666).**

If any authority misuses its power to please someone by ignoring material on record and by considering extraneous factor is a fraud on power by that judge or authority.

9. A Special Judicial Commission should be constituted for hearing the complaints against all the judges.

| **National Judicial Commission** | **State Judicial Commission** |
|---|---|
| All the complaints made against a judge of Hon'ble High Court or the Hon'ble Supreme Court of India, would be heard before this commission, equivalent to the Hon'ble High Court/ Supreme Court. | All the complaints made against a District Judge or a Judge holding equivalent post of District Judge and all subordinate Judges, would be heard before this Commission, equivalent to the Hon'ble High |

| | |
|---|---|
| | Court of a particular State. |

10. The strength of this Special National Judicial Commission would be 50 Judges. The status of these Judges would be equivalent to a Judge of Supreme Court. All complaints received and lodged against Judges of High Court; Judges of Supreme Court; & the Chief Justice, would be heard by this Commission. The main and Principal Bench of this Commission would be situated at Delhi, and its Benches would be situated in the Capital city of each State.

11. The Judges appointed in this Commission would not be posted or transferred to any other Court/s of any State, and they would not be entitled to work there. They should be provided with special facilities and protections. So as to minimize any possibility of corruption etc. The Children/wards of these Judges would be provided education in any School OR College by the State, which would be free of cost; similarly they would be entitled to reservation in the jobs. All these Judges would be only answerable to the office of the President of India.

12.In view of this no case would be kept pending for consideration in any Court of law for a period of more then 6 months. In this case, the subject matter of the case involves a big question or issue, and so also the number of witnesses are more, (As was in the case of Kasab), in such circumstances, the said duration of the case can be extended at the most for a period of one year.(Violation of this At would be termed as an offence and there would be a provision and in pursuance there of the concerned Judges would be liable to be dismissed after giving him appropriate notice in the matter, and he or she shall be fined with any amount up to Rs10 lacs and imprisonment for a period of one year. The entire Proceeding in this context would be taken up by the Special Court.)

13. The language for conducting the proceedings before the High Court and before the Supreme Court of India will be "English", however, if any person or any Advocate wishes or makes a oral request, such person or Advocate would be made available the services of Translator. In this respect, before the Hon'ble Supreme Court of India, Appointments would be required to be made of 'Translators' conversant with each Regional Languages, spoken throughout India.

14. No petition filed before the Supreme Court of India would not be dismissed by passing a two line order. It will be binding on each and every Court of Law throughout the Country, including the Supreme Court of India, that they should formulate their opinion on the points raised by the petitioner in the petition, and apart from this, the position of law, case laws, precedents- citations, arguments advanced by the Advocate/s, all these will be required to be incorporated while writing a order or a judgment, while dealing or disposing of the petition. **[ 2019 SCC OnLine Guj 1535, (2009) 3 SCC 258, 2018 SCC OnLine SC 1266, 2014 SCC OnLine guj 15949,(2013) 14 SCC 348, AIR 1968 Kant 288, AIR 1992 Cal 129, AIR 2003 AP 191, (2012) 8 SCC 148, AIR 1991 gau 100, AIR 1963 Assam 151]**

*(i)* ***(2009) 3 SCC 258*** *It is bounded duty of the Court to examine the issues raised in petition and to give reasons to that issue. It is not the proper way to dispose of the petition without giving proper reasons. The duty to give reasons for coming to a decision is of decisive importance, which cannot be lawfully discharged. The giving of the satisfactory reasons is required by the ordinary man's sense if justice and also a healthy discipline who exercise power over others. Reason is the heartbeat of every*

*conclusion. Without the same, it become lifeless**. ((2009) 3 SCC 258).***

*(ii) The reason ascribed may not be lengthy but they should be cogent, germane and reflective…. Giving reasons for an order is the sacrosanct requirement of law, which is the aim of the every civilized society. And intellect respects it. **(2013) 14 SCC 348).***

(iii) In **Bogamal Gohain and others V. Lakhinath Kalita and others, AIR 1991** Gauhati at page 100 wherein it is held as under:

*"It is abundantly clear that a judgment of the appellate Court should be self- contained. It should be a speaking judgment. It should contain decision on each and every point arising for consideration before the Court with reasons therefor. It may be observed that the requirement of giving reasons for the decision on each point is a salutary requirement. It is like the principle of audi alteram partem. It has to be observed in proper spirit. A mere pretence of compliance will not suffice. An appellate judgment, which does not comply with these requirements would be vitiated."*

15. The provisions of this Act will be applicable to all the Courts, including the High Courts and Supreme Court of India, and any violation there from would be termed as an offence under Section 219, 219(a) of the Indian Penal Code. The concerned Judge in that case would be liable to be punished with sentence to suffer imprisonment for a minimum period of 5 years, which may be extended to life, looking to the gravity and issues/controversy involved in the case.

16. Section 219 of the Indian Penal Code would be made as a cognizable and non-bailable offence, and punishment thereunder would be minimum for 5 years imprisonment and which may be extended to life imprisonment.

17. The proceedings of any case/Trial would compulsorily be completed within a period of 6 months; and if both the parties have completed their arguments, it would be further incumbent on the judge to take a decision in the matter within a period of 7 days, thereof. (In matter where huge stake, claim or issues are involved, this period of 7 days may be extended to 15 days; however, the concerned Judge in that case would be required to record reasons for such late decision)

18. Any Judge found incompetent to understand the genesis of law would be immediately removed from the services, and the persons who were responsible for his appointment as a Judge would be held liable for prosecution, in that event.

19. In all cases it would be binding on both the parties to submit their written notes of argument and also to advance oral arguments. A soft copy in the form of Compact Disc or Pen Drive would be required to be furnished/submitted in the Court and, it would also be binding on all the Judges, that after hearing the arguments advanced before them by the parties, they should evaluate the same taking into consideration the applicable case laws, position of law and crux of the matter. Similarly they are also required to see that whether there is any amendment in the Act or Rules. And if the concerned Judge arrives at a conclusion that he has to give a decision, then, in that case he would be required to prepare notes in respect of the issues involved in the matter, case laws, and points argued by the parties, and after evaluating all these, he should arrive at a conclusion note and then give a

copy of his view in writing to both the parties and then fix a date for final submission and after hearing again deliver a final decision. This would be helpful for the Higher and Superior Courts, where the matter would be taken up in appeal or revision to decide the case and malafides of the party and also of the Judge. On the other hand it would also be helpful in reducing filing of number of cases before Higher/Superior Courts and shall also deprecate the practice of the Judicial Officers from acting as per their own whims in arriving at an one sided decision.

20. For taking action against all the Judges, the provisions of Criminal Procedure Code shall be applicable and where there is no clear or specific provision, in that case the Special Court can take aid/help of Civil Procedure Code, or can on their own prescribe/formulate their own Rules. However, this can only be done, with in the interest of justice, nor to favour or for the benefit of some special person.

21. In the judicial process, either the Judge, Advocate or any other person would not be permitted to speak or argue in loud voice. Violation of this, the provision would entail punishment of imprisonment for minimum period of one month.

22. The foremost reason for corruption in judiciary is the discretion conferred on a particular Judge.

Meaning thereby the distinction whether the Judge may grant Bail or not. Taking advantage of this distinction/discretion, a particular person can be illegally benefited. For getting over this situation or to avoid this, explanation should be given in clear terms to explain the provision of law and Rules, which should be in accordance with law.

**For Example:-**

(a) Where in a given case, if investigation is possible without asking for custody of the accused, then it would be necessary to grant him bail, instead of asking for his remand.

(b) Where the complaint is old; where the dispute pertains to land etc., for each kind of cases such as Civil, Criminal or Family matters, the law should be Clear. For each law, there should be 100, 200, 1000 clear explanations rules/ proviso, so that in each situation the same can be made applicable, and it should not be left to the discretion and / or to the choice of the Judge, so that he should pass any distorted order on the ground that the subject matter of the Case law is not applicable to the Case in hand.

23. Contents of the Judgment. Mandatory requirements :- For all the Courts right form the Supreme Court, High Court, Sessions Court and all Appellate Court it would be binding rule that their order/final order should contain the explanation on the following points:

23.1) What is the subject of the Petition/Case? What are the prayers made therein?

23.2) On which law point the Case of the Petitioner is based.

23.3) Whether the Lower Court has taken into consideration all those points, and by giving explanation legally, has passed the order ?

23.4) If there is an any mistake committed by the Lower Court, where is the mistake found?

23.5) Whether the mistake has been committed deliberately, or it has mistakenly committed?

23.6) What and how much loss is caused to the Petitioner , because of the said mistake committed by the Judge?

23.7) Whether the Judge of the Lower Court has committed similar type or kind of mistake in past or not? (His service book should be

checked by taking help of Net). All the complaints against Judge should be connected to his service book and service book should be public document.

23.8) If the Judge has repeated the mistake earlier committed by him , or if it is his first mistake , however it is not liable to be pardoned, then in that situation the Appellate/ revision Court by taking recourse of the provisions contained in sec. 218, 219, 220 etc. of the Indian Penal Code, referred the matter against the Judge of Lower Court to the Special Court, and in view of guidelines contained in judicial pronouncement in the Hon'ble Supreme Court in AIR 1994 SC 787, the expenses incurred by the Petitioner, his Advocate , loss of time and expenses of state in appeal , should be recovered from the salary of the concern Judge who has committed said mistake, within a period of 7 days and an order for payment of the same to the Petitioner will have to be passed.

23.9) In such Cases where the aforesaid orders are not specifically passed, the Special Court in that Case would take suo motu cognizance of the same against the concerned guilty Judge, and can issue notice in the same .

23.10) While delivering the Judgement in the each Case , it will be binding on the concerned Judge that he should make it clear that what is the Case about or what is the law point involved therein. The igher and Appellate Court while delivering its verdict on the same, it would also be bound to discuss the proposition of law and the law point in clear words. ( AIR 1990 SC 261)

23.11) In any Case, it is found that with an intention to favor or benefit a particular person the Case law/citations orders of Hon'ble Supreme Court or High Court are twisted or misunderstood in sense to mean it differently , or to ignore the Case laws, such act would be termed as judicial impropriety and would be unpardoned (AIR

1997 SC 2377) and the concerned Judge would be liable to punishment under Section 219 (The minimum punishment under this provision would be of 5 years)

23.12) In all Cases, it would be binding on all the Judges that in their order they should specifically mention whether any person has given false statements or produced bogus witnesses or evidence? Action under Section 191, 192, 193, 200, 465, 466, 471, 474 etc. of the Indian penal Code would necessarily be initiated against the person found responsible for such act. It would be compulsory/obligatory to pass an order under Section 344, 340 of the Criminal procedure Code. It would also be compulsory/ obligatory to punish the Police personnel, Government Advocate/Pleader, Complainant, Accused etc., for perjury. [ Similar guidelines given by the Supreme Court in **Rajnish case 2020 SCC OnLine SC 903**

(2002 ALL MR (Cri) 2462) (1998 Cri. L.J. 2908) (AIR 1996 SC 2326) (AIR 1996 SC 2299).

23.13) Under this law there would be separate rules for the Judges (Code of Conduct), in which it would be made known to them, the manner in which their conduct should be in the Court hall/room/premises and off the bench and any breach thereof would be termed as an offence. There would be a clear regulation in the matter, in respect of conduct that if a Judge is drinking liquor by going to liquior shop/ bar, going to a dance bar, smoking cigarette on road or teasing girls etc. and for breach of any the said Rules/Regulations, there would be provision for imprisonment for a minimum period of one year and maximum of 5 years.

24. When a person or an Advocate is appointed or elevated as a Judge the he would be posted or function as such out of his

area/region. Meaning thereby, he would not be able to work in his Divison.

25. Transfer of each and every Judge right from the Judge of a Lower Court upto High Court in every three years would be compulsory. It would also be then he/she would be posted or function out of his area /region. Meaning thereby, he would not be able to work in his division.

26. After the retirement of a Judge, for a period of two years, he should not be given any Constitutional post.

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**23.7** The Appellate Court is required to refer all the evidence that have received better treatment than the Trial Court and relied on by it.
In Bogamal Gohain and others V. lakhinath Kalita and others, AIR 1991 Gauhati at page 100 wherein it is held as under:

**23.8** In Laxmi and another V. Krishna Bhatta and another, AIR 1968 Mysore 288, it is held that discussion of every part evidence in appellate Court judgement as per Order 41 Rule 31 of Civil Procedure Code is imperative and the failure to do so and disposal in short paragraph affirming views of lower court is grave misapplication of power'.

**23.9** In Samir Kumar Chatterjee V. Hirendra Nath Ghosh, AIR 1992 Calcutta 129 at page 135 in paragraph 17, it is observed and held under:

"17. As already stated, the first court of appeal, also approached the whole case from a wrong angle misdirecting itself as that of the trail court, in a way prejudicial to the inerest of the defendant/appellant. In short, the appellate Court's judgement is also based on summise and

con-juectures, as that of the trail Court. He simply brushed aside the documentary evidence adduced by the defendant/appellant as suspicious in nature and placed no reliance on the same without carefully examining the same and trying to arrive at a finding based on his independent judgment and reasoning. He simply dittoed and endorsed the finding of the trail Court that such documents were created for the purpose of this suit, without trying to weigh and assess the evidentiary value of the same. In that view of the matter, I am constrained to observe that the Court of appeal below failed altogether to comply with the statutory provision of Order 41 , Rule 31 of the Code of Civil Procedure. The Judgement of the appeal Court Should not be the mere endorsement of the findings of the trail Court, not containing the reason for the decisions arrived at by him independently of that of the trail Court."

**23.10.** It cannot be said that all rules under Order 41 are not made application to the second appeals, as per the decision in Parbanna Vs. Veershetty , AIR 2003 AP 191.

**23.11** The aim of Order 41 Rule 33 of Civil Procedure Code is to prevent inconsistent and contradictory decision on the same questions in the same suits. In Genuine cases where the power is not exercised by an Appellate Court, it may even result in miscarriage of justice. The discretionary power of an Appellate Court under Order 41 Rule 33 of Civil Procedure Code ought not to be refused either on the ground of technicalities or hyper-technicalities.

# TRANSPARENT LAW FOR POLICE DEPARTMENT

1. The salary of all the Police Officer up to the rank of Police Inspector shall be doubled . E.g. If salary of a constable is Rs 20000/- then it shall be made Rs 40000/-
2. The strength of all police personnel should be doubled. E.g. if the number Is lakh then it shall be made 2 Lakh.
3. The number of female police personnel shall be 30% of total number of police force.
4. In all Police stations, there shall be at least one lady Police Inspector.
5. Only female police officer shall deal with female complainant or accused.
6. There shall be video recording of all the corners of Police Stations and the recording so made shall be preserved for at least one year and every recording shall be connected to the website and online watchable by senior officials or the courts. The same shall also be made avaibvale under Rti. Any defect in the recording shall forthwith be reported and alternative system be in place or else any such defect shall be treated as criminal conspiracy.
7. All FIRs shall be uploaded on the official Website.
8. There shall be special Vigilance Police Cell to keep watch upon the police.
9. This Special Vigilance Police Cell shall consist of the officer recruited from CBI or Crime Branch initially but however, such officials once recruited into this cell shall not transferred back to their police department. However, subsequent official shall be recruited from open and direct recruitment process in pursuance of scheme of Art 16 of Constitution.

10. Special Vigilance shall also have police stations where the complaints against only police and judges shall be lodged and investigated.
11. This cell shall be accountable only to the Special Courts. No official of this cell shall be transferred except with permission of the Special Court; provided that No official of this cell shall be transferred during investigation of any case.

There are many complaints to the effects that the complaints of poo or helpless females are not registered when the accused are hooligans or influential persons but instead, the complainants are ill-treated by the polic. Under the political pressure the complaint is weakened or weak sections are applied. [Salma Babu Shaikh 2008Mh.L.J (Cri) (3)182] and on the other hand if any influential person or police officer desires to implicate any innocent person, then immediately a false case is registered and the poor is arrested . [1998 Cr.L.J 2908].

- **To prevent the above, the following measure shall be provided :-**

**1.** The task of writing a complaint shall not be undertaken by a police. For this task, there shall be one special office consisting of minimum 3 officers for 24 hours, who shall be either retired judges or able advocates.

**2.** When any complainant comes then such officers shall write as under what sections the case is to be registered or that no case is made out depending upon the facts complained. This shall be done only after having conversation with the complainant. No complaint in writing shall be accepted.

**3.** On finding any complaint to be false, the officers shall immediately send the notes along with recording of the

conversation with complainant to the court which shall prosecute the complainant for lodging a false complaint. This all shall be done within three months so that this will prevent false complaints being made and shall increase respect to the law.

4. If any case is made out on the basis of the noting made by such officers,then the matter shall be sent to the Police Station. If despite receiving such letter from this officers, police don't register FIR or delay in registering thereby casuing any loss to the complainant then such complainant may lodge a complaint to the special vigilance police against such erring police officers and such offence shall be cognizable and non-bailable like IPC 167,201,218 and the guilty police officer shall be prosecuted immediately.
5. In case the police shall endeavor to collect the evidence rather than arresting the accused first. Only in the case like Terrorism ect like Kasab, the police shall arrest the accused on the spot . Provided that in all other cases, no person shall be arrested without permission of the court. Hoever, the police may restrain such accused person from leaving the place of residence without permission of the police.

   **I) 2004 (1) Crimes 1 (Bom)**

   **II) 2008 All Mr (Cri) 2432**

   **III) 2012 All Mr (Cri) 3942**
6. All acse shall be investigated into six months otherwise the police shall have to apply and inform the court the reason for not completing the investigation and the court may extend such period but not beyond maximum 3 months. Thereafter, the case shall be taken up by the special police vigilance department and investigated into including the investigation of the earlier police officer.

7. Special Police shall also carry out sting operation by sending ogus complainants to the police so as to catch any corrupt officer of police and accordingly shall take action if anyone is so found.
8. A complaint in respect of any police station may be filed in any Special Police Vigilance cell located in any corner of the state so that the corruption shall be uprooted.
9. It shall be duty of every investigating office of police department to record into digital case dairy and send an email thereof to the higher officer and the courts which practice shall decrease the incidences of creating false evidence or destroying the evidence against any one. This mail shall be seen by the court in case of any complaint against such investing officer to determine whether he carried out proper investigation or not or when he implicated any innocent or saved any perpetrator?
10. It shall be mandatory for the police officer filing the charge sheet or B summary report to clearly mention his report on the following particulars:-
    1. What was complaint?
    2. What was reply of the accused?
    3. What was investigation of both complaint and reply thereof?
    4. If the investigation is not properly conducted on all above points as per **Babubhai Vs. State (2011) 1 SCC (Cri.) 386**, then such a report shall be discarded and the investigation shall be handed over to the special vigilance department.
11. The officer found Guilty of not following new and old law and directives, shall be liable to suffer imprisonment upto 10 years but it shall not be less than 6 months. Apart from this law he shall be prosecutable under section 201, 218, 167, 194, and 191, and the punishment of offence under section 145(2) of

Bombay Police Act shall be enhanced upto 10 years and the same shall be made non bailable.

12. Every complaint against the police shall be investigated into only by special police department. If complaint is found false then complainant be punished and if it is genuine then officers concerned be punished.
13. In such cases section 197 of Cr.Pc shall not be applied as all the decisions shall be subjected to the approval by the special police and special courts and there shall be provisions for prosecuting the false complaints.
14. It shall be the responsibility of special police department to monitor all the police Station across the state and if anything wrong is noticed, or CCTV is found to be defective, then special police officer shall attend such police station until CCTV is resorted.
15. It shall be mandatory to install CCTV camaras in all governmental offices of the country and the company undertaking the job of installing such CCTV'S, if any, within two hours or rep[lace the defective CCTV with new one so that the police officer shall not be in position to do any act in contrary to law and innocent are not falsely implicated.
16. Similar guidelines given by the Supreme Court in the recent judgment in the case of **Paramvir Singh Saini's case (2021) 1 SCC 184**. It is ruled as under ;

> *"12. It shall be the duty of the SLOC to see that the directions passed by this Court are carried out. Amongst others, the duties shall consist of:*
>
> ***(a)** Purchase, distribution and installation of CCTVs and its equipment;*

***(b)*** *Obtaining the budgetary allocation for the same;*

***(c)*** *Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;*

***(d)*** *Carrying out inspections and addressing the grievances received from the DLOC; and*

***(e)*** *To call for monthly reports from the DLOC and immediately address any concerns like faulty equipment.*

*Likewise, the DLOC shall have the following obligations:*

***(a)*** *Supervision, maintenance and upkeep of CCTVs and its equipment;*

***(b)*** *Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;*

***(c)*** *To interact with the Station House Officer (hereinafter referred to as "the SHO") as to the functioning and maintenance of CCTVs and its equipment; and*

***(d)*** *To send monthly reports to the SLOC about the functioning of CCTVs and allied equipment.*

***(e)*** *To review footage stored from CCTVs in the various police stations to check for any human rights violation that may have occurred but are not reported****".***

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# THE BENEFITS ON ENFORCING THIS LAW IN THE COUNTRY

1) No person can dare to file any false case against anyone, As under this law, there shall be a provision that anyone who is guilty of filing a false case, shall be punished with imprisonment upto life, which shall not be less than 5 years. Such cases should be decided within 3 months.

2) Every complaint shall be registered, though it may be against any big person, builder, judge, police, mighty hooligan and influential and, such complaint shall be inquired into and the guilty shall be punished.

3) The cases against the judges and police shall be investigated only by Special Police and to be tried by only Special Courts so that the guilty shall be punished as early as possible and the same shall send a signal to the influential persons like Builders, politicians, hooligans etc and also to the Judges or Police Officers etc that the complaints cannot be suppressed or delayed with the use of money power.

4) No judge shall be in a position to give any decision by using unjust exercise of discretion except when there is existing and justifiable reason and if Judge violates this, then he is liable for punishment with imprisonment upto life but not less than minimum five years and such case shall be disposed off within three months.

5) There shall not be any discrimination between rich and poor, forward and backward or male and females etc. The provision of Article 14 of the Constitution shall be mandatorily followed in all judicial proceedings and any breach thereof shall be strictly punishable.

6) The **'Tarikh –pe- Tarikh'** syndrome shall be over. After increasing the strength of judges, every case shall be disposed off within 6 to 9 months else the judge shall be liable to punishment.

7) The practice of arresting poor and freeing rich would be over and all shall be equally treated.

8) The false complaints like rape, molestation or cruelty shall be curbed down because there shall be strict punishment for lodging or filing such flase cases.

9) The fact that a litigant is represented by so called big advocate, will not matter because any ordinary common person shall be in position to conduct his own case and the judge shall give verdict after due deliberation and consideration of facts and hearing arguments of both parties to a case.

10) There shall be translators in all courts from Supreme Court to the lowest subordinate court, so that inability of knowing English, shall not be a problem for a common man.

11) No false allegation shall be made against any judge or lawyer because there shall be video and audio recording in every case.

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# TWO JUDGES ARRESTED FOR CORRUPTION AFTER VIDEO RECORDING OF HIS CHAMBER

**(Jagat patel Vs. State Of Gujrat MANU/GJ/0361/2017)**

- **Corruption os 1 Crore in 40 days exposed in video recording.**
- **Both accused Judges arrested & sent to Police Custody.**
- **Investigation transferred to Anti-Corruption Bereau.**

**Wapi/Gujarat :- 27/07/2015**

Today Police arrested two senior Judges Mr.M.D. Acharya. Principal Civil Judge and JMFC

And DD , Inamdar Additional Civil Judge for corruption of around Rs. 1 Crore in 40 days. Actually the Whistleblower Mr. Jugat J. Patel and his Advocate fixed Spy- camera for video and audio recording for conversation in the chamber of accused Judge. After Forty days record he prepared two CDS and handed over to Vigilance department of High Court . FIR registered and Two Judges were arrested. The conversation revealed that Judge Mr. A.D Acharya having conversated with advocate in his chamber demanded and accepted money.

*Some instances of Bride:*

Advocate A.J Patel entered in chamber for bail where accused Judge demanded Rs. 1 Lakh fifty Thousand and accepted packet.

In other case the Judge is seen to be saying that he can also manage the statement of witnesses which is recorded.

In other case he said the advocate that if I gave punishment to your client then his political career would end and demanded Nine Lakh

Rupees for giving Judgment of acquittal. He asked lawyer to keep one lakh for him.

## JUSTICE KATJU STRIKES AGAIN :

## CLAIMS ALLAHABAD HC JUDGE WAS CORRUPT

## BUT CJI SAVED HIM

**(Aug 11, 2014)**

Justice Markandey Katju is continuing his on slaught against corrupt judges in the judiciary.

In his latest blog post , the former Supreme Court judge has alleged that there was a " judge in a High Court who had a very bad reputation about his integrity , and on this account was transferred to Allahabad High Court", where too he continued with his corruption and that three mobile phones of this judge were tapped by intelligence agencies and revealed that he was corrupt.

According to Katju's post, the judge in question was the Acting Chief Justice of Allahabad High Court at one point of time and people were demanding that he be elevated to the Supreme Court.

Katju goes on to note,

"the then chief Justice of India, Justice Kapadia, had received several complaints about this Judge that even at Allahabad he was indulging in corruption , and Justice Kapadia requested me to find out the true facts about that Judge ( I was then Judge of the Supreme Court ). At that time I had to go to Allahabad , my home town for attending a function , and while there I contacted some lawyers I knew , and got 3 mobile numbers of the agents of this Judge through whom he was taking money. On returning to Delhi I gave these 3 mobile numbers to Justice Kapadia. And suggested that he get these numbers tapped through intelligence agencies. About 2 months thereafter Justice

Kapadia told me that he had done as I had suggested, and the conversations tapped revealed the corruption of this judge."

According to Katju, given that the CJI had proof of his corruption, the judge should have been asked for resignation, failing which impeachment proceedings should have been started, but nothing of the sort happened.

Katju's argument is that corruption is rampant and even well-known but, "most Chief Justice of India are reluctant to expose corruption in the Judiciary thinking that this will defame the judiciary, and so they prefer to bury corruption under the carpet…"

Katju then goes on to give another example of how he had tried to stop corruption in the judiciary when he was Acting Chief Justice of Allahabad High Court and had told Chief Justice of India Justice Lahoti, about 5 corrupt judges in his Court.

He Writes,

"Justice Lahoti asked me what should be done? I replied that if he permitted, I would solve the problem in 24 hours. He asked, how?

I replied that I was going back to Allahabad by night Train, and on reaching there would call the Registrar General and tell him to telephone these 5 Judges, and tell them that the Chief Justice had instructed that they would not be allowed entry in the High Court premises. Police was been posted at the gate of High Court with instruction from me that these Judges were not to be allowed entry. Their Chambers have been locked and they will receive their salary checks at home, and they need not come to High Court. I did not see them inside the High Court premises as they had disgraced the High Court.

When I said this Judge Lahoti said "Please do not do this, because then the politicians will get the handle, and then they will set up a National Judicial Commission ". I replied that since he was not

permitting me to do this, I would not, but he may take whatever action he thought fit".

While the Judges were later transferred, according to Katju this isn't a solution. Katjualso asks in his blog post, "does corruption by judges defame the judiciary, or does exposing such corruption defame it?"

Perviously justice Katju had alleged that an additional judge in the Madras High Court was allowed to continue despite and adverse IB report against him, he was close to the DMK,

Which threatened to withdraw support to the then UPA government if the judge was removed?

According to Katju, the Judge was allowed to continue by Judge Lahoti, then the next CJI Justice Sabrwal and then confirmed as a permanent judge by the next CJI Justice KG Balkrishnan.

Justice Lahoti had responded to Justice Katju's earlier allegations saying, "Everything is a matter of record. Whatever I have done or not done is all on record with reason. I have never done anything wrong in my life".

It remains to Be seen whether he and former CJI Justice Kapadia will respond to these latest ones, given that once again that Katju is pointing fingers at former Chief Justice of India.

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## CHAPTER 210

SOME LANDMARK JUDGMENTS FROM OUR BOOK LAW OF PRECEDENTS

| SR. NO. | CASE CITATION | LAW POINT |
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| 1. | **2018(3) SCC 85**<br>Bank Of Travancore<br>Vs<br>Mathew K.C | It is the duty of the court to apply correct law even if not raised by the party – When a position is settled then passing an order contrary to law amounts to judicial impropriety – such judicial adventurism even by the High Court cannot be permitted. |
| 2. | **AIR 1997 SC 2477**<br>**(1997) 6 SCC 450**<br>Dwarikesh Sugar Industries Ltd.<br>Vs.<br>Prem Heavy Engineering Works (P) Ltd., and another | **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 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. |
| 3. | **2015 SCC DEL 11910**<br>**2015 (222)DLT 706**<br>New Delhi Municipal Council | **RATIO / LAW DECIDED:** (i) Failure to follow Higher Court's decision and passing order by ignoring law declared makes the Judge liable for action under Contempt, (ii) Filing false affidavit is Contempt, (iii) |

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| | Vs.<br>M/S Prominent Hotels Limited | Deterrent action required to uphold the majesty of law. Maximum Punishment be given to dishonest litigants (iv) Imposition of costs for frivolous and vexatious litigations, (v) No limit for imposing costs, (vi) Cost includes Lawyers fees.<br>Plaintiff cannot go against legal position declared in various cases.<br>Judgments/case laws pronounced by Higher Courts are binding on all including the Licensee/Plaintiff who could not bypass or disregarded them otherwise he is liable for action of contempt of this Court - The plaintiff misled the Trial Court to disregard well settled law. |
| **4.** | **(2017) 11 SCC 77**<br>**2017(2) SCALE 19**<br>Prabha Sharma<br>Vs.<br>Sunil Goyal and Ors. | **ARTICLE 141 OF THE CONSTITUTION OF INDIA** - disciplinary proceedings against Additional District Judge for not following the law declared in Judgments. |
| **5.** | **2011 (2) ILR (Raj.) 530**<br>**MANU/RH/1195/2011**<br>Sunil Goyal | **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 |

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| | Vs.<br>Additional District Judge | 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.** |
| **6.** | **AIR 1996 SC 2299**<br>**(1996) 4 SCC 152**<br>M.P Dwivedi & Ors. | **THE SUPREME COURT INITIATED SUO-MOTO CONTEMPT PROCEEDINGS AGAINST SEVEN PERSONS INCLUDING THE JUDICIAL MAGISTRATE, WHO DISREGARDED THE LAW LAID DOWN BY THE SUPREME COURT** - Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received |

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| | | Judicial Criticism. Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a Contempt proceeding." |
| **7.** | **(2016) 14 SCC 1**<br>**AIR 2016 SC 3356**<br>R. R. Parekh<br>V.S<br>High Court Of Gujarat &Anr. | 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. |
| **8.** | **2010 SCC OnLine 2223**<br>**MANU/MH/0791/2010**<br>Garware Polyester | **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 initiated by the officer is against the |

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| | Ltd. and Anr.<br>Vs.<br>The State of Maharashtra &Ors. | Judgment of High Court amounts to Contempt of High Court – show cause notice is issued to the officer. |
| **9.** | **2010 3 SCC(Cri.)165, (2010) 6 SCC 417**<br>RabindraNath Singh<br>Vs.<br>Rajesh RanjanPappuYadav and Anr. | Contempt of Supreme Court by High Court –High Court passed order of bail in breach of Supreme Court direction – It is Contempt of Order of Supreme Court by the High Court. |
| **10.** | **AIR 2001 SC 1975 (2001) 5 SCC 65**<br>Superintendent of Central Excise And Ors.<br>Vs.<br>Somabhai Ranchhodhichai Patel | **(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 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.<br>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 |

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| | | unconditional apology. |
| **11.** | **(1974) 1 SCC 374**<br>**1974 SCC (Cri.) 128**<br>Shri. Baradkanta Mishra<br>Vs.<br>The Registrar Of Orissa High Court And Anr. | Delinquent Judge punished with 3 months imprisonment under contempt for not following High Court order by giving unlawful reasons. |
| **12.** | **224 (2015) DLT 68**<br>**2015 SCC OnLine Del 13042**<br>Kusum Kumaria And Ors.<br>Vs.<br>Pharma Venture (India) Pvt.Ltd. | **PRESSING PLEAS CONTRARY TO SETTLED LEGAL POSITIONS TANTAMOUNT TO THE GROSSEST ABUSE OF THE JUDICIAL PROCESS.**<br>Filing of frivolous application, adopting dilatory tactics by taking adjournments time and again, pleading contradictory stands before this court, non-payment of costs imposed and **pressing pleas contrary to settled legal positions tantamount to the grossest abuse of the Judicial process.** More so, the entirety of this litigation is misconceived and without any merit. It has had the effect of entangling valuable rights of the defendants in this legal tussle. |

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| **13.** | **2003 DRJ 70 327**<br>**2003 SCC OnLine Del 821**<br>Shameet Mukherjee<br>Vs.<br>C.B.I. | **CR. P.C. – SECTION 439** – Accused was a Judge of High Court – He was Arrested under section 120 – B, IPC r/w sec. 7,8,11,12,13 (1) of prevention of corruption Act.- Charges of misuse of power for passing favourable order – Petitioner/accused is having relationship with another accused – Petitioner used to enjoy his hospitality in terms of wine and women – 12 days police remand granted but nothing incriminating was found – Petitioner's wife is ill – Held petitioner entitled to be released on bail. |
| **14.** | **(2002)4 SCC 638**<br>**AIR 2002 SC 1598**<br>Director of Settlements<br>Vs.<br>M.R.Apparao | **DUTY OF THE HIGH COURTS TO ASSIST THE SUPREME COURT**<br>When the Supreme Court decides a principle it would be the duty of the High Court or subordinate Courts to follow that decision. "A Judgment of the High Court which refuses to follow the decision had been set aside by the Supreme Court. |
| **15.** | **2016 ALLMR(Cri.)1239**<br>**MANU/MH/0047/2016** | **ACTION AGAINST JUDGE -** No grant of bail in bailable offences – lapse on the part of Judge – Principal District Judge was directed to submit the report – explanation |

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| | Bharat Devdan Salvi, And Ors<br>Vs.<br>The State Of Maharashtra and Anr. | tendered by the Judge not satisfactory – violation of direction of Supreme Court in Arnesh Kumar's case – enquiry ordered agasint errant Police officer &Judicaial officer – Compensation of Rs. 50, 000/- is granted. |
| **16.** | **(2017) 7 SCC 1**<br>**AIR 2017 SC 3191**<br>In Re: Justice C. S. Karnan | **A)** High Court Judge disobeying Supreme Court direction and abusing process of Court sentenced to six months imprisonment.<br>**B)** Even if petitiopn is filed by a common man alleging contempt committed by a High Court Judge then Supreme Court is bound to examine these allegation. |
| **17.** | **2012 ALL MR ( Cri.) 271**<br>**MANU/MH/2152/2011**<br>Farooq Abdul Gani Surve<br>Vs.<br>The State of Maharashtra | **CONTEMPT ACTION AGAINST JUDGES NOT GRANTING BAIL** - Arrest of accused in from acquittal- Non-compliance with directions by High Court and Apex Court- Effect- Besides being subject to departmental action, Sessions Judge shall also be liable for Contempt of Court. **(Para 12)** |
| **18.** | **(2018) 12 SCC 564**<br>**2018(1) ADJ 14** | **JUDICIAL IMPROPRIETY BY HIGH COURT JUDGE- Discretion should not** |

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| | Medical Council Of India<br>Vs.<br>G.C.R.G Memorial Trust | **be used against law -**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.<br>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. (13) |
| **19.** | **(1995) 1 SCC 259**<br>**AIR 1994 SCW 5188**<br>M/s. Spencer And Co.&Anr.<br>Vs.<br>M/s.Vishwadarshan Distributers Pvt.Ltd.&Ors. | **CONTEMPT OF SUPREME COURT BY HIGH COURT -** Request for early hearing by superior Court - High Court refusing early hearing on the ground of pendency of other cases - order of Supreme Court even if in the form of request is expected to be obeyed and followed by the Judges of the High Court - Language of request oftenly employed by Supreme Court is to be read by the High Court as an obligation, in carrying out constitutional mandate - If such request are flouted then |

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| | | Supreme Court will punish erring Judges of the High Court for Contempt after initiating Contempt proceeding. Conceivably our action has parameters ranging between total apathy and punishment for contempt after initiating contempt proceeding.<br>Order of High Court refusing early hearing is of a negative or reverse action. |
| **20.** | **(1989) 3 SCC 396**<br>**AIR 1990 SC 261**<br>Sundarjas Kanyalal Bhathija and Ors.<br>Vs.<br>The Collector, Thane, Maharashtra and Ors. | **PRECEDENTS** – **DISCRETION** - 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 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. |
| **21.** | **(2016) 9 SCC 426**<br>**AIR 2016 SC 4542**<br>Anurag Kumar Singh &Ors. | **DISCRETION** - It assumes the freedom to choose among several lawful alternatives. Therefore, discretion does not exist when there is but one lawful option. In this |

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| | Vs.<br>State Of Uttarakhand&Ors. | situation, the Judge is required to select that option and has no freedom of choice. No discretion is involved in the choice between a lawful act and an unlawful act. The Judge must choose the lawful act, and he is precluded from choosing the unlawful act. |
| **22.** | **(2004) 6 SCC 588**<br>**AIR 2006 SC 1325**<br>M.C.Mehta<br>Vs.<br>Union Of India | **JUDICIAL DISCRETION** has to be exercised in accordance with law and settled legal prnciples. Judicial review is permissible if impugned action is against law or in violation of the prescribed procedure, unreasonable, irrational or malafide. A discretion which encourages or perpetuates an illegality cannot be exercised. |
| **23.** | **(2014) 16 SCC 623**<br>**2014 ALL MR (Cri.) 4113**<br>Sundeep Kumar Bafna<br>Vs.<br>State Of Maharashtra &Anr. | **LAW OF PRECEDENTS**:-<br>**A)JUDGE SHOULD NOT BLINDLY FOLLOW THE EDITORIAL NOTE IN THE CITATIONS - SHOULD SEE IN WHAT CONTEXT THE OBSERVATIONS ARE MADE.**<br>In the present case, in the impugned Order the learned Single Judge appears to have blindly followed the incorrect and certainly misleading editorial note in the Supreme |

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| | | Court Reports without taking the trouble of conscientiously apprising himself of the context in which RashmiRekha appears to hold Niranjan Singh per incuriam, and equally importantly, to which previous Judgment. An earlier Judgment cannot possibly be seen as per incuriam a later Judgment as the latter if numerically stronger only then it would overrule the former.<br>In the common law system, the purpose of precedents is to impart predictability to law, regrettably the judicial indiscipline displayed in the impugned Judgment, defeats it. If the learned Single Judge who had authored the impugned Judgment irrepressibly held divergent opinion and found it unpalatable, all that he could have done was to draft a reference to the Hon'ble Chief Justice for the purpose of constituting a larger Bench; whether or not to accede to this request remains within the discretion of the Chief Justice.<br>However, in the case in hand, this avenue could also not have been traversed since |

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| | | Niranjan Singh binds not only Co-equal Benches of the Supreme Court but certainly every Bench of any High Court of India. Far from being per incuriam, Niranjan Singh has metamorphosed into the structure of stare decisis, owing to it having endured over two score years of consideration, leading to the position that even Larger Benches of this Court should hesitate to remodel its ratio.<br>**B) PER-INCURIAM JUDGMENTS-NOT TO BE FOLLOWED** - It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.<br>C) **Judge shall remain impervious** - Influence by media and Public - Judge shall remain impervious to any pressure that may be brought to bear upon him either from the public or from the media - We expect that the learned Single Judge shall remain impervious to any pressure that may be brought to bear upon him either from the |

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| | | public or from the media as this is the fundamental and onerous duty cast on every Judge. **( Para 27)** |
| **24.** | **2008 SCC OnLine Bom 133**<br>**2008 (2) BomCR. 242**<br>Mr. Roy Joseph Creado.<br>Vs.<br>Additional Sessions Judge and State of Maharashtra | **PRECEDENTS**-Placitum is not the law – the Judge is expected to go thought the judgment and then see the ratio decidendi.<br>**PRECEDENTS** – How to deal with case law relied by the party - Sessions Judge merely reproduced the head Ntes/Placitums - The Magistrate also did not discuss the case law with reference to the ratio of the decisions - Held, many Judicial Officers follow practice of reproducing the head notes/placitum from the reported precedents. The Judicial Officers need to understand that the head notes are drawn by editors/staff members of the Law Journals. It is necessary to read the precedent in entirety. The Judicial Officer is required thereafter to cull out the ratio of the authority. The matching of facts and circumstances would then enable the Court to examine whether such ratio is applicable to the case with which the Court is required to deal with- the Judicial Officers shall |

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| | | avoid such practice. They shall not merely quote the head notes/placitum appearing from the indexes or the prelude to the Judgments reported in the law Journal**.(Para 6)** |
| **25.** | **2010 SCC OnLine Bom 53**<br>**2010 Cr. L.J. 1971**<br>Adarsh Gramin Sahakari PatSanstha Maryadit through its Power of Attorney Holder Authorised Person Shri. Rajesh JanardhanRinke<br>**V**s.<br>Shri.Dattu Ramdasji Paithankar | **NOT FOLLOWING RATIO IN THE CITATION IS ILLEGAL -** Simply referring Judgment without going through ratio - decidendi is illegal. Order is liable to be Set Aside. |
| **26.** | **2006 SCC OnLine Bom 753**<br>**(2006) 5 Mah.L.J. 264**<br>Bank of Rajasthan<br>Vs.<br>Sham SundarTaparia | **CASE LAW SHOULD BE GIVEN PROPER WEIGHTAGE -** The Judge Should recorded short reasons demonstrating how the case law is applicable to the case. The conduct of Judge about passing of cryptic orders even without mentioning full title of the |

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| | | Judgement and citation thereof is illegal. Courts are expected to exhibit from their conduct and their orders concern for justice and not casualness. |
| **27.** | **AIR 2003 SC 2661**<br>**MANU/SC/0469/2003**<br>Ashwani Kumar Singh<br>Vs.<br>U.P. Public Service Commission and Ors. | Judgement not to be relied without discussing as to how the factual situation fits in observation of Courts are not to be read as Euclid's theorems nor as provisions of statute. |
| **28.** | **(2014) 4 SCC 626**<br>**MANU/SC/0134/2014**<br>Dinubhai Boghabhai Solanki<br>Vs.<br>State of Gujrat And Ors. | **CASES SHOULD NOT BE DECIDED BY MATCHING THE CLOUR OF ONE CASE AGAINST THE COLOUR OF ANOTHER – EVEN A SINGLE DETAIL MAY ALTER THE ENTIRE ASPECT -** Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To |

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| | | decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.<br>The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.<br>A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.<br>The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It was further observed that the Judgments of Courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases. |

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| **29.** | **(2004) 8 SCC 579**<br>**2005 (58) ALR 139**<br>Bharat Petroleum Corporation Ltd. and Ors.<br>Vs.<br>N.R. Vairamani and Ors. | Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. |
| **30.** | **(1990) 4 SCC 207**<br>**MANU/SC/0317/1990**<br>Krishena Kumar and Ors.<br>Vs.<br>Union of India (UOI) and Ors. | The enunciation of the reason or principle upon which a question before a court has been decided is binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a |

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| | | minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. **(PARA 36)** |
| **31.** | **AIR 1959 SC 395**<br>**1959 Supp (1) SCR 806**<br>**(CONSTITUTION BENCH)**<br>M.S.M. Sharma<br>Vs.<br>Krishna Sinha and Ors. | Decesion based on the concession given by the councel is not a binding precedent.When the power and privilege of the State Legislature and the Fundamental Right of Freedom of Speech and expression including the freedom of the press was the subject matter of consideration. In the aforesaid Judgment it has been observed by the Court that the decision in Gunupati Keshavram Reddy v. Nafisul Hasan – AIR 1954 SC 636 , relied upon by the Counsel for the petitioner which entirely proceeded on a concession of the Counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law." |
| **32.** | **(2008) 9 SCC 579**<br>**MANU/SC/7924/2008** | The decision of a Court is a precedent if it lays down some principle of law supported by reasons. Mere casual observations or |

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| | Rajbir Singh Dalal<br>Vs.<br>Chaudhari Devi Lal University, Sirsa and Ors. | directions without laying down any principle of law and without giving reasons does not amount to a precedent. |
| **33.** | **(1999) 6 SCC 172**<br>**MANU/SC/0972/1998**<br>**(FULL BENCH)**<br>State of Punjab<br>Vs.<br>Baldev Singh | A Constitution Bench of this Court observed that a decision is an authority for what it decides (i.e the principle of law it lays down) , and not that everything said therein constitutes a precedent. |
| **34.** | **(2003) 7 SCC 197**<br>**2003 ACJ 1775**<br>The Divisional Controller, KSRTC<br>Vs.<br>MahadevaShetty and Ors. | **A)** Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative.<br>**B)** 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." |
| **35.** | **AIR 1968 SC 647**<br>**(1968) 2 SCR 154**<br>The State of Orissa<br>Vs. | A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically |

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| | SudhansuSekharMisra and Ors. | follows from the various observations made in it. |
| **36.** | **AIR 1976 SC 2433**<br>**(1976) 3 SCC 677**<br>Union of India (UOI) and Ors.<br>Vs.<br>K.S. Subramanian | **A)** If any judgment is found to be inapplicable then High Court is bound to give reasons supporting its point of view.<br>**B)** 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.<br>**C)** 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" |
| **37.** | **2009 (2) ACR 1282 (SC)**<br>**(2009) 5 SCC 117**<br>State of A.P.<br>Vs.<br>M. Radha Krishna Murthy | Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. |
| **38.** | **2009 Cri. L.J. 3816**<br>**2009 SCC OnLine Bom 759** | "Every settled principle of law has to be rationally understood with reference to the facts of the case in which such principle of |

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| | Rajeshwar J. Mohurle<br>Vs.<br>State of Maharashtra | law is stated. In other words, facts make the law and this should always be kept in mind while applying the principles stated and reasoning in support thereof. A little difference in the facts or additional facts may make a lot of difference in the precedential value of a decision. |
| **39.** | `<br>**MANU/GJ/0702/2013**<br>Dattani & Co.<br>Vs<br>Income Tax Officer | **PRECEDENTS:-** Applicabilty of case Law - Held, whenever any decision has been relied upon and/or cited by any party, the authority/tribunal is bound to consider and/or deal with the same and opine whether in the facts and circumstances of the particular case, the same will be applicable or not.<br>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. |
| **40.** | **AIR 2008 SC (Supp)1788**<br>**(2008) 14 SCC 283**<br>Pradip J. Mehta | **PRECEDENT -VIEW TAKEN BY OTHER HIGH COURT THOUGH NOT BINDING BUT HAVE PERSUASIVE VALUE** - Another High Court would be |

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| | **V**s.<br>Commissioner of Income-tax, Ahmedabad | 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 therefore. 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) |
| **41.** | **AIR 2003 PATNA 54**<br>**2002 SCC OnLine Pat 608**<br>Pavitra Kuer Thakur Ram Jayaswal and another<br>Vs.<br>State | **PLACITUM - CONTENTS OF HEADNOTE WOULD NOT BIND ANY COURT -** Judgment is Judgment for what it decides and not for what editor understands it to be. |
| **42.** | **(2002) 3 SCC 533**<br>**AIR 2002 SC 1334**<br>Padmasundara Rao and Ors.<br>Vs.<br>State of Tamil Nadu and Ors. | Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed**.** There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are |

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| | | made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. **(PARA 9)** |
| **43.** | **AIR 1986 SC 468**<br>**(1986) 1 SCC 581**<br>Prakash Amichand Shah<br>Vs.<br>State of Gujarat and others | **PRECEDENT -DUTY OF COURT WHILE APPLYING.** A decision ordinarily is a decision on the case before the Court - While the principle underlying the decision would be binding as a precedent in case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. |
| **44.** | **AIR 1985 SC 218**<br>**(1985) 1 SCC 345**<br>M/s. Amar Nath Om Prakash and others<br>Vs.<br>State of Punjab and others. | **PRECEDENTS - JUDGMENTS ARE NOT TO BE INTERPRETED AS STATUTES.**<br>To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and |

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| | | not to define. Judges interpret words of statutes; their words are not to be interpreted as statutes. |
| **45.** | **(1995) 4 SCC 546**<br>**AIR 1995 SC 1729**<br>Sarwan Singh Lamba & Ors.<br>Vs.<br>Union Of India &Anr. | Obiter dicta is also binding.It is expected to be obeyed and followed. |
| **46.** | **2008 SCC OnLine Bom 1072**<br>**2009 (2)BomCR 81**<br>Jinraj Paper Ugyog<br>Vs.<br>Dinesh Associates | Even Obiter Dicta of the Supreme Court are binding on all Courts in absence of direct pronouncement of the Judgment by Supreme Court on that particular subject. |
| **47.** | **2014 (III) AD (SC) 557**<br>**(2014) 6 SCC 351**<br>Union of India (UOI) and Ors.<br>Vs.<br>S.P. Sharma and Ors. | **A)** Further by an erroneous decision if the Court resumes jurisdiction which it does not possess under the Statute, the question cannot operate as res judicata between the same parties whether the cause of action in the subsequent litigation is same or otherwise.<br>**B)** The Obiter Dicta of a Judge of Hon'ble Supreme Court, even in dissenting Judgment, are entitled to high respect, |

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| | | especially if there is no direct decision to conclude the question under another enactment. |
| **48.** | **AIR 2017 Bom 52**<br>**2016 SCC OnLine Bom 10004**<br>Dayaram Bhondu Koche & Ors.<br>Vs.<br>State of Maharashtra&Ors. | Obiter dictum,is binding on courts,in absence of direct pronouncement of Supreme Court on that subject. |
| **49.** | **2004 ALLMR (Cri.)1802**<br>**2005 BomCR (Cri.) 465**<br>Shri.Srinivasa cut pieces Cloth Shop Rajahamundri (A.P) &Anr.<br>Vs.<br>State Of Maharashtra &Anr. | **PRECEDENTS** – Courts of co-ordinate jurisdiction should have consistent opinions in respect of an identical set of facts or on a question of law. If courts express different opinions on the identical set of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy. It is a very sound rule and practice that like questions should be decided alike, otherwise on same question of law or same set of facts different persons approaching a Court can get different orders. This basic principle is enunciated by |

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| | | the Apex Court in **Hari Singh Vs. State of Haryana 1993(66)ELT23(SC).**<br>Keeping this in view and as I have already expressed that I do not find any justifiable reason to take a different view from the one which had been taken by the learned Single Judge in Criminal Writ Petition No. 95 of 1996, this petition deserves to be allowed for the selfsame reasons. |
| **50.** | **AIR 2001 SC 600**<br>**(2001) 2 SCC 247**<br>Vijay LaxmiSadho<br>Vs.<br>Jagdish | Courts of Co–ordinate jurisdiction should have consistency. The quality of certainity will disappear if Co-ordinate benches overrules each other decisions. |
| **51.** | **(2010) 13 SCC 336**<br>**2011(84)ALR 487**<br>Sant Lal Gupta and Ors.<br>Vs.<br>Modern Co-operative Group Housing Society Ltd. and Ors. | **A]**A Co - ordinate bench cannot comment upon the discretion exercised or Judgment rendered by another coordinate bench of the same court.<br>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 |

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| | | earlier bench, the proper course is for it to refer the matter to a larger bench.<br>**B] Reasoned order :-**Any order or judgment should be with reasons unless the order is vitiated. |
| **52.** | **MANU/DE/9380/2006**<br>Thirani Chemicals Ltd.<br>Vs.<br>Dy. Commissioner of Income Tax | 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 the views taken by an earlier Coordinate Bench as that would play havoc with principles of Judicial Discipline and certainty . |
| **53.** | **2007 SCC OnLine Del 988**<br>**MANU/DE/8202/2007**<br>Delhi Transport Corporation<br>Vs.<br>Surinder Pal | Court Of Co- ordinate Jurisdiction even a Tribunal of Co-ordinate Jurisdiction is bound by the earlier decision.<br>It is well settled law that multiplicity of the proceedings should be avoided and no man should be vexed twice over the same cause. |
| **54.** | **AIR 2011 SC 312**<br>**(2011) 1 SCC 694**<br>Siddharam Satlingappa Mhetre | **JUDGEMENT OF CO-EQUAL STRENGTH IS BINDING -** The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the |

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| | Vs.<br>State of Maharashtra and Ors. | Judgment of a larger strength is binding on a Judgment of smaller strength but the Judgment of a co-equal strength is also binding on a Bench of judges of co-equal strength. |
| **55.** | **1984 Supp SCC 263**<br>**AIR 1984 SC 241**<br>Forasol<br>Vs.<br>Oil and Natural Gas Commission | **PRECEDENTS -** English decisions , though not binding but have persuasive value. |
| **56.** | **(2003) 5 SCC 448**<br>**AIR 2003 SC 2443**<br>State of Bihar<br>Vs<br>Kalika Kuer | **PER IN CURIAM :-**If court has acted in ignorance of a previous decision or the Court omits to consider a statute. Earlier Judgment may seem to be not correct but will have a binding effect. |
| **57.** | **2003 SCC OnLine MP 306**<br>**2003 Cri.L.J. 2755,**<br>Wali Mohammed<br>Vs.<br>Batulbai | Where there is conflict between two decisions of High Court by benches of equal strength , **<u>THE EARLIER DECISION WOULD HOLD THE FIELD UNLESS REFERRED AND EXPLAINED IN LATTER DECISION.</u>** |
| **58.** | **1986 SCC OnLine P&H 272**<br>**1986 CRI. L. J. 1834** | **PER INCURIAM :-**A decision by Court rendered prior to the decision of the Superior Court cannot be said to be per |

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| | Harbans Singh and others<br>Vs.<br>State of Punjab | incuriam. |
| **59.** | **(1975) 2 SCC 232**<br>**AIR 1975 SC 907**<br>Mamleshwar Prasad and another<br>Vs.<br>KanahaiyaLal (Dead} through L. Rs | A prior decision on identical facts and law binds the Court on the same points in a later case.<br>Per Incuriam is if it fails to consider statute and law. |
| **60.** | **(2002) 4 SCC 297**<br>**AIR 2002 SC 1706**<br>Grasim Industries Ltd.<br>Vs.<br>Collector of Customs, Bombay | Wherever the language is clear, the intention of the Legislature is to be gathered from the language used. While doing so, what has been said as also what has not been said, has to be noted. Here, the object of the Act and the intention of the Legislature is clear which is to the otherwise**.** It is Court's duty to mitigate the counter mischief. |
| **61.** | **(2015) 10 SCC 161**<br>**AIR 2015 SC 3479**<br>Indian Performing Rights Society Ltd.<br>Vs.<br>Sanjay Dalia and Ors. | **A.INTERPRETATION :–**Duty if theCourt to avoid mischief, injustice, absurdity, and anomaly while selecting out of different interpretation.<br>**B.**Court should take care of gereral good of the community that hard cases do not make |

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| | | the bad law. |
| **62.** | **1992 Supp (1) SCC 323**<br>**AIR 1992 SC 96,**<br>Union of India &Ors.<br>Vs.<br>Deoki Nandan Aggarwal | It is not duty of the Court either to enlarge the scope of the legislation or the intention of the legislature if the provision is plain and unambiguous. The Court cannot rewrite,recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts.<br>The Court cannot add words to a statute or read words into it which are not there.<br>Assuming there is a defeat or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be<br>the Court of Course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself.But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumenalities. |
| **63.** | **2007 ALL MR (Cri. ) 479** | **NO NOTICE:-**No prejudice would be caused to the parties is the learned trail court |

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| | Manoharlal s/o. MeghrajAnandani<br>Vs.<br>State of Maharashtra and Anr. | is directed to complete the trail expeditiously. Court is directed to complete the trail expeditiously as possible and preferably within a period of six months from today. |
| **64.** | **(2015) 8 SCC 519**<br>Dharampal Satyapal Limited<br>Vs.<br>Deputy Commissioner of Central Excise Gauhati and Ors. | Useless formality theory which is not followed. |
| **65.** | **(2013) 16 SCC 147**<br>Union of India<br>Vs.<br>Ashok Kumar Aggrawal | Litigating same issue again is abuse of process of Court and tentamounts to Contempt Of Court. |
| **66.** | **AIR 2005 SC 115**<br>**(2004) 8 SCC 683**<br>E.T. Sunup<br>Vs.<br>C.A.N.S.S. Employees Association and Ors. | **(A) CONTEMPT OF COURT-** deliberate attempt on the part bureaucracy to circumvent order of court and try to take recourse to one justification or other- this shows complete lack of grace in accepting the order of the Court – this tendency of undermining the Court's order cannot be |

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| | | countenanced – in democracy the role of Court cannot be subservient to the administrative fiat- the executive and legislature had to work within Constitution framework and Judiciary has given role of watch dog to keep the legislature and executive within check- the appellant office flouted order of this Court is guilty of Contempt of Court.<br>**(B) PUNISHMENT TO BUREAUCRATS-** apology tendered- order of court complied- held- if the Court's are flouted like this, then people will loose faith in Court- therefore it is necessary that such violation should be dealt with strong hand and to convey to the authorities that the Courts are not going to take thing lightly - order of the High Court convincing the office under contempt of court's act and imposition of fine of Rs. 5000 if affirmed. |
| **67.** | **(2003 )1SCC 644, MANU/SC/1331/2002**<br>Bijay Kumar Mahanty Vs. | **CONTEMPT BY POLICE OFFICER -** Police Inspector arresting an accused even if bail was granted to the accused, High Court sentenced the Investigating Police Officer to jail under Contempt of Courts Act. |

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| **68.** | **2010 SCC OnLineBom 821, (2011) 1 AIR R NOC 38**<br>Deepak Shivaji Karande<br>Vs.<br>Maharashtra State Human Rights Commission | The order of the State Human Rights Commission does not hold the petitioner guilty of custodial death but merely directs an enquiry into the matter. In this view of the matter, we see no reason to interfere with the impugned order. The writ petition is, therefore, dismissed. No order as to costs. |
| **69.** | **2006 (2) ACR 1649 (SC)**<br>**(2006) 5 SCC 1**<br>T. N. Godavarman Thirumulpad through the Amicus Curiae<br>Vs.<br>Ashok Khot and Ors. | **Gross Violation Of SupremeCourtOrder**:-MinisterSwarop Singh Naik and Chief Secretary were sentenced to 1 month's imprisonment for acting against Supreme Court Judgment**.** |
| **70.** | **1993 Supp (4) SCC 595**<br>**1993 (3) SCALE 548**<br>S.Nagaraj<br>Vs. | **AUTHORITIES CANNOT TAKE A STAND THAT THE ORDER IS ILLEGALLY OBTAINED -** If an order had been passed by a court which had jurisdiction to pass it then the error or |

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| | State of Karnataka | mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. |
| **71.** | **1996 SCC OnLine Bom 292**<br>**AIR 1997 Bom 260**<br>Shafi Ahmed Khudabux Kazi (Deceased by LRs ) and Ors.<br>Vs.<br>Hashmatbi Hajjumiya Mogal | High Court remanded the matter to the Appellate Court to consider the questions of the bona fide requirement and the comparative hardship regarding to the subsequent events and after passing the decree by the Trial Court - However, the Appellate Court unnecessarily considered the question of inheritance of the property by the heirs of the landlord according to their personal law - The Court held that the order of the Appellate Court, dismissing the suit for eviction on the ground that the bona fide requirements of the landlord were not proved, was liable to be set aside. |
| **72.** | **1998(3) ALD 305,** | False Information in bail application to |

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| | **MANU/AP/0393/1998**<br>K. Ram Reddy<br>Vs.<br>State of A.P. & Anr. | bring the case before a particular Judge – The Advocates & Judges involved in the conspiracy are liable to be prosecuted u/s 193, 466, 468, 471 of I.P.C |
| **73.** | **2007 SCC OnLine Del 1381**<br>**2008 Cri. L. J. 3561**<br>Rohit Kumar alias Raju<br>Vs.<br>State of NCT Delhi and Anr. | **A] JUDICIAL INDISCIPLINE** - Sessions Judge not having elementary knowledge of Criminal Law - passed illegal order ignoring order passed by High Court - In spite of the fact that Sh. R.K. Tewari has no basic knowledge of the criminal law, he has chosen to comment on the order passed by this Court, which amounts to Judicial Indiscipline<br>**B] ORDER OF HIGH COURTS ARE BINDING:-** Subordinate Courts are, by way of constitutional provisions, bound by the decision of the local High Courts as is every Court in the country including the High Courts, are bound by the decision of the Supreme Court by virtue of provisions of Art. 141 |
| **74.** | **2016 SCC OnLine Guj 4517**<br>**MANU/GJ/0361/201** | Two Judges caught in sting opration – demanding bribe to give favourable verdict – F.I.R. registered – Two accused Judges |

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| | **7**<br>Jagat Jagdishchandra Patel<br>Vs.<br>State of Gujarat and Ors. | arrested – Police did not file charge-sheet within time – Accused Judges got bail – complainant filed writ for transferring inverstigation.<br><br>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. |
| **75.** | **2006 (5) AWC 4519 ALL**<br>**MANU/ UP / 1412 /2005**<br>Umesh Chandra<br>Vs.<br>State of Uttar Pradesh & Ors. | If Judge is passing illegal order either due to negligence or extraneous consideration giving undue advantage to the party then that Judge is liable for action in spite of the fact that an order can be corrected in Appellate/Revisional Jurisdiction. |
| **76.** | **2001 Cri. L. J. 800**<br>**2000 SCC OnLine Raj 226**<br>Raman Lal<br>Vs<br>State of Rajasthan" | **A] NO SANCTION REQUIRED TO PROSECUTE A HIGH COURT JUDGE WHO IS INVOLVED IN CONSPIRACY** - Cri.P.C. Sec. 197 – Sanction for prosecution – Accused are Additional High Court Judge, Suprintendant of Police Sanjeev Bhatt and others – The accused |

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

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| | | are not applicable in instant case.<br>**C]** The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of City Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a questionnaire through the Registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner in view of the facts of the case.<br>**D]** Conspiracy – I.P.C. Sec. 120 (B) – Apex Court made it clear that an inference of conspiracy has to be drawn on the basis |

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| | | of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal ommission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed.<br>**E]** Jurisdiction – Continuing offence – Held – Where complainants allegations are of stinking magnitude and the authority which ought to have redressed it have closed its eyes and not even trid to find out the real offender and the clues for illegal arrest and harassment are not enquired then he can not be let at the mercy of such law enforcing agencies who adopted an entirely indifferent attitude – Legal maxim Necessiatas sub lege Non continetureQuia Qua Quad Alias Non EstLictumNecessitasfacitLictum, Means |

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| | | necessity is not restrained by laws – Since what otherwise is not lawful necessity makes it lawful – Proceeding proper cannot be quashed. |
| **77.** | **1968 SCC OnLine Pat 49**<br>**AIR 1969 PAT 194**<br>Sailajanand Pande<br>Vs.<br>Suresh Chandra Gupta | Action against Judicial Officer causing illegal arrest– Magistrate acting illegally and without jurisdiction in the matter of arrest is not protected – Magistrate has no absolute protection regard to his act of illegal arrest. |
| **78.** | **1971 SCC ( 3 )329**<br>**AIR 1971 SC 1708**<br>Govind Mehta<br>Vs.<br>State Of Bihar | Cri. P.C. Sec. 197 – I.P.C. Sec. 167, 465, 466 and 471 – Prosecution of 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 |

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| | | 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. |
| **79.** | **2002 ALLMR (CRI.) 2640**<br>**2003 Mh.L.R. (2) 117**<br>State Of Maharashtra Vs.<br>Kamlakar Nandram Bhawsar | I.P.C. Sec. 193, 196, 466, 471, 474, r/w 109 – Criminal Procedure Code, 1978, Sec. 344 – Summary trail against Magistrate ,P.P., Police Officer,and others for fabricating false evidence – 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 |

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| | | giving false evidence or fabricating false evidence. |
| **80.** | **1992 SCC OnLine HP 28**<br>**1993 CRI. L. J. 499**<br>Bidhi Singh<br>Vs.<br>M. S. Mandyal and another | Criminal P.C. (2 of 1974), S.197 - **PROSECUTION OF JUDGES AND PUBLIC SERVANTS NOT REQUIRED IN CASES OF ABUSIVE LANGUAGE -** Complaint under Section 504 I.P.C. - Use of words "non-sense" and 'bloody fool' by Presiding Officer against complainant - Sanction to prosecute, not necessary – This is not the part of his official duty.<br>A Presiding Judge is expected to maintain decorum in the proceedings before him. He is expected also to act with restraint- One would expect him to be sober, unruffled and temperate in language even when faced with a situation where those appearing before him may tend to lose their composure. In this scheme of things any vituperative outburst on the part of the Presiding Officer, howsoever grave the provocation to him, cannot be countenanced as an action sustainable as one performed by him "while acting or purporting to act in the discharge of his official duty." |

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| **81.** | **(1983) 1 SCC 11**<br>**AIR 1983 SC 64**<br>B. S. Sambhu , Appellant<br>Vs.<br>T. S. Krishnaswamy | **Criminal P.C. (2 of 1974) , S.197 -** Complaint of defamation under section 499 of I.P.C. against Judge- Sanction For Prosecution - Applicability - An Advocate filing transfer petition - In letter to District Judge, concerned Magistrate calling the Advocate as 'rowdy', 'a big gambler' and 'a mischievous element' - Criminal complaint against Magistrate without sanction - Held, the act complained of had no connection with the discharge of official duty by the appellant. Hence, S. 197, Cr. P.C. was not in any way attracted - Section 197, not attracted.<br>Where the appellant, a Munsiff Magistrate by a letter to Distinct Judge submitted by his remarks against the allegations made by the respondent an advocate in transfer petition for transfer of a suit pending in appellant's Court and while so doing called the respondent 'rowdy', 'a big gambler' and 'a mischievous element' and on this letter being read in open Court respondent filed criminal complaint against appellant without the sanction contemplated |

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| | | under S. 197, Cr. it was held that the act complained of had no connection with the discharge of official duty by the appellant. Hence, S. 197, Cr. P.C. was not in any way attracted. The High Court was right in coming to the conclusion that Section 197 was not attracted. There is, therefore, no substance in the appeal<br>and the same is dismissed. |
| **82.** | **(2005)1SCC201**<br>**AIR 2005 SC 338**<br>Tarak Singh and Ors.<br>Vs.<br>Jyoti Basu and Ors. | **MISCONDUCT BY HIGH COURT JUDGE:-**The Judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery |

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| | | system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside. |
| **83.** | **(2013) 5 SCC 277**<br>**2013 (2) BomCR 695**<br>Deepak Aggarwal<br>Vs.<br>Keshav Kaushik and Ors. | **DUTY OF PUBLIC PROSECUTOR**<br>Role of Public Prosecutor is no different. He has at all times to ensure that an accused is tried fairly. He should consider the views, legitimate interests and possible concern of witnesses and victims. He is supposed to refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods. His acts should always serve and protect the public interest. The State being a Prosecutor, the Public Prosecutor carries a primary position. He is not a mouthpiece of the investigating agency. In Chapter II of the BCI Rules, it is stated that an advocate appearing for the prosecution of a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent; he should scrupulously avoid suppression of material capable of establishing the innocence of the accused. |

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| **84.** | **2009 SCC OnLine AP 898**<br>**2010Cri.L.J.3079**<br>Harsha Sisodia<br>Vs.<br>State of A.P. and Anr. | **DUTY OF PUBLIC PROSECUTOR**<br>It is the duty of the State to protect the life and properties of its citizens and to prevent the crime and to punish the accused in accordance with law. As part of criminal justice delivery system, the Courts have been established and the Public Prosecutors. The Public Prosecutors must present the facts without any bias and without undue emphasis on any aspect of the case leaving the decision to the Court. They have to act independently and in the interest of Justice. |
| **85.** | **2016 SCC OnLineBom9859**<br>**2017(2)BomCR65,**<br>Heena Nikhil Dharia<br>Vs.<br>Kokilaben Kirtikumar Nayak and Ors. | The Advocate should not withhold the authority/case law which is against his client – He is first officer of the Court – The advocates should not be allowed to take defense of not searching on the net about relevant case laws. |

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| **86.** | **2016 SCC OnLineBom5259 MANU /MH/1406/2016** Ujwala J. Patil Vs. Slum Rehabilition Authority and Ors. | **ADVOCATE - STANDARD OF MORAL, ETHICAL AND PROFESSIONAL CONDUCT:-**It has a duty to the Court which is paramount. It is a mistake to suppose that he is the mouth-piece of his client to say what he wants or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. |
| **87.** | **(1987) SCC (3) 258 AIR 1987 AP 1550** E.S. Reddi Vs. Chief Secretary, Government of A.P. and Anr. | **DUTY OF ADVOCATES TOWARDS COURT –**he has to act fairly and place all the truth even if it is against his clienthe should not withhold the authority or documents which tells against his client.It is a mistake to suppose that he is a mouthpiece of his client to say that he wants .He must disregard with instruction of his client which conflicts with their duty to the Court. **Duty and responsibility of senior counsel** |

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| | | - By virtue of the pre-eminence which Senior Counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A Senior Counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honor and privilege conferred on Advocates of standing and experience by the Chief Justice and the Judges of this Court. |
| **88.** | **(1999) 7 SCC 467**<br>**1999 (3)ACR 2101 (S.C)**<br>Shiv Kumar<br>Vs.<br>Hukam Chand and another | **DUTY OF PUBLIC PROSECUTOR**<br>Criminal Procedure Code, 1973 — Ss. 301, 302 and 225 & 24 — Duty of the Public Prosecutor to act fairly and not merely to obtain conviction by any means fair or foul — If the accused is entitled to any legitimate benefit the Public Prosecutor should make it available to him or inform the court even if the defence counsel overlooked it . |
| **89.** | **AIR 1960 MP 102**<br>**1959 SCC OnLine MP 3** | **DUTY OF PUBLIC PROSECUTOR**<br>It is duty of Public Prosecutor. to conduct case fairly – He should therefore place |

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| | Barelal<br>Vs.<br>State | before the Court all evidence and should not withhold certain evidence. |
| **90.** | **2007 ALL MR (Cri.) 801**<br>**2006 SCC OnLine Bom 1222**<br>Angadh s/o Rohidas Kadam & Ors.<br>Vs.<br>State of Maharashtra & Anr. | **DUTY OF INVESTIGATING OFFICER** It is the duty of Investing Officer to forward copies of all such statements of persons to whom prosecution proposes to examine. Statements cannot be withheld only on ground that they would have strengthened defence of accused persons. Prosecution cannot be allowed to convert itself into persecution. |
| **91.** | **2007 ALL MR Cri.648**<br>Suwarna w/o Deendayal Soni<br>Vs.<br>State of Maharashtra | **DUTY OF PROSECUTION** – It is not the job of prosecution to try only for the conviction of accused, but it is their duty to place all the facts on record. |
| **92.** | **(2009) 3 SCC 258**<br>**2009 (2) SCALE 285**<br>Ram Phal<br>Vs.<br>State Of Haryana | **REASONED ORDER - WRIT PETITION-**Several issues raised in support of relief sought-Without examining any of issues, High Court by cryptic and non-reasoned order dismissed writ petition-It is |

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| | &Ors. | not the way to dispose of Writ Petition-Giving of reasons required by ordinary man's sense of Justice-Impugned order set aside-Matter remitted to High Court. |
| **93.** | **2018 SCC OnLine SC 1266**<br>Dinbandhu Panda & Anr.<br>Vs.<br>Bajaj Allianz General Insurance Company & Ltd. | **REASONED ORDER -**The High Court is supposed to decide these matters purely after considering the matter in accordance with law. It is surprising that the High Court had not assigned any reason while interfering with the just and appropriate order passed by the Commissioner. This approach of the High Court cannot be appreciated. We request the High Court in future to decide the matters by reasoned order strictly in accordance with the law not by these kind of orders. It is made clear that it is the duty of the Courts to give what is proper and due and Courts are not supposed to take away what is just and admissible claim. The approach of the High Court is thus not appreciated at all. The order of the High Court is set aside and that of the Commissioner is restored. |
| **94.** | **2014 SCC Online GUJ 15949** | **REASONED ORDER :-**Whether an argument was rejected validly or otherwise, |

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| | Dhanuben Lallubhai Patel<br>Vs.<br>Oil And Natural Gas Corporation Of India | reasoning of the order alone can show.To evaluate the submissions is obligation of the Court and to know the resons for rejection of its contention is a legitimate expectation on the part of the litigant. |
| **95.** | **(2013) 14 SCC 348**<br>**2013 Cri.L.J. 829**<br>Kumari Shaima Jafari<br>Vs.<br>Irphan @ Gulfam and Ors | **REASONED ORDER :-**Order should be a reasoned one - order without cogent reasons is nullified - without reasons conclusion becomes lifeless - the Judgment is set aside. - thedeliberation by the High Court has to be reflective of due cogitation and requisite rumination. It must reflect application of mind, consideration of facts in proper perspective and appropriate ratiocination either for affirmation or reversal of the Judgment. |
| **96.** | **1967 SCC OnLine Kar 70**<br>**AIR 1968 Mys 288**<br>Laxmi And Anr.<br>Vs.<br>Krishna Bhatta And Anr. | **DUTY TO GIVE REASONS ON EACH POINT**:-Discussion of every part evidence in appellate Court judgment as per Order 41 Rule 31 of Civil Procedure Code is Imperative and the failure to do so and disposal in short paragraph affirming views of lower court is gave misapplication of power. |
| **97.** | **1990 SCC OnLine** | **DUTY TO GIVE REASONS ON EACH** |

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| | **Cal 150**<br>**AIR 1992 Cal 129**<br>Samir Kumar Chatterjee<br>Vs.<br>HirendraNathGhosh | **POINT**:-The Judgment of the appeal Court should not be the mere endorsement of the findings of the trial Court, not containing the reasons for the decisions arrived at by him independently of that of the trial Court. |
| **98.** | **AIR 2003 AP 191**<br>**2002 SCC OnLine AP 963**<br>Parbanna (deceased by L.R's.) and Ors.<br>Vs.<br>Veershetty | **DUTY TO GIVE REASONS ON EACH POINT**.- The Discretionary power of an Appellate Court under Order 41 Rule 33 Civil Procedure Code Ought not to be refused either on the ground of technicalities or hyper – technicalities. |
| **99.** | **(2012) 8 SCC 148**<br>**MANU/SC/0561/2012**<br>Union of India (UOI)<br>Vs.<br>Ibrahim Uddin and Anr. | **REASONED ORDER :-**It is a settled legal proposition that not only administrative order, but also Judicial order must be supported by reasons, recorded in it. The person who is adversely affected must know why his application has been rejected. |
| **100.** | **AIR 1991 Gau 100,**<br>**1991 SCC OnLine Gau 13**<br>Bogamal Gohain and | **RESONED ORDER :-**It is abundantly clear that a Judgment of the appellate Court should be self- contained. It should be a sparking Judgment. It Should contain |

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| | Ors.<br>Vs.<br>Lakhinath Kalita and Ors. | decision on each and every point arising for consideration before the Court with reasons. |
| **101.** | **AIR 1963 Assam 151**<br>The State<br>Vs.<br>Md. Misir Ali & Ors. | **JUDGMENT WHAT SHOULD IT CONTAIN –NO DISCUSSION OF PROSECUTION EVIDENCE** Where a judgment by a Magistrate is vague and perfunctory and a carelessly prepared document, inasmuch as there is practically no discussion of prosecution evidence in it and although a point for determination was framed, it is not followed by any intelligent discussion of the pros and cons of the case and consideration of the evidence in regard to the charges and in respect of each of the accused and it does not appear from the judgment that the Magistrate took the trouble of going through the evidence and judicially considering the same before he recorded the decision to reject it, such a judgment cannot be called a judgment at all in the eye of the law and is certainly not in conformity with either the letter or spirit of S. 367. **(Para 5)** |

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| **102.** | **(2000) 1 SCC 278**<br>**AIR 2000 SC 168**<br>M.S. Ahlawat<br>Vs.<br>State of Haryana and Ors. | **OF ORDER.**<br>– To perpetuate error is no virtue but to correct it is compulsion of judicial conscience.<br>Wrong order by Two Judge Bench of Supreme Court is corrected by Three Judge Bench. |
| **103.** | **MANU/MH/0583/2018**<br>Hindustan Organic Chemicals Ltd.<br>Vs.<br>ICI India Ltd. | **RECALL OF WRONG ORDER -** It is sometimes said that a 'foolish consistency is the hobgoblin of little minds'. That might be true. But an obstinate adherence to a demonstrably incorrect position in law, even - or, worse, especially - if that pronouncement is one's own, is perhaps infinitely worse, for it would result in the perpetuation of wrong law. |
| **104.** | **2008 ALL MR (Cri.) 2032**<br>Ravindra Narayan Joglekar<br>Vs.<br>Encon Exports Pvt. Ltd &Ors. | **RECALL OF ORDER :** In case the order passed by the Court is patently contrary to the provisions of law, the same cannot be allowed to remain in force as it can result in great prejudice and irreparable loss to the parties – No amount of technicalities can abstain the High Court from exercising its plenary jurisdiction to do the needful to wreck the wicked wrong. **(Para 9)** |

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| **105.** | **(1996) 5 SCC 550**<br>**AIR 1996 SC 2592**<br>Indian Bank<br>Vs.<br>M/s. Satyam Fibres (India} Pvt.Ltd | **EVERY COURT HAS THE INHERENT POWER TO RECALL ITS ORDER:**<br>Order obtained by fraud practiced upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party. |
| **106.** | **ILR 2018 (2) Ker 847**<br>**MANU/KE/1419/2018**<br>Shiyas K.B.<br>Vs.<br>Manoj Paul and Ors. | **<u>POWER TO RECALL THE ORDER</u>**<br>1. Under Section 482 of the Cr.P.C. court could recall an order for the grounds as enumerated in the aforecited Judgments and where this Court is convinced that the party could not take part in the hearing process and that there was flagrant violation of principles of natural justice, etc., then this Court could invoke its jurisdiction to recall the impugned order so as to dispose of the matter afresh after hearing all the affected parties concerned**. (Para 8 & 16)**<br>2. S. 362 Cr.P.C. does not affect the power of this Court to recall a Judgment or order, if legal grounds are properly established by the party complaining."<br>3. This Court is not powerless even though these Original Petitions were disposed of as |

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| | | per the impugned Judgments. Going by the legal principles laid down by the Apex Court in the aforecited decisions, this Court is invested with the power to recall such Judgments if it is clearly shown that it is vitiated by fraud and misrepresentation by one of the parties thereto**.(Para 15)** |
| **107.** | **2018 SCC OnLine Bom 2199**<br>**MANU/MH/2449/2018**<br>**(Aurangabad bench)**<br>Deepak<br>Vs.<br>Shriram and Ors. | **RECALL OF ORDER IN CRIMINAL CASE:-**Magistrate can recall his order in criminal case.If it is found that order is obtained by suppression and practising fraud on the Court. |
| **108.** | **2016 (2) ALL MR 212**<br>Suresh Ramchandra Palande & Ors.<br>Vs.<br>The Government of Maharashtra and Ors. | **JUDICIAL BIAS AND DISQUALIFICATION OF A JUDGE TO TRY THE CASE** –It is of the essence of Judicial decisions and Judicial administration that Judges should be able to act impartially, objectively and without any bias- No one can act in a Judicial capacity if his previous conduct gives ground for believing that he cannot act with an open |

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| | | mind or impartially - a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias - if a man acts as a Judge in his own cause or is himself interested in its outcome then the Judgment is vitiated- A Judgment which is the result of bias or want of impartiality is a nullity and the trial ' coram non judice'.<br>Justice should not only be done but should manifestly be seen to be done. |
| **109.** | **(2011) 14 SCC 770**<br>**AIR 2012 SC 364**<br>State of Punjab<br>Vs.<br>Davinder Pal Singh Bhullar and Ors. | **DISQUALIFICATION OF A JUDGE TO HEAR A CASE - BIAS-** allegations made against a Judge of having bias - High Court Judge in order to settle personal score passed illegal order against public servant acted against him - Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc. |

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| | | stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial "coram non-judice". - Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as "suacausa. Whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one. |
| **110.** | **(1995) 6 SCC 744**<br>**MANU/SC/0124/1996**<br>P.K. Ghosh and Ors.<br>Vs.<br>J.G. Rajput | **JUDICIAL BIAS –**The Judge should recuse himself from the case if reasonable apprehension is alleged. |
| **111.** | **AIR 1952 Assam 68**<br>Ramswarup Agarwalla<br>Vs.<br>The State | Principle of res judicata is undoubtedly a salutary principle. Even a wrong decision would attract the principle of res judicata. The said principle, however, amongst others, has some exceptions, e.g., when a |

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| | | judgment is passed without jurisdiction, when the matter involves a pure question of law or when the judgment has been obtained by committing fraud on the Court. |
| **112.** | **AIR 1919 ALL 345**<br>**MANU/UP/0356/1919**<br>Jai Narain & Ors.<br>Vs.<br>Emperor | If the Magistrate had any interest in the decision of the case he is disqualified from trying it however small that interest may be – One important subject at all events, it to clear away everything which might engender suspicion and distrust of the tribunal and to promote feelings of confidence in the administration of justice which is so essential to social order and security. |
| **113.** | **1963 SCC OnLine AP 16**<br>**AIR 1964 AP 226**<br>In Re: Malepati Srihari Rao | A magistrate not competent to try case, and if he tries the case the defect may not be cured U/s. 464. |
| **114.** | **(2008) 9 SCC 54**<br>**2008 (12) SCALE 252**<br>Raju Ramsing Vasave<br><br>Vs. | **WHEN RES-JUDICATA IS NOT APPLICABLE -**Principle of res judicata is undoubtedly a salutary principle. Even a wrong decision would attract the principle of res judicata. The said principle, however, amongst others, has some exceptions, e.g., |

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| | Mahesh Deorao Bhivapurkar & Ors. | when a Judgment is passed without jurisdiction, when the matter involves a pure question of law or when the Judgment has been obtained by committing fraud on the Court. |
| **115.** | **1955 SCC OnLine Pepsu 18**<br>**AIR 1956 Pepsu 30**<br>Sita Ram Chandulall<br>Vs.<br>Malikant Singh | **I.P.C. SECTION 220 UNLAWFUL CONFINEMENT -**Where the unlawful commitment to confinement is wilful, without any excuse and with a view to put pressure on the person confined to come to terms with a certain person in whom the accused is interested, the accused can be said prosecuted u.sec. 220 of I.P.C. said to have acted "maliciously." **(Para 6)** |
| **116.** | **1939 SCC OnLine Lah 218**<br>**AIR 1940 Lah 292**<br>Beharilal<br>Vs.<br>Sheikh Abdul Qadir Hamyari | No complaint from that Court is necessary where it is alleged that the subordinate Judge before whom a suit was proceeding has himself abated an offence under section 193 and has also committed offence under section 465 and 466 |
| **117.** | **(2004) 3 SCC 263**<br>**AIR 2004 SC 3976**<br>Vijay Shekhar<br>Vs. | **FRAUD ON POWER – MISUSE OF POWER BY THE MAGISTRATE -** magistrateissud process and baillablewarrents on a fraud complaint - the |

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| | Union of India | 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. |
| **118.** | **1995 SCC OnLine Cal 443**<br>**1996 Cri. L.J. 839**<br>Ram Chandra Singh & Anr.<br>Vs.<br>State | **CONDUCT OF C.J.M IS FAR FROM SATISFACTION –HE IS LIABLE FOR ACTION:-**The conduct of the Chief Judicial Magistrate, on the face of the record, clearly appears to be good deal less happy and far from satisfactory, which cannot but earn from the Court, making him liable for appropriate action. We, however, refrained from taking any action against him for the present, and simply record our strongest disapproval about the manner he had conducted himself in the matter, and warn him to be careful in complying with the orders of this Court in future. The Chief Judicial Magistrate. |

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| **119.** | **(2011) 6 SCC 527**<br>**MANU/SC/0570/2011**<br>Noida Entrepreneurs Association and Ors.<br>Vs.<br>Noida and Ors. | **UNDUE HASTE BY PUBLIC SERVANT** In absence of any urgency – Inference of malafide can be drawn against the said public servant. Thereafter it is a matter of investigation to find out whether there was any ulterior motive – Fraud, Forgery, Malafides. |
| **120.** | **1967 SCC Online Del 6**<br>**1967 Cri. L.J. 1297**<br>D. S. Bhatnagar<br>Vs.<br>The State | **WRONGFUL CONDUCT OF A JUDGE** - Indeed there is no explanation as to why the learned Magistrate did not take appropriate steps to see the matter – His helpless ness or his indifference in this matter whichever be the position reflects a most unsatisfactory state of affairs – **THE LD MAGISTRATE SEEMS TO HAVE CLEARLY ADOPTED AN ATTITUDE OF UN-JUDICIAL INDIFFERENCE TOWARDS THE JUDICIAL PROCEEDING IN HIS COURT.** The fact that the accused belongs to a respectable family and that there is no danger of his absconding were not considered by the learned sessions judge to be the only consideration for granting bail. |
| **121.** | **2000 SCC OnLine** | **INCAPACITY TO UNDERSTAND** |

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| | **Ori.225**<br>**2000 Cri. L. J. 4296**<br>Swamy Aroopanda<br>Vs.<br>Bagmisri<br>Nilamadhaba Bramha & Ors. | **BASIC PROVISIONS OF THE LAW:**specifically been laid down that the complaint of defamation by an advocate for defamation of a third party is barred. Even regarding the lack of knowledge of Judge regarding the provisions of section 199 of Cri. P.C. are also discussed as follows.<br>*It shocked my conscience, that a Magistrate having been empowered to take cognizance of the offence is in dark about the statutory provision. In my opinion them pugned order taking cognizance nothing but an abuse of the process of the Court – Quashed*"**(Para 6 )**<br>Hence, it shows the incapacity of Shri. Justice A. P. Xyz. |
| **122.** | **2003 SCC OnLine Mad 946**<br>**2004 Cri. L.J. 2818**<br>N. Balaji<br>Vs.<br>Smt. Savithiri & Anr. | Whereas in the case in hand the Magistrate has only acted against the warranting procedures established by Law in one sided manner absolutely without giving any opportunity for the girl to speak out her mind and as though treating her dumb founded animal, the Magistrate, had acted in a biased manner absolutely bereft of any reason of legal consideration but only as an |

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| | | instrument of the first respondent for reasons known to himself." |
| **123.** | **(1984) 3 SCC 531**<br>**AIR 1984 SC 1268**<br>Nirankar Nath Wahi & Ors<br>Vs.<br>Fifth Additional District Judge, Moradbad & Ors. | **BIASED APPROACH OF A JUDGE:- NATURAL JUSTICE -** Injustice by Addl. Dist Judge by dismissing appeal by readymade judgement without waiting for advocate - the High Court rejected the petition summarily - Landlords' appeal from proceeding against a leading influential member of Bar - Refusal of Addl. Dist. Judge to grant short adjournment to landlord to engage senior counsel - Advocate engaged by the appellant was not in a position to appear due illness - Landlord's appeal dismissed by readymade judgment - No reasonable opportunity of hearing to landlord - Judgment of Addl. Dist Judge vitiated. |
| **124.** | **2003 SCCOnLineBom 1233**<br>**2004 Cri.L.J. 985**<br>**(BOMBAY HIGH COURT)**<br>Noor Mohamed | **SEC. 52 OF I.P.C – GOOD FAITH** -It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution.If these ingredients are indicated by the complaint,the Magistrate is obliged to take the cognizance of the complaint so |

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| | Mohd. Shah R. Patel<br>Vs<br>Nadir shah Ismail shah Patel | presented before him unless there are the other grounds for acting otherwisewhich has to be justified by reasons recorded in writing. |
| **125.** | **2002 SCC OnLine Bom 236**<br>**Mh.L.J 2002 (2) 830**<br>Vaidya Kuldip Laj Kohil<br>Vs.<br>State of Maharashtra | **CODE OF CRIMINAL PROCEDURE. 1973:- S.190 –** illegal cognizance by Magistrate – The complaint disclosed no offence but the Magistrate going out of the way and for extraneous consideration issued process against the accused – The order of Magistrate does not show that how he come to the conclusion that how and what offence disclosed - observation by Magistrate that it is a case for full fledged trial is illegal - it appears that for some reasons not on record the learned Magistrate took cognizance of offence without having been himself satisfied that any offence was in fact committed. The order of learned Magistrate if read in its entirety, clearly shows that the Magistrate was aware that complaint discloses no offence and in spite of having become aware, he issued the process for reasons which can only be extraneous – |

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| | | proceeding quashed – Accused granted compensation of Rs. 10,000/- |
| **126.** | **1961 SCC OnLine Kar 113**<br>**AIR 1962 Mys 167**<br>K. D. Appachu & Ors.<br>Vs.<br>The State of Mysore | If the Magistrate relies upon extraneous matters for discharging the accused or for framing the charge it vitiates the proceedings. |
| **127.** | **(1998) 1 SCC 1**<br>**AIR 1998 SC 1344**<br>State of Rajasthan<br>Vs.<br>Prakash Chand and Ors**.** | Erosion of credibility of the Judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the Judiciary. It must be remembered that **IT IS THE DUTY OF EVERY MEMBER OF THE LEGAL FRATERNITY TO ENSURE THAT THE IMAGE OF THE JUDICIARY IS NOT TARNISHED AND ITS RESPECTABILITY ERODED.** … Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. … It needs no emphasis to say that all actions of a Judge must be Judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is |

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| | | 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. |
| **128.** | **2008 SCC OnLine All 797**<br>**2009 Cri.L.J. 627** | **IT IS DISTRESSING TO NOTE THAT THE REPEATED PRONOUNCEMENT OF THIS COURT AS ALSO THE** |

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| | Baleshwar and Ors.<br>Vs.<br>State of U.P. | **PERCEPTION MADE BY THE SUPREME COURT HAVE FALLEN ON THE DEAF EARS OF OUR EXECUTIVE MAGISTRATES WHO STILL THREAT THE MAKING OF ORDER UNDER SECTION 111.**<br>In a democracy the people are the ultimate masters of the country and all state organs are meant to searve the people.The lack of vigil on the part of the lower provisional Court is regrettable. |
| **129.** | **2003 (1) ALL MR 4**<br>Sitaram ganesh walimbe & Ors.<br>Vs.<br>Yeshwant Bhunikam & Ors. | The Court should act on legal evidence and not on surmises or outside information.It should not allow its prejudices to interfere in its judgments and order. |
| **130.** | **1916 SCC OnLine All 253**<br>**AIR 1917 ALL 317**<br>Peary Lal<br>Vs.<br>Emperor | A village Munsif passing a decree contrary to law and without jurisdiction is guilty of maliciously pronouncing a decision and liable for punishment u.s. 219 of I.P.C. |
| **131.** | **2011 SCC OnLine Bom 2021** | **JUDICIAL DISCIPLINE – JUDGEMENT OF ANOTHER HIGH** |

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| | **2011 (4) AIR BomR 238**<br>Maharashtra Govt., through G. B. Gore, Food Inspector, Nanded<br>Vs.<br>RajaramDigamberPadamwar&Anr. | **COURT THAN BOMBAY HIGH COURT –** Observations of trial Magistrate that the Judgement of Kerala High Court is not binding on him – Further observing the legality and correctness of the Judgement of another High Court is against the judicial discipline and propriety – Registrar General directed to take suitable action against concerned Judge. **(Paras 42, 43, 44, 45)** |
| **132.** | **1989 SCC OnLine Bom 345**<br>**1990 Cri. L.J. 171**<br>Qazi Mohomed Hanif<br>Vs.<br>Mumtaz Begum and Ors. | Courts in Maharashtra are bound to follow Judgment of Bombay High Court. The subordinate Court must unquestioningly obey the law laid down by their High Court. |
| **133.** | **1989 SCC OnLine Del 257**<br>**1990 Cri.L.J.1217**<br>Subhash Chander<br>Vs.<br>The State | **JUDICIAL PRECEDENTS**: Courts subordinate to such High Court cannot ignore the decision. Approach of lower Courts of ignoring decision deprecated High Court cannot brook any deviation from these principles. |
| **134.** | **1932 SCC OnLine Cal 99**<br>**AIR 1932 Cal 850** | **I.P.C. 217, 218 PROSECUTION OF PUBLIC SERVANT, JUDGE FOR HELPING ACCUSED -** For a conviction |

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| | Emperor<br>Vs.<br>Maturanath De & Ors**.** | under this section it is not necessary to establish that an offence has actually committed – It could be sufficient if the circumstances are such that a reasonable interference can be drawn there from that the accused had a knowledge that he has likely by his act to save a person from legal punishment. |
| **135.** | **(1975) 2 SCC 570**<br>**AIR 1975 SC 1925**<br>Kodali Purnachandra Rao & Anr.<br>Public Prosecutor, Andhra Pradesh | **I.P.C. Sec. 218** - Where a public servant charged with the preparation of official record prepares a false report with dishonest intention of misleading his superior an offence is committed. |
| **136.** | **1921 SCC OnLine Bom 126**<br>**AIR 1921 Bom 115**<br>Anverkhan Mahamadkhan<br>Vs.<br>Emperor | **I.P.C. 218 –**The gist of the section is the stifling of truth and pervasion of the course of justice 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 someone will escape from punishment. |
| **137.** | **(2008) 11 SCC 579**<br>**2008 Cri.L.J. 2999**<br>Pramotee Telecom | Wrong interpretation of supreme courts order is contempt of court- The respondent took completely wrong view and adopted |

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| | Engineers Forum &Ors.<br>Vs.<br>D.S. Mathur, Secretary, Department Of Tele Communications. | wholly incoorect interpretation. |
| **138.** | **1965 SCC OnLine AP 66**<br>**AIR 1967 AP 219**<br>R. Narapa Reddy<br>Vs.<br>JagarlamudiChandra mouli and others | An ordinary citizen may plead ignorance of law but a Judicial officer cannot plead that he did not understand the order of Higher Court. |
| **139.** | **(2007) 14 SCC 568**<br>**AIR 2007 SC 976**<br>State Of West Bangal Electricity Board<br>Vs.<br>Dilip Kumar Ray | **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 |

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| | | 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. |
| **140.** | **(2010) 9 SCC 437**<br>**AIR 2010 SC 3745**<br>Kalabharati Advertising<br>Vs.<br>HemantVimalnathNarichania And Ors. | **MALICE IN LAW :-**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 |

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| | | by its injurious acts. Passing an order for an unauthorized purpose constitutes malice in law. |
| **141.** | **(2004) 7 SCC 19**<br>**AIR 2004 SC 4277**<br>State Of Orissa<br>Vs.<br>Nalinikanta Muduli | The Advocate relying on overruled Judgment is guilty of professional misconduct. |
| **142.** | **1991 (3)SCC 655**<br>**MANU/SC/0610/1991**<br>**(CONSTITUTION BENCH )**<br>K. Veeraswami<br>Vs.<br>Union of India (UOI) and Ors. | **SANCTIONING AUTHORITY FOR PROSECUTION OF HIGH COURT AND SUPREME COURT JUDGES IS PRECEDENT OF INDIA -JUDGE SHOULD RESIGN HIMSELF -** The Judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of the public is not shaken. The Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not have the Judicial independence and may not command confidence of the public. He must voluntarily withdraw from the Judicial work and administration. |
| **143.** | **MANU/WB/0621/20** | **CONSTITUTIONAL DUTY OF EVERY** |

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| | **18**<br>Munshi Matiar Rahaman<br>Vs.<br>State of West Bengal | **JUDGE TO DECIDE THE MATTER NOT ONLY "WITHOUT FAVOUR"BUT ALSO "WITHOUT FEAR "**<br>"It is the duty of a Court to decide a plea of recusal on merits and not release a matter on the mere asking of a litigant.<br>"A Judge may recuse at his own from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never be acceded to. For that would give the impression, that the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified." |
| **144.** | **1983 SCC OnLine Del 342**<br>**1984 Cri. L.J. 481**<br>Subhash Chand<br>Vs. | **CONTEMPT OF COURT BY SESSIONS JUDGE -AFTER HANDING DOWN THE DEATH SENTENCES AND SUBMITTING THE RECORD TO THE HIGH COURT FOR** |

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| | S.M Aggrawa l& Anr. | **CONFIRMATION, THE SESSIONS JUDGE GAVE INTERVIEWS TO PRESS AND DOORDARSHAN WHERE HE DISCUSSED THE MERITS OF THE CASE WHICH WAS SUB-JUDICE.**<br>That if accused have a right to a fair trial, then it necessarily follows that they have a right to be tried in an atmosphere free from prejudice.<br>The Judge has accepted the post of judicial character by choice and thereby he has also undertaken to impose upon himself certain restrictions as adjunct of the office. No citizen has a right to make use of Article 19 in a manner so as to bring the Contempts of Court Act into action. Showering praise on a Judgment while its confirmation was sub-judice would amount to creating prejudice in the mind of the general public. In such a case if the High Court comes to a different conclusion, it will be faced with an additional burden of dispelling the impression from the public mind that the approach of the lower court was correct.<br>Section 7 permits a publication of a "fair |

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| | | and accurate ' report of a judicial proceeding. The media reports in this case do not represent a fair and accurate report thereof. It is absolutely a one sided picture. |
| **145.** | **(2005) 2 SCC 686**<br>**AIR 2005 SC 790**<br>M.P.Lohia<br>Vs.<br>State of West Bengal | **MEDIA TRIAL:-**The articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue is subjudiced. |
| **146.** | **(2014) 2 SCC 401**<br>**MANU/SC/0994/2013**<br>J. Jayalalithaa and Ors.<br>Vs.<br>State of Karnataka and Ors. | **FAIR TRIAL –MALICE IN LAW -** Supreme Court cannot pass order against statute - Denial of a fair trial is injustice to the accused , victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. |
| **147.** | **2017(4)Crimes283(SC),**<br>**2017(353)ELT265(S.C.)**<br>Pradyuman Bisht | Supreme Court directed to install the CCTV Cameras in Court withinthe period of three months. Courts are open to all. |

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| | Vs.<br>Union of India (UOI) | |
| **148.** | **2017 (1) Mh.L.J.(Cri.)**<br>**MANU/SC/0159/2017**<br>Asha Ranjan and Ors.<br>Vs.<br>State of Bihar and Ors. | **FAIR TRIAL :**<br>**A.** Denial of fair trial is as much injustice to the accused as is to the victim and the society. The object of trial is to convict the guilty and protect the innocent. Accused entitled to have a fair investigation , fair Prosecutor and a fair Judge. It is Fundamental Right as per Article 21 of the Constitution.<br>**B.**Court should avoid deley by Complaintant or Accused. |
| **149.** | **2017 SCC OnLine Del 8925**<br>**MANU/DE/1799/2017**<br>Vidur Impex and Traders Pvt. Ltd. and Ors.<br>Vs.<br>Pradeep Kumar KhannaandOrs. | **DISMISSAL OF SUIT FOR CONCEALMENT OF FACTS:** Vexatious case based onfraud,suppretion,twisting of facts is liable to be rejected. Such litigants should be thrown out at any stage of the litigation. |
| **150.** | **2016(5)ABR312**<br>**MANU/MH/1346/20** | **SUPPRESSION IS FRAUD :-** Application for interim injunction is |

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| | **16**<br>Akashaditya Harishchandra Lama<br>Vs.<br>AshutoshGowarikar and Ors. | rejected with Cost of Rs.1.5 Lakh. |
| **151.** | **1995 SCC OnLine Bom 479**<br>**1996 Cr. L.J. 1102**<br>State of Maharashtra<br>Vs<br>Walchand Hiralal Shaha And Ors | **FRAUD ON COURT :-**It is well settled that an order resulting from suppression of material facts and a false statement is a nullity in law. There is no need of any judicial precedent in support of the aforesaid preposition. This circumstance would alone be sufficient to cancel the order granted. |
| **152.** | **2012(1) SCC 476**<br>**2011 (12) SCALE 544**<br>Union of India<br>Vs.<br>Ramesh Gandhi | **LOWER COURT ARE PERMITTED TO SEE WHETHER ORDER FROM SUPERIOR COURT IS OBTAINED BY FRAUD -** Judgment obtained by non-disclosure of all the necessary facts tantamounts to playing fraud on the Court - Such Order/Judgment is a nullity and is to be treated as non est by every Court . Even Courts of subordinate Jurisdiction are permitted to enter into question whether Judgment of superior court even of Supreme Court was obtained by playing fraud on |

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| | | Court .<br>Res – Judicata & Doctrine of merger – don't apply to an order obtained by playing fraud on Court |
| **153.** | **2015 SCC OnLine Del 9524**<br>**2016 (I) AD DELHI 661**<br>H.S.Bedi<br>Vs.<br>National Highway Authority of India | 1. A solicitor being an officer of the Court,powes a paramount duty to the court,which overrides his duties to the Client.<br>2. A solicitor cannot simply take whatever the client states at face value.<br>3. A lawyer having actual knowlwdge about the falsity of a client's claim(or after he subsequentlyacquires that knowledge), is not supposed to proceedto make that claim in Court. |
| **154.** | **(2003) 8 SCC 319**<br>**MANU/SC/0802/2003**<br>Ram Chandra Singh<br>Vs.<br>Savitri Devi and Ors. | **FRAUD ON POWER :** Once it is held that a Judgment and decree has been obtained by practicing fraud on the Court it is trite that the principles of Res Judicata shall not apply.<br>An order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuand thereto or in furtherance thereof would also be nullities. |
| **155.** | **(2010) 8 SCC 383** | **FRAUD :-**Once a fraud upon Court for |

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| | **2010 (8) SCALE 237**<br>Meghmala & Ors.<br>Vs.<br>G. Narasimha Reddy &Ors. | obtaining order is proved, all advantages gained by playing fraud can be taken away.<br>**POWER TO RECALL THE ORDER-** Suppression of any material fact/document amounts to a fraud on the court. Every Court has an inherent power to recall its own order obtained by fraud as the order so obtained is nonest - once a fraud is proved, all advantages gained by playing fraud can be taken away. |
| **156.** | **(2017) 8 SCC 608**<br>**2017 SCC OnLine SC 751**<br>State of Orissa and Ors.<br>Vs.<br>Bibhisan Kanhar | **FRAUD ON COURT -** No Court will allow a person to keep an advantage which he has obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever. |
| **157.** | **1993 (4) SCC 216**<br>**AIR 1994 SC 1673**<br>Ramachandra Ganpat Shinde<br>Vs.<br>State Of Maharashtra And Others | **FRAUD ON COURT**:- An order obtained by abuse of the process of the court or by playing fraud or collusion is nullity and to be treated by every Court. |

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| **158.** | **2002 ALL MR (4) 198**<br>**MANU/MH/1306/2002**<br>Ramjisingh Bhulian singh<br>Vs.<br>Tarun K Shah & Ors**.** | **ADMINISTRATION OF JUSTICE – FRAUD – ALLEGATIONS OF FRAUD PLAYED UPON COURT OR OF ABUSE OF PROCESS OF LAW, MADE AND ESTABLISHED FROM RECORD:-**Court would not sit on technicalities to deny relief to affected party - It will be bounden duty of Court to remedy the mischief, because no man can take advantage of his own wrong. |
| **159.** | **(1996) 8 SCC 285**<br>**AIR 1996 SC 1733**<br>Municipal Corporation of Delhi<br>Vs.<br>Kamla Devi & Anr. | Proceeding instated in court malafide by way of sharp practice and designed to abuse process of law – Exemplary cost of Rs.50,000/- imposed. |
| **160.** | **2007 ALL MR (Cri.) 2826**<br>Dilip Pandurang Kadam<br>Vs.<br>State of Mahrashtra | **FALSE CASE OF RAPE :-**Complaint of rate U/s. 376 of I.PC found to be false – Accused acquitted and complainant ordered to pay compensation of Rs.50,000/- to accused. |
| **161.** | **(1997) 6 SCC 564**<br>**AIR 1997 SC 2658**<br>M/s. Sun Export | Appeal to Supreme Court Rejected in limine at admission stage Does not constitutebinding precedent. **(Para 13)** |

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| | Corporation, Bombay<br>Vs.<br>Collector of Customs, Bombay and another | |
| **162.** | **(2000) 6 SCC 359**<br>**AIR 2000 SC 2587**<br>Kunhayammed and others<br>Vs.<br>State of Kerala and another | 1.**DISMISSAL OF SLP** –does not mean that impunged order is Confirmed.<br>2.There cannot be more than one decree or order governing the same subject matter at given point of time. |
| **163.** | **(2003) 10 SCC 321**<br>**AIR 2003 SC 4672**<br>Delhi Administration & Ors.<br>Vs.<br>Madan Lal Nangia & Ors. | If a Special Leave Petition **(S.L.P.)** is summarily dismissed, this cannot prevent other parties filinig SLP against the same Judgment. |
| **164.** | **1993(91) ALJ 655**<br>**1993 (21) ALR 516**<br>Jagdish Prasad<br>Vs.<br>Passenger Tax Officer and Anr. | **SUB SILENTIO DECISION:-**A decision passes sub silentio when the particular point of law involved in the decision is not perceived by the Court or is present to its mind.<br>The decision is not authority on point which is not discussed. Said point is said to be sub |

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| **165.** | **(2015) 1 SCC (LS) 799**<br>**AIR 2015 SC 645**<br>Additional District and Sessions Judge 'X'<br>Vs.<br>Registrar General, High Court of Madhya Pradesh and Ors. | **IN HOUSE ENQUIRY AGAINST JUDGES OF HIGH COURT AND SUPREME COURT** -The Chief Justice is required to takenotingsand after prelimnary enquiry forward it to Chief Justice of India. The Chief Justice Of India then can set up Committee for further enquiry. |
| **166.** | **(1997) 7 SCC 101**<br>**AIR1997SC 3571**<br>Government of Tamil Nadu<br>Vs.<br>K.N. Ramamurthy | **MIS- CONDUCT BY JUDGE:**<br>Exercise of Judicial or Quasi Judicial power negligently having adverse affect on the party or the State certainly amounts to misconduct. |
| **167.** | **2015(2)KCCR 1809**<br>**MANU/KA/0949/2015**<br>High Court of Karnataka<br>Vs.<br>Jai Chaitanya Dasa | **RESPECT IS NOT TO THE PERSON AS A JUDGE BUT TO HIS OFFICE** - The bad behaviour of one Judge has a rippling effect on the reputation of the Judiciary as a whole. When the edifice of Judiciary is built heavily on public confidence and respect, the damage by an |

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| | and Ors. | obstinate Judge would rip apart the entire Judicial structure built in the Constitution."<br>It is questionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a Court Room. |
| **168.** | **(1998) 3 SCC 732**<br>**AIR 1998 SC 1064**<br>M.H. Devendrappa<br>Vs.<br>The Karnataka State Small Industries Development Corp. | **MISCONDUCT BY JUDGE:**<br>Any action of an employee which is detrimental to the prestige of the institution or employment, would amount to misconduct. |
| **169.** | **(1997)5 SCC 129**<br>**AIR 1997 SC 2286**<br>High Court of Judicature at Bombay through its Registrar<br>Vs.<br>Udaysingh and Ors. | **DISMISSAL OF A JUDGE FOR PASSINGILLEGAL/ UNLAWFUL ORDER:-** Acceptability of the Judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that imposition of penalty of dismissal from service is well justified." |
| **170.** | **(2001)3UPLBEC253** | **MISCONDUCT OF JUDGE:-** |

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| | **0,**<br>**(2001)3UPLBEC2351**<br>Ram Chandra Shukla<br>Vs.<br>State of Uttar Pradesh and Ors. | Judicial officers has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of Judicial Officers. |
| **171.** | **(1997)6SCC339**<br>**AIR 1997 SC 2631**<br>High Court of Judicature at Bombay<br>Vs.<br>Shirish Kumar Rangrao Patil & Anr. | **MISCONDUCT BY JUDICIAL OFFICER** Proof - Demand and acceptance of illegal gratification to do Judicial work by Civil Judge - Evidence adduced during disciplinary enquiry sufficient to prove proclivity and corrupt conduct on his part - Supreme Court cannot re-appreciate evidence charge by charge and reach a conclusion different from that of Disciplinary Authority - Punishment of dismissal is proportionate. |
| **172.** | **(2000) 2 SCC 220**<br>**MANU/SC/2078/1998**<br>Government of Andhra Pradesh<br>Vs.<br>P. Posetty | **DISMISSAL OF A JUDGE FOR PASSING ILLEGAL/UNLAWFULORDER:**Sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct |

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| | | as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/Government servant. |
| **173.** | **(1992)1SCC119**<br>**AIR1992SC165**<br>All India Judges' Association<br>Vs.<br>Union of India (UOI) and Ors. | **MISCONDUCT OF JUDGE:-**Judges perform a "function that is utterly divine" and officers of the subordinate Judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, Judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully. |
| **174.** | **(2005) 1 GLR 743**<br>Ajit D. Padiwal<br>Vs.<br>State Of Gujarat And others | **JUDGES 'SCANDAL OF WARRANTS'**<br>Non bailable warrant against judge. High Court ordered CID enquiry on the basis of news and it was found that there is nexus between Judge and some Advocates - the Magistrate was dismissed by High Court. |
| **175.** | **2001**<br>**ALLMR.Cri.173**<br>**1**<br>Walmik Deorao Bobade | **MISUSE OF POWER BY JUDGE:**a reckless arrest of a citizen and detention even under a warrant of arrest by a competent Court without first satisfying itself of such necessity and fullfilment of the |

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| | Vs.<br>State Of<br>Maharashtra | requirement of law is actionable as it violates not only his fundamental rights but such action deserves to be condemned being taken in utter disregard to human rights of an individual citizen. |
| **176.** | **(2000)3 SCC 350**<br>**AIR 2000 SC 1238**<br>Sajjadanashin Sayed Md. B.E. Edr. (D) by L.Rs<br>Vs.<br>Musa Dadabhai Ummer and others | **BETWEEN SAME PARTIES, THE SUBSEQUENT DECISION WILL PREVAIL OVER ALL THE EARLIER ONES**. It is well settled that an earlier decision which is binding between the parties loses its binding force if between the parties a second decision decides to the contrary. Then, in the subsequent litigation, the decision in the second one will prevail and not the decision in the first. |
| **177.** | **2003 SCCOnLine AP 193**<br>**AIR 2003 AP 413**<br>M/s. Aditya Pharmaceuticals (P) Ltd<br>Vs.<br>The A. P. State Financial Corporation | **APEX COURT OVERRULING ITS EARLIER DECISION -** It will always have retrospective effect except in certain circumstances or specially made prospective . |
| **178.** | **(2005) 6 SCC 705** | Processual law is not to be a tryant but a |

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| | **AIR 2005 SC 3304**<br>Rani Kusum<br>Vs.<br>Kanchan Devi and Ors. | servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. |
| **179.** | **(1984) 3 SCC 46**<br>**AIR 1984 SC 1004**<br>Ghanshyam Dass and Ors.<br>Vs.<br>Dominion of India and Ors. | **PRINCIPLES OF NATURAL JUSTICE**<br>Any procedure /rules must be interpreted in a manner so as to sub serve and advance the cause of justice rather than to defeat it.<br>The procedure is designed to facilitate justice and not a thing designed to trip people up. Too technical a construction of section that leaves no room for reasonable elasticity of interpretation should therefore be guarded against interpretation to frustrate it.<br>Our laws of procedure are based on the principle that as far as possible no proceeding in a court of law should be allowed to be defeated on mere technicalities. |
| **180.** | **(2017) 4 SCC 1,**<br>**AIR 2017 SC 986**<br>Nidhi Kaim and Ors.<br>Vs. | Article 142, 141 of the constitution – Supreme Court cannot disregard statutory provision, and/or a declared pronouncement of law Under Article 141 of the Constitution |

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| | State of Madhya Pradesh and Ors. | ,even in exceptional circumtances. |
| **181.** | **2013 SCC OnLine All 13099**<br>**(2013) 83 ACC 215**<br>Shashikant Prasad<br>Vs.<br>The State Thru C.B.I./ A.C.B., Lucknow | **DEEMED SANCTION FOR PROSECUTION –**If Sanction is not granted within 90 days from the application for sanction to prosecute. |
| **182.** | **2010 SCC OnLine Del 3365**<br>**2010(119)DRJ102**<br>Aniruddha Bahal<br>Vs.<br>State | **DUTY OF A CITIZEN UNDER ARTICLE 51A (h)** is to develop a spirit of inquiry and reforms.<br>It is a fundamental right ofEvery 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 and 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. |
| **183.** | **(2010) 3 SCC (Cri.)** | **DUTY TO EXPOSE CORRUPTION:-** |

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| | **841**<br>**(2010) 8 SCC 281**<br>Indirect Tax Practitioners Association<br>Vs<br>R.K. Jain | Duty of citizen to expose the corruption in Judiciary if news based on true facts is published then it is not a contempt. |
| **184.** | **MANU/DE/0609/2017**<br>Court on its own Motion<br>Vs.<br>DSP Jayant Kashmiri and Ors. | Complaint /allegation against Judges is not Contempt if the allegations are Supported with proof and are well founded. |
| **185.** | **(1960) 3 SCR 431**<br>**AIR 1960 SC 882**<br>Nand Lal Misra<br>Vs.<br>Kanhaiyalal Misra | **DOUBLE STANDARD :-**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. |
| **186.** | **2009(1)Mh.L.J. 97**<br>**2009 ALL MR (Cri.) 2991**<br>Sandeep Rammilan + and Ors. | **A)** If The Police do the work of Court by declaring innocence or guilt then there will be complete breakdown of the constitutional Machinery and rule of law. In future if any police officer found to be flouting the rule |

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| | Vs.<br>The State of Maharashtra and Ors. | of law, brazenly and openly the Court will direct stringent action against such officer**.**<br>**B) Art. 14 of Constitution -** Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Under our Constitution there is Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth." |
| **187.** | **1956 SCC OnLine Bom 73**<br>**AIR 1956 Bom 695**<br>Arunachalam Swami and Ors.<br>Vs.<br>State of Bombay and Ors. | **CONSTITUTION OF INDIA:**Article 14 assures to the citizen equality not only in respect of a substantive law but also procedural law, and if any procedure is set up which deprives a citizen of substantive rights of relief and defence the citizen is entitled to of this procedure. |
| **188.** | **(1967) 3 SCR 415**<br>**AIR 1968 SC 178**<br>Jamatraj Kewalji Govani<br>Vs.<br>The State of Maharashtra | A judge must not side with either party nor should descend into the arena. |
| **189.** | **(2011) 3 SCC** | **VIOLATION OF FUNDAMNETAL** |

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| | **(Cri.)727**<br>**AIR 2011 SC (Cri.) 31**<br>Ramdeo Chauhan<br>Vs.<br>Bani Kant Das | **RIGHTS BY COURTS INCLUDING SUPREME COURT** -National Human Rights Commission is having Jurisdiction to entertain the petition alleging violation of Fundamental Rights of the citizen at the hands of Court even by the Supreme Court. It is clear that where the party is denied of protection of any law to which he is entitle even by Courts of law the Human Right Commission is having Jurisdiction to enquire it. |
| **190.** | **(1998) 8 SCC 296**<br>**AIR 1999 SC 495**<br>Mr. X<br>Vs.<br>Hospital Z | Duty of Judge to not to sit as mute structure when violation of Fundamental Rights are brought to their notice. |
| **191.** | **AIR 1976 SC 859**<br>**(1976) 1 SCC 975**<br>S. Abdul karim & Ors.<br>Vs<br>Prakash & Ors**.** | **CONTEMPT BY A JUDGE –** If Judge shows undue haste in delivering possession when matter was sub-judice before High Court then the said Judge is guilty of Contempt. The proper course to be adopted by the Judge is to wait till the outcome of decision of Superior Court. |
| **192.** | **2007 (3) Bom. C.R. 279** | When this Court is ceased of the matter, it is expected of the subordinate courts to stay |

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| | **LAWS(Bom) 2007 22**<br>Kishor Bhikansingh Rajput<br>Vs.<br>Preeti Kishor Rajput | their hands away. It is difficult to understand as to what was an alarming urgency to proceed further and dismiss the petition when the learned Judge of the Family Court was very well aware that the order dated 15th September 2006 was challenged before this Court by the present petitioner. No doubt, that the learned Family Court is right in observing that there was no stay by this Court. But as a matter of propriety and when the learned Judge was very much aware about pendency of the Petition before this Court, the learned Judge ought to have stayed his hands away and waited till further orders to be passed by this Court. In that view of the matter, I am inclined to allow the petition. **(Para 7)** |
| **193.** | **2010 SCC OnLine Bom 1469**<br>**MANU/MH/0293/2011**<br>Vishwanath P Mahadeshwar<br>Vs.<br>SuryawanshiBalrup | No doubt that if the order of the subordinate court is challenged before this Court and the subordinate court is informed about the pendency of the matter before this Court, it would be expected of the trial Court to stay its hands away for a period of a week or two, so as to enable the parties to get circulation before this Court and obtain |

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| | Thakur & Ors. | appropriate orders. However, merely by filing the proceedings before this Court, the proceedings before the lower Courts cannot be permitted to be protracted for months together at the interest of the litigants who neither circulate the matters before this Court nor get the interim order staying the proceedings. |
| **194.** | **2004 SCCOnLine Bom 1209**<br>**2004 Cri. L. J.2278**<br>Sudhir M. Vora<br>Vs.<br>Commissioner of Police for Greater and others | When matter was subjudice before the Court then arresting the petitioner and Threatening him is Contempt of Court . |
| **195.** | **1985 SCC OnLine Pat 213**<br>**1986 (34) BLJR 63**<br>Harish Chandra Mishra<br>Vs.<br>Hon'bleMr.Justice Ali Ahmad | **JUDGE GUILTY OF CONTEMPT IF JUDGE INSULT THE ADVOCATE:-**A Judge has every right to control the proceedings of the court in a dignified manner and in a case of misbehaviour or misconduct on the part of a lawyer proceedings in the nature of contempt can be started against the lawyer concerned. But, at the same time a Judge cannot make |

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| | | personal remarks and use harsh words in open Court which may touch the dignity of a lawyer and bring him to disrepute in the eyes of his colleagues and litigants. Lawyars are also officers of the court and deserve the same respect and dignity which a Judge expects from the members of the Bar. In my opinion, this application cannot be brushed aside and has been rightly contended by the learned Counsel for the petitioners that the matter can be resolved only after issuance of notice to the opposite party. |
| **196.** | **(2002) 8 SCC 715**<br>**AIR 2002 SC 3588**<br>West Bangal Electricity Regulatory Commisssion<br>Vs.<br>CESC Ltd. | **HIGH COURT CANNOT DENY HEARING OF THE CASE ON THE GROUND THAT PARTY FILED THE CASE AGAINST JUDGES -** The High Court has declined to hear the arguments of the appellant on the ground that they had alleged bias against the judges – Held that- it would not empower the Court to deny a right of hearing if the person alleging the said bias is otherwise entitled to in case where and allegation of bias against judges found to be not proved it is open to the Court to initiate such action as is |

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| | | permissible in law. |
| **197.** | **2004 SCC OnLine Bom 145**<br>**2004 (5) BomCR 196**<br>Bhartiya Bhavan Co.Operative Housing Society Ltd.& Ors,<br>Vs.<br>Krishna H.Bajaj & Ors. | **POWER OF ATTORNEY CAN APPPEAR INSTEAD OF ADVOCATE-** Whether respondent entitled to plead through power of attorney instead of advocate - facts revealed advocate had abruptly withdrawn his appearance and there was direction for expeditious disposal of case - respondent was not able to engage another advocate immediately - held, respondent was justified in seeking representation through attorney. |
| **198.** | **(2012) 9 SCC 1**<br>**2012 SCC OnLine SC 652**<br>Mohammed Ajmal Mohammed Amir kasab<br>Vs.<br>State Of Maharashtra | **FAILURE BY JUDGE TO PROTECT RIGHTS OF ACCUSED MAKES HIM LIABLE FOR ACTION** -Supreme Court directed that it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, it should be provided to him from legal aid at the expense of the State. The Supreme Court further directed that the failure of any |

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| | | magistrate to discharge this duty would amount to dereliction in duty and would made the concerned magistrate liable to departmental proceedings. |
| **199.** | **1968 SCC OnLine Gau 3**<br>**1970 Cri.L.J.396**<br>Nasia Pradhan & Ors.<br>Vs<br>The State | Accused were undefended before Court of Session - Initially there was counsel appointed by Additional Sessions Judge to defend accused persons, who appeared to be undefended at that stage - However, on adjourned date when accused signified their intention to engage their own counsel, Additional Sessions Judge terminated appointment of State counsel - All this had led to inadequate defence of accused persons before Court of Session - Hence, entire trial was vit0iated for accused not having got proper and fair trial - Thus, accused were acquitted of charges Appeal allowed. |
| **200.** | **2002 SCC OnLine Gau 134**<br>**2003 Cri.L.J 4302**<br>Union of India<br>Vs.<br>Hari Ram | **Central Reserve Police Force Act (66 of 1949), S.9 - CRIMINAL PROCEDURE CODE -** Opportunity to be defended by lawyer of choice of accused is constitutional mandate- Non providing opportunity to defend the case by engaging |

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| | | lawyer of choice of accused - Offends provisions of S. 303 of Cri. P.C. and Arts. 22 and 14of Constitution-trial vitiated – Conviction set aside. |
| **201.** | **2002 SCC OnLine Kar 524**<br>**2003 Cri.L.J 350**<br>Ajay Mehta & Ors.<br>Vs.<br>State Of Karnataka ,By C.B.I/CB Bangalore | **CRIMINAL TRIAL-** Authority of an Advocate to represent the parties in a criminal trial-Vakalathnama or Memo of Appearance-Which is necessary. |
| **202.** | **(1981) 2 SCC 758**<br>**1981 Cri.L.J. 632**<br>Muncipal Corporation Of Delhi<br>Vs.<br>Girdharilal Sapuru & Ors. | When attention of the High Court is drawn to a clear illegality the High Court can not reject the petition as time barred thereby perpetuating the illegality as miscarriage of Justice. |
| **203.** | **2008 SCC OnLine Bom 1210**<br>**2009 (2) Mh.L.J. 340**<br>Lilavati Kirtilal Mehta Medical Trust & Anr. | **Civil - Removal of administrator** Held, Administrator duty bound to act impartially - Administrator failed to discharge his duty in impartial manner - Application allowed. |

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| | Vs.<br>Charu K. Mehta &<br>Ors. | |
| **204.** | **2008 SCC OnLine Bom 924**<br>**2009 Cri.L.J.910**<br>Geeta Marine Services Pvt Ltd. & Anr.<br>Vs.<br>The State & Anr. | **DECISION OF HIGH COURT - STAY BY SUPREME COURT -** Even if a decision of the High Court is stayed back by the Supreme Court, unless the decision of the High Court is set aside by the Apex Court, the Courts subordinate to the High Court are bound by the same. |
| **205.** | **2008 ALL MR (Cri.)446**<br>Smt. Damodar Prabhu Anr.<br>Vs.<br>Ravindra Vassant Kenkre & Anr. | **PRECEDENT :-** High Court decision Binding on Lower Courts. Magistrate had no option but to follow Judgment of Apex Court as explained by High Court. |
| **206.** | **2007 ALL MR (Cri.) 3012**<br>Inder Fakirchand Jain<br>Vs.<br>State Of Maharashtra | **EXPUNGING OF ADVERSE REMARKS – IN ORDER AGAINST LAWYER AND PARTY -** Magistrate seeming to be prejudiced against lawyers as well as complainant and made adverse remarks against them a judge is expected to maintain equanimity and not to get swayed |

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| | | by the prejudices. Those remarks directed to be expunged- Magistrate directed to refrain from making such uncalled and unwarranted remarks against any person and particularly without hearing them. |
| **207.** | **(2014) 5 SCC 417**<br>**AIR 2014 SC 1220**<br>Om Prakash Chautala<br>Vs.<br>Kanwar Bhan & Ors. | **EXPUNGING OF REMARKS** :-The person against whom mala fides or bias is imputed should be impleaded as a party respondent to the proceeding and be given an opportunity to meet the allegations. In his absence no enquiry into the allegations should be made, for such an enquiry would tantamount to violative of the principles of natural justice as it amounts to condemning a person without affording an opportunity of hearing. |
| **208.** | **2011 ALL MR (Cri.)381**<br>High Court on its own motion<br>Vs.<br>Mr.N.B. Deshmukh | Right to appear in Advocate's robes before Court is a statutory right. That the right is available only to a person who appears in his capacity as Advocate for any other party or litigant and not in his own cause and more so, while defending contempt action initiated against him personally. |
| **209.** | **1984 Supp SCC 571**<br>**AIR 1985 SC 28** | **PROFESSIONAL MISCONDUCT**Advocate counter signing |

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| | M.Veerabhadra Rao<br>Vs.<br>Tekchand | forged document should be suspended for five years. |
| **210.** | **1926 SCC OnLine ALL 365**<br>**AIR 1927 All 45**<br>Ahmad Ashrab, Vakil<br>Vs.<br>State | 10 years imprisonment to defendants and Lawyer for filing false reply to defeat the lawful claim of the plaintiff. Practitioner Suspended. |
| **211.** | **1998 AIR SCW 1908**<br>**(1998) 5 SCC 513**<br>State Of W.B. & Ors.<br>Vs.<br>Shivananda Pathak & Ors | If a judgment is overruled by the higher Court, the judicial discipline requires that the Judge whose judgment is overruled must submit to that judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. Even if it was a decision on a pure question of law which came to be overruled, it cannot be reiterated in the same proceedings at the subsequent stage by reason of the fact that the judgment of the higher Court which has overruled that judgment, not only binds the parties to the proceedings but also the Judge who had earlier rendered that decision. That Judge may have his occasion to reiterate his |

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| | | dogmatic views on a particular question of common law or constitutional law in some other case but not in the same case. If it is done, it would be exhibitive of his bias in his own favour to satisfy his egoistic judicial obstinacy. |
| **212.** | **1959 SCC OnLine AP 303**<br>**AIR 1959 AP 659**<br>Medichetty Ramakistiah & Ors.<br>Vs.<br>State of AP | **JUDGE – AVOIDANCE OF DUTY-** entire conduct of case left in the hands of counsel for private party trial is irregular – Retrial ordered. Cr. P.C. 493, 270. |
| **213.** | **(2003) 7 SCC 175**<br>**AIR 2003 SC 3039**<br>S.R.Ramaraj<br>Vs.<br>Special Court<br>Bombay | **CONTEMPT OF COURTS ACT (70 OF 1971),** S.2 - Pleading/defence made on basis of facts which are not false - Howsoever the pleading may be an abuse of process of Court - Does not amount to contempt.<br>Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. Merely because an action or defence can be an abuse of process of the Court those responsible for its formulation cannot be regarded as committing contempt. |

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| | | If the facts leading to a claim or defence are set out, but an inference is drawn thereby stating that the stand of the plaintiff or defendant is one way or the other it will not amount to contempt unless it be that the facts as pleaded themselves are false. **(Para 9)** |
| **214.** | **(2003) 2 SCC 76**<br>**AIR 2003 SC 541**<br>N.Natrajan<br>Vs.<br>B.K.Subha Rao | **A)ANY THIRD PARTY –** Stranger to the proceeding can make application<br>under section 340 of Cr.P.C.<br>**B)**The person having half backed knowledge of law should be prevented from coming to the Court. |
| **215.** | **(1986) 1 SCC 133**<br>**AIR 1986 SC 872**<br>Express Newspapers Pvt.Ltd.<br>Vs.<br>Union of India& Ors. | **CONSTITUTION OF INDIA , ARTS. 32,226-MALAFIDES- PLEADINGS-** If allegations of malafides remain unrebutted and unanswered court is bound constrained to accept them. |
| **216.** | **2017 (6)ALL MR 22**<br>Prafulla Narhar Wagh & Ors.<br>Vs.<br>Govind Narayan Pimpalkar | It is well settled by the hon'ble Apex Court and following the spirit of its own earlier orders,has granted adjourmant by the impugned order and,therefore,such an order would have to be held as manifestly perverse as well as contrary to the settled |

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| | | principles of law.Such an order must go and the conduct of the respondent would necessitate passing of further order of dismissal of suit. |
| **217.** | **2009 SCC OnLine Bom 460**<br>**(2009) 4 mah.L.J. 406**<br>Smt.Savitri Chandra kesh Pal<br>Vs.<br>State Of Maharashtra | **COPY SHOULD BE PROVIDED TO THE OTHER PARTY:-** The material supplied or shown to the decision making authority without disclosing it to the person against whom it is to be used clearly constitutes breach of principles of natural justice - the impugned order is liable to be quashed and set aside holding it to be bad and illegal being in breach of principles of natural justice. |
| **218.** | **(2016) 8 SCC 509**<br>**AIR 2016 SC 3506**<br>Anita Khushwha & Ors.<br>Vs<br>Pushap Sudan And Ors. | **RIGHT TO ACCESS TO THE COURT IS FUNDAMENTAL RIGHT :-**<br>Access to justice is also a facet of rights guaranteed u/Art. 14, 21 - Rule of law, independence of judiciary and access to justice are conceptually interwoven, an aggrieved person cannot be left without the remedy and that access to justice is a human right and in certain situations even a fundamental right. |
| **219.** | **1944 SCCOnline** | No order restraining a party to approach the |

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| | **ALL 34**<br>**(1944) 23 AIR 562**<br>Shyam Lal Gomatwala<br>Vs.<br>Nand Lal and others | Court should be passed. |
| **220.** | **(2014) 5 SCC 377**<br>**2014 SCC OnLine SC 46**<br>Perumal<br>Vs.<br>Janki | **A)** I.P.C. Section 211 against I.O. for filing false charge-sheet of rape.High Court should exercise its power and order prosecution under section.340 of Cr.P.C.Any order which makes the complainant remediless cannot be passed.<br>**B)** Strictures passed against High Court that absolute power corrupts. |
| **221.** | **1999 SCC OnLine Mad 107**<br>**1999 Cri. L. J. 2010**<br>P.V.R.S. Manikumar<br>Vs.<br>Krishna Reddy | Filling of petition by advocate by suppressing material fact is contempt Apology by advocate accepted. |
| **222.** | **2014 SCC OnLIne Mad 737**<br>**AIR 2014 Mad 133**<br>R. Muthukrishn | 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 |

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| | Vs<br>Union of India | 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. |
| **223.** | **2010 SCC OnLine Del 2376**<br>**2011 Cr. L. J. 868**<br>M/s Nova Vision Electronics<br>Vs.<br>State | Submission by advocate by suppressing material facts- Cost of Rs. 10000/- imposed. |
| **224.** | **(2002) 4 SCC 388**<br>**AIR 2002 SC 1771**<br>**[CONSTITUTION BENCH]**<br>Rupa Ashok Hurra | Supreme Court after review can re consider a Judgment on the ground that it is vitiated being in violation of principles of natural justice.Larger Bench of Supreme Court can set a side the order of Supreme Court with |

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| | Vs.<br>Ashok Hurra &Ors. | lesser numeric strength as done in Supreme Court Bar Association Case and in M.S. Ahlawaths Case. Writ Petition is maintainable. |
| **225.** | **MANU/KE/0940/2017**<br>State of Kerala and Ors.<br>Vs.<br>K.K. Mathai | **CONSTITUTION OF INDIA - ARTICLE 141-** The High Court cannot ignore the Supreme Court's express directions or observations on the ground that the direction is either ambiguous or incongruent and decides a different course of adjudication.<br>we felt it inadvisable to indulge in any Judicial adventurism. Then, the course left open for us is this: directing either party to approach the Supreme Court and obtain the necessary clarification, for it is that court which passed the order has the means and eminence to clarify what it meant. |
| **226.** | **(2016) 15 SCC 289**<br>**MANU/SC/1379/2015**<br>State OF U.P<br>Vs.<br>Ajay Sharma | **STARE DECISIS –** Long Standing precedents should be followed<br>consistency creates confidence.<br>**ART.141 OF CONSTITUTION OF INDIA** Exposition of law must be followed by and applied even by co-ordinate or co-equal benches and certainly by all smaller |

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| | | benches and subordinate Court. |
| **227.** | **2013 SCC online Mad 2088**<br>**2013 (4) CTC 821**<br>V. Thirulokachander<br>Vs.<br>E. Kannan and S. Veeraraghavan | **CONTEMPT OF COURT - DISOBEDIENCE OF ORDER - WRONG POSTING IN SERVICE -** Suspension - Repeated refusal of second Contemnor to post Petitioner as Secretary was based on subsequent resolution passed by Board increased cadre strength of Secretary - Respondents with determined mind not to implement Court's order, had been engaging Senior Counsel one after other only to achieve their oblique motive. Not posting Petitioner as Secretary was clear act of deliberate disobedience of Court's order - Thus second Respondent-President of Government Telecommunication Employees' Co-operative Society Limited guilty of contempt of High Court under Section 2(b) of Act, sentence him to undergo simple imprisonment for period of two weeks. |
| **228.** | **1981 SCC OnLine P&H 45**<br>**AIR 1981 P & H 213**<br>Indo Swiss Time | It opined that in such a situation the HC can follow the Judgment which appears to it as laying down the law more elaborately and accurately. The mere incidence of time is a |

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| | Limited<br>Vs.<br>Umrao and Ors | consideration which appears as hardly relevant. |
| **229.** | **2014 SCC OnLine Bom 284**<br>**2015 (1) Mh.L.J.90**<br>**(AURANGABAD BENCH)**<br>Reliance General Insurance Company Limited and Ors.<br>Vs.<br>SyedaAleemunbee and Ors. | It is well-settled, Judicial process demands that a judge move within the frame-work of relevant legal rules and the coveted modes of those for ascertaining them. The Judicial robe has its inbuilt discipline, which mandates, for a High Court to adhere in tune with the precedent of Supreme Court and in particular of the larger Benches. This is more so, if there are divergent views by Hon'ble Judges of the Supreme Court, on identical issues. **(Para 27)** |
| **230.** | **1998 SCC OnLineBom 491**<br>**1999 Cri.L.J. 554**<br>Mayur Chandumal Contractor, Bombay & Ors.<br>Vs.<br>Hurcules D'Souza & Anr. | **CODE OF CRIMINAL PROCEDURE, 1973 S.482 S.2O2 S.200 INDIAN PENAL CODE, 1860 S.506(2) S.386 S.452 S.451** Complaint case has to be decided urgently - issue Of process - Validity - Process issued after over one year of complaint splitting the offences - Held, Section 200 does not permit the Magistrate to wait for such a long time on a complaint filed by the complainant under Section 200 I.P.C.It should bear in mind that Section 200 cr.P.C.Is an |

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| | | alternative protection for a citizen who suffers, against the reluctant attitude of the police either to entertain his complaint or a police officer May be baised against the accused.In that circumstances, a complaint filed under Section 200 should be Acted with a sense of urgency.Here, an year has been taken.The complaint was filed on 5-2-90 and verification has been taken for the reasons best known to the Magistrate only on 6-3-1990 and the Actual verification process started on 5-6-1990 and again evidence was called for on 2-2-1991.Ultimately, the endorsement was made by the advocate on 2-4-1991 and the order was passed for issuing summons against the petitioner on 2-4-1991.The time spent by the Magistrate is not in the ordinary course of business of the Court.Such delay is not admissible in the light of the provisions of Sections 200, 202, 203, and 204 of Cr.P.C.The Magistrate cannot split offences according to the wishes of the complainant as is done in this case.The procedure adopted by the Magistrate is clearly an |

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| | | instance of mis-carriage of justiceand liable to be Quashed. |
| **231.** | **2007 SCC OnLine Bom 538**<br>**2007(6) Mh.L.J. 146**<br>Legrand (India) Private Ltd.<br>Vs.<br>Union of India (UOI) and Ors. | **A.**It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party,but if a law on a particular point has been laid down by the High Court,it must be followed by all authorities and tribunals in the State thus State government is no exception..<br>**B.**The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding onthe rights involved in such a proceedings.<br>**C.**If inspite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position ,in utter disregard of that position, proceeding are initiated,it must be held to be a willful disregard of the law laid down by the High Court and would amount to civil contempt as deined in S.2 (b) of the Contempt of Court Act,1971 |

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| **232.** | **2009 SCC OnLine bom 231**<br>**2009 (111) Bom LR 1163**<br>Geeta Keshav Shankar<br>Vs.<br>The State of Maharashtra | **CONSTITUTION OF INDIA ARTICLE 141:BINDING NATURE PRECEDENTS:-**decisions of privy council –decision binding on the highcourt unless there is judgmentof the supreme court to the contrary. |
| **233.** | **2006 SCC OnLine Bom 382**<br>**2006Cri.L.J.2628,**<br>D.D. Samudra, Judge, Court of Small Causes<br>**V**s.<br>Vaziralli Pvt. Ltd. and Vishwesh V. Desai | **MISUSE POWER BY JUDGE IS CONTEMPT:-**Proper procedure not followed by sub-ordinate Judge while forwarding reference of Contempt to High Court . |
| **234.** | **(2008)215CTR(Bom) 150**<br>**MANU/MH/0174/2008**<br>The commissioner of Income Tax<br>Vs. | **DISMISSAL OF SPECIAL LEAVE PETITON:** If the Supreme Court has given reasons for dismissing the Special Leave Petition, that will attract Article 141 of the Constitution. Otherwise a mere dismissal of a Special Leave Petition which does not indicate the grounds or reasons of dismissal |

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| | Pamwi Tissues Limited | by necessary implication it must be taken that the Supreme Court decided that it was not a fit case for a Special Leave Petition. |
| **235.** | **(2004 ) 3 SCC 488, 2004(92)ECC161** Commissioner of Customs, Calcutta and Ors. Vs. Indian Oil Corporation Ltd. and Ors. | **DECISION ON AN ACT IS BINDING ON OTHER PARI MATERIA ACTS:-** As we have noted the provisions of Section 151A are in parimateria with the provisions of Section 119 of the Income Tax Act 1961 and Section 37B of the Central Excise Act. Parliament introduced Section 151A by an amendment to the Customs Act, 1962 in 1995 but with effect from 27th December, 1985 (Act 80 of 1995), when this Court had already construed identical language in the manner indicated. It may be assumed that Parliament had legislatively approved the construction by using the exact words so construed again in the Customs Act. There is, therefore, no reason why the principles enunciated by this Court under the two earlier Acts should not also be determinative of the construction put on the later in respect of a materially similar statutory provision, This was also not argued by the appellant.**(Para 13)** |

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| **236.** | **(1999) 3 SCC 91**<br>**AIR 1999 SC 1098**<br>Nazim Ali and others<br>Vs.<br>AnjumanIslamia,<br>Chhatarpur and others | **RES-JUDICATA –**Subsequent Suit barred. |
| **237.** | **(1999) 4 SCC 243**<br>**AIR 1999 SC 1823**<br>Pawan Kumar Gupta<br>Vs.<br>RochiramNagdeo | **RES-JUDICATA –**Subsequent Suit barred. |
| **238.** | **(2000) 7 SCC 296**<br>**AIR 2000 SC 3737**<br>Delhi Administration<br>Vs.<br>Gurdip Singh Uban<br>and others etc. | **A]** Reasoned order after operative order cannot go beyond the points raised.<br>**B]**Application for clarification with other prayers to be rejected.<br>**C]** Review application cannot be filed without examining. |
| **239.** | **(2000) 7 SCC 543**<br>**AIR 2000 SC 3272**<br>Gram Panchayat of<br>Village Naulakha<br>Vs.<br>Ujagar Singh and<br>others | **A]collusive decree-** Not necessary to file seprate suit.<br>**B]**Decision in Injunction is not binding on title. |
| **240.** | **2000 SCC OnLine** | Writ dismissed in limineisnot precedent. |

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| | **All 305**<br>**AIR 2001 ALL 244**<br>Brahma Baksh Singh 'Gopal'<br>Vs.<br>University of Lucknow and other | Cannot operate as Res-Judicata. |
| **241.** | **(2002) 3 SCC 258**<br>**AIR 2002 SC 1012**<br>KondaLakshmanaBapuji<br>Vs.<br>Govt. of A.P. and others | Res- Judicate not applicable after amendment. |
| **242.** | **(1964) 5 SCR 946**<br>**AIR 1964 SC 993**<br>Arjun Singh<br>Vs.<br>Mohindra Kumar and others | **MEANING OF EX – PARTE :-**Such judgment does not operate as Res- Judicata. |
| **243.** | **(1964) 4 SCR 19**<br>**AIR 1964 SC 538**<br>Badat and Co., Bombay<br>Vs. | **A] FOREIGN JUDGMENTS:-**Award made in New York not enforceable in India by way of Suit.<br>**B]PLEADING:-**Pleading on original side of Bombay High Court - To be construed |

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| | East India Trading Co. | strictly - Evasive or vague denial of facts in written statement - Such facts may be taken to have been admitted. |
| **244.** | **(1969) 2 SCC 258**<br>**AIR 1970 SC 42**<br>Raj Kumar Mohan Singh and others<br>Vs.<br>Raj Kumar PashupatiNath Saran Singh and others | **PRIVY COUNCIL DECISION -** Where the Privy Council decisions lay down a rule of succession which is regarded as settled for many years and to depart from it would result in upsetting settled titles, the Supreme Court would not interfere with the decisions. |
| **245.** | **AIR 1970 SC 1525**<br>PremLataAgarwal<br>Vs.<br>Lakshman Prasad Gupta and others | **A]** Simultaneous execution in more places can be allowed in exceptional cases by imposing proper term so as to avoid hardship to judgment debtor. |
| **246.** | **(1974) 2 SCC 660**<br>**AIR 1975 SC 290**<br>Rahim Khan<br>Vs.<br>Khurshid Ahmed and others | **(A) PRECEDENTS - DECISIONS ON CREDIBILITY OF WITNESS - HOW FAR BINDING.**<br>Precedents on legal propositions are useful and binding, but the variety of circumstances and peculiar features of each case cannot be identical with those in another and judgments of Courts on when and why a certain witness has been accepted |

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| | | or rejected can hardly serve as binding decisions. **(Para 20)**<br>**(B)** Duty of High Court in naming all collaborators in corrupt practice the procedure to be followed before naming them in judgment pointed out. |
| **247.** | **(1975)3 SCC 836**<br>**AIR 1975 SC 775**<br>John Martin<br>Vs.<br>The State of W.B | **PRECEDENTS –** Supreme Court decision - Observation made by two out of six Judges in a decision cannot be regarded as laying down the law on the point. |
| **248.** | **(1976) 1 SCC 852**<br>**AIR 1976 SC 844**<br>Ram Jivan<br>Vs.<br>Smt. Phoola (dead) by L. Rs. and others | **DIVISION BENCH RULING – BINDING EITHER IN SUIT OR IN WRIT .**<br>Merely because the previous Division Bench judgment was given in a suit the subsequent Division Bench cannot refuse to follow the same because it was hearing the proceeding in a writ petition. |
| **249.** | **(1982) 1 SCC 4**<br>**AIR 1982 SC 20**<br>Smt. Gangabai<br>Vs.<br>Smt. Chhabubai | **RES JUDICATA - FINDING BY SMALL CAUSE COURT AS TO TITLE.**<br>Res judicata cannot be pleaded as a bar in a subsequent regular civil suit for the determination or enforcement of any right or |

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| | | interest in immovable property. In order to operate as res judicata the finding must be one disposing of a matter directly and substantially in issue in the former suit and the issue should have been heard and finally decided by the Court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding the matter which is directly in issue in the case cannot be made the basis of a plea of res judicata. |
| **250.** | **1987 SCC OnLine Ker 25**<br>**AIR 1987 KERALA 184**<br>Moideenkutty Haji and others<br>Vs.<br>Kunhikoya and others | **INTERPRETATION OF STATUTES:-** If the wording of the Section is capable of an interpretation to fit in with the object and purpose of the legislation, without doing violence to the language, the duty of the Courts is to give effect to the intention of the legislature. A different interpretation will only tend to defeat the purpose of the provision. |
| **251.** | **(1999) 4 SCC 697**<br>**AIR 1999 SC 1958**<br>N. S. Giri<br>Vs.<br>The Corporation of | **INDUSTRIAL DISPUTES ACT (14 OF 1947), S.10A-** Award of Industrial Tribunal Inconsistent with statutory provisions governing service conditions or law laid down by Supreme Court cannot be enforced. |

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| | City of Mangalore and others | |
| **252.** | **(2000) 2 SCC 552 AIR 2000 SC 622** Maharashtra VikrikarKaramchariSangathan Vs. State of Maharashtra and another | **CONSTRUCTIVE RES JUDICATA - CERTIFICATE BY GOVT:-**declaring promotions of promotees to be temporary, Not produced in earlier proceedings before Tribunal - Cannot be allowed in proceedings before Supreme Court, as it is barred under the principles of constructive res judicata. |
| **253.** | **(2000) 6 SCC 224 AIR 2000 SC 1650** Lily Thomas, etc. etc Vs. Union of India and others | **DEFINATION OF REVIEW -** Only for correction of mistake - Not to substitute views. |
| **254.** | **(2000) 6 SCC 301 AIR 2000 SC 2301** Madhvi Amma Bhawani Amma and others Vs. Kunjikutty Pillai Meenakshi Pillai and others | **(A) RES JUDICATA - DECISION ON AN ISSUE - OPERATES AS RES JUDICATA - ONLY IF THAT ISSUE WAS RAISED AND DECIDED** So if no such issue is raised and if on any other issue, if incidentally any finding is recorded it would not come within the periphery of the principle of res judicata.<br>**(B)** Decision in proceedings for grant of |

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| | | succession certificate - Not being final adjudication of rights of parties - Cannot operate as res judicata in subsequent proceedings |
| **255.** | **(2000) 6 SCC 614**<br>**AIR 2000 SC 2907**<br>Collector of Central Excise, Indore<br>Vs.<br>M/s. Hindustan Lever Ltd., Chhindwara, etc. etc | **(A)** Appeal allowed by Tribunal and matter remanded back to original authority - No appeal against order of remand - Matter again decided against claimant by original authority - Parties reapproaching the Tribunal allowed by Tribunal - Appeal to Supreme Court - Supreme Court not bound by finding of Tribunal in its earlier order for remand.<br>**(B)** Authorities while deciding claim not going into impact of various clauses of agreement as to the trade practice - It raises question of fact - Matter remanded back to original authority for decision afresh. (Para 14) |

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| **256.** | **(2001) 5 SCC 265**<br>**AIR 2001 SC 2134**<br>M/s. International Woollen Mills<br>Vs.<br>M/s. Standard Wool (U.K.) Ltd | **(A) FOREIGN JUDGMENT -** Ex parte decree - Cannot be presumed to be on merits by aid of S. 114 illustration (e) of Evidence Act.<br><br>**(B) RES JUDICATA - DECISION FINALLY DECIDING A RIGHT OR CLAIM BETWEEN PARTIES IS NECESSARY** - Application to dismiss execution application filed on ground of non-compliance with Ss. 38-40 of Code - second application raising defence of non-compliance of S. 13(b) - Both applications were heard and decided together - Second application cannot be said to be barred by principles of res judicata or constructive res judicata - Case not covered by Expln. iv to S. 11. |
| **257.** | **2001 SCC OnLine P&H 339**<br>**AIR 2002 P&H 5**<br>District Red Cross Society<br>Vs.<br>Joginder Pal alias | **RES JUDICATA - APPLICATION FOR GRANT OF SUCCESSION CERTIFICATE** - Findings recorded therein regarding will set up by applicant - Cannot operate as res judicata in susbsequent suit by same applicant praying for mandatory injunction against defendant |

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| | JoginderNath and another | praying for mandate to defendant to supply him locker number obtained by defendant on basis of alleged will giving him right to operate locker - Fact that issues were raised and evidence was recorded in succession certificate proceedings not relevant |
| **258.** | **(2004) 5 SCC 155**<br>**AIR 2004 SC 3894**<br>State of Gujarat and others<br>Vs.<br>Akhil Gujarat Pravasi V. S. Mahamandal and others | **PRECEDENTS -** Observation made during course of reasoning in Judgment - Should not be read divorced from context in which they were used. |
| **259.** | **(2003) 12 SCC 306**<br>**AIR 2004 SC 132**<br>Parasa Raja ManikyalaRao and another<br>Vs.<br>State of A.P | Dealing with accusations, guilt or otherwise of accused on basis of another decided case – is not permissible |
| **260.** | **(2006) 1 SCC 212**<br>**AIR 2006 SC 543**<br>SatrucharlaVijaya Rama Raju | **ELECTION PETITION -** Finding given therein - Does not operate as res judicata in subsequent election petition - Every election furnishes a fresh cause of action - Judgment |

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| | Vs.<br>Nimmaka Jaya Raju and Ors. | in election petition -Not judgment in rem. |
| **261.** | **1993 (3) SCALE 548**<br>**1993 Supp (4)SCC 595**<br>S.Nagaraj<br>Vs.<br>State Of Karnataka | If an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. |
| **262.** | **(2002) 7 SCC 222**<br>**AIR 2002 SC 3088**<br>Delhi Admn.<br>Vs.<br>ManoharLal | **A) COMMUTATION OF SENTENCE RIGHT TO COMMUTE SENTENCE UNDER S. 433 VESTS IN GOVERNMENT -** High Court can only direct consideration of the case of premature release by Government - Order of High Court issuing mandatory direction by itself deciding to commute sentence and leaving no discretion or liberty with Government - Not proper. |

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| | | **(B) PRECEDENTS -** Supreme Court giving directions regarding commutation of sentence in specific circumstances of case before it - High Court, exercising statutory powers under Criminal Laws could not assume to itself the powers and jurisdiction to do the same thing. |
| **263.** | **(2002) 8 SCC 31**<br>**AIR 2002 SC 3456**<br>Nutan Kumar<br>Vs.<br>Addl. District Judge | **BINDING PRECEDENTS -** Decisions whether conflicting - Full Bench of High Court cannot say that authority is perhaps in conflict with other decision without looking into whether there really is any conflict of decisions of binding authority of Supreme Court. |
| **264.** | **(2002)2 SCC 420**<br>**AIR 2002 SC 681**<br>Suganthi Suresh Kumar<br>Vs<br>Jagdeeshan | **HIGH COURTS CANNOT OVERRULE THE SUPREME COURT'S DECISION:-** It is impermissible for the High Court to overrule the decision of the Supreme Court on the ground that the Supreme Court laid down the legal position without considering any other point it is not only a matter of discipline for the High Court's in India it is mandate of the Constitution as provided in Article 141 that the Law declared by the Supreme Court shall be binding on all |

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| | | Courts within the territory of India. |
| **265.** | **1992 SCC OnLine Bom 368**<br>**1993 Cr.L.J.816**<br>State of Maharashtra Through Shri S.S. Nirkhe, District & Sessions Judge.,Wardha, Complainant<br>**V**s.<br>R.A.Khan,ChiefJ.D.L. Magistrate Gadchiroli | A Judge passing order by ignoring earlier view taken by the High Court is guilty of Contempt Of Court. |
| **266.** | **2006 SCC OnLine Del 1302**<br>**2006Cri.L.J.2626**<br>Sh. H. Syama Sundara<br>Vs.<br>Union of India (UOI) a<br>Ors. | Prejudicing the public in favor of or against a party in a pending case by writing an article in the Press is contempt. The reason is that such articles tend to prejudice the mind of the court, to deter the witness from giving evidence, to induce a party to abandon his defence and to possibly affect the decision of the court, though as a rule courts are not affected. Such writings tend to prejudice the public opinion by incubating the public with definite opinion about the matter. The result may be that |

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| | | public confidence in court might be lost if the result was otherwise than the opinion formed. |
| **267.** | **2015 SCC OnLine Ori. 81**<br>**2015 ( I ) OLR 662**<br>Preeti Bhatia<br>Vs.<br>Republic of India | **THE ILLEGAL/UNWARRANTED ACTION MUST BE CORRECTED. EVEN IF IT IS NOT CORRECTED IT CANNOT BE ALLOWED TO BE REPEATED** - wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition...Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law". |
| **268.** | **2007 SCC OnLine Del 5**<br>**2007 Cri.L.J.3114**<br>Court On Its Own Motion<br>Vs.<br>Rajiv Dawar | **CONTEMPT BY ADVOCATE:-**<br>Advocate having put in more than 25 years of practice - Addl. Sessions Judge directed that a reference to the High Court be prepared against Advocate and a copy of the complaint received from the accused be also sent to the Chairman, Bar Council of Delhi – Held, for maintaining the stream of justice |

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| | | unsullied, it is essential that aberration committed by those who are integral part of the administration of justice are sternly and firmly dealt with. Magnanimity and latitude should be available to those who are not knowledgeable or conversant with the system or commit the offence unwittingly or innocently - has committed criminal contempt and is liable to be punished for the same. We impose a fine of Rs. 2000/- |
| **269.** | **MANU/UP/0667/2018**<br>State of U.P.<br>Vs.<br>Sant Pal | **FRAUD ON COURT :-**The manner in which paragraph 12 is worded coupled with the failure to bring the subsequent FIR on record clearly points to a deliberate attempt to suppress material facts which would have, in all likelihood, had an immediate impact and bearing on the issue of grant of bail. The Court finds that in the facts of the present case, the discretion of the Court was secured on the basis of an incomplete disclosure of facts and clearly amounts to a suppression of material facts. The continuance of the order according liberty to the opposite party would, therefore, clearly result in a miscarriage of justice. A person |

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| | | who is alleged, prima facie, to have made a flagrant and undisguised attempt to intimidate a witness cannot be accorded the facility of bail.<br>**(Para 19)** |
| **270.** | **2018(1) RCR (Civil) 884**<br>**MANU/MH/0285/2018**<br>Shital Krushna dhage<br>Vs.<br>Krushna Dagdu Dhage | **AUTHENTICATED COPY IS SUFFICIENT:-**Once the order is uploaded on the official Website, It is a reliable document to be consider by the Court before whom it is cited. |
| **271.** | **(2018) 12 SCC 30**<br>**2018 ALLMR (Cri.)1368**<br>Madan Mohan<br>Vs.<br>State of Rajasthan andOrs. | No superior Court In hierarchical jurisdiction can issue direction /mandamus to any sub-ordinate Court commanding them to pass a perticular order on any application filed by any party. The judicial independence of every Court in passing the orders in cases in well settled. It cannot be interfered with by any court including superior Court. |
| **272.** | **2008 SCCOnlineBom** | **NO CALLING ON PHONE BY POLICE FORINVESTIGATION:-** Police |

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| | **1648**<br>Nisar Ahmad Faisal Shaikh<br>Vs.<br>The State Of Maharashtra | cannot call a person on phone. Calling on phone and asking the person to sit in police station is offence of unlawful confinement. |
| **273.** | **2005 ALL MR (Cri.) 2392**<br>Rameshwar war laxminarayan kahale<br>Vs.<br>Gajanan S/O Samadhan Pachpor & Ors. | Public Prosecutor cannot appear for a public servant who is accused in the case – Cost of Rs. 15,000/- imposed. |
| **274.** | **2011 SCC OnLine Del 803**<br>**178 (2011) DLT 462**<br>Mst. Kiran Chhabra and Anr.<br>Vs.<br>Mr.Pawan Kumar Jain and Ors. | Written arguments/submissions – what it must contain |
| **275.** | **(2016) 9 SCC 473**<br>**AIR 2016 SC 4136** | Copy of F.I.R should be provided to accused on payment of fees. F.I.R should be |

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| | Youth Bar Association of India Vs. Union of India (UOI) | uploaded on website. |
| **276.** | **1988 MAD LW(CRL.)503** Selvanathan alias Raghavan Vs. State by Inspector of Police, G-5 Police Station, Madras | Copy of F.I.R. should be provided to accused at the time of arrest. Section 50 of Cr.P.C is mandatory. If copy is not provided, the Court cannot grant Police remand. |
| **277.** | **(2012) 10 SCC 517 2013 Cri.L.J. 144** Manharibhai Muljibhai Kakadia &Ors. Vs. Shaileshbhai Mohanbhai Patel & Ors. | Judge cannot consider as to what would be the defence of the accused before issuing process against the accused. |
| **278.** | **2009 SCC OnLine Gau 107 2010 Cr. L.J. 56** | **CRIMINAL P.C. (2 OF 1974), S.160, S.91 – SUMMONS - PERSONAL APPEARANCE AND ATTENDANCE** |

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| | M/s. Pusma Innvestment Pvt.Ltd. &Ors.<br>Vs.<br>State of Meghalaya and Ors. | **OF WITNESSES** - Enforcement of - Petitioners were residents of Delhi and said to be acquainted with facts of case - Were summoned for their personal attendance by police officer at Shillong - Since police officer making investigation can enforce attendance of persons u/S.160 only if witness resides within limits of his or adjoining police station - Hence, notices issued seeking personal attendance were liable to be quashed. **(Para 5)** |
| **279.** | **2009 SCC OnLine Ori. 317**<br>**2010 Cri. L. J. 60**<br>Rabindranath Satpathy<br>Vs.<br>Hina Sethy | Cri. P.C. Sec. 197 – Abuse of Power by police – Sanction for prosecution – Complainant went to lodge F.I.R. at Police Station – Officer in charge of Police station did not register F.I.R. but tore it and abused complainant – Held – Refusal to receive complaint and toering it can not be considered as official duty – Rather it is a serious lapse on the on his part – The police officer by refusing to record the information has not only omitted or neglected to perform his official duty but also thereby facilitated an offender to escape from the criminal liability – Such police officer cannot be |

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| | | protected – They has to face the prosecution – No sanction is required for prosecution of such Police Officers. |
| **280.** | **1990 CRI.C.J. 2257**<br>Jugal Kishore<br>Vs.<br>State Of M.P. | A] One sided Investigation – Police is bound to investigate the plea of accused also – A dishonest, unfair or one sided investigation violate the constitutional guarantee and justify interference by Court of Law – Such proceeding has be quashed<br>B]To put an accused person to long lasting trial on an incomplete and one sided investigation and promise to consider full facts only when they are brought before the court at defence stage amounts to ignoring default of the I.O. and clothe him with the authority to harass accused. It may even amount to judicial sanction of substitution of rule of law by the Police Raj, and subversion of our constitutional ideals. These consequences deserve notice of the Session Judge while interpreting his own authority and jurisdiction in the matter. |
| **281.** | **2011 (1) SCC (Cri.) 336, 2010 TLPRE 595** | A] Cr. P.C. – S. 482 – Tainted investigation – Quashing of investigation which is tainted and baised, suffers from irregualtities and |

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| | Babubhai<br>Vs.<br>State of Gujrat | conducted in malafide exercise of power by police causing serios prejudice and harassment to any party then such investigation is vitiated and any other order passed by investigating agency on basis of such vititated investigation is laible to be quashed – charge sheet is quashed.<br><br>B] Article 20, 21 of the constitution – Fair investigation – Investigation must be fiar, transparent and judicious – Police cannot be permitted to harass any party on basis of tainted investigation – Such tainted investigation has to be quashed- fresh investigation may be ordered from other investigation agencies. |
| **282.** | **1999 SCC (Cri.) 1150**<br>**AIR 2000 SC 3632**<br>G.L .Gupta,Advocate<br>Vs.<br>R.K.Sharma | **Contempt of Courts Act, 1971 – S. 12** – Accused was Hnadcuffed and produced before Magistrate after being paraded from station to District Court – Keeping in view of fact that charges u/s 220, IPC have already been framed against police personal and departmental action also taken against guilty police personal – No need to take further action. |

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| **283.** | **2004 SCC OnLine 695**<br>**2005 CRI. L. J. 765**<br>Kapol Co.Op.Bank Ltd.<br>Vs.<br>State of Maharashtra | A] Contempt of Court by police Officer – In a petition to transfer investigation the respondent I.O. Shri Mandar Dharmadhikari – Asstt-P.O., Cuff Parade. Police Station Mumbai, made a false statement with ulterior motive that the petition will be dismissed – It is an act of interference with the administration of justice – the apology tendered by I.O. at belated stage is nothing but mere realization of the contemnor that his adventure has turned into a misadventure as he failed in misleading the Court to get the petition dismissed – I.O. is guilty of committing Criminal Contempt – Cost of Rs. 50,000/- imposed imprisonment till rising of court ordered.<br>B] Contempt of Courts Act (1971), SS. 2 (c) (ii), 13 – Criminal contempt – Making a false statement in judicial proceeding or filing false affidavit before Court or the other statements which result in misleading the court or disclose even an attempt to deceive the court, could result in mischievous consequence to the administration of justice and warrant |

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| | | criminal contempt.<br>C] Abuse of process of court – Abusing the court's process may mean different types of acts – Most serious example is an act which is intended to deceive the Court, for example by deliberate suppression of facts or by the presentation of falsehood is as much abuse of Court's process as the act of bringing frivolous and vexatious and oppresive proceedings.<br>D] The concept of criminal contempt was well explained in the matter of Hastings Mill Limited v. Hira Singh reported in 1978 Cri LJ 560. Shri Justice A. K. Sen, speaking for the Division Bench of the Calcutta High Court. |
| **284.** | **(2011) 6 SCC 1**<br>**2011 CRI. L. J. 2908**<br>Satyavir Singh Rathi<br>Vs.<br>State Thr.C.B.I. | (A) **Delhi Police Act (1978), S.140 - Offence by Police Officer -** Bar to prosecution lodged after three months - Shelter of period of three months can be taken only if act done by police officer is under colour of duty - Case of murder by police officials - Will not fall within expression 'colour of duty' occurring in S. 140. (Paras 35, 36, 42) |

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| | | (B) Penal Code (45 of 1860), S.300, Exception 3 - MURDER - POLICE OFFICERS - Death by police officials - Benefit of exception 3 to S.300 - Obligation to prove an exception is on preponderance of probabilities but it nevertheless lies on defence - Accused police party had fired without provocation at car killing two innocent persons and injuring one - Incident occurred on account of mistaken identity of deceased as wanted criminal by police party - Defence of police party that deceased had first resorted to firing - Found unacceptable as it was proved, that 7.65 mm pistol had been surreptitiously placed in car to create defence - Though police party was acquitted to plant pistol in car on grounds that it was not possible to pinpoint culprit who had done so - This can, by no stretch of imagination, be taken to mean that pistol had been planted in car has been disbelieved by High Court - Accused police party not entitled to benefit of exception 3 to S. 300. |
| **285.** | **(1971) 3 SCC 945 , 1972 SCC (Cri.)193** | India Penal code sec. 341, 342 – Conviction of Police Officer for illegally Summoning a |

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| | Raja Ram<br>Vs<br>State of Haryana | accused/witnesses – Held –The Police Officer cannot Summon a woman or a male under fifteen years of age – Such persons must be asked to attend interrogation at the place where they reside – This is mandatory provision of section 160 of Cr. P.C. – The Police Officer by calling the witnesses at police station kept them under wrongful restraint - The Police Officer is guilty under section 341 of I.P.C. – His conviction is proper. |
| **286.** | **(2009) 3 SCC 398**<br>**2009 Cri. L. J. 1318**<br>Choudhury Parveen Sultana<br>Vs.<br>State of W.B. and Anr. | **CRIMINAL P.C. (2 OF 1974), S.197 - SANCTION FOR PROSECUTION –** Abuse of power by police during investigation - No sanction is required – Held -- the Deputy Suprintendent of police was alleged to have - In respect of prosecution for excesses or misuse of authority, no protection can be demanded by the public servant concerned - Where the Deputy Superintendent of Police was alleged to have committed acts of extortion and criminal intimidation while conducting investigation of case the acts cannot be said to be part of the duties of the Investigating |

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| | | Officer while investigating an offence entitling him to get protection of S. 197- No sanction is required. |
| **287.** | **2004 ALL MR (Cri.) 65**<br>**2003 SCC OnLine Bom 313**<br>G.B.Nayyar<br>Vs.<br>Ashok Satyadev Mishra & State Of Maharashtra | I.P.C. 499, 500 – False entries by Police officer in the enquiry report – Complainant filed complaint at Police station – The Police investigatin Officer send 'B' summary report stating that the complaint was mischivious, vexatious and flase – The said 'B' summary report was challenged before High Court- High Court held that the complaint was not flase and 'B' summary report prepared by the I.O. was not proper – Thereafter the complainant filed complaint u.s. 500 of I.P.C. – The trial Court issued the process against the accused police officer – The order of issue process is challenged on grund of exception embodied in S. 499 – Defence of action done in good faith was taken – Held – No case of exceptions is made out to grant any relief to accused police officer – Proceeding against him not to be quashed. |
| **288.** | **(1996) 7 SCC 397**<br>**AIR 1996 SC 2326** | **A ]**I.P.C. 193 – Prosecution of S.P. and other Police personnel – I.O. during |

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| | Afzal<br>Vs.<br>State of Haryana | enquiry illegally detained a minor boy and warned that he could be released only when his father surrender before Police - Petition filed before Supreme Court – Report is called form S.P. – False and misleading report submitted by S.P. – Supreme Court being doubtful of report called the report from C.B.I. – It proved the malafides of S.P. – S.P. is guilty u.s. 193 of I.P.C. |
| **289.** | **1996 9 SCC 74**<br>**AIR 1996 SC 1925**<br>Secretary, Halakandi Bar Association<br>Vs.<br>State Of Assam | Prosecution of Police Officer (S.P.) for filing false affidavit/ enquiry report before Court – A undertrial prisoner was brutally beaten by Police who died up – Bar Association send letter to Supreme Court – Treated as writ – Court called report from S.P. – S.P. A.K. Sinha Kasshyap filed a false report to save guilty police officer – Court not satisfied with reply called report from C.B.I. – C.B.I. pointed out the disdendful role played by S.P. said to be against all tenents of law and morality – The report and affidavit submitted by S.P. ound to be false/ fabricated – Supreme *Court* issued a Show cause notice to S.P – In reply to the notice S.P. again try to mislead to |

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| | | court and try to justified his illegal acts – S.P. is guilty of ontempt of Court sentenced to imprisonment for three months. |
| **290.** | **2005 All MR(Cri.) 1638**<br>Baliram Daulatrao Shendre<br>Vs.<br>State of Maharashtra | Constitution of India – Art. 21 – Torture and harassment by police officer – Compensation of Rs. 2 Lacs - A boy was summoned by Police – The investigation was going to be done without registering of offence – The boy did not return to home – National Human Rights Commission called enquiry from S.P. of Amravati Gramin – S.P. filed enquiry report and try to defend guilty police officers – The commission did not find police version convincing – Commission ordered a sopot enquiry on 5/03/1998 – During enquiry commission recorded finding that without registering the offence at the police station the boy was called at the police station which is illegal and there was a manipulation in the entries recorded in the station diary – High Court ordered investigation by C.I.D. by officer not below the rank of S.P. – Held that – Though the boy was picked up by police no ground of arrest were informed to him and |

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| | | instead doubtful entries have been made in the stationdiary to show that boy absconded from the police station. |
| **291.** | **2006SCC OnLine Bom 15, 2006 Cri.L.J.2202,**<br>Prabatbai Sakharam Taram<br>Vs.<br>State of Maharashtra | A] Constitution of India, Arts 21, 226<br>– Police atrocities – A triabal girl of 13 years age falsely implicated by police in Criminal case by alleging that she is having links with naxalites – Court acquitted her for want of evidence – Detention found to be illegal – Victim entitled to compensation – Rs. 5 lakhs awarded as compensation.<br>B]**Police Attrocities –** There is lack of accountability of the Police force is also major factor in custodial violence – The Police are policed mostly by themselves and therefore the police personnel committing excesses on citizen are not going to be punished – They succeed to manage in getting away slot free – In present case the illegal detention of the minor girl cannot be said to have been done without facit consent of senior police officials – The state was expected to conduct fair enquiry and made offer before the court their willingness to punish all those officer who were connected |

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| | | with the investigation and prosecution – It is unfortunate that instead doing so the state tried to cover their misdeeds therefore they are bound to compensate petitioner.<br>C] Police Torture – Delay in filing petition – Held – Victim approaching Court after some assistance from organization (NGO) – State can not oppose the petition on ground of delay and latches – state is supposed to protect fundamental and human rights of a citizen.<br>Further we have no hesitation to add that the fact brought on record does go to show that the petitioner had no access to justice though she suffered flagrant violation of her fundamental rights under Articles 21 and 22 of the constitution of India and human rights till Non-governmental Organisation intervened in her matter and look her issue not only with the State Government but also sought assistance of the National and States Human Rights commissions. |
| **292.** | **2006 ALL MR (Cri) 1241**<br>**MANU/MH/1287/20** | **VIOLATION OF HUMAN RIGHTS -** Petition against handcuffing and parading the accused in public by Police - Petition |

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| | **06**<br>Mrs. Karishma Kamlesh Naik & Ors.<br>Vs.<br>Government of Goa & Ors. | registered as Public Interest Litigation - It would be improper after a lapse of almost three years to shut the doors of the Court and direct that the petitioners should seek reliefs elsewhere or approach the Human Rights Commission – Compensation of Rs. 15,000/- is granted to each accused. **(Para 15)** |
| **293.** | **2001 SCC OnLine Mad 213**<br>**2001 Cri.L.J. 4092**<br>K.V.Rajendra<br>Vs.<br>Inspector of Police | **A]PROTECTION OF HUMAN RIGHTS –** Abuse of power by Govt. officers, Police Illegal Confinement and brutal torture by Revenue officer – Victim lodge report to police – Police conducted biased enquiry – The accused R.D.O. was allowed to continue to work as RDO in the very same jurisdiction during the enquiry period is highly illegal – Tahsildar/Trainee Magistrate and Police constable and sub-Inspector of Police helped the accused by exceeding their limit – When the statutory authority, namely Police failed to perform their duty under section 154 of Cri. P.C., it is the bounden duty of the High Court to invoke the power u.s. 482 of Cr. P.c. to give suitable direction to register FIR and |

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| | | investigate – The judiciary which is the sentinel of the great liberty of citizens would certainly intervene in the cases where the human dignity is wounded in order to uphold human values and to protect the rights guaranteed under the constitution – Dy. S.P. , C.I.D. was directed to register FIR and take suitable action against the concerned officials.<br>B]No one shall be subjected to<br>torture or to cruel, inhuman or degrading treatment or punishment is a part of Universal Declaration of Human Rights.<br>C]The victim was beaten brutally by<br>the RDO and Policemen. He was produced before trainee Magistrate and remand order was obtained even without recording his complaint of torture – the primary report called from the CID support the allegations of petitioner.<br>D] Human Rights commission – The petitioner sent a petition to the Commission which was referred to the collector – Collector sent a report to the commission to drop the action as allegations were not |

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| | | proved so commission closed the case and directed the victim that if aggrieved he can approach to any other courts for vindication of his rights – dropping of enquiry by Human Rights Commission is a no obstacle for the proposed registration of FIR against guilty officers – The judiciary cannot keep quiet by shutting its eyes to the illegalities committed by govt. officials. |
| **294.** | **2006 (2) B. Cr. C. 489,**<br>**2006 (5) Mh L.J. 243**<br>Rajesh S/O Suryabhan Nayak<br>Vs.<br>The State of Maharashtra ,Thruough Ministry of Homes | (A) Cr. P.C. 1973, Sections 106 to 110 – Power to direct security for peace and good behavior – It is of nature being direct interference with liberty of individual – hence order must reflect application of judicial mind by magistrate – The order must be a reasoned and speaking order.<br>(B) Cr. P.C. 1973 , Section 116 (3) – Execution of bond – Amount of bond should not be excessive – The bond should be of such amount for which there is fair probability of being able to find security – The bond shall not be excessive.<br>(C) 'Cross – Surety' – The Magistrate have no right to ask for surety from caste, creed and religion. |

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| | | (D) Cr. P.C. 1973, Section 106 to 116 – constitution of India, Article 22 (I) Enquiry in to chapter cases – Discouraging a person to engage lawyer of his own choice violates Article 22 (I) of constitution – It not only obstructs the course of justice but also pollutes the same and is contempt of court.<br>(E) Depriving and discouraging a person to engage lawyer – if special executive Magistrate and its staff finds inconvenience about presence of lawyer with a person it means that they wants to extort money. |
| **295.** | **1999 SCC OnLine Ori.169**<br>**2000 Cr. L.J. 1888**<br>Abdul Nazim<br>Vs.<br>State of Orrissa | Cr. P.c. S. 110 – Police has no power to arrest a person against whom proceeding u.s. 110 is initiated – The Magistrate if thinks proper can issue a production warrant – Similarly the action of the Magistrate in calling upon the petitioner to execute a bond even though the enquiry had not commenced is without jurisdiction. |
| **296.** | **2001 SCC OnLine Bom 571**<br>**2001 ALLMR (Cri.) 2079,** | (A) Cr. P.C. Section 106 to 110 – Mandatory procedure must be followed – Passing of final order without show cause notice is illegal proceeding quashed. |

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| | Surendra Ramchandra<br>Vs.<br>State Of Maharahtra<br>Through Its Secretary dept of<br>Home,Mantralaya | (B) Petitioner was tortured in police custody causing him serious injury – He was detained illegally without following the procedures provided under sections III and 116 – Compensation of Rs. 20,000 granted. |
| **297.** | **2009 SCC OnLine Bom 813**<br>**2009 (5) Mh.L.J. 723**<br>Pravin Vijaykumar Taware<br>Vs.<br>Special Executive Magistrate | Cr. P.C. – Section 111, 117 – Magistrate has no power to arrest and detain a person – His power is to require to show cause and if necessary start enquiry – Powers are often misused by untrained Magistrates – Directions issued for safety of citizens – Sufficient time shall be given to arrange for surety – If any person is sent to Jail then the Executive Magistrate shall sent a copy of the order to the Principal DistrIct Judge, Who shall go through the order and if finds case of revision shall intervene SUO-MOTU u.s. 397 of Cr. P.C. – The copy of order must also be sent to superior officers also. |
| **298.** | **1999 SCC OnLine Bom 209**<br>**1999 Cri. L. J. 2676**<br>Shyam Dattatray | **(A)**Criminal P.C. (2 of 1974), S.110, S.41, S.482 - Chapter proceedings - Quashing of - Petitioner arrested and chapter proceedings initiated against him on basis of pendency of |

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| | Beturkar<br>Vs<br>Special Executive Magistrate,Kalyan& Ors. | criminal cases and statement of witnesses etc. - Said statement of witnesses recorded three months prior to arrest - No case of emergency - Arrest of petitioner and initiation of chapter proceedings against him - Is illegal. (Paras 29, 31, 32)<br><br>**(B)**Constitution of India, Art.21, Art.226 - DETENTION - Compensation - Illegal detention - Arrest of petitioner and chapter proceedings initiated against him found illegal - Further petitioner detained for non furnishing interim bond - Petitioner entitled to compensation for his arrest – Compensation of Rs. 4,000/- granted. |
| **299.** | **2017 SCC OnLine om 164**<br>**2017 (3) Mh.L.J. 644**<br>Shivajirao Bhavanrao Patil & Anr.<br>Vs.<br>Shikshan Prasarak Mandal Malshiras & Ors. | Order Obtain By Playing Fraud Cannot be Sustained in law. |

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| **300.** | (**2012)11 SCC 574**<br>**(2012) SCC OnLine SC 456**<br>Badami<br>Vs.<br>Bhali | **FRAUD ON COURT –** Parties must come before Court with clean hands – Person filing suit based on falsehood and concealment of vital documents to gain advantage, guilty of playing fraud on Court – Equity.<br>**FRAUD ON COURT –** Effect – Judgment and decree obtained by playing fraud would be a nullity – Consent decree obtained by fraud – Hence such decree as also subsequent Judgments and decrees passed on claim of right, title, interest and possession based on decree which was vitiated by fraud liable to be set aside. |
| **301.** | **(2006) 7 SCC 416**<br>**AIR 2006 SC 3028**<br>Hamza Haji<br>Vs.<br>State Of Kerala & Anr. | **FRAUD ON COURT :-**Decision obtained by – Effect – Such decision liable to be set aside – Basic principle is that party who secured a decision by fraud cannot be allowed to enjoy its fruits.<br>Practice and Procedure – Fraud on Court – Meaning – Obtaining relief from Court by deliberately suppressing a fact which was fundamental to entitlement of relief sought and founding the claim on the basis of a non |

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| | | – existent fact, amount to practicing fraud on Court – Such fraud vitiates the decision/order of the Court.<br><br>When a decision is vitiated by fraud, proper course would be to approach the Court which had rendered the decision for redressal. |
| **302.** | **2007 SCC OnLine Bom 457**<br>**2007 (5) Mh.L.J.297**<br>Maharashtra Housing And Area Development Authority and Anr.<br>Vs.<br>Mahesh Jaggumal Sacchani and Ors. | **Fraud on Court :**Impugned judgment and decree obtained by playing fraud on the Court.Fraud and collusion committed at the instances of the plaintiffs for getting unfair advantage and gain impermissible in law and in violation of rule of law.<br><br>There is a right an obligation in the superior Court to set aside the orders obtained by fraud and not to allow perpetuation of benefits obtained by fraud. |
| **303.** | **(2012) 8 SCC 1**<br>**2012 SCC OnLine SC 578**<br>Dr. Mehmood Nayyar Azam<br>Vs<br>State of Chattisgarh | **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 |

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| | and Ors. | |
| **304.** | **(2013) 10SCC 591**<br>**2013 SCC OnLine SC 809**<br>Umesh Kumar<br>Vs.<br>State of Andhra Pradesh | Allegations against any person if found to be false or made forging some one else signature may affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, scandal and defamation are injurious to reputation. Reputation has been defined in dictionary as "to have a good name; the credit, honor, or character which is derived from a favourable public opinion or esteem and character by report". Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. International Covenant on Civil and Political Rights 1966 recognises the right to have opinions and the right of freedom of expression under Article 19 is |

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| | | subject to the right of reputation of others. Reputation is "not only a salt of life but the purest treasure and the most precious perfume of life." |
| **305.** | **(2011) 2 SCC 258**<br>**2011 (1) SCALE 149**<br>Automatic Tyre Manufacturers Association<br>Vs.<br>Designated Authority &Ors. | written arguments are no substitute for oral hearing. Giving a personal hearing before a final order is passed is essential for ensuring compliance with basic principle of Audi alteram partem. |
| **306.** | **(2015) 4 SCC 515**<br>**AIR 2015 SC 767**<br>B.A.Linga Reddy<br>Vs.<br>Karnataka State Transport Authority & Ors. | **DUTY TO GIVE REASONED ORDER**<br>The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India (supra), is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in |

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| | | brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation. |
| **307.** | **(2017) 13 SCC 606**<br>**AIR 2017 SC 2038**<br>Muncipal Board<br>Vs.<br>Kundanmal | **THE ORDER SHOULD CONTAIN - BRIEF FACTS INVOLVED IN THE CASE-** grounds on which action is impugned, stand of parties, submissions of the parties, legal provisions applicable to the controversy, brief reasons for acceptance/rejection of case – Courts should decide the prayers in writ Petition on merits by reasoned order – impugned order of the writ court set aside – case remanded to writ Court for deciding the writ petition on merits in accordance with law. |
| **308.** | **198 (2013) DLT 555**<br>**MANU/DE/0642/2013**<br>Ved Parkash Kharbanda<br>Vs.<br>Vimal Bindal | **<u>THE SILENCE OR ABSENCE OF CORRESPONDENCE BY ANY PARTY MAY BE INDICATIVE OF HIS DISHONEST INTENTION.</u>**<br>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 |

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| | | society.(Para 10.2) |
| **309.** | **2018 SCC OnLine MP 553**<br>**MANU/MP/0395/2018**<br>Manish Makhija<br>Vs.<br>Central Bank Of India and others | A statute is best interpreted when we know why it was enacted. [See RBI Vs. Peerless General Finance & Investment Company MANU/SC/0073/1987 : (1987) 1 SCC 424)] V.R. Krishna Iyer J. in his unique words held that adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. Such approach would be "to see the skin and miss the soul". Whereas, "the judicial key to construction is the composite perception of Deha and Dehi of the provision." (Board of Mining Examination v. Ramjee MANU/SC/0061/1977 : (1977) 2 SCC 256). This principle was followed by Supreme Court in MANU/SC/1089/2012 : (2013) 3 SCC 489 (Ajay Maken v. Adesh Kumar Gupta v. Another). |
| **310.** | **(2018) 4 SCC 608**<br>**2018 ALL SCR (Cri.) 623** | Exemption From Personal Appearance – Consideration is mandatory. |

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| | Rameshwar Yadav<br>Vs.<br>State Of Bihar | |
| **311.** | **(2015) 4 SCC 609**<br>Sunil Bharti Mittal<br>Vs.<br>Central Bureau of Investigation | Reasoned Order was necessary for taking Cognizance . |
| **312.** | **(2017) 5 SCC 496**<br>**MANU/SCOR/11032/2017**<br>Dnyandeo Shaji naik<br>Vs.<br>Mrs. Pradnya Prakash Khadekar | The Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth. **(Para 13)** |
| **313.** | **MANU/MH/2583/20** | Bombay High Court imposes cost of Rs. |

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| | **18**<br>M/s Vibyog Texotech Ltd.<br>Vs<br>Board of Director,SBI | 50k on petitioner firm for abuse of law by filling multiple proceedings on similar grounds. |
| **314.** | **(2008)3SCC574**<br>**AIR2008SC1528**<br>Som Mittal<br>Vs.<br>Govt.Of Karnataka | Where it has been laid down that, the Court cannot travel beyond observation 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 view on such issue. |
| **315.** | **2008 SCC OnLine All 367**<br>**MANU/UP/1702/2007**<br>The Basti Sugar mills Company Ltd.<br>Vs.<br>State Of Uttar Pradesh | **Minority View:**<br>**A.**The law declared by the Supreme Court shall be binding on all the Courts within the territory of India.<br>**B.** The Minority Judgment of two Judges will also have binding effect upon this Court. |
| **316.** | **2018 SCC OnLine 1636**<br>Satluj Jal Vidyut Nigam | **A.** Fraud and justice never dwell together.Any party committing fraud should not be allowed to eat the fruit of illegality.<br>No judgment of a Court, no order of a |

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| | Vs.<br>Raj Kumar | minister can be allowed to stand if it has been obtained by fraud.<br>**B.** A judgment decree or order obtained by fraud on Court, Tribunal or authority is a nullity.Such order by first Court or final Court has to be treated as nullity by every Court at any time, in appeal ,revision,writ or even in collateral proceedings. Such person can be thrown out at any stage of proceeding.<br>**C.**Re-Litigation is an abuse of process of Court.It is contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. |
| **317.** | **1992 SCC OnLine All 871**<br>**1993 Cri.L.J. 938**<br>Nanha S/o Nabhan Kha<br>Vs.<br>State of U.P | **A] 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. |
| **318.** | **(2016) 14 SCC 275** | No formal application under **Order.7** |

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| | **AIR 2016 SC 3282**<br>R. K. Roja<br>Vs.<br>U. S. Rayudu and Anr. | **Rule.11** is necessary to dismiss the suit if from written stateents it is reflected that the suit is barred by any law. |
| **319.** | **(2001) 4 SCC 667**<br>State Of U.P<br>Vs.<br>Shambhau Nath Singh And Others | **NO ADJOURNMENT CAN BE GRANTED TO DISHONEST LITIGANTS:-**<br>When withness are in Court,they will have to be examined expert for "special reason" which are to be recorded in the order of adjournment. |
| **320.** | **(2011) 9 SCC 678**<br>**(2011) 4 SCC (Civ.) 817**<br>Shiv Cotex<br>Vs.<br>Tigun Auto Plast Private Limited & Anr. | **NO ADJOURNMENT CAN BE GRANTED TO DISHONEST LITIGANTS** |
| **321.** | **2017 SCC OnLine Mad 1653**<br>**2017 ALL MR (Cri.) 298** | **COURT CAN NOT ASK FOR PROPERTY DOCUMENTS FROM SURETY -**Poor man can also be surety. |

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| | Sagayam<br>Vs.<br>State | |
| **322.** | **MANU/UP/0708/2007**<br>Prof. Ramesh Chandra<br>Vs.<br>State of Uttar Pradesh through Secretary | **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.<br>**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.<br>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.<br><br>**C)** In Dr. Binapani Dei (supra), the Hon'ble Apex Court held as under:<br>"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 |

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| | | 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."<br><br>**D) 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.<br><br>**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.<br><br>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 |

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| | | proceedings.<br><br>*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."*<br><br>**F)** In Union of India v. Kuldeep Singh ( AIR 2004 SC 827 ), the Supreme Court again observed:<br><br>*"When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done* |

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| | | *with sound discretion, and according to law. 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."*<br><br>**G)** 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 |

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| | | be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself. |
| **323.** | **(2006) 7 SCC 735**<br>Commissioner of Central Excise,Delhi<br>Vs<br>Allied Air – Conditioner Corpn.(Redg.) | A judgment should be understood in the light of facts of the case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment divorced from the context of the question under consideration and treat it to be complete law decided by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. |
| **324.** | **1958 SCR 595**<br>**AIR 1958 SC 86**<br>State of U.P.<br>Vs<br>Mohammad Nooh | Where a Court or Tribunal, which is called upon to exercise judicial or quasi-judicial functions discards all rules of natural justice and arrives at a decision contrary to all accepted principles of justice then it appears to me that the court can and must interfere." |
| **325.** | **(2008) 14 SCC 171**<br>Assistant Commissioner, Income Tax,Rajkot | The core issue, therefore, is whether non-consideration of a decision of Jurisdictional Court (in this case a decision of the High Court of Gujarat) or of the Supreme Court |

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| | Vs<br>Saurashtra Kutch Stock Exchange Ltd. | can be said to be a "mistake apparent from the record"? In our opinion, both - the Tribunal and the High Court - were right in holding that such a mistake can be said to be a "mistake apparent from the record" which could be rectified under Section 254(2)**(Para 40)** |
| **326.** | **(2006) 7 SCC 416**<br>Hamza Haji<br>Vs.<br>State of Kerala And Another | **A. <u>Fraud On Court</u> –** Decision obtained by fraudsuc hdecision liable to be set aside – Basic principle is that party who secured a decision by fraud cannot be allowed to enjoy its fruit.<br>**B.** When decision is vitiated by fraud ,proper course would be to approach the Court which had rendered the decision for redressal. In this case order/decision had been produced by appellant from a Forest tribunal by fraud and High Court having dismissed the appeal filed under the Act by the state at the admission stage ,the order /decision of the Tribunal had merged with the order/decision of High Court and as such governing decision was that of High Court . |
| **327.** | **(2011 )3SCC 436, MANU/SC/0110/201** | **A.** It is a settled legal proposition that if an order is bad in its inception, it does not get |

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| | **1**<br>State of Orissa and Ors.<br>Vs.<br>Mamata Mohanty | 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.<br>**B.** 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. **(Para 36)** |
| **328.** | **(2013) 6 SCC 602**<br>S.R.Tewari<br>Vs.<br>Union Of India And Another | 1. The Court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from malafide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon |

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| | | the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision**.(Para 14)**<br>2.Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not. |

## CHAPTER 210

SOME LANDMARK JUDGMENTS FROM OUR BOOK LAW OF BAILS

| SR. NO. | LAW POINTS | CITATION |
|---|---|---|
| 1. | **Suresh Kumar Ishwarlal Chordiya Vs. State of Maharashtra**<br>S. 438- Anticipatory Bail – Case disclosing high Landed activities of Police – Accused entitled for anticipatory bail – investigation transferred. | **2006 Mh. L.J. (Cri) (1) (1) 2005 BCR Cri. (2) 428** |
| 2. | **Suresh Sehgal Vs. State of Punjab**<br>S. 438 – Serious allegation against Police- accused entitled for anticipatory Bail. | **2011 Cri. L.J. (NOC) 398 (P&H)** |
| 3. | **Mohd. Amin Memon Vs.State of Chhattisgarh**<br>S. 438 – IPC – 452, 32, 294, 506 – Applicant lodged a complaint against police therefore wants to | **2005 (2) Crimes 299 (HC)** |

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| | arrest the applicant – Fit case anticipatory bail. | |
| **4.** | **Pravinbhai Kashirambhai Patel Vs. State of Gujrat**<br>S. 438 – Anticipatory Bail – Different versions given in different complaint – IPC 395, 397, 467, 468, 471 – grant of bail justified. | **2010 (3) SCC (Cri) 469** |
| **5.** | **M. P. Lohia Vs. State of West Bengal**<br>S. 438 – Anticipatory Bail – Dowry death – when both the parties are relying on documentary evidence bail should be granted. | **2005 Cri. L.J. 1416** |
| **6.** | **Samiullaha Vs. Superintendent, Narcotic Central Bureau**<br>S. 439 – When two views are possible – The view which lean in favour of accused must be favoured. | **2008 (4) B.Cr.C. 716 (SC)** |
| **7.** | **Somesh Das Vs. State of Chhattisgarh** | **2004 Cri. L.J. 680** |

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| | S. 438 – SC & ST Act – If complaint found to be false anticipatory bail cannot be denied – Delay of 14 days – Bail granted. | |
| **8.** | **Mr. Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra**<br>N.B.W. could be issued as last resort – Accused arrested even after NBW is cancelled – compensation of Rs. 2000/- awarded. | **2008 ALL MR (Cri) 1684** |
| **9.** | **Salma Babu Shaikh Vs. State of Maharashtra**<br>Criminal Negligence by Police – IPC 201 B.P. Act 145 (2), (C), (d) – cost of Rs. 10, 000/- imposed- High Court directed criminal prosecution against Police. | **2008 MH.L.J. (Cri) (3) 182** |
| **10.** | **Raja Ram Vs. State of Haryana**<br>Illegal summons – Prosecution under sec. 341, 342, of IPC | **1971 SCC (3) 945** |

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| | against Police Officer – Police cannot summon a woman at Police station U.S. 160 of Cr. P.C. | |
| **11.** | **Nandkumar S. Kale Vs. Bhaurao Chandrabhanji Tidke** Cr. P.C. S. 156 (3) registration of F.I.R. against Police Officer on the direction of Court. | **2007 ALL MR (Cri) 2737** |
| **12.** | **Kodali Purnachandra Rao Vs. Public Prosecutor, Andhra Pradesh** I.P.C. 201, 218, 468 – Prosecution of Police Officer creating false record of investigation to save the accused. | **AIR 1975 SC 1925** |
| **13.** | **G. B. Nayyar Vs. Ashok Satyadev Mishra & State of Maharashtra** I.P.C. 499, 500 – False entry by Police officer in the enquiry report prosecution proper. | **2004 ALL MR (Cri) 65** |
| **14.** | **Arvinder Singh Bagga Vs. State of Uttar Pradesh** Police torture during | **AIR 1995 SC 117** |

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| | investigation – Even mental torture – Compensation granted – Presecution of Police ordered. | |
| **15.** | **Baliram Daulatrao Shendre Vs. State of Maharashtra**<br>Torture, harassment by police officer – boy called without registering offence against him – boy was missing – investigation transferred to – CID – compensation of Rs. 2 Lacs – Illegal arrest by not following guidelines in D. K. Basu's case. | **2005 ALL MR (Cri) 1638** |
| **16.** | **Parbatabai Sakharam Taram Vs. State of Maharashtra**<br>Illegal Detention by Police – Compensation of Rs. 5 Lacs. | **2006 Mh. L.J. (Cri) 2202** |
| **17.** | **Hardeep Singh Anand Vs. State of M.P.**<br>Illegal prosecution U.S. 420 of I.P.C. – compensation of Rs. 70,000 awarded. | **2008 Cri. L.J. 3281** |
| **18.** | **Suresh s/o Pochanna Kurollu Vs. State of Maharashtra**<br>Illegal arrest by police – In Writ | **2010 ALL MR (Cri) 2849** |

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| | petition home secretary did not file reply – compensation of Rs. 1 Lac awarded. | |
| **19.** | **Rajesh s/o Suryabhan Nayak Vs. State of Maharashtra, Through Ministry of Homes, Commissioner of Police and Shri. S. U. Nandanwar, Asst. Commissioner of Police Kotwali Division (Special Magistrate)**<br>Engaging lawyer in 110 proceeding is fundamental right. | **2006 (2) B. cr.C. 489** |
| **20.** | **Surendra, Ramchandra Taori Vs. State of Maharashtra Through Its Secretary Dept of Home, Mantralaya**<br>Torture during chapter proceeding – Compensation of Rs. 20,000/- granted- Sec. 110 final order cannot be passed without passing show cause notice. | **2001 ALL MR (Cri) 2079** |
| **21.** | **Pravin Vijaykumar Taware Vs. Special Executive** | **2009 Mh. L.J. (Cri) (3) 155** |

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| | **Magistrate**<br>Cr. P.C. 110 – Magistrate has no power to arrest and detain a person – Every order must be sent to District Judge who can Suo Motu intervene if case of revision is found out. | |
| **22.** | **Ravikant Patil Vs. Director General of Police**<br>Handcuffing and parading on road – Even if accused is facing murder trial that does not permit the police to violate his rights compensation of Rs. 10,000/- awarded. | **1991 Cri. L.J. 2344** |
| **23.** | **Mrs. Karishma Kamlesh Naik Vs. Government of Goa**<br>Handcuffing and parading by Police – Rs. 25,000/- awarded. | **2006 ALL MR (Cri) 1241** |
| **24.** | **Shri. Deepak Shivaji Karande Vs. Maharashtra State Human Rights Commission & Shri. Nilesh C. Ojha, Human Rights Security Council**<br>Illegal detention under section | **2010 TLMH 510** |

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| | 151 of Cr. P.C. – Enquiry directed by State Human Rights commission is proper. | |
| **25.** | **Krishnamma Vs. Government of Tamil Nadu**<br>Unfair Investigation – False implication of accused in a serious charge of murder – The person murdered was found to be alive – Compensation of Rs. 50,000/- awarded to each accused – state directed to take appropriate action. | **1999 Cri. L.J. 1915** |
| **26.** | **Manik S. Jibhkate Vs. State**<br>Illegal arrest – Custody death- When arrest is not done in accordance with the law and arrest is not recorded then it is wrongful confinement – Prosecution u.s. 201, 203, 299, 193, 218 proved Guidelines regarding arrest. | **2011 ALL MR (Cri) 2472** |
| **27.** | **D. K. Basu Vs. State of West Bengal**<br>Guidelines regarding arrest – | **1997 (1) SCC 416 (D.K. Basu)** |

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| | violation of it amounts to contempt – proof of custodial torture is not normally available. | |
| **28.** | **Har Charan Vs. State of U.P.** Notice – Cri.P.C. 110- printed cyclostyled proforma used by Magistrate is illegal – Proceeding quashed. | **2008 JIC 418** |
| **29.** | **Dattaram Krishna Pedamkar Vs. State of Maharashtra** Cr. P.C. 110, direction to furnish interim bond without recording reason in writing – Proseeding quashed. | **2009 ALL MR (Cri) 2929** |
| **30.** | **Abdul Naim Vs. State of Orissa** Cr. P.C. 110 – Police has no power to arrest a person in proceeding u.s. 110 of Cr. P.C. – illegal. | **2000 Cri. L.J. 1888.** |
| **31.** | **Ahmed Ashrab, Vakil** IPC 466, 192 – Conviction of Advocate for 10 years imprisonment for signing dishonest pleading. | **AIR 1927 ALL 45** |
| **32.** | **A. S. Mohammad Rafi Vs.** | **AIR 2011 SC (Cri) 193** |

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| | **State of Tamilnadu**<br>Resolution by Bar Council to not to accept the Vakalatnama is illegal and declared as null & void. | |
| **33.** | **R. D. Saxena Vs. Balram Prasad Sharma**<br>Change of Advocate – It is choice of the litigant to change advocate of his choice – outstanding fee is no ground to withheld the case papers. | **2000 SCC (7) 264** |
| **34.** | **Dattaraj Nathuji Thaware Vs. State of Maharashtra**<br>Advocate filing petition as PIL to gain private profit- Cost of Rs. 25,0000 is imposed on the advocate. | **2005 ALL MR (5) 270** |
| **35.** | **Ajay Mehta Vs. State of karnataka**<br>In criminal case the advocate can act even without filing vakalatnama. | **2003 Cr. L.J. 350** |
| **36.** | **Union of India & Ors. Vs. Hariram** | **2003 Cri. L.J. 4302** |

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| | Opportunity to be defended by lawyer of his choice is mandatory- Accused conviction set aside. | |
| **37.** | **Nasia Pradhan Vs. State**<br>Opportunity to be defended by lawyer of his choice – Duty of Govt. pleader to bring it to the notice of court. | **1970 Cri.L.J. 396** |
| **38.** | **B. A. Shelar Vs. M. S. Menon & Anr.**<br>Contempt by Advocate – malicious statement given during proceeding – Cost of Rs. 2000/- imposed. | **2002 Cri.L.J. 788** |
| **39.** | Publication of news in pending matter is contempt. | **Page no. 731** |
| **40.** | **Bhim Sen Garg Vs. State of Rajasthan**<br>News published on basis of forged document is offence- FIR registered against Editor u.s. 465, 467, 471, 120-B of IPC. | **2006 Cri. L.J. 3643** |
| **41.** | **Anil Thakeraney Vs. M. Darius Kapadia** | **2003 Mh.L.J. (4) 705** |

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| | Publication of news with attractive heading defamation u.s. 499, 500 of IPC. | |
| **42.** | **B. S. Sambhu Vs. T. S. Krishnaswamy**<br>Sanction to prosecute Judge u,s, 500 of IPC is not necessary when he used words Rowdy, gambler etc. | **AIR 1983 SC 64** |
| **43.** | **Sailajanand Pande Vs. Suresh Chandra Gupta**<br>If Magistrate acts illegally and without jurisdiction in the matter of arrest he is not protected. | **AIR 1969 (Pat) 194** |
| **44.** | **Sukhanandan Lal Vs. King Emperor**<br>IPC 167- Govt. officer issuing false copies is liable to be punished severaly. | **AIR 1926 ALL 719** |
| **45.** | **Ram Phal Vs. State of Haryana**<br>Dismissal of Writ Petition by High Court by passing cryptic order and not examining any og the issue is illegal. | **2009 SCC (Cri) (2) 72** |
| **46.** | Judges Ethics Code | |

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| **47.** | **Municipal Corporation of Delhi Vs. Kaml Devi**<br>Proceeding in Court as a sharp practice to harass the other party – cost of Rs. 50,000/- imposed. | **1996 AIR (SC) 0 1733** |

## CHAPTER 211

WHEN ILLEGALITY IN THE JUDGMENT OF A SUPREME COURT IS CLEAR THEN THE COURT SHOULD NOT SIT ON TECHNICALITY OF ASKING THE PARTY TO FILE RECALL OR REVIEW ETC. COURT SHOULD CORRECT THE MISTAKE IN ANY APPLICATION OR WRIT.

The Seven-Judge Bench in **A.R. Antuley's case (1988) 2 SCC 602,** ruled as under;

> ***"48.*** *According to Shri Jethmalani, the doctrine of per incuriam has no application in the same proceedings. We are unable to accept this contention. We are of the opinion that this Court is not powerless to correct its error w hich has the effect of depriving a citizen of his fundamental rights and more so, the right to life and liberty. It can d o so in* ***exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or Article 32 or under any other provision of the Constitution if the court is satisfied that its directions have resulted in the deprivation of the fundamental rights of a citizen***

***or any legal right of the petitioner. See the observations in Prem Chand Garg v. Excise Commissioner [AIR 1963 SC 996 : 1963 Supp (1) SCR 885] ."***

## CHAPTER 212

JUDGE HAS TO APPLY CORRECT LAW EVEN IF IT IS NOT RAISED BY THE PARTIES.**[Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. 2018 (3) SCC 85]**

# DRAFT APPLICATION UNDER SECTION 340 CR.P.C.

IN THE COURT OF CITY CIVIL COURT AT
BOMBAY
BORIVALI DIVISION AT DINDOSHI
M.A. No. OF 2021
IN
L.C. SUIT NO. 000 OF 2016

ABCD ….Applicant

IN THE MATTER OF
ABCD ….Plaintiff
-Versus-
EFGH …Defendant

**APPLICATION U/SEC. 340 OF CR.P.C. FOR TAKING ACTION AGAINST ACCUSED U/SEC. 191, 192, 193, 196, 199, 200, 201, 209, 409, 467, 471, 474 ETC. OF IPC FOR FILING FALSE AFFIDAVIT WITH ULTERIOR MOTIVE TO GRAB THE PROPERTY BY MISLEADING THIS HON'BLE COURT.**

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| | parties. And then to decide the rival claims of the parties based on the report of the CBI. | |
| **9.** | Case laws on duty of the court to discover truth. | **20** |
| **10.** | No locus of the prospective accused to claim hearing in an application under Sec. 340 of Cr. P.C. before launching of prosecution against him. | **21** |
| **11.** | **Concluding Paragraph** | **22** |
| **12.** | **Prayers** | |

**THE APPLICANT HUMBLY SUBMITS AS UNDER;**

**A.** That by way of this application the applicant seeks indulgence of this Hon'ble Court in the grave offences against the administration of justice committed by the accused.

**1. <u>BRIEF FACTS OF THE CASE</u>**

**1.1.** That the accused had taken the tenement No.xxxxxxxxxxxxxxxxxxxxxxxxx, Andheri from MHADA on monthly tenancy basis by giving various affidavits and undertaking. **(Exhibit – "A-1")**

**1.2.** That, the above said affidavit was false and was made only with an intention to grab the state government property meant for the people belonging to Lower Income Group (LIG).

**1.3** In addition to the above said dishonesty and gross illegalities the accused converted the said premises for commercial purpose and done many unauthorized construction on the said tenement.

**1.4.** The MHADA & M.C.G.M. (B.M.C.) had issued various notices to the accused but he adopted the arrogant attitude and rather managed to avoid the legal action.

**1.5** Thereafter an NGO by name 'DISHA' filed one **PIL No. xx of 2015** in the Hon'ble Bombay High Court and then the officials of MHADA & B.M.C. come in action and started taking action against the persons involved in unauthorized construction and also in misusing the premises for commercial purpose when the said tenament is only meant for residential purpose only.

Copy of order passed by Hon'ble Bombay High Court dated **29th October, 2015** in the said PIL is at **(Exhibit – "A-2")**

**1.6** That, on 6th June 2012 order passed by the Defendant no.1 and on 9th March 2016 the M.C.G.M. issued notice under section 351 to the accused for his two unlawful activities;

i) Unauthorized construction

& ii) Unauthorized commercial use of the premises in breach of the undertaking and condition of allotment of the tenement.

A copy of the said notice dated 4th June 2012 (**Exhibit – "A-3")** and 9th March 2016 issued by the M.C.G.M. is at **(Exhibit – "A-4")**

**1.7** In order to protect his unlawful acts the accused had approached this Hon'ble Court and by way of false & misleading affidavit with concocted, twisted, dishonestly concealed and suppressed facts he succeeded to get the order of status-quo from this Hon'ble Court.

**1.8** In order to prosecute the accused for his above said serious offences against administration of justice, the present application is being filed as per the provisions of section 340 r/w 195 of Cr. P.C.

## 2. GREVIENCE OF ACCUSED IN HIS FRIVOLOUS PLAINT FILED BEFORE THIS HON'BLE COURT:

**2.1.** That, the crux of the grievance of the accused is in para 4 & 5 of the present suit. Said paras reads thus;

**2.2.** In support of his grievance the accused in his plaint had narrated the story saying that no notice was given to him earlier and there is no unauthorized construction on the said tenement and he had committed no wrong.

**2.3**. However, the record shows that the accused have suppressed the fact that he himself had given undertaking on affidavit that he will demolish the unauthorized construction. Secondly he was served with two notices in the year 2002. Thirdly he is not residing on the said tenement and he had unauthorizedly converted it for commercial purposes. Hence his entire claim in

the suit is false and frivolous and he is guilty of filing false claim on affidavit before the court.

**3. <u>FALSITY OF THE AFFIDAVIT FILED BY THE ACCUSED:</u>**

**3.1** That the accused in the title of the plaint and in his affidavit in support of the plaint had made a following false declaration about his residential address that he is residing at said tenement no. 102 at Aram Nagar since 1994. The para 1 of plaint as under;

> *"**PARA NO 1** - **<u>The Plaintiff is a tenant of Defendant No. 2 in respect of structure admeasuring 3250 sq. ft. approximately on, Plot No 102. Aram Nagar - Il</u>** consisting of ground floor of 2100 sq. ft. with cemented roof plus first floor of 1150 sq.ft. consisting of asbestos roof **(the Suit Structure")** which forms part of a larger land bearing City Survey No 1103, collectively admeasuring 160,000 square meters lying, being and situate at Village Versova, Taluka District Mumbai **("said Land")** and within the Registration District of Mumbai and within the local limits of Municipal Corporation of Greater Bombay comprising of Vibhag - I and Vibhag - II known as **(Aram Nagar Colony)**. **<u>The Plaintiff is residing at the Suit Structure on the said Land since 1994.</u>***

***PARA NO. 7 -*** *Briefly set out, the material and relevant facts giving rise to thepresent suits are as under:-*

> ***''The Plaintiff is a tenant of Defendant No. 2 in respect of theSuit Structure and a member of the Association.*** *……* ***The Plaintiff has been residing at the Suit Structure since 1994and is a bonafide recognized tenant*** *of Defendant No. 2 in respect of the Suit Structure…"*

**3.2.** The falsity of the abovesaid statement on oath is ex-facie proved from the affidavit dated **20th January, 2019** filed by the accused himself before Hon'ble Sessions Court in C.R. No. 404/2018, where the accused mad a categorical submission that he is residing at Pali Hills, which is different than what mentioned here.

A copy of affidavit is at marked as Annexure ' '.

**3.3.** Moreover, the Passport [Annexure ] of the accused issued on /2008 also proves falsity of accused.

**3.4.** The Aadhaar Card of accused [Annexure ] also a sound proof against accused.

**3.5** The falsity of the accused is also ex facie proved from the Government records, the court orders and the affidavit given by accused himself and also the other evidences of unimpeachable and sterling nature. The same is summarized as under;

**i)** The notice dated **24.02.2002**(Exh. **E** here)**, 27.02.2002**(Exh **F** here) issued by the MHADA, notice issued by M.C.G.M dated 04.06.2012 **(Exh. M to the plaint)** and order passed by M.C.G.M dated **09.03.2016 (Exh. A to the plaint)** ex-facie proves that the said property is completely converted to commercial purpose and the accused is not residing there.

Needless to mention here that the accused in his reply notice 'plaint' & in his counter affidavit in rejoinder dated **19.09.2016** never disputed these specific allegations of commercial use of the premises in the notice. In fact he deliberately avoided even to mention the said part of the notice issued by M.C.G.M dated 04.06.2012 (Exh. M to the plaint) **(and here Exhibit A-3),** and order passed by M.C.G.M dated **09.03.2016** (Exh. **A** to the plaint),**(and here Exhibit A-4).**

The accused only objecting the allegations of unauthorized construction but not the allegations of commercial use of the residential property. The accused himself admitted this fact in para 7 (xxx) of the plaint. It reads thus;

> ***"7(xxx)In response to the section 351 Notice issued by Defendant No. 1, the Advocates for the Plaintiff diligently vide letter dated 7th June, 2012 ("the Response Letter") denied all the allegations of unauthorized***

> ***construction raised by Defendant No. 1*** *and called upon the Defendants to furnish him the sanctioned plans, lay out plan and other documentary evidence, survey and inspect report and various documents which they were in the possession of Defendant No. 1 to enable the Plaintiff to submit a suitable response to the section 351 Notice. However, there had been no reply to the Response Letter of the plaintiff for more than 3 years.* ***A copy of the letter dated 7th June, 2012 addressed by the Advocates for the Plaintiff to the Defendant No. 1 is annexed hereto and marked Exhibit "G".***

It is settled law by the full bench of the Supreme Court that when the facts not specifically denied then the only conclusion that can be drawn that the accused have admitted the said fact and the court is bound to draw adverse inference against the accused. **[Express Newspapers Pvt. Ltd. 2009 ALL SCR (OCC) 1]**

**ii)** That, the declaration on oath given by the accused himself before this Hon'ble Court in another proceeding in the case against him being Crime No. 404 of 2018 and order passed on it makes it clear that the actual residential address of the accused is different and it is at Pali Hill.

That, the order dated **22nd January 2019** passed by the Hon'ble Sessions Court Dindoshi in **C. R. No. 000 of 2018** of Versova Police Station had proved the falsity, dishonesty, fraud and malafides of the accused. In the said order the real address of the accused xxxxxxxxxxx is shown as under;

A copy of the said order and judgment dated 22.01.2019 passed by this Hon'ble Court is marked and annexed as **Exhibit "A-5".**

**3.6.** That, the accused is not a bonafide member of the society because, the basic requirement/qualification for the person to become member of the society is mentioned in the Point No. 5 which reads thus;

***''TYPES OF MEMBERSHIP:***

*There are two types of membership.*

***1. "BONAFIDE TENANT"*** *member residing in Azad Nagar colonies part I/II who pays rent for the tenant in his occupation directly to the MHADA, may become member of the society on payment of yearly subscription of Rs.120/ due on lst January every year.*

***2."ASSOCIATE MEMBER"*** *who is an "Occupant" residing in the Aram Nagar Colony Part I/II pays rent of the tenament in his occupation, directly to the MHADA, may become an associate member on*

*payment of yearly subscription of Rs. 120/- due on 1st January of every year.''*

**3.7.** Hence, the claim of accused on the basis of his alleged membership is false and frivolous.

**3.8.** That, the law is very clear that when wrong residential address is given in the plaint then it is a serious offence against administration of Justice and such plaintiff should be prosecuted immediately.

In **Indresh Shamsunder Advani Vs. Gopi Tarachand Advani (Smt.) 2005 (1) BomCR 918** had ruled that;

***'20.*** *It is then rightly contended on behalf of the defendant that the affidavit filed before this Court on behalf of the plaintiff dated 25th March, 2004 mentions that the plaintiff was resident of 95/1, Garden View', Oomar Park, Bhulabhai Desai Road, Bombay - 400 026. However, this statement is false and its falsity is evinced by the permanent address of the plaintiff mentioned in his passport No. A 1 740845 as B/2, Shangrila Apartment, St. Mary's Colony, Miramar, Panjim, Goa. The contents of the passport being public document, will have to be given credence in preference to the statement made on affidavit. From the details mentioned in the passport of the plaintiff, it is clear that the statement made on affidavit before this Court that the plaintiff was resident of 95/1, Garden View, Oomar Park, Bhulabhai Desai Road, Mumbai is false and*

*the plaintiff knew and believed the same to be false. The appropriate course, in such a situation, in my view, is to direct the Registry of this Court to file a complaint in writing before the appropriate forum as is required by Section 195(l)(b) of the Criminal Procedure Code, 1973 for the plaintiffs have made aforesaid false statements on oath in the proceedings before this Court, which is punishable under Chapter XI of the Indian Penal Code. The Registry of this Court shall draw a complaint in this behalf regarding the aforesaid four false statements made on affidavit in the proceedings before this Court and file the same before the appropriate Court, competent to try and decide the criminal action against the respondents/plaintiff.*

***17.*** *Taking overall view of the matter, I am more than convinced that the defences taken on behalf of the respondents/plaintiff are only smoke screen created to take refuge thereunder, so as to justify their illegitimate actions taken with purpose, to sub serve their ulterior design……..''*

**3.9.** Hon'ble High Court in the case of similar nature in the case between **Sugesan Finance Investment Vs. MuljiMetha1989 SCC OnLine Mad 112,** had ruled as under;

***"Application under sec 340 has to be decided urgently. –***

***It is expedient in the interests of justice to set the criminal law in motion as prayed for by the applicants in regard to the above said <u>first charge of giving fictitious address of plaintiff.</u> Offences prima facie disclosed are under Ss. 191, 193 and 199 of the Penal Code, 1860.***

*Larger interest of administration of Justice also demands that a fuller probe is made by the Criminal Court in this matter as to whether the alleged offences have been committed by the respondent, so that such alleged bad practice to get the desired result is not resorted to by other litigants.*

*The result is, I sanction prosecution only with reference to the first of the above said charges (dealt with in paragraph 6 to 12 above) and direct the Registrar of this Court to prefer a complaint against the respondents under the punishing Ss. 193 and 199 of the Penal Code, 1860 read with S. 191 thereof before the Chief Metropolitan Magistrate, Madras.*

***B] Immediate action on 340 application is necessary as the offences alleged, being those against administration of justice- Therefore prompt action is desirable. Constitution bench***

***judgment of Supreme Court relied to expeditious and urgent hearing of 340 applications.***

***In fact, it is so in almost all criminal cases. 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. The argument by opposite counsel that it should be decided at the time of rendering judgment at the trial of the suit is rejected.***

*The learned Counsel for the plaintiff argued that only at the time of rendering judgment at the trial of the suit, sanction, if at all, can be granted under S. 340, Cr. P.C. and not earlier. But S. 340, Cr. P.C. does not contemplate or provide any particular stage at which alone the proceeding could be resorted to. Offences alleged, being those against administration of justice, prompt action is desirable. In fact, it is so in almost all criminal cases. The following words of Supreme Court in* ***M.S. Sheriff v. State of Madras1954 SCR 1229*** *Supreme Court may be cited in this connection:—*

*"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".*

*Further it must also be noted that with reference to the above referred to statement regarding the plaintiff's address, no further finding is warranted or can be expected in judgment that will be delivered in the main suit. So, the above said argument of the learned Counsel for the plaintiff has no merit."*

**4.** Hence, it is clear that the accused himself had given undertaking to demolish the unauthorized structure and further as per enquiry by MHADA it is found that the accused was not residing there and had unauthorizely misusing the entire premises for commercial purposes.

**5.** This proves the falsity of the affidavit given by the accused.

**6**. The undertaking given by the accused are at **Exh "A-8"**

**The crucial part of his undertaking reads thus;**

"I hereby undertake to demolish the addition and alteration carried out to the said tenement as and when the

board and/or the society may ask me to do so at my on risk, cost and consequences."

**7.** That the accused in **para 7(xxii)** of his plaint had made a categorical false statement that no other notice was ever served upon him by the Defendant No. 2 i.e. MHADA and only after appointment of the Developer the notice was issued to him.

**7.1.** The said para of plaint filed by the accused reads this;

> *"**PARA NO. 7 - (xxii)** The Defendant No. 2 has never issued any notices either to the Plaintiff or any of the members of the Association till date. All the tenants are making beneficial use of the premises with such security which is needed to avoid any trespass from strangers. The tenants have been using their respective structures on the said and, for decades together. However, is only after the proposed Developer has sought to undertake redevelopment of the Aram Nagar colony, has he been instigating the Defendants to issue such notices and pass such orders for demolition putting the entire burden on the tenants, knowing well that the tenants would not be able to produce the alleged sanction plans which are prior to 1950."*

**7.2.** The falsity of the abovesaid para is proved from three proofs as explained in earlier paras. The said proofs are within the

knowledge of the accused. That the accused himself had given affidavit to demolish the unauthorized construction and he was given many notices since the year 2002 i.e. even before the appointment of the Developer.

The affidavit and undertaking of the accused is at **Exhibit- "A-8"** and the notices dated **27.02.2002** already annexed as '**Exhibit – "A-6" & 17.06.2002** is annexed herewith at **'Exh. A-7.**

**7.3.** The undertaking given by the accused are at **Exhibit- "A-8".**

Thereafter, in the year 2012 another notice was given on **04.06.2012** to the accused which is at **Exh M** to the plaint **(and here Exhibit A-3),**.This fact was mentioned in the reply affidavit dated **04.04.2016** filed by **Dy. Engineer of MHADA Sh. Vilas Bhadne** in reply to the Notice of Motion for interim relief by accused.

A copy of said reply affidavit is at **Exhibit- "A-9".**

The relevant para from reply affidavit by MHADA reads thus;

> *"14. I further say that the Show cause notice was issued to the Plaintiff in the year 2011 itself the Plaintiff have not filed the suit for challenging the same. The Plaintiff has only file the present suit to drag the proceedings and to drag the implementation of the redevelopment scheme.*
>
> *19.* ***The Plaintiff has suppressed various material facts from this Hon'ble Court and Plaintiff had come before***

***this Hon'ble with unclean hand just with illegal and malafide intension to grab the Order from this Hon'ble court, therefore this Defendant prays that the present Notice of Motion to be dismissed with cost.***

*20. I further say that, if for eg. Tomorrow due to all the proceedings filed by the Aram Nagar occupants the redevelopment proposal could not take place then what the land of the Government can be encroached by the occupant and they can illegally occupy the same? Whether the land owner has no right to restrict the occupants to their original allotment and not acquire additional area not allotted to them I say that today behind the blanket of the undertaking and protection granted by Hon'ble court all the occupants are enjoying the unauthorized addition and alteration and Today when the Hon ble High court in PIL No. 88 of 2015 has passed the order dated 21st December 2016 to remove all unauthorized construction, then to the authorities are not able to take action due to clear blanket of undertaking and on the basis of the undertaking which is filed in 2102 the occupants are obtaining the order from Hon'ble court by misleading the court, wherein the order passed in PIL No. 88 of 2015 is passed in 2016 and undertaking is given in 2012, therefore the subsequent order passed in PIL No.88 of 2015 is binding upon all the parties.*

*21. I say that, the counsel of the Plaintiff have adduced the argument that the order passed in 14.12.2012 in which all the occupant of Aram Nagar have filed their undertaking have not be pointed out in the PIL No.88 of 2015 wherein some of the occupants have filed the Notice of Motion in PIL No.88 of 2015 which has not been entertained by Hon'ble court and same is not challenged by them therefore the order passed in PIL No. 88 of 2015 is binding on all parties. "*

**8.** That the accused falsely claiming himself to be a member of the Aram Nagar Tenant's Welfare Association because he cannot be a bonafide member as he is not residing at the said premises.

**9.** That, in para **Para No. 7 - (vii)** of the plaint the accused had made a blatantly wrong and incorrect statement that no development work commenced by the proposed Developer on the said Land to blame the Developer for not taking steps for development but the record and reply filed by the MHADA makes it clear that the same is false and misleading statement on oath.

The para **Para No. 7 - (vii)** of the plaint reads thus;

*"The appointment of the proposed Developer by the purported Executive Committee was way back in 2004*

*and even after expiry of nearly 12 years, there has been no development work commenced by the proposed Developer on the said Land"*

**9.1.** The falsity of the above statement is proved from the Reply affidavit by MHADA (**Exhibit-" A-10"**) and the letter dated **01.10.2017** given by the Minister for**.** (**Exhibit-"A-11"**)

**9.2** In para 14 of affidavit dated **23/08/2016** filed by the Dy. Engineer (**Exhibit-"A-10"**) **In** Notice of Motion In **xxxxxxxxxxx**, but adopted for opposing the claim of the accused xxxxxxxxxx in L. C. Suit No. 000 of 2016 to the plaint it is clearly mentioned that the **Developers gave the written proofs to MHADA about all the permissions needed for the redevelopment of Aram Nagar Layout.** The said affidavit by MHADA reads as thus;

*"22. ……. I say that* ***the Defendant No.2 to substantiate this statement have written letter dated 22.08.2016 to East & West Developers to find out what is the progress with respect to the permissions and approval for redevelopment of the said Aram Nagar Layout.The Developers have vide Letter dated 23.08.2016 have informed MHADA that they have obtained all the permissions needed for the redevelopment of Aram Nagar Layout and send all the copies of the permissions obtained by them. Hereto annexed and Marked Exhibit***

***of a copy of the letter dated 22.08.2016 written by MHADA to East & West Developers and this Defendant refer to and rely upon the letter dated 23.08.2016 written by East & West Developers to MHADA along with all the permissions as and when produced.***

***19. I say the occupants of the Aram Nagar one side just to show that they are ready and willing to vacate the premises when the Redevelopment scheme will be implemented and on the other hand they themselves are not allowing the scheme to be implemented.***

***18.*** *In para 4 of the order dated 5th May 2016 passed by His Lordship Mr. Justice G.S. Kulkarni it is mentioned that it is submitted that in order dated 1 14.12.2012 passed by this court a statement as made on behalf of the MHADA was recorded that after all permissions, approvals are obtained and formalities are completed the statutory authority will issue a notice in the requisite form to the Appellants" i.e. Plaintiff herein.* ***I say that this statement is only applicable when the Plaintiff is cooperating with the authority, but here <u>the Plaintiff is for one or the other reasons are filing one or the other proceedings till the Hon'ble Supreme court and they themselves are obstructing the redevelopment project</u>.*** *"*

**9.3.** Furthermore, the letter dated **01.10.2017** given by the Minister for **xxxxxxxxxxx [Exhibit-A-11]** also proves that, the delay in the project is due to mischievous members of the Association which includes the accused and not due to Developer company.

**9.4.** The accused in his affidavit dated **20th January, 2019** filed before Hon'ble Sessions Court in Crime No. 404 of 2018 had himself mentioned this fact on oath. The accused asserted as under;

> *''**1.** That the Applicant is a resident of the address mentioned in the cause Title. That the Applicant is a peace loving and law abiding citizen. That the Applicant originally came from Nepal. That the Applicant's father was a Saffron Trader. That the Applicant was keen about persuing Photography as his career in due course set up his own studio at The Oberoi, Mumbai.*
>
> ***2.** That the Applicant is a known celebrity photographer and has an enviable clientele in the Bollywood film industry. Neetu Singh, Rekha, Aishwarya Rai Bachchan are just to name a few of his celebrated clientele.''*

**9.5.** The bail order [Annexure] passed By Hon'ble Sessions Judge on 22nd January 2019 also proves the falsity of address given by the accused before this Hon'ble Court.

This proves falsity and dishonesty of the accused.

**9.6.** That, in the undertaking given by all the tenants and more particularly by the accused it is clearly mentioned that, if the accused and his family members do not reside there then their tenancy stand terminated.

**9.7.** That, as per the undertakings received under RTI a copy of which is annexed herewith, it is clear that, the person entering in to the agreement with **MHADA** has to give some declarations/undertakings so as to use the property of **MHADA.**

The said declaration must includes that;

**i)** The person belongs to Lower Income Group (LIG) earning daily wages up to rupees not exceeding Rs. **10,000 Per Month.**

**ii)** The person is personally living in the said tenamounts.

**iii)** The tenement will never be used for commercial purposes and will be used only for the **'residential purposes'**.

**iv)** There is no property in the name of any of the family member of the person using tenement of **MHADA** and wants to get the facilities of schemes of **MHADA.**

**v)** The person will never sublet the premises to anyone.

**vi)** If his income exceeds the limits of Lower Income Group then he/she should forthwith surrender the tenement to MHADA.

**vii)** **If any of the declaration found to be false/incorrect and if any of the condition breached the tenancy rights of the said person stands terminated.**

**9.8.** Hence, the accused is guilty of playing fraud with the MHADA by producing forged and fabricated documents and obtaining a property [Tenement No.102] for which the accused was not entitled and therefore he is liable to be prosecuted.

Hon'ble Bombay High Court in the case of **Shashikant Kadam in ABA No. 705/2014** vide its order dated **11.06.2014** had ruled that, in such cases custodial interrogation of the accused is must. It is observed as under;

> ***''1.*** *This application is moved for anticipatory bail in an offence punishable under Sections 465, 467, 468, 471, 420 read with Section 34 of the Indian Penal Code. One AnupamSiddhu, Senior Clerk, working in MHADA, is the complainant. It is the case of the prosecution that 8 war widows, all residents of District Satara were contacted by the applicants accused and they were informed that they are eligible to get houses from MHADA as they were war widows. The applicants accused approached them in the year 2008. They got necessary documents and the forms*

*filled up from those 8 war widows and promised them that they would get the houses in the scheme. These widows did not receive any communication from MHADA, and therefore, in the year 2012, they made enquiry and found that MHADA in fact had allotted the tenements.These ladies were issued allotment letters, however, those tenements were subsequently sold to different persons and some are occupying those tenements. These war widows were kept fully in dark and they realised that the applicants accused have sold the houses directly to some third parties and obtained money. Initially lady by name Narmada JanardanKadam gave complaint to Kherwadi Police station. However, the Senior Inspector of Kherwadi Police Station, has informed them that they had enquired into the matter and nothing was found in their complaint and the allegations made by these ladies were baseless and therefore, their applications were filed. This communication was made by Senior Police Inspector, Kherwadi Police Station on* ***11.4.2013.***

***5.*** *The perusal of the documents and on hearing the parties, I find that there is a case against these applicants accused. The applicants accused have adopted a particular modus operandi to show the sale of flats and the payment of tenements which were made by the purchasers by demand draft to the women. The offence is*

*of a serious nature and is committed with crooked intelligence and systematically. Therefore, the police undoubtedly require custody of the applicants for interrogation and also to find out the details how the money was paid, where the money has gone and how the allotment letters were grabbed. It is necessary to find out when the letters of allotment were issued and who has received the letters of allotment. In view of the above facts, there is prima facie case against the accused, hence, I am not inclined to grant pre-arrest bail. Application is rejected.''*

**9.9.** That, the accused Mr. xxxxxxx is a renowned photographer of Bollywood.

He is a millionaire and having his own independent properties in the jurisdiction of MCGM, but to grab the properties and scheme reserved for poor and needy people, the accused made false declaration and undertaking and succeeded in getting the said tenement. Thereafter he have misutilized the said tenement for commercial purposes which is an offence of misappropriation and misultilization of public property for unauthorized purposes. It is an offence under sec 420,409,467 etc. of IPC

**9.10.** In **Emperor vs. Bimla Charan (1913) 35 ALL 361** where it is ruled as under**;**

***I.P.C. Section 409, 408 :- Criminal breach of trust--Water works inspector misappropriating water.***

*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.*

**Section 409 of Indian Penal Code** reads thus;

***''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.''*

**9.11.** Hence, it is clear that, the accused have committed two fold offences. First they made false declarations to public servant about their income with full knowledge that, they don't belong to Lower Income Group (LIG). This was done with dishonest and malafide intention and ulterior purposes of grabbing the public property illegally and unauthorisedly.

Thereafter, these accused again committed criminal breach of trust and they cheated the government and are still cheating the government by misusing the said property for commercial purposes and also creating the unauthorized construction on the said premises.

**9.12.** It makes clear that, his affidavit and declaration was false to his knowledge and it was made only with a malafide intention to grab the government property and further to misutilize it for unauthorised purposes and therefore it is an offence under Section **66**& other relevant provisions of MHADA Act and sec.

**409, 467, 420, 468, 471, 474, 191, 192, 193, 196, 199, 200, 120 [B] and 34, 109 etc. of IPC**.

**10. <u>CONTEMPT OF HON'BLE SUPREME COURT'S DIRECTION BY MAKING UNWARRANTED ALLEGATIONS AGAINST THE APPLICANT – DEVELOPER WITHOUT MAKING THEM AS A PARTY DEFENDANT:</u>**

**10.1.** That the accused made various allegations against the Applicant who is Constituted Attorney of Developer firm stating that the action of MHADA and MCGM is malafide and at the behest of Developer i.e. Applicant. The accused made the above allegations without making the applicant as a party defendant. Which is against the guidelines given by the Hon'ble Supreme Court. It is it is settled law by Hon'ble Supreme Court that no such allegations can be made against a person without impleading him a party. In **<u>BhimSen Garg vs. State Of Rajasthan And Ors. 2006 CriLJ 3643</u>,** it is ruled as under;

> *" 59. I am also not convinced with the submission made on behalf of the petitioner that the alleged FIR is outcome of gross mala fide on the part of the concerned Minister.* ***And in view of the settled proposition of law, the allegation of mala fide against the Minister concerned without impleading him as party are not sustained as***

***held by Hon'ble the Supreme Court in the case of Indian Railway Construction (Supra).***

***60. It is burden of the petitioner to establish mala fide alleged against the police officials and the Minister concerned. Mere assertion of mala fide allegation would not enough and in support of such allegation specific material should be laced before the Court as held, by Hon'ble the Supreme Court in the case "First Land Acquisition Collector and Ors. v. Nirodhi Prakash Ganguly 2004 (4) SCC 160.***

**10.2.** In **New Delhi Municipal Council Vs. M/S Prominent Hotels Limited 2015 SCC Online Del 11910** it is ruled that the Plaintiff cannot take a stand contrary to the settled law and binding precedents. It is ruled as under;

> *"It cannot be gainsaid that the judgments mentioned below are binding on the Licensee who could not have bypassed or disregarded them except at the peril of contempt of this Court. This cannot be said to be a mere lapse."*

**10.3.** In **Kusum Kumria And Ors. Vs Pharma Venture (India) Pvt. Ltd., MANU/ DE/ 3144/2015,** it is ruled that;

> "*A) Grossest abuse of The Judicial Process - Pressing pleas contrary to settled legal positions*

*tantamount to grossest abuse of the judicial process.*

*The instant case manifests abuse of judicial process of the worst kind - Filing of frivolous application, adopting dilatory tactics, pleading contradictory stands and pressing pleas contrary to settled legal positions tantamount to the grossest abuse of the judicial process. More so, the entirety of this litigation is misconceived and without any merit. It has had the effect of entangling valuable rights of the defendants in this legal tussle - costs of the present appeal are assessed at a total of Rs. 6,00,000/- in addition to (ii), counsel's fee is assessed at Rs. 19,750/- also payable in equal shares by the three appellants. ( para 242) "*

**10.4.** Hence, the conduct of the accused is ex facie proved.

**11. <u>LAW ON LOCUS OF APPLICANT IN FILING APPLICATION U/SEC. 340 OF CR.PC.</u>**

**11.1.** That, even if the applicant is not made a formal party to the proceedings, but in view of law laid down by the Supreme Court referred in *Bhim Sen Garg's case (supra)* the Applicant is a natural party in the present proceedings, as the allegations are made by the accused against him.

However, for the purpose of filing an application under sec 340 of Cr.P.C. there is no prohibition that the Application should be filed by the formal parties only.

Hon'ble Supreme Court in two landmark judgments in the case of **Manohar Lal Vs. Vinesh Anand (2001) SCC and N. Natarajan v. B.K. Subba Rao AIR 2003 SC 541**ruled that, even a stranger to the proceeding can file an application under section 340 of Cr.P.C.. The concept of locus is unknown to application under 340 of Cr.P.C.

In **N. Natarajan v. B.K. Subba Rao AIR 2003 SC 541,** it is ruled that;

> ***"*** *In answer to this contention,* ***the respondent relied upon the decisions in Bhagwan-das Narandas v. D.D. Patel and Co., AIR 1940 Bom 131 and Hare-krishna Parida and others v. Emporer, AIR 1929 Patna 242, to contend that even a stranger to a cause can lodge a complaint under Section 340, Cr.P.C.***
>
> *It is well settled that in criminal law that a complaint can be lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In respect of offences adverted to in S. 195, Cr. P.C. there is a restriction that the same cannot be entertained unless a complaint is made by a Court because the offence is stated to have been committed in relation to the proceedings in that Court S. 340, Cr. P.C. is invoked*

*to get over the bar imposed under S. 195, Cr. P.C. In ordinary crimes not adverted to under S. 195, Cr. P.C.,* ***if in respect of any offence, law can be set into motion by any citizen of this country, we fail to see how any citizen of this country cannot approach even under S. 340, Cr. P.C. For that matter, the wordings of S. 340, Cr. P.C. are significant. The Court will have to act in the interest of justice on a complaint or otherwise.*** *Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the Court can take action in the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed covered by the said provision.* ***Therefore, it is wholly unnecessary to examine this aspect of the matter.*** *We proceed on the basis that the respondent has locus standi to present the complaint before the Designated Judge.*"

**12. <u>THAT, THE OFFENCES ARE NON- BAILABLE AND OF SERIOUS NATURE AFFECTING THE ADMINISTRATION OF JUSTICE AND EX FACIE PROVED FROM THE RECORDS OF THE CASE THEREFORE THE ACCUSED NEED TO BE TRIED AS UNDER TRIAL.</u>**

**12.1.** In **Dilip @ Dinesh Shivabhai Patel Vs. State of Gujarat 2011 SCC OnLine Guj 7522,**It is ruled that such accused should not be granted bail and case should be tried as under trial. It is ruled as under;

> ***"Bail- I. P. C. sec 420, 406, 114, 118, 465, 467, 468, 471 – False***
>
> ***Claim in court -***
>
> ***Contents of written statement filed before civil court proves mensrea of the accused – Offences are serious – Bail rejected.***
>
> *Accused submitted that the dispute is with regard to the suit land in respect of which learned Civil Judge has directed the parties to maintain status-quo.*
>
> *Denial of their possession and ownership over the land indicate the consciousness of guilty mind of the applicants. It is proved that mens rea is set of mind under criminal law and is considered as "guilty intention" and when it is established that the accused with guilty mind committed the crime then no question can arise to consider that principle of mens rea will not apply. It is established law by the Hon'ble Supreme Court in the case of Medchl Chemical & Pharma (P) Ltd.*

*vs. Biological E Ltd., reported in AIR 2000 SC 1869.*

*In view of the above discussion and observation and submissions made by the parties and from documentary evidence produced on record ,it appears that present applicants have committed serious offence and I am also in agreement with the submission of the learned senior advocate Mr. S.V. Raju that there is a genuine reason to say that if the present applicants may be released on bail, then they will tamper with the evidence. It is a case documentary evidence. Therefore, I am of the view that the bail application of the applicants is required to be dismissed. Hence, dismissed. Rule is discharged.*

**12.2.** In a landmark judgment in the case of **Koppala Venkataswami Vs. Satrasala Laxminarayana Chetti & Anr. AIR 1959 AP 204,** it is ruled that such a person is obviously a danger to society. It is observed as under;

*"The plaintiff forged the said documents to support his claim.*

*Such a person is obviously a danger to society and this is a typical case where the Court should file a complaint under Section 476, Cr. P. C. "*

Here the case is regarding property worth thousands of Crores and therefore the accused don't deserve any sympathy.

**12.3.** In **Babu Lal Vs. State Of Uttar Pradesh and Others : AIR 1964 SC 725** it is ruled by the Hon'ble Supreme Court as under;

***"8.*** *It is true that some of the ingredients of the act of fabricating false evidence which is penalised under Section 193 Indian Penal Code and of making a false document and thereby comitting forgery within the meaning of Sections 463 and 464 of the Indian Penal Code are common. A person by making a false entry in any book or record or by making any document containing a false statement may, if the prescribed conditions of Section 463 are fulfilled, commit an offence of forgery. But the important ingredient which constitutes fabrication of false evidence within the meaning of Section 192 Indian penal Code beside causing a circumstance to exist or making a false document — to use a*

*compendious expression — is the intention that the circumstance so caused to exist or the false document made may appear in evidence in a judicial proceeding, or before a public servent or before an arbitrator, and lead to the forming of an erroneous opinion touching any point material to the result of the proceeding."*

**12.4.** Also relied on **Ashok Sarogi's Case 2016 ALL MR (Cri) 3400** and other various case law which laid down that such accused doesn't deserve bail.

**13. LAW LAID DOWN BY THIS HON'BLE COURT REGARDING THE PROCEDURE TO BE FOLLOWED TO CALL REPORT FROM C.B.I. OR ANY STATE AGENCY WHEN THERE ARE CONTRARY VERSIONS ON AFFIDAVITS BY THE OPPOSITE PARTIES. AND THEN TO DECIDE THE IVAL CLAIMS OF THE PARTIES BASED ON THE REPORT OF THE CBI.**

**13.1.** That, this Hon'ble court in catena of decisions had made it clear that whenever there are contrary versions of the rival parties and if prima facie it smaks foul play then in order to bring the truth to the surface it is just and necessary that the state agency like CBI along with some other officer having expertise

in the subject matter be directed to investigate the rival allegations of the parties and submit the report. Thereafter based on the said report the rival claim of the parties be decided.

**13.2.** Three Judge Bench of Hon'ble Supreme Court in the recent judgment in the case of **Sarvepalli Radhakrishnana University &Anr. Vs. Union of India (2019) 14 SCC 761,**has taken a stand that when there are rival and contrary claims on affidavit by the contesting parties before the Supreme court the a enqury report should be called from committee and based on the said report the person filing false affidavit should be prosecuted by rejecting his claim. It is ruled as under;

> *"learned Senior Counsel for Respondent Nos. 1 and 2 submitted that the College was indulging in fraud by showing persons who were not sick as patients only for the purpose of showing compliance of the minimum requirements. The learned Senior Counsel appearing for the College refuted the said contention and argued that all the patients were genuine.* ***As this Court was in no position to determine the truth or otherwise of the allegations, an enquiry was directed to be conducted into the correctness of the statistics, reports and material placed before this Court by the College along with the Writ Petition. For the said purpose, a committee was constituted by this Court. A senior***

***officer deputed by the Director, Central Bureau of Investigation (CBI), was directed to head the Committee which would have two doctors of the All India Institute of Medical Sciences (AIIMS) as its members****. It is relevant to note that in the said order dated 14 th December, 2017 it was made clear that the College may have to face prosecution under Section 193 of the Indian Penal Code, 1860 (IPC) if the allegations made by Respondent No.2 were found to be correct. The decision to constitute a committee by this Court was arrived at after a thorough examination of the voluminous material placed on record by the College. The material was constituted of several photographs showing patients occupying the beds and their case sheets. A bare perusal of the photographs did not convince us that the patients were genuine. After a close scrutiny of the case sheets, we had serious doubts about the necessity for admission of persons suffering from minor ailments as in-patients.*

*7. The students who were admitted in the College for the year 2017-18 were directed to be adjusted in the other private medical colleges in the State of Madhya Pradesh for the academic year 2018- 19 by an order passed by this Court on 3rd July, 2018. The students were directed to pay the fees to the colleges to which*

*they are admitted. It was mentioned in the said order dated 3 rd July, 2018 that the entitlement of the students for refund of the fee paid for admission to the College shall be adjudicated at the final hearing of the Writ Petition.*

*8. The Committee appointed by this Court on 14 th December, 2017 submitted its Report on 12 th July, 2018. It was mentioned in the Report inter alia, that the Committee visited the College on 29th January, 2018 around 11.30 a.m. and found that the patient waiting area for OPD Registration was totally empty. After visiting several wards in the hospital, the Committee found that the attendance of patients was abysmally low and the patients shown to be admitted in OPDs/ wards were not in conformity with the actual number of patients. It was further stated in the Report that a scrutiny of the medical case files of the in-patients showed that their admission was not necessary. The case duty rosters for duty doctors as well as nurses were not available in the wards and the junior doctors on duty were not able to identify and confirm who had written the case notes/ progress notes on the case files.*

*9. The Committee collected the medical sheets of 435 patients who were shown to have been admitted in the*

*hospital on the date of the inspection conducted on 25th & 26th September, 2017. The hard disk that was obtained from the hospital for verification of the details of patients who were admitted prior to 7 th January, 2018 was examined by the CBI. It was found that the hard disk was empty and did not contain any data. The conclusion of the Committee after a detailed enquiry revealed the following: doctors namely, Dr. Ritesh Kumawat, Dr. MR Gaikwad, SB Petkar, Dr. Deepak Kaladagi, Dr. Jeetendra Gupta and Dr. Ram Ballabh Thakur couldn't attend the MCI inspection on 25.09.2017 as they were summoned by Court/Police in connection with a motor accident case.*

*However, such claim was found to be incorrect.*

*10. When the matter was listed on 5 th December, 2018, Shri VivekTankha, learned Senior Counsel appearing for the College, submitted that the College intends to submit an apology for the lapses on their part. He requested us to give a quietus to this matter. He submitted that there are students presently studying in the institution who would be affected by any adverse order passed against the College.*

*.....Without delving deep into the details of the Report submitted by the Committee, it is clear that the College*

*is guilty of practicing fraud on this Court. The conduct of the College administration in indulging in manipulations and hoodwinking the authorities to project compliance of the requisite minimum standards for admission of students does not deserve to be condoned.* ***The impunity with which the College has manufactured records to convince us that they were being unnecessarily hounded by the MCI in spite of their compliance with the required standards is deprecated.The brazen attempt by the College in taking this Court for a ride by placing on record maneuvered documents to obtain a favourable order is a clear-cut act of deceit. The justification given by the College regarding the absence of certain residents has turned out to be a concocted story. Had we not initiated an enquiry by the Committee of Experts, the fraud played by the College on this Court would not have come to light. It is trite that every litigant has to approach the Court with clean hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief. The conduct of the College in this case to mislead this Court for the purpose of getting a favourable order is reprehensible and the College deserves to be dealt with suitably.***

*12. In Re. SuoMotu Proceedings against R. Karuppan, Advocate (2001) 5 SCC 289 , this Court observed as under:*

*"13. 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 filing and 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." In Mohan Singh v. Amar Singh 5 case, it was observed by this Court :*

*"36. …Tampering with the record of judicial proceedings and filing of false affidavit in a court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of the unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity."*

*13. In the affidavit filed along with the Writ Petition, Mr. S.S. Kushwaha, Dean of the R.K.D.F. Medical College Hospital and Research Centre stated that the contents in the Writ Petition are true and correct to the best of his knowledge and belief. …… On the basis of the above findings of the Committee, it is clear that a false statement has been made by the College on the basis of a fabricated document.*

*…The College further tried to mislead this Court that it is compliant in all respects, to get permission for the admission of students.*

*14. The brazen manner in which the College has indulged in relying upon manipulated records to*

*mislead this Court for the purpose of getting favourable order deserves to be dealt with in a serious manner. We find that this is a fit case where Mr. S.S. Kushwaha, Dean of the College must be held liable for prosecution under Section 193 IPC.*

*……. The Committee exposes the evil design of the College in resorting to deceitful methods to cheat the authorities concerned and this Court to secure permission for admission of students. Apart from the prosecution of the Dean, the College is liable to be suitably punished for committing perjury.*

*16.* ***We are unable to persuade ourselves to accept the apology offered on behalf of the College. The College has been habitually indulging in foul play which is clear from the course of events*** *in 2015 when faculty members were found to have been working elsewhere and running hospitals. The bravado shown by the College in an attempt to cheat the MCI, the Government and this Court has to be condemned. The Committee constituted by this Court is due to the vehemence with which the Counsels appearing for the College were trying to convince us that they are fully compliant with all the requirements. "Apology is an act of contrition. Unless apology is offered at the earliest*

*opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward."*

*18. For the aforementioned reasons, we pass the following order:*

*(i) Mr. S.S. Kushwaha, Dean of the R.K.D.F. Medical College Hospital and Research Centre i.e. Petitioner No.2- herein is liable for prosecution under Section 193 IPC.* ***The Secretary General of this Court is directed to depute an Officer to initiate the prosecution in a competent Court having jurisdiction at Delhi****.*

*(ii) The College is barred from making admissions for the 1 st Year MBBS course for the next two years i.e. 2018-19 and 2019- 2020.*

*(iii)* ***A penalty of Rs. Five Crores is imposed*** *on the College for playing fraud on this Court. The amount may be paid to the account of the Supreme Court Legal Services Committee.*

*……*

*19. In addition, the College is directed to pay a compensation of Rs. One Lakh to the said students. "*

**13.3.** In a similar case of tenants committing fraud upon the Court this Hon'ble Court whiling directing the registrar of the Court to launch prosecution against the tenants in the case of **Mohan Vs. Late Amar Singh (1998) 6 SCC 686,** ruled as under;

***" .. we consider it appropriate to direct the Registrar of this Court to file a complaint before the appropriate court and set the criminal law in motion against the tenant, the appellant in this case namely Mohan Singh.***

*36. But the matter does not end there. We have found that the records of the A.R.C. and the Rent Tribunal have been tampered. We have also drawn an inference that the visa alleged to have been issued by the German Embassy on 26.6.81 to the tenant and the Immigration Stamp found thereon are not genuine. Prima facie, the circumstances indicate that the tenant had committed the aforesaid offences.* ***The tenant has also made an attempt to hoodwink this Court and succeed in his appeal. he was successful in getting the Special Leave and an order staying dispossession. Tampering with the record of judicial proceedings and filing of false affidavit, in a court of law has the tendency of***

> ***causing obstruction in the due course of justice.*** *It under mines and obstructs free flow of unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice. It undermines and obstructs free flow of unsoiled steam of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity. Since, we are prima facie satisfied that the tenant has filed false affidavits and tampered with judicial record, with a view to eradicate the evil of perjury, we consider it appropriate to direct the Registrar of this Court to file a complaint before the appropriate court and set the criminal law in motion against the tenant, the appellant in this case namely Mohan Singh.*"

**13.4.** In a recent judgment in the case of **ABCD Vs. UOI (2020) 2 SCC 52,** while directing prosecution against the person filing false affidavit, it is ruled as under;

> *"15. Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 of the IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only*

*upon a proper complaint in writing as stated in said Section. In respect of matters coming under Section 195(1)(b)(i) of the Code,* ***in Pushpadevi M. Jatia vs. M.L. Wadhawan*** *etc.4 prosecution was directed to be launched after prima facie satisfaction was recorded by this Court.*

*16. It has also been laid down by this Court in Chandra Shashi v. Anil Kumar Verma5 that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks imprisonment. It was observed as under:*

*"1.The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.*

*2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done*

*with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.*

*14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to (1987) 3 SCC 367 (1995) 1 SCC 421 Writ Petition (Criminal) Appeal No.191 of 2018 ABCD v. Union of India defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mensrea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt." In K.D. Sharma v. Steel Authority of India Limited and others(2008) 12 SCC 481 it was observed:*

*"39. If the primary object as highlighted in Kensington Income Tax Commrs.7 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, manoeuvring 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**."*

*In Dhananjay Sharma v. State of Haryana and others(1995) 3 SCC 757 filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the concerned persons were punished.*

*17. In the circumstances **a notice is required to be issued to the petitioner in suomotu exercise of power of this Court "why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code"***

*The Registry is directed to register the matter as suomotu proceedings and send a copy of this Order to the Petitioner, who is directed to appear in-person before this Court on 14.01.2020. "*

**13.5.** In **Pushpadevi M. Jatiavs M.L. Wadhavan, Addl. Secretary AIR 1987 SC 1748,**it is observed that the manipulations of the petitioner who file SLP 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, cate and concern. It was ruled that all other persons responsible for the fabrication of false evidence should be prosecuted. It is ruled as under;

*"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 offences committed by them.*** *Nevertheless we wish to defer the passing of final orders on the. application made under Section 340 of the Code of Criminal Procedure, 1973 by the Union of India at this stage because of the fact the Central Bureau of Investiga- tion is said to be*

*engaged in making a thorough 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 detenu and his set of people at this stage forthwith may lead to a premature 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 detenu 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, cate and concern.*** *Consequently, while making known our opinion of the matter for action being taken under Section 340 of the Code of the Criminal Procedure we defer the passing of final orders on the application under Section 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. Accordingly, the special leave petition and the writ petition are dismissed with costs."*

**13.6.** In **Sanjeev Mittal vs State 2011 RCR (CRI) (7) 2111,** it is ruled that;

*"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.*

*12.5. The present is a fit case where the investigation by the Police (Crime Branch) is necessary,* ***otherwise many facts will remain hidden and the others involved will escape punishment.***

*12.1.5. Manjit Kaur v. J.P. Sharma, order dated 8.12.1994 passed by a Division Bench of this Court in FAO(OS)No.152/1994 arising out of Suit No.3174/90 at (internal page 13)-*

*—If really the facts mentioned by the appellant in the memorandum of appeal coupled with the other circumstances are true, it appears to us that a prima facie case of fraud not only on the appellant, but also fraud on this Court has been played by the plaintiff / respondent in this behalf. We have,*

*therefore, decided to order an effective investigation into this issue. We do not consider it fit to refer the inquiry to any other body except to Director of Central Bureau of Investigation, who should either conduct the inquiry himself or have it conducted by a Senior Officer of the CBI. The said authority will go into the entire matter and submit a report in the case within three months from today.*

*12.1.6. In ShobaSamat v. MadanLalDua, order dated 25.05.1995 passed by a Division Bench of this Court (D.P. Wadhwa and Dr.M.K. Sharma, JJ.) in Writ 4649 of 1994, court held that-*

*" We have heard learned counsel for the parties. To some extent, we are of the view that various offences have been committed and the matter needs through investigation by the police. We accordingly direct the D.C.P (Crime) to have the matter investigated. Copies of our proceedings dated 10th March 1995 and that of 18th April 1995 be sent to him and so also copy of the writ petition giving the names of the parties. Liberty is granted to the police to take photo copies of the documents from this file as well as from the file of the Commercial Sub Judge which is lying in sealed cover in the registry of this Court.*

*12.1.7. In Davendar Singh v. Subroto Ghosh, Order dated 5.02.1996 passed by a Division Bench of this Court (M.J. Rao, C.J and Dalveer Bhandari, J.) in FAO(OS)No.52/1996, court held that-*

*In view of the prima facie evidence arrived at by the learned Judge, (which we shall examine later), it has been felt necessary by us that there should be an independent enquiry into the question whether there is a person known as Ashok Kumar Gupta son of Shri Ghasita Ram Gupta R/O 5, Ring Road, Kirlokari, Opposite Maharani Bagh, New Delhi, and whether he was the person who had executed the documents dated 9.10.1990 in favour of defendants 2 and 3 and whether he was also the person who executed the general power of attorney dated 6.3.90, (whose photographs are attached thereto) and the person who applied to Municipal Corporation of Delhi for mutation and obtained the same on 16.10.89 in respect of the suit property. And if so, his whereabouts. The original power of attorney in court custody contains thumb impression of the executant.‖ —There are various other facts and circumstances which are material for deciding the appeal but before we do so, we are of the view that the abovesaid investigation should be*

*conducted by the CBI and a proper report should be placed before us. The Director, CBI is directed to appoint a Senior officer of the CBI to go into the above facts and submit a report to this court on the aspects referred to above.*

*12.1.8. GirdhariLalTewari v. Union of India, 2003 (70) Delhi Reported Judgment 415-*

*—29. We also feel that this is an appropriate case where the Central Bureau of Investigation should be directed to make an enquiry with regard to the entire transactions including the forgery and fabrication of documents which are proved and established. The CBI shall make Investigation and those who are found responsible for such manipulations and misdeeds of tempering, falsifying and interpolation of official record, shall be proceeded with the accordance with law. In terms of the aforesaid directions and observations both the writ petitions stand allowed to the aforesaid extent.*‖

*12.1.9. Vishesh Jain v. ArunMehra, IA No.5596/06 in CS (OS) No.1136 / 05 decided by this Court on 4.04.2008-*

*—All efforts to trace the plaintiff failed.* ***This suit has been filed on the basis of forged documents. Even bailable warrants could not be served on the plaintiff as he is evading service. This application under Section 340 of the Code of Criminal Procedure has been made on behalf of the applicants/defendants No.1, 2 and 3 wherein it is alleged that the present suit was filed by one Vishesh Jain on the basis of forged and frivolous documents.*** *The suit filed by the plaintiff was dismissed by this Court on 12th December 2005 with cost of `10,000/-. This Court issued notice to Mr. R.K. Nanda and Mrs. Promila Nanda, Directors of Durga Builders and recorded statement of Mr. R.K. Nanda. His statement prima facie showed a collusion between them and Mr. Vishesh Jain. He stated that he had no knowledge about the suit being listed on 16th August 2005. He had not met Mr. Vishesh Jain. However, he had executed power of attorney in favour of Mr. Sharad Kumar Aggarwal and Ms. Purnima Aggarwal, Adv and admitted his signatures. The record of other suit No.987 of 2006 was summoned. The suit was shown disposed of having been amicably settled outside the Court between plaintiff and defendants. It was stated by*

*the plaintiff that he had received a sum of `30,000/- as full and final settlement. It seems that there was a conspiracy and collusion between the plaintiff Vishesh Kumar Jain and defendant No.4. The matter needs through investigation.*

*Registrar General of this Court is directed to send the matter for investigation to Crime Branch of Delhi Police to find out who was this Vishesh Jain, his business and his present whereabouts. Report be sent to this Court by Crime Branch within 90 days. Crime Branch shall investigate the conspiracy between defendant No.4 and Vishesh Jain and how the documents filed in this case came into existence, whether they were forged documents or genuine. Registrar General of this Court shall also send all documents filed by the plaintiff in the suit along with copy of the suit to the Crime Branch as well as photocopy of the record of suit No.981 of 2006.*‖

*12.1.10. MahantSurinderNath v. Union of India, 146 (2008) Delhi Law Times 438-*

*—41. I, thus, deem it appropriate to direct that the Registrar General should appoint a Registrar/Joint Registrar of this Court to take necessary action for*

*initiation of proceedings under Section 340(1) Cr.P.C. keeping in mind the aforesaid provisions of the IPC.*

*42. It also cannot be lost sight of that the execution of the sale deeds prima facie appears to be a collusive act not only of the plaintiffs but of three other persons, Mr.Mahender Pal, Smt.Anita Yogi and Mr.Akhilesh Singh, who are closely related to the plaintiff, being the natural brother, the wife of the brother and the brother of such a wife. These vendees are not before the Court. A further inquiry into the execution of sale deeds is necessary. I, thus, deem it appropriate to direct that the Economic Offence Wing of the Delhi Police shall register an FIR against all the five persons and carry out investigation in accordance with law and if offences are made out, to take suitable action thereafter. This direction is necessary as the sale deeds are documents in rem and would give authority to the vandees to mislead the public of the prospect of purchase of land which could never have been sold.*

*—44. The suit is accordingly dismissed with the aforesaid directions with the hope that the authorities concerned would follow-up the matter in*

*a proper perspective to see that the ends of justice are met.*‖

*12.1.11. Nitin Seth v. Rohit Kumar, CM(M) No. 459/2004 decided by this Court on 22.08.2008-*

> *— ... Aggrieved by the said order, the petitioner herein filed an appeal before the Delhi High Court being FAO No. 96/2000 {sic 96/2001}. Delhi High Court vide order dated 3.4.2002 confirmed the status quo order however, during pendency of this FAO, the High Court in order to come at a right conclusion had made detailed enquiry into the facts. The High Court vide order dated 17.4.2001 had directed the petitioner herein to produce the original title deeds of the said property on the basis of claim of ownership was staked and directed an investigation to be done by the Crime Branch of Delhi Police regarding genuineness of the said documents. The Crime Branch made an enquiry and got the documents examined from forensic lab and submitted its enquiry report dated 22.1.2002 to the High Court. The enquiry report revealed that sale deed dated 4.3.1971*

*in favour of Ms. KumKum Jain and the sale deed dated 31.8.2000 in favour of the petitioner, both were forged and fabricated documents and even the stamps of Sub-Registrar were forged. ...‖*

*12.1.12. Oil and Natural Gas Corporation Ltd. v. PhulaBala Paul, 2007 (4) GLT 680-*

*—9. A bare reading of the two sets of sale deeds pertaining to the same Sub-Registrar office with identical numbers disclose that the exhibited sale deeds, the value have been shown to be fabulously higher and inflated than what is disclosed in the sale deeds so produced by Mr. Dutta as referred to above. Apart from the consideration of amount, the parties to the transaction also do not tally.*

*10. The aforesaid exhibits have been accepted by the learned District Judge in a judicial proceeding in the Reference cases, as produced by the respondents/claimants. The decision to enhance the market value of the acquired land is also based on the aforesaid exhibits so produced by the claimants. The*

*picture that emerges from the aforesaid fact it is apparent prima facie that the claimants appear to have practice fraud to get compensation at inflated rate going to the extent of manufacturing such sale deeds. In such a situation, the decision rendered by the learned District Judge enhancing the compensation based on fraud is not sustainable in law. ...*‖

*12. On perusal of the exhibited documents as well as documents submitted by Mr. Dutta (copies of which are kept on records), there appears a genuine doubt about the genuineness of the aforesaid exhibits, namely Exts.-1, 3, 4, 6, 7 and 8, as exhibited before the Reference Court. ...*‖

*13. In view of the aforesaid discussions and grave doubt about the genuineness of the exhibited documents on the basis of which Awards have been passed, ...*‖

*14. The Registry of this Court is directed to forward a copy of this judgment along with the Ext.-1, 3, 4, 6, 7 and 8 and the documents*

*produced by Mr. Dutta, to the Superintendent of Police, Cachar, Silchar and on receipt of the same, the Superintendent of Police, Cachar, Silcharshall cause registering criminal case under appropriate sections of law and necessary investigation be caused regarding genuineness/fraudulent manufacturing of the aforesaid documents and investigate the matter under his strict supervision to unearth and identify the culprits, if any, and to deal with as per law. The learned District Judge, Cachar, Silchar shall render all assistance from his end whatever is necessary for the purpose of the aforesaid investigation.*

*The Registry shall register a Misc Case and shall appraise the Court regarding the stage of investigation as directed to be conducted as aforesaid. The Superintendent of Police, Cachar, Silchar, and the Officer-in-Charge, Silchar Police Station are also directed to report back to this Court from time to time about the progress of the investigation so that this Court can well monitor the matter.*‖

*12.1.13. Shanthamma v. Sub-Inspector of Police, Malur Police Station, 2007 (3) Kar L J 330-*

*We also deem it proper to direct the Commissioner of Police to get hold of the entire records including the reports and the affidavit filed in this Court and hold appropriate enquiry in accordance with law against Sri. Zahoor Ali Baig, Sub-Inspector, Sri. Mallegowda, PC and Sri. Balanaik, PC for creating false records thereby violating their duty in a manner known to law and in accordance with law departmentally. Further liberty is reserved to the Commissioner of Police to proceed against any other police officers, if they are involved directly or indirectly, departmentally in accordance with law. 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. "*

**13.7.** In **H.S. Bedi Vs. National Highway Authority Of India 2016(I) AD DELHI 661 ,** it is ruled that *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.*

**13.8.** In **Maria Margarida SequeriaFernandes v. Erasmo Jack de Sequeria, (2012) 5 SCC 370**, the three judge bench 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.*

***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.***

***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.*

*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.....****"*

*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)*

**14. CASE LAWS ON DUTY OF THE COURT TO DISCOVER TRUTH.**

**20.1.** Truth should be the guiding star in the entire judicial process.

**14.2.** In **H.S. Bedi Vs. National Highway Authority Of India 2016(I) AD DELHI 661,**it is ruled as under;

***''In VedParkashKharbanda v. VimalBindal, 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 JasrajInder Singh v. HemrajMultanchand, (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 MohanlalShamjiSoni 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. NarayanaDeekshitulu 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 ZahiraHabibullah 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.*

***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'.***

***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 RiteshTewari 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' 11.11*

*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)*

*12.4 Indian 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 VedParkashKharbanda v. VimalBindal (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 RiteshTewari 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 ZahiraHabibulla 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 MohanlalShamjiSoni 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 JamatrajKewaljiGovani 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. InthaRamana 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 'Upper Court' Myth "The notion about the provisional nature of the Trial Court decisions being subject to correction in appeal, or what has been called the "upper-Court myth" ignores the realities of the situation. In spite of the right of appeal, there are many cases in which appeals are not filed. This apart, the appellate Courts having only the written record before them are normally reluctant to interfere with the appraisement of evidence of witnesses by the Trial Judges who have had the advantage of looking at the demeanour of the witnesses. The appellate Court, it has been said, operates in the partial vacuum of the printed record. A stenographic transcript fails to reproduce tones of voice and hesitations of speech that often make a sentence mean the reverse of what the mere words signify. The best and most accurate record of oral*

*testimony is like a dehydrated peach; it has neither the substance nor the flavor of the peach before it was dried."*

**15. NO LOCUS OF THE PROSPECTIVE ACCUSED TO CLAIM HEARING IN AN APPLICATION UNDER SEC. 340 OF CR. P. C. BEFORE LAUNCHING OF PROSECUTION AGAINST HIM.**

**15.1.** That in view of the provisions of law and law laid down by the Full bench in the case of **Pritish vs State (2002) 1 SCC 253** there is a specific bar for allowing the accused to participate the enquiry under Sec. 340 of Cr. P. C.

**15.2**. The order and findings based on the defence of accused in an enquiry under sec. 340 of Cr. P. C. is beyond the purview of the jurisdiction of the Court:

**15.3.** That, in catena of decisions it is ruled that the Court conducting enquiry under sec 340 of cr. P. C. Cannot accept the defence of the accused and if any order is passed by relying on the defence/submission of the accused then such order is vitiated.

In **Devinder Singh ZakhmiVs. Amritsar Improvement Trust, Amritsar &Anr. 2002 Cri.L.J. 4485,**it is ruled that;

***" Cr. P. C. S. 340–195 : -***

*The entertainment of the application of, respondents by the trial Court in order to enable them to produce*

*evidence in defence, as such was against the mandate of law. The findings of the trial Court that the provisions of Section 340 of the Code do not propose to shut down all gates for the respondents to place their case before the Court, and these provisions are only directive in nature, as such cannot be accepted in the face of the dictum of law laid down in the above-mentioned cases. Manifestly, the trial Judge has committed a patent error in passing order dated 2-4-2002 and for that reason, the same cannot be sustained.*

*He placed reliance on the observations made in case Madan Lal Sharma v. Punjab and Haryana High Court through its Registrar 2000 (1) Rec Cri R 592 : 2000 Cri LJ 1512 wherein it was laid down that no hearing is required to be given to the accused before filing of the complaint because the accused can raise all defences before the Magistrate when the complaint is filed. Further reference was made to observations of the Apex Court in Pritish v. State of Maharashtra 2002 (1) Rec Cri R 92 : 2002 Cri LJ 548 wherein it was observed in paras 9 and 10 as under :-*

*9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the*

*Court (before which proceedings were to be held) that, it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the Court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the Court can form such an opinion when it appears to the Court that an offence has been committed in relation to a proceeding in that Court. It is important to notice that even when the court forms such an opinion it is not mandatory that the Court should make a complaint. This sub-section has conferred a power on the Court to do so. It does not mean that the Court should, as a matter of course, make a complaint. But once the Court decides to do so, then the Court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the Court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the Court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the Court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any*

*particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the Court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.*

*10. "Inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a magistrate or Court." It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion. whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said Court has to make a complaint in writing to the Magistrate of first class concerned. As the offences involved are all falling within the purview of "warrant case" (as defined in Section 2(x)) of the Code the Magistrate concerned, has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report, that being the*

*position, the Magistrate on receiving the complaint shall proceed under Section 238 to 243 of the Code."*

**15.4.** In **M/s A-One Industries Vs. D.P Garg (1999 Cri. L.J. 4743),** it is ruled that during the enquiry under sec 340 of Cr P C. the **court cannot examine the defense of the appellant and record a finding thereon. It is observed thus**;

*"5. Whether action in such matters should be taken under Section 195 Cr. P.C. is a matter primarily for the court which hears the application, and its discretion is not to be lightly interfered with an appeal. In the instant case, the material on record clearly makes out a case under Section 193 IPC against the appellant. The order dated 18.11.1996 passed by the learned Metropolitan Magistrate shows that a charge under Section 193 IPC has already been framed against the appellant. At this stage the court cannot examine the defense of the appellant and record a finding thereon."*

**15.5.** In the case of **State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659,** it is ruled that in such cases the court has to follow the procedures laid down under sec. 200,202, 204 of **Criminal Procedure Code** and there is no right to would be accused that he must be heard before making complaint. It is ruled thus;

*"When complaint is made to the Magistrate having jurisdiction then, the Magistrate, if he thinks fit, can conduct further enquiry by considering the complaint as the Police Report. The Magistrate has to follow procedure under section 200, 202, 203, 204 of Criminal Procedure Code "*

**15.6.** It was held by this Honorable Court in the case of **Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another 1983 SCR (2) 724**, that :-

***"The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. Such a person cannot even be legally called to participate in the proceedings under Section 202 of the Code".***

**15.7.** In **Chandra Deo Singh v. Prakash Chandra Bose** reported in **MANU/SC/0053/ 1963[1964] 1 SCR 639,**the Supreme Court has held that the object of enqury under Section 202 of Cr.P.C. is to enable the Court to scrutinize carefully the allegations made in the complaint with a view to prevent the person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind that provision and it is to find out what material is there to support the allegations made in the complaint. It is the bound

ant duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of material placed before the Magistrate by the complainant. **Whatever defence the accused may have can only be enquired into at the trial. An enquiry under Section 202 Cr.P.C. can in no sense be characterised as a trial.** Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in the enquiry under Section 202 of Cr.P.C.

**15.8. In Smt.Nagawwa v. Veeranna Shivalilingappa Konjalgi**, the Supreme Court has held that at the stage of issuing of process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient ground for proceeding against the accused. The scope of the enquiry under Section 202 of Cr.P.C. is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the material placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the

point of view of the complainant without at all adverting to any defence that the accused may have in fact. In proceedings under Section 202, the accused has absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

> *"7. The aforesaid two decisions of the this Hon'ble Court make it clear that in an enquiry under Section 202 of Cr.P.C., the accused has no right to be heard. In fact, he has no locus to address the court on the question whether the process should be issued against him or not. He may remain present in person or through an advocate with a view to be informed as to what is going on, but has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so."*

**15.9**. In the case of **Ramesh Sobti Vs. State of West Bengal and Ors 2017 Cri. L. J. 4163,** it is ruled that;

> ***"13. Hence, there is no dispute that a Magistrate holding enquiry under Section 202 Cr. P. C. cannot call upon an accused to participate in such enquiry or pose any question to him or his witnesses. It is only upon conclusion of such enquiry if the Magistrate is satisfied on the basis of***

***materials on record that there is sufficient ground to proceed against the accused he shall issue process for his appearance in the case. He cannot permit the accused to participate and canvass his defence in the course of the pre-summoning enquiry and convert it to a 'mini trial' even before the commencement of the trial itself.***

***14. Police officer conducting investigation under Section 202 Cr.P.C. is a delegatee of the Magistrate and his powers of investigation are, therefore, circumscribed by the limitations imposed upon the principal, that is, the Magistrate himself. Since the Magistrate in the course of enquiry under Section 202 Cr.P.C. is not entitled to issue notice upon the accused to appear and participate in the proceeding, the police officer as his delegatee cannot claim higher powers and issue notice upon the accused and interrogate him in the course of investigation under Section 202 Cr.P.C. No doubt, the police officer may exercise other powers of investigation e.g. proceed to the spot, interrogate the complainant and his witnesses, collect evidence by effecting searches and seizures for the purpose of determining the intrinsic truth in the allegations in the complaint***

***but he cannot in course of such investigation issue notice to the accused and interrogate him to elicit his responses to the allegations in the complaint. If he does so, he would be enlarging the scope of enquiry under Section 202 Cr.P.C. wherein an accused is precluded from participating and raising his defences in rebuttal to the allegations in the petition of complaint.***

**15.10.** In the case of **Kareem Fatima &Ors.Vs.Habeeb Omer &Anr. 2009 ALL MR (Cri) JOURNAL 21** it is ruled that the **Accused has no statutory right to be heard before taking cognizance of offence whether it is before Magistrate Court or Revisional Court**;

*"The above decisions clearly indicate that the accused need not be afforded an opportunity of being heard before taking cognizance of the offence whether it is before the Magistrate or before the revisional Court and the contention that the documents were not alleged to be forged after filing them into Court is also not an embargo to take cognizance of the offence. Therefore, I do not see any merit in the contention of the learned Counsel for petitioners that the revisional Court failed to*

*give them an opportunity of being heard and failed to consider the contentions raised by them.*

*3. In support of his contention the learned Counsel for first respondent relied on* ***PritishVs. State of Maharashtra and others, 2002 Cri.L.J. 548 : [2002 ALL MR (Cri) 732 (S.C.)],*** *wherein the apex Court observed that in the proceedings before a criminal Court, before ordering prosecution, when the preliminary enquiry is going on, the Court is not under a legal obligation to hear the persons against whom an accusation is made. The scheme underlying Sections 340, 343, 238 and 243 of the Code clearly shows that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that Court might file a complaint before the Magistrate for initiating prosecution proceedings. Once the prosecution proceedings commence, the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code. Principles of natural justice would not be hampered by not hearing to the person concerned at the stage of deciding whether such person should be proceeded against or not. The Court at the stage envisaged in Section 340 of the*

*Code is not deciding the guilt or innocence of the party against whom the proceedings are to be taken before the Magistrate. At that stage the Court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. The apex Court further observed that the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pretrial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged. "*

**16. <u>CONCLUDING PARAGRAPH –</u>**

**16.1.** That from the material available on record public documents and the legal position settled by Hon'ble Bombay High Court and Hon'ble Supreme Court the following factual and legal position is concluded with regard to the offences committed by the accused-plaintiff Sh. xxxxxx as under;

**16.2.** That, the accused Mr. xxxxxxxx had filed a false affidavit

before this Hon'ble Court in support of his grievance in his plaint and had narrated the false and concocted story with four type of false submissions as;

**(i)** There is no unauthorized construction on the said tenement no 102 ;

**(ii)** The Defendant No. 2 MHADA has never issued any notices to the Plaintiff before 2012 and only after the Developer (East & West Developer) has sought to undertake redevelopment of the Aram Nagar colony, has he been instigating the MHADA and MCGM to issue such notices and pass such orders for demolition and the action of government official is actuated by malafides and for ulterior purposes;

**(iii)** The accused plaintiff is residing at the said tenement no. 102 since the year 1994.

**(iv)** Since last 12 years i.e. since appointment of developer year 2004 no development work commenced by the proposed developer on the said land

**16.3.** However the govt. record, reply affidavit filed by the Dy. Engineer of MHADA **(Exh.A-9)** and affidavit given by the accused himself proves the falsity and dishonesty of the accused which is summarized as;

***(i) The accused himself had given an affidavit to MHADA (Exh. A-7) admitting that there is an unauthorized construction on the said tenement and he will demolish the additions/alterations made in the said premises allotted to him. This fact was specifically pointed out to him vide show cause notice dated 17.06.2020 (Exh. A-7) issued to accused giving him the warning that if he fails to remove the unauthorized construction then his tenancy will be terminated. But the accused deliberately suppressed this fact from the court. In brief reply affidavit the MHADA to Notice of Motion had mentioned the conduct of the accused in suppression of the various facts with malafide intention to grab the order of stay/injunction from this court is specifically mentioned but then also the accused have not produced the correct facts and again tried to misled the Court by filing rejoinder affidavit. therefore this Hon'ble court have no option except to direct prosecution of the accused as per provisions of Se. 340 of Cr.P.C.***

***(ii) The version of the accused that the Defendant No. 2, MHADA has never issued any notices to the Plaintiff before 2012 and only after the Developer (East & West Developer) has sought to***

***undertake redevelopment of the Aram Nagar colony, the notices and orders for demolition are passed, is falsified from the records of MHADA and affidavit cum undertaking given by the accused that the issue of demolition first time came on 17.08.1995 when the accused gave undertaking on affidavit (Exh. A-1) that he will demolish the additions/alterations and thereafter based on the said undertaking the Estate Manager of MHADA vide its notice dated*** *17.06.2002* ***,*** *(Exh. A- 7)* ***warned the accused that if the demolition of additions/ulterations is not done as per undertaking then his tenancy should be terminated. This had happened around 10 year before the next action of the year 2012 when East and West Developers sought to undertake redevelopment of the Aram Nagar colony and therefore the allegations of malafided against the Govt. officials are out rightly false and misleading;***

*(iii)* ***the submission of the accused that the accused- plaintiff is residing at the said tenement no. 102 at Aram Nagar Versova since the year 1994 till date is also false statement as proved from the various proofs such as;***

*(a)* ***The said tenement was completely converted to commercial tenement from residential tenement and therefore show cause notice was issued by the*** *Estate Manager of MHADA* ***to the accused in this regard on 17-02-2002*** *(Exh. A-7)* ***thereby warning that his tenancy will be terminated;***

*(b)* ***the order dated*** *22nd January 2019* ***passed by the Hon'ble Sessions Court Dindoshi in*** *C. R. No. 40000000 of 2018* ***of Versova Police Station had proved the falsity, dishonesty, fraud and malafides of the accused. In the said order the real address of the accused xxxxxx is shown as under;***

> ***''xxxxxxxxxx ,***
>
> *R/o Golf Link Society,4th Floor, Krishna Apartment Union Park, Khar (W) Mumbai"*

**(c)** In the show cause notice dated 20.02.2002 and subsequent notice dated 04.06.2012 (Exh. M to the plaint )and here **Exhibit A-3** and the recent impugned notice/order dated 09.03.2016 (Exh A to the plaint ) and here **Exhibit A-4** it was specifically mentioned that the accused is guilty of

unauthorized change of user from residential to commercial purpose of said tenement and this fact was neither disputed nor denied in the reply given by the accused through his advocate, nor in the entire plaint and hence the said factual allegations are undisputedly proved that the said tenement is only being used for the commercial purposes and the accused is not residing there but in order to misled this Hon'ble Court and having full knowledge that as per the second undertaking dated 19.05.1995 by the accused **(Exh. A-1)** the tenancy of the accused stand terminated for using the said premises for other than residential purposes and converting to commercial purposes and also the fact that the membership of the accused from the Association by name 'Aramnagar Tenant's Welfare Association' stand cancelled if he don't reside at the said tenement and therefore the accused malafidely and deliberately made a false statement on oath that he is residing at the said address and had given the false address in the suit and therefore in view of specific law laid down in the similar case more particularly in the case of **Indresh Vs Gopi 2004 SCC OnLine Bom 577,** marked & annexed as **Exhibit 'A-14'** the accused

should be prosecuted for the relevant offences against administration of justice.

**(iv)** the version of accused in para **Para No. 7 - (vii)** of the plaint that since appointment of developer no development work commenced by the proposed developer on the said land, is ex facie falsified from the reply affidavit filed by the Dy. Engineer of MHAD A (Exh ) **in** Notice Of Motion In **L.C. Suit No. 2061 Of 2016**, but adopted for opposing the claim of the accused in L.C. Suit No. 803 of 2016 to the plaint where it has been clearly pointed out in para 14 that, the Developer '**East & West Developers' gave the written proofs to MHADA about all the permissions needed for the redevelopment of Aram Nagar Layout and the** ***the Plaintiff- accused and others are obstructing the redevelopment project and they themselves are not allowing the scheme to be implemente. It is specific stand of the MHADA that for one or the other reasons are filing one or the other proceedings till the Hon'ble Supreme court and they themselves are obstructing the redevelopment project and they themselves are not allowing the scheme to be implemented and taking a wrong***

***stand before this Hon'ble court.*** The said affidavit by MHADA reads as thus;

*"22. ……. I say that* ***the Defendant No.2 to substantiate this statement have written letter dated 22.08.2016 to East & West Developers to find out what is the progress with respect to the permissions and approval for redevelopment of the said Aram Nagar Layout. The East & West Developers have vide Letter dated 23.08.2016 have informed MHADA that they have obtained all the permissions needed for the redevelopment of Aram Nagar Layout and send all the copies of the permissions obtained by them. Hereto annexed and Marked Exhibit of a copy of the letter dated 22.08.2016 written by MHADA to East & West Developers and this Defendant refer to and rely upon the letter dated 23.08.2016 written by East & West Developers to MHADA along with all the permissions as and when produced.***

***19. I say the occupants of the Aram Nagar one side just to show that they are ready and willing to vacate the premises when the Redevelopment scheme will be implemented and on the other hand they themselves are not allowing the scheme to be implemented.***

***18.*** *In para 4 of the order dated 5th May 2016 passed by His Lordship Mr. Justice G.S. Kulkarni it is mentioned that it is submitted that in order dated 1 14.12.2012 passed by this court a statement as made on behalf of the MHADA was recorded that after all permissions, approvals are obtained and formalities are completed the statutory authority will issue a notice in the requisite form to the Appellants" i.e. Plaintiff herein.* ***I say that this statement is only applicable when the Plaintiff is cooperating with the authority, but here <u>the Plaintiff is for one or the other reasons are filing one or the other proceedings till the Hon'ble Supreme court and they themselves are obstructing the redevelopment project</u>.*** *"*

And the above said submission of MHADA are not disputed by the accused hence his falsity and dishonesty is ex facie proved.

**<u>Prayer</u>:-** It is therefore humbly requested for;

**i)** To record a finding as per section 340 (1) of Cr.P.C as mentioned in concluding **paragraph No. 22** of this application.

**ii)** To record a finding that, the passport **[ Annexure A-4.2 ],** Aadhar Card **[ Annexure A-4.3 ],** Affidavit **[ Annexure**

**A-4.1 ],** given by accused himself before Hon'ble Sessions Court in C. R. No.0000/2018 the bail order dated 22.01.2019 passed by Hon'ble Sessions Court **[ Annexure A-5 ],** the records of MHADA as mentioned in para ex-facie proves that the accused Mr. is not residing at the address mentioned in the plaint i.e. tenement No. 102, Aram Nagar, Andheri and therefore his statement on oath in plaint that he is residing at tenement No. 102 since 1994 till filing of suit in the year 2016 is clearly false and incorrect statement and it is prepared and filed to misled this Hon'ble Court to get the interim relief from the Court. Hence in view of the law laid down by Hon'ble Bombay High Court in **Indresh Advani Vs. Gopi Advani (Smt.) 2005 (1) Bom CR 918 [Annexure]** this Court is bound to direct Registrar to initiate prosecution against accused as per section 340 r/w 195 of Cr.P.C.

**iii)** To hold that the sum and substance of the above said offences committed by the accused is that the accused first created the false documents to grab the property of the government which is only meant for the persons belonging to Lower Income Group (LIG) and thereafter misappropriated/ misutilized the said property and unauthorizedly converted it for commercial use when it was only to be used for residential purposes and when govt officials and public authority wanted to take legal

action against him then he again prepared false affidavit with an intention to be used as genuine before this Hon'ble Court with an ulterior motive to grab the interim order from this Hon'ble Court and filed the frivolous suit/Plaint and Notice of Motion by dishonest concealment, twisting and suppression of material facts and had given the wrong residential address and therefore he is liable to be prosecuted under sec 191,192,193,196, 199,200,201,209, 409, 467,471,474 etc of IPC in view of law laid down by Hon'ble High Court in **para 20** in the case of **Indresh Vs Gopi 2004 SCC OnLine Bom 577.**

**iv) To** record a findings as per section 340 (1) of Cr.P.C. based on the submission by the Dy. Engineer of MHADA (Exh- ) that the accused Mr. xxxxxx had filed a false affidavit before this Hon'ble Court with ulterior motive to misled this Hon'ble Court and a favorable order of stay of demolition of authorized construction.

v) **Issue arrest warrant against accused as per sec 340(1) (d) of Cr. P.C. against the accused as the offences are non – bailable and having punishment up to life imprisonment and therefore the accused needs to be tried as under trial without giving bail in view of law laid down in the case of** Dilip @ Dinesh Shivabhai Patel Vs. State 2011 SCC OnLine Guj 7522, Koppala

Venkataswami Vs. Satrasala AIR 1959 AP 204 , Ashok Sarogi Vs State 2016 ALL MR (CR) 3400.

vi) **Direct MHADA & M.C.G.M. to submit the detail report within 14 days, regarding the other falsity of the affidavit filed by the accused as has been done by Full Bench of Hon'ble Supreme Court in the case** Sarvapalli Radhakrishnan's 2019 SCC OnLine SC 51 **case.**

**vii)** To pass an order of cost/interim compensation to be paid by the accused to the MHADA and MCGM as per section 342 of Criminal Procedure Code by considering the stakes involved in the project and as per the legal position regarding interim compensation as laid down in **Sarvepalli Radhakrishnana University Vs. Union of India (2019) 14 SCC 761, New Delhi Municipal Council Vs. M/s Prominent Hotels Limited (2015) SCC OnLine Del 11910, Badhuvan Kunhi Vs. K. M. Abdulla MANU/KE/0828/2016.**

**Since the project cost may goes tentatively around Rs. 5,000 Crores the interim compensation may be around Rs. 50 Crores which is independent of the rights of the MHADA and MCGM to file separate proceedings in the appropriate Court of law to recover compensation for total damages from the accused.**

**viii)** To hold that in view of the law laid down by the Full bench in **Pritish Vs. State (2002) 1 SCC 253** and other binding precedents mentioned in **Para 21** of this application, the accused have no right to participate in the haring of application under section 340 of Criminal Procedure Code and the say if any filed in the application under section 340 of Criminal Procedure Code is legally inadmissible and beyond the preview of the jurisdiction of this Hon'ble Court for adjudication of the action under section 340 of Criminal Procedure Code.

Place: Mumbai

Date: ___ January, 2021

**Advocate for Applicant**

**Applicant**

## VERIFICATION

**I, ABCD** , aged years being the applicant abovenamed, do hereby state and declare that whatever stated in the foregoing paragraphs of the Complaint is stated on the basis of my information and belief; which I believe to be true and correct.

Dated this _____day of January, 2021.

**Place:**

**Mumbai**

Advocate for Applicant

Applicant

**Before Me**

**ORDER PASSED BY THE J.M.F.C AGAINST WOMEN MAKING FALSE ALLEGATIONS OF RAPE.**

CRI.M. A. NO. 106/2020
Manish v/s The State of Maharashtra & ors.
CNR NO. MHST16 -000888-2020
Exh.: 01

**ORDER BELOW EXH. 01 IN CRI. M. A. NO. 106/2020.**

**(In continuation of Order dated 22.12.2020 passed at Exh. 01. this order is passed)**

**1.** This is an application for holding preliminary inquiry under Section 340 read with Section 195 (1)(b)(i) of The Code of Criminal Procedure, 1973 in order to launch the complaint against respondent no. 2 to 6 under Section 199, 200, 203, 205, 209 and 211 of Indian Penal Code.

**2.** For the purpose of making preliminary inquiry about allegations made in this application, this Court passed an order below Exh. 1 or 22.12.2020 and thereby called the original record and proceedings of B summary report, decided by this Court on 15.12.2020.

**3.** Before further discussion, it is necessary to make mention here that in the case of Union of India and others v/s. Haresh Milani 2017(4)

Mh.1.0.441. Hon'ble Bombay High Court has held that, it is not necessary to hear the other side while making preliminary inquiry under Section 340 of the Code of Crimina. Procedure. Hence, in view of this authority, I have not issued notice to any of the respondents.

**4.** For the purpose of preliminary inquiry. I have read entire original record of the B summary report filed by the investigating officer in Crime No. 08/2020 under Section 376(d), 323, 504 and 506 read with Section 34 of Indian Penal Code registered at Wai police station. I have also read original record of protest petition which was filed by informant against B summary report. It would be apt to mention here that this Court by its common order dared 15.12.2020 has accepted B summary report and rejected the protest petition.

**5.** Informant had lodged First Information report bearing No. 08/2020 (in short FIR) on dated 18.01.2020 at Wai police station and stated that present applicant and one Bhisham Parwani committed rape on her person under promise to give her job as receptionist in Hotel at Panchgani. It is alleged in FIR that, on 24.07.2019, these accused had committed rape on her person at isolated place on Wai to Panchgani road in a vehicle bearing No MH-12-JU.9778.It is further alleged that, while committing rape by present applicant and his friend Bhisham Parwani, accused No. 3 Ravindra Waghmare had taken photo of alleged incident from his cell phone. On the basis of Fir lodged by informant, the Crime No. 08/2020 came to be registered at Wai police

station under Section 376(d), 323, 504,506 read with Section 34 of Indian Penal Code.

**6.** Assistant Police Inspector, A. D. Kamble has carried out the investigation of the said crime During investigation, he prepared spot parchnama recorded statement of witnesses, got recorded statement of informant under Section 164 of Criminal Procedure Code before the Judicial Magistrate First Class, Wai. During investigation, he collected Call Details Report (in Short CDRs) of the mobile phone of informant, present applicant and Bhisham Purwani. During investigation, it was revealed that the present applicant was in foreign country on the date of alleged incident. Therefore, he collected the report from Foreign Regional Registration Officer, Mumbai and Report of Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi. As per the said reports, investigating officer came to a conclusion, that on the date of alleged incident, present applicant was not in India. During investigation, it was revealed to 1.0.that on the date of alleged incident, Bhisham Parwani was also not present at a place of alleged incident. Rather, he was present at Pune. It further revealed to 1.O., that the vehicle bearing No. MH-12-JU-9778 was sold out by the present applicant to one Sandip Thorave on 08.09.2018. Therefore, 1.0. had collected the R.C. book of the said vehicle and also recorded statement of Chamandeep singh Bombaywale under Section 161 of Code of Criminal Procedure and thereafter come the to conclusion that on the date of alleged incident, said vehicle was not in possession of present

applicant as well as Bhisham Parwan. On the basis of material collected in investigation, I.O. come to a conclusion that FIR lodged by informant is false and maliciously false and therefore, he has filed B summary report in Court.

**7.** After filing of B summary report, say of informant came to be called. After service of notice, informant appeared in the proceeding and resisted B summary report by filing protest petition. In her protest petition, she reiterated her contentions made in FIR. She also raised some other grounds in protest petition such as police have not mentioned date of alleged incident in FIR which was stated by her at the time of lodging of FIR. She alleged that during investigation, 1.0., has not conducted DNA test of present applicant and Bhisham Parwani. She alleged that 1. o. has not made any investigation about mobile phone of accused No. 3 Ravindra Waghmare by which he had taken photograph of alleged incident. She alleged that 1.0. has not made any investigation about WhatsApp calls and messages of the mobile phone of present applicant. She further alleged that, in collusion with present applicant and Bhisham Parwani, the I.O. has submitted false B summary report by conducting one sided investigation.

**8.** This Court has accepted the B summary report on the following main grounds:- On the basis of report of Intelligence Bureau, Ministry of Home Affairs, Govt. of India New Delhi and on the basis of report of the office of Foreign Regional Registration Officer, Mumbai, it reveals

that on the date of alleged incident, present applicant was in abroad. b - On the basis of CDR of the mobile phone of present applicant as well as Bhisham Parwani, it reveals that they were not present at the alleged spot of incident on the date and time of alleged incident. c - On the basis of R.C. book of vehicle bearing No. MH 12 JU-9778 and in view of statement of witness Chamandeep singh Bombay wale, it reveals that on the date of alleged incident present applicant was not owner and possessor of the said vehicle and the said vehicle was present in front of Gurudwara, Nanded.

**9.** On the basis of above mentioned grounds and on perusal of entire record of summary report. I came to the conclusion that during investigation of above said crime. 10. has touched all material aspects of investigation of this Crime and therefore, I have accepted summary report.

**10.** I have accepted B summary report filed by 1.0., in Crime No. 08/2020 registered at Wai police station. On that basis, in present inquiry, I come to the conclusion that informant of said crime has given false FIR at Wai police station as well false statement on oath under Section 164 of the Criminal Procedure Code in Court of Justice. Therefore, it appears to me that the informant being legally bound by an oath or by an express provision of law to state the truth, but she has given false FIR as well as false statement under Section 164 of Code of Criminal Procedure in the Court. The informant has given statement on

oath under Section 164 of Code of Criminal Procedure in the Court of Judicial Magistrate First Class, Wall, inspite of knowledge that the FIR lodged by her is false. Informant has lodged false FIR with intent to cause injury to the present applicant and to Bhisham Parwani, knowing that no just or lawful ground for further proceeding on the basis of that false FIR.

**11.** Therefore. I record my finding that Criminal Prosecution is required to be initiated against the respondent No. 2 of this application who is informant of Crime No. 08/2020 registered at Wai police station for the offences punishable under Section 193, 194, 199, 200 and 211 of the Indian Penal Code as per Section 195(1)(b) of the Code of Criminal Procedure. She has prima facie committed aforesaid offences in relation to B summary proceeding before this Court. It is necessary to make mention here that there is no cogent and convincing material to proceed against respondent's No. 3 to 6 for the offences mentioned above.

**12**. Considering all above grounds, a complaint is required to be filed against the present respondent No. 2 for the offences punishable under Section 193, 194, 199, 200 and 211 of the Indian Penal Code as per Section 195(1)(b)(i) of the Code of Criminal Procedure. As per Section 195(1) (b)(1) of Code of Criminal Procedure, it is required to authorize officer of this court to file a written complaint on behalf of this Court

against respondent No. 2 in this Court. Therefore, proceed to pass following order:

**:: ORDER::**

**1.** Application is partly allowed.

**2.** S. D. Dhekane, Assistant Superintendent of Civil and Criminal Court Wai is authorised and directed to file a Written Complaint against the respondent No. 2 Ruchika Pradeep Meher as per Section 195(1)(b) of Code of Criminal Procedure for the offences punishable under Section 193, 194, 199, 200 and 211 of the Indian Penal Code.

**3.** The record of present application as well as original record of B summary report and protest petition shall be tagged with that complaint.

**4.** The proceeding is dropped against respondent No. 3 to 6.

**Date - 24.12.2020,**

**Place :- Wai.**

**(V. N. Girwalkar)**
**Judicial Magistrate First**
**Class, Wai.**

# ORDER PASSED BY THE BOMBAY CITY CIVIL COURT AGAINST ALL DIRECTORS OF COMPANY FOR FORGERY AND FALSE AFFIDAVIT IN CITY CIVIL COURT.

IN THE COURT OF CITY CIVIL FOR GREATER BOMBAY

AT MUMBAI

NOTICE OF MOTION NO. 3476 OF 2017

IN

SUIT NO. 5026 OF 2007

Mahadeo Vithal Koli …Applicant/

Vs. Org. Plaintiff No. 2

Mr. Vinod Sharma,

Director of M/s Khandelwal Eng. Co. Ltd. …Accused

IN THE MATTER BETWEEN

Smt. Babibai Vithal Koli and Ors …Plaintiffs

Vs

M/s Khandelwal Engineering Co. Ltd. …Defendant

**CORAM : HIS HONOUR ADHOC JUDGE**

**SHRI. K. R. JOGLEKAR (C.R.NO.34)**

**DATED : 14th December, 2018.**

**(DICTATED AND PRONOUNCED IN OPEN COURT)**

**ORAL ORDER**

1. This is the Notice of Motion by the Original plaintiffs against the original defendants for taking action and to start prosecution against them Under Section 191, 192, 193, 196, 199, 200, 465, 466, 467, 468, 471 and 474 of Indian Penal Code by giving findings that the said

defendants have made false and misleading statements on affidavit in Written Statement dated 28.12.2010.

2. Facts of the case is that the present applicants have filed suit against the present respondents for various reliefs and especially for seeking declaration that Consent Terms dated 25.06.2002 in Writ Petition No. 1743 of 1998 and 1668 of 1999 are null and void, illegal and not binding upon the plaintiffs and for other reliefs.

3. The present respondents appeared in the suit and filed written statement on 28.12.2010 on affidavit. In the said Affidavit and Written Statement, the defendants made following statements:

(a) There were only three legal heirs of Late. Vitthal Sovar Koli therefore the consent term dated 25.06.2002 is correct.

(b) The defendant Company was is peaceful possession of land since 1970 to 2010 i.e. when Written Statement is affirmed and filed in the Court. The land was non-agricultural land since 1970.

4. According to the present applicant the said statements are false and bogus and without truth. According to the present applicant, the said statements are against the Government record and Public document. Accordingly he filed this Notice of Motion for appropriate relief as per prayer clause.

5. Heard Learned Advocates for the applicant at length. He also tendered on record synopsis of written notes of arguments at Exh. 14.

Perused the same. He also tendered on record list of citations as per Exh. 15. Considered the same.

6. I have conducted preliminary inquiry in the matter. Accordingly, I have summons on Tahasildar, Borivali, Mumbai and Senior Inspector of Police, Bangur Nagar Police Station, Mumbai.

7. Concerned persons from the said authorities appeared in the Court and produced necessary documents.

8. From the copy of Written statement in a suit, which is annexed along with this Notice of Motion it is clear on face of it that the defendants have made statements on oath as mentioned in paragraph No.3 (a) and (b) of this order. On this aspects, it has to be seen whether the said statements are false and misleading and intentionally made knowing well the situation or not.

9. During the course of preliminary inquiry, API Sachin Patil attached to Bangur Nagar Police station remained present in the Court on 17.07.2018 and produced on record report alongwith documents. The report is t.o.r. at Exh. 1. He produced on record at Exh. 2, true copy of complaint application dated 02.12.2010 by Anandi Shivram Koli to Sr. Inspector of Police, Bangur Nagar Police Station against Sanjay Patel and Kirit Thakkar, C.A. of M/s. Khandelwal Co. for illegal act of carry out encroachment in her open land and giving

threats for dire consequences. He produced on record at Exh. 3 True copy of N.C. complaint No. 1869/2010 dated 18.12.2010 by Krushna Vitthal Koli against Sanjay Patel and Kirit Thakkar for the offences punishable under Section 504, 506 and 427 of IPC. He produced on record a Exh. 4 true copy of reply dated 18.07.2017 given by police Inspector Shri. More of Bangur Nagar Police Station to Surendra Mishra in respect of application given under Right to Information Act.

10. During the course of preliminary inquiry, on behalf of Tahasildar, Borivali, Smt. Manisha Nagale, Talathi Malwani remain present as per authority letter Exh. 5. She produced on record various documents. She produced on record Xerox copy of letter at Exh. 6 dated 19.04.2014 issued by Talathi, Malwani to Tahsildar, Borivali in respect of inquiry report of legal heirs of deceased Vitthal Koli in respect of the suit property bearing Mauje Valani, Survey No. 26, Hissa No.1, Plot No.15, 16 and 17. The said report is signed by Smt. Manisha Nagale in the capacity as Talathi, Malwani. As per the said report, she had intimated to the Tahsildar, Borivali that following are the legal heirs of deceased Vitthal Sovar Koli who died on 07.02.2001.

(i) Smt. Babitai Vitthal Koli (wife)
(ii) Smt. Anandi Shivram Koli (married daughter)
(iii) Mr. Mahadeo Vitthal Koli (son)
(iv) Smt. Kashibai Suresh Koli (married daughter)
(v) Mr. Krushna Vitthal Koli (married daughter)

(vi) Smt. Lata Hareshwar Bhandari (married daughter)

As per the said report Exh. 6, Talathi Smt. Nagale has further reported that Vitthal Sovar Koli was cultivating the suit land independently and "M" Certificate has been issued in the name of deceased Vitthal Sovar Koli. Smt. Nagale also produced on record Xerox copy of order dated 20.08.2014 passed by Tahsildar, Borivali in proceeding No.TA/BORI/T-2/RTS/SR-11/2014 by which the application of Dattu Koli through his legal heirs has been rejected. The said Xerox copy of letter dated 25.10.2017 issued by in-charge Tahsildar, Borivali to the Registrar, MRT, Mumbai for sending original papers to him which is at Exh. 8.

11. From the above material, it is crystal clear that father of the applicant was cultivating the suit land before "Tillar's Day" i.e., 01.04.1957. Accordingly he was declared as the "TENANT" of the suit land by Tahasildar and ALT after conducting enquiry and upon report of DILR. Accordingly, Tahasildar fixed the purchase price as per Order dated 12.12.1994 which is at page No. 119 of the Affidavit of the Applicants dated 01.08.2018. Accordingly 32-M Certificate is issued in favour of late. Shri Vitthal Sovar Koli. The said order was challenged by the Respondents herein before SDO.

SDO as per Order dated 10.07.1995 set aside the order of Tahasildar and then Vitthal Koli filed revision before MRT. On 20.12.1996 MRT passed an order in favour of deceased Vitthal koli and restored the order of Tahasildar. Said order of MRT is at page 162 of the affidavit

of the applicant dated 01.08.2018. the present Respondents filed Review Petition before MRT but as per order dated 17.12.1997, Review Petition was dismissed by MRT. The order of Review Petition is at page No. 190 of the affidavit of the Applicant dated 01.08.2018 against the same, on 20.02.1998 Respondents filed Writ Petition No. 1743 of 1998 before Hon'ble Bombay High Court, challenging the said order of MRT. Respondents also filed another Writ Petition No. 1668/1999 before Hon'ble Bombay High Court against the order of Deputy Collector to confirm Mutation entry and 32-M Certificate in the name of Vittal Koli.

12. During the pendency of the said Petitions, Vittal Koli died on 07.02.2001 leaving behind him Six legal heirs as per report Exh. 6 of Talathi, Malwani. Inspite of the same, the Respondents Company by misrepresenting and under coercion and threats to illiterate widow and two sons of Vitthal Koli obtained thumb impression of widow of Vittal Koli and signatures of Mahadeo and Krishna Koli on the consent Terms without explaining anything and without being represented by any Advocate and got consent Decree on 25.06.2002 without any settlement or any payment. The Copy of the said consent Terms dated 25.06.2002 in Writ Petition No. 1743/1998 and 1668/1999 are at page No.127 and 129 respectively of the affidavit of the Applicant dated 01.08.2018.

13. Thereafter, when all the legal heirs got knowledge about the same, they filed Suit No. 1418/2007 before Hon'ble Bombay High Court which is now transferred to City Civil Court, Mumbai bearing

No. 5026/2007 challenging the said consent Terms and declaring the said Consent Terms as null and void, illegal and not binding on them.

14. The present Respondent appeared in the said Suit through one Director and filed Written Statement on Oath on 28.12.2012 which is at page No. 29 to 76 of the present Notice of Motion. In the said Notice of Motion they made the above mentioned statements as per paragraph No. 3 (a) and (b) of this order

15. Considering entire aspects, it is very clear that though as per Talathi Report Exh.6, dated 19.4.2014, there were six legal heirs to the deceased Vitthal Koli, on 25.6.2002 i.e. on date of Consent Terms, the present Respondent misrepresented that there are only three legal heirs to deceased Vitthal Koli and further obtained Thumb impression of wife of deceased Vitthal Koli on the said Consent Terms. It is pertinent to note that there is no identification called as "Dastur" to the said Thumb impression of the wife of deceased Vitthal Koli. Further, as per 32-G and 32-M Certificate and as per report of Tahsildar, Vitthal Koli was in actual and peaceful possession of the suit land since beginning, but defendants made statements that defendant Company was in possession of the suit land since 1970 till 2010. Therefore, all these statements are prima facie misleading and false and against the Government and public documents. Therefore, prima facie I record my findings that the defendant has made above false and misleading statements on affidavit in Written Statement dated 28.12.2010. As per ratio laid down by the Division Bench of Hon'ble Bombay High Court, in the case of **Rajesh Himatlal Shah V/s. State of Maharashtra and**

**Another in 2013(6) ABR 850**, the prosecution in such type of case is absolutely necessary. Therefore, considering this aspect and the ratio laid down by the Division Bench of Hon'ble High Court, prosecution needs to be initiated against the concerned.Further, when the Respondent/Defendant Company came to know that they made such blunder statements in the Written Statement and when it is pointed out to them specifically and when they have knowledge that public documents are against their statement, they should have withdrawn both the said statements referred above in paragraph No.3(a) and (b) of this Order from the Written Statement. But they have sticked up to the said statements. Therefore, as per ratio laid down by the Hon'ble Bombay High Court in the case of Madangopal B. Jalan & Ors. V/s. Partha S/o. Sarathy Sarkar, 2018, SCC on line Bombay 3525 and more particularly paragraph No.3 of the said ruling, in such circumstances, Court had no alternative but to direct the concerned Registrar to lodge the prosecution.

**ORDER**

*1. The Notice of Motion 3476 of 2017 in Suit No. 5026 of 2007 is partly allowed.*

***2. Registrar (Sessions) of this Court is directed to file written complaint before concerned Metropolian Magistrate, against M/s. Khandelwal Engineering Company Limited and its Directors under Sections 191,***

***192, 193, 199, 200, 465, 466, 467, 468, 471 and 474 of Indian Penal Code***

*3. The applicant herein is directed to give all necessary documents required for filing the written complaint to the Registrar (S) of this Court and to pay necessary expenses for typing, xeroxing, Court fee Stamps and other alied expenses which are required for filing the complaint and also to bear the necessary expenses and bhatta of the Registrar (S) for filing the complaint including travelling expenses as and when made.*

*4. Upon the said written complaint, concerned Metropolitan Magistrate shall initiate as he deemed fit to ascertain the names of the accused persons and to proceed in the matter accordingly.*

*5. Cost of the notice of Motion shall be paid by the Respondents to the applicant.*

*6. The prayer of compensation of Rs. 100 Crores is left open and which shall be decided by the concerned Learned Metropolitan Magistrate after conclusion of trial subject to result of the trial.*

*7. Copy of this Order be forwarded to concerned Judge, City Civil for information in which Court Suit No. 5026 of 2007 is pending.*

*8. Notice of Motion 3476 of 2017 is disposed off accordingly.*

**********

**COMPLAINT FILED BY THE REGISTRAR OF THE BOMBAY CITY CIVIL COURT AGAINST ALL DIRECTORS OF THE COMPANY.**

**IN THE COURT OF ADDL. METROPOLITAN MAGISTRATE, ESPLANDE, MUMBAI**

**CRI.CASE NO._____/2019**

**Smt. S. S. Luman-Sawant**
**Registrar, (City Sesion Court,**
**Bombay) ... Complainant**

**V/s**

**Mr. Vinod Sharma and Ors..**
**Directors (Khandelwal Engineering**
**Company Ltd.) ... Accused**

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**IN THE COURT OF ADDL. METROPOLITAN MAGISTRATE, ESPLANDE, MUMBAI**

**CRI.CASE NO._____/2019**

**LIST OF WITNESSES**

1. Smt. Babytai Vitthal Koli (Wife)
2. Smt. Anandi Shiram Koli (Married daughter)
3. Mr. Mahadeo Vitthal Koli (Son)
4. Smt. Kashibai Suresh Koli (Married daughter)
5. Mr. Krushna Vitthal Koli (Son)
6. Smt. Lata Hareshwar Bhandari (Married daughter)
7. Shri. Sachin Patil, A.P.I. Bangur Nagar Police Station, Mumbai.
8. Smt. Manisha Nagale, Talathi, Borivali
9. Shri. Surendra Mishra

**IN THE COURT OF ADDL. METROPOLITAN MAGISTRATE, ESPLANDE, MUMBAI**

**CRI. CASE NO._____/2019**

**Complainant :** Smt. S. S. Luman-Sawant
Occupation: Registrar (Sessions)
City Civil & Sessions Court, Mumbai
Age : 53 years
Address: City Civil & Sssions Court,
Greater Bombay, Old Secretariat Building,
Fort, Mumbai – 400 032.

**Versus**

**ACCUSED :** 1. Vinod Sharma
Director, M/s. Khandelwal Engineering Co. Ltd.
2. Sanjay Kanubhai Patel
Director, M/s. Khandelwal Engineering Co. Ltd.
3. Varun Arunkumar Khandelwal
Director, M/s. Khandelwal Engineering Co. Ltd.
4. Arun Kumar Devi Prasad Khandelwal
Director, M/s. Khandelwal Engineering Co. Ltd.
5. Matacharan Dayashankar Pandey
Director, M/s. Khandelwal Engineering Co. Ltd.

All having office at Golden Bunglow, Juhu Tara Road No. 26 Santacruz (W) Mumbai - 400054.

**COMPLAINT UNDER SECTION 340 OF CRIMINAL PROCEDURE CODE FOR OFFENCES PUNISHABLE UNDER SECTION 191, 192, 193, 196, 199, 200, 465, 466, 467, 468, 471, 474 OF INDIAN PENAL CODE FOR CREATING BOGUS CONSENT TERMS AND FILING FALSE AND MISLEADING WRITTEN STATEMENT IN B.C.C.C. SUIT NO. 5026 OF 2007 (HIGH COURT SUIT NO. 1418 OF 2007), AS PER DIRECTIONS GIVEN BY HON'BLE CITY CIVIL & SESSIONS COURT GREATER BOMBAY VIDE ORDER DAETD 14TH DECEMBER 2018.**

**MAY IT PLEASE YOUR HONOUR**

1. That, the Complainant is working as Registrar (Sessions) before Hon'ble City Civil & Sessions Court, Greater Bombay.

2. That, vide order dated 14th December 2018 Hon'ble Court (Court Room No. 34) His Honour Judge Shri. K.R. Joglekar had directed me to file complaint against all directors of M/s Khandelwal Engineering company Limited for their malafide act of filling bogus consent terms dated 25th June 2002 in WP No.1743 of 1998 and 1668 of 1999 and thereafter again filling false affidavit in Bombay City Civil Court B.C.C.C Suit No.5026 of 2007 (High Court Suit No 1418 of 2007) The operative part of the order dated **14th December 2018** passed by the **Hon'ble City Civil & Session Court** reads as under;

*1. The Notice of Motion 3476 of 2017 in Suit No. 5026 of 2007 is partly allowed.*

***2. Registrar (Sessions) of this Court is directed to file written complaint before concerned Metropolitan Magistrate, against M/s. Khandelwal Engineering Company Limited and its Directors under Sections 191, 192, 193, 196, 199, 200, 465, 466, 467, 468, 471 and 474 of Indian Penal Code***

*3. The applicant herein is directed to give all necessary documents required for filing the written complaint to the Registrar(s) of this Court and to pay necessary expenses for typing, Xeroxing, Court fee Stamps and other alied expenses which are required for filing the complaint and also to bear the necessary expenses and bhatta of the Registrar(s) for filing the complaint including travelling expenses as and when made.*

*4. Upon the said written complaint, concerned Metropolitan Magistrate shall initiate as he deemed fit to ascertain the names of the accused persons and to proceed in the matter accordingly.*

*5. Cost of the notice of Motion shall be paid by the Respondents to the applicant.*

*6. The prayer of compensation of Rs. 100 Crores is left open and which shall be decided by the concerned Learned Metropolitan Magistrate after conclusion of trial subject to result of the trial.*

*7. Copy of this Order be forwarded to concerned Judge, City Civil for information in which Court Suit No. 5026 of 2007 is pending.*

*8. Notice of Motion 3476 of 2017 is disposed off accordingly.*

A certified copy of the order dated 14th December 2018 is at **(Annexed "A")**

3. **BRIEF FACTS OF THE CASE**

3.1. That one Mahadeo S/o Vitthal Koli R/o Malwani Koliwada, Sunder Gully, Malad Marve Road, Malad (W), Mumbai 400095. Along with his family members have filed Suit No. 1418 of 2018 before Hon'ble High Court against the present accused for various reliefs and especially for seeking declaration that Consent Terms dated 25th June 2002 in WP No. 1743 of 1998 and 1668 of 1999 are null and void, illegal and not binding upon the plaintiffs and for other relief.

3.2. The said suit No. 1418 of 2007 was transferred to City Civil & Sessions Court on the basis of pecuniary jurisdiction and being numbered as Bombay City Civil Court Suit No. 5026 of 2018

3.3. The Accused Company namely M/s Khandelwal Engineering Company Ltd. through one of the Director filed Written Statement on oath dated 28.12.2012. (**Annexure "B")**

3.4. The Accused Company made various false submissions and bogus claims in their Written Statement and therefore to prosecute the Accused Company, Plaintiff No. 2 Mahadeo Koli had taken out Notice of Motion No. 3476 of 2017 for taking action against the accused as per provision of Section 340 of Criminal Procedure Code marked as **(Annexure "C")**

3.4. (1) Since the Written Statement were filed on behalf of the company therefore all Directors of company are made accused. That the bogus, forged & Fabricated Consent Terms dated 25.06.2002 were created by accused Sanjay Patel, now Managing Director of M/s Khandelwal Engineering Co. Ltd. The Same accused is prosecuted by police by registering **(N.C.)** Complaint No. 1869 of 2010 for offences punishable Under Section 504, 506, 427 of Indian Penal Code for his attempt to encroach the property of Applicant and this fact came on record in the evidence given by A.P.I. Sachin Patil attached to Bangur Nagar Police Station. He appears to be main conspirator of playing fraud upon the Court. The said Consent Terms of the said Sanjay Patel, is annexed in the Annexure 'C' i.e. Notice of Motion No.3476/17 as Exhibit 'K'.

3.5 The case of the applicant Mahadeo Koli i.e. Applicant/Plaintiff No. 2 in Notice of Motion No. 3476 of 2017 as under;

i) Father of the Applicant, Late Shri. Vitthal Sovar Koli, was cultivating the land being Survey No. 26, Hissa No. 1 (part) of village Valnai, Borivali Taluka, Mumbai Suburban District.

ii) Since Late Shri. Vitthal Sovar Koli was cultivating the land before Tillar's Day i.e. 01.04.1957, therefore he made an application in the Court of Tahsildar and ALT Borivali for declaring himself as tenant and for fixation of purchase price of the land.

iii) After conducting enquiry and calling Report from District Inspector of Land Records (D.I.L.R), the Tahsildar and ALT declared deceased Vitthal Sovar Koli as the tenant of the land and fixed the purchase price. The said Order dated 12.12.1994 is at Page No. 119 of the Affidavit dated 1st August, 2018.

iv) 32-M Certificate is issued in favor of Late Shri. Vitthal Sovar Koli.

v) The said Order was challenged by Accused Company i.e. M/s Khandelwal Engineering Company Ltd. before Sub-Divisional Officer On 10.07.1995, SDO, to set aside the Order of Tahsildar.

vi) Deceased Vitthal S. Koli filed Revision Application before Maharashtra Revenue Tribunal (M.R.T).

vii) On 20.12.1996, M.R.T passed an Order in favor of deceased Vitthal S. Koli and restored the Order of Tahsildar (said Order is at Page No. 162 of the Affidavit dated 1st August, 2018).

viii) The Accused Company then filed Review Petition before Maharashtra Revenue Tribunal M.R.T the M.R.T. vide its Order dated

17.12.1997 dismissed the Review Petition filed by the Accused Company (Page No. 190 of the Affidavit dated 1st August, 2018).

ix) On 20.02.1998, the Accused Company filed Writ Petition No. 1743 of 1998 against the Order passed by M.R.T before the Hon'ble High Court, Mumbai.

x) Another Writ Petition No. 1668 of 1999 was filed by Accused Company for quashing the Order of Dy. Collector where the mutation entry in the name of Late Vitthal Koli was confirmed. The said mutation entry was done based on 32-M Certificate.

xi) Deceased Vitthal S. Koli appeared in the said Writ Petition through Adv. A. R. Shaikh.

xii) During pendency of the Petition, on 07.02.2001, Shri. Vitthal S. Koli died intestate in Mumbai leaving behind him following legal heirs:

I. Smt. Babibai Vitthal Koli (Wife)
II. Smt. Anandi Shivar Koli (Married Daughter)
III. Mr. Mahadeo Vitthal Koli (Son)
IV. Smt. Kashibai Suresh Koli (Married Daughter)
V. Mr. Krishna Vitthal Koli (Son)
VI. Smt. Lata Hareshwar Bhandari (Married Daughter)

xiii) But the Accused Company by misrepresenting the illiterate widow and two illiterate sons and under pressure and threat, got thumb impression of illiterate widow of Late Vitthal S. Koli and also signatures of two sons, Shri. Mahadeo Koli and Shri. Krishna Koli,

without explaining anything and without being represented by any Advocate, got the Consent Terms filed in the Court and got the Consent Decree on 25.06.2002. There was no settlement nor any payment made.

xiv) After that, when the plaintiffs and legal heirs of deceased Vitthal S. Koli got the knowledge of mischief done by the Accused, they filed a Civil Suit before Hon'ble High Court being Suit No. 1418/2007 for various relief including declaration that the said Consent Terms are null and void, illegal and not binding on plaintiffs.

xv) The said Suit is transferred to City Civil Court on the basis of pecuniary jurisdiction and being numbered as 5026 of 2007.

xvi) The present accused appeared in the suit as defendants and filed written statement on 28.12.2010 on affidavit. In the said Affidavit and Written Statement, the accused company through their director made following statements:

*(a) There were only three legal heirs of Late. Vitthal Sovar Koli therefore the consent term dated 25.06.2002 is correct.*

*(b) The defendant Company was*

*is peaceful possession of land since 1970 to 2010 i.e. when Written Statement is affirmed and filed in the Court. The land was non-agricultural land since 1970.*

3.6 Hon'ble Court (Shri. K. R. Joglekar) vide Order dated 10th July, 2018, deemed it proper to conduct Preliminary Enquiry before launching any prosecution as per provisions of Section 340 of Criminal

Procedure Code and two important witnesses were summoned with their concerned records the said order date 10th July 2018 reads as under;

*Due to heavy rain and disturb Railway and Road traffic hence, board is discharged. Adjd. To 13.07.2018. L.O. 3.17pm Adv. Mr. Nilesh Oza for applicant in Notice of Motion no. 3476/17 Ld. advocate for the applicant in Notice of Motion no. 3476/2017 again appeared in the court and showed his readiness to argue the Notice of Motion as it is high court expedited. Primary Argument of Adv. Mr. Oza for applicant in Notice of Motion no. 3476/17 is heard. He pointed out to me the order of Tahsildar declaring the applicant as owner in suit property and thereafter further orders passed by MRT, Mumbai wherein it is held that the order of Collector Mumbai declaring the Suit land as N.A. is not valid. He further pointed out to me that by mis-representing some of the applicants and by wrongly showing only three legal heirs of the deceased Vitthal Sovar Koli instead of showing all Six legal heirs, compromised decree has been obtained by the respondent in this mater by fraud from the Hon'ble Bombay High Court and same is under challenged. He further pointed out to me that inspite of the same, in the written statement dated 28.12.2010, the respondent made false statement. Therefore considering all these aspects I am of the view that preliminary enquiry needs to be concerned passing any order in the matter. Therefore preliminary enquiry be conducted by summoning the concerned witness in the Court along with concerned record. Ld. Adv for the applicant filed on record pursis in Notice of Motion No.*

*3476/2017 of summoning two witnesses along with concerned record. Pursis is taken on record. Issue summons to the said two witnesses either to remain present in person or through authorized representative along with original record and certified copies of the same as mentioned in the pursis. Witness summons R/o 17.07.2018. Humdast allowed Ld. Adv for the applicant is directed to get the summons served through the proper channel. Adjd. For return of witness summons and for preliminary enquiry of Notice of Motion no. 3476/2017 on 17.07.2018 at 2.45pm.*

*Roznama is annexed at* ***Annexure as "D"***

3.7 As per Order passed by Hon'ble Court API Sachin Patil attached to Bangurnagar Police Station was present in the Court.

3.8 On 17.07.2018, Hon'ble Sessions Judge Shri. K. R. Joglekar recorded the statement of API Sachin Patil attached to Bangur Nagar Police Station. The said submissions are as under:

> *"API Sachin Patil attached to Bangurnagar Police Station present in response to the witness summons called documents. He produced on record documents as called for along with report. Report is TOR and marked as Exh.1. He produced on record certified copies of following documents they are taken on record and marked as Exhibit. Anandi Shivram Koli lodged complaint in Police Station, Bangurnagar against Sanjay Patel and Kirit Thakkar of M/s Khandelwal Engineering Company. TOR at Exh. 2. NC No. 1869/2010 u/s 504,506,427 is lodged on 18.12.2010 by Krushna Vitthal Koli against Sanjay Patel and*

*Kirit Thakkar, TOR at Exh. 3. Reply given by Police inspector More of Bangurnagar Police Station to Surendra Mishra in respect of application given under Right to Information Act. TOR at Exh. 4. API Sachin Patil submitted that on 02.12.2010 one Anandi Shivram Koli lodged complaint in Police Station, Bangurnagar against Sanjay Patel and Kirit Thakkar of M/s Khandelwal Engineering Company in respect of attempted encroachment by Khandelwal Engineering Company. He further submitted that NC No. 1869/2010 u/s 504, 506, 427 is lodged on 18.12.2010 by Krushna Vitthal Koli against Sanjay Patel and Kirit Thakkar of Khandelwal Builders. He further submitted that the said NC was allotted for enquiry/investigation to API N.Y. Jadhav. He produced necessary documents as mentioned above. API Sachin Patil is discharged."*

A Copy of Roznama dated 17th July 2018 with Exhibits is **Annexure "E"**

**3.9.** On 25.07.2018, Ms. Manisha Nagale, representative of Tahsildar Borivali, appeared before the Court. Her deposition was also recorded by Ld. Predecessor. The Court proceeding dated 25.07.2018 is as under:

*"Ms. Manisha Vinod Nagale representative of Tahsildar, Borivali in response to the witness summons along with documents. She tendered on record letter issued by Tahsildar, Borivali authorizing Manisha Nagale on his behalf to tendered documents on record. Authority letter*

*taken on record at **Exh. 5**. She produced on record Xerox copy of letter dated 19.04.2014 issued by Talathi, Malvani to Tahsildar, Borivali in respect of inquiry report of legal heirs of the Suit Property bearing Mauje Valanai, Survey No. 26, Hissa No. 1, plot No. 15, 16, 17. The said report is signed by Mrs. Manisha Nagale in the capacity as Talathi of Malvani. As per the said report, she had intimated to Tahsildar, Borivali that following are the legal heirs of deceased Vitthal Sovar Koli who died on 07.02.2001-*

1. *Smt. Babytai Vitthal Koli (Wife)*
2. *Smt. Anandi Shivar Koli (Married Daughter)*
3. *Mr. Mahadeo Vitthal Koli (Son)*
4. *Smt. Kashibai Suresh Koli (Married Daughter)*
5. *Mr. Krushna Vitthal Koli (Son)*
6. *Smt. Lata Hareshwar Bhandari (Married Daughter)*

*As per said report, it is further reported by her that Vitthal Sovar Koli was cultivating the Suit land independently and "M" Certificate has been issued in the name of Deceased Vitthal Sovar Koli. The said Xerox copy of the letter is taken on record and marked as **Exh. 6**. She also produced on record, Xerox copy of the Order dated 20.08.2014 passed by Tahsildar, Borivali in proceeding No. TA/BORI/T-2/RTS/SR-11/2014 by which the Application of Dattu Koli through his legal heirs has been rejected. The Xerox copy is taken on record. It is marked as **Exh. 7**. She produced on record Xerox copy of letter dated 25.10.2017 issued by in charge Tahsildar, Borivali to the Registrar, MRT, Mumbai*

*for sending original papers (page no. 1 to 137) to him in a matter pending before him. The said Xerox copy is taken on record* ***Exh. 8****.*

*Witnesses discharged.*

*Ld. Advocate for Applicant undertakes to produce certified copies of the paper which are forwarded by Tahsildar, Borivali to MRT."*

Certified copy of above Roznama and Exhibits are at **Annexure "F"**

3.10 On 1st August, 2018, the Applicant filed Affidavits of following people:

***I.*** Mr. Mahadeo Vitthal Koli (Son) – ***Annexure "G"***

***II.*** Mr. Krishna Vitthal Koli (Son) ***Annexure "H"***

***III.*** Smt. Lata Hareshwar Bhandari (Married Daughter) ***Annexure "I"***

***IV.*** Smt. Kashibai Suresh Koli (Married Daughter) ***Annexure "J "***

3.11. The Affidavit of Krishna Vitthal Koli is supported with the Certified copies of the documents received from Maharashtra Revenue Tribunal and other Certified/Original documents proving the falsity of the version of Accused-Defendant.

3.12 After going through the deposition of witnesses those are public servants and after considering the government records that are public documents Hon'ble Court (Hon'ble Shri K. R. Joglekar) found that the accused company has filed false and misleading affidavit and therefore they are liable to be prosecuted under section 191, 192, 193, 196, 199, 200, 465, 466, 467, 468, 471, 474 of Indian Penal Code.

4. That the findings of Hon'ble City Civil and Sessions Judge are as under;

1. This is the Notice of Motion by the Original plaintiffs against the original defendants for taking action and to start prosecution against them Under Section 191, 192, 193, 196, 199, 200, 465, 466, 467, 468, 471 and 474 of Indian Penal Code by giving findings that the said defendants have made false and misleading statements on affidavit in Written Statement dated 28.12.2010.

2. Facts of the case is that the present applicants have filed suit against the present respondents for various reliefs and especially for seeking declaration that Consent Terms dated 25.06.2002 in Writ Petition No. 1743 of 1998 and 1668 of 1999 are null and void, illegal and not binding upon the plaintiffs and for other reliefs.

3. The present respondents appeared in the suit and filed written statement on 28.12.2010 on affidavit. In the said Affidavit and Written Statement, the defendants made following statements:

(a) There were only three legal heirs of Late. Vitthal Sovar Koli therefore the consent term dated 25.06.2002 is correct.

(b) The defendant Company was is peaceful possession of land sinc 1970 to 2010 i.e. when Written Statement is affirmed and filed in the Court. The land was non-agricultural land since 1970.

4. According to the present applicant the said statements are false and bogus and without truth. According to the present applicant, the said statements are against the Government record and Public

document. Accordingly he filed this Notice of Motion for appropriate relief as per prayer clause.

5. Heard Learned Advocates for the applicant at length. He also tendered on record synopsis of written notes of arguments at Exh. 14. Perused the same. He also tendered on record list of citations as per Exh. 15. Considered the same.

6. I have conducted preliminary inquiry in the matter. Accordingly, I have summons on Tahsildar, Borivali, Mumbai and Senior Inspector of Police, Bangur Nagar Police Station, Mumbai.

7. Concerned persons from the said authorities appeared in the Court and produced necessary documents.

8. From the copy of Written statement in a suit, which is annexed along with this Notice of Motion it is clear on face of it that the defendants have made statements on oath as mentioned in paragraph No.3 (a) and (b) of this order. On this aspects, it has to be seen whether the said statements are false and misleading and intentionally made knowing well the situation or not.

9. During the course of preliminary inquiry, API Sachin Patil attached to Bangur Nagar Police station remained present in the Court on 17.07.2018 and produced on record report alongwith documents.

The report is t.o.r. at Exh. 1. He produced on record at Exh. 2, true copy of complaint application dated 02.12.2010 by Anandi Shivram Koli to Sr. Inspector of Police, Bangur Nagar Police Station against Sanjay Patel and Kirit Thakkar, C.A. of M/s. Khandelwal Co. for illegal act of carry out encroachment in her open land and giving threats for dire consequences. He produced on record at Exh. 3 True copy of N.C. complaint No. 1869/2010 dated 18.12.2010 by Krushna Vitthal Koli against Sanjay Patel and Kirit Thakkar for the offences punishable under Section 504, 506 and 427 of IPC. He produced on record a Exh. 4 true copy of reply dated 18.07.2017 given by police Inspector Shri. More of Bangur Nagar Police Station to Surendra Mishra in respect of application given under Right to Information Act.

10. During the course of preliminary inquiry, on behalf of Tahasildar, Borivali, Smt. Manisha Nagale, TalathiMalwani remain present as per authority letter Exh. 5. She produced on record various documents. She produced on record Xerox copy of letter at Exh. 6 dated 19.04.2014 issued by Talathi, Malwani to Tahsildar, Borivali in respect of inquiry report of legal heirs of deceased Vitthal Koli in respect of the suit property bearing Mauje Valani, Survey No. 26, Hissa No.1, Plot No.15, 16 and 17. The said report is signed by Smt. Manisha Nagale in the capacity as Talathi, Malwani. As per the said report, she had intimated to the Tahsildar, Borivali that following are the legal heirs of deceased Vitthal Sovar Koli who died on 07.02.2001.

(i) Smt. Babitai Vitthal Koli (wife)

(ii) Smt. Anandi Shivram Koli (married daughter)

(iii) Mr. Mahadeo Vitthal Koli (son)

(iv) Smt. Kashibai Suresh Koli (married daughter)

(v) Mr. Krushna Vitthal Koli (married daughter)

(vi) Smt. Lata Hareshwar Bhandari (married daughter)

As per the said report Exh. 6, Talathi Smt. Nagale has further reported that Vitthal Sovar Koli was cultivating the suit land independently and "M" Certificate has been issued in the name of deceased Vitthal Sovar Koli. Smt. Nagale also produced on record Xerox copy of order dated 20.08.2014 passed by Tahsildar, Borivali in proceeding No. TA/BORI/T-2/RTS/SR-11/2014 by which the application of Dattu Koli through his legal heirs has been rejected. The said Xerox copy of letter dated 25.10.2017 issued by in-charge Tahsildar, Borivali to the Registrar, MRT, Mumbai for sending original papers to him which is at Exh. 8.

11. From the above material, it is crystal clear that father of the applicant was cultivating the suit land before "Tillar's Day" i.e., 01.04.1957. Accordingly he was declared as the "TENANT" of the suit land by Tahsildar and ALT after conducting enquiry and upon report of DILR. Accordingly, Tahsildar fixed the purchase price as per Order dated 12.12.1994 which is at page No. 119 of the Affidavit of the Applicants dated 01.08.2018. Accordingly 32-M Certificate is issued in favour of late. Shri Vitthal Sovar Koli. The said order was challenged by the Respondents herein before SDO.

SDO as per Order dated 10.07.1995 set aside the order of Tahsildar and then Vitthal Koli filed revision before MRT. On 20.12.1996 MRT passed an order in favour of deceased Vitthal koli and restored the order of Tahsildar. Said order of MRT is at page 162 of the affidavit of the applicant dated 01.08.2018. The present Respondents filed Review Petition before MRT but as per order dated 17.12.1997, Review Petition was dismissed by MRT. The order of Review Petition is at page No. 190 of the affidavit of the Applicant dated 01.08.2018 against the same, on 20.02.1998 Respondents filed Writ Petition No. 1743 of 1998 before Hon'ble Bombay High Court, challenging the said order of MRT. Respondents also filed another Writ Petition No. 1668/1999 before Hon'ble Bombay High Court against the order of Deputy Collector to confirm Mutation entry and 32-M Certificate in the name of Vittal Koli.

12. During the pendency of the said Petitions, Vittal Koli died on 07.02.2001 leaving behind him Six legal heirs as per report Exh. 6 of Talathi, Malwani. Inspite of the same, the Respondents Company by misrepresenting and under coercion and threats to illiterate widow and two sons of Vitthal Koli obtained thumb impression of widow of Vittal Koli and signatures of Mahadeo and Krishna Koli on the consent Terms without explaining anything and without being represented by any Advocate and got consent Decree on 25.06.2002 without any settlement or any payment. The Copy of the said consent Terms dated 25.06.2002 in Writ Petition No. 1743/1998 and 1668/1999 are at page No.127 and 129 respectively of the affidavit of the Applicant dated 01.08.2018.

13. Thereafter, when all the legal heirs got knowledge about the same, they filed Suit No. 1418/2007 before Hon'ble Bombay High Court which is now transferred to City Civil Court, Mumbai bearing No. 5026/2007 challenging the said consent Terms and declaring the said Consent Terms as null and void, illegal and not binding on them.

14. The present Respondent appeared in the said Suit through one Director and filed Written Statement on Oath on 28.12.2012 which is at page No. 29 to 76 of the present Notice of Motion. In the said Notice of Motion they made the above mentioned statements as per paragraph No. 3 (a) and (b) of this order

15. Considering entire aspects, it is very clear that though as per Talathi Report Exh.6, dated 19.4.2014, there were six legal heirs to the deceased Vitthal Koli, on 25.6.2002 i.e. on date of Consent Terms, the present Respondent misrepresented that there are only three legal heirs to deceased Vitthal Koli and further obtained Thumb impression of wife of deceased Vitthal Koli on the said Consent Terms. It is pertinent to note that there is no identification called as "Dastur" to the said Thumb impression of the wife of deceased Vitthal Koli. Further, as per 32-G and 32-M Certificate and as per report of Tahsildar, Vitthal Koli was in actual and peaceful possession of the suit land since beginning, but defendants made statements that defendant Company was in possession of the suit land since 1970 till 2010. Therefore, all these statements are prima facie misleading and false and against the Government and public documents. Therefore, prima facie I record my findings that the defendant has made above false and misleading

statements on affidavit in Written Statement dated 28.12.2010. As per ratio laid down by the Division Bench of Hon'ble Bombay High Court, in the case of **Rajesh Himatlal Shah V/s. State of Maharashtra and Another in 2013(6) ABR 850**, the prosecution in such type of case is absolutely necessary. Therefore, considering this aspect and the ratio laid down by the Division Bench of Hon'ble High Court, prosecution needs to be initiated against the concerned. Further, when the Respondent/Defendant Company came to know that they made such blunder statements in the Written Statement and when it is pointed out to them specifically and when they have knowledge that public documents are against their statement, they should have withdrawn both the said statements referred above in paragraph No.3(a) and (b) of this Order from the Written Statement. But they have sticked up to the said statements. Therefore, as per ratio laid down by the Hon'ble Bombay High Court in the case of **Madangopal B. Jalan & Ors. V/s. Partha S/o. Sarathy Sarkar, 2018, SCC Online Bombay 3525** and more particularly paragraph No.3 of the said ruling, in such circumstances, Court had no alternative but to direct the concerned Registrar to lodge the prosecution.

**ORDER**

*1. The Notice of Motion 3476 of 2017 in Suit No. 5026 of 2007 is partly allowed.*

***2. Registrar (Sessions) of this Court is directed to file written complaint before concerned Metropolitan Magistrate, against***

***M/s. Khandelwal Engineering Company Limited and its Directors under Sections 191, 192, 193, 196, 199, 200, 465, 466, 467, 468, 471 and 474 of Indian Penal Code.***

*3. The applicant herein is directed to give all necessary documents required for filing the written complaint to the Registrar (S) of this Court and to pay necessary expenses for typing, Xeroxing, Court fee Stamps and other alied expenses which are required for filing the complaint and also to bear the necessary expenses and bhatta of the Registrar(s) for filing the complaint including travelling expenses as and when made.*

*4. Upon the said written complaint, concerned Metropolitan Magistrate shall initiate as he deemed fit to ascertain the names of the accused persons and to proceed in the matter accordingly.*

*5. Cost of the Notice of Motion shall be paid by the Respondents to the applicant.*

*6. The prayer of compensation of Rs. 100 Crores is left open and which shall be decided by the concerned Learned Metropolitan Magistrate after conclusion of trial subject to result of the trial.*

*7. Copy of this Order be forwarded to concerned Judge, City Civil for information in which Court Suit No. 5026 of 2007 is pending.*

*8. Notice of Motion 3476 of 2017 is disposed off accordingly.*

5. That the copy of the citation **Rajesh Himmatlal Shah Vs. State of Maharashtra and Anr. 2013(6) ABR 850**. Is at **Annexure 'K'.**

The copy of the citation **Madan Gopal B Jalan&Ors. Vs Partha S/o Sarathi Sarkar 2018 SCC OnLine 3525** is at **Annexure 'L'.**

In the abovesaid case The Hon'ble High Court has ruled as under;

*"3 ..... When the facts available on record unmistakably point out that the accused has continued to make defamatory and false statements, even after those statements made previously by him have been found to be false, the Court has no option but to take cognizance of the complaint made by the aggrieved person and the Court shall be within it's right to direct the Registrar (Judicial) to file an appropriate complaint."*

6. That the counsel for the applicant had provided me the list of names of Directors of the accused company the same is as under,

Names of the Directors:

1. Arun Kumar Devi Prasad Khandelwal
2. Matacharan Dayashankar Pandey

3. Varun Arunkumar Khandelwal

4. Sanjay Kanubhai Patel

5. Vinod Sharma.

**7. JURISDICTION.**

The offense is of giving false evidence before Hon'ble City Civil and sessions court of Greater Bombay and as per provisions of section 340 of Criminal Procedure code it and to be filed before the magistrate having jurisdiction to try the offences committed in that area.

Section 340 of Criminal Procedure code reads as under,

***Section 340***

*(1) When upon an application made to it in this behalf or otherwise any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,-*

*(a) Record a finding to that effect;*

*(b) Make a complaint thereof in writing;*

*(c) Send it to a Magistrate of the first class having jurisdiction;*

*(d) Take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the court*

*thinks it necessary so to do send the accused in custody to such Magistrate; and*

*(e) Bind over any person to appear and give evidence before such Magistrate*

*(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of section 195.*

*(3) A complaint made under this section shall be signed, -*

*(a) Where the court making the complaint is a High Court, by such officer of the court as the court may appoint;*

*(b) In any other case, by the presiding officer of the court.*

*(4) In this section, "court" has the same meaning as in section 195.*

Hence this Hon'ble Court has the jurisdiction to try the case and punish the accused.

**8. OFFENCES.**

The operative part of the order read as under ;

***2. Registrar (Sessions) of this Court is directed to file written complaint before concerned Metropolitan Magistrate, against M/s. Khandelwal Engineering Company Limited and its Directors under Sections 191, 192, 193, 196, 199, 200, 465, 466, 467, 468, 471 and 474 of Indian Penal Code***

The relevant section of I.P.C. read as under;

***191.*** *Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise. Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know. Illustrations*

*(a) A, in support of a just claim which B has against Z for one thousand rupees, ears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.*

*(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.*

*(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.*

*(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.*

*(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.*

***192.** Fabricating false evidence.—Whoever causes any circumstance to exist or 1[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an*

*erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence". Illustrations*

*(a) A, puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.*

*(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.*

*(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.*

***193**. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Explanation 1.—A trial before a Court-martial; 1[***] is a judicial proceeding. Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a*

*judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence. Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.*

***196.*** *Using evidence known to be false. — Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.*

***199.*** *False statement made in declaration which is by law receivable as evidence.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point*

*material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.*

***200.*** *Using as true such declaration knowing it to be false.—Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence. Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 to 200.*

***465.*** *Punishment for forgery.—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

***466.*** *Forgery of record of Court or of public register, etc.—1[Whoever forges a document or an electronic record], purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. 1[Explanation.—For the purposes of this section,*

*"register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section.*

***467.*** *Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, 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.*

***468.*** *Forgery for purpose of cheating.—Whoever commits forgery, intending that the 1[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

***471.*** *Using as genuine a forged 1[document or electronic record].—Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record].*

***474.*** *Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.—1[Whoever*

*has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with 2[imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.*

**9.** That the accused directors of M/s. Khandelwal Engineering Company Limited created bogus Consent Terms and used the same has genuine one and based on that forged documents they have filed false and misleading affidavit in order to mislead the Court and hence guilty of offence against administration of Justice and it is expedient and in the interest of justice that they should be tried and punish as per the relevant provision of Indian Penal Code.

Since the defendant in the aforesaid suit is M/s. Khandelwal Engineering Company Limited and written statement is filed on behalf of the said company therefore the Hon'ble Sessions Court has directed prosecution against all the directors of the said company.

Since the Written Statement were filed on behalf of the company therefore all Directors of company are made accused. That the bogus, forged & Fabricated Consent Terms dated 25.06.2002 were created by accused Sanjay Patel, now Managing Director of M/s Khandelwal

Engineering Co. Ltd. The Same accused is prosecuted by police by registering **(N.C.)** Complaint No. 1869 of 2010 for offences punishable Under Section 504, 506, 427 of Indian Penal Code for his attempt to encroach the property of Applicant and this fact came on record in the evidence given by A.P.I. Sachin Patil attached to Bangur Nagar Police Station. He appears to be main conspirator of playing fraud upon the Court. The said Consent Terms of the said Sanjay Patel, is annexed in the Annexure 'C' i.e. Notice of Motion No.3476/17 as Exhibit 'K'.

**10. <u>Compensation to Applicant Mahadeo Vithal Koli .</u>**

The point No.6 of the operative part of the order dated 14/12/2018 of the Hon'ble Ad-hoc Judge read as under;

*"6. The prayer of compensation of Rs. 100 Crores is left open and which shall be decided by the concerned Learned Metropolitan Magistrate after conclusion of trial subject to result of the trial."*

Here the victim Mahadeo Vitthal Koli be granted appropriate compensation considering the overall materials available on record.

**11.** The Complainant is filing documents as per List -A and he be permitted to file additional documents as required.

**12. PRAYER**; It is therefore requested that,

(i) The present complaint be registered;

(ii) Process be issued against the Accused-directors of M/s Khandelwal Engineering Co Ltd, namely Arun Kumar Devi

Prasad Khandelwal, Matacharan Dayashankar Pandey, Varun Arunkumar Khandelwal, Sanjay Kanubhai Patel and Vinod Sharma. In view of section 204(1) (b) of Criminal Procedure code;

(iii) The accused be tried and punished under sections 191, 192, 193, 196 199, 200, 465, 466, 467, 468, 471 and 474 of Indian Penal Code;

(iv) Compensation be granted to the victim Shri. Mahadeo Vitthal Koli, as per section 357(3) of Criminal Procedure Code.

Mumbai.

Dated this _____ day of January, 2019.

**Complainant**

(Smt. S. S. Luman-Sawant)
Registrar, City Sessions
Court,Gr. Mumbai

**V E R I F I C A T I O N**

I, S. S. Luman-Sawant an adult, Registrar, City Civil and Sessions Court, Gr. Mumbai, do hereby state on solemn affirmation that whatever is stated in the forgoing Para's are true to the my personal knowledge as the same are based on the order and documents and I believe the same as true.

Solemnly affirmed on this

Dated this _____ day of January, 2019.

Complainant