PART - A : STANDARDS OF ETIQUETTE AND PROFESSIONAL ETHICS

RULES GOVERNING ADVOCATES

Restrictions on Senior Advocates

[Rules made by the Bar Council of India under
sections 16 (3) and 49 (1) (g) of the Advocates Act, 1961]

Senior Advocates shall, in the matter of the practice of the profession of law mentioned in section 30 of the Act, be subject to the following restrictions:-

(a) A senior advocate shall not file a vakalatnama or act in any court or tribunal, or before any person or other authority mentioned in section 30 of the Act.

Explanation - "To act" means to file an appearance or any pleading or application in any court or Tribunal or before any person or other authority mentioned in section 30 of the Act, or to do any act other than pleading required or authorised by law to be done by a party in such court, or tribunal or before any person or other authority mentioned in the said section either in person or by his recognised agent or by an advocate or an attorney on his behalf.

(b) (i) A senior advocate shall not appear without an Advocate on Record in the Supreme Court or without an advocate in Part II of the State roll in any court, or tribunal, or before any person or other authority mentioned in section 30 of the Act.

(ii) Where a senior advocate has been engaged prior to the coming into force of the rule in this Chapter, he shall not continue thereafter unless an advocate in Part II of the State roll is engaged along with him. Provided that a senior advocate may continue to appear without an advocate in Part II of the State roll in cases in which he had been briefed to appear for the prosecution or the defence in a criminal case, if he was so briefed before he is designated as a senior advocate or before coming into operation of the rules in this Chapter as the case may be.

(c) He shall not accept instructions to draft pleading or affidavits, advice on evidence or to do any drafting work of an analogous kind in any court or tribunal, or before any person or other authority mentioned in section 30 of the Act or undertake conveyancing work of any kind whatsoever. This restriction however shall not extend to settling any such matter as aforesaid in consultation with an advocate in Part II of the State roll.

(cc) A senior advocate shall, however, be free to make concession or give undertakings in the course of arguments on behalf of his clients on instructions from the junior advocate.

(d) He shall not accept directly from a client any brief or instructions to appear in any court or tribunal or before any person or other authority in India.

(e) A senior advocate who had acted as an advocate (junior) in a case, shall not after he has been designated as a senior advocate advise on grounds of appeal in a Court of Appeal or in the Supreme Court, except with an advocate as aforesaid.

(f) A senior advocate may in recognition of the services rendered by an advocate in Part II of the State roll appearing in any matter pay him a fee which he considers reasonable.

Standards of Professional Conduct and Etiquette

[Rules made by the Bar Council of India under section 49(1)(c) of the Advocates Act, 1961]

Preamble

An advocate shall, at all times, Comport himself in a manner befitting his status as an officer of the court, a privileged member of the community; and a gentleman, bearing in mind that what may be lawful and a moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the forgoing obligation, an advocate shall fearlessly uphold the interests of his client, and in his conduct conform to he rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned.

Section I – Duty to the Court

1. An advocate shall, during the presentation of his case and while otherwise acting before a court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

2. An advocate shall maintain towards the courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

3. An advocate shall not influence the decision of a court by any illegal or improper means. Private communications with a judge relating to a pending case are forbidden.

4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in reltion to the court, opposing counsel or parties which the Advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth-piece of the client, and shall exercise his own judgement in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.

5. An Advocate shall appear in court at all times only in the prescribed dress, and his appearance shall always be presentable.

6. An Advocate shall not enter appearance, act, plead or practice in any way before a court, tribunal or Authority mentioned in section 30 of the Act, if the sole of any member thereof is related to the Advocate as father, grandfather, son, grand son, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.

For the purposes of this rule, court shall mean a court, Bench a tribunal in which above mentioned relation of the Advocate is a judge, member or the Presiding Officer.

7. An advocate shall not wear bands or gown in public places other than in Courts except on such ceremonial occasions and at such places as the Bar Council of India or the court may prescribe.

8. An advocates shall not appear in or before any court or tribunal or any other authority for or against an organization or an institution, society or corporation, if he is a member of the Executive Committee of such organization or institution or society or corporation. "Executive Committee", by whatever name it may be called, shall include any Committee or body of persons which for the time being, is vested with the general management of the affairs of the organisation or institution, society or corporation :

Provided that this rule shall not apply to such a member appearing as *amicus curiae* or without a fee on behalf or a Bar Council, Incorporated Law Society or a Bar Association.

9. An advocate should not act or plead in any manner in which he is himself pecuniary interested.

Illustration:

I. He should not act in a bankruptcy petition when he himself is also a creditor of the bankrupt.

II. He should not accept a brief from a company of which he is Director.

10. An advocate shall not stand as a surety, or certify the soundness of a surety for his client required for the purpose of any legal proceedings.

Section II- Duty to the Client

11. An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

12. An advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

13. An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an advocate if he can retire without jeopardizing his client's interests.

14. An advocate shall, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either engaging him or continuing the engagement.

15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

16. 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. The suppression of material capable of establishing the innocence of the accused shall be scrupulously avoided.

17. An advocate shall not, directly or indirectly, commit a breach of the obligations imposed by section 126 of the Indian Evidence Act.

18. An advocate shall not, at any time, be a party to fomenting litigation.

19. An advocate shall not act on the instructions of any person other than his client or his authorized agent.

20. An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.

21. An advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

22. An advocate shall not, directly or indirectly, bid for or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of decree or order in any suit, appeal or other proceeding in which he was in any way professionally engaged. This prohibition, however, does not prevent an advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase, provided the advocate is expressly authorized in writing in this behalf.

23. An advocate shall not adjust fee payable to him by his client against his own personal liability to the client, which liability does not arise in the course of his employment as an advocate.

24. An advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

25. An advocate should keep accounts of the client's money entrusted to him, and the accounts should show the amounts received from the client or on his behalf, the expenses incurred for him and the debits made on account of fees with respective dates and all other necessary particulars.

26. Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses, and during the course of the proceedings, no advocate shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

27. Where any amount is received or given to him on behalf of his client, the fact of such receipt must be intimated to the client, as early as possible.

28. After the termination of the proceedings, the advocate shall be at liberty to appropriate towards the settled fee due to him, any sum remaining unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceeding for which he had been engaged, the fee payable under the rules of the Court, in force for the time being, or by then settled and the balance, if any, shall be refunded to the client.

30. A copy of the client's account shall be furnished to him on demand provided the necessary copying charge is paid.

31. An advocate shall not enter into arrangements whereby funds in his hands are concerned into loans.

32. An advocate shall not lend money to his client for the purpose or any action or legal proceedings in which he engaged by such client.

Explanation – An advocate shall not be held guilty for a breach of this rule, if in the course a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the court to make a payment to the court on account of the client for the progress of the suit or proceeding.

33. An advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party.

Section III – Duty to Opponent

34. An advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an advocate except through that advocate.

35. An advocate shall do his best to carry out all legitimate promises made to the opposite party even thought not reduced to writing or enforceable under the rules of the court.

Section IV – Duty to Colleagues

36. An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal comm-unications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photograph to be published in connection with cases in which he has been engaged or concerned. His sign-board or name plate should be reasonable size. The sign-board or nameplate or stationery should not indicate that he is or has been associated with any person or organization or with any particular cause or matter or that he specializes in any particular type of work or that he has been a Judge or an Advocate General.

37. An Advocate shall not permit his professional services or his name to be used in aid, or to make possible, the unauthorized practice of law by any agency.

38. An advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same.

39. An advocate shall not enter appearance in any case in which there is already a vakalat or memo of appearance filed by an advocate engaged for a party except with his consent; in case such consent is not produced he shall apply to the court stating reasons why the said consent should not be produced and he shall appear only after obtaining the permission of the court.

Section IVA

40. Every advocate borne on the rolls of the State Bar Council shall pay to the State Bar Council a sum of Rs.300/- every third year commencing from 1st August, 2001 along with a statement of particulars as given in the form set out at the end of these rules, the first payment to be made on or before 1st August, 2001 or such extended time as notified by the Bar Council of India or the concerned State Bar Council:

Provided further however that an advocate shall be at liberty to pay in lieu of the payment of Rs. 300/- every three years a consolidated amount of Rs. 600/-. This will be a life time payment to be kept in the fixed deposit by the concerned State Bar Council and the Bar

Council of India at the ratio of 80 : 20 as envisaged under rule 41 and interest to be used for the purpose of this rule.

Out of life time payment, 80% of the amount will be retained by the State Bar Council in a fixed deposit and remaining 20% has to be transferred to the Bar Council of India. The Bar Council of India and State Bar Council have to keep the same in a fixed deposit and the interest on the said deposits shall alone be utilized for the welfare of the Advocates.

Explanation 1. – Statement of particulars as required by rule 40 in the form set out require to be submitted only once in three years.

Explanation 2 – All advocates who are in actual practice and are not drawing salary or not in full-time service and drawing salary from their respective employers are only required to pay the amount referred to in this rule.

Explanation 3.– This rule will be effective from 1st August, 2001 and for period prior to this Advocates will continue to be covered by old rule.

41. (1) All the sums so collected by the State Bar Council in accordance with rule 40 shall be credited in a separate fund known as "Bar Council of Indian Advocates Welfare Fund and shall be deposited in the bank as provided hereunder.

(2) The Bar Council of India Advocates Welfare Fund Committee for the State shall remit 20% of the total amount collected and credited to its account, to the Bar Council of India by the end of every month which shall be credited by the Bar Council of India and the Bar Council of India shall deposit the said amount in a separate fund to be known as "BAR COUNCIL OF INDIA ADVOCATES WELFARE FUND". This fund shall be managed by the Welfare Committee of the Bar Council of India in the manner prescribed from time to time by the Bar Council of India for the Welfare of the Advocates.

(3) The rest 80% of the total sum so collected by the Bar Council of India Advocates Welfare Fund Committee for the State under rule 41 (1) shall be utilized for the welfare of advocates in respect of Welfare Schemes sponsored by the respective State Bar Councils and this fund shall be administered by the Advocates Welfare Committee for the State which shall submit its report annually to the Bar Council of India.

(4) In case of transfer of an advocate from one State Bar Council to other State Bar Council, 80% of the total sum collected so far in respect of that advocate by the Bar Council of India Advocates Welfare Committee for the State under rule 41(1) where the said advocate was originally enrolled, would get transferred to the Advocates Welfare Fund Committee of the Bar Council of India for the State to which the said advocate has got himself transferred.

42. If any advocate fails to pay the aforesaid sum within the prescribed time as provided under rule 40, the Secretary of the State Bar Council shall issue to him a notice to show cause within a month why his right to practice be not suspended. In case the advocate pays the amount together with the late fee of Rs. 5/- per month, or a part of a month subject to a maximum of Rs. 30/- within the period specified in notice, the proceedings shall be dropped. If the advocate does not pay the amount or fails to show sufficient cause, a Committee of three members constituted by the State Bar Council in this behalf may pass an order suspending the right of the advocate to practice:

Provided that the order of suspension shall cease to be in force when the advocate concerned pays the amount along with a late fee of Rs. 50/- and obtain a certificate in this behalf from the State Bar Council.

43. An advocate who has been convicted of an offence mentioned under section 24A of the Advocates Act or has been declared insolvent or has taken full time service part time service or engages in business or any avocation inconsistent with his practicing as an advocate or has incurred any disqualification mentioned in the Advocates Act or the rules made thereunder, shall send a declaration to that effect to the respective State Bar Council in which the advocate is enrolled, within ninety days from the date of such disqualification. If the advocate does not file the said declaration or fails to show sufficient cause for not filing such declaration provided thereof, the Committee constituted by the State Bar Council under rule 42 may pass orders suspending the right of the advocate to practice :

Provided that it shall be open to the Committee to condone the delay on an application being made in this behalf:

Provided further that an advocate who had after the date of his enrolment and before the coming into force of this rule, become subject to any of the disqualifications mentioned in this rule, shall within a period of ninety days of the coming into force of this rule send declaration referred to in this rule to the respective State Bar Council in which the Advocate is enrolled and on failure to do so by such Advocate all the provisions of this rule would apply.

44. An appeal shall lie to the Bar Council of India at the instance of an aggrieved advocate within a period of thirty days form the date of the passed under the Rules 42 and 43.

44A. (1) There shall be a Bar Council of India Advocates Welfare Committee, consisting of five members elected from amongst the members of the Council. The term of the members of the Committee shall be co-extensive with their term in the Bar Council of India.

(2) (i) Every State Council shall have an Advocate Welfare Committee known as Bar Council of India Advocates Welfare Committee for the State.

(ii) The Committee shall consist of member Bar Council of India from the State concerned who shall be the *ex-officio* Chairman of the Committee and two members elected from amongst the members.

(iii) The Secretary of the State Bar Council concerned will act as *ex-officio* Secretary of the Committee.

(iv) The term of the member, Bar Council of India in the Committee shall be co-extensive with his term in the Bar Council of India.

(v) The term of the members elected from the State Bar Council shall be two years.

(vi) Two members of the Committee will form a quorum of any meeting of the Committee.

(3) Every State Bar Council shall open an account in the name of the Bar Council of India Welfare Committee for the State, in any Nationalised Bank.

(4) No amount shall be withdrawn from the Bank unless that cheque is signed by the Chairman of the Welfare Committee and its Secretary.

(5) The State Bar Council shall implement Welfare Schemes approved by the Bar Council of India through Advocates Welfare Committee as constituted under sub-clause (2) (i). The State Bar Councils may suggest suitable modifications in the Welfare Schemes or suggested schemes shall have effect only after approval by the Bar Council of India.

(6) The State Bar Council shall maintain separate account in respect of the Advocate Welfare Fund which shall be audited annually along with other accounts of the State Bar Council and send the same along with Auditor's Report to the Bar Council of India:

Provided that the Bar Council of India Advocates Welfare Fund Committee for the State shall be competent to appoint its own staff in addition to the staff of the Bar Council of the State entrusted with duty to maintain the account of the fund if their fund are adequate to make such appointment. The salary and other conditions of the said staff be determined by the Bar Council of India Advocates Welfare Fund Committee for the State:

Provided further that Chairman of the Bar Council of India Advocates Welfare Fund Committee for the State shall be competent to make temporary appointment for a period not exceeding six months in one transaction if the situation so requires subject to availability of fund in the said Committee for making such appointment.

44B. The Bar Council of India shall utilize the funds received under rule 41(2) in accordance with the schemes which may be framed from time to time.

Section V – Duty in imparting training

45. It is improper for an Advocate to demand or accept fees or any premium from any person as a consideration for imparting training in law under the rules prescribed by a State Bar Council to enable such person to qualify for enrolment under the Advocates Act, 1961.

Section VI – Duty to Render Legal Aid

46. Every Advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot any for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society.

Section VII – Section on other Employments

47. An advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that, in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

48. An advocate may be Director or Chairman of the Board of Directors of a company with or without any ordinary sitting fee, providing none of his duties are of an executive character. An advocate shall not be a Managing Director or a Secretary of any company.

49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practice as an advocate so long as he continues in such employment.

50. An advocate who has inherited, or succeeded by survivorship to, a family business may continue it, but may not personally participate in the management thereof. He may continue to hold a share with others in any business which has descended to him by survivorship or inheritance or by will, provided he dies not personally participate in the management thereof.

51. An advocate may review Parliamentary Bills for a remuneration, edit legal text books at a salary, do press-vetting for newspapers, coach pupils for legal examination, set and examine question papers; and, subject to the rules against advertising and full-time employment, engage in broadcasting journalism, lecturing and teaching subjects, both legal and non-legal.

52. Nothing in these rules shall prevent an advocate form accepting, after obtaining the consent of the State Bar Council Part-time employment provided that in the opinion of the State Bar Council the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession. The rule shall be subject to such directives if any as may be issued by the Bar Council of India from time to time.

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CASES ON PROFESSIONAL MISCONDUCT

CONTEMPT OF COURT BY A SENIOR AVOCATE

R.K. Anand v. *Registrar, Delhi High Court*

(2009) 8 SCC 106

AFTAB ALAM, J. 1. The present is a fall out from a criminal trial arising from a hit and run accident on a cold winter morning in Delhi in which a car travelling at reckless speed crashed through a police check post and crushed to death six people, including three policemen. Facing the trial, as the main accused, was a young person called Sanjeev Nanda coming from a very wealthy business family. According to the prosecution, the accident was caused by Sanjeev Nanda who, in an inebriated state, was driving a black BMW car at very high speed. The trial, commonly called as the BMW case, was meandering endlessly even after eight years of the accident and in the year 2007, it was not proceeding very satisfactorily at all from the point of view of the prosecution. The status of the main accused coupled with the flip flop of the prosecution witnesses evoked considerable media attention and public interest. To the people who watch TV and read newspapers it was yet another case that was destined to end up in a fiasco. It was in this background that a well known English language news channel called New Delhi Television (NDTV) telecast a programme on May 30, 2007 in which one Sunil Kulkarni was shown meeting with IU Khan, the Special Public Prosecutor and RK Anand, the Senior Defence Counsel (and two others) and negotiating for his sell out in favour of the defence for a very high price. Kulkarni was at one time considered the most valuable witness for the prosecution but afterwards, at an early stage in the trial, he was dropped by the prosecution as one of its witnesses. Nearly eight years later, the trial court had summoned him to appear and give his testimony as a court witness. The telecast came a few weeks after the court order and even as his evidence in the trial was going on. According to NDTV, the programme was based on a clandestine operation carried out by means of a concealed camera with Kulkarni acting as the mole. What appeared in the telecast was outrageous and tended to confirm the cynical but widely held belief that in this country the rich and the mighty enjoyed some kind of corrupt and extra-constitutional immunity that put them beyond the reach of the criminal justice system. Shocked by the programme the Delhi High Court suo moto initiated a proceeding (Writ Petition (Criminal) No. 796 of 2007). It called for from the news channel all the materials on which the telecast was based and after examining those materials issued show cause notices to RK Anand, IU Khan and Bhagwan Sharma, an associate advocate with RK Anand why they should not be convicted and punished for committing criminal contempt of court as defined under Section 2(c) of the Contempt of Courts Act. (In the sting operations there was another person called Lovely who was apparently sent to meet Kulkarni as an emissary of RK Anand. But he died in a freak accident even before the stage of issuance of notice in the proceeding before the High Court). On considering their show cause and after hearing the parties the High Court expressed its displeasure over the role of Bhagwan Sharma but acquitted him of the charge of contempt of court. As regards RK Anand and IU Khan, however, the High Court found and held that their acts squarely fell within the definition of contempt under clauses (ii) & (iii) of Section 2(c) of

the Contempt of Courts Act. It, accordingly, held them guilty of committing contempt of Court vide judgment and order dated August 21, 2008 and in exercise of power under Article 215 of the Constitution of India prohibited them, by way of punishment, from appearing in the Delhi High Court and the courts subordinate to it for a period of four months from the date of the judgment. It, however, left them free to carry on their other professional work, e.g., `consultations, advises, conferences, opinion etc'. It also held that RK Anand and IU Khan had forfeited their right to be designated as Senior Advocates and recommended to the Full Court to divest them of the honour. In addition to this the High Court also sentenced them to fine of rupees two thousand each.

2. These two appeals by RK Anand and IU Khan respectively are filed under Section 19(1) of the Contempt of Courts Act against the judgment and order passed by the Delhi High Court.

THE CONTEXT

3. Before proceeding to examine the different issues arising in the case it is necessary to first know the context in which the whole sordid episode took place. It will be, therefore, useful to put together the basic facts and circumstances of the case at one place. The occurance in which six people lost their lives was reconstructed by the prosecution on the basis of police investigation as follows:

The crime, the Police investigation & proceedings before the Trial court

4. On January 10, 1999 at about half past four in the morning a speeding vehicle crashed through a police check-post on one of the Delhi roads and drove away leaving behind six people dead or dying. As the speeding car hit the group of persons standing on the road some were thrown away but two or three persons landed on the car's bonnet and rolled down to the ground under it. The car, however, did not stop. It moved on dragging along the persons who were caught in its underside. It halted only after the driver lost control and going down a distance of 200-300 feet hit the road divider. At this point the occupants came down from the car to inspect the scene. They looked at the front and the rear of the car and would not have failed to notice the persons caught under the car who were still crying for help and who perhaps might have been saved if they were taken out even at that stage. But the anxiety of the car's occupants to leave the accident site without delay seemed to override all other considerations. They got back into the car, reversed it and drove on. The car went on dragging the unfortunate victims trapped under it to certain and ghastly death and left behind at the accident site dismembered limbs and dead bodies of men.

5. The police investigation brought to light that the accident was caused by a black BMW car which was being driven by Sanjeev Nanda. He was returning from a late night party, under the influence of liquor, along with some friend(s).

6. Five days after the accident, on January 15, 1999 one Sunil Kulkarni contacted the Joint Commissioner of Police, Delhi, and claimed to be an eye witness to the occurrence. According to his story, at the time of the accident he was passing through the spot, on foot, on his way to the Nizamuddin Railway Station for catching a train for Bhopal. He described the accident in considerable detail and stated that at the sight of so many people being mowed down by the car he got completely unnerved. He proceeded for the railway station and on

reaching there tried to ring up the police or the emergency number 100 but was unable to get through. He finally went to Bhopal and on coming back to Delhi, being bitten by conscience, he contacted the police. What was of significance in Kulkarni's statement is that the accident was caused by a car and when it stopped after hitting the people a man alighted from the driving seat and examined the front and rear of the car. Then, another person got down from the passenger seat called the other, "Sanjeev", and urged that they should go. On the same day his statement was recorded by the police under Section 161 of the Code of Criminal Procedure (CrPC). The following day he was shown Nanda's BMW car at Lodhi Colony Police Station and he identified it as the one that had caused the accident. On January 21, 1999 Kulkarni's statement was recorded before a magistrate under Section 164 of CrPC. Before the magistrate, in regard to the accident, he substantially reiterated the statement made before the police, lacing it up with details about his stay in Delhi from January 7 and his movements on the evening before the accident. In the statement before the magistrate the manner of identification of Sanjeev Nanda was also the same with the addition that after the accident when the car moved again the person on the driving seat was trying to look for the way by craning out his head out of the broken glass window and thus he was able to see him from a distance of no more than three and a half feet when the car passed by his side. The police wanted to settle the question of the driver's identification by having Kulkarni identify Sanjeev Nanda in a test identification parade but Sanjeev Nanda refused to take part in any identification parade. Then, on March 31, 1999 when Sanjeev Nanda was produced in court Kulkarni also happened to be there. He identified him to the investigating officer as the driver of the car causing accident.

7. Kulkarni's arrival on the scene as an eye witness of the tragic accident got wide publicity and he was generally acclaimed as a champion of the public cause. He must have appeared to the police too as godsend but soon there were reasons for the police to look at him completely differently. He had given as his address a place in Mumbai. A summons issued by the trial court on the Mumbai address given by him returned unserved. The report dated August 30, 1999 on the summons disclosed that he had given a wrong address and his actual address was not known to anyone. It also stated that he was a petty fraudster who had defrauded several people in different ways. The report concluded by saying that he seemed to be a person of shady character.

8. At the same time Kulkarni also turned around. On August 31, 1999 a Habeas Corpus petition (Writ Petition (Crl) No. 846/99) was filed in the Delhi High Court making the allegation that he was being held by the Delhi Police in wrongful confinement. On the following day (September 1, 1999) when the writ petition was taken up the allegations were denied on behalf of the police. Moreover, Kulkarni was personally present in Court. The Court, therefore, dismissed the writ petition without any directions. Next, Kulkarni filed a petition (through a lawyer) before the trial court on September 13, 1999. In this petition, he stated that on the date of occurrence, that is, January 10, 1999 itself he had told the police that the accident was caused by a truck. But the police was adamant not to change the version of the FIR that was already registered and on the basis of which five persons were arrested. The police forced him to support its story, and his earlier statements were made under police coercion.

9. On September 23, 1999 a clash took place between some policemen and some members of the bar in the Patiala House court premises for the `custody' of Kulkarni. A complaint about the alleged high handed actions of the police was formally lodged before the court and a notice was issued to the Jt. Commissioner. In response to the notice the Jt. Commissioner submitted a long and detailed report to the court on September 27, 1999. In the report, apart from defending the action of the policemen the Jt. Commissioner had a lot of things to say about Kulkarni's conduct since he became a witness for the prosecution in the BMW case. He noted that he would never give his address or any contact number to any police official. His life style had completely changed. He lived in expensive hotels and moved around in big cars. The Jt. Commissioner enclosed with his report a copy of the print-out of the cell phone of Kulkarni (the number of which he had given to one of the police officers) that showed that as early as on July 17, 1999 he was in touch with the counsel for the defence RK Anand (one of the appellants) and his junior Mr. Jai Bhagwan, Advocate and even with Suresh Nanda, father of Sanjeev Nanda. He cited several other instances to show Kulkarni's duplicity. The long and short of the report was that Kulkarni was bought off by the defence. He was in collusion with the defence and was receiving fat sums of money from the family of the accused. He was trying to play the two ends against the middle and he was completely unreliable.

10. On September 30, the date fixed for his examination, Kulkarni was duly present in court. He was, however, represented by his own lawyer and not by the prosecuting counsel. He was quite eager to depose. But the prosecution no longer wanted to examine him. IU Khan, the Special Prosecutor filed a petition stating that on the instructions of the State he gave up Kulkarni as one of the prosecution witness on the ground that he was won over by the accused. He also submitted before the court the report of the Joint Commissioner dated September 27. The allegation that he was won over was of course, denied both by Kulkarni and the accused. The court, however, discharged him leaving the question open as to what inference would it draw as a result of his non- examination by the prosecution.

11. Earlier to Kulkarni's exit from the case, the prosecution had lost two other key witnesses. To begin with there were three crucial witnesses for the prosecution. One was Hari Shankar Yadav, an attendant on a petrol pump near the site of the tragedy; the other was one Manoj Malik who was the lone survivor among the victims of the accident and the third of course was Kulkarni. Hari Shankar Yadav was examined before the court on August 18, 1999 and he resiled from his earlier statement made before the police. Manoj Malik was scheduled to be examined on August 30, 1999 but he seemed to have disappeared and the police was unable to trace him out either in Delhi or at his home address in Orissa. On the date fixed in the case, however, he appeared in court, not with the prosecution team but with two other lawyers. He was examined as a witness notwithstanding the strong protest by the prosecution who asked for an adjournment. Not surprisingly, he too turned hostile. Lastly, Kulkarni too had to be dropped as one of the prosecution witness in the circumstances as noted above.

12. The trial proceeded in this manner and over a period of the next four years the prosecution examined around sixty witnesses on the forensic and other circumstantial aspects of the case. The prosecution finally closed its evidence on August 22, 2003. Thereafter, the accused were examined under Section 313 of CrPC and a list of defence witnesses was

furnished on their behalf. While the case was fixed for defence evidence two applications came to be filed before the trial court, one was at the instance of the prosecution seeking a direction to the accused Sanjeev Nanda to give his blood sample for analysis and comparison with the blood stains found in the car and on his clothes, and the other by the defence under Section 311 of CrPC for recalling nine prosecution witnesses for their further cross-examination. By order dated March 19, 2007 the trial court rejected both the applications. It severely criticised the police for trying to seek its direction for something for which the law gave it ample power and authority. It also rejected the petition by the defence for recall of witnesses observing that the power under Section 311 of CrPC was available to the court and not to the accused. At the end of the order the court observed that the only witness in the case whose statement was recorded under Section 164 of CrPC was Kulkarni and even though he was given up by the prosecution, the court felt his examination essential for the case. It, accordingly, summoned Kulkarni to appear before the court on May 14, 2007. Kulkarni thus bounced back on the stage with greater vigour than before.

MEDIA INTERVENTION

13. In the trial court the matter was in this state when another chapter was opened up by a TV channel with which we are primarily concerned in this case. On April 19, 2007 one Vikas Arora, Advocate, an assistant of IU Khan sent a complaint in writing to the Chief Editor, NDTV with copies to the Commissioner of Police and some other authorities. In the complaint it was alleged that one Ms Poonam Agarwal, a reporter of the TV Channel was demanding copies of statements of witnesses and the Police Case-diary of the BMW case and was also seeking an interview with IU Khan or the complainant, his junior. On their refusal to meet the demands she had threatened to expose them through some unknown person and to let the people know that the police and the public prosecutor had been influenced and bribed by the accused party. He requested the authorities to take appropriate action against Poonam Agarwal.

14. On April 20, 2007 NDTV telecast a half hour special programme on how the BMW case was floundering endlessly even after more than seven years of the occurrence. Apparently, the telecast on April 20, 2007 brought Poonam Agarwal and Kulkarni together. According to Poonam Agarwal, on April 22, 2007 she received a phone call from Kulkarni who said that he was deeply impressed by the programme telecast by her channel and requested for a meeting with her. (The version of Kulkarni is of course quite different). She met him on April 22 and 23. He told her that in the BMW case the prosecution was hand in glove with the defence; he wanted to expose the nexus between the prosecution and the defence and needed her help in that regard. Poonam Agarwal obtained the approval of her superiors and the idea to carry out the sting operation using Kulkarni as the decoy was thus conceived.

15. Even while the planning for the sting operation was going on, NDTV on April 26 gave reply to the notice by Vikas Arora. In their reply it was admitted that Poonam Agarwal had sought an interview with Arora's senior which was denied for reasons best known to him. All other allegations in Arora's notice were totally denied and it was loftily added that the people at NDTV were conscious of their responsibilities and obligations and would make continuous efforts to unravel the truth as a responsible news channel.

16. On April 28, 2007 Kulkarni along with one Deepak Verma of NDTV went to meet IU Khan in the Patiala House court premises. For the mission Poonam Agarwal `wired' Kulkarni, that is to say, she equipped him with a concealed camera and a small electronic device that comprised of a tiny black button-shaped lens attached to his shirt front connected through a wire to a small recorder with a microchip hidden at his backside. Before sending off Kulkarni she switched on the camera and waited outside the court premises in a vehicle. Deepak Verma from the TV channel was sent along to ensure that everything went according to plan. He was carrying another concealed camera and the recording device in his handbag. Kulkarni and Deepak Verma were able to meet IU Khan while he was sitting in the chamber of another lawyer. Kulkarni entered into a conversation with IU Khan inside the crowded chamber (the details of the conversation we will examine later on at its proper place in the judgment). The conversation between the two that took place inside the chamber was recorded on the microchips of both the devices, one worn by Kulkarni and the other carried by Deepak Verma in his bag. After a while, on Kulkarni's request, both IU Khan and Kulkarni came out of the chamber and some conversation between the two took place outside the chamber. The recording on the microchip of Kulkarni's camera was copied onto magnetic tapes and from there to compact discs (CDs). The microchip in Kulkarni's camera used on April 28, 2007 was later reformatted for other uses. Thus, admittedly that part of the conversation between Kulkarni and IU Khan that took place on April 28, 2007 outside the chamber is available only on CD and the microchip on which the original recording was made is no longer available. The second operation was carried out on May 6, 2007 when Kulkarni met RK Anand in the VIP lounge at the domestic terminal of IGI Airport. The recording of the meeting was made on the microchip of the concealed camera carried by Kulkarni.

17. On May 8, 2007 the third sting operation was carried out when Kulkarni got into the back seat of RK Anand's car that was standing outside the Delhi High Court premises. RK Anand was sitting on the back seat of the car from before. The recording shows Kulkarni and RK Anand in conversation as they travelled together in the car from Delhi High Court to South Extension.

18. In the evening of the same day the fourth and final sting operation was carried out in South Extension Part II market where Kulkarni met one Bhagwan Sharma, Advocate and another person called Lovely. Bhagwan Sharma is one of the juniors working with RK Anand and Lovely appears to be his handyman who was sent to negotiate with Kulkarni on behalf of RK Anand.

19. According to Poonam Agarwal, in all these operation she was only at a little distance from the scene and was keeping Kulkarni, as far as possible, within her sight.

20. According to NDTV, in all these operations a total of five microchips were used. Four out of those five chips are available with them in completely untouched and unaltered condition. One microchip that was used in the camera of Kulkarni on April 28, 2007, as noted above, was reformatted after its contents were transferred onto a CD.

21. On May 13, 2007 NDTV recorded an interview by Kulkarni in its studio in which Kulkarni is shown saying that after watching the NDTV programme (on the BMW case) he got in touch with the people from the channel and told them that the prosecution and the

defence in the case were in league and he knew how witnesses in the case were bought over by the accused and their lawyers. He also told NDTV that he could expose them through a sting operation. He further said that he carried out the sting operation with the help of NDTV. He first met IU Khan who referred him to RK Anand. He then met some people sent by RK Anand, including someone whose name was `Lovely or something like that'. As to his objective he said quite righteously that he did the sting operation `in the interest of the judiciary'. In answer to one of the questions by the interviewer he replied rather grandly that he would ask the court to provide him security by the NSG and he would try to go and depose as soon as security was provided to him. In the second part of the interview the interviewer asked him about the accident and in that regard he said briefly and in substance what he had earlier stated before the police and the magistrate.

Back to the Court

22. It is noted above that by order dated March 19, 2007 the trial court had summoned Kulkarni to appear before it as a court witness on May 14, 2007. The defence took the matter to the Delhi High Court (in Crl. M.C. No. 1035/2007 with Crl. M. 3562/2007) assailing the trial court order rejecting their prayer to recall some prosecution witnesses for further cross-examination and suo moto summoning Kulkarni under Section 311 of CrPC, to be examined as a court witness. The matter was heard in the High Court on several dates. In the meanwhile Kulkarni was to appear before the trial court on May 14, 2007. Hence, the High Court gave interim directions allowing Kulkarni to be examined by the court but not to put him to any cross-examinations till the disposal of the petition being argued before it. The petition was finally disposed of by a detailed order dated May 29, 2007. The High Court set aside the trial court order rejecting the defence petition for recall of certain prosecution witnesses and asked the trial court to reconsider the matter. It also held that the trial court's criticism of the police was unwarranted and accordingly, expunged those passages from its order. However, insofar as summoning of Kulkarni was concerned the High Court held that there was no infirmity in the trial court order and left it undisturbed.

23. On May 14, 2007 Kulkarni appeared before the trial court but on that date, despite much persuasion, the court was not able to get any statement from him. From the beginning he asked for an adjournment on the plea that he was not well. In the end the court adjourned the proceedings to May 17 with the direction to provide him police protection. On May 17, the examination of Kulkarni commenced and he described the accident more or less in the same way as in his statements before the police and the magistrate. He said that the accident was caused by a black car (and not by a truck) but added that the car was coming from his front and its light was so strong that he could not see much. He said about his identification of the car at the Lodhi Colony police station. But on the question of identification of the driver there was a significant shift from his earlier statements. He told the court that what he had heard was one of the occupants urging the other to go calling him "Sanch or Sanz". He had also heard another name `Sidh' being mentioned among the car's occupants. In reply to the court's question he said that in his statement before the magistrate under Section 164 of CrPC he had stated the name `Sanjeev', and not the nick names that he actually heard, under pressure from some police officials. He said that he was also put under pressure not to take the name of Sidharth Gupta and some police official told him that he was not in the car at the

time of the accident. He said that apart from the name that he heard being uttered by the occupant(s) of the car and the number of persons he saw getting down from the car the rest of his statement under Section 164 was correct. He said that actually three, and not two, persons had got down from the car. The court then asked him to identify the persons who came out of the offending car. Kulkarni identified Sanjeev Nanda who was present in court. He further said that the third occupant of the car was a hefty boy whom he did not see in the court. At this point IU Khan explained that he might be referring to Sidharth Gupta who was discharged by the order of the High Court. Kulkarni added that he was unable to identify the second occupant of the car and went on to declare, even without being asked, he could not say who came out of the driver's side. He was shown Manik Kapoor, another accused in the case, as one the occupants of the car but he said that after lapse of nine years he was not in a position to identify him.

24. On May 29 Kulkarni was cross examined on behalf of the Prosecution by IU Khan. The prosecutor confronted him with his earlier statements recorded under Sections 161 and 164 of CrPC and he took it as opportunity to move more and more away from the prosecution case. He admitted that Sanjeev Nanda was one of the occupants of the car but positively denied that he came out from the driving seat of the offending car. He elaborated that the one to come out from the driving seat of the car was a fat, hefty boy who was not present on that date. (It does not take much imagination to see that he was trying to put Sidharth Gupta on the driving seat of the car who had been discharged from the case by the order of the Delhi High Court and was thus in no imminent danger from his deposition!). He denied that he disowned or changed some portions from his earlier statements under the influence of the accused persons. On May 29 Kulkarni's cross-examination by IU Khan was incomplete and it was deferred to May 31. But before that NDTV telecast the sting programme that badly jolted not only everyone connected with the BMW trial but the judicial system as well.

THE TELECAST

25. Based on the sting operations NDTV telecast a programme called India 60 Minutes (BMW Special) on May 30, 2007 at 8.00 p.m. It was followed at 9.00 pm, normally reserved for news, as `BMW Special'. From a purely journalistic point of view it was a brilliant programme designed to have the greatest impact on the viewers. The programmes commenced with the anchors (Ms. Sonia Singh in the first and Ms. Barkha Dutt in the second telecast) making some crisp and hard hitting introductory remarks on the way the BMW case was proceeding which, according to the two anchors, was typical of the country's legal system. The introductory remarks were followed by some clips from the sting recordings and comments by the anchors, interspersed with comments on what was shown in the programme by a host of well known legal experts.

26. It is highly significant for our purpose that both the telecasts also showed live interviews with RK Anand. According to the channel's reporter, who was posted at RK Anand's residence with a mobile unit, he initially declined to come on the camera or to make any comments on the programme saying that he would speak only the following day in the court at the hearing of the case. According to the reporter, in course of the telecast Sanjeev Nanda also arrived at the residence of RK Anand and joined him in his office. He too refused to make any comments on the on-going telecast. But later on RK Anand came twice on the

TV and spoke with the two anchors giving his comments on what was being shown in the telecasts. We shall presently examine whether the programmes aired to the viewers were truly and faithfully based on the sting operations or whether in the process of editing for preparing the programmes any slant was given, prejudicial to the two appellants. This is of course subject to the premise that the Court has no reason to suspect the original materials on which the programme was based and it is fully satisfied in regard to the integrity and authenticity of the recordings made in the sting operations. That is to say, the recordings of the sting operations were true and pure and those were not fake, fabricated, doctored or morphed.

27. In regard to the telecast it needs to be noted that though the sting operations were complete on May 8, 2007 and all the materials on which the telecast would be based were available with the TV channel, the programme came on air much later on May 30. The reason for withholding the telecast was touched upon by the anchors who said in their introductory remarks that after the sting operations were complete and just before his testimony began in court Kulkarni withdrew his consent for telecasting the programmes. Nevertheless, after taking legal opinion on the matter NDTV was going ahead with the airing of programme in larger public interest. Towards the end of the nine o'clock programme the anchor had a live discussion with Poonam Agarwal in which she elaborated upon the reason for withholding the telecast for about three weeks. Concerning Kulkarni, Poonam Agarwal said that he was the main person behind the stings and the sting operation was planned at his initiative. He had approached her and said to her that he wished to bring out into the open the nexus between the prosecution and the defence in the BMW case. He had also said to her that in connection with the case he was under tremendous pressure from both sides. But after the stings were complete he changed his stand and would not agree to the telecast of the programme based on the stings. In the discussion between the anchor and Poonam Agarwal it also came to light that initially NDTV had seen Kulkarni as one of the victims of the system but later on he appeared in highly dubious light. The anchor said that they had no means to know if he had received any money from any side. Poonam Agarwal who had the occasion to closely see him in course of the sting operations gave instances to say that he appeared to her duplicitous, shifty and completely unreliable.

28. NDTV took the interview of RK Anand even as the first telecasts were on and thus what he had to say on what was being shown on the TV was fully integrated in the eight o'clock and nine o'clock programmes on May 30. IU Khan was interviewed on the following morning when a reporter from the TV channel met him at his residence with a mobile transmission unit. The interview was live telecast from around eight to twenty three past eight on the morning of May 31. But that was the only time his interview was telecast in full. In the programmes telecast later on, one or two sentences from his interview were used by the anchor to make her comments.

29. In his interview IU Khan basically maintained that from the clandestine recording of his conversation with Kulkarni, pieces, were used out of context and selectively for making the programme and what he spoke to Kulkarni was deliberately misinterpreted to derive completely wrong inferences. He further maintained that in his meeting with Kulkarni he had said nothing wrong much less anything to interfere with the court's proceeding in the pending BMW case. Impact of the telecast:

30. On the same day IU Khan withdrew from the BMW case as Special Public Prosecutor. Before his withdrawal, however, he produced before the trial court a letter that finds mention in the trial court order passed on that date, written in the hand of Kulkarni stating that he collected the summons issued to him by the court from SHO, Lodhi Colony Police Station on the advice of IU Khan.

31. The trial court viewed the telecast by NDTV very seriously and issued notice to its Managing Director directing to produce `the entire unedited original record of the sting operation as well as the names of the employees/reporters of NDTV who were part of the said sting operation' by the following day.

32. The further cross-examination of Kulkarni was deferred to another date on the request of the counsel replacing IU Khan as Special Public Prosecutor.

33. On June 1, 2007, RK Anand had a legal notice sent to NDTV, its Chairman, Directors and a host of other staff asking them to stop any further telecasts of their BMW programme and to tender an unconditional apology to him failing which he would take legal action against them inter alia for damages amounting to rupees fifty crores. NDTV gave its reply to the legal notice on July 20, 2007. No further action was taken by RK Anand in pursuance of the notice.

HIGH COURT TAKES NOTICE

34. On the same day (May 31, 2007) a Bench of the Delhi High Court presided over by the Chief Justice took cognisance of the programme telecast by NDTV the previous evening and felt compelled to examine all the facts. The Court, accordingly, directed the Registrar General `to collect all materials that may be available in respect of the telecast including copies of CDs/Video and transcript and submit the same for consideration within 10 days'. The court further directed NDTV `to preserve the original material including the CDs/Video pertaining to the aforesaid sting operation.'

35. In response to the notice issued by the trial court, NDTV produced before it on June 1, 2007 two microchips and a recorder with the third chip inside it. The chips were said to contain the original recordings. In addition to the chips and the recorder NDTV also produced 5 CDs that were copies of the original, unedited recordings on the three chips. It was brought to the notice of the trial court that the High Court had also issued notice to NDTV in the same matter. The trial court, accordingly, stopped its inquiry and returned everything back to NDTV for production before the High Court.

36. On June 2, 2007, Ms. Poonam Agarwal of NDTV submitted before the High Court six CDs; one of the CDs (marked `1') was stated to be edited and the remaining five (marked `2'-`6') unedited. In a written statement given on the same day she declared that NDTV News Channel did not have any other material in connection with the sting operation. She also stated that in accordance with the direction of the Court, NDTV was preserving the original CDs/ Videos relating to the sting operation. On June 6, 2007, Poonam Agarwal submitted true transcripts of the CDs duly signed by her on each page. She also gave a written statement on that date stating that the CDs submitted by her earlier were duplicated from a tape-recording prepared from four spy camera chips which were recorded on different occasions. (As we shall see later on, the total number of microchips used in all the four stings was actually five

and not four). She also gave the undertaking, on behalf of NDTV that those original chips would be duly preserved.

37. On June 11 (during summer vacation) the Court recorded the statement of the counsel appearing for NDTV that its order dated May 31 had been fully complied with. On July 9 after hearing counsel for NDTV and on going through the earlier orders passed in the matter the Court felt the need for a further affidavit regarding the telecast based on the sting operation. It, accordingly, directed NDTV to file an affidavit `concerning the sting operation from the stage it was conceived and the attendant circumstances, details of the recording done, i.e., the time and place etc. and other relevant circumstances'. In compliance with the Court's direction, Poonam Agarwal filed an affidavit on July 23, 2007. Poonam Agarwal's Affidavit:

38. In her affidavit Poonam Agarwal stated that she was a reporter working with NDTV. She had joined the TV channel two years ago. She stated that NDTV was covering the BMW trial and had telecast a special programme on the case on April 20, 2007. Two days later Kulkarni contacted her on telephone and requested for a meeting saying that he had something important to tell her about the case. She met him on April 22 and 23. In the second meeting he was accompanied by his wife. He told her that there was a strong nexus between the prosecution and the defence in that case and that he had suffered a lot due to his involvement in the case. He was determined to expose the nexus. He said that he needed the help of NDTV to do a sting operation in order to bring out the complicity between the prosecution and the defence into open. She discussed the plan mooted by Kulkarni with her superiors in the organisation and got their permission to carry out the sting operation. In this regard she stated in the affidavit that the people at NDTV were greatly concerned over the manner in which a number of trials had ended up in acquittal on account of witnesses turning hostile, especially in cases in which accused were influential people. NDTV, as a news channel, was trying to uncover the causes behind this malaise and it was in this spirit that the channel decided to help Kulkarni. She duly told Kulkarni that NDTV was willing to help him in doing the sting operation. Kulkarni informed her that he was going to meet IU Khan in his chamber to seek his direction in connection with the court summons issued to him and that would be good a opportunity for doing the sting. Accordingly, she along with one Deepak Verma (a camera person from the TV channel) met Kulkarni outside the Patiala House court premises. She fitted Kulkarni with a button camera and a recording device and also gave her a cell phone to communicate with her in any emergency. Then Kulkarni and Deepak Verma went to meet IU Khan. Deepak Verma carried another concealed camera and a recording device in his bag. Deepak Verma was sent along with Kulkarni to ensure that he did not in any manner tamper with the hidden camera. Before sending them off she switched on Kulkarni's camera. After meeting with IU Khan both came back and she then switched off Kulkarni's camera. She stated in the affidavit that after copying its contents onto a compact disc the microchip used in Kulkarni's camera was formatted for other projects but the microchip in the camera in Deepak Verma's bag was available undisturbed. Kulkarni next called to tell her that he was meeting RK Anand at the IGI Airport (Domestic Terminal) and suggested to do a sting there. She, accordingly, took her to the airport on May 6, 2007. There she fitted him with the hidden camera and the recording device, switched the camera on and

send him off to meet RK Anand. She herself waited for him in her car. After meeting with RK Anand, Kulkarni came out of the airport building and contacted her on the cell phone to find out where her car was parked. He then came back to the car. She switched off the camera and brought her back to her office. Kulkarni again contacted her to say that he was meeting RK Anand on May 8. This time she met him near the Delhi High Court and in her vehicle equipped him with the hidden camera and switched it on. She waited in her vehicle while Kulkarni got into the back seat of a black car outside the Delhi High Court in which RK Anand was sitting from before. The car with Kulkarni and RK Anand drove off and she followed them in her vehicle. They went to South Extension, New Delhi where Kulkarni was dropped. He came back to her vehicle and joined her. She then switched off the camera. She stated in the affidavit that all along the way from outside the Delhi High Court to South Extension the car in which Kulkarni and RK Anand were travelling did not stop anywhere except at the red lights on the crossings. She also averred that all along the way she followed the car in her own vehicle and it always remained in her sight. On the same day Kulkarni told her that he was scheduled to meet RK Anand in his office at South Extension Part II. They together went to South Extension and from there Kulkarni telephoned RK Anand. He told her that he was asked to wait there at a particular spot where someone would come to meet him. After a short while Bhagwan Sharma arrived there whom she knew from before as an advocate associated with RK Anand. At that time they were in her vehicle. She `wired' Kulkarni, like the earlier occasions, and he went to meet Bhagwan Sharma at the fixed spot. For a little while she lost them from her sight. She then contacted Kulkarni on his cell phone and he, feigning to be talking to his wife, indicated to her the exact spot where he was at that moment. She approached that spot and found that Bhagwan Sharma had gone away and Kulkarni was talking with a Sikh person whom he later identified as `Lovely'. They moved around and talked for a pretty long time. In the end Lovely got into his car and drove away. Kulkarni then called her on the cell phone to find out where her vehicle was parked. He came back to her. She switched off the camera. He narrated to her what transpired in the meetings with Bhagwan Sharma and Lovely. She stated in the affidavit that the entire episode lasted for over an hour and a half. All through she had Kulkarni in her sight except for the short period as indicated above. She also stated that as the episode went on for a long time the batteries of the hidden camera got exhausted and, therefore, the recording of the meeting ended abruptly. Once all the material collected in course of the sting operations came in possession of NDTV it was carefully examined and evaluated and the editorial team at NDTV came to the view that in the larger public interest it was their duty to put the whole matter in the public domain. The decision was thus taken to telecast a special programme under the caption `BMW ‘expose’. The recordings made in the sting operations were then very carefully edited for making a programme that could be telecast. The process of editing took three days. The chips were copied onto CDs in her presence and under her supervision. She, at all time, retained the custody of the original chips. At all successive stages she was personally present to ensure the factual accuracy of the edited version incorporated in the programme. But once the programme was made Kulkarni completely changed his position and strongly opposed the telecast of the programme. He asked her not to telecast the programme saying that he and his wife were facing threat to their lives. He would not clearly spell out the nature of the threat or its source but simply oppose the telecast. In view of his plea that he and his wife faced threat

to their lives it was decided to defer the telecast till his examination-in-chief in the court was over. She then stated about Kulkarni's interview (without stating the date on which it was recorded) on camera in the NDTV studio in which he spoke about why and how he carried out the stings. Coming back to the telecast she said that she met Kulkarni on the dates of his appearance in the trial court on May 14, 17 and 29 but was not able to persuade him to agree to the telecast. He was not willing to give his consent even on May 29 but then the people at NDTV felt that his stand was quite contradictory to the objective avowed by him for carrying out the stings with the help of NDTV; by that date his examination-in-chief was over and he was also provided with police protection. Taking all those facts and circumstances into account it was decided to go ahead with the telecast regardless of Kulkarni's objections. The programme was, accordingly, telecast on May 30, 2007. In course of the telecast the anchor of the show engaged with RK Anand and presented his version too before the viewers. IU Khan was similarly tried to be contacted but he was indisposed. In the end the affidavit gave a list of all the materials submitted in the court along with it.

39. In Poonam Agarwal's affidavit NDTV took the stand that the stings were conceived and executed by Kulkarni. Its own role was only that of the facilitator. Kulkarni would choose the date and time and venue of the meetings where he would like to do the sting. He would fix up the meetings not in consultation with Poonam Agarwal but on his own. He would simply tell her about the meetings and she would provide him with the wherewithal to do the sting. She would not ask him when and how and for what purpose the meeting was fixed even though it may take place at such strange places as the VIP lounge of the airport or a car travelling from outside the Delhi High Court to South Extension. She would not ask him even about any future meetings or his further plans. Proceeding resumes:

40. On July 25, 2007 when the matter next came up before the Court the affidavit of Poonam Agarwal was already submitted before it. On that date the counsel for NDTV took the Court through the transcripts of the sting recordings and submitted that the three advocates and the other person Lovely, the subjects of the sting, had prima facie interfered with the due administration of criminal justice. The Court, however, deferred any further action in the matter till it viewed for itself the original sting recordings. On that date it appointed Mr. Arvind K. Nigam, Advocate as amicus curiae to assist the court in the matter.

41. On July 31, 2007, one Mr. Vinay Bhasin, Senior Advocate, tried to intervene stating that the action of NDTV in telecasting a programme based on sting operations in connection with a pending criminal trial itself amounted to interference with the administration of criminal justice. On the same day both RK Anand and IU Khan also tried to intervene in the Court proceedings and sought to put forward their point of view. The Court, however, declined to hear them, pointing out that there was no occasion for it at that stage since no notice was issued to them.

42. On August 7, 2007, the Court on a consideration of all the materials coming before it came to the view that prima facie the actions of RK Anand, IU Khan, Bhagwan Sharma and Lovely (who was dead by then) were aimed at influencing the testimony of a witness in a manner so as to interfere with the due legal process. Their actions thus clearly amounted to criminal contempt of court as defined under Clause (ii) & (iii) of Section 2(c) of the Contempt of Courts Act. The Court accordingly passed the following order:

From your aforesaid acts and conduct as discerned from the CDs and their transcripts, the affidavit 23rd July, 2007 of Ms. Poonam Agarwal along with its annexures, we are, prima facie, satisfied that you Mr. R.K. Anand, Senior Advocate, Mr. I. U. Khan, Senior Advocate, Mr. Sri Bhagwan, Advocate and Mr. Lovely have wilfully and deliberately tried to interfere with the due course of judicial proceedings and administration of justice by the courts. Prima facie your acts and conduct as aforesaid was intended to subvert the administration of justice in the pending trial and in particular influence the outcome of the pending judicial proceedings.

Accordingly, in exercise of the powers under Article 215 of the Constitution of India, we do hereby direct initiation of proceedings for contempt and issuance of notice to you, Mr. RK Anand, Senior Advocate, Mr. IU Khan, Senior Advocate, Mr. Shri Bhagwan, Advocate and Mr. Lovely to show cause as to why you should not be proceeded and punished for contempt of court as defined under Section 2(c) of the Contempt of Courts Act and under Article 215 of the Constitution of India.

You are, therefore, required to file your reply showing cause, if any, against the action as proposed within four weeks.

Noticees and contemnors shall be present in Court on the next date of hearing i.e. 24 September, 2007.

Registry is directed to supply under mentioned material to the noticees:

(i) Copy of the order dated 7th August, 2007;

(ii) Affidavit of Ms. Poonam Agarwal dated 23rd July, 2007 together with annexures including the four copies of CDs filed along with the affidavit;

(iii) Copies of the corrected transcripts filed on 6th August, 2007 in terms of the order dated 31st July, 2007;

(iv) Copies of 6 CDs, including one edited and five unedited containing the original footage which were produced on 6th June, 2007.

NDTV shall make available to the Registry sufficient number of copies of the CDs. and transcripts, which the Registry has to supply to the noticees as above.

43. In response to the notice RK Anand, instead of filing a show cause, first filed a petition (on September 5, 2007) asking one of the judges on the Bench, namely, Manmohan Sarin J. to recuse himself from the hearing of the matter. The recusal petition and the review petition arising from it were rejected by the High Court by orders dated October 4 and November 29, 2007. We will be required to consider the unpleasant business of the recusal petition in greater detail at its proper place later in the judgment.

44. While the matter of recusal was still pending a grievance was made before the Court (on September 24) that along with the notice the proceedees were given only five CDs, though the number of CDs submitted by NDTV before the Court was six. Counsel for NDTV explained that the contents of two of the CDs were copied onto a single CD and hence, the number of CDs furnished to the noticees had come down to five. Counsel for the TV channel, however, undertook to provide fresh sets of six CDs to each of the noticees.

45. On September 28, 2007 counsel for IU Khan was granted permission for viewing the six CDs submitted by NDTV on the courts record.

46. On October 1, IU Khan filed his affidavit in reply to the notice issued by the High Court and RK Anand and Bhagwan Sharma filed their affidavits on October 3, 2007.

YET ANOTHER TELECAST

47. In the evening of December 3, 2007 NDTV telecast yet another programme from which it appeared that RK Anand and Kulkarni were by no means strangers to each other and the association between the two went back several years in the past. Kulkarni, under the assumed name of Nishikant, had stayed in RK Anand's villa in Shimla for some time. There he also had a brush with the law and was arrested by the police in Una (HP). He had spent about forty five days in jail. From the HP police record it appeared that after coming on the scene in the BMW case he spent some time in hotels in Rajasthan and Gurgaon with the Nanda's paying the bills.

48. This time RK Anand did not give any legal notice to NDTV seeking apology or claiming damages etc. but on the following day (December 4) he made a complaint about the telecast before the Court. The Court directed NDTV to produce all the original materials concerning the telecast and its transcript. The Court further directed NDTV to file an affidavit giving details in regard to the collection of the materials and the making of the programme.

49. In response to the High Court's direction one Deepak Bajpai, Principal Correspondent with NDTV filed an affidavit on its behalf on December 11, 2007. In the affidavit it was stated that following a reference to HP in the conversation between RK Anand and Kulkarni in the second sting that took place in the car he went to Shimla and other places in Himachal Pradesh and made extensive investigations there. Kulkarni was easily identified by the people there through his photograph. On making enquiries he came to learn that in the year 2000 Kulkarni lived in RK Anand's villa called `Schilthorn' in Shimla for about a year under the assumed name of Nishikant. While staying there he corresponded with an insurance company on behalf of RK Anand, using his letter-head, in connection with some insurance claim. Interestingly, there he also obtained a driving licence describing himself as Nishikant Anand son of RK Anand. In Shimla and in other places in Himachal he also duped a number of traders and businessmen. In Una he was arrested by Police on suspicion and he had to spend about 45 days in jail.

50. In reply to the affidavit filed by Deepak Bajpai, RK Anand filed an affidavit on January 10, 2008 in which he mostly tried to point out the discrepancies in the sting recordings and contended that those were inadmissible in evidence.

PROCEEDINGS BEFORE THE HIGH COURT

51. After putting the recusal petition and the review application out of its way, the Court took up the hearing of the main matter that was held on many dates spread over a period of four months from December 4, 2007 to May 2, 2008. RK Anand appeared in person while IU Khan was represented through lawyers. Neither RK Anand nor IU Khan (nor for that matter Bhagwan Sharma) tendered apology or expressed regret or contrition for their acts. IU Khan simply denied the charge of trying to interfere with the due course of judicial proceedings and

administration of justice by the Courts. He took the stand that the expressions and words he is shown to have uttered in his meeting with Kulkarni were misinterpreted and a completely different meaning was given to them to suit the story fabricated by the TV channel for its programme.

52. RK Anand on his part took a posture of defiant denial and tried to present himself as one who was more sinned against than a sinner. Before coming to his own defence he raised a number of issues concerning the role of the mass media in general and, in particular, in reporting about the BMW case. He contended that it was NDTV that was guilty of committing contempt of Court as the programmes telecast by it on May 30, 2007 (and on subsequent dates) clearly violated the sub-judice rule. On this issue, however, he was strangely ambivalent; he would not file an application before the Court for initiating contempt proceedings against the TV channel but `invite' the Court to suo moto take appropriate action against it. He next submitted that the Court should rein in and control the mass media in reporting court matters, especially live cases pending adjudication before the court, arguing that media reports mould public opinion and thereby tend to goad the court to take a certain view of the matter that may not necessarily be the correct view. He also urged the Court to lay down the law and guidelines in respect of stings or undercover operations by media. After an elaborate discussion the High Court rejected all the contentions of the contemnors based on these issues. Before us these issues were not raised on behalf of the appellants. But we must observe we fail to see how those issues could be raised before the High Court as pleas in defence of a charge of criminal contempt for suborning a witness in a criminal trial. In the overall facts and circumstances of the case it was perfectly open to the High Court to deal with those issues as well. But it certainly did not lie with anyone facing the charge of criminal contempt to plead any alleged wrong doing by the TV channel as defence against the charge. If the telecast of the programme concerning a pending trial could be viewed as contempt of Court; or if the stings preceding it, in any way, violated the rights of the subjects of the stings those would be separate issues to be dealt with separately. In case of the former the matter was between the Court and the TV channel and in the latter case it was open to the aggrieved person(s) to seek his remedies under the civil and/or criminal law. As a matter of fact RK Anand had given a legal notice to NDTV that he did not pursue. But neither the stings nor the telecast would absolve the contemnors of the grave charge of suborning a witness in a criminal trial. We have, therefore, not the slightest doubt that the High Court was quite right in rejecting the contemnors' contentions based on those so called preliminary issues.

53. The contemnors then raised the issues of the nature of contempt jurisdiction and the onus and the standard of proof in a proceeding for criminal contempt. They further questioned the admissibility of the sting recordings and contended that those recordings were even otherwise unreliable. In course of hearing RK Anand tried to assail the integrity of the CDs furnished to him that were the reproductions from the original of the sting recordings. According to him, there were several anomalies and discrepancies in those recordings and (on January 29, 2008) he submitted before the Court that from the CDs furnished to him he had got another CD of eight minutes duration prepared in order to highlight the tampering in the original recording. He sought the Court's permission to play his eight minute CD before it. On RK Anand's request the Court viewed the eight minute CD submitted by him on February 5,

2008. On February 27, 2008 the Court directed NDTV to file an affidavit giving its response to the CD prepared by RK Anand. As directed, NDTV filed the affidavit, sworn by one Dinesh Singh, on March 7, 2008. The affidavit explained all the objections raised by RK Anand in his eight minute CD. RK Anand then filed a petition (Crl. M. 4012/2008) on March 31, 2008 for sending the original CDs for examination by the Central Forensic Science Laboratory.

54. Besides this, RK Anand filed a number of interlocutory applications in course of the proceedings. Only three of those are relevant for us having regard to the points raised in the hearing of the appeal. Those were: (I) Crl.M. No. 13782 of 2007 filed on December 3, 2007 for summoning Poonam Agarwal for cross-examination, (II) Crl.M. No. 4010 of 2008 filed on March 31, 2008 for initiating proceeding of perjury against NDTV and Poonam Agarwal for deliberately making false statements on affidavits and fabricating evidence and (III) Crl.M. No. 4150 of 2008 filed on April 2, 2008 asking the Court to direct NDTV to place all the original microchips before it and to furnish him copies directly reproduced from those chips. Apart from the above, RK Anand also filed before the High Court on March 31, 2008 an application in the nature of written arguments.

55. On conclusion of oral submissions, on April 5, 2008 the Court, in presence of the three contemnors and their counsel, viewed all the original materials of the sting operations submitted before it by NDTV. In the order passed on that date it recorded the proceeding of the day as under:

The under mentioned recordings were played in court today in the presence of noticees, their counsel and the amicus curiae:

(i) Bag camera chip of conversation with Shri I. U. Khan on 28.4.2007;

(ii) Button camera DVD of conversation with Shri I. U. Khan on 28.4.2007;

(iii) Button camera chip of conversation with Shri R. K. Anand on 6.5.2007;

(iv) Button camera chip of conversation with Shri R. K. Anand on 8.5.2007;

(v) Button Camera Chip of conversation with Sri Bhagwan Sharma; Shri Lovely;

(vi) Telecast of second expose of 3.12.2007 at H.P. stay of Sunil Kulkarni Mr. Huzefa Ahmedi for noticee Mr. I. U. Khan and Mr. R. K. Anand for himself and Sri Bhagwan offered their comments on the inferences to be drawn from the video recordings and the conversations therein. Re-notify on 10th April, 2008 at 2.30 p.m. for conclusion of submissions on behalf of noticees.

56. On the next date April 10, 2008 RK Anand concluded his submission and the counsel for IU Khan filed reply to the written submission of amicus curiae. The matter came up once more before the Court on May 2, 2008 when the Court after giving some direction to NDTV and amicus curiae, reserved judgment in the case which was finally pronounced on August 21, 2008. The Court held that the contempt jurisdiction of a Court is sui generis. The provisions of CrPC and the Evidence Act are not applicable to a proceeding of contempt. In dealing with contempt, the Court was entitled to devise its own procedure but it must firmly adhere to the principles of natural justice. The Court also found and held that the recordings of the stings on the microchips and their reproduction on the CDs were completely genuine and unimpeachable and hence, those materials could not only be taken in evidence but fully relied on in support of the charge.

57. The High Court rejected all the interlocutory applications filed by RK Anand. As to the request to call Poonam Agarwal for cross-examination the Court observed that what transpired between RK Anand and Kulkarni in the sting meetings was there on the microchips and the CDs, copied from those chips, for anyone to see and no statement by Poonam Agarwal in her cross- examination would alter that even slightly. The Court further recorded its finding that the microchips were not subjected to any tampering etc. and hence, rejected the petition for proceeding against NDTV for perjury. In regard to the other petitions the Court observed that those were moved in desperation and for exerting pressure on NDTV and Poonam Agarwal. The Court further observed that the original chips were in the safe custody of NDTV and there was no need for those chips to be deposited in Court. The contents of the microchips were viewed by the proceedees and the CDs onto which the microchips were copied were handed over to them. The proceedees, therefore, had no cause for grievance and the submission to send the microchips for forensic examination or for directing NDTV to submit the original microchips before the High Court had no substance or merit.

58. In the end the Court held that the circumstances and the manner in which the meetings took place between the proceedees and Kulkarni and the exchanges that took place in those meetings as evidenced from the sting recordings fully established that both IU Khan and RK Anand were guilty of the charges framed against them. It accordingly convicted them for criminal contempt of Court and sentenced them as noticed above.

SOME OF THE ISSUES ARISING IN THE CASE

59. These are broadly all the facts of the case. We have set out the relevant facts in considerable detail since we do not see this case as simply a matter of culpability, or otherwise, of two individuals. Inherent in the facts of the case are a number of issues, some of which go to the very root of the administration of justice in the country and need to be addressed by this Court.

The two appeals give rise to the following questions:

1. Whether the conviction of the two appellants for committing criminal contempt of court is justified and sustainable?

2. Whether the procedure adopted by the High Court in the contempt proceedings was fair and reasonable, causing no prejudice to the two appellants?

3. Whether it was open to the High Court to prohibit the appellants from appearing before the High Court and the courts sub-ordinate to it for a specified period as one of the punishments for criminal contempt of court?

4. Whether in the facts and circumstances of the case the punishments awarded to the appellants can be said to be adequate and commensurate to their misdeeds? Apart from the above, some other important issues arise from the facts of the case that need to be addressed by us. These are:

5. The role of NDTV in carrying out sting operations and telecasting the programme based on the sting materials in regard to a criminal trial that was going on before the court.

6. The declining professional standards among lawyers, and

7. The root-cause behind the whole affair; the way the BMW trial was allowed to go directionless

60. On these issues we were addressed at length by Mr. Altaf Ahmed, learned Senior Advocate appearing for RK Anand and Mr. P. P. Rao, learned Senior Advocate appearing on behalf of IU Khan. We also heard Mr. Harish Salve, learned Senior Advocate representing NDTV, which though not a party in the appeals was, nevertheless issued notice by us. We also received valuable assistance from Mr. Gopal Subramanium, Senior Advocate and Mr. Nageshwar Rao, Senior advocate, the amici appointed by us having regard to the important issues involved in the case. We spent a full day viewing all the sting recordings, the recording of the programmes telecast by NDTV on May 30, 2007 and the eight minute CD prepared by RK Anand. Present at the viewing were all the counsel and one of the appellants, namely RK Anand.

RK ANAND'S APPEAL

61. Before adverting to anything else we must deal with the appeals proper. In order to judge the charge of criminal contempt against the appellants it needs to be seen what actually transpired between Kulkarni and the two appellants in the stings to which they were subjected. And for that we shall have to examine the raw sting recordings.

62. Taking the case of RK Anand first we go to the sting done on him on May 6, 2007 when Kulkarni met him in the VIP lounge at the domestic terminal of IGI Airport, Delhi. Here, it needs to be recalled that as Kulkarni was behind the camera (which was fixed to his shirt front) he is not seen in the picture. What one sees and hears are the pictures of whomsoever he is engaged with and their voices. The video begins with Kulkarni approaching the guard at the entrance of the airport building and asking him about the public address system from where he could contact RK Anand who was inside the airport building in the VIP lounge. The following are the extracts from the transcript of the sting recording of the meeting that would give an idea how the meeting between the two took place and what was said in the meeting.

THE EXCHANGE BETWEEN KULKARNI & RK ANAND

Kulkarni: Excuse me, apka announcement kaha hai?

Someone: Kis liye?

Kulkarni: Mr. RK Anand, yaha hai, ex Member of Parliament, mujhe unse milna hai, urgent.... I think woh udhar hi hai.

KULKARNI ON THE PUBLIC TELEPHONE AT THE AIRPORT

Kulkarni: Hello Haanji boss, bahar hi hoo...gate No. 1 gate No. 2 ke beech mein, Ha, VIP gate

ok...I'll be there. Ya, ya, ya, ya, ok.

KULKARNI HANGS UP AND PROCEEDS TOWARDS THE VIP GATE

Kulkarni: Poonam, keep your mobile on! Ok! and keep it with your recorder! Ok! Ok! I'm leaving for the VIP gate...he is waiting there..ok...ok

Anand: Kya badmashi karte rehte ho?

Kulkarni: Main aapko wohi time bata raha tha ke mujhe sab kuch pata tha ye..isi liye hamne...but lekin nobody believed me...(Anand laughing)

Anand: Acha Tu mere saath badmashi karni band kar de...tu banda ban ja.

Kulkarni: Aap banaoge to banoonga.

Anand: Agar nahi banega to main maroonga (Kulkarni: cuts in)

x x x

Kulkarni: Ab kya strategy banani hai batao.

Kulkarni: Maine message bheja tha khan saab ke pass...aapko shayad mila hoga

Anand: Haan...mil gaya tha

x x x

Anand: Main kya bola? (Laughs) Anand: Acha let me come back tomorrow, meri flight ayegi koi saare nau (9.30) baje..tum ghar mein xxxx.

Kulkarni: Han that will be better because I dont want....

x x x

Anand: Haan ab....ab mujhe batao...

Anand: Ab batao mereko....

Kulkarni: Mujhe bola dhai crore doonga...aap batao mereko.

Anand: Hain?

Kulkarni: Dhai crore....

Anand: Tu paanch crore maang le....

Kulkarni: Main paanch crore maang leta hoo...

Anand: Tere ko cross examine maine zaroor karna hai!

Kulkarni: Aur doosri baat...cross examine aap karoge mereko? (Anand laughs)

x x x

Kulkarni: Jab bhi mereko zaroorat padegi main ghar pe aa jaunga, mujhe pata hai.

Anand: Chalo let me come back tomorrow evening, you come and meet me in the night...in the farm...don't meet me outside.

x x x

Kulkarni: Nahi aaj jaroori tha isliye main mila...nahi to main.. I avoid it..

Anand: Nahi farm pe milna.

Kulkarni: Aur doosri baat...yeh inhe bhi jante ho...yeh dekho its Commando...ok

Anand: Ya, Tomorrow evening, bye!

The second sting took place on May 8, 2007 in the car. Extracts from the transcript of that meeting are as follows.

Kulkarni: kyon office mein bhi aur ghar pe bhi mat millo...yeh sare log mere peeche...

Anand: yahan kyon milte ho phir?

Kulkarni: Yahan koi nahi dekhta...acha abhi kya karna hai batao.

x x x

Anand: Ab dekho tum xxxx tum xx .paise xxxxx

Kulkarni: Main...yeh sab main kaise boloonga...ab yeh sab drama yeh kar rahe hai na...drama kar rehe hai poora hi...ab dekho jo hua so hua....

Anand: Baat to tumhare samne karonga, peeche to karongaa nahi....

Kulkarni: Vo to mainbhi janta hoo

Anand: Samne baat hogi tumhare

Kulkarni: Kal kya mere ko nikaal rahe ho kya...311 se?

Anand: Nikal doo?

Kulkarni: Nahi..nahi mat nikalna xxx

Anand: Nahi Nikalta

Kulkarni: Nahi Nahi mat nikalna..withdraw karva lo na aap...jab main aapke saath hoo, jo marzi karne ke liye tyaar hoo. to yeh kaye ke liye High Court main laga diya aapne..aur mere upar aapko itna bhi bharosa nahi hai kya...theek hai gussa ho jata hoo main xxxx..

Anand: Nahi Nahi

Kulkarni: Lekin aana hai...depose karna hai.

Anand: Ab usse kya baat karni hai...batao, Reasonable baat karo.

Kulkarni: Aap decide karo.

Anand: Tum decide karo.

Anand: Woh to you decide."

Kulkarni: 30,000 crores...CBI ne 2300 crores..big investment...84 crores

Anand: Vo choddo

Kulkarni: Kyon..kyon Chodo..kyon chodo?.. Aap..main aapka beta hoo. bolo.

Anand: Tumhara bheja kharaab ho gaya hai...(Laughs)

Kulkarni: Kharaab ho gaya hai na abhi....

Anand: Haa bheja kharaab ho raha hai.

x x x

Anand: So you have not taken the summon?

Kulkarni: Na...not al all. Jab tak aap nahin bataoge, Khan sahib nahi bataenge tab main summon kaise lu.

Anand: How did Ramesh Gupta inform him that you have taken the summons?

x x x

Kulkarni: Ab maine kya karna hai..maine summon liya nahi hai..aap mere upar to bharosa kar sakte ho na?

Anand: Poora, mujhe to poora...

Kulkarni: Poora vishwas hai na? To maine summon nahi liya ha...

x x x

Anand: I'm out of touch...I'm not in trial, I'm in High Court so I don't know...anyhow.. what statement you are supposed to make..we will decide about it...First of all, meet the bugger and talk to him. And be reasonable. Don't be unreasonable like what you told me that day. Don't be silly!

Kulkarni: Kitna Mango?

Anand: Chodo na...bat samjha kar yaar...aadmi ko zindagi main aur bhi bade kaam aate hai...aise nahi karte..that fellow is sick you know..that man..jo kya naam hai uska xxx

Kulkarni: Hmm.

x x x

Anand: Talk to me around seven forty five.

Kulkarni: Ok

Anand: Ok

Kulkarni: Sir..

Anand: Then we'll decide about it.

x x x

Kulkarni: Hmm. Paune aath (8) baje I'll get back to you..agar paune aath (8) baje aap bulate ho to main aaju-baaju ke area main hi rehta hoo..Kanth ko bula lena bas..meri ek dil ki bhadaas niklane do bas...do minute.

Anand: Aaju baju mein hi rehna, main tumhe bula lunga.

Kulkarni: Isme bachana hai na usko Sanjeev ko?

Anand: xx Kabhi kisika bura mat kiya karo. Panga lene ka kaya faydaa.!

Kulkarni: Theek hai.

Kulkarni: Nahi.lekin kaise kya karna hai vo aapne aur khan sahab ne decided karna hai.after all it was merely an accidentxxx.

Anand: And he remained in jail for 8-9 months...yaar.

Kulkarni: To main.to mere ko bhool jayoge aap.pentalis (45) din.

Anand: Kaise.

x x x

Anand: You were enjoying..

Kulkarni: Kya,...

Anand: You were enjoying. Not that you were in a problem..uski to dikkat hai bechare kixxxx

Kulkarni: Nahi Nahi..I'm also not interested. Aisi baat nahi hai..

Anand: Kabhi kisi ka bura nahi kara karo.aise bhala karne se hi aadmi to acha rehta hai..kisi ko jhoota nahi phasana chahiye.nikal dena chahiye...

Kulkarni: Chalo theek hai. Aap ke kehne par main kuch bhi karne ke liye tayaar hoo..aur inki saari galat information hai.

Anand: Aage jake bhi bhagwan ko jawaab dena hota hai yaar..aage bhi jawaab.... kya fayda karne. x x x

Anand: Chhuraane se phir bhi ache rehta hai..phasane seto (abuses) bura hi kaam hota hai... main to kisi main interested hi nahi hoo..kisiko phasane main...

Kulkarni: nahi vo to mujhe bhi pata hai...

Anand: In logo ne Narsimha Rao ko phasaya..acha thodi hua tah vo..vaapis chhuraya tha humne..kya fayda hua..

Kulkarni: Main aajo baajo main paune aath baje..aap mere ko bula lena

Anand: Give me a call at seven forty five..

Kulkarni: Ji..

Anand: On my office number.

x x x

Kulkarni: Phir mere khayaal se 311 udega nahi na, blood sample ka udega?

Anand: Hain?

Anand: Kyon udaye..jab tumhare pass paise bante hai to main kyon udayo?

Kulkarni: Jab main aapke saath hoo..

Anand: Ha..to phir kya hai..

x x x

Kulkarni: Koi neta log tha..acha..seven forty five..

Anand: Pakki gal.

63. It is quite possible that Kulkarni had somehow found out RK Anand's programme and RK Anand did not know that he was coming to meet him at the airport but there can be no doubt that he allowed him to come to him and the meeting took place with his consent. From his opening remark and the general tenor of the conversation it is evident that they were quite free and familiar with each other. (We may recall here their seven years old Shimla connection!). Now, when Kulkarni asks him what strategy was to be made it could mean only one thing. He did not give any direct reply to that question but he did not ask Kulkarni to shut up either. When Kulkarni said that he was offered two and half crores he indeed mockingly

suggested that he should ask for five crores but here also what was sought to be ridiculed was the sum quoted and not the prospects for negotiation. As a matter of fact for further negotiation door was kept wide open with the express invitation for further meeting albeit at a discreet place and time.

64. The meeting at the airport might or might not have been scheduled but there can be no doubt that the meeting in the car was fixed from before. Otherwise, it was impossible for Kulkarni to enter the car having equipped himself with a hidden camera and the recording device from before in anticipation that he would get the chance to get into the car outside Delhi High Court. The purpose of the meeting is manifest by the conversation between the two. It is also evident that before parting another meeting was fixed in the evening for which Kulkarni was to call up RK Anand at his office. As arranged, Kulkarni did telephone at RK Anand's office but the meeting did not take place there or with RK Anand. The meeting took place at the South Extension Market where first Bhagwan Sharma and then Lovely came to meet Kulkarni. Both claimed that they were sent to meet him by RK Anand. There is a very long transcript of the sting on the third meeting, first between Kulkarni and Bhagwan Sharma (who stayed with Kulkarni till Lovely came there) and then between Kulkarni and Lovely. The recording of the third sting further makes it evident that Kulkarni was trying (at least for the purpose of the sting) to sell himself off in favour of the accused Sanjeev Nanda for a price that he left to be fixed by RK Anand. However we see no reason to advert to the third sting, first because RK Anand was not personally present in the meeting and secondly and more importantly because the charge is fully established against him on the basis of the two stings done on him personally. This is of course, provided the recordings of the two stings truly and faithfully represent what actually transpired in those two meetings. Submissions on behalf of RK Anand:

65. Mr. Altaf Ahmed, learned senior counsel appearing for RK Anand, submitted that the High Court founded the appellant's conviction under the Contempt of Courts Act on facts that were electronically recorded, even without having the authenticity of the recording properly proved. The High Court simply assumed the sting recordings to be correct and proceeded to pronounce the appellant guilty of criminal contempt on that basis. Hence, the genuineness and accuracy of what appeared in the sting recordings always remained questionable. Mr. Ahmed submitted that the judgment and order coming under appeal was quite untenable for the simple reason that the integrity of its factual foundation was never free from doubt. Learned Counsel further submitted that the procedure followed by the High Court was not fair and the appellant was denied a fair trial. He also submitted that the High Court arrived at its conclusions without taking into consideration the appellant's defence and that was yet another reason for setting aside the impugned judgment and order. Nature of Contempt Proceeding:

66. Mr. Ahmed submitted that under the Contempt of Courts Act the High Court exercised extra-ordinary jurisdiction. A proceeding under the Act was quasi criminal in nature and it demanded the same standard of proof as required in a criminal trial to hold a person guilty of criminal contempt. In support of the proposition he cited two decisions of this Court, one in ***Mritunjoy Das* v. *Sayed Hasibur Rahman*** [2001] 2 SCR 471 and the other in ***Chotu Ram* v. *Urvashi Gulati*** [2001Cri LJ 4204]. In both the decisions the Court observed that the common English phrase, “he who asserts must prove” was equally applicable to contempt

proceedings. In both the decisions the Court cited a passage from a decision by Lord Denning in ***Re Bramblevale Ltd***. [All ER 1063H and 1064B] on the nature and standard of evidence required in a proceeding of contempt.

A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt.

67. Seeking to buttress the point learned Counsel also referred to some more decisions of this Court in: (i) ***Anil Rattan Sarkar* v. *Hirak Ghosh*** [2002 Cri LJ 1814] (ii) ***Bijay Kumar Mahanty* v. *Jadu @ Ram Chandra Sahoo*** [2003 Cri LJ 841] (iii) ***J. R. Parashar, Advocate* v. *Prashant Bhushan, Advocate*** [2001 Cri LJ 4207] and (iv) ***S. Abdul Karim* v. *NK Prakash*** [1976 Cri LJ 641].

68. There cannot be any disagreement with the proposition advanced by Mr. Ahmed but as noted above if the sting recordings are true and correct no more evidence is required to see that RK Anand was trying to suborn a witness, that is, a particularly vile way of interfering with due course of a judicial proceeding especially if indulged in by a lawyer of long standing. Admissibility of electronically recorded & stored materials in evidence:

69. This leads us to consider the main thrust of Mr. Ahmed's submissions in regard to the integrity, authenticity, and reliability of the electronic materials on the basis of which the appellants were held guilty of committing contempt of Court. Learned Counsel submitted that the way the High Court proceeded in the matter it was impossible to say with any certainty that the microchips that finally came before it for viewing were the same microchips that were used in the spy cameras for the stings or those were not in any way manipulated or interfered with before production in court. He further submitted that the admissibility in evidence of electronic recordings or Electronically Stored Information (ESI) was subject to stringent conditions but the High Court completely disregarded those conditions and freely used the sting recordings as the basis for the appellants' conviction.

70. In support of the submissions Mr. Ahmed submitted a voluminous compilation of decisions (of this Court and of some foreign courts) and some technical literature and articles on ESI. We propose to take note of only those decisions/articles that Mr. Ahmed specifically referred to us and that have some relevance to the case in hand.

71. Two of the decisions of this Court referred by Mr. Ahmed, one in ***S A Khan* v. *Bhajan Lal*** [(1993) 3 SCC 151] and the other in ***Quamarul Islam* v. *S. K. Kanta*** [1973 Cri LJ 228] relate to newspaper reports. In these two decisions it was held that news paper report is hearsay secondary evidence which cannot be relied on unless proved by evidence aliunde. Even absence of denial of statement appearing in newspaper by its maker would not absolve the obligation of the applicant of proving the statement. These two decisions have evidently no relevance to the case before us.

72. In regard to the admissibility in evidence of tape recorded statements Mr. Ahmed cited a number of decisions of this Court in (i) ***N. Shri Rama Reddy* v. *V. Giri*** [1971] 1 SCR 399 (ii) ***R.M. Malkani* v. *State of Maharashtra*** 1973Cri LJ228 (iii) ***Mahabir Prasad Verma* v. *Dr. Surinder Kaur*** [1982]3 SCR 607 and (iv) ***Ram Singh* v. *Col. Ram Singh*** AIR 1986 SC 3 . He also referred to two foreign decisions on the point, one in (i) ***R* v. *Stevenson*** 1971 (1) All ER 678, and the other of the Supreme Court, Appellate Division of the State of New York in ***The People of State of New York* v. *Francis Bell*** (taken down from the internet). We need here refer to the last among the decisions of this Court and the English decisions in ***R* v. *Stevenson***. In ***Ram Singh***, a case arising from an election trial the Court examined the question of admissibility of tape recorded conversations under the relevant provisions of the Indian Evidence Act. The Court lay down that a tape recorded statement would be admissible in evidence subject to the following conditions. Thus, so far as this Court is concerned the conditions for admissibility of a tape-recorded statement may be stated as follows:

(1) The voice of the speaker must be duly identified by the maker of the record or by other who recognise his voice. In other words, it manifestly follows as a logical corollary that in the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

(2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence-direct or circumstantial.

(3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in a safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

73. In ***R* v. *Stevenson*** too the Court was dealing with a tape recorded conversation in a criminal case. In regard to the admissibility of the tape recorded conversation the court observed as follows:

Just as in the case of photographs in a criminal trial the original un-retouched negatives have to be retained in strict custody so in my views should original tape recordings. However one looks at it, whether, as counsel for the Crown argues, all the prosecution have to do on this issue is to establish a prima facie case, or whether, as counsel for the defendant Stevenson in particular, and counsel for the defendant Hulse joining with him, argues for the defence, the burden of establishing an original document is a criminal burden of proof beyond reasonable doubt, in the circumstances of this case it seems to me that the prosecution have failed to establish this particular type of evidence. Once the original is impugned and sufficient details as to certain peculiarities in the proffered evidence have been examined in court, and once the situation is reached that it is likely that the proffered evidence is not the original-is not the

primary and the best evidence -that seems to me to create a situation in which, whether on reasonable doubt or whether on a prima facie basis, the judge is left with no alternative but to reject the evidence. In this case on the facts as I have heard them such doubt does arise. That means that no one can hear this evidence and it is inadmissible.

74. Mr. Ahmed also referred to another decision by a US Court on the admissibility of video tapes. This is by the Court of Appeal of the State of North Carolina in ***State of North Carolina* v. *Michael Odell Sibley***. In this decision there is a reference to an earlier decision of the same court in ***State* v. *Cannon***. [92 N C App. 246] etc. in which the conditions for admissibility of video tape in evidence were laid down as under:

The prerequisite that the offer or lay a proper foundation for the videotape can be met by:

(1) testimony that the motion picture or videotape fairly and accurately illustrates the events filmed (illustrative purpose); (2) "proper testimony concerning the checking and operation of the video camera and the chain of evidence concerning the videotape..."; (3) testimony that "the photographs introduced at trial were the same as those [the witness] had inspected immediately after processing," (substantive purposes); or (4) "testimony that the videotape had not been edited, and that the picture fairly and accurately recorded the actual appearance of the area `photographed.

75. On the different issues germane to the admissibility of ESI Mr. Ahmed also referred to a decision of the District Court of Maryland, United State in Civil Action No. PWG-06-1893, ***Jack R. Lorraine and Beverly Mack* v. *Markel American Insurance Company***. Mr. Ahmed also cited before us an article captioned `The Sedona Conference. Commentary on ESI Evidence & Admissibility': A Project of The Sedona Conference Working Group on Electronic Document Retention & Production (WGI). published in Sedona Conference Journal, Fall 2008. The article deals extensively with the different questions relating to admissibility in evidence of ESI and one of its basic premises is that the mere fact that the information was created and stored within a computer system would not make that information reliable and authentic.

76. He also invited our attention to an article appearing in The Indian Police Journal, July-September 2004 issue under the caption "Detection Technique of Video Tape Alteration on the Basis of Sound Track Analysis". From this article Mr. Ahmed read out the following passages:

> The acceptance of recorded evidence in the court of law depends solely on the establishment of its integrity. In other words, the recorded evidence should be free from intentional alteration. Generally, examination of recorded evidence for establishing the integrity/authenticity is performed to find out whether it is a one-time recording or an edited version or copy of the original.

And further:

> Alteration on an audio recording can be of Addition, Deletion, Obscuration, Transformation and Synthesis. In video recordings the alteration may be with the intention to change either on the audio track or on the video track. In both the ways there is always disturbance on both the track. Alterations in a video track are usually

made by adding or removing some frames, by rearranging few frames, by distorting certain frames and lastly by introducing artificially generated frames. Alteration on a video recording

77. In light of the decisions and articles cited above Mr Ahmed contended that the High Court freely used the copies of the sting recordings and the transcripts of those recordings made and supplied by NDTV without caring to first establish the authenticity of the sting recordings. Learned Counsel submitted that the use of the CDs of the sting recordings and their transcripts by the High Court was in complete violation of the conditions laid down by this Court in Ram Singh.

78. Learned Counsel pointed out that at the threshold of the proceeding, started suo moto, the High Court, instead of taking the microchips used for the sting operations in its custody directed NDTV `to preserve the original material including the CDs/Video' pertaining to the sting operations and to submit to the Court copies and transcripts made from those chips. Thus the microchips remained all along with NDTV, allowing it all the time and opportunity to make any alterations and changes in the sting recordings (even assuming there were such recording in the first place!) to suit its purpose. The petition filed by RK Anand for directing NDTV to submit the original microchips before the Court and to give him copies made in Court directly from those chips remained lying on the record unattended till it was rejected by the final judgment and order passed in the case. Another petition requesting to send the microchips for forensic examination also met with the same fate.

79. Mr. Ahmed further submitted that the procedure followed by the High Court was so flawed that even the number of chips used for the different sting operations remained indeterminate. The trial court order dated June 1, 2007 referred to three chips produced on behalf of NDTV. The written statement of Poonam Agarwal made before the High Court on June 6, 2007 mentioned four chips and finally their number became five in her affidavit dated October 1, 2007.

80. He further submitted that the audio and the video recording on the basis of which the NDTV telecast was based and that was produced before the High Court was done by Kulkarni and it was he who was the maker of those materials. The Court never got Kulkarni brought before it either for the formal proof of the electronic materials or for cross-examination by the contemnors. The finding of the High Court was thus based on materials of which neither the authenticity was proved nor the veracity of which was tested by cross-examination. He further submitted that the affidavit of the NDTV reporter (Poonam Agarwal) doesn't cure this basic flaw in the proceedings. The recordings were not done by the TV channel's reporter: her participation in the process was only to the extent that she `wired' Kulkarni and received from him the recorded materials. What she received from Kulkarni was also not identified, much less formally proved before the High Court. According to Mr. Ahmed, therefore, the finding of the High Court was wholly untenable and fit to be set aside.

SUBMISSIONS CONSIDERED

81. The legal principles advanced by Mr. Ahmed are unexceptionable but the way he tried to apply those principles to the present case appear to us to be completely misplaced.

82. Here, we must make it clear that we are dealing with a proceeding under the Contempt of Courts Act. Now, it is one thing to say that the standard of proof in a contempt proceeding is no less rigorous than a criminal trial but it is something entirely different to insist that the manner of proof for the two proceedings must also be the same. It is now well settled and so also the High Court has held that the proceeding of contempt of court is sui generis. In other words, it is not strictly controlled by the provisions of the CrPC and the Indian Evidence Act. What, however, applies to a proceeding of contempt of court are the principles of natural justice and those principles apply to the contempt proceeding with greater rigour than any other proceeding. This means that the Court must follow a procedure that is fair and objective; that should cause no prejudice to the person facing the charge of contempt of court and that should allow him/her the fullest opportunity to defend himself/herself. [See ***In Re Vinay Mishra,*** 1995 Cri LJ 3994; ***Daroga Singh* v. *B.K. Pandey*** 2004 Cri LJ 2084].

CORRECTNESS OF STING RECORDINGS NEVER DISPUTED OR DOUBTED:

83. Keeping this in mind when we turn to the facts of this case we find that the correctness of the sting recordings was never in doubt or dispute. RK Anand never said that on the given dates and time he never met Kulkarni at the airport lounge or in the car and what was shown in the sting recordings was fabricated and false. He did not say that though he met Kulkarni on the two occasions, they were talking about the weather or the stock market or the latest film hits and the utterances put in their mouth were fabricated and doctored. Where then is the question of proof of authenticity and integrity of the recordings? It may be recalled that both in the eight o'clock and nine o'clock programmes, RK Anand was interviewed by the programme anchors and the live exchange was integrated into the programmes. Let us see what his first response to the telecast was when the anchor of the eight o'clock programme brought him on the show.

[Following are the extracts from the exchange between the anchor and RK Anand]

LIVE EXCHANGE BETWEEN TV ANCHOR & RK ANAND:

India 60 Minutes (BMW Special) 8 PM"

Segment 2

Sonia: We have RK Anand, on line with us. Mr. RK Anand, you have watched that report, what's your defence?

RK Anand: My defence, what can be the defence you tell me. See, he just came to me and he was making a joke that should I make a demand for Rs. 2.5 crores and I said what the hell are you talking, you would want any amount you want ten, I meant this jokingly I'd not serious manner.

I thought what the hell you want and I never invited him I was going out he must have come there to meet me and I don't know what kind of story if being made my NDTV on this channel. x x x x x

Sonia: But Mr. Anand if you have a witness who has come up, you have a witness of the prosecution who has come up to you he has claimed that he wants this much money and you

may've laughed it off but you then met him again, you've again discussed details of the case, surely that is not appropriate behaviour for a defence lawyer with a prosecution witness.

RK Anand: See, did I ask him to sit in the car? Did I ask him to come to my office? Did I ever give him a call to come to me? We never called. I think it's a trap being laid by the NDTV people and sending the Kulkarni to me. It's nothing that we have done anything.

x x x

Sonia: But Mr Anand, let me come back to the central point once again why should a defence lawyer and a prosecution witness be meeting and discussing the case even if it's at the behest of the witness, surely as a senior defence lawyer you should've thrown him out and not entertained this conversation?

RK Anand: Just listen to me now; somebody comes up and talks to you, what do you do, you throw him out?

x x x

Sonia: But you met him again in your car?

RK Anand: HE was saying 2.5 and I said make a demand for 5. I was making a joke of him. Could you not understand the language in which I said it? I was laughing at that time. Listen to me, he is a blackmailer, he is trying to blackmail at your instance.

x x x

Sonia: Mr Anand, if you were joking the questions that we are raising as we've said many times, we have no evidence that money changed hands or didn't change hands, what we are showing you is what was caught on camera. Money being discussed whether it was jokingly or not jokingly has to be investigated and two meetings between you and the key prosecution witness, that seems to be what is currently on camera, what actually happened has to be investigated. But how do you justify these two meetings?

RK Anand: You are tying again to ask questions after questions. I am saying that you know when he said about 2.5 crores, I laughed at him and said bloody you are joking. I was smiling at him; he was making a fool of himself.

x x x

Next is his response in course of the second telecast immediately following the first one:

[Following are the extracts from the exchange between the anchor and RK Anand]

30th May - 9 PM BMW Special

Barkha Dutt: Mr RK Anand if you can hear me, by now you have watched over two times on NDTV.

The camera doesn't lie sir, u were meeting the prosecution's witness not once but twice, sir, how was this appropriate, how can you defend this sir?

Anand: Barkha, we should talk in the right perspective. One must understand that this witness is a blackmailer, we have been fighting in the High Court even today that this witness should not be examined because he has been blackmailing us for the last so many years and

when I was going out of Delhi, he appeared suddenly at the airport, and starts talking to me and say should I make it 2.5 crores. I laughed at him and what the hell are you talking, u demand 5 crores, I'll cross- examine you. This is my first reaction to that one.

Barkha: But Mr Anand if he's a blackmailer, why did you meet him a second time in your own car a second time outside the Delhi High Court, if he's a blackmailer?

Anand: I have not met him in my car I'm telling you, this is not correct.

Barkha: Did u meet him a second time?

Anand: No I did not meet him

Barkha: Sir our investigation reveals that you met him at the Delhi airport and then again a second time conversation between you and him takes place inside a car, it may not have been your car.

There are two separate meetings for sure sir.

Anand: There is no second meeting, I've never met him. I only met him once and that he came. I was going out of Delhi, and somebody comes and talks to me and asks for 2.5 crores and I laughed at him that what the hell are u talking. U want 2.5 crores and just see what I've said. I'll cross-examine you. He said will you cross-examine me, I said yes I'll cross-examine you. And then we go to the HC and tell HC that he is a blackmailer and we will not examine him.

x x x

Barkha: Anand, when Sunil Kulkarni met u at the airport, how correct is it for the defence lawyer to be toughing (sic. laughing) when Sunil Kulkarni raises the question of Rs 2.5 crores. In response u laugh and say for that money I will cross-examine you. Even as a joke is it appropriate?

Anand: It is not a joke I'm saying.If somebody comes before your vision suddenly when u are going out of Delhi, and say I will demand 2.5 crores, I say what 2.5 crores, make a demand of 5 crores I will cross examine you in the court of law

x x x.

Barkha: U we (sic. have) flatly denied meeting Sunil Kulkarni, is that correct?

Anand: I've not met him a second time.

x x x

Barkha: u think its appropriate for you to asking the prosecution witness to come and met you at your house sir?

Anand: why what is the difficulty in meeting anyone, I don't understand?

Barkha: So according to u RK Anand.....

Anand:.....so long u do not influence them...

x x x

84. As may be seen from the above, the first response of RK Anand is to try to explain away (quite unconvincingly to anyone who might have viewed the recorded programme!)

what he said when Kulkarni mentioned the amount of rupees 2.5 crores. He admitted that Kulkarni met him at the airport lounge. He didn't deny any part of the conversation between them as shown in the programme based on the sting recordings. To the anchor of the first programme, he impliedly admitted meeting Kulkarni for the second time in the car simply stating that he didn't ask Kulkarni to sit in the car and he did not ask him to come to the office. But about half an hour later, to the anchor of the second programme, though admitting meeting Kulkarni at the airport lounge, RK Anand completely denied meeting him in the car or anywhere else for the second time. However, as we shall see presently the denial was quite false.

85. We have gone through the transcripts of the exchange between the two anchors and RK Anand a number of times and we have also viewed the programme recorded on CDs. To us, RK Anand, in his interactions with the programme anchors, appeared to be quite stunned at being caught on the camera in the wrong act, rather than outraged at any false accusations.

86. It is noted above that immediately after the telecast RK Anand sent a legal notice to NDTV threatening legal actions against them and demanding a huge sum as compensation. NDTV gave its replay to the legal notice and thereafter RK Anand didn't pursue the matter any further. Meeting with Kulkarni in car admitted:

87. RK Anand filed his reply affidavit in response to the notice issued by the Court on October 3, 2007. In paragraph B of the affidavit he denied, "each and every part of alleged tape conversation and CDs produced before the Court in response to order passed by this Court in relation to telecast of BMW exposing thereby denying each part of the conversation". He further stated that the whole tape was fabricated, distorted, edited in such a manner to tarnish his image and to suit and project the TV channel's story in particular manner.

In paragraph `O' of the affidavit, however, he stated as follows:

O. That the Deponent was awfully busy in Court on 8.5.2007. He finished his arguments in a bride burning case at 5.45 p.m. While he was sitting in his car, Sunil Kulkarni made entry in the car. The Deponent was unwilling to talk and to allow him to sit in the car. The opening lines would make it clear that the Deponent never wanted to talk to Sunil Kulkarni.

Kulkarni: Kyon office mein, ghar pe bhi mat milo....

Anand: Yahan Kyon milto ho phir."

After reaching office, the deponent had meeting with clients i.e. Sanjeev Nanda and his father. Lovely had come to meet Mr. Suresh Nanda. All the colleagues of the deponent and Nanda's were apprised of development in the car about Sunil Kulkarni. After some time, the deponent left the office. The deponent was informed that Lovely offered to record the conversation of Kulkarni so as to trap him. The deponent was informed later that not only Lovely was successful in recording the demand of Sunil Kulkarni but Shri Bhagwan also recorded another conversation subsequent to that of Lovely. The said conversation is reproduced below.

88. This is followed by a transcript of some alleged conversation between Shri Bhagwan and Kulkarni.

89. In the above quoted paragraph there is plain and clear admission in regard to the second meeting taking place in the car between RK Anand and Kulkarni on the evening of May 8, 2007. The statement made on oath before the High Court thus completely falsifies his denial in the live interview with the anchor of the TV programme about the second meeting with Kulkarni in the car. As to the later part of the paragraph regarding the alleged sting on Sunil Kulkarni by Shri Bhagwan, we don't have the slightest doubt that it was an afterthought and concoction. Had there been such a sting recording RK Anand was duty bound to inform the High Court about it when the Criminal Revision against the trial court order summoning Kulkarni as court witness was heard on several dates in May 2007 before the telecast of the programme by NDTV. He was equally duty bound to inform the trial court about Kulkarni's approaches and the sting done on him by Shri Bhagwan when Kulkarni was examined before it on May 14, 17 & 29. Referring to sting recordings to show innocence:

90. Further, interestingly, though calling the sting recordings fabricated, manufactured, and distorted, he also relies on the very same sting recordings to make out some point or the other in his defence. For example, in paragraph S of the affidavit it is stated as follows:

S. That in fact, this alleged witness Sunil Kulkarni had earlier attempted to meet the Respondent in his office. It is a matter of chance that Shri Amod Kanth the then Director General of Police, Arunachal Pradesh was present with the Respondent in his office. Sunil Kulkarni was rebuffed, rebuked and was asked to leave Respondent's office in the presence of Shri Kanth. Thereafter, Sunil Kulkarni was physically thrown out from the office of Respondent. Shri Amodh Kanth also rebuked him for his conduct.

This fact stands corroborated by the transcript in which it has been stated by Sunil Kulkarni as under:

Kul: mujhe koi to message nahi mil raha tha. Phir panga yeh ho raha ki when u told me I don't want to discuss (mujhe koi message nahi mil raha tha phir panga yeh ho raha ki when u told me I don't want to discuss."

Kul: "beech main aap par gussa ho gaya tha. (Beech me aap par gussa ho gaya tha, aap ka koi neta log hain, ek aaddmi jisne mere ko aisa kheencha tha).

Kul: vo aapka ek neta log hain ek Neta isne mereko aisa Kheecha tha (Ek neta tha usne mere kko aisa kheencha tha, aisa kheencha tha, bola sahib ne milne ko manakar diya, bigar gaya, kaha bhag jao, bhag jao, aisa bola).

From the above transcript, it is clear that the Respondent had no intention at any time to meet the said witness. He was thrown out physically from the office of Respondent. He was told not to meet the Respondent as they are not interested in any one.

Similarly in paragraph Z10 it is stated as follows:

Z10. ...The deponent has never tried or intended to influence this witness so as to interfere in the course of justice. On the other hand, deponent have rebuked and rebuffed him & told him not to ask for any money. Rather the witness was advised to speak the truth and not to falsely implicate the Nanda's. Respondent has gone to the extent of telling him to have fear from God since everyone is answerable for his acts to God....

And again in paragraph 17 it is stated as follows:

17. ...The deponent had no intention to discuss the subject matter of the case with Sunil Kulkarni. The discussion was started by Sunil Kulkarni by alleging that;

Kul "kal kya mereko nikaal rahe ho kya...311 se."

Anand: Karoon... Kulkarni nahi Kulkarni No, nahi nikalna Kulkarni nahi, nahi, mat nikalna..withdraw karva lo na aap. Jab Main aapke saath ho jo marzi karne ke liya tyaar ho to yeh kay ke liye High Court main lagwa diya aapne...mere upar aapko itna bhi bharosa nahin hain kya..theek hain gussa ho jata hoon main....

Kulkarni lekin aana hain depose karma hain.

The aforesaid transcript of Sunil Kulkarni would clearly indicate that he himself was suggesting that he is prepared to make any kind of statement. It is not that the deponent wanted him to make a statement in a particular manner. It is not that the deponent was trying to influence the witness. The witness had already taken a decision to make a statement in a particular manner not at the instance of the deponent.

Further in Paragraph 23

23. ...The below noted conversation would substantiate the stand of the deponent.

Kul: kitna mango.

Anand: chodo...baat samjha kar...aadmi ki zindagi main aur Bhi bade kaam aate hain. Aisa nahi karte

The whole conversation about reasonableness was in the form of an admonishment and advice so that no money is demanded. If the deponent wanted to deal with the witness or influence the witness or negotiate the terms of settlement, at that point of time, the deponent could have discussed since the demand of 2.5 crores was already allegedly made by the witness but categorically telling the witness to not to talk about the money and reminding of the relations would negate the discussion about the money part in the whole transcript. The reference to the utterances by Sunil Kulkarni.

Kul: "isme bachana hain usko sanjeev ko..

Anand: kabhi kisika bura mat kiya karo.

Anand: Kabhi kisi ka bura nahin kara karo..aisa bhala karne se hi Aadmi ko acha x x....kisii ko jhoota nahi phasana chahiya....nikal dena chahiye...

Anand: aage jake bhi bhagwan ko jawaab dena hota hain yaar ...aage bhi jawaab...kya fayda karne...xxx...

Anand: Bachane se phir bhi ache rehta hain...phasane me To bura kaam hota hain...main to kisi main interested hi nahin hoon.

First of all...

Further in paragraph 24

24. That during the course of conversation and in view of the past acquaintance Sunil Kulkarni had with the deponent, number of irrelevant statements were made by the witness.

One such part was in relation to Amodh Kanth. The important conversation which came to light during the course of the talks was;

Uska koi taluk nahin..phir bhi yeh amod kanth ke peeche kyon pada hua K.K. Paul.

91. He thus accepts the entire recordings in both the stings. For, it is absurd even to suggest that the sting recordings are true and correct if those are seen as supporting his explanations (which, in any event, are quite un-statable!) but are otherwise false and fabricated.

92. In a rearguard action Mr. Altaf Ahmed took us one by one through all the paragraphs in different affidavits filed by RK Anand in which the sting recordings were described as false, fabricated, doctored, morphed and manipulated. But those allegations are simply not compatible with the other statements in his affidavits as noted above and his responses in regard to the sting operations at different times. The denials in the affidavits are nothing more than ornamental pleas.

93. We also see no substance in the anomalies and alleged inter correlation in the sting recordings as pointed out on behalf of RK Anand on the basis of the eight minute CD which he got prepared from the materials supplied to him by the Court. Along with the other materials we also viewed eight minute CD produced by RK Anand. In the CD an attempt is made to show that the frames in the sting recordings some times jumped out of the sequence number and such other technical flaws. The objections raised by RK Anand where fully explained by the affidavit filed by Dinesh Singh on behalf of NDTV. In the affidavit it was explained

80...the alleged discrepancies in the CDs produced before the Court and supplied to the appellants occurred primarily due to conversion of the recorded material from chips into CDs, via the intermediary medium of tapes. Shri Singh further explains the gap occurring at certain points of the recording as due to displacement of the ear-plus connector i.e. the device uses to attach the button lens and the microphone with the recording device.

94. Mr. Altaf Ahmed also made the grievance that the High Court failed to consider his defence. According to him NDTV had conceived the sting operation as pre-empted measure against Shri Anand, who was consulted in his professional capacity in connection with a matter in which NDTV in collusion with one Mrs. Sumana Sain and IRS officer was indulging in massive tax evasion. The materials in support of the allegations and in particular RK Anand's connection with the matter are so vague and tenuous that we don't consider it worthwhile to go into that question.

95. On a careful consideration of the materials on record we don't have the slightest doubt that the authenticity and integrity of the sting recordings was never disputed or doubted by RK Anand. As noted above he kept on changing his stand in regard to the sting recordings. In the facts and circumstances of the case, therefore, there was no requirement of any formal proof of the sting recordings. Further, so far as RK Anand is concerned there was no violation of the principles of natural justice inasmuch as he was given copies of all the sting recordings along with their transcripts. He was fully made aware of the charge against him. He was given fullest opportunity to defend himself and to explain his conduct as appearing from the sting recordings. The High Court viewed the microchips used in the spy camera and the programme

telecast by TV channel in his presence and gave him further opportunity of hearing thereafter. The sting recordings were rightly made the basis of conviction and the irresistible conclusion is that the conviction of RK Anand for contempt of court is proper legal and valid calling for no interference.

IU KHAN'S APPEAL

96. The sting on IU Khan was done on April 28, 2007 in one of the lawyers' chambers at the Patiala House court premises. The video CD begins by showing Poonam Agarwal fixing the recording device and the button camera on Kulkarni's person sitting inside the car. Then Kulkarni and Deepak Verma together enter the Patiala House. They move around in the court premises for a long time till just before the lunch recess they are able to find IU Khan sitting in someone else's chamber. The chamber seems to be quite crowded with people all the time coming and going away. The first exchange of greetings between IU khan and Kulkarni as he, accompanied with Deepak Verma, enters into the chamber is not audible. But then IU Khan is heard describing Kulkarni, in a general sort of introduction to those present there, as `the prime witness in the BMW case, `'star witness' `a very public spirited and devoted man' etc. Kulkarni starts chatting with him about the summons issued to him by the court in the BMW case. In the meanwhile someone else comes into the chamber. IU Khan greets him loudly and starts talking to him. After a while, on Kulkarni's request, both IU Khan and Kulkarni come out of the chamber and some conversation between the two takes place outside the chamber. After the meeting is over Kulkarni and Deepak Verma together return back. As the recording devices carried by them are still on the conversation that takes place between the two is naturally recorded. Kulkarni does not allow Deepak Verma to go directly to the TV Channel's vehicle parked outside the Court premises where Poonam Agarwal would be waiting for their return, saying that they are bound to be followed. Instead, they take an auto-rickshaw and go to Pargati Maidan at a short distance from the court. From there they contact Poonam Agarwal on mobile phone, who goes there and joins them and de-wires Kulkarni. Only partial transcript of the sting recording submitted to Court:

97. The recording of this sting operation is more than an hour long. But the transcript of this sting recording submitted to the Court by NDTV is confined only to the exchange between IU Khan and Kulkarni. In the absence of the full transcript it becomes difficult and cumbersome to see what transpired between Kulkarni and Deepak Verma immediately before and after the meeting with their subject. In our view that part of the sting recording was also highly relevant and important for judging the true import of the exchange that took place between Kulkarni and IU Khan. We are surprised that the High Court did not notice this big omission in the transcript of the first sting and we record our disapproval of NDTV in withholding the full transcript of the sting recording. Full transcript/recording of IU Khan's interview by TV channel on May 31, 2007 not on record:

98. Further, it is noted above that in the morning of May 31, 2007 one Anusuya Roy, a reporter from NDTV had interviewed IU Khan at his residence for his response to the programme telecast the previous evening. The interview was telecast live from around 8 to 8.23 in the morning. But that was the only time the full interview was shown and later only one statement made by IU Khan in course of the interview was incorporated in the programmes telecast in the evening of May 31. What is more significant, however, is that

NDTV did not present before the High Court either the full recording of the interview or its transcript and what we find on the High Court record is only the statement that was used in the programmes telecast on May 31, 2007 and that runs as follows;

IU Khan: I am not denying anything at all, I am not denying it but the interpretation, meaning and inferences which were drawn are totally wrong, unfounded and totally inconsonance (sic) with the actual record that I am producing before you. Kulkarni also has used the word `Bade Saheb' means the big officer, high officer of the police headquarter. In his deposition in the court also he had used the word Bade Saheb twice and when the explanation was sought, he explained that by bade saheb I mean senior officer of the police headquarter, it was unconnected to Mr. R.K. Anand as it has been wrongly, mischievously and calculatedly projected by you people.

Confusion in submitting copies of sting recording to High Court:

99. Yet again, there is serious confusion about the production of the recording of the first sting on the microchip of the spy camera carried by Kulkarni before the High Court. It is noted above that on June 1, 2007 three chips and five CDs were produced before the trial court. Those were returned back because in the meanwhile the proceeding was initiated by the High Court. On June 2, 2007 six CDs were submitted before the High Court. On that date Poonam Agarwal stated before the Registrar that one of the CDs (marked `1') was edited and the other five CDs (marked `2' to `6') were unedited. She also said that NDTV news channel did not have any other material in connection with the sting operation in question. On June 6, 2007 she submitted the transcripts of the recordings. In the statement made on that date she said that she had earlier submitted six CDs. Those CDs were duplicated from four spy camera chips which were recorded on different occasions. After copies of the CDs were given to the proceedees as directed in the order dated August 7, 2007 issuing show cause notices to them, a grievance was made before the Court that they were supplied only five CDs, though the number of CDs submitted before the High Court was six. It was then explained on behalf of NDTV that the contents of two CDs were copied onto a single one and thus the number of CDs was reduced from six to five. It was of course stated that a fresh set of six CDs each would again be supplied to all the three proceedees. The High Court apparently accepted the explanation given by NDTV (High Court order dated 24.9.2007). But the lapse was far more serious as would appear from the affidavit dated October 1, 2007 filed by Poonam Agarwal to explain the position. In her affidavit she stated that in the first sting (on IU Khan) two spy cameras were used, one carried by Kulkarni and the other by Deepak Verma. The recording of the first sting was thus on two microchips one in Kulkarni's camera and other in the bag camera of Deepak Verma. In the other three stings there was a single spy camera carried by Kulkarni, on each occasion having a fresh microchips. Thus for all the four stings a total number of five chips were used. The contents of the microchip in Kulkarni's spy camera used for the first sting (on IU Khan) were copied onto magnetic tape and then to a CD. That microchip was then reformatted for other uses. The other four microchips were available in their original and undisturbed condition. For preparation of the programme telecast on May 30 the contents of all the five chips, including the one that was reformatted, were used. However, the five unedited CDs (marked `2' to `6') that were submitted before the High Court on June 2, 2007 were copies from the four microchips that had remained in their original and

undisturbed condition. The sixth CD (marked as `1') was the copy of the programme that was telecast. The recording on the microchip in Kulkarni's camera used for the first sting operation, though available on magnetic tape and CD was not submitted to the High Court because the microchip itself was reformatted. She further stated that while supplying CDs to the noticees in pursuance to the direction of the Court, "a mistake occurred in that, one of the CDs given to the noticees (*sic*) was not taken from the "four chips but the CD which is a copy of the formatted chip containing the recording done by Mr. Kulkarni". She further stated that a CD made from the mother tape of the formatted chip was being filed along with the affidavit before the High Court.

100. What follows from the affidavit may be summarised as follows; (I) the conduct of NDTV before the High Court in a vary serious proceeding was quite cavalier and causal. (II) At the time the High Court issued show cause notices to the three proceedees it did not have before it the recording on one of the five microchips used in the sting operations. (III) The materials given to the proceedees along with show cause notice were not exactly the same as submitted before the High Court. (IV) The explanation in the form of Poonam Agarwal's affidavit came on October 1, 2007 on the same day when IU Khan filed his reply affidavit in response to the show cause notice.

101. In those circumstances it was not wrong for IU Khan to state in paragraphs 14 and 15 of his memorandum of appeal as under:

14. ...This finding is again against the material on record as the original chip of the button camera carried by Mr. Kulkarni was formatted by the NDTV in violation of the direction issued by the Hon'ble Court. This part of the conversation is not available in the transcript of the bag camera.

15. Because the CD of the button camera firstly cannot be relied upon as it was filed after the reply was filed by the appellant on 1.10.2007...

Lapses have no effect on RK Anand's case or even on case of IU Khan

102. We have recounted here some of the noticeable lapses committed by NDTV in the proceedings that were overlooked by the High Court. Having regard to seriousness of the proceeding we should have wished that it was free from such lapses. But it needs to be made absolutely clear that the irregularities pointed out above were in regard to the first sting concerning IU Khan. These in no way affect RK Anand or alter his position. The discussions and findings recorded above in respect of RK Anand thus remains completely unaffected by the mistakes pointed out here.

103. Further, having regard to the defence taken by IU Khan the aforementioned lapses do not have any material affect on his case either. But before proceeding to examine his defence and how the High Court dealt with it, it would be necessary to see what conversation is shown to have taken place in the sting recordings between Kulkarni and IU Khan.

THE EXCHANGE BETWEEN KULKARNI & IU KHAN

Khan: Meet Kulkarni, he is the prime witness in the BMW case. He is our star witness and he is a very public spirited and devoted man and incidentally, he was in Delhi on the

way/day when this unfortunate incident happened. He was going on foot to the Nizamuddin Railway Station.

A BIT FOLLOWS THAT IS HARD TO UNDERSTAND

Kulkarni: Mein barbad ho gaya, sir.

Khan: How?

Kulkarni: This particular thing is only you and myself are aware of. But I am not aware of anything, anything. I don't want to go again with that particular guy. I lost my mother, I don't know where my father is. I'm just roaming around for 8 years. Ab yeh mujhe kyun bulaya gaya hai?

Khan: Ab court ne (coughs) we dropped you....court ne (unclear)

Kulkarni: No, no you....I think the state told you to drop, right, if I'm not wrong?

Khan: These were the instructions I received from the Headquarters and that's why I got the SHO statement recorded that "on the instruction of the SHO and the ACP, such and such witness has been dropped". Then how can I make a statement? My clients are Delhi Police. Whatever instructions they will give, I will act upon it. I was very keen to examine you.

Kulkarni: Ya, I know that because I still remember, still remember.

Khan: Inhone mera haath dabaya xxxbhi dabaya, khoob dabaya, maine kaha main kya karoo, agar individual client ho to samjha bhi lo, department hai.

Khan: Bade Sahab se mile? Nahi mile? Mulakat hi nahi hooyi?

Kulkarni: Ab yeh kya jhanjhat aur?

Khan: Nahi nahi kuch nahi hoga, ab High Court mein unhone petition file kar di hai ki

Kulkarni ki statement xxx.

Kulkarni: To woh record karenge nahi na?

Khan: Nahi.

Kulkarni: Pakka?

Khan: Tum mauj karo...hum...humne drop kar diya, court ko kya...who is he is to say that it should be recorded.

Someone: Investigation to court kar sakta hai, pur mode of investigation to determine nahi kar sakta.

Khan: Exactly, they cannot decide the mode of investigation

SOMEBODY ENTERS THE CHAMBER

Kulkarni: Khan Sahab, ek minute, chale jata hoo, mein sham to ghar pe xxx aa jaon ga.

Khan: Ha, ha who to ana hi hai, ghar pe nahi xxx

Kulkarni: Who to abhi dilli mein aya hoo to aya hoo, ek second.

Khan: In Delhi, you're our guest.

Kulkarni: Inka nahi! Khan: Na inke nahi.

Khan: Aapka aur hamara personal effort/rapport (not clear) hai

Kulkarni: Who to alag hi baat hai.

Khan: Aur, bhai yaar thanda peeke jana.

Kulkarni: Nahi thanda nahi, bus ek second khali, kyonki wahi xxxx

THEY COME OUT OF THE CHAMBER AND TALK

Kulkarni: Summons Bombay challa gaya thaa, ab waha se reject ho ke ayaa hua hai. Ab loon ken na loon? Baad me mere ko raat ko ghar pe (Mr. Khan cuts in)

Khan: Tum mere ko miloge kab, yeh batao?

Kulkarni: Aap batao kyonki mere ko....SHO se meri baat hui hai. Aap usko...(Mr. Khan cuts in)

Khan: Tum thehre kahan ho?

Kulkarni: Main to thehre hoo out of Delhi.

Khan: Out of Delhi?

Kulkarni: Out of Delhi, Haan.

Khan: Sham ko keh baje aaoge?

Kulkarni: Aaj nahi aaonga...mein kal zarror...shamko. Sunday aaram reheat hai aur....

Khan: Sunday ko kis waqt aaoge?

Kulkarni: Aap batao mere ko.

Khan: Aapko suit kaunsa time karta hai?

Kulkarni: Koi bhi.

Khan: Saat aur aath ke darmiyan?

Kulkarni: Hann, theek hai.

Khan: Kalxxx

Kulkarni: Lekin kisi ko bhi batao mat.

Khan: Nahi ji, sawal hi paida nahi hota yaar.

Kulkarni: Na, na.

Khan: Aur tumhare liye bahut badiya scotch rakhi hui hai xxxx

Kulkarni: Scotch..laughs

Khan: Bahut badiya xxx

Kulkarni: Acha baki sab khairyat sahib?

Khan: Sab khairyat xx.Khuda ka xxx

Kulkarni: Chalo, kal mulaqat hogi

Kulkarni: Ok, main... (Mr. Khan cuts in)

Khan: Saat aur aath ke darmiyan

Kulkarni: Main, vese meri K K Paul se baat hui hai, lekin maine abhi tak nahin bola hoo I have not received summons at all. Woh mere ko bata dena.

Khan: Kal tum aajao

Kulkarni: Main...Huh? Woh hamare dono ki baat hogi,

Khan: Theek hai.

104. After this Kulkarni and Deepak Verma return back. As walking along they naturally talk about the sting done by them together.

105. As we shall see presently much depends on what IU Khan meant when he asked Kulkarni whether he had met `Bade Saheb'.

106. As noted above IU Khan does not deny the conversation that is shown to have taken place between him and Kulkarni. In his first response, that is, in the interview given to NDTV on the morning following the telecast he said that he did not deny anything at all, he did not deny (the utterances) but the inferences sought to be drawn were totally unfounded and wrong. When he said `Bade Saheb' he meant some high officer in the police headquarter. He also said that was the way Kulkarni used to refer to superior officers in the police headquarter(s) and that is how he had referred to them in his deposition before the trial court. When the trial court asked Kulkarni to clarify he explained that Bade Saheb meant a superior officer of the police headquarter. The words Bade Saheb, according to IU Khan, did not in any way refer to RK Anand.

107. And this was broadly his defence before the High Court. High Court dealing with IU Khan Defence:

108. The High Court did not accept his defence. The High Court held that there was great familiarity between IU Khan, Kulkarni and RK Anand. In this regard it observed as follows;

We have noted above that there are several references to Mr. Khan in the conversations of Mr. Kulkarni with Mr. Anand. We cannot overlook these since they suggest a tacit arrangement or at least an understanding between Mr. Khan, Mr. Anand and Mr. Kulkarni.

109. In coming to this conclusion, as is evident from the above quoted observation the High Court relied a great deal upon the conversations between Kulkarni and RK Anand (vide paragraphs 196, 197 & 198 of the High Court Judgment).

110. The High Court further held that when IU Khan asked Kulkarni whether he had met `Bade Saheb' he only meant RK Anand. It rejected IU Khan's stand that what he meant by the expression was a senior police officer. The High Court observed that no material was produced on behalf of IU Khan in support of the statement that in course of his deposition before the trial court Kulkarni used the expression `Bade Saheb' to mean a senior police officer. It further observed that in the sting operation, just before the conclusion of the meeting, Kulkarni had said that he had met K.K. Paul (who was then the Police Commissioner). The passage referred to is as follows;

Kulkarni: Main, vese meri K K Paul se baat hui hai, lekin maine abhi tak nahin bola hoo I have not received summons at all. Woh mere ko bata dena.

111. This, according to the High Court, clearly showed that Kulkarni referred to the Police Commissioner by his name and not by the expression `Bade Saheb'. High Court further observed that for Kulkarni there was no reason to meet the senior police officers particularly when he was dropped as prosecution witness. There was nothing to suggest that while in Delhi Kulkarni used to meet the senior police officers. On the other hand there was sufficient evidence to show that he was very familiar with both IU Khan and RK Anand, had easy access to both of them and used to frequently meet them. The High Court then took up Kulkarni's affidavit that supported IU Khan's plea that by the expression he had meant some senior police officer and not RK Anand and rejected it on a number of grounds.

112. After giving the reasons for rejecting the stand of IU Khan the High Court held that Bade Saheb was none else then RK Anand observing as follows;

190. On the other hand, when we watched the recording of the events of 28th April, 2007 from the button camera, we noted that towards the end of the recording, Mr. Deepak Verma asked Mr. Kulkarni about the identity of Bade Saheb and Mr. Kulkarni responded by saying that it is Mr. Anand. There is no suggestion that this part of the video recording is doctored or morphed....

113. The High Court further observed that as IU Khan was fully aware that Kulkarni, a prosecution witness was on highly familiar terms with a senior defence lawyer RK Anand, he was obliged to inform the prosecution about it and by not doing so he clearly failed in his duty as a prosecutor who was expected to be fair not only to his client but also to the Court. His conduct was, therefore, plainly unbecoming of a prosecutor. The High Court then proceeded to consider whether the conduct of IU Khan amounted to a criminal contempt of court. In this regard the Court refers to the conversation between IU Khan and Kulkarni taking place outside the chamber in which a second meeting was fixed up for the following evening with IU Khan giving Kulkarni the inducement of good scotch whisky. From the exchange between the two the court inferred that the extent of familiarity between the two was rather more than normal. IU Khan was aware that Kulkarni was on equally, if not more familiar, terms with RK Anand. Coupled with this his failure to inform the prosecution or the Court about the connection between Kulkarni and RK Anand had the potential and the tendency to interfere or obstruct the natural course of the BMW case and certainly the administration of justice, particularly when Mr. Khan himself described Mr. Kulkarni as the prime witness in the BMW case and the `star witness of the prosecution'. Finally the court held

207. Under these circumstances, we are left with no option but to hold that Mr. Khan was quite familiar with Mr. Kulkarni; Mr. Khan was aware that Mr. Kulkarni was in touch with Mr. Anand; Mr. Khan was not unwilling to advise Mr. Kulkarni or at least discuss with him the issue of accepting the summons sent by the trial court to Mr. Kulkarni. We also have no option but to hold that Mr. Khan very seriously erred in not bringing important facts touching upon the BMW case to his client's notice, the prosecution. The error is so grave as to make it a deliberate omission that may have a very serious impact on the case of the prosecution in the Trial court. Consequently, we have no option but to hold Mr. Khan criminally liable, beyond a shadow of doubt, for actually interfering, if not tending to interfere with the due

course of the judicial proceeding, that is the BMW case, and thereby actually interfering, if not tending to interfere with the administration of justice in any other manner.

Submissions on behalf of IU Khan

114. Mr. P. P. Rao, learned Senior Advocate appearing for IU Khan mainly submitted that even if the sting recording is accepted as true, on the basis of the exchange that took place between his client and Kulkarni it cannot be said that he acted in a way or colluded in any action aimed at interfering or tending to interfere with the prosecution of the accused in the BMW case or interfering or tending to interfere with or obstructing or tending to obstruct the administration of justice in any other manner. He further submitted that the findings of the High Court were based on assumptions that were not only completely unfounded but in respect of which the appellant was given no opportunity to defend himself. The High Court held the appellant guilty of committing criminal contempt of court referring to and relying upon certain alleged facts and circumstances that did not form part of the notice and in regard to which he was given no opportunity to defend himself. Mr. Rao submitted that along with the notice issued by the High Court the appellant was not given all the materials concerning his case and he was thus handicapped in submitting his show cause. He further submitted that the High Court erroneously placed the case of his client at par with RK Anand and convicted him because RK Anand was found guilty even though the two cases were completely different. Mr. Rao was also highly critical of the TV channel. He questioned the propriety of the sting operation and the telecast of the sting programme concerning a pending trial and involving a court witness without any information to, much less permission by the trial court or even the High Court or its Chief Justice. Mr. Rao submitted that when Kulkarni first approached Poonam Agarwal she thought it imperative to first obtain the approval of her superiors before embarking upon the project, but it did not occur to anyone, including her superiors in the TV channel to obtain the permission or to even inform at least the Chief Justice of the Delhi High Court before taking up the operation fraught with highly sinister implications. Mr. Rao also assailed the judgment coming under appeal on a number of other grounds.

SUBMISSIONS CONSIDERED

115. We have carefully gone through all the materials concerning IU Khan. We have perused the transcript of the exchange between Kulkarni and IU Khan and have also viewed the full recording of the sting several times since the full transcript of the recording is not available on the record. IU Khan's conduct quite improper:

116. We have not the slightest doubt that the exchange between Kulkarni and IU Khan far crosses the limits of proper professional conduct of a prosecutor (especially engaged to conduct a sensational trial) and a designated Senior Advocate of long standing. We are not prepared to accept for a moment that on seeing Kulkarni suddenly after several years in the company of a `burly stranger' (Deepak Verma) IU Khan became apprehensive about his personal safety since in the past some violent incidents had taken place in the court premises and some lawyers had lost their lives and consequently he was simply play-acting and pampering Kulkarni in order to mollify him. The plea is not borne out from the transcript and much less from the video recording. In the video recording there is no trace of any fear or

apprehension on his face or in his gestures. He appears perfectly normal and natural sitting among his colleagues (and may be one or two clients) and at no point the situation appears to be out of his control. As a matter of fact, we feel constrained to say that the plea is not quite worthy of a lawyer of IU Khan's standing and we should have much appreciated had he simply taken the plea of an error of discretion on his part.

117. Coming back to the exchange between IU Khan and Kulkarni, we accept that the transcript of the exchange does not present the accurate picture; listening to the live voices of the two (and others present in the chamber) on the CD gives a more realistic idea of the meeting. We grant everything that can be said in favour of IU Khan. The meeting took place without any prior appointment from him. Kulkarni was able to reach him, unlike RK Anand, without his permission or consent. IU Khan did not seem to be overly enthused at the appearance of Kulkarni. Accosted by Kulkarni, he spoke to him out of civility and mostly responded only to his questions and comments. There were others present in the chamber with whom he was equally engaged in conversation. He also greeted someone else who came into the chamber far more cheerfully than Kulkarni. But the undeniable fact remains that he was talking to him all the time about the BMW trial and the related proceedings. Instead of simply telling him to receive the summons and appear before the court as directed, IU Khan gave reassurances to Kulkarni telling him about the revision filed in the High Court against the trial court's order. He advised him to relax saying that since he had dropped him (as a prosecution witness) the court was no one to ask for his statement. The part of the exchange that took place outside the chamber was worse. Inside the chamber, at one stage, IU Khan seemed even dismissive of Kulkarni but on coming out he appeared quite anxious to fix up another meeting with him at his residence giving promising good Scotch whisky as inducement. IU Khan would be the first person to deny any friendship or even a long acquaintanceship with Kulkarni. The only common factor between them was the BMW case in which one was the prosecutor and the other was a prosecution witness, later dropped from the list of witnesses. A lawyer, howsoever, affable and sociable by disposition, if he has the slightest respect for professional ethics, would not allow himself such degree of familiarity with the witness of a criminal trial that he might be prosecuting and would not indulge with him into the kind of exchange as admittedly took place between IU Khan and Kulkarni. We are also not prepared to believe that in his conversation with Kulkarni, IU Khan did not mean what he was saying and he was simply trying to somehow get rid of Kulkarni. The video of the sting recordings leaves no room for doubt that IU Khan was freely discussing the proceeding of BMW case with Kulkarni and was not at all averse to another meeting with him rather he was looking forward to it. We, therefore, fully endorse the High Court finding that the conduct of IU Khan was inappropriate for a lawyer in general and a prosecutor in particular.

CRIMINAL CONTEMPT ???

118. But there is a wide gap between professional misconduct and criminal contempt of court and we now proceed to examine whether on the basis of materials on record the charge of criminal contempt of court can be sustained against IU Khan.

119. The High Court held that there was an extraordinary degree of familiarity between IU Khan, Kulkarni and RK Anand and each of them knew that the other two were equally familiar with each other. So far as BMW trial is concerned Kulkarni was a link between IU

Khan and RK Anand. IU Khan, by reason of his familiarity both with RK Anand and Kulkarni would also know about the game that was afoot for the subversion of the trial. He failed to inform the prosecution and the court about it and his omission to do so was likely to have a very serious impact on the trial. He was, therefore, guilty of actually interfering with due course of judicial proceeding, in the BMW case.

120. In the two sting recordings concerning RK Anand there are ample references to IU Khan to suggest a high degree of familiarity between the three. But in the sting on IU Khan the only words used by him that might connect him to RK Anand through Kulkarni are `Bade Saheb'. If `Bade Saheb' referred to RK Anand, the involvement of IU Khan needs no further proof. The question, however, is whether that finding can be safely arrived at.

121. Now, what are the materials that might suggest that while asking Kulkarni whether he had met Bade Saheb, IU Khan meant RK Anand. Apart from the piece of conversation between Deepak Verma and Kulkarni when they were returning after meeting with IU Khan, relied upon by the High Court, there is another material, for whatever its worth, that doesn't find any mention in the High Court judgment. It is Kulkarni's statement in his interview recorded at the NDTV studio. He said as follows;

He (IU Khan) directed me to Mr RK Anand is in that video you can find `Bade Saheb'. He meant that Mr. RK Anand.

122. We mention it only because it is one of the materials lying on the record. Not that we rely on it in the least. Having known the conduct of Kulkarni throughout this episode as discussed in detail in the earlier part of the judgment it is impossible to rely on this statement and we don't even fault the High Court for not taking any note of it.

123. The only other positive material in this regard is the one referred to by the High Court. The High Court observed that towards the end of the recording by the button camera, "Mr. Deepak Verma asked Mr. Kulkarni about the identity of Bade Saheb and Mr. Kulkarni responded by saying that it is Mr. Anand." But the reference by the High Court to that particular piece of conversation between Deepak Verma and Kulkarni is neither complete nor accurate. We have noted earlier that the transcript submitted to the High Court by NDTV was incomplete and it covered only the exchange between Kulkarni and IU Khan. If the High Court had before it the full transcript of the entire recording it might have taken a different view. We have viewed the CD labelled as "Button Spy cam Recording done by Sunil Kulkarni. IU Khan Sting Operation" a number of times and we find that on the way back after meeting IU Khan, Kulkarni was being quite voluble. He spoke to Deepak Verma and gave him some instructions. A part of their conversation, relevant for our purpose is as follows:

EXCHANGE BETWEEN KULKARNI & DEEPAK VERMA

Kulkarni: Humming some tune

Kulkarni: Don't go to car directly. We'll take an auto

Deepak Verma: Take an auto?

Kulkarni: Haan. Thoda sa aage chalen ge

Kulkarni: Aap ne suna nahin? "Bade Saheb se mile ya nahin?"

Deepak Verma: Haan Kulkarni: Ab dekho kal you will get [unclear..] you what you want

Deepak Verma: Kal aap Bade Saheb se milne ja rahe hain?

Kulkani: Na, Haan unke ghar pe. No, you don't have to come. You just come and stay outside.

Theek hai na?

[unclear...] Haan ab to aap ke samne hua sab kucchh

Deepak Verma: Bade Saheb woh hai, Anand?

Kulkarni: Hmm.

Noise of some auto/heavy vehicle engine

Deepak Verma: [Unclear...] Ek baar iska Photograph lein....Iska photograph aaya ki nahin aaya?

Kulkarni: Aaya. Aaya, aaya.

Kulkarni: Pukka trail hoga hamara. Hundred percent Tail hoga.

Deepak Verma: Police Waale ko kaise kah raha tha who? Gaadi Dilwao yaar..

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124. From the manner of speaking Kulkarni appeared to be giving the impression that everything went off according to the plan. He also tended to be slightly melodramatic. (He would not go to the car directly because they were bound to be followed!)

125. Now, while examining what Kulkarni understood or rather what he wanted Deepak Verma to believe what was meant by `Bade Saheb' it is necessary to bear in mind that the whole object of the sting was to uncover the alleged unholy alliance between the defence and the prosecution. It was based on the premise that the prosecution was colluding with the defence in the effort to save the accused in the BMW case. In that situation for Kulkarni, who for his own reasons was anxious to get NDTV's help for doing the sting, it was natural to find out and show to Deepak Verma some link between IU Khan and RK Anand irrespective of whether or not there was, in reality, any link between the two. There is no way to find out whether Kulkarni really believed that by `Bade Saheb' IU Khan meant RK Anand (Like everything else even on this issue he changed his stand from time to time!) or he just wanted Deepak Verma to believe so. But even if Kulkarni really understood Bade Saheb to mean RK Anand, that would not change the position much. For our purpose it is not important what Kulkarni or Deepak Verma or any one else understood (truthfully or otherwise!) by that expression. One may use an expression to mean a certain thing but to the listener it may mean something quite different. What is important here is to judge what IU Khan meant when he used that expression. In our view, on the basis of the exchange between Kulkarni and Deepak Verma, it will be highly unsafe to hold that when IU Khan asked Kulkarni whether he had met "Bade Saheb' he meant RK Anand.

126. The High Court rejected IU Khan's explanation that what he meant by `Bade Saheb' was some senior officer in the police headquarter. According to IU Khan, Kulkarni was in the habit of directly approaching the superior police officers and he would refer to them by that

expression. In support of the plea in his reply affidavit (paragraph 12) IU Khan stated as follows:

Even during the course of his deposition in court Mr. S. Kulkarni had used the expression "Bade Sahab" while referring to the higher police officers. The Ld. trial court also translated the same in English while recording the statement as "higher police officers". In the cross-examination Mr. S. Kulkarni has stated "I had voluntarily gone to the higher police officers of the police headquarter".

The High Court rejected the aforesaid plea observing as follows;

It was further submitted that during the recording of Mr. Kulkarni's evidence on an earlier occasion, a reference to Bade Saheb was made more than once. "Bade Saheb" was then translated and recorded in the deposition to mean senior police officers. Learned Counsel for Mr. Khan, however, did not produce any material to support the last submission.

127. Mr. P.P. Rao submitted that the approach of the High Court was quite unfair. The proceeding before the High Court was not in the nature of a suit or a criminal trial. In response to the notice issued by the Court the appellant had made a positive statement in his reply affidavit. The statement was not formally traversed by anyone. There was, therefore, no reason for the appellant to assume that he would be required to produce evidence in support of the statement. In case the High Court felt the need for some evidence in support of the averment it should have at least made it known to the appellant. But the High Court without giving any inkling to the appellant rejected the plea in the final judgment. The appellant was thus clearly denied a proper opportunity to defend himself. We find that the submission is not without substance. The proceeding before the High Court was under the Contempt of Courts Act and the High Court was not following any well known and well established format. In that situation it was only fair to give notice to the proceedees to substantiate the pleas taken in the reply affidavit by leading proper evidence. It must, therefore be held that the High Court rejected a material plea raised on behalf of the IU Khan without giving him any opportunity to substantiate it.

128. Further, as noticed above, the High Court, for arriving at the finding that there was a high degree of familiarity among IU Khan, Kulkarni and RK Anand has repeatedly used the transcripts of the meetings between Kulkarni and RK Anand. It is indeed true that in the exchanges between Kulkarni and RK Anand there are many references to IU Khan. That may give rise of a strong suspicion, of a common connection between the three. But having regard to the charge of criminal contempt any suspicion howsoever strong cannot take the place of proof and we don't feel it wholly prudent to rely upon the exchanges between Kulkarni and RK Anand to record a finding against IU Khan.

129. Further, according to the High Court, the essence of culpability of IU Khan was his omission to inform the prosecution and the Court "that one of its witnesses was more than an acquaintance of defence lawyer".

130. Mr. P.P. Rao submitted that the High Court convicted the appellant for something in regard to which he was never given an opportunity to defend himself. From the notice issued by the High Court it was impossible to discern that the charge of criminal contempt would be eventually fastened on him for his failure to inform the court and the prosecution about the

way Kulkarni's was being manipulated by the defence. Mr. Rao further submitted that the reason assigned by the Court to hold the appellant guilty was based purely on assumption. The appellant was given no opportunity to show that, as a matter of fact, after Kulkarni met him at the Patiala House on April 28, 2007 he had informed the concerned authorities that after being summoned by the court Kulkarni was back to his old tricks. He further submitted that the appellant, given the opportunity, could also show that the decision to not examine him as one of the prosecution witnesses was taken by the concerned authorities in consultation with him. We find substance in Mr. Rao's submission.

131. In our considered view, on the basis of materials on record the charge of criminal contempt cannot be held to be satisfactorily established against IU Khan. In our opinion he is entitled to the benefit of doubt.

PROCEDURE FOLLOWED BY THE HIGH COURT

132. A lot has been argued about the procedure followed by the High Court in dealing with the matter. On behalf of RK Anand it was strongly contended that by only asking for the copies of the original sting recordings and allowing the original microchips and the magnetic tapes to be retained in the custody of NDTV the High Court committed a serious and fatal lapse. Mr. Gopal Subramanium also took the view that though the final judgment passed by the High Court was faultless, it was nevertheless an error on its part to leave the original sting recordings in the safe custody of the TV channel. On principle and as a matter of proper procedure, the Court, at the first instance, ought to have taken in its custody all the original electronic materials concerning the stings.

133. At first the direction of the High Court leaving the microchips containing the original sting recordings and the magnetic tapes with the TV channel indeed appears to be somewhat strange and uncommon but a moment's thought would show the rationale behind it. If the recordings on the microchips were fake from the start or if the microchips were morphed before notice was issued to the TV channel, those would come to the court in that condition and in that case the question whether the microchips were genuine or fake/morphed would be another issue. But once the High Court obtained their copies there was no possibility of any tampering with the microchips from that stage. Moreover, the High Court might have felt that the TV channel with its well equipped studio/laboratory would be a much better place for the handling and conservation of such electronic articles than the High Court Registry. On the facts of the case, therefore, there was no lapse on the part of the High Court in leaving the microchips in the safe custody of the TV channel and in any event it does not have any bearing on the final decision of the case.

134. However, what we find completely inexplicable is why, at least at the beginning of the proceeding, the High Court did not put NDTV, along with the two appellants, in the array of contemnors. Looking back at the matter (now that we have on the record before us the appellants' affidavits in reply to the notice issued by the High Court as well as their first response to the telecast in the form of their live interviews), we are in the position to say that since the contents of the sting recordings were admitted there was no need for the proof of integrity and correctness of the electronic materials. But at the time the High Court issued notices to the two appellants (and two others) the position was completely different. At that

stage the issue of integrity, authenticity and reliability of the sting recordings was wide open. The appellants might have taken the stand that not only the sting recordings but their respective responses shown by the TV channel were fake and doctored. In such an event the TV channel would have been required to be subjected to the strictest proof of the electronic materials on which its programmes were based and, in case it failed to establish their genuineness and correctness, it would have been equally guilty, if not more, of serious contempt of court and other criminal offences. By all reckoning, at the time of initiation of the proceeding, the place of NDTV was along with the appellants facing the charge of contempt. Such a course would have put the proceeding on a more even keel and given it a more balanced appearance. Then perhaps there would have been no scope for the grievance that the High Court put the TV channel on the complainant's seat. And then perhaps the TV Channel too would have conducted itself in a more careful manner and the lapses as indicated above in the case of IU Khan might not have occurred.

THE PUNISHMENT: PROHIBITION AGAINST APPEARING IN COURTS

135. We were also addressed on the validity of the High Court's direction prohibiting the two appellants from appearing before the High Court and the courts subordinate to it for a period of four months. Though by the time the appeals were taken up for hearing the period of four months was over, Mr. Altaf Ahmed contended that the High Court's direction was beyond its competence and authority. In a proceeding of contempt punishment could only be awarded as provided under the Contempt of Courts Act, though in a given case the High Court could debar the contemnor from appearing in court till he purged himself of the contempt. He further submitted that professional misconduct is a subject specifically dealt with under the Advocates Act and the authority to take action against a lawyer for any professional misconduct vests exclusively in the State Bar Council, where he may be enrolled, and the Bar Council of India. The Counsel further submitted that a High Court could frame rules under Section 34 of the Advocates Act laying down the conditions subject to which an advocate would be permitted to practise in the High Court and the courts subordinate to it and such rules may contain a provision that an advocate convicted of contempt of court would be barred from appearing before it or before the subordinate courts for a specified period. But so far the Delhi High Court has not framed any rules under Section 34 of the Act. According to him, therefore, the punishment awarded to the appellant by the High Court had no legal sanction.

136. Mr. Nageshwar Rao learned Senior Advocate assisting the Court as amicus shared the same view. Mr. Rao submitted that the direction given by the High Court was beyond its jurisdiction. In a proceeding of contempt the High Court could only impose a punishment as provided under Section 12 of the Contempt of Courts Act, 1971. The High Court was bound by the provisions of the Contempt of Courts Act and it was not open to it to innovate any new kind of punishment in exercise of its powers under Article 215 of the Constitution or its inherent powers. Mr. Rao submitted that a person who is a law graduate becomes entitled to practise the profession of law on the basis of his enrolment with any of the State Bar Councils established under the Advocates Act, 1961. Appearance in Court is the dominant, if not the sole content of a lawyer's practice. Since, the authority to grant licence to a law graduate to practise as an advocate vests exclusively in a State Bar Council, the power to revoke the

licence or to suspend it for a specified term also vests in the same body. Further, the revocation or suspension of licence of an advocate has not only civil but also penal consequences; hence, the relevant statutory provisions in regard to imposition of punishment must be strictly followed. Punishment by way of suspension of the licence of an advocate can only be imposed by the Bar Council, the competent statutory body, after the charge is established against the advocate concerned in the manner prescribed by the Act and the Rules framed thereunder. The High Court can, of course, prohibit an advocate convicted of contempt from appearing before it or any court subordinate to it till the contemnor purged himself of the contempt. But it cannot assume the authority and the power statutorily vested in the Bar Council.

137. Mr. Gopal Subramanium the other amicus, however, approached the issue in a slightly different manner and took the middle ground. Mr. Subramanium submitted that the power to suspend the licence of a lawyer for a reason that may constitute contempt of court and at the same time may also amount to professional misconduct is a power to be exercised by the disciplinary authority i.e. the Disciplinary Committee of the State Bar Council where the concerned advocate is registered or the Bar Council of India. The Supreme Court has held that even it, in exercise of its powers under Article 142, cannot override statutory provisions and, assuming the position of the Disciplinary Committee, suspend the licence of a lawyer. Such a course cannot be followed even by taking recourse to the appellate powers of the Supreme Court under Section 38 of the Advocates Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). But approaching the matter from a different angle Mr. Subramanium submitted, it is, however, open to the High Court to make rules regulating the appearance of advocates in courts. He further submitted that although the Delhi High Court has not framed any specific rules regulating the appearance of advocates, it is settled law that power vested in an authority would not cease to exist merely because rules prescribing the manner of exercise of power have not been framed.

138. The contention that the direction debarring a lawyer from appearing before it or in courts subordinate to it is beyond the jurisdiction of the High Court is based on the premise that the bar is akin to revocation/suspension of the lawyer's licence which is a punishment for professional misconduct that can only be inflicted by the Bar Council after following the procedure prescribed under the Advocates Act. The contention finds support from the Constitution Bench decision of this Court in Supreme Court Bar Association v. Union of India MANU/SC/0291/1998 : [1998]2SCR795 . In paragraph 37 of the decision the Court observed and held as under:

37.The nature and types of punishment which a court of record can impose in a case of established contempt under the common law have now been specifically incorporated in the Contempt of Courts Act, 1971 insofar as the High Courts are concerned and therefore to the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed.

In paragraphs 39 & 40 it observed:

39. Suspending the licence to practise of any professional like a lawyer, doctor, chartered accountant etc. when such a professional is found guilty of committing contempt of court, for any specified period, is not recognised or accepted punishment which a court of record either under the common law or under the statutory law can impose on a contemnor in addition to any of the other recognised punishments." "40. The suspension of an advocate from practise and his removal from the State roll of advocates are both punishments specifically provided for under the Advocates Act, 1961, for proven "professional misconduct" of an advocate. While exercising its contempt jurisdiction under Article 129, the only cause or matter before this Court is regarding commission of contempt of court. There is no cause of professional misconduct, properly so called, pending before the Court. This Court, therefore, in exercise of its jurisdiction under Article 129 cannot take over the jurisdiction of the Disciplinary Committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of "professional misconduct" is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder.

In Paragraph 57 it observed:

57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing “professional misconduct”, depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts. Again in paragraph 80 it observed:

80. In a given case it may be possible for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules, itself, to withdraw his privilege to practice as an Advocate-on- Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals.

139. The matter, however, did not stop at Supreme Court Bar Association. In ***Pravin C Shah* v. *K.A. Mohd. Ali*** [AIR 2001 SC 3041], this Court considered the case of a lawyer who was found guilty of contempt of court and as a consequence was sought to be debarred from appearing in courts till he purged himself of contempt. Kerala High Court has framed Rules under Section 34 of the Advocates Act and Rule 11 reads thus:

No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged himself of the contempt.

140. An Advocate, notwithstanding his conviction for contempt of Court by the Kerala High Court continued to freely appear before the courts. A complaint was made to the Kerala State Bar Council on which a disciplinary proceeding was initiated against the advocate concerned and finally the State Bar Council imposed a punishment on him debarring him from acting or pleading in any court till he got himself purged of the contempt of court by an order of the appropriate court. The concerned advocate challenged the order of the State Bar Council in appeal before the Bar Council of India. The Bar Council of India allowed the appeal and set aside the interdict imposed on the advocate. The matter was brought in appeal before this Court and a two judges' Bench hearing the appeal framed the question arising for consideration as follows:

> When an advocate was punished for contempt of court can he appear thereafter as a counsel in the courts, unless he purges himself of such contempt? If he cannot, then what is the way he can purge himself of such contempt?

The Court answered the question in paragraphs 27, 28 and 31 of the judgment as follows:

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforesaid decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said the contemnor has purged himself of the guilt.

31. Thus a mere statement made by a contemnor before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court the delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules.

141. More importantly, another Constitution Bench of this Court in ***Ex. Capt. Harish Uppal* v. *Union of India*** [(2002) SUPP 5 SCR 186], examined the question whether lawyers have a right to strike and/or give a call for boycott of Court(s). In paragraph 34 of the decision the Court made highly illuminating observations in regard to lawyers' right to appear before the Court and sounded the note of caution for the lawyers. Para 34 of the decision need to be reproduced below:

34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for his clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file vakalat on behalf of a client event though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is genus of which the right to appeal and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not

be confused with the right to practice law. While the Bar council can exercise control over the latter, the courts are in control of the former. The distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empower the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practice in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a Court to such conditions as are laid down by the Court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in a court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 Constitution of Indian on the other.

142. In both ***Pravin C. Shah*** and ***Ex. Capt. Harish Uppal*** the earlier Constitution Bench decision was extensively considered. The decision in ***Ex. Capt. Harish Uppal*** was later followed in a three judge Bench decision in ***Bar Council of India*** **v.** ***The High Court of Kerala*** [AIR 2004 SC 2227].

143. In ***Supreme Court Bar Association***, the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practise law and the bar was considered as a punishment inflicted on him. 1 In Ex. Capt. Harish Uppal it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and Though in Paragraph 80 of the decision, as seen earlier there is an observation that in a given case it might be possible for this Court or the High Court to prevent the contemnor advocate to appear before it till he purge himself of the contempt. orderly functioning of the courts but may become necessary for the self protection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an `inconvenient' court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the

superior courts. Unfortunately these examples are not from imagination. These things are happening more frequently than we care to acknowledge. We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time. It is already explained in Ex. Captain Harish Uppal that a direction of this kind by the Court cannot be equated with punishment for professional misconduct. Further, the prohibition against appearance in courts does not affect the right of the concerned lawyer to carry on his legal practice in other ways as indicated in the decision.

144. We respectfully submit that the decision in Ex-Capt. Harish Uppal v. Union of India places the issue in correct perspective and must be followed to answer the question at issue before us.

145. Lest we are misunderstood it needs to be made clear that the occasion to take recourse to the extreme step of debarring an advocate from appearing in court should arise very rarely and only as a measure of last resort in cases where the wrong doer advocate does not at all appear to be genuinely contrite and remorseful for his act/conduct, but on the contrary shows a tendency to repeat or perpetuate the wrong act(s).

146. Ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the Rule the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that Rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory Rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceedee is held guilty of criminal contempt before dealing with the question of punishment.

147. In order to avoid any such controversies in future all the High Courts that have so far not framed rules under Section 34 of the Advocates Act are directed to frame the rules without any further delay. It is earnestly hoped that all the High Courts shall frame the rules within four months from today. The High Courts may also consider framing rules for having Advocates on Record on the pattern of the Supreme Court of India. Suborning a witness in a criminal trial is an act striking at the root of the judicial proceeding and it surely deserves the treatment meted out to the appellant. But the appellants were not given any notice by the High

Court that if found guilty they might be prohibited from appearing in the High Court, and the courts subordinate to it, for a certain period. To that extent the direction given by the High Court was not in conformity with the principles of natural justice.

THE QUESTION OF SENTENCE

148. Having regard to the misdeeds of which RK Anand has been found guilty, the punishment given to him by the High Court can only be regarded as nominal. We feel that the leniency shown by the High Court in meting out the punishment was qute misplaced. And the view is greatly reinforced if one looks at the contemnor's conduct before the High Court. As we shall see presently, before the High Court the contemnor took a defiant stand and constantly tried to obstruct the proceedings.

THE DIVERSIONARY & INTIMIDATORY TACTICS IN THE PROCEEDING

149. Even as contempt notices were issued by the High Court, or even before it, some diversionary and even intimidatory tactics were employed to stonewall the proceeding initiated by it.

Kulkarni's Affidavit

150. The first in the series was an affidavit filed on August 6, 2007 by Kulkarni in regard to the stings done by him. The affidavit was not called for by the Court and it was filed quite gratuitously. It was a jumble of non-sense, half truths and lies. Kulkarni made all conceivable and even some inconceivable allegations against NDTV in general and Poonam Agarwal in particular. He stated that Poonam Agarwal had recorded his first interview on April 25, 2003 and thereafter on several other dates till the last one in the last week of May before the telecast. It is not clear on whose behalf Poonam Agarwal would take his earlier interviews because she had joined NDTV only two years prior to July 2007. He then alleged that Poonam Agarwal subjected him to "Gobel's technique" (sic. Goebbels's) to make him `illicit' (sic. elicit) certain answers `to' (sic. from) RK Anand and IU Khan in a particular manner. What is of significance in Kulkarni's affidavit, however, is that it anticipated what in the sting recordings might prove fatal for RK Anand and IU Khan and tried to do the ground work for their defence. In regard to his meeting with IU Khan, Kulkarni said that he met and spoke to him in the manner directed by Poonam Agarwal. He further said on affidavit that when IU Khan asked him if he had met `Bade Saheb' he implied some senior police official but it was Poonam Agarwal who forced him to say that IU Khan referred to RK Anand. Now, this is exactly what IU Khan said in his interview to the TV channel and what he would say later in his show cause to the High Court. He also said that as agreed between the two in the meeting of April 28, 2007, he again met IU Khan in the evening but the conversation that took place in that meeting exposed NDTV story and, therefore, that recording was withheld from being telecast.

151. Similarly, in regard to his meeting with RK Anand, Kulkarni said that he met him on being forced by Poonam Agarwal. He further said on affidavit that he had mentioned the sum of rupees two and half crores to RK Anand on the direction of Poonam Agarwal. He himself had neither any idea nor the intention to ask him for any money. He further said that on the mention of the sum of money RK Anand was shocked and he rebuked him by making the sarcastic remark that he should ask for five crores and not only two and half crores. He said

that he got the message that no demand for money would be entertained. The similarity between what Kulkarni said in his affidavit and what RK Anand had to say about this matter and the manner in which he would say it is unmistakable. We are unable to believe that the manner in which Kulkarni's affidavit fore- shadows the proceedees defence was simply coincidental. It does not require much imagination to see that Kulkarni had once again switched over sides and he had joined hands with those whom he had earlier tried to trap in the stings.

152. In one of the paragraphs of the affidavit there is a ludicrous description of his meeting with Lovely. It is stated that despite persistent request by him for a meeting there was no positive response from RK Anand. Then, "suddenly a Sardar Ji came and started talking with me. In his pocket I saw some flash light beeping which alerted me that I was trapped. I was upset and wanted to convey all the facts to Hon'ble Court but Ms. Poonam Agarwal prevailed over me and dissuaded me to do the same". Even this apparently absurd story was not without purpose; its object was to provide for the existence of another recording, apart from his own sting, of his meeting with Lovely.

153. The recording, by Lovely, of their meeting was the second diversionary attempt in the proceeding before the High Court. Another audio recording of the meeting between Kulkarni & Lovely:

154. The High Court registry received an audio cassette along with a letter from one Sunil Garg. In the letter it was stated that the cassette had the recording of some conversation between Lovely and Kulkarni. The cassette proved to be completely blank. Then on notice being issued to him Garg appeared in Court and made a statement on oath. He said that Kulbir Singh alias Lovely was his friend. Shortly before his death he had come to him and handed over to him to two audio cassettes saying that those contained the recordings of his conversation with Kulkarni. He had earlier sent one of the two cassettes without playing it on the recorder. He later came to learn from the newspaper reports the cassette was blank. He then played the other cassette and found it had the recording of some conversation between his friend Lovely and someone else. He recognised the voice of his friend Lovely. He submitted the other cassette in the High Court.

155. We would have completely ignored Kulkarni's affidavit and Garg's audio cassettes as foolish and desperate attempts to create some defence, not worthy of any attention. But there is something more to come that is impossible to ignore.

REQUEST FOR RECUSAL

156. Of all the obstructive measures adopted before the High Court the most unfortunate and undesirable came from RK Anand in the form of a petition `requesting' Manmohan Sarin J., the presiding judge on the bench dealing with the matter, to recuse him from the proceeding. This petition, an ill concealed attempt at intimidation, was, as a matter of fact, RK Anand's first response to the notice issued to him by the Court. He stated in this petition that he had the feeling that he was not likely to get justice at the hands of Manmohan Sarin J. He further stated alluding to some past events, that he had tried his best to forget the past and bury the hatchet but the way and the manner in which the matter was being dealt with had caused the greatest damage to his reputation. He made the prayer that the recusal application

should be heard in camera and the main matter be transferred to another bench of which Sarin J. was not a member. Along with the petition he filed a sealed cover containing a note and the materials giving rise to the belief that he was not likely to get justice at the hands of Sarin J.

157. The recusal petition was primarily based on the plea that he had reasonable apprehension of bias, for Sarin J. was personally hostile to him. The self perceived hostility between the applicant (RK Anand) and Sarin J. dated back to 1984 when he was still a lawyer. They had a quarrel then that had led to an exchange of verbal abuses. In 1988 Sarin J. (still a lawyer), in his position as the Vice President of the Delhi High Court Bar Association, had moved a resolution before the Association's executive committee opposing any proposal for the applicant's nomination for appointment as a judge of the Delhi High Court. Sarin J., as a lawyer, had among his clients, the magazine, `India Today' (Living Media) and the owners of NDTV were closely associated with `India Today'. Sarin J., as an advocate had done the cases of the applicant's brothers whom he had referred to him. It was stated that the judge, thus, might have been privy to some family gossip causing him to be prejudicially disposed towards the applicant. The applicant had earlier sent a complaint to the Prime Minister against the Law Minister, who was one of his (applicant's) political rival. In the complaint, apart from the Law Minister, allegations were also made against the then Chief Justice of the High Court. And in that connection it was alleged that the Chief Justice had around him a coterie of Judges that included Sarin J. On the arrest of a sitting judge of the Delhi High Court by the CBI the media had gone to Sarin J. for his comments and even this, it was stated, might lead him to harbour ill will against the applicant. In a civil case for damages arising from the BMW case the matter was settled between the parties (one of the victims of the accident on the one side and the family of the accused Sanjeev Nanda on the other). But Sarin J. who was a member of the bench before which the matter came up for recording the settlement, did not allow it to be said in the compromise petition that the accident was caused by a truck and not by any car. It showed, according to the applicant, that Sarin J. had some pre-conceived notion that the accident was caused by the car driven by Sanjeev Nanda. The bench had appointed as amicus curiae a lawyer personally hostile to the applicant. And lastly the applicant had moved the Chief Justice on the administrative side to assign the matter to some other bench.

158. In one glance, the grounds on which recusal was asked for appear fit to be rejected out of hands. But the court gave the matter far greater importance than it merited, apparently because it saw a personal angle in it. The petition was heard for three days before it was rejected by the order dated October 4, 2007. It is a long order running into twenty seven pages authored by Sarin J. The order dealt with all the grounds advanced in support of the recusal petition and effectively showed that there was no truth or substance in any of those grounds. In regard to the 1988 resolution of the Bar Association allegedly passed against RK Anand at the instance of Mr. Sarin the Court called for the Association's Register of Resolutions for the years 1988 and 1989. From the Association's Register it transpired that at the relevant time Mr. Sarin was not an office bearer of the Association but was simply a member of its Executive Committee. Further, there was no resolution concerning RK Anand. A resolution of the nature stated in the recusal application was passed against someone from the Judicial Service. It is true that one Mr. Tufail, the Joint Secretary of the Association had wished to move a resolution against RK Anand too and was given the permission to do so by the

Executive Committee. But he did not actually move any resolution and later said that he did not have necessary proof in support of the allegations and the matter was dropped. As regards the complaint to the Prime Minister in which Sarin J. was said to be a member of the alleged coterie around the Chief Justice, Sarin J. commented that until a copy of the complaint was filed with the recusal application he was not even aware of it. Having thus dealt with the rest of the allegations made in the recusal application, the order, towards its end, said something which alone was sufficient to reject the request for recusal. It was pointed out that the applicant had a flourishing practice; he had been frequently appearing in the court of Sarin J. ever since he was appointed as a judge and for the past twelve years was getting orders, both favourable and unfavourable, for his different clients. He never complained of any unfair treatment by Sarin J. but recalled his old `hostility' with the judge only after the notice was issued to him. In the order the concerned judge further observed:

The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour affection or ill will while upholding the constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting / Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.

159. The above passage, in our view, correctly sums up what should be the Court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an `inconvenient' judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one would simply throw a stone on a judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the judge concerned but what is far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.

160. The other Judge on the bench, however, it seems was unable to bear the onslaught and he took the easy way out. He expressed his inability to concur with the order passed by presiding judge observing that "the nature of the controversy before us pertains to my learned brother alone. It revolves around a number of factual assertions, which can only be known to my learned brother personally, and which must necessarily be examined in the light of the law on the subject. Therefore, I consider it inappropriate to express any opinion in the matter, one way or the other." Having passed the brief separate order he declined to take any further part in the proceeding.

161. This development provided RK Anand with another opportunity to carry on his offensive further. He unhesitatingly availed of the opportunity and filed an application

(Crl. M. 11677/2007) for clarification/review of the order dated October 4, 2007 dismissing his recusal petition. Review was sought primarily on the ground that the order of Sarin J. was not the order by the bench since the other judge had declined to concur with him. After the other judge opted out of the bench, the Chief Justice put Lokur J. in his place. Consequently, the clarification/review application came before Sarin J., sitting with Lokur J., and the first thing this bench was told, and with some assertiveness too, was that it was not competent to hear the application and it could only be heard by the previous bench as it arose from an order passed by that bench.

162. The clarification/review application was rejected by a long order dated November 29, 2007 authored by Lokur J. As we shall see, henceforth all substantive orders in the proceeding were written, not by the presiding judge, but by Lokur J. and the significance of it is not lost on us. The application for recusal though rejected was not completely unsuccessful. It left a lasting shadow on the proceeding.

163. Here, it may be noted that apart from filing an application for its clarification/review before the High Court, the order rejecting the recusal application was also sought to be challenged before this Court by filing SLP (Crl) No. 7374 of 2007. The SLP was, however, withdrawn on December 14, 2007. Nevertheless, the challenge to the High Court order rejecting the recusal application is still not given up and paragraphs H & I of the Grounds in the present Memo of appeal expressly seek to assail that order.

164. Both Mr. Salve and Mr. Subramanium strongly submitted that the appellant had plainly no respect for the court or the court proceedings. Mr. Salve submitted that the recusal application was a brazen attempt to browbeat the High Court and in that attempt the appellant succeeded to a large extent since the prohibition to appear before the courts for a period of only four months could only be considered as a token punishment having regard to the gravity of his conduct. Mr. Subramanium also felt strongly about the recusal application but before taking up the issue he fairly tried to give another opportunity to the appellant stating that perhaps even now the appellant might wish to withdraw the grounds in the SLP challenging the order passed by the High Court on the recusal application. The appellant was given ample time to consider the suggestion but later on enquiry Mr. Altaf Ahmed stated that he had not pressed those grounds in course of his submissions exercising his discretion as the Counsel but he had no instructions to get those grounds deleted from the SLP.

165. The action of the appellant in trying to suborn the court witness in a criminal trial was reprehensible enough but his conduct before the High Court aggravates the matter manifold. He does not show any remorse for his gross misdemeanour and instead tries to take on the High Court by defying its authority. We are in agreement with Mr. Salve and Mr. Subramanium that punishment given to him by the High Court was wholly inadequate and incommensurate to the seriousness of his actions and conduct. We, accordingly, propose to issue a notice to him for enhancement of punishment. We also hold that by his actions and conduct the appellant has established himself as a person who needs to be kept away from the portals of the court for a longer time. The notice would therefore require him to show-cause why the punishment awarded to him should not be enhanced as provided under Section 12 of the Contempt of Courts Act. He would additionally show-cause why he should not be debarred from appearing in courts for a longer period. The second part of the notice would

also cure the defect in the High Court order in debarring the appellant from appearing in courts without giving any specific notice in that regard as held in the earlier part of the judgment.

166. We have so far been considering the two appeals proper. We now proceed to examine some other important issues arising from the case.

THE ROLE OF NDTV

167. NDTV came under heavy attack from practically all sides for carrying out the stings and airing the programme based on it. On behalf of RK Anand the sting programme was called malicious and motivated, aimed at defaming him personally. Mr. P P Rao appearing for IU Khan questioned the propriety of the stings and the repeated telecast of the sting programme concerning a pending trial and involving a court witness. Mr. Rao submitted that before taking up the sting operations, fraught with highly sinister implications, the TV channel should have informed the trial court and obtained its permission. If for any reason it was not possible to inform the trial judge then permission for the stings should have been taken from the Chief Justice of the Delhi High Court. Also, it was the duty of that TV channel to place the sting materials before the court before telecasting any programme on that basis.

168. Mr. Gopal Subramanium submitted that this case raised the important issue regarding the nature and extent of the right of the media to deal with a pending trial. He submitted that a sting operation was, by its nature, based on deception and hence, overriding public interest alone might justify its publication/telecast. Further, since the operation was based on deception the onus would be heavy on the person behind the sting and publication/telecast of the sting materials to establish his/her bona fide, apart from the genuineness and truthfulness of the sting materials. In regard to sting operations bona fide could not be assumed. In this case, therefore, it was the duty of the High Court to inquire into and satisfy itself whether the sting operation was a genuine exercise by the TV channel to expose the attempted subversion of the trial. He further submitted that the affidavit of Poonam Agarwal was not sufficient to arrive at the conclusion that the action of the TV channel was genuine and bona fide and the matter required further enquiry. Mr. Subramanium further submitted that the act of publication/telecast and the contents of publication/telecast, though interlinked, were still needed to be viewed separately and whether or not a publication or telecast was justified would, to a large extent, depend, as much on the contents of the publication/telecast, as the act of publication/telecast itself. He further submitted that, in the facts of the case, the sting operation was in public interest and there was nothing objectionable there. But the same cannot be said of the telecast. The date on which the programme was telecast (May 30, 2007- when Kulkarni's cross- examination was still pending), the "slant" given to the episode by the NDTV presenters, and the way opinions were solicited from eminent lawyers, left much to be explained by the TV channel. Learned Counsel submitted that a question may arise whether NDTV was justified in telecasting the programme based on the sting when they were not in a position to vouch for Kulkarni's character. He, however, submitted that the TV channel must at least be given credit for transparency - it made a public disclosure, in the same telecast, that (a) Kulkarni had withdrawn his consent for the telecast; (b) it did not know if any money had in fact changed hands, and (c) it could not vouch for Kulkarni's character. It also gave the contemnors a

chance to state their version of the story. In conclusion Mr Subramanium submitted that it would be difficult to conclude that NDTV was guilty of contempt or of conducting a media trial although the "slant in the telecast was regrettable overreach."

169. The other amicus Mr. N. Rao was more severe in his criticism of the telecast of the sting programme by NDTV. He maintained that NDTV was equally guilty of contempt of court, though under a different provision of law. Mr. Rao submitted that the programme was an instance of, what is commonly called, `trial by media' and it was telecast while the criminal trial was going on. He submitted that in our system of law there was no place for trial by media in a sub-judice matter. Mr. Rao submitted that freedom of speech and expression, subject of course to reasonable restrictions, was indeed one of the most important rights guaranteed by the Constitution of India. But the press or the electronic media did not enjoy any right(s) superior to an individual citizen. Further, the right of free and fair trial was of far greater importance and in case of any conflict between free speech and fair trial the latter must always get precedence. Mr. Rao submitted that though the law normally did not permit any pre-censorship of a media report concerning an ongoing criminal trial or sub-judice matter, any person publishing the report in contravention of the provisions of law would certainly make himself liable to the proceeding of contempt. Mr. Rao further submitted that the immunity provided under Section 3(3) of the Contempt of Courts Act was not available to the TV channel in terms of proviso (ii) Explanation (B) to Sub-section (3) and thus the telecast of the sting programme by NDTV clearly fell in the prohibited zone under the Act. He further submitted that in such an event, a plea of `larger public good' was not a legal defence. In support of his submission he cited several decisions of this Court in (i) Saibal Kumar Gupta and Ors. v. B.K.Sen and Anr. MANU/SC/0110/1961 : 1961CriLJ749 (ii) In Re: P.C. Sen MANU/SC/0298/1968 : 1970CriLJ1525 (iii) Reliance Petrochemcials Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. MANU/SC/0412/1988 : AIR1989SC190 (iv) M.P. Lohia v. State of W. B. MANU/SC/0081/2005 : 2005CriLJ1416 .

170. Mr. Salve learned Senior Advocate appearing for NDTV, on the other hand, defended the telecast of the programme. Mr. Salve submitted that commenting on or exposing something foul concerning proceedings pending in courts would not constitute contempt if the court is satisfied that the report/comment is substantially accurate, it is bona fide and it is in public interest. He referred to the new Section 13 in the Contempt of Courts Act substituted with effect from March 17, 2006 which is as under:

13. Notwithstanding anything contained in any law for the time being in force,-

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.

171. Mr. Salve submitted that in a situation of this kind two competing public interests are likely to arise; one, purity of trial and the other public reporting of something concerning the conduct of a trial (that may even have the tendency to impinge on the proceedings) where

the trial, for any reason, can be considered as a matter of public concern. With regard to the case in hand Mr. Salve submitted that in the sting programmes there was nothing to influence the outcome of the BMW trial. But even if the telecast had any potential to influence the trial proceedings that risk was far outweighed by the public good served by the programme. He further submitted that in a case where two important considerations arise, vying with each other, the court is the final arbiter to judge whether or not the publication or telecast is in larger public interest; how far, if at all, it interferes or tends to interfere with or obstructs or tends to obstruct the course of justice and on which side the balance tilts. In support of his submission he relied upon a decision of the House of Lords in ***Re Lonrho plc*** [(1989) 2 All ER 1100 paragraphs 7.2 and 7.3 at 1116].

172. We have already dealt with the allegations made on behalf of RK Anand while considering his appeal earlier in this judgment and we find no substance in those allegations. Reporting of pending trial:

173. We are also unable to agree with the submission made by Mr. P. P. Rao that the TV channel should have carried out the stings only after obtaining the permission of the trial court or the Chief Justice of the Delhi High Court and should have submitted the sting materials to the court before its telecast. Such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the court. On little consideration the idea appears to be quite repugnant both from the points of view of the court and the media. It would be a sad day for the court to employ the media for setting its own house in order; and media too would certainly not relish the role of being the snoopers for the court. Moreover, to insist that a report concerning a pending trial may be published or a sting operation concerning a trial may be done only subject to the prior consent and permission of the court would tantamount to pre- censorship of reporting of court proceedings. And this would be plainly an infraction of the media's right of freedom of speech and expression guaranteed under Article 19(1) of the Constitution. This is, however, not to say that media is free to publish any kind of report concerning a sub-judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameter within which a report or comment on a sub-judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting operation is an incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment.

Sting programme whether trial by media??

174. The submissions of Mr. N. Rao are based on two premises: one, the sting programme telecast by NDTV was of the genre, `trial by media' and two, the programme interfered or tended to interfere with or obstructed or tended to obstruct the proceedings of the BMW trial that was going on at the time of the telecast. If the two premises are correct then the rest of the submissions would logically follow. But are the two premises correct? 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.

175. In light of the above it can hardly be said that the sting programme telecast by NDTV was a media trial. Leaving aside some stray remarks or comments by the anchors or the interviewees, the programme showed some people trying to subvert the BMW trial and the state of the criminal administration of justice in the country (as perceived by the TV channel and the interviewees). There was nothing in the programme to suggest that the accused in the BMW case were guilty or innocent. The programme was not about the accused but it was mainly about two lawyers representing the two sides and one of the witnesses in the case. It indeed made serious allegations against the two lawyers. The allegations, insofar as RK Anand is concerned, stand established after strict scrutiny by the High Court and this Court. Insofar as IU Khan is concerned, though this Court held that his conduct did not constitute criminal contempt of court, nonetheless allegations against him too are established to the extent that his conduct has been found to be inappropriate for a Special Prosecutor. In regard to the witness the comments and remarks made in the telecast were never subject to a judicial scrutiny but those too are broadly in conformity with the materials on the court's record. We are thus clearly of the view that the sting programme telecast by NDTV cannot be described as a piece of trial by media. Stings & telecast of sting programmes not constituting criminal contempt:

176. Coming now to Section 3 of the Contempt of Courts Act we are unable to appreciate Mr. Rao's submission that NDTV did not have the immunity under Sub-section (3) of Section 3 as the telecast was hit by proviso (ii) Explanation (B) to that sub section. Section 3 of the Act insofar as relevant is as under:

3. ***Innocent publication and distribution of matter not contempt***.- (1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) x x x

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in Sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid: Provided that this Sub-section shall not apply in respect of the distribution of-

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in Section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);

(ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in Section 5 of the said Act.

Explanantion.- For the purposes of this section, a judicial proceeding-

(a) is said to be pending-

(A) x x x

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law-

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and xxx

(b) x x x

177. Section 5 provides that a fair criticism of a judicial act concerning any case which has been heard and finally decided would not constitute contempt.

178. Sub-section (1) of Section 3 provides immunity to a publisher of any matter which interferes or tends to interfere with, or obstructs or tends to obstruct the course of justice in any civil or criminal proceeding if he reasonably believed that there was no proceeding pending. A Sub-section (3) deal with distribution of the publication as mentioned in Sub-section (1) and provides immunity to the distributor if he reasonably believed that the publication did not contain any matter which interfered or tended to interfere with, or obstructed or tended to obstruct the course of justice in any civil or criminal proceeding. The immunity provided under Sub-section (3) is subject to the exceptions as stated in the proviso and explanations to the Sub-section. We fail to see any application of Section 3(3) of the Contempt of Courts Act in the facts of this case. In this case there is no distribution of any publication made under Sub-section (1). Hence, neither Sub-section (3) nor its proviso or explanation is attracted. NDTV did the sting, prepared a programme on the basis of the sting materials and telecast it at a time when it fully knew that the BMW trial was going on. Hence, if the programme is held to be a matter which interfered or tended to interfere with, or obstructed or tended to obstruct the due course of the BMW case then the immunity under Sub-section (1) will not be available to it and the telecast would clearly constitute criminal contempt within the meaning of Section 2(c)(ii) & (iii) of the Act. But can the programme be accused of interfering or tending to interfere with, or obstructing or tending to obstruct the due course of the BMW case. Whichever way we look at the programme we are not able to come to that conclusion. The programme may have any other faults or weaknesses but it certainly did not interfere with or obstruct the due course of the BMW trial. The programme telecast by NDTV showed to the people (the courts not excluded) that a conspiracy was afoot to undermine the BMW trial. What was shown was proved to be substantially true and accurate. The programme was thus clearly intended to prevent the attempt to interfere with or obstruct the due course of the BMW trial.

STINGS & TELECAST OF STING PROGRAMMES SERVED IMPORTANT PUBLIC CAUSE

179. Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly behind the veil of secrecy or to bring out the mischief in full public gaze? To our mind the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause.

180. We have held that the sting programme telecast by NDTV in no way interfered with or obstructed the due course of any judicial proceeding, rather it was intended to prevent the attempt to interfere with or obstruct the due course of law in the BMW trial. We have also held that the sting programme telecast by NDTV served an important public cause. In view of the twin findings we need not go into the larger question canvassed by Mr Salve that even if the programme marginally tended to influence the proceedings in the BMW trial the larger public interest served by it was so important that the little risk should not be allowed to stand in its way. Excesses in the telecast:

181. We have unequivocally upheld the basic legitimacy of the stings and the sting programmes telecast by NDTV. But at the same time we must also point out the deficiencies (or rather the excesses) in the telecast. Mr. Subramanium spoke about the `slant' in the telecast as `regrettable overreach'. But we find many instances in the programme that cannot be simply described as `slants'. There are a number of statements and remarks which are actually incorrect and misleading. In the first sting programme telecast on May 30, 2007 at 8.00 pm the anchor made the opening remarks as under:

> Good Evening,....an NDTV expose, on how the legal system may have been subverted in the high profile BMW case. In 1999 six people were run over allegedly by a BMW driven by Sanjeev Nanda a young, rich industrialist but 8 years later every witness except one has turned hostile. Tonight NDTV investigates did the prosecution, the defence and the only witness not turned hostile Sunil Kulkarni collude...

182. The anchor's remarks were apparently from a prepared text since the same remarks were repeated word by word by another anchor as introduction to the second telecast on the same day at 9:00 pm.

183. Further, in the 9 o'clock telecast after some brief introductory remarks, clips from the sting recordings are shown for several minutes and a commentator from the background (probably Poonam Agarwal) introduces the main characters in the BMW case. Kulkarni is introduced by the commentator in the following words:

Sunil Kulkarni, a passerby, who allegedly saw the accident but inexplicably dropped as witness by prosecution. They claim he had been bought by the Nandas. This despite the fact that he is the only witness who still says the accident was caused by a `black car' with two men in it one of them called Sanjeev.

184. [This statement does not find place in the manuscript of the telecast furnished to the court and can be found only by carefully watching the CD of the telecast submitted before the

court. We are again left with the feeling that NDTV did not submit full and complete materials before the court and we are surprised that the High Court did not find it amiss]

185. In the first statement Kulkarni is twice described as the only witness in the BMW case who after eight years had not turned hostile. The statement is fallacious and misleading. Kulkarni was not being examined in the court as prosecution witness and, therefore, there was no question of his being declared `hostile' by the prosecution. He was being examined as a Court witnesses. Nevertheless, the prosecution was cross-examining him in detail in course of which he was trying to sabotage the prosecution case.

186. The second statement is equally, if not more, fallacious. In the second statement it is said that Kulkarni was `inexplicably' dropped as a prosecution witness. We have seen earlier that Kulkarni was dropped as a prosecution witness for good reasons summed up in the Joint Commissioner's report to the trial court and there was nothing `inexplicable' about it. In the second statement it is further suggested that the prosecution's claim that Kulkarni was bought over by the accused was untrue because he was the only witness who still said that the accident was caused by a black car with two men in it, one of them being called Sanjeev. It is true that in his deposition before the court Kulkarni said that the accident was caused by a black car but he resiled from his earlier statements made before the police and the magistrate in a more subtle and clever way than the other two prosecution witnesses, namely, Hari Shankar Yadav and Manoj Malik. Departing from his earlier statements he said in the court that he heard one of the two occupants of the car addressing the other as `Sanch or sanz' (and not as Sanjeev). Further, though admitting that Sanjeev Nanda was one of the occupants of the car, he positively denied that he got down from the driving seat of the car and placed someone else on the driving seat of the car causing the accident. Thus the damage to the prosecution case that he tried to cause was far more serious than any other prosecution witness. It is not that NDTV did not know these facts. NDTV was covering the BMW trial very closely since its beginning and was aware of all the developments taking place in the case. Then why did it introduce the programme in this way, running down the prosecution and presenting Kulkarni as the only person standing upright while everyone else had fallen down? The answer is not far to seek. One can not start a highly sensational programme by saying that it was prepared with the active help of someone whose own credibility is extremely suspect. The opening remarks were thus designed to catch the viewer and to hold his/her attention, but truth, for the moment at least was relegated to the sidelines. It is indeed true that later on in the programme facts concerning Kulkarni were stated correctly and he was presented in a more balanced way and Mr. Subramanium wanted to give NDTV credit points for that. But the impact and value of the opening remarks in a TV programme is quite different from what comes later on. The later corrections were for the sake of the record while the introductory remarks had their own value.

187. Further, on the basis of the sting recordings NDTV might have justifiably said that IU Khan, the Special Prosecutor appeared to be colluding with the defence (though this Court found that there was no conclusive evidence to come to such a finding). But there was no material before NDTV to make such allegation against the prosecution as a whole and thus to run down the other agencies and people connected with the prosecution. There are other

instances also of wrong and inappropriate choice of words and expressions but we need not go any further in the matter.

188. Another sad feature is its stridency. It is understandable that the programme should have started on a highly sensational note because what was about to be shown was really quite shocking. But the programme never regained poise and it became more and more shrill. All the interviewees, highly eminent people, expressed their shock and dismay over the state of the legal system in the country and the way the BMW trial was proceeding. But as the interview progressed, they somewhat tended to lose their self restraint and did not pause to ponder that they were speaking about a sub-judice matter and a trial in which the testimony of a court witness was not even over. We are left with the feeling that some of the speakers allowed their passions, roused by witnessing the shocking scenes on the TV screen, to get better of their judgment and made certain very general and broad remarks about the country's legal system that they might not have made if speaking in a more dispassionate and objective circumstances. Unfortunately, not a single constructive suggestion came from anyone as to how to revamp the administration of criminal justice. The programme began on negative note and remained so till the very end. Conduct of NDTV in proceeding before High Court:

189. In the earlier part of the judgment some of the glaring lapses committed by NDTV in the proceeding before the High Court are already recounted. Apart from those one or two other issues need to be mentioned here that failed to catch the attention of the High Court. It seems that at the time the sting operations were carried out people were actually apprehensive of something of that kind. Vikas Arora, Advocate had stated in his complaint (dated April 19, 2007) about receiving such a threat from Poonam Agarwal. NDTV in its reply dated April 26, 2007 had denied the allegations in the complaint, at the same time, declaring its resolve to make continuous efforts to unravel the truth. At the same time Poonam Agarwal was planning the stings in her meetings with Kulkarni. As a matter of fact, the first sting was carried out on IU Khan just two days after giving reply to Arora's complaint. Further, from the transcript of the first sting carried out on RK Anand on May 6, 2007 it appears that he too had expressed some apprehension of this kind to which Kulkarni responded by saying that he did not have money enough to eat how could he do any recording of anyone. (It is difficult to miss the irony that the exchange took place while RK Anand was actually being subjected to the sting). It thus appears that at that time, for some reason, the smell of sting was in the air. In those circumstances we find it strange that in the affidavits filed on behalf of NDTV there should be absolutely no reference to Vikas Arora's complaint. In the earlier part of the judgment we have examined the affidavits filed by Poonam Agarwal and found that she states about all the aspects of the sting operations in great detail. But surprisingly those affidavits do not even refer to, much less deal with the complaint of Vikas Arora despite the striking similarity between the threat that was allegedly given to him and his senior IU Khan and the way the sting operation was actually carried out on IU Khan.

190. There is another loose end in the whole matter. Kulkarni's sting meeting with IU Khan had ended with fixing up another meeting for the following Sunday at the latter's residence. (It was the setting up of this meeting that is primarily the basis for holding him guilty of misconduct as the Special Public Prosecutor). One should have thought that this meeting would surely take place because it provided a far better opportunity for the sting.

With `good Scotch whisky' flowing it was likely that the planners of the stings would get more substantial evidences of what they suspected. But we are not told anything about this meeting: whether it took place or not? If it took place what transpired in it and whether any sting recording was done? If it did not take place what was the reason for not keeping the appointment and giving up such a good opportunity. Here it may be noted that Kulkarni also in his affidavit filed before the High Court on August 6, 2007 stated that as arranged between them he again met IU Khan in the evening but the sting recording of that meeting was withheld by NDTV because that falsified their story. Kulkarni, as was his wont, might be telling lies but that was an additional reason for NDTV to clarify the issue regarding the second meeting between the two.

191. The next meeting between Kulkarni and IU Khan that was fixed up in the sting meeting on April 28, 2007 might or might not have taken place but there can be little doubt that they met again between April 28, 2007 and May 31, 2007 (the day following the first sting telecast) when Kulkarni gave IU Khan the `certificate' that he had accepted the summons on his advice (which was submitted by IU Khan before the trial court when he withdrew from the case).

192. The affidavits filed on behalf of NDTV are completely silent on these aspects.

193. These omissions (and some similar others) on the part of NDTV leave one with the feeling that it was not sharing all the facts within its knowledge with the court. The disclosures before the Court do not appear to be completely open, full and frank. It would tell the court only so much as was necessary to secure the conviction of the proceedees-wrong doers. There were some things that it would rather hold back from the court. We would have appreciated the TV channel to make a fuller disclosure before the High Court of all the facts within its knowledge.

194. Having said all this we would say, in the end, that for all its faults the stings and the telecast of the sting programme by NDTV rendered valuable service to the important public cause to protect and salvage the purity of the course of justice. We appreciate the professional initiative and courage shown by the young reporter Poonam Agarwal and we are impressed by the painstaking investigation undertaken by NDTV to uncover the Shimla connection between Kulkarni and RK Anand.

195. We have recounted above the acts of omission and commission by NDTV before the High Court and in the telecast of the sting programme in the hope that the observations will help NDTV and other TV channels in their future operations and programmes. We are conscious that the privately run TV channels in this country are very young, no more than eighteen or twenty years old. We also find that like almost every other sphere of human activity in the country the electronic news media has a very broad spectrum ranging from very good to unspeakably bad.

196. The better news channels in the country (NDTV being one of them) are second to none in the world in matters of coverage of news, impartiality and objectivity in reporting, reach to the audience and capacity to influence public opinion and are actually better than many foreign TV channels. But that is not to say that they are totally free from biases and prejudices or they do not commit mistakes or gaffes or they some times do not tend to

trivialise highly serious issues or that there is nothing wanting in their social content and orientation or that they maintain the same standards in all their programmes. In quest of excellence they have still a long way to go.

197. A private TV channel which is also a vast business venture has the inherent dilemma to reconcile its business interests with the higher standards of professionalism/demands of profession. The two may not always converge and then the TV channel would find its professional options getting limited as a result of conflict of priorities. The media trips mostly on TRPs (television rating points), when commercial considerations assume dominance over higher standards of professionalism.

198. It is not our intent here to lay down any reformist agenda for the media. Any attempt to control and regulate the media from outside is likely to cause more harm than good. The norms to regulate the media and to raise its professional standards must come from inside.

ROLE OF THE LAWYER

199. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct. We have viewed with disbelief Senior Advocates freely taking part in TV debates or giving interviews to a TV reporter/anchor of the show on issues that are directly the subject matter of cases pending before the court and in which they are appearing for one of the sides or taking up the brief of one of the sides soon after the TV show. Such conduct reminds us of the fictional barrister Rumpole, `the Old Hack of Bailey', who self deprecatingly described himself as an `old taxi plying for hire'. He at least was not bereft of professional values. When a young and enthusiastic journalist invited him to a drink of Dom Perignon, vastly superior and far more expensive than his usual `plonk', `Chbteau Fleet Street', he joined him with alacrity but when in the course of the drink the journalist offered him a large sum of money for giving him a story on the case; `why he was defending the most hated woman in England', Rumpole ended the meeting simply saying "In the circumstance I think it is best if I pay for the Dom Perignon"

200. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a bar that enjoys the unqualified trust and confidence of the people, that share the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

201. We are glad to note that Mr. Gopal Subramanium, the amicus fully shared our concern and realised the gravity of the issue. In course of his submissions he eloquently addressed us on the elevated position enjoyed by a lawyer in our system of justice and the responsibilities cast upon him in consequence. His Written Submissions begin with this issue and he quotes extensively form the address of Shri M C Setalvad at the Diamond Jubilee Celebrations of the Banglore Bar Association, 1961, and from the decisions of this Court in Pritam Pal v. High court of Madhya Pradesh MANU/SC/0169/1992 : 1992CriLJ1269 (observations of Ratnavel Pandian J.) and Sanjeev Datta, In Re, MANU/SC/0697/1995 : 1995CriLJ2910 (observations of Sawant J. at pp 634-635, para 20).

202. We respectfully endorse the views and sentiments expressed by Mr. M.C. Setalvad, Pandian J. and Sawant J.

203. Here we must also observe that the Bar Council of India and the Bar Councils of the different states cannot escape their responsibility in this regard. Indeed the Bar council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society. This takes us to the last leg of this matter.

THE LARGER ISSUE : BMW TRIAL GETTING OUT OF HAND

204. Before laying down the records of the case we must also advert to another issue of great importance that causes grave concern to this Court. At the root of this odious affair is the way the BMW trial was allowed to be constantly interfered with till it almost became directionless. We have noted Kulkarni's conduct in course of investigation and at the commencement of the trial; the fight that broke out in the court premises between some policemen and a section of lawyers over his control and custody; the manner in which Hari Shankar Yadav, a key prosecution witness turned hostile in court; the curious way in which Manoj Malik, another key witness for the prosecution appeared before the court and overriding the prosecution's protest, was allowed to depose only to resile from his earlier statement. All this and several other similar developments calculated to derail the trial would not have escaped the notice of the Chief Justice or the judges of the Court. But there is nothing to show that the High Court, as an institution, as a body took any step to thwart the nefarious activities aimed at undermining the trial and to ensure that it proceeded on the proper course. As a result, everyone seemed to feel free to try to subvert the trial in any way they pleased.

205. We must add here that this indifferent and passive attitude is not confined to the BMW trial or to the Delhi High Court alone. It is shared in greater or lesser degrees by many other High Courts. From experience in Bihar, the author of these lines can say that every now and then one would come across reports of investigation deliberately botched up or of the trial

being hijacked by some powerful and influential accused, either by buying over or intimidating witnesses or by creating insurmountable impediments for the trial court and not allowing the trial to proceed. But unfortunately the reports would seldom, if ever, be taken note of by the collective consciousness of the Court. The High Court would continue to carry on its business as if everything under it was proceeding normally and smoothly. The trial would fail because it was not protected from external interferences. Every trial that fails due to external interference is a tragedy for the victim(s) of the crime. More importantly, every frustrated trial defies and mocks the society based on the rule of law. Every subverted trial leaves a scar on the criminal justice system. Repeated scars make the system unrecognisable and it then loses the trust and confidence of the people. Every failed trial is also, in a manner of speaking, a negative comment on the State's High Court that is entrusted with the responsibility of superintendence, supervision and control of the lower courts. It is, therefore, high time for the High Courts to assume a more pro-active role in such matters. A step in time by the High Court can save a criminal case from going astray. An enquiry from the High Court Registry to the concerned quarters would send the message that the High Court is watching; it means business and it will not tolerate any nonsense. Even this much would help a great deal in insulating a criminal case from outside interferences. In very few cases where more positive intervention is called for, if the matter is at the stage of investigation the High Court may call for status report and progress reports from police headquarter or the concerned Superintendent of Police. That alone would provide sufficient stimulation and pressure for a fair investigation of the case. In rare cases if the High Court is not satisfied by the status/progress reports it may even consider taking up the matter on the judicial side. Once the case reaches the stage of trial the High Court obviously has far wider powers. It can assign the trial to some judicial officer who has made a reputation for independence and integrity. It may fix the venue of the trial at a proper place where the scope for any external interference may be eliminated or minimized. It can give effective directions for protection of witnesses and victims and their families. It can ensure a speedy conclusion of the trial by directing the trial court to take up the matter on a day-to-day basis. The High Court has got ample powers for all this both on the judicial and administrative sides. Article 227 of the Constitution of India that gives the High Court the authority of superintendence over the subordinate courts has great dynamism and now is the time to add to it another dimension for monitoring and protection of criminal trials. Similarly Article 235 of the Constitution that vests the High Court with the power of control over sub-ordinate courts should also include a positive element. It should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary. The power of control should also be exercised to protect them from external interference that may sometime appear overpowering to them and to support them to discharge their duties fearlessly.

206. In light of the discussions made above we pass the following orders and directions.

1. The appeal filed by IU Khan is allowed and his conviction for criminal contempt is set aside. The period of four month's prohibition from appearing in Delhi High Court and the courts sub-ordinate to it is already over. The punishment of fine given to him by the High Court is set aside. The Full Court of the Delhi High Court may still consider whether or not to

continue the honour of Senior Advocate conferred on him in light of the findings recorded in this judgment.

2. The appeal of RK Anand is dismissed subject to the notice of enhancement of punishment issued to him as indicated in paragraph 165 of the judgment. He is allowed eight weeks time from the date of service of notice for filing his show-cause.

3. Those of the High Courts which have so far not framed any rules under Section 34 of the Advocates Act, shall frame appropriate rules without any further delay as directed in paragraph 147 of the judgment.

4. Put up the appeal of RK Anand after the show-cause is filed.

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An Advocate v. *Bar Council of India*

1989 Supp (2) SCC 25

M.P. THAKKAR, J. - A host of questions of seminal significance, not only for the advocate who has been suspended from practising his profession for 3 years on the charge of having withdrawn a suit (as settled) without the instructions from his client, but also for the members of the legal profession in general have arisen in this appeal:

(1) Whether a charge apprising him specifically of the precise nature and character of the professional misconduct ascribed to him needs to be framed?

(2) Whether in the absence of an allegation or finding of dishonesty or mens rea a finding of guilt and a punishment of this nature can be inflicted on him?

(3) Whether the allegations and the finding of guilt require to be proved beyond reasonable doubt?

(4) Whether the doctrine of benefit of doubt applies?

(5) Whether an advocate acting bona fide and in good faith on the basis of oral instructions given by someone purporting to act on behalf of his client, would be guilty of professional misconduct or of an unwise or imprudent act, or negligence simpliciter, or culpable negligence punishable as professional misconduct?

2. The suit was a suit for recovery of Rs 30,098 (Suit No. 65 of 1981 on the file of Additional City Civil Judge, Bangalore). It appears that the complainant had entrusted the brief of the appellant which he in his turn had entrusted to his junior colleague (Respondent 2 herein) who was attached to his office and was practising along with him at his office at the material time. At the point of time when the suit was withdrawn, Respondent 2 was practising on his own having set up his separate office. On the docket of the brief pertaining to the suit, the appellant made an endorsement giving instructions to withdraw the suit as settled. A sketch was drawn on the back of the cover to enable the person carrying the brief to the junior colleague to locate his office in order to convey the instructions as per the endorsement made by the appellant. The allegations made by the complainant against the appellant are embodied in paras 1 and 2 of his complaint:

(1) The petitioner submits that he entrusted a matter to Respondent 2 to file a case against Shri A. Anantaraju for recovery of a sum of Rs 30,098 with court costs and current interest in Case No. OS 1965 of 1981 on the file of the City Civil Judge at Bangalore. The petitioner submits that the said suit was filed by the first respondent who was then a junior of Respondent 2. The petitioner submits that the matter in dispute in the suit was not settled at all and the first respondent without the knowledge and without the instructions of the petitioner has filed a memo stating that the matter is settled out of court and got the suit dismissed and he has also received half of the institution court fee within 10 days since the date of the disposal of the suit. The petitioner submits that he has not received either the suit amount or the refund of court fee and he is not aware of the dismissal of the suit as settled out of court.

(2) The petitioner submits that when the case was posted for filing of written statement itself the first respondent has filed such a memo stating that the suit was settled out of court. The petitioner submits that in fact, the respondents did not even inform the

petitioner about the dates of hearing and when the petitioner asked the dates of hearing the respondents informed the petitioner stating that his presence is not required in the court since the case was posted for filing of written statement and therefore, the petitioner did not attend the court on that day. The petitioner submits that when he enquired about the further date of hearing the respondents did not give the date and said that they would verify the next date of hearing since they have not attended the case since the case was posted for filing written statement by the defendant. The petitioner submits that when he himself went to the court and verified he found to his great surprise that the suit is dismissed as settled out of court and later learnt that even the half of the institution court fee is also taken by the first respondent within 10 days.

3. The version of the appellant may now be unfolded:

(1) One Gautam Chand (RW 3) has been a longstanding client of the appellant. Gautam Chand had business dealings with the plaintiff Haradara and the defendant Anantaraju. Besides, Anantaraju executed an agreement dated 9-8-1980 to sell his house property to Gautam Chand. He received earnest money in the sum of Rs 35,000 from Gautam Chand. Anantaraju, however, did not execute the sale deed within the stipulated period and during the extended period. It was in these circumstances that Gautam Chand (RW 3) approached the appellant for legal advice.

(2) It is the common case of parties that Gautam Chand introduced the complainant Haradara to the appellant and his colleague advocate Respondent 2.

(3) The appellant caused the issue of notice dated 1-6-1981 (Ex. R/15) on behalf of Gautam Chand addressed to the seller Anantaraju calling upon him to execute the sale deed. On the same date, a notice was separately issued on behalf of the complainant Haradara addressed to Anantaraju demanding certain amounts due on the three 'self' bearer cheques aggregating Rs 30,098 issued by Anantaraju in course of their mutual transactions. This notice was issued by the advocate Respondent 2 acting on behalf of the complainant Haradara.

(4) Gautam Chand (RW 3) and Haradara (PW 1) were friends. Anantaraju was their common adversary. There was no conflict of interests as between Gautam Chand and Haradara. Gautam Chand instructed the appellant and his colleague Respondent 2 Ashok, that he was in possession of the said cheques issued by Anantaraju and that no amount was actually due from Anantaraju to the complainant Haradara. Gautam Chand was desirous of steps to induce Anantaraju to execute the sale deed in his favour.

(5) A suit being OS No. 1965 of 1981 was instituted on behalf of the complainant Haradara claiming an amount of Rs 30,000 and odd, from the defendant Anantaraju on the basis of the aforesaid cheques. It was instituted on 30-6-1981. An interlocutory application was moved on behalf of Haradara by Respondent 2 as his advocate seeking the attachment before judgment of the immovable property belonging to the defendant Anantaraju. The property was in fact the subject of an agreement to sell between Anantaraju and Gautam Chand (RW 3). The court initially declined to grant an order of attachment. In order to persuade the court, certain steps were taken through the said Gautam Chand. He caused the publication of a notice stating that the property in question was the subject-matter of an agreement between Anantaraju and himself and it should not

be dealt with by anyone. The publication of this notice was relied upon subsequently on behalf of the complainant Haradara by his advocate (Respondent 2), Ashok in seeking an order of attachment. The court accepted his submissions and passed the order of attachment.

(6) Subsequently the defendant Anantaraju executed the sale deed dated 27-11-1981 in favour of Gautam Chand. The object of the suit was achieved. The sale deed was in fact executed during the subsistance of the order of attachment concerning the same property. The plaintiff Haradara has not objected to it at any time. Consistently, the appellant had reasons to believe the information of settlement of dispute, conveyed by the three parties together on 9-12-1981.

(7) Gautam Chand (RW 3) and the complainant Haradara acted in mutual interest and secured the attachment of property which was the subject-matter of an agreement to sell in favour of Gautam Chand. The suit instituted in the name of the complainant Haradara was only for the benefit of Gautam Chand by reference to this interest in the property.

(8) The appellant conveyed information of the settlement of dispute by his note made on the docket. He drew a diagram of the location of residence of the Respondent 2 Ashok advocate (Ex. R-l-A at p. 14 Additional Documents). The papers were delivered to Respondent 2 Ashok advocate by Gautam Chand (RW 3).

(9) After satisfying himself, Respondent 2 Ashok advocate appeared in court on 10-12-1981 and filed a memo prepared in his handwriting recording the fact of settlement of dispute and seeking withdrawal of the suit. The court passed order dated 10-12-1981 dismissing the suit, OS No. 1965 of 1981.

(10) Even though the plaintiff Haradara gained knowledge of the disposal of suit, he did not meet the appellant nor did he address him for over 1½ years until May 1983. He did not also immediately apply for the restoration of suit. An application for restoration was filed on the last date of limitation on 11-1-1982. The application Misc. 16 of 1982 was later allowed to be dismissed for default on 30-7-1982. It was later sought to be revived by application Misc. No. 581 of 1982. Necessary orders were obtained on 16-7-1982. Thus Misc. 16 of 1982 (Application for restoration of suit) is pending in civil court.

On a survey of the legal landscape in the area of disciplinary proceedings this scenario emerges:

(1) In exercise of powers under Section 35 contained in Chapter V entitled "conduct of advocates", on receipt of a complaint against an advocate (or suo motu) if the State Bar Council has 'reason to believe' that any advocate on its roll has been guilty of "professional or other misconduct", disciplinary proceeding may be initiated against him.

(2) Neither Section 35 nor any other provision of the Act defines the expression 'legal misconduct' or the expression 'misconduct'.

(3) The Disciplinary Committee of the State Bar Council is authorised to inflict punishment, including removal of his name from the rolls of the Bar Council and suspending him from practice for a period deemed fit by it, after giving the advocate concerned and the 'Advocate General' of the State an opportunity of hearing.

(4) While under Section 42(1) of the Act the Disciplinary Committee has been conferred powers vested in a civil court in respect of certain matters including

summoning and enforcing attendance of any person and examining him on oath, the Act which enjoins the Disciplinary Committee to 'afford an opportunity of hearing' (vide Section 35) to the advocate does not prescribe the procedure to be followed at the hearing.

(5) The procedure to be followed in an enquiry under Section 35 is outlined in Part VII of the Bar Council of India Rules[2] made under the authority of Section 60 of the Act.

(6) Rule 8(1) of the said Rules enjoins the Disciplinary Committee to hear the concerned parties that is to say the complainant and the concerned advocate as also the Attorney General or the Solicitor General or the Advocate General. It also enjoins that if it is considered appropriate to take oral evidence the procedure of the trial of civil suits shall as far as possible be followed.

4. At this juncture it is appropriate to articulate some basic principles which must inform the disciplinary proceedings against members of the legal profession in proceedings under Section 35 of the Advocates Act, read with the relevant Rules:

(*i*) essentially the proceedings are quasi-criminal in character inasmuch as a member of the profession can be visited with penal consequences which affect his right to practise the profession as also his honour; under Section 35(3)(*d*) of the Act, the name of the advocate found guilty of professional or other misconduct can be removed from the State Roll of Advocates. This extreme penalty is equivalent of death penalty which is in vogue in criminal jurisprudence. The advocate on whom the penalty of his name being removed from the roll of advocates is imposed would be deprived of practising the profession of his choice, would be robbed of his means of livelihood, would be stripped of the name and honour earned by him in the past and is liable to become a social apartheid. A disciplinary proceeding by a statutory body of the members of the profession which is statutorily empowered to impose a punishment including a punishment of such immense proportions is quasi-criminal in character;

(*ii*) as a logical corollary it follows that the Disciplinary Committee empowered to conduct the enquiry and to inflict the punishment on behalf of the body, in forming an opinion must be guided by the doctrine of benefit of doubt and is under an obligation to record a finding of guilt only upon being satisfied beyond reasonable doubt. It would be impermissible to reach a conclusion on the basis of preponderance of evidence or on the basis of surmise, conjecture or suspicion. It will also be essential to consider the dimension regarding mens rea.

This proposition is hardly open to doubt or debate particularly having regard to the view taken by this Court in ***L.D. Jaisinghani* v. *Naraindas N. Punjabi*** [(1976) 1 SCC 354], wherein Ray, C.J., speaking for the Court has observed:

"In any case, we are left in doubt whether the complainant's version, with which he had come forward with considerable delay was really truthful. *We think that in a case of this nature, involving possible disbarring of the advocate concerned, the evidence should be of a character which should leave no reasonable doubt about guilt.* The Disciplinary Committee had not only found the appellant guilty but had disbarred him permanently." (*emphasis added*)

(*iii*) in the event of a charge of negligence being levelled against an advocate, the question will have to be decided whether negligence simpliciter would constitute misconduct. It would also have to be considered whether the standard expected from an advocate would have to answer the test of a reasonably equipped prudent practitioner carrying reasonable workload. A line will have to be drawn between tolerable negligence and culpable negligence in the sense of negligence which can be treated as professional misconduct exposing a member of the profession to punishment in the course of disciplinary proceedings. In forming the opinion on this question the standards of professional conduct and etiquette spelt out in Chapter 2 of Part VI of the Rules governing advocates, framed under Section 60(3) and Section 49(1)(*g*) of the Act, which form a part of the Bar Council of India Rules may be consulted. As indicated, in the preamble of the Rules, an advocate shall, at all times compose himself in a manner befitting his status as an officer of the court, a privileged member of the community and a gentleman bearing in mind what may be lawful and moral for one who is not a member of the Bar may still be improper for an advocate and that his conduct is required to conform to the rules relating to the duty to the court, the duty to the client, to the opponent, and the duty to the colleagues, not only in letter but also in spirit.

It is in the light of these principles the Disciplinary Committee would be required to approach the question as regards the guilt or otherwise of an advocate in the context of professional misconduct levelled against him. In doing so apart from conforming to such procedure as may have been outlined in the Act or the Rules, the Disciplinary Authority would be expected to exercise the power with full consciousness and awareness of the paramount consideration regarding principles of natural justice and fair play.

5. The State Bar Council, after calling for the comments of the appellant in the context of the complaint, straightway proceeded to record the evidence of the parties. No charge was framed specifying the nature and content of the professional misconduct attributed to the appellant. Nor were any issues framed or points for determination formulated. The Disciplinary Committee straightway proceeded to record evidence. As the case could not be concluded within the prescribed time limit the matter came to be transferred to the Bar Council of India which has heard arguments and rendered the order under appeal.

6. The questions which have surfaced are:

(1) Whether a specific charge should have been framed apprising the appellant of the true nature and content of the professional misconduct ascribed to him?

(2) Whether the doctrine of benefit of doubt and the need for establishing the basic allegations were present in the mind of the Disciplinary Authority in recording the finding of guilt or in determining the nature and extent of the punishment inflicted on him?

(3) Whether in the absence of the charge and finding of dishonesty against him the appellant could be held guilty of professional misconduct even on the assumption that he had acted on the instructions of a person not authorised to act on behalf of his client if he was acting in good faith and in a bona fide manner. Would it amount to lack of prudence or non-culpable negligence or would it constitute professional misconduct?

Now so far as the procedure followed by the State Bar Council at the enquiry against the appellant, is concerned it appears that in order to enable the concerned advocate to defend himself properly, an appropriate specific charge was required to be framed. No doubt the Act does not outline the procedure and the Rules do not prescribe the framing of a charge. But then even in a departmental proceeding in an enquiry against an employee, a charge is always framed. Surely an advocate whose honour and right to earn his livelihood are at stake can expect from his own professional brethren, what an employee expects from his employer? Even if the rules are silent, the paramount and overshadowing considerations of fairness would demand the framing of a charge. In a disciplinary proceeding initiated at the level of this Court even though the Supreme Court Rules did not so prescribe, ***in Re Shri 'M' an Advocate of the Supreme Court of India*** [AIR 1957 SC 149], this Court framed a charge making these observations:

> We treated the enquiry in chambers as a preliminary enquiry and heard arguments on both sides with reference to the matter of that enquiry. We came to the conclusion that this was not a case for discharge at that stage. We accordingly reframed the charges framed by our learned brother, Bhagwati, J. and added a fresh charge. No objection has been taken to this course. But it is as well to mention that, in our opinion, the terms of Order IV, Rule 30 of the Supreme Court Rules do not preclude us from adopting this course, including the reframing of, or adding to, the charges specified in the original summons, where the material at the preliminary enquiry justifies the same. The fresh enquiry before us in court has proceeded with reference to the following charges as reframed and added to by us.

It would be extremely difficult for an advocate facing a disciplinary proceeding to effectively defend himself in the absence of a charge framed as a result of application of mind to the allegations and to the question as regards what particular elements constituted a specified head of professional misconduct.

7. The point arising in the context of the non-framing of issues has also significance. As discussed earlier Rule 8(1) enjoins that "the procedure for the trial of civil suits, shall as far as possible be followed". Framing of the issues based on the pleadings as in a civil _suit would be of immense utility. The controversial matters and substantial questions would be identified and the attention focussed on the real and substantial factual and legal matters in context. The parties would then become aware of the real nature and content of the matters in issue and would come to know (1) on whom the burden rests (2) what evidence should be adduced to prove or disprove any matter (3) to what end cross-examination and evidence in rebuttal should be directed. When such a procedure is not adopted there exists inherent danger of miscarriage of justice on account of virtual denial of a fair opportunity to meet the case of the other side. We wish the State Bar Council had initially framed a charge and later on framed issues arising out of the pleadings for the sake of fairness and for the sake of bringing into forefront the real controversy.

8. In the light of the foregoing discussion the questions arising in the present appeal may now be examined. In substance the charge against the appellant was that he had withdrawn a suit as settled without the instructions from the complainant. It was not the case of the complainant that the appellant had any dishonest motive or that he had acted in the matter by

reason of lack of probity or by reason of having been won over by the other side for monetary considerations or otherwise. The version of the appellant was that the suit which had been withdrawn had been instituted in a particular set of circumstances and that the complainant had been introduced to the appellant for purposes of the institution of the suit by an old client of his viz. RW 3 Gautam Chand. The appellant was already handling a case on behalf of RW 3 Gautam Chand against RW 4 Anantaraju. The decision to file a suit on behalf of the complainant against RW 4 Anantaraju was taken in the presence of RW 3 Gautam Chand. It was at the instance and inspiration of RW 3 Gautam Chand that the suit had been instituted by the complainant, but really he was the nominee of Gautam Chand and that the complainant himself had no real claim on his own. It transpires from the records that it was admitted by the complainant that he was not maintaining any account books in regard to the business and he was not an income tax assessee. In addition, the complainant (PW 1) Haradara himself has admitted in his evidence that it was Gautam Chand who had introduced him to the appellant, and that he was in fact taken to the office of the appellant for filing the said suit, by Gautam Chand. It was this suit which was withdrawn by the appellant. Of course it was withdrawn without any written instructions from the complainant. It was also admitted by the complainant that he knew the defendant against whom he had filed the suit for recovery of Rs 30,000 and odd through Gautam Chand and that he did not know the defendant intimately or closely. He also admitted that the cheques used to be passed in favour of the party and that he was not entitled to the entire amount. He used to get only commission.

9. Even on the admission of the complainant himself he was taken to the office of the appellant for instituting the suit, by RW 3 Gautam Chand, an old client of the appellant whose dispute with the defendant against whom the complainant had filed the suit existed at the material time and was being handled by the appellant. The defence of the appellant that he had withdrawn the suit in the circumstances mentioned by him required to be considered in the light of his admissions. The defence of the appellant being the suit was withdrawn under the oral instructions of the complainant in the presence of RW 3 Gautam Chand and RW 4 Anantaraju and inasmuch as RWs 3 and 4 supported the version of the appellant on oath, the matter was required to be examined in this background. Assuming that the evidence of the appellant corroborated by RWs 3 and 4 in regard to the presence of the complainant was not considered acceptable, the question would yet arise as to whether the withdrawal on the part of the appellant as per the oral instructions of RW 3 Gautam Chand who had taken the complainant to the appellant for instituting the suit, would amount to professional misconduct. Whether the appellant had acted in a bona fide manner under the honest belief that RW 3 Gautam Chand was giving the instructions on behalf of the complainant requires to be considered. If he had done so in a bona fide and honest belief would it constitute professional misconduct, particularly having regard to the fact that no allegation regarding corrupt motive was attributed or established. Here it has to be mentioned that the appellant had acted in an open manner in the sense that he had in his own hand-made endorsement for withdrawing the suit as settled and sent the brief to his junior colleague. If the appellant had any oblique motive or dishonest intention, he would not have made the endorsement in his own hand.

10. No doubt Rule 19 contained in Section 2 captioned 'Duty to the clients' provides that an advocate shall not act on the instructions of any person other than his client or his authorised agent. If, therefore, the appellant had acted under the instructions of RW 3 Gautam Chand bona fide believing that he was the authorised agent to give instructions on behalf of the client, would it constitute professional misconduct. Even if RW 3 was not in fact an authorised agent of the complainant, but if the appellant bona fide believed him to be the authorised agent having regard to the circumstances in which the suit came to be instituted, would it constitute professional misconduct? Or would it amount to only an imprudent and unwise act or even a negligent act on the part of the appellant? These were the questions which directly arose to which the Committee never addressed itself. There is also nothing to show that the Disciplinary Committee has recorded a finding on the facts and the conclusion as regards the guilt in full awareness of the doctrine of benefit of doubt and the need to establish the facts and the guilt beyond reasonable doubt. As has been mentioned earlier, no charge has been formulated and framed, no issues have been framed. The attention of the parties was not focussed on what were the real issues. The appellant was not specifically told as to what constituted professional misconduct and what was the real content of the charge regarding the professional misconduct against him.

11. In the order under appeal the Disciplinary Committee has addressed itself to three questions viz.:

(*i*) Whether the complainant was the person who entrusted the brief to the appellant and whether the brief was entrusted by the complainant to the appellant?

(*ii*) Whether report of settlement was made without instruction or knowledge of the complainant?

(*iii*) Who was responsible for reporting settlement and instructions of the complainant?

In taking the view that the appellant had done so probably with a view to clear the cloud of title of RW 3 as reflected in para 22 quoted herein, the Disciplinary Committee was not only making recourse to conjecture, surmise and presumption on the basis of suspicion but also attributing to the appellant a motive which was not even attributed by the complainant and of which the appellant was not given any notice to enable him to meet the charge:

> "It is not possible to find out as to what made PW 2 to have done like that. As already pointed out the house property which was under attachment had been purchased by RW 3 during the subsistence of the attachment. Probably with a view to clear the cloud of title of RW 3, PW 2 might have done it. This is only our suspicion whatever it might be, it is clear that RW 2 had acted illegally in directing RW 1 to report settlement."

12. In our opinion the appellant has not been afforded reasonable and fair opportunity of showing cause inasmuch as the appellant was not apprised of the exact content of the professional misconduct attributed to him and was not made aware of the precise charge he was required to rebut. The conclusion reached by the Disciplinary Committee in the impugned order further shows that in recording the finding of facts on the three questions, the applicability of the doctrine of benefit of doubt and need for establishing the facts beyond reasonable doubt were not realised. Nor did the Disciplinary Committee consider the question

as to whether the facts established that the appellant was acting with bona fides or with mala fides, whether the appellant was acting with any oblique or dishonest motive, whether there was any mens rea, whether the facts constituted negligence and if so whether it constituted culpable negligence. Nor has the Disciplinary Committee considered the question as regards the quantum of punishment in the light of the aforesaid considerations and the exact nature of the professional misconduct established against the appellant. The impugned order passed by the Disciplinary Committee, therefore cannot be sustained. Since we do not consider it appropriate to examine the matter on merits on our own without the benefit of the finding recorded by the Disciplinary Committee of the apex judicial body of the legal profession, we consider it appropriate to remit the matter back to the Disciplinary Committee. As observed by this Court in ***O.N. Mohindroo* v. *District Judge, Delhi*** [(1971) 2 SCR 11], we have no doubt that the Disciplinary Committee will approach the matter with an open mind:

> From this it follows that questions of professional conduct are as open as charges of cowardice against Generals or reconsideration of the conviction of persons convicted of crimes. Otherwise how could the Hebron brothers get their conviction set aside after Charles Peace confessed to the crime for which they were charged and held guilty?

We must explain why we consider it appropriate to remit the matter back to the Bar Council of India. This matter is one pertaining to the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight because in the words of Hidayatullah, C.J., in ***Mohindroo*** case:

> This matter is one of the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight.

It appears to us that the Bar Council of India must have an opportunity to examine the very vexed and sensitive question which has arisen in the present matter with utmost care and consideration, the question being of great importance for the entire profession. We are not aware of any other matter where the apex body of the profession was required to consider whether the bona fide act of an advocate who in good faith acted under the instructions of someone closely connected with his client and entertained a bona fide belief that the instructions were being given under the authority of his client, would be guilty of misconduct. It will be for the Bar Council of India to consider whether it would constitute an imprudent act, an unwise act, a negligent act or whether it constituted negligence and if so a culpable negligence, or whether it constituted a professional misconduct deserving severe punishment, even when it was not established or at least not established beyond reasonable doubt that the concerned advocate was acting with any oblique or dishonest motive or with mala fides. This question will have to be determined in the light of the evidence and the surrounding circumstances taking into account the doctrine of benefit of doubt and the need to record a finding only upon being satisfied beyond reasonable doubt. In the facts and circumstances of the present case, it will also be necessary to re-examine the version of the complainant in the light of the foregoing discussion keeping in mind the admission made by the complainant that he was not maintaining any books of accounts and he was not an income tax assessee and yet he was the real plaintiff in the suit for Rs 30,000 and odd instituted by him, and in the light of the admission that it was RW 3 Gautam Chand who had introduced him to the appellant and

that he was in fact taken to the office of the appellant, for filing the suit, by RW 3 Gautam Chand. The aforesaid question would arise even if the conclusion was reached that the complainant himself was not present and had not given instructions and that the appellant had acted on the instructions of RW 3 Gautam Chand who had brought the complainant to the appellant's office for instituting the suit and who was a close associate of the complainant. Since all these aspects have not been examined at the level of the Bar Council, and since the matter raises a question of principle of considerable importance relating to the ethics of the profession which the law has entrusted to the Bar Council of India, it would not be proper for this Court to render an opinion on this matter without the benefit of the opinion of the Bar Council of India which will accord close consideration to this matter in the light of the perspective unfolded in this judgment both on law and on facts. We are reminded of the high degree of fairness with which the Bar Council of India had acted in ***Mohindroo*** case. The advocate concerned was suspended from practice for four years. The Bar Council had dismissed the appeal. Supreme Court had dismissed the special leave petition summarily. And yet the whole matter was reviewed at the instance of the Bar Council and this Court was persuaded to grant the review. A passage extracted from ***Mohindroo*** case deserves to be quoted in this connection:

> We find some unusual circumstances facing us. The entire Bar of India are of the opinion that the case was not as satisfactorily proved as one should be and we are also of the same opinion. All processes of the court are intended to secure justice and one such process is the power of review. No doubt frivolous reviews are to be discouraged and technical rules have been devised to prevent persons from reopening decided cases. But as the disciplinary committee themselves observed there should not be too much technicality where professional honour is involved and if there is a manifest wrong done, it is never too late to undo the wrong. This Court possesses under the Constitution a special power of review and further may pass any order to do full and effective justice. This Court is moved to take action and the Bar Council of India and the Bar Association of the Supreme Court are unanimous that the appellant deserves to have the order debarring him from practice set aside.

13. We have therefore no doubt that upon the matter being remitted to the Bar Council of India it will be dealt with appropriately in the light of the aforesaid perspective. We accordingly allow this appeal, set aside the order of the Bar Council insofar as the appellant is concerned and remit the matter to the Bar Council of India. We, however, wish to make it clear that it will not be open to the complainant to amend the complaint or to add any further allegation. We also clarify that the evidence already recorded will continue to form part of the record and it will be open to the Bar Council of India to hear the matter afresh on the same evidence. It is understood that an application for restoration of the suit which has been dismissed for default in the city civil court at Bangalore has been made by the complainant and is still pending before the court. It will be open to the Bar Council of India to consider whether the hearing of the matter has to be deferred till the application for restoration is disposed of. The Bar Council of India may give appropriate consideration to all these questions.

14. We further direct that in case the judgment rendered by this Court or any part thereof is reported in law journals or published elsewhere, the name of the appellant shall not be mentioned because the matter is still sub judice and fairness demands that the name should not be specified. The matter can be referred to as ***An Advocate*** **v.** ***Bar Council*** **or** ***In re an Advocate*** without naming the appellant. The appeal is disposed of accordingly.

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Salil Dutta v. *T.M. and M.C. (P) Ltd.*

(1993) 2 SCC 185

B.P. JEEVAN REDDY, J. - 2. The appeal is preferred by the plaintiff against the judgment and order of a Division Bench of the Calcutta High Court allowing the appeal preferred by the respondent/defendant. The appeal before the High Court was directed against an order of the city civil court, Calcutta dismissing an application filed by the defendant to set aside the ex parte decree passed against him, under Order 9 Rule 13 of the Civil Procedure Code. The relevant facts may be noticed briefly.

3. The plaintiff/appellant filed a suit for ejecting the defendant-tenant on the ground of default in paying rent and also on the ground that the such premises are required for his own use and occupation. The suit was posted for final hearing on June 9, 1988 - seven years after its institution. On an earlier occasion, the defendant had filed two interlocutory applications, one under Order 14 Rule 5 and the other under Order 6 Rule 16 CPC. On May 19, 1988 the city civil court had passed an order on the said applications observing that the said applications shall be considered at the final hearing of the suit. According to the defendant (as per his statement made in the application filed by him for setting aside the ex parte decree) his advocate advised him that he need not be present at the hearing of the suit on June 9, 1988, and thereafter till the applications filed by him under Order 14 Rule 5 and Order 6 Rule 16 CPC are disposed of. Be that as it may, on June 9, 1988, the advocate for the defendant prayed for an adjournment till the next day. It was adjourned accordingly. On June 10, neither the advocate for the defendant nor the defendant appeared, with the result the defendant was set ex parte. Hearing of the suit was commenced and concluded on June 11, 1988. The suit was posted for delivery of judgment to June 13, 1988. On June 11, 1988, an application was made on behalf of the defendant stating the circumstances in which his advocate had to retire from the case. This application, however, contained no prayer whatsoever. The suit was decreed ex parte on June 13, 1988. Thereafter the defendant filed the application to set aside the ex parte decree. In this application he referred to the fact of his filing two interlocutory applications as aforesaid, the order of the court thereon passed on May 19, 1988 and then stated "due to the advice of the learned advocate-on-record that your petitioner need not be present at the hearing of the suit on June 9, 1988 and thereafter till the disposal of the application filed under Order 6 Rule 16 and Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure in the above suit," the defendant did not appear before the Court. It was stated that Mr Ravindran the Principal Officer of the defendant-company was out of town on that date. It was submitted that because the defendant had acted on the basis of the advice given by the advocate-on-record of the defendant, there was sufficient cause to set aside the ex parte decree within the meaning of Order 9 Rule 13 CPC. The trial court dismissed the said application against which an appeal was preferred by the defendant to the Calcutta High Court. The appeal was heard by a Division Bench and judgment pronounced in open court on July 8, 1991 dismissing the appeal. However, it appears, before the judgment was signed by the learned judges constituting the Division Bench, an application was moved by the defendant for alteration or modification and/or reconsideration of the said judgment mainly on the ground that the defendants' counsel could not bring to the notice of the Division Bench

the decision of this Court in ***Rafiq* v. *Munshilal*** [AIR 1981 SC 1400] and that the said decision clearly supports the defendants' case. The counsel for the plaintiff opposed the said request. He submitted that once the judgment was pronounced in open court, it was final and that matter cannot be reopened just because a relevant decision was not brought to the notice of the Court. After hearing the counsel for both the parties, the Division Bench reopened the appeal on the ground that "technicalities should not be allowed to stand in the way of doing justice to the parties". The Bench observed that when they disposed of the appeal, their attention was not invited to the decision of this Court in ***Rafiq* v. *Munshilal*** and that in view of the said judgment they were inclined to reopen the matter. The Division Bench was of the opinion that "after a judgment is delivered by the High Court ignoring the decision of the Supreme Court or in disobedience of a clear judgment of the Supreme Court, it would be treated as non-est and absolutely without jurisdiction .... when our attention has been drawn that our judgment is per incuriam, it is our duty to apply this decision and to hold that our judgment was wrong and liable to be recalled". (We express no opinion on the correctness of the above premise since it is not put in issue in this appeal.) Accordingly, the Division Bench heard the counsel for the parties and by its judgment and order dated March 3, 1992 allowed the appeal mainly relying upon the decision of this Court in ***Rafiq***.

5. Since the judgment under appeal is exclusively based upon the decision of this Court in ***Rafiq*** it is necessary to ascertain what precisely does the said decision say. The appellant, Rafiq had preferred a second appeal in the Allahabad High Court through an advocate. His advocate was not present when the second appeal was taken up for hearing with the result it was dismissed for default. The appellant then moved an application to set aside the order of dismissal for default which was dismissed by the High Court. The correctness of the said order was questioned in this Court. The matter came up before a Bench comprising D.A. Desai and Baharul Islam, JJ. D.A. Desai, J. speaking for the Bench observed thus:

> The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.

6. It was then argued by the counsel for the respondent in that appeal that a practice has grown up in the High Court of Allahabad among the lawyers to remain absent when they did not like a particular Bench and that the absence of the appellant's advocate in the High Court was in accordance with the said practice, which should not be encouraged. While expressing no opinion upon the existence or justification of such practice, the learned Judge observed

that if the dismissal order is not set aside "the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented," and then made the following further observations:

> The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.

7. The question is whether the principle of the said decision comes to the rescue of the defendant respondent herein. Firstly, in the case before us it was not an appeal preferred by an outstation litigant but a suit which was posted for final hearing seven years after the institution of the suit. The defendant is a private limited company having its registered office at Calcutta itself. The persons in charge of the defendant-company are not rustic villagers nor they are innocent illiterates unaware of court procedures. Prior to the suit coming up for final hearing on June 9, 1988 the defendant had filed two applications whereupon the court ordered that they will be considered at the time of the final hearing of the suit. The plaintiff's case no doubt is that the said applications were part of delaying tactics being adopted by the defendant-tenants with a view to protract the suit. Be that as it may, the defendant thereafter refused to appear before the court. According to the defendant, their advocate advised them that until the interlocutory applications filed by them are disposed of, the defendant need not appear before the court which means that the defendants need not appear at the final hearing of the suit. It may be remembered that the court proposed to consider the said interlocutory applications at the final hearing of the suit. It is difficult to believe that the defendants implicitly believed their advocate's advice. Being educated businessmen they would have known that non-participation at the final hearing of the suit would necessarily result in an adverse decision. Indeed we are not prepared to believe that such an advice was in fact tendered by the advocate. No advocate worth his salt would give such advice to his client. Secondly, the several contradictions in his deposition which are pointed out by the Division Bench in the impugned order go to show that the whole story is a later fabrication. The following are the observations made in the judgment of the Division Bench with respect to the conduct of the said advocate: "We found that the said learned advocate conducted the proceedings in a most improper manner and that his absence on June 10, 1988 and on subsequent date was not only discourteous but possibly a dereliction of duty to his client ... the learned advocate had forgotten his professional duty in not making inquiry to the court as to what happened on June 10, 11 and 13, 1988 ... the learned advocate acted in a most perfunctory manner in the matter and the learned advocate dealt with the matter in a most unusual manner. We have also found that the said learned advocate had made serious contradiction in the deposition before the court below. The learned advocate in his deposition stated that he did not file an application for adjournment on June 9, 1988. But from the record it was evident that it was on the basis of the application filed on June 9, 1988, the case was adjourned for cross-examination of the witnesses whose examination was called on the next

date." The above facts stated in the deposition of the advocate show that he indeed made an application for adjournment on June 9, 1988 to enable him to cross-examine the witnesses on the next date. Therefore, his present stand that he advised his client not to participate in the trial from and including June 9, 1988 onwards is evidently untrue. We are, therefore, of the opinion that the story set up by the defendant in his application under Order 9 Rule 13 is an after-thought and ought not to have been accepted by the Division Bench in its order dated March 3, 1992 - more particularly when it had rejected the very case in its earlier judgment dated July 8, 1991.

8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in ***Rafiq*** must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear - they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.

9. For the above reasons, the appeal is allowed.

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State of Maharashtra v. *Budhikota Subbarao (Dr)*

(1993) 3 SCC 71

R.M. SAHAI, J. - Strictures of 'sharp practice', suppression of facts, obtaining orders by playing fraud upon the court against State by Mr Justice Saldanha of the Bombay High Court, while deciding criminal miscellaneous petition filed by the opposite party, accused of leaking official secrets and violating provisions of the Atomic Energy Act, 1962 and awarding Rs 25,000 as compensation, for consultancy loss, suffered by him, due to ex parte order obtained by the State against order of the trial Judge permitting the opposite party to go abroad, compelled the State to file this appeal and assail the order not only for legal infirmities but factual inaccuracies.

2. Reasons to quote the learned Judge which, 'compelled the conscience of court to pass' the impugned order were, 'the unfortunate proceedings that bristled(s) with mala fides'. Basis for these inferences was, the conclusion by the learned Judge, that the State, deliberately, procured the interim order by another learned Judge by filing a separate writ petition, when it knew that the main petition for quashing of the proceedings was pending before the Division Bench (Puranik and Saldanha, JJ). The learned Judge felt, strongly, against the public prosecutor as she being aware of the proceedings before the Division Bench failed in her duty of apprising the learned Judge of correct facts.

3. Was this so? Did the State procure the order by concealing facts? Was the public prosecutor guilty of violating professional ethics or her duty as responsible officer of the court? What led to all this was an application filed by the opposite party, in the writ petition pending for quashing the charge-sheet framed under [The Indian] Official Secrets Act, 1923 and the Atomic Energy Act, 1962, for release of his passport on which the Division Bench of which Mr Justice Saldanha was a member, passed the order on February 13, 1991 that it may be presented before the trial Judge. On the very next day the Additional Sessions Judge, ('ASJ') after hearing the parties, directed that the passport and identity card of the opposite party be returned. He, further, permitted the opposite party to leave India and travel abroad as per the itinerary during the period from February 17, 1991 to February 22, 1991 on executing a personal bond of Rs 50,000. The State was, obviously, disturbed by this order as serious charges had been levelled against the opposite party who had been arrested, earlier, just when he was about to leave the country and board the plane, for leakage of official secrets and whose bail had, even, been cancelled by this Court, appeared to be in danger of leaving the country again. Since the order was passed on February 14, 1991 and the opposite party was to fly on February 17, 1991 and February 16, 1991 was Saturday, the State challenged the correctness of the order passed by the ASJ by way of a writ petition under Article 227 of the Constitution read with Section 482 of Criminal Procedure Code and the learned Judge, who under the rules was entitled to hear such a petition, passed an ex parte order on February 15, 1991 staying that part of the order which permitted the opposite party to leave the country and directed the application to be listed for further orders on February 18, 1991. On coming to know of this order, in the evening, the opposite party approached the Division Bench where the main petition was pending on February 16, which after making an observation that the public prosecutor ought to have brought it to the notice of the learned Single Judge that the

main matter was pending before the Division Bench and the trial Judge had passed the order in pursuance of the direction issued by the Division Bench, directed that the matter, being urgent, it should be placed before the same learned Single Judge. Consequently parties appeared before the learned Judge on February 16, who, after hearing, confirmed the interim order passed, a day earlier.

4. With confirmation of interim order the proceedings which had commenced on the application filed by the opposite party to leave the country came to an end. But the writ petition in which the interim order was passed remained pending. And when the revision filed by the State, directed against the order acquitting the accused, was taken up for hearing by Mr Justice Saldanha, and observations were made, during course of judgment dictated in open court from October 5 to 12, 1991 against the public prosecutor and the State, the opposite party appears to have made a mention on October 10, that the writ petition filed by the State against the order of the trial Judge releasing his passport and permitting him to travel abroad may be summoned and disposed of. The request was accepted and on direction of the learned Judge the office listed the case before him on October 11. When the petition was taken up, on October 11, and the public prosecutor was asked if she had any objection to hearing it was stated by her that it did not survive. But the learned Judge after completion of judgment in criminal revision on October 12, appears to have, taken up the writ petition. It was pointed out by the learned senior counsel for the State that since the criminal revision filed by the State against the order acquitting the accused had been dismissed, the writ petition had become infructuous and orders may be passed accordingly.

5. Yet the learned Judge passed the impugned order. What weighed with the learned Judge to infer mala fides against the State was that the order dated February 14, 1991 having been passed in open court in presence of the opposite party and counsel for the State, permitting the opposite party to leave the country on February 17, 1991, the opposite party, genuinely expected and according to the learned Judge, rightly, that any further application which the State would make could only be addressed to the Bench, namely, the Bench of Puranik and Saldanha, JJ., before whom the petition was pending, therefore, the opposite party, justifiably, waited and watched in the Bench, whole day for moving of any application but the State instead of moving any such application filed a fresh writ petition and obtained an ex parte order, the information of which was given to opposite party in the evening. The learned Judge was of opinion that it was deliberate as it was known to the public prosecutor that the Bench on February 13, 1991 after scrutinising the papers was of opinion that it was a genuine case in which the passport should be released and the opposite party should be permitted to travel abroad but due to paucity of time the Bench instead of passing the order directed the opposite party to approach the trial Judge. The learned Judge further held that even though the public prosecutor and the Inspector of Police knew these facts and that the opposite party was to fly on February 17, 1991 yet the notice was obtained from the learned Judge returnable on February 18, 1991 by which time the delegation from Reliance Industries of which the accused was to be a member was to have left the country. Since the effect of the interim order and the fixing of the petition on February 18, 1991 nullified the opposite party's going to United States of America, the court felt that the order was obtained not only unfairly, but that it constituted a sharp practice. The motive of the public prosecutor and the State was

further attempted to be shown to be dishonest and motivated as the averments in the petition on which the interim order was obtained were false to their knowledge. The falsity found was that the State had deliberately tried to mislead the court by alleging that the trial was fixed for hearing on February 18, 1991 and the same had been adjourned to February 24, 1991. The court found that the learned Single Judge was misled in passing the order as was clear from ground No. 6 which was to the effect that the trial being fixed for February 18, 1991, the trial Judge was not justified in issuing the orders in favour of opposite party. The learned Judge also felt aggrieved by the conduct of the public prosecutor in not informing the learned Single Judge that the main writ petition was already listed for hearing before the Division Bench and that the direction to the ASJ to consider the application for return of passport had been issued by the Bench. The learned Single Judge was not satisfied with explanation of the State that a petition under Article 227 of the Constitution read with Section 482 of Criminal Procedure Code being maintainable before the learned Single Judge under the High Court rules it had no option but to proceed in accordance with law. The learned Single Judge pointed out that if the State would have pointed out to the Registry the correct facts then the case could not have been listed before the learned Single Judge.

6. That any party aggrieved by an order passed by a court is entitled to approach the higher court cannot be disputed nor can it be disputed that a petition under Article 227 of the Constitution read with Section 482 of the Criminal Procedure Code against the order of trial Judge was maintainable and under rules of the court it could be listed before the learned Single Judge only. The State, therefore, in filing the petition against the order of the Sessions Judge did not commit any illegality or any impropriety. A copy of the writ petition, has been annexed to this special leave petition which, does not show any disclosure of incorrect facts or any attempt to mislead the court. Even the learned Single Judge did not find that the trial was not fixed for February 18, 1991. Disclosing correct facts and then obtaining order in favour is not same as procuring an order on incorrect facts. Former is legitimate being part of advocacy, latter is reprehensible and against profession. But if the State persuaded the court to stay the operation of the order passed by the trial Judge while mentioning the details about the pendency of the earlier petition before the Division Bench and issuing of directions to the Sessions Judge to decide the application for release of passport etc. it is difficult to imagine how any inference of obtaining order on incorrect facts could be drawn. During arguments the opposite party attempted to highlight averments in paragraph 6 of the writ petition to the effect that the Division Bench had dismissed the application of the opposite party when no such order was passed. The sentence, in fact, reads as under:

> "The application was dismissed and directed the respondent to move trial court and further directed the trial court to consider the same in accordance with law."

True, the application was not dismissed. But the sentence had to be read in its entirety. No court could be misled from the use of the word dismissed as the directions issued by the court were mentioned correctly. The inference drawn by court and the finding recorded by it of obtaining the order by 'suppression of facts and making positively false statements' is factually incorrect and legally unsound. The grief of the opposite party in missing an opportunity of going to the United States and the grievance against functionaries of the State, namely, public prosecutor and prosecuting Inspector can be appreciated. We can, also,

visualise the vehemence and eloquence of the opposite party, of which he is capable of, as appeared from his submission when he appeared in person in this Court, but what has baffled us that the learned Judge was persuaded to record the finding of suppression of facts on such weak and insufficient material.

7. Mala fides violating the proceedings may be legal or factual. Former arises as a matter of law where a public functionary acts deliberately in defiance of law without any malicious intention or improper motive whereas the latter is actuated by extraneous considerations. But neither can be assumed or readily inferred. It requires strong evidence and unimpeachable proof. Neither the order passed by the learned Single Judge granting ex parte order of stay preventing opposite party from going abroad was against provisions of law nor was the State guilty of acting mala fides in approaching the learned Single Judge by way of writ petition. The order of the trial Judge could not be challenged before the Division Bench. Under the rules of the court, the correctness of, the order could be assailed only in the manner it was done by the State. Any party aggrieved by an order is entitled to challenge it in a court of law. Such action is neither express malice nor malice in law.

8. The opposite party was charged with very serious offence. He was arrested when he was about to leave the country. The State was possessed of material that he had, even, applied for matrimonial alliance in response to an advertisement issued from New York. The order of the trial Judge, therefore, permitting opposite party to leave the country without trial must have created a flutter in the department. It was by all standards a sensational and a sensitive case. The public prosecutor and the prosecuting Inspector who were entrusted with responsibility to prosecute the opposite party must have felt worked up by the order permitting the opposite party to leave the country. Decision must have been taken to prevent the opposite party by approaching the High Court by way of a writ petition instead of approaching the Division Bench. Assuming that the State took recourse to this method, as it might have been apprehensive that it would not get any order from the Division Bench, the State could not be accused of mala fides so long it proceeded in accordance with law. Apart from that once it was brought to the notice of the Division Bench that the State had procured an ex parte order from the learned Judge who was requested by the Division Bench to treat the matter urgent and hear parties and the application was heard on February 16 and the learned Judge refused to vacate the interim order and confirmed it, the entire basis of mala fide stood demolished. The learned Judge was not justified in blaming the State for getting the notice returnable on February 18. That was order of the court. In any case the opposite party having appeared on 16th yet the learned Judge having refused to modify his order it was too much to hold the State or public prosecutor responsible for it.

9. Sharp practice is not a court language. We are sorry to say so. Facts did not justify it. Legal propriety does not countenance use of such expressions favourably. The learned Judge, to our discomfort, used very harsh language without there being any occasion for it. A State counsel with all the aura of office suffers dual handicap of being looked upon by the other side as the necessary devil and the courts too at times, find it easier to frown upon him. The moral responsibility of a State counsel, to place the facts correctly, honestly and fairly before the court, having access to State records, coupled with his duty to secure an order in favour of his client requires him to discharge his duty responsibly and sensibly. Even so if a State

lawyer who owes a special duty and is charged with higher standard of conduct in his zeal or due to pressure, not uncommon in the present day, adopts a partisan approach that by itself is not sufficient to warrant a finding of unfairness or resorting to sharp practice. In this case too not more than this appears to have happened. May be the public prosecutor may have exhibited more zeal. But that could not be characterised as unfair. Maybe it would have been proper and probably better to inform the learned Single Judge about the earlier order passed by the Division Bench. But assuming the public prosecutor did not inform and remained content with its disclosure in the body of the petition she could not be held to have acted dishonestly.

10. We are constrained to observe our unhappiness on the manner in which the writ petition was summoned by Mr Justice Saldanha from the office, heard and decided. As stated earlier the writ petition was directed by the learned Judge to be listed before him, on a mention made by the opposite party in course of dictation of judgment in criminal revision wherein he had made observations against the public prosecutor. A Judge of the High Court may have unchallenged and unfettered power to direct the office to list a case before him. But that by itself restricts the exercise of power and calls for strict judicial discipline. We do not intend to make any comment but we are of opinion that if the learned Judge would have avoided sending for and deciding the petition, which as pointed out by the learned senior counsel for the State had become infructuous, it would have been more in keeping with judicial culture.

11. For reasons stated above by us this appeal succeeds and is allowed. The order dated October 28, 1991 passed in civil miscellaneous writ petition is set aside. It shall stand dismissed as infructuous. The Intervention Application No. 943 of 1992 of the Public Prosecutor is allowed. We make it clear that all the observations and remarks made by the learned Judge against the State and Public Prosecutor shall stand expunged.

* * * * *

Vinay Chandra Mishra, In re

(1995) 2 SCC 584

P.B. SAWANT, J. - On 10-3-1994, Justice S.K. Keshote of the Allahabad High Court addressed a letter to the Acting Chief Justice of that Court as follows:

"No. SKK/ALL/8/94 10-3-1994

Dear Brother Actg. Chief Justice,

Though on 9-3-1994 itself I orally narrated about the misbehaviour of Shri V.C. Mishra with me in the Court but I thought it advisable to give you the same in writing also.

On 9-3-1994 I was sitting with Justice Anshuman Singh in Court No. 38. In the list of fresh cases of 9-3-1994 at Sr. No. 5 FAFO Record No. 22793 **M/s *Bansal Forgings Ltd.* v. *U.P. Financial Corpn.*** filed by Smt S.V. Misra was listed. Shri V.C. Mishra appeared in this case when the case was called.

Brief facts of that case

M/s Bansal Forgings Ltd. took loan from U.P. Financial Corporation and it made default in payment of instalment of the same. The Corporation proceeded against the Company under Section 29 of the U.P. Financial Corporation Act. The Company filed a civil suit against the Corporation and it has also filed an application for grant of temporary injunction. Counsel for the Corporation suo motu put appearance in the matter before trial court and prayed for time for filing of reply. The learned trial court passed an order on the said date that the Corporation will not seize the factory of the Company. The Company shall pay the amount of instalment and it will furnish also security for the disputed amount. The court directed to furnish security on 31-1-1994 and case was fixed on 15-3-1994.

Against said order of the trial court this appeal has been filed and arguments have been advanced that that Court has no jurisdiction to pass the order for payment of instalment of loan and further no security could have been ordered.

I put a question to Shri Mishra under which provision this order has been passed. On putting of question he started to shout and said that no question could have been put to him. He will get me transferred or see that impeachment motion is brought against me in Parliament. He further said that he has turned up many Judges. He created a good scene in the Court. He asked me to follow the practice of this Court. In sum and substance it is a matter where except to abuse me of mother and sister he insulted me like anything. What he wanted to convey to me was that admission is as a course and no arguments are heard, at this stage. It is not the question of insulting of a Judge of this institution but it is a matter of institution as a whole. In case dignity of Judiciary is not being maintained then where this institution will stand. In case a Senior Advocate, President of Bar and Chairman of Bar Council of India behaves in Court in such manner what will happen to other advocates.

Since the day I have come here I am deciding the cases on merits. In case a case has merits it is admitted but not as a matter of course. In this Court probably advocates do not like the consideration of cases on their merits at the stage of admission. In case dignity of

Judiciary is not restored then it is very difficult for the Judges to discharge their judicial function without fear and favour.

I am submitting this matter to you in writing to bring this mishappening in the Court with the hope that you will do something for restoration of dignity of Judiciary.

Thanking you,

Yours sincerely,
Sd/- (Jus. S.K. Keshote) "

2. The Acting Chief Justice, Shri V.K. Khanna forwarded the said letter to the then Chief Justice of India by his letter of 5-4-1994. The learned Chief Justice of India constituted this Bench to hear the matter on 15-4-1994.

3. On 15-4-1994, this Court took the view that there was a prima facie case of criminal contempt of court committed by Shri Vinay Chandra Mishra (the 'contemner') and issued a notice against him to show cause why contempt proceedings be not initiated against him. By the same order, Shri D.P. Gupta, the learned Solicitor General of India was requested to assist the Court in the matter. Pursuant to the notice, the contemner filed his reply by affidavit dated 10-5-1994 and also an application seeking discharge of show-cause notice, and in the alternative for an inquiry to be held into the incident referred to by Justice Keshote in his letter which had given rise to the contempt proceedings. It is necessary at this stage to refer to the material portions of both the affidavit and the application filed by the contemner. After referring to his status as a Senior Advocate of the Allahabad High Court and his connections with the various law organisations in different capacities to impress upon the Court that he had a deep involvement in the purity, integrity and solemnity of judicial process, he has submitted in the affidavit that but for his deep commitments to the norms of judicial processes as evidenced by his said status and connections, he would have adopted the usual expedient of submitting his unconditional regrets. But the facts and circumstances of this case were such which induced him to "state the facts and seek the verdict of the Court" whether he had committed the alleged contempt or whether it could be "a judge committing contempt of his own court". He has then stated the facts which according to him form the 'genesis' of the present controversy. They are as follows:

"*A.* A Private Ltd. Co. had taken an instalment loan from U.P. Financial Corporation, which provides under its constituent Act (Section 29) for some sort of self-help in case of default of instalments.

B. A controversy arose between the said Financial Corporation and the borrower as a result of which, the borrower had to file a civil suit seeking an injunction against the Corporation for not opting for the non-judicial sale of their assets.

C. The civil court granted the injunction against putting the assets to sale, but at the same time directed furnishing security for the amount due.

D. Being aggrieved by the condition of furnishing security, which in law would be tantamount to directing a mortgagor to furnish security for payment of mortgage loan, even when he satisfies the Court that a stay is called for - the property mortgaged being a pre-existing security for its payment.

E. The Company filed an FAFO being No. 229793 of 1994 against the portion of the order directing furnishing of security.

F. The said FAFO came for preliminary hearing before Hon'ble Justice Anshuman Singh and the Applicant of this petition on 9-3-1994, in which I argued for the debtor-Company.

G. When the matter was called on Board, the Applicant took charge of the court proceedings and virtually foreclosed attempts made by the Senior Judge to intervene. The Applicant Judge inquired from me as to under what law the impugned order was passed to which I replied that it was under various rules of Order 39 CPC. That Applicant therefore conveyed to me that he was going to set aside the entire order, against a portion of which I had come in appeal, because in his view the Lower Court was not competent to pass such an order as Order 39 did not apply to the facts.

H. I politely brought to the notice of the Applicant Judge that being the appellant I had the dominion over the case and it could not be made worse, just because I had come to High Court.

I. The Applicant Judge apparently lost his temper and told me in no unconcealed term that he would set aside the order in toto, disregarding what I had said.

J. Being upset over, what I felt was an arbitrary approach to judicial process I got emotionally perturbed and my professional and institutional sensitivity got deeply wounded and I told the Applicant Judge that it was not the practice in this Court to dismiss cases without hearing or to upset judgments or portions of judgments, which have not been appealed against. Unfortunately the Applicant Judge took it unsportingly and apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order.

K. At this juncture, the Hon'ble Senior Judge intervened, whispered something to the Applicant Judge and directed the case to be listed before some other Bench. It was duly done and by an order of the other Court dated 18-3-1994 Hon'ble Justices B.M. Lal and S.K. Verma, the points raised by me before the Applicant Judge were accepted. A copy of the said order is reproduced as Annexure I to this affidavit.

L. I find it necessary to mention that the exchange that took place between me and the Applicant Judge got a little heated up. In the moment of heat the Applicant Judge made the following observations:

'I am from the Bar and if need be I can take to goondaism.'

Adding in English -

'I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked.'

Provoked by this I asked him whether he was creating a scene to create conditions for getting himself transferred as also talked earlier."

After narrating the above incident, the contemner has gone on to deny that he had referred to any impeachment, though according to him he did mention that "a judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence".

4. The contemner has further denied the allegations made by Justice Keshote that as soon as the case was called out, he (i.e. Justice Keshote) asked him the provision under which the

impugned order was passed and that he had replied that the Court had no jurisdiction to ask the same and should admit and grant the stay order. According to him, such a reply could only be attributed to one who is 'mad' and that considering his practice of thirty-five years at the Bar and his responsible status as a member of the Bar, it is unbelievable that he would reply in such a "foolish manner". The contemner has further denied that he had abused the learned Judge since according to him he had never indulged in abusing anybody. With regard to the said allegations against him, the contemner has stated that the same are vague and, therefore, "nothing definite is warranted to reply".

5. He has further contended in his affidavit that if the learned Judge was to be believed that he had committed the contempt, the Senior Judge who was to direct the court proceedings would have initiated proceedings under "Article 129 of the Constitution" for committing contempt *in facie curiae*. He has also stated that the learned Judge himself did not direct such proceedings against him which he could have. He has found fault that instead of doing so, the learned Judge had "deferred the matter for the next day and adopted a devious way of writing to the Acting Chief Justice for doing something about it". He has then expressed his 'uncomprehension' with (*sic* why) the learned Judge should have come to the Supreme Court when he had ample and sufficient legal and constitutional powers to arraign him at the Bar for what was attributed to him.

6. The contemner has then gone on to complain that the "language used" by the learned Judge "in the Court extending a threat to resort to goondaism is acting in a way which is professionally perverse and approximating to creating an unfavourable public opinion about the awesomeness of judicial process, lowering or tending to lower the authority of any Court" which amounted to contempt by a Judge punishable under Section 16 of the Contempt of Courts Act, 1971. He has then gone on to submit "under compulsion of" his "institutional and professional conscience" and for "upholding professional standards expected of both the Bench and the Bar of this Court" that this Court may order a thorough investigation into the incident in question to find out whether a contempt has been committed by him punishable under "Article 215" of the Constitution or by the Judge under Section 16 of the Contempt of Courts Act.

7. He has further stated that the entire Bar at Allahabad knows that he was unjustly 'roughed' by the Judge and was being punished for taking a "fearless and non-servile stand" and that he is being prosecuted for asserting the right of audience and using "the liberty to express his views" when a Judge takes a course "which in the opinion of the Bar is irregular". He has also contended that any punishment meted out to the "outspoken lawyer" will completely emasculate the freedom of the profession and make the Bar "a subservient, tail-wagging appendage to the judicial branch, which is an anathema to a healthy democratic judicial system".

8. He has made a complaint that he was feeling handicapped in not being provided with the copy of the letter/report of the Acting Chief Justice of the Allahabad High Court and he has also been unable to gauge the "rationale of the applicant in not having initiated proceedings" against him either immediately or a day following, when he chose to address a letter to the Acting Chief Justice. He has then contended that he wanted to make it clear that he was seeking a formal inquiry not for any vindication of any personal hurt but to make

things safe for the profession which in a small way by a quirk of destiny come to his keeping also. He has also stated that he would be untrue and faithless to his office if he subordinated the larger interests of the profession and dignity of the judicial process for a small thing of seeking his little safety. The contemner goes on to state that he did not opt for filing a contempt against the learned Judge as in normal course of arguments, sometimes altercations take place between a Judge and the arguing advocate, which may technically be contempt on either side but there being no intention, provisions of contempt are not attracted. In support of his said case, he has reproduced an extract from Oswald's ***Contempt of Court***, 3rd Edn., by Robertson. The said extract is as follows:

> "An advocate is at liberty, when addressing the Court in regular course, to combat and contest strongly any adverse views of the Judge or Judges expressed on the case during its argument, to object to and protest against any course which the Judge may take and which the advocate thinks irregular or detrimental to the interests of his client, and to caution juries against any interference by the Judge with their functions, or with the advocate when addressing them, or against any strong view adverse to his client expressed by the presiding Judge upon the facts of a case before the verdict of the jury thereon. An advocate ought to be allowed freedom and latitude both in speech and in the conduct of his client's case. It is said that a Scotch advocate was arguing before a Court in Scotland, when one of the Judges, not liking his manner, said to him, 'It seems to me, Mr Blank, that you are endeavouring in every way to show your contempt for the Court.' 'No', was the quick rejoinder, 'I am endeavouring in every way to conceal it'."

9. In the end, he has stated that he had utmost respect and regard for the courts and he never intended nor intends not to pay due respect to the courts which under the law they are entitled to and it is for this reason that instead of defending himself through an advocate, he had left to the mercy of this Court to judge and decide the right and wrong. He has also stated that it is for this reason that he had not relied upon the provisions of the Constitution under Articles 129 and 215 and Section 16 of the Contempt of Courts Act and to save himself on the technicality and jurisdictional competence.

10. Lastly, he has reiterated that he had always paid due regard to the courts and he was paying the same and will continue to pay the same and he "neither intended nor intends to commit contempt of any court".

11. Along with the aforesaid affidavit was forwarded by the contemner, a petition stating therein that he had not gone beyond the legitimate limits of fearless, honest and independent obligations of an advocate and it was Justice Keshote himself who had lost his temper and extended threats to him which were such as would be punishable under Section 16 of the Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act'). He has prayed that the notice issued to him be discharged and if in any case, this Court does not feel inclined to discharge the notice, he "seeks his right to inquiry and production of evidence directly or by affidavits" as this Court may direct. He has further stated in that petition that he is moving an independent application for contempt proceedings to be drawn against the learned Judge and it would be in the interests of justice and fair play if the two are heard together. It has to be noted that the contemner has throughout this affidavit as well as the petition referred to Justice Keshote as 'applicant', although he knew very well that contempt proceedings had

been initiated suo motu by this Court on the basis of the letter written by Justice Keshote to the Acting Chief Justice of the High Court. His manner of reference to the learned Judge also reveals the respect in which he holds the learned Judge.

12. The contemner has also filed another petition on the same day as stated in the aforesaid petition wherein he has prayed that on the facts stated in the reply affidavit to the show-cause notice for contempt proceedings against him, this Court be pleased to draw proceedings under Section 16 of the Act against the learned Judge for committing contempt of his own court and hold an inquiry. In this petition, he has stated that in his reply to the contempt notice, he has brought the whole truth before this Court which according to him was witnessed by the Senior Judge of the Bench, Justice Anshuman Singh and a large number of advocates. Once again referring to Justice Keshote as the applicant, he has stated that the learned Judge in open court conveyed to him (i.e. the contemner) that he can take to goondaism if need arises, that he also talked disparagingly against the Chief Justice of India for not transferring him to the place for which he had opted and talked to the contemner scurrilously and in a manner unworthy of a Judge and also attempted to gag the contemner from discharging his duties as an advocate. The contemner has further contended that as a common law principle relating to contempt of courts, a Judge is liable for contempt of his own court as much as any other person associated with judicial proceedings and outside, and that the aforesaid principle has been given statutory recognition under Section 16 of the Act. He has further contended that the behaviour of the learned Judge was so unworthy that the senior colleague on the Bench apart from "disregarding with the desire of the applicant to dismiss the entire order" against a part of which an appeal had been filed, released the case from the board and did not think of taking recourse to the obvious and well-known procedure of initiating contempt proceedings against him for the alleged contempt committed in the face of the Court. He has further contended that "the adoption of devious ways of reaching the Acting Chief Justice by letter and reportedly coming to Delhi for meeting meaningful people" is "itself seeking (*sic*) about the infirmity of the case" of the Judge. He has in the end reiterated his prayer for an inquiry into the behaviour of the learned Judge if the notice of contempt was not discharged against him in view of the denial by him of the conduct alleged against him.

14. On 30-6-1994 the contemner filed his supplementary/additional counter-affidavit. In this affidavit, he raised objections to the maintainability "of initiating contempt proceedings" against him. His first objection was to the assumption of jurisdiction by this Court to punish for an act of contempt committed in respect of another court of record which is invested with identical and independent power for punishing for contempt of itself. According to him, this Court can take cognizance only of contempt committed in respect of itself. He has also demanded that in view of the point of law raised by him, the matter be placed before the Constitution Bench and that notice be issued to the Attorney General of India and all the Advocates General of the States. He has then gone on to deny the statements made by the learned Judge in the letter written to the Acting Chief Justice of the High Court and in view of the said denial by him, he has asked for the presence of the learned Judge in the Court for being cross-examined by him, i.e., the contemner. He has further stated that if the contempt proceedings are taken against him, the statement of Justice Anshuman Singh who was the

Senior Judge on the Bench before which the incident took place, would also be necessary. He has also taken exception to Justice Keshote's speaking in the Court except through the Senior Judge on the Bench which, according to him had been the practice in the Allahabad High Court, and has alleged that the learned Judge did not follow the said convention. In the end, he has reiterated that he has utmost respect and regard for the courts and he has never intended nor intends not to pay due regard to the courts.

15. On 15-7-1994 this Court passed an order wherein it is recorded that on 15-4-1994 the court had issued a notice to the contemner to show cause as to why criminal contempt proceedings be not initiated against him and notice was issued on its own motion. The Court heard the contemner in person as well as his learned counsel. The Court perused the counter-affidavit and the additional affidavit of the contemner and was of the view that it was a fit case where criminal contempt proceedings be initiated against the contemner. Accordingly, the Court directed that the proceedings be initiated against him. The contemner was given an opportunity to file any material in reply or in defence within another eight weeks. He was also allowed to file the affidavit of any other person apart from himself in support of his defence. Shri Gupta, learned Solicitor General was appointed as the prosecutor to conduct the proceedings. 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.

16. In view of the said order, the Court dismissed the contemner's Application No. 2560 of 1994 praying for discharge of the notice. The contemner thereafter desired to withdraw his Application No. 2561 of 1994 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.

17. Justice Keshote by a letter of 20-8-1994 forwarded his comments on the counter-affidavit and the supplementary/additional counter-affidavit filed by the contemner. The learned Judge denied that he took charge of the court proceedings and virtually foreclosed the attempts made by the Senior Judge to intervene, as was alleged by the contemner. He stated that being a member of the Bench, he put a question to the contemner as to under which provision, the order under appeal had been passed by the trial court, and upon that the contemner started shouting and said that he would get him transferred or see to it that impeachment motion was brought against him in Parliament. According to the learned Judge, the contemner said many more things as already mentioned by him in his letter dated 10-3-1994. He further stated that the contemner created a scene which made it difficult to continue the court proceedings and ultimately when it became difficult to hear all the slogans, insulting words and threats, he requested his learned brother on the Bench to list that case before another Bench and to retire to the chamber. Accordingly, the order was made by the other learned member of the Bench and both of them retired to their chambers.

18. The learned Judge also stated that the contemner has made wrong statement when he states "that applicant, therefore, conveyed to me that he was going to set aside the entire order, against portion of which I had come in appeal because in his view, the lower court was not competent to pass such order as Order 39 did not apply to the facts". The learned Judge

stated that he neither made any such statement nor conveyed to the contemner, as suggested by him. He reiterates that except one sentence, viz., "that under which provision this order had been made by the trial court" nothing was said by him. According to the learned Judge, it was a case where the contemner did not permit the court proceedings to be proceeded and both the Judges ultimately had to retire to the chambers. The learned Judge alleges that the counter-affidavit manufactures a defence. He has denied the contents of para 6(H) and (I) of the counter-affidavit by stating that nothing of the kind as alleged therein had happened. According to the learned Judge, it was a case where the contemner lost his temper on the question being put to him by him, i.e., the learned Judge. He has stated that instead of losing his temper and creating a scene and threatening and terrorising him, the contemner should have argued the matter and encouraged the new junior Judge. The learned Judge has further denied the following averment, viz., "unfortunately, the applicant Judge took it unsportingly and apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order" made in para 6(J) of the counter-affidavit, as wrong. He has pointed out that in the Division Bench, it is the senior member who dictates order/judgments. He has also denied the statements attributed to him in other paragraphs of the affidavit and in particular, has stated that he did not make the following observations: "I am from the Bar and if need be I can take to goondaism" and has alleged that the said allegations are absolutely wrong. He has also denied that he ever made the statements as follows: "I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place which I never liked." According to him, the said allegations are manufactured with a view to create a defence. He has denied the allegations made against him in the additional/supplementary affidavits as wrong and has stated that what actually happened in the Court was stated in his letter of 10-3-1994.

19. On 7-10-1994, the contemner filed his unconditional written apology in the following words:

> "*1.* In deep and regretful realization of the fact that a situation like the one which has given rise to the present proceedings, and which in an ideal condition should never have arisen, subjects me to deep anguish and remorse and a feeling of moral guilt. The feeling has been compounded by the fact of my modest association with the profession as the Senior Advocate for some time and also being the President of the High Court Bar Association for multiple terms (from which I have resigned a week or ten days back), and also being the Chairman of the Bar Council of India for the third five-year term. The latter two being elective posts convey with its holding an element of trust by my professional fraternity which expectations of setting up an example of an ideal advocate, which includes generating an intra-professional culture between the Bar and the Bench, under which the first looks upon the second with respect and resignation, the second upon the first with courtesy and consideration. It also calls for cultivation of a professional attitude amongst the lawyers to learn to be good and sporting losers.
>
> *2.* Guilty realizing my failure at approximating these standards resulting in the present proceedings, *nolo contendere* I submit my humble and unconditional

apologies for the happenings in the Court of Justice S.K. Keshote at Allahabad High Court on 9-3-1994, and submit myself at the Hon. Court's sweet will.

3. I hereby withdraw from record all my applications, petitions, counter-affidavits, and prayers made to the court earlier to the presented (sic) of this statement. I, also, withdraw all submissions made at the Bar earlier and rest my matter with the present statement alone, and any submissions that may be made in support of or in connection with statement."

20. On that day, the matter was adjourned to 24-11-1994 to enable the learned counsel for the parties to make further submissions on the apology and to argue the case on all points, since the Court stated that it may not be inclined to accept the apology as tendered. The learned counsel for all the parties including the contemner, Bar Council of India and the State Bar Council of U.P. (who were allowed to intervene) were heard and the matter was reserved for judgment.

21. Thereafter, the State Bar Council of U.P. also submitted its written submissions on 26-11-1994 along with an application for intervention. We have perused the said submissions.

22. We may first deal with the preliminary objection raised by the contemner and the State Bar Council, viz., that this Court cannot take cognizance of the contempt of the High Courts. The contention is based on two grounds. The first is that Article 129 vests this Court with the power to punish only for the contempt of itself and not of the High Courts. Secondly, the High Court is also another court of record vested with identical and independent power of punishing for contempt of itself.

23. The contention ignores that the Supreme Court is not only the highest court of record, but under various provisions of the Constitution, is also charged with the duties and responsibilities of correcting the lower courts and tribunals and of protecting them from those whose misconduct tends to prevent the due performance of their duties. The latter functions and powers of this Court are independent of Article 129 of the Constitution. When, therefore, Article 129 vests this Court with the powers of the court of record including the power to punish for contempt of itself, it vests such powers in this Court in its capacity as the highest court of record and also as a court charged with the appellate and superintending powers over the lower courts and tribunals as detailed in the Constitution. To discharge its obligations as the custodian of the administration of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, it is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour and for that purpose all the courts and tribunals are protected while discharging their legitimate duties. To discharge this obligation, this Court has to take cognizance of the deviation from the path of justice in the tribunals of the land, and also of attempts to cause such deviations and obstruct the course of justice. To hold otherwise would mean that although this Court is charged with the duties and responsibilities enumerated in the Constitution, it is not equipped with the power to discharge them.

24. This subject has been dealt with elaborately by this Court in ***Delhi Judicial Service Assn.* v. *State of Gujarat*** [(1991) 4 SCC 406]. We may do no better than quote from the said decision the relevant extracts:

> "*18.* There is therefore no room for any doubt that this Court has wide power to interfere and correct the judgment and orders passed by any court or tribunal in the country. In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India.
>
> *19.* Article 129 provides that the Supreme 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. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself. The Constitution does not define 'Court of Record'. This expression is well recognised in juridical world. In **Jowitt's *Dictionary of English Law***, 'Court of Record' is defined as:
>
> 'A court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority.'
>
> In Wharton's ***Law Lexicon***, Court of Record is defined as:
>
> 'Courts are either of record where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison; or not of record being courts of inferior dignity, and in a less proper sense the King's Courts - and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. These proceedings are not enrolled or recorded.'

In ***Words and Phrases*** (Permanent Edn., Vol. 10, p. 429) 'Court of Record' is defined as under:

> 'Court of Record is a court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the 'record' of the court, and are of such high and supereminent authority that their truth is not to be questioned.'
>
> **Halsbury's *Laws of England***, 4th Edn., Vol. 10, para 709, p. 319, states:
>
> 'Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record. In the case of courts not expressly declared to be courts of record, the answer to the question whether a court is a court of record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record.... The

proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein.'

23. The question whether in the absence of any express provision a Court of Record has inherent power in respect of contempt of subordinate or inferior courts, has been considered by English and Indian courts.

These authorities show that in England the power of the High Court to deal with the contempt of inferior court was based not so much on its historical foundation but on the High Court's inherent jurisdiction being a court of record having jurisdiction to correct the orders of those courts.

24. In India prior to the enactment of the Contempt of Courts Act, 1926, High Court's jurisdiction in respect of contempt of subordinate and inferior courts was regulated by the principles of Common Law of England. The High Courts in the absence of statutory provision exercised power of contempt to protect the subordinate courts on the premise of inherent power of a Court of Record.

26. The English and the Indian authorities are based on the basic foundation of inherent power of a Court of Record, having jurisdiction to correct the judicial orders of subordinate courts. The King's Bench in England and High Courts in India being superior Courts of Record and having judicial power to correct orders of subordinate courts enjoyed the inherent power of contempt to protect the subordinate courts. The Supreme Court being a Court of Record under Article 129 and having wide power of judicial supervision over all the courts in the country, must possess and exercise similar jurisdiction and power as the High Courts had prior to Contempt Legislation in 1926. Inherent powers of a superior Court of Record have remained unaffected even after codification of Contempt Law.

28. The Parliament's power to .The Parliament's power to legislate in relation to law of contempt relating to Supreme Court is limited, therefore the Act does not impinge upon this Court's power with regard to the contempt of subordinate courts under Article 129 of the Constitution.

29. Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court *including the power to punish for contempt of itself*. The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity of inserting the expression '*including the power to punish for contempt of itself*'. The article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression 'including'. The expression 'including' has been interpreted by courts, to extend and widen the scope of power. The plain language of Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record.

In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record has inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression 'including' was deliberately inserted in the article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdiction of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very backbone of administration of justice. The subordinate courts administer justice at the grassroot level, their protection is necessary to preserve the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level.

31. We have already discussed a number of decisions holding that the High Court being a court of record has inherent power in respect of contempt of itself as well as of its subordinate courts even in the absence of any express provision in any Act. A fortiori the Supreme Court being the Apex Court of the country and superior court of record should possess the same inherent jurisdiction and power for taking action for contempt of itself as well as for the contempt of subordinate and inferior courts. It was contended that since High Court has power of superintendence over the subordinate courts under Article 227 of the Constitution, therefore, High Court has power to punish for the contempt of subordinate courts. Since the Supreme Court has no supervisory jurisdiction over the High Courts or other subordinate courts, it does not possess powers which High Courts have under Article 215. This submission is misconceived. Article 227 confers supervisory jurisdiction on the High Court and in exercise of that power High Court may correct judicial orders of subordinate courts, in addition to that, the High Court has administrative control over the subordinate courts. Supreme Court's power to correct judicial orders of the subordinate courts under Article 136 is much wider and more effective than that contained under Article 227. Absence of administrative power of superintendence over the High Courts and subordinate courts does not affect this Court's wide power of judicial superintendence of all courts in India. Once there is power of judicial superintendence, all the courts whose orders are amenable to correction by this Court would be subordinate courts and therefore this Court also possesses similar inherent power as the High Court has under Article 215 with regard to the contempt of subordinate courts. The jurisdiction and power of a superior Court of Record to punish contempt of subordinate courts was not founded on the Court's administrative power of superintendence, instead the inherent jurisdiction was conceded to superior Court of Record on the premise of its judicial power to correct the errors of subordinate courts.

36. Advent of freedom, and promulgation of Constitution have made drastic changes in the administration of justice necessitating new judicial approach. The Constitution has assigned a new role to the Constitutional Courts to ensure rule of law in the country. These changes have brought new perceptions. In interpreting the Constitution, we must have regard to the social, economic and political changes, need of the community and the independence of judiciary. The court cannot be a helpless spectator, bound by precedents of colonial days which have lost relevance. Time has come to have a fresh look at the old precedents and to lay down law with the changed perceptions keeping in view the provisions of the Constitution. 'Law', to use the words of Lord Coleridge, 'grows; and though the principles of law remain unchanged, yet their application is to be changed with the changing circumstances of the time'. The considerations which weighed with the Federal Court in rendering its decision in ***Gauba*** [***K.L. Gauba* v. *Hon'ble the Chief Justice and Judges of the High Court of Judicature at Lahore*** AIR 1942 FC 1] and ***Jaitly*** case [***Purshottam Lal Jaitly* v. *King-Emperor***, 1944 FCR 364] are no more relevant in the context of the constitutional provisions.

37. Since this Court has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The subordinate and inferior courts do not have adequate power under the law to protect themselves, therefore, it is necessary that this Court should protect them. Under the constitutional scheme this Court has a special role, in the administration of justice and the powers conferred on it under Articles 32, 136, 141 and 142 form part of the basic structure of the Constitution. The amplitude of the power of this Court under these articles of the Constitution cannot be curtailed by law made by Central or State legislature. If the contention raised on behalf of the contemners is accepted, the courts all over India will have no protection from this Court. No doubt High Courts have power to persist for the contempt of subordinate courts but that does not affect or abridge the inherent power of this Court under Article 129.

The Supreme Court and the High Courts both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Articles 32 and 226 of the Constitution, therefore this Court's jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. There may be occasions when attack on Judges and Magistrates of subordinate courts may have wide repercussions throughout the country, in that situation it may not be possible for a High Court to contain the same, as a result of which the administration of justice in the country may be paralysed, in that situation the Apex Court must intervene to ensure smooth functioning of courts. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice throughout the country, for that purpose it must wield the requisite power to take action for contempt of subordinate courts. Ordinarily, the High Court would protect the subordinate court

> from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, this Court may directly take cognizance of contempt of subordinate courts. We would like to strike a note of caution that this Court will sparingly exercise its inherent power in taking cognizance of the contempt of subordinate courts, as ordinarily matters relating to contempt of subordinate courts must be dealt with by the High Courts. The instant case is of exceptional nature, as the incident created a situation where functioning of the subordinate courts all over the country was adversely affected, and the administration of justice was paralysed, therefore, this Court took cognizance of the matter.
>
> *38.* It is true that courts .It is true that courts constituted under a law enacted by Parliament or the State legislature have limited jurisdiction and they cannot assume jurisdiction in a matter, not expressly assigned to them, but that is not so in the case of a superior court of record constituted by the Constitution. Such a court does not have a limited jurisdiction instead it has power to determine its own jurisdiction. No matter is beyond the jurisdiction of a superior court of record unless it is expressly shown to be so, under the provisions of the Constitution. In the absence of any express provision in the Constitution, the Apex Court being a court of record has jurisdiction in every matter and if there be any doubt, the Court has power to determine its jurisdiction. If such determination is made by High Court, the same would be subject to appeal to this Court, but if the jurisdiction is determined by this Court it would be final.
>
> We therefore hold that this Court being the Apex Court and a superior court of record has power to determine its jurisdiction under Article 129 of the Constitution, and as discussed earlier it has jurisdiction to initiate or entertain proceedings for contempt of subordinate courts. This view does not run counter to any provision of the Constitution."

27. In the present case, although the contempt is in the face of the court, the procedure adopted is not only 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. However, in the affidavit which he has filed, he has requested for an examination of the learned Judge. We have at length dealt with the nature of *in facie curiae* contempt and the justification for adopting summary procedure and punishing the offender on the spot. In such procedure, there is no scope for examining the Judge or Judges of the court before whom the contempt is committed. To give such a right to the contemner is to destroy not only the raison d'être for taking action for contempt committed in the face of the court but also to destroy the very jurisdiction of the court to adopt proceedings for such conduct. It is for these reasons that neither the common law nor the statute law countenances the claim of the offender for examination of the Judge or Judges before whom the contempt is committed. Section 14 of our Act, i.e. the Contempt of Courts Act, 1971 deals with the procedure when the action is taken for the contempt in the face of the

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

28. We may now refer to the matters in dispute to examine whether the contemner is guilty of the contempt of court. Under the common law definition, "contempt of court" is defined as an act or omission calculated to interfere with the due administration of justice. This covers criminal contempt (that is, acts which so threaten the administration of justice that they require punishment) and civil contempt (disobedience of an order made in a civil cause). Section 2(*a*), (*b*) and (*c*) of the Act defines the contempt of court as follows:

> **"2. *Definitions*.**- In this Act, unless the context otherwise requires,-
>
> (*a*) 'contempt of court' means civil contempt or criminal contempt;
>
> (*b*) 'civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;
>
> (*c*) 'criminal contempt' means 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 -
>
> (*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
>
> (*ii*) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
>
> (*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

29. From the facts which have been narrated above, it is clear that the allegations against the contemner, if true, would amount to criminal contempt as defined under Section 2(*c*) of the Act. It is in the light of this definition of the "criminal contempt" that we have to examine the facts on record.

30. The essence of the contents of Justice Keshote's letter is that when he put a question to the contemner as to under which provision the order was passed by the lower court, the contemner "started to shout and said that no question could have been put to him". The contemner further said that he would get the learned Judge transferred or see that impeachment motion was brought against him in Parliament. He also said that he had "turned up many judges". He also created a scene in the Court. The learned Judge has further stated in his letter that in sum and substance it was a matter where "except to abuse him of mother and sister", he insulted him "like anything". The contemner, according to the learned Judge,

wanted to convey to him that admission was a matter of course and no arguments were to be heard at that stage. The learned Judge has given his reaction to the entire episode by pointing out that this is not a question of insulting a Judge but the institution as a whole. In case the dignity of the judiciary was not maintained then he "did not know where the institution would stand, particularly when contemner who is a Senior Advocate, President of the Bar and Chairman of the Bar Council of India behaved in the court in such manner which will have its effect on other advocates as well". He has further stated that in case the dignity of the judiciary is not restored, it would be very difficult for the Judges to discharge the judicial function without fear or favour. At the end of his letter, he has appealed to the learned Acting Chief Justice for "restoration of dignity of the judiciary".

31. The contemner, as pointed out above, by filing an affidavit has denied the version of the episode given by the learned Judge and has stated that when the matter was called on, the learned Judge (he has referred to him as the 'applicant') took charge of the court proceedings and virtually foreclosed the attempts made by the Senior Judge to intervene. The learned Judge enquired from the contemner as to under which law the impugned order was passed to which the latter replied that it was under various rules of Order 39 CPC. The learned Judge then conveyed to the contemner that he was going to set aside the entire order although against a portion of it only he had come in appeal. According to the contemner, he then politely brought to the notice of the learned Judge that being the appellant, he had the dominion over the case and it could not be made worse just because he had come to High Court. According to the contemner, the learned Judge then apparently lost his temper and told him that he would set aside the order in toto disregarding what he had said. The contemner has then proceeded to state that "being upset over what" he felt was an arbitrary approach to judicial process he "got emotionally perturbed" and "his professional and institutional sensitivity got deeply wounded" and he told the applicant-Judge that "it was not the practice" of that Court to dismiss a case without hearing or to upset judgments or portions of judgments which have not been appealed against. According to the contemner, "unfortunately the applicant-Judge took it unsportingly and apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order". The contemner has then stated that he "found it necessary to mention that the exchange that took place between him and the applicant-Judge got a little heated up". In the moment of heat the applicant-Judge made the following observations:

> "I am from the Bar and if need be I can take to goondaism. I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked."

According to the contemner, he was "provoked by this" and asked the learned Judge "whether he was creating a scene to create conditions for getting himself transferred as also talked earlier". The contemner has denied that he had referred to any impeachment although according to him, he did say that "a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence". He has also denied that when the learned Judge asked him as to under which provision the order was passed, he had replied that the Court had no jurisdiction to ask the same and should admit and

grant the stay order. He has added that such a reply could only be attributed to one who is mad and it is unbelievable that "he would reply in such a foolish manner". He has also denied that he had abused the learned Judge and the allegations made against him in that behalf were vague. According to the contemner, if he had committed the contempt, the senior member of the Bench would have initiated proceedings under "Article 129" of the Constitution for committing contempt *in facie curiae*. He has also stated that even the learned Judge himself could have done so but he did not do so and deferred the matter for the next day and "adopted a devious way of writing to the acting Chief Justice for doing something about it" which shows that the version of the episode was not correct. The contemner has also then expressed his "uncomprehension" why the learned Judge should have come to this Court when he had ample and sufficient legal and constitutional powers to arraign the contemner at the "Bar for what was attributed" to him.

32. Before we refer to the other contentions raised by the contemner, the question is which of the two versions has to be accepted as correct. The contemner has no doubt asked for an inquiry and an opportunity to produce evidence. For reasons stated earlier, we declined his request for such inquiry, but gave him ample opportunity to produce whatever material he desired to, including the affidavits of whomsoever he desired. Our order dated 15-7-1994 is clear on the subject. Pursuant to the said order, the contemner has not filed his further affidavit or material or the affidavit of any other person. Instead he tendered a written apology dated 7-10-1994 which will be considered at the proper place. In his earlier counter and additional counter, he has stated that it is not he who had committed contempt but it is the learned Judge who had committed contempt of his own court. According to him, the learned Judge had gagged him from discharging his duties as an advocate and the statement of senior member of the Bench concerned was necessary. He has taken exception to the learned Judge speaking in the Court except through the Senior Judge of the Bench which according to him, had been the practice in the said High Court and has also alleged that the learned Judge did not follow the said convention.

33. Normally, no Judge takes action for *in facie curiae* contempt against the lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which it is expressed and the intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the court and to threaten and obstruct the course of justice. After going through the report of the learned Judge and the affidavits and the additional affidavits filed by the contemner and after hearing the learned counsel appearing for the contemner, we have come to the conclusion that there is every reason to believe that notwithstanding his denials, and disclaimers, the contemner had undoubtedly tried to browbeat, threaten, insult and show disrespect personally to the learned Judge. This is evident from the manner in which even in the affidavits filed in this Court, the contemner has tried to justify his conduct. He has started narration of his version of the incident by taking exception to the learned Judge's taking charge of the court proceedings. We are unable to understand what exactly he means thereby. Every member of the Bench is on a par with the other member or members of the Bench and has a right to ask whatever questions he wants to, to appreciate the merits or demerits of the case. It is obvious that the contemner was incensed by the fact that the learned Judge was asking the questions to

him. This is clear from his contention that the learned Judge being a junior member of the Bench, was not supposed to ask him any question and if any questions were to be asked, he had to ask them through the senior member of the Bench because that was the convention of the Court. We are not aware of any such convention in any court at least in this country. Assuming that there is such a convention, it is for the learned Judges forming the Bench to observe it inter se. No lawyer or a third party can have any right or say in the matter and can make either an issue of it or refuse to answer the questions on that ground. The lawyer or the litigant concerned has to answer the questions put to him by any member of the Bench. The contemner has sought to rely on the so-called convention and to spell out his right from it not to have been questioned by the learned Judge. This contention coupled with his grievance that the learned Judge had taken charge of the proceedings, shows that the contemner was in all probability perturbed by the fact that the learned Judge was asking him questions. The learned Judge's version, therefore, appears to be correct when he states that the contemner lost his temper when he started asking him questions. The contemner has further admitted that he got "emotionally perturbed" and his "professional and institutional sensitivity got deeply wounded" because the learned Judge, according to him, apparently lost his temper and told him in no unconcealed terms that he would set aside the order in toto disregarding what he had said. The learned Judge's statement that the contemner threatened him with transfer and impeachment proceedings also gets corroboration from the contemner's own statement in the additional affidavit that he did tell the learned Judge that a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence. No one expects a lawyer to be subservient to the Court while presenting his case and not to put forward his arguments merely because the Court is against him. In fact, that is the moment when he is expected to put forth his best effort to persuade the Court. However, if, in spite of it, the lawyer finds that the court is against him, he is not expected to be discourteous to the court or to fling hot words or epithets or use disrespectful, derogatory or threatening language or exhibit temper which has the effect of overbearing the court. Cases are won and lost in the court daily. One or the other side is bound to lose. The remedy of the losing lawyer or the litigant is to prefer an appeal against the decision and not to indulge in a running battle of words with the court. That is the least that is expected of a lawyer. Silence on some occasions is also an argument. The lawyer is not entitled to indulge in unbecoming conduct either by showing his temper or using unbecoming language.

34. The incident had undoubtedly created a scene in the court since even according to the contemner, the exchange between the learned Judge and him was "a little heated up" and the contemner asked the learned Judge "whether he was creating scene to create conditions for getting himself transferred as also talked earlier". He had also to remind the learned Judge that "a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence". He has further stated in his affidavit that "the entire Bar at Allahabad" knew that he was unjustly "roughed" by the Judge and was being punished for taking "a fearless and non-servile stand" and that he was being prosecuted for 'asserting' a right of audience and "using the liberty to express his views when a Judge takes a course which in the opinion of the Bar is irregular". He has also stated that any punishment meted out to the 'outspoken' lawyer will completely emasculate the freedom of the profession and make the Bar a subservient tail-wagging appendage to the judicial branch

which is an anathema to a healthy democratic judicial system. He has further stated in his petition for taking contempt action against the learned Judge that the incident was "witnessed by a large number of advocates".

35. We have reproduced the contents of the letter written by the learned Judge and his reply to the affidavits filed by the contemner. The learned Judge's version is that when he put the question to the contemner as to under which provision, the lower court had passed the order in question, the contemner started shouting and said that no question could have been put to him. The contemner also stated that he would get him transferred or see that impeachment motion was brought against him in Parliament. He further said that he had "turned up" many judges and created a good scene in the Court. The contemner further asked him to follow the practice of the Court. The learned Judge has stated that in sum and substance, it was a matter where except "to abuse of his mother and sister", he had insulted him "like anything". The learned Judge has further stated that the contemner wanted to convey to him that admission of every matter was as a matter of course and no arguments were heard at the admission stage. He has reiterated the said version in his reply to the affidavits and in particular, has denied the allegations made against him by the contemner. He has defended his asking the question to the contemner since he was a member of the Bench. The learned Judge has stated that the contemner took exception to his asking the said question as if he had committed some wrong and started shouting. He has further stated that he had asked only the question referred to above and the contemner had created the scene on account of his putting the said question to him, and made it difficult to continue the court's proceedings. Ultimately, when it became impossible to hear all the slogans and insulting words and threats, he requested the senior learned member of the Bench to list that case before another Bench and to retire to the chamber. Accordingly, an order was made by the senior member of the Bench and both of them retired to the chamber. The learned Judge has denied that he had conveyed to the contemner that he was going to set aside the entire order against a portion of which the contemner had come in appeal. He has stated that it was a case where the contemner did not permit the court proceedings to be proceeded with and both the members of the Bench had ultimately to retire to the chambers. The learned Judge has stated that the defence of the conduct of the contemner in the counter-affidavit "was a manufactured" one. He has then dealt with each paragraph of the contemner's counter-affidavit. He has also stated that there was no question of his having directed the stenographer to take down the order for setting aside of the whole order since that function was performed by the senior member of the Bench. He has also stated that the contemner has made absolutely wrong allegations when he states that he had made the following remarks: "I am from the Bar and if need be I can take to goondaism." He has also denied that he had said: "I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked." He has stated that the contemner has made false allegations against him.

37. To resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scenes in the court, to address him by losing temper are all acts calculated to interfere with

and obstruct the course of justice. Such acts tend to overawe the court and to prevent it from performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice.

38. The stance taken by the contemner is that he was performing his duty as an outspoken and fearless member of the Bar. He seems to be labouring under a grave misunderstanding. Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the court, presentation of correct facts and law with a balanced mind and without overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentleman first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the Court.

39. The rule of law is the foundation of a democratic society. The Judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. 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 civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

40. It cannot be disputed and was not disputed before us that the acts indulged into by the contemner in the present case as stated by the learned Judge per se amount to criminal contempt of court. What was disputed was their occurrence. We have held above that we are satisfied that the contemner did indulge in the said acts.

43. The contemner has obviously misunderstood his function both as a lawyer representing the interests of his client and as an officer of the court. Indeed, he has not tried to

defend the said acts in either of his capacities. On the other hand, he has tried to deny them. Hence, much need not be said on this subject to remind him of his duties in both the capacities. It is, however, necessary to observe that by indulging in the said acts, he has positively abused his position both as a lawyer and as an officer of the court, and has done distinct disservice to the litigants in general and to the profession of law and the administration of justice in particular. It pains us to note that the contemner is not only a senior member of the legal profession, but holds the high offices of the Chairman of the Bar Council of India, Member of the Bar Council of U.P., Chairman and Member, Executive Council and Academic Council of the National Law School University of India at Bangalore and President of the High Court Bar Association, Allahabad. Both as a senior member of the profession and as holder of the said high offices, special and additional duties were cast upon him to conduct himself as a model lawyer and officer of the court and to help strengthen the administration of justice by upholding the dignity and the majesty of the court. It was in fact expected of him to be zealous in maintaining the rule of law and in strengthening the people's confidence in the judicial institutions. To our dismay, we find that he has acted exactly contrary to his obligations and has in reality set a bad example to others while at the same time contributing to weakening of the confidence of the people in the courts.

44. The contemner has no doubt tendered an unconditional apology on 7-10-1994 by withdrawing from record all his applications, petitions, counter-affidavits, prayers and submissions made at the Bar and to the court earlier. We have reproduced that apology verbatim earlier. In the apology he has pleaded that he has deeply and regretfully realised that the situation, meaning thereby the incident, should never have arisen and the fact that it arose has subjected him to anguish and remorse and a feeling of moral guilt. That feeling has been compounded with the fact that he was a senior advocate and was holding the elective posts of the President of the High Court Bar Association and the Chairman of the Bar Council of India which by their nature show that he was entrusted by his professional fraternity to set up an example of an ideal advocate. He has guiltily realised his failure to approximate to this standard resulting in the present proceedings and he was, therefore, submitting his unconditional apology for the incident in question. We have not accepted this apology, firstly because we find that the apology is not a free and frank admission of the misdemeanour he indulged in the incident in question. Nor is there a sincere regret for the disrespect he showed to the learned Judge and the Court, and for the harm that he has done to the judiciary. On the other hand, the apology is couched in a sophisticated and garbed language exhibiting more an attempt to justify his conduct by reference to the circumstances in which he had indulged in it and to exonerate himself from the offence by pleading that the condition in which the 'situation' had developed was not an ideal one and were it ideal, the 'situation' should not have arisen. It is a clever and disguised attempt to refurbish his image and get out of a tight situation by not only not exhibiting the least sincere remorse for his conduct but by trying to blame the so-called circumstances which led to it. At the same time, he has attempted to varnish and re-establish himself as a valiant defender of his "alleged duties" as a lawyer. Secondly, from the very inception his attitude has been defiant and belligerent. In his affidavits and application, not only he has not shown any respect for the learned Judge, but has made counter-allegations against him and has asked for initiation of contempt proceedings against him. He has even chosen to insinuate that the learned Judge, by not taking contempt

action on the spot and instead writing the letter to the Acting Chief Justice of the High Court, had adopted a devious way and that he had also come to Delhi to meet 'meaningful' people. These allegations may themselves amount to contempt of court. Lastly, to accept any apology for a conduct of this kind and to condone it, would tantamount to a failure on the part of this Court to uphold the majesty of the law, the dignity of the court and to maintain the confidence of the people in the judiciary. The Court will be failing in its duty to protect the administration of justice from attempts to denigrate and lower the authority of the judicial officers entrusted with the sacred task of delivering justice. A failure on the part of this Court to punish the offender on an occasion such as this would thus be a failure to perform one of its essential duties solemnly entrusted to it by the Constitution and the people. For all these reasons, we unhesitatingly reject the said so-called apology tendered by the contemner.

45. The question now is what punishment should be meted out to the contemner. We have already discussed the contempt jurisdiction of this Court under Article 129 of the Constitution. That jurisdiction is independent of the statutory law of contempt enacted by Parliament under Entry 77 of List I of Seventh Schedule of the Constitution. The jurisdiction of this Court under Article 129 is sui generis. The jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute. Neither, therefore, the Contempt of Courts Act, 1971 nor the Advocates Act, 1961 can be pressed into service to restrict the said jurisdiction. We had, during the course of the proceedings indicated that if we convict the contemner of the offence, we may also suspend his licence to practise as a lawyer. The learned counsel for the contemner and the interveners and also the learned Solicitor General appointed amicus curiae to assist the Court were requested to advance their arguments also on the said point. Pursuant to it, it was sought to be contended on behalf of the contemner and the U.P. Bar Association and the U.P. Bar Council that the Court cannot suspend the licence which is a power entrusted by the Advocates Act, 1961 specially made for the purpose, to the disciplinary committees of the State Bar Councils and of the Bar Council of India. The argument was that even the constitutional power under Articles 129 and 142 was circumscribed by the said statutory provisions and hence in the exercise of our power under the said provisions, the licence of an advocate was not liable either to be cancelled or suspended. A reference was made in this connection to the provisions of Sections 35 and 36 of the Advocates Act, which show that the power to punish the advocate is vested in the disciplinary committees of the State Bar Councils and the Bar Council of India. Under Section 37 of the Advocates Act, an appeal lies to the Bar Council of India, when the order is passed by the disciplinary committee of the State Bar Council. Under Section 38, the appeal lies to this Court when the order is made by the disciplinary committee of the Bar Council of India, either under Section 36 or in appeal under Section 37. The power to punish includes the power to suspend the advocate from practice for such period as the disciplinary committee concerned may deem fit under Section 35(3)(*c*) and also to remove the name of the advocate from the State roll of the Advocates under Section 35(3)(*d*). Relying on these provisions, it was contended that since the Act has vested the powers of suspending and removing the advocate from practice exclusively in the disciplinary committees of the State Bar Councils and the Bar Council of India, as the case may be, the Supreme Court is denuded of its power to impose such punishment both under Articles 129 and 142 of the Constitution. In support of this contention, reliance was placed on the observations of the majority of this

Court in ***Prem Chand Garg* v. *Excise Commr., U.P.*** [AIR 1963 SC 996] relating to the powers of this Court under Article 142 which are as follows:

> "In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.
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> That takes us to the second argument urged by the Solicitor General that Article 142 and Article 32 should be reconciled by the adoption of the rule of harmonious construction. *In this connection, we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions. There can, therefore, be no conflict between Article 142(1) and Article* 32. In the case of ***K.M. Nanavati* v. *State of Bombay*** [AIR 1961 SC 112], on which the Solicitor General relies, it was conceded, and rightly, that under Article 142(1) this Court had the power to grant bail in cases brought before it, and so, there was obviously a conflict between the power vested in this Court under the said Article and that vested in the Governor of the State under Article 161. The possibility of a conflict between these powers necessitated the application of the rule of harmonious construction. The said rule can have no application to the present case, because on a fair construction of Article 142(1), this Court has no power to circumscribe the fundamental right guaranteed under Article 32. The existence of the said power is itself in dispute, and so, the present case is clearly distinguishable from the case of ***K.M. Nanavati***."

46. Apart from the fact that these observations are made with reference to the powers of this Court under Article 142 which are in the nature of supplementary powers and not with reference to this Court's power under Article 129, the said observations have been explained by this Court in its later decisions in ***Delhi Judicial Service Assn.* v. *State of Gujarat*** and ***Union Carbide Corpn.* v. *Union of India***. In para 51 of the former decision, it has been, with respect, rightly pointed out that the said observations were made with regard to the extent of this Court's power under Article 142(1) in the context of fundamental rights. Those observations have no bearing on the present issue. No doubt, it was further observed there that those observations have no bearing on the question in issue in that case as there was no provision in any substantive law restricting this Court's power to quash proceedings pending before subordinate courts. But it was also added there that this Court's power under Article 142(1) to do complete justice was entirely of a different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court is in seisin of a matter before it, it has

power to issue any order or direction to do complete justice in the matter. A reference was made in that connection to the concurring opinion of Justice A.N. Sen in ***Harbans Singh* v. *State of U.P.,*** where the learned Judge observed as follows:

> "Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice."

The Court has then gone on to observe there that no enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though the Court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of complete justice in a cause or matter, would depend upon the facts and circumstances of each case.

47. In the latter case, i.e., the ***Union Carbide*** case [(1991) 4 SCC 584], the Constitution Bench in para 83 stated as follows:

> "It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Apex Court under Article 142(1) is unsound and erroneous. In both ***Garg*** as well as ***Antulay*** cases [***A.R. Antulay* v. *R.S. Nayak*** (1988) 2 SCC 602] the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers - limited in some appropriate way - is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to ***Garg*** case, said that limitation on the powers under Article 142 arising from 'inconsistency with express statutory provisions of substantive law' must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression 'prohibition' is read in place of 'provision' that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme

or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of 'complete justice' of a cause or matter, the Apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."

49. The consequence of accepting the said contention advanced on behalf of the contemner and the other parties will be twofold. This Court while exercising its power under Article 142(1) would not even be entitled to reprimand the advocate for his professional misconduct which includes exhibition of disrespect to the Court as per Rule 2 of Section I of Chapter II of Part VI of the Bar Council of India Rules made under the Advocates Act, which is also a contempt of court, since the reprimand of the advocate is a punishment which the disciplinary committees of the State Bar Councils and of the Bar Council of India are authorised to administer under Section 35 of the Advocates Act. Secondly, it would also mean that for any act of contempt of court, if it also happens to be an act of professional misconduct under the Bar Council of India Rules, the courts including this Court, will have no power to take action since the Advocates Act confers exclusive power for taking action for such conduct on the disciplinary committees of the State Bar Councils and the Bar Council of India, as the case may be. Such a proposition of law on the face of it deserves rejection for the simple reason that the disciplinary jurisdiction of the State Bar Councils and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court. The said jurisdictions coexist independently of each other. The action taken under one jurisdiction does not bar an action under the other jurisdiction.

50. The contention is also misplaced for yet another and equally, if not more, important reason. In the matter of disciplinary jurisdiction under the Advocates Act, this Court is constituted as the final appellate authority under Section 38 of the Act as pointed out earlier. In that capacity this Court can impose any of the punishments mentioned in Section 35(3) of the Act including that of removal of the name of the advocate from the State roll and of suspending him from practice. If that be so, there is no reason why this Court while exercising its contempt jurisdiction under Article 129 read with Article 142 cannot impose any of the said punishments. The punishment so imposed will not only be not against the provisions of any statute, but in conformity with the substantive provisions of the Advocates Act and for conduct which is both a professional misconduct as well as the contempt of court. The argument has, therefore, to be rejected.

51. What is further, the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter, are independent of the jurisdiction and powers of this Court under Article 129 which cannot be trammelled in any way by any statutory provision including the provisions of the Advocates

Act or the Contempt of Courts Act. As pointed out earlier, the Advocates Act has nothing to do with the contempt jurisdiction of the court including of this Court and the Contempt of Courts Act, 1971 being a statute cannot denude, restrict or limit the powers of this Court to take action for contempt under Article 129. It is not disputed that suspension of the advocate from practice and his removal from the State roll of advocates are both punishments. There is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction and the said punishments can be the punishments the Court may impose while exercising the said jurisdiction.

52. Shri P.P. Rao, learned counsel appearing for the High Court Bar Association of Allahabad contended that Articles 19(1)(*a*) and 19(2), and 19(1)(*g*) and 19(6) have to be read together and thus read the power to suspend a member of the legal profession from practice or to remove him from the roll of the State Bar Council is not available to this Court under Article 129. We have been unable to appreciate this contention. Article 19(1)(*a*) guarantees freedom of speech and expression which is subject to the provisions of Article 19(2) and, therefore, to the law in relation to the contempt of court as well. Article 19(1)(*g*) guarantees the right to practise any profession or to carry on any occupation, trade or business and is subject to the provisions of Article 19(6) which empowers the State to make a law imposing reasonable restrictions, in the interests of general public, on the exercise of the said right and, in particular, is subject to a law prescribing technical or professional qualifications necessary for practising the profession or carrying on the occupation, trade or business. On our part we are unable to see how these provisions of Article 19 can be pressed into service to limit the power of this Court to take cognizance of and punish for the contempt of court under Article 129. The contention that the power of this Court under Article 129 is subject to the provisions of Articles 19(1)(*a*) and 19(1)(*g*), is unexceptional. However, it is not pointed out to us as to how the action taken under Article 129 would be violative of the said provisions, since the said provisions are subject to the law of contempt and the law laying down technical and professional qualifications necessary for practising any profession, which includes the legal profession. The freedom of speech and expression cannot be used for committing contempt of court nor can the legal profession be practised by committing the contempt of court. The right to continue to practise is subject to the law of contempt. The law does not mean merely the statute law but also the constitutional provisions. The right, therefore, is subject to the restrictions placed by the law of contempt as contained in the statute - in the present case, the Contempt of Courts Act, 1971 as well as to the jurisdiction of this Court and of the High Court to take action under Articles 129 and 215 of the Constitution respectively. We, therefore, do not see any conflict between the provisions of Articles 129 and 215, and Article 19(1)(*a*) and Article 19(1)(*g*) read with Articles 19(2) and 19(6) respectively.

53. When the Constitution vests this Court with a special and specific power to take action for contempt not only of itself but of the lower courts and tribunals, for discharging its constitutional obligations as the highest custodian of justice in the land, that power is obviously coupled with a duty to protect all the limbs of the administration of justice from those whose actions create interference with or obstruction to the course of justice. Failure to exercise the power on such occasions, when it is invested specifically for the purpose, is a failure to discharge the duty. In this connection, we may refer to the following extract from

the decision of this Court in ***Chief Controlling Revenue Authority and Superintendent of Stamps* v. *Maharashtra Sugar Mills Ltd.*** [AIR 1950 SC 218]:

> "But when a capacity or power is given to a public authority there may be circumstances which couple with the power a duty to exercise it. To use the language of Lord Cairns in the case of ***Julius* v. *Bishop of Oxford*** [(1880) 5 AC 214]:
>
> 'There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so'."

54. For the reasons discussed above, we find the contemner, Shri Vinay Chandra Mishra, guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U.P. High Court Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. We are, therefore, of the view that an exemplary punishment has to be meted out to him.

55. The facts and circumstances of the present case justify our invoking the power under Article 129 read with Article 142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of criminal contempt as under:

(*a*) The contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period; and

(*b*) The contemner shall stand suspended from practising as an advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an advocate, shall stand vacated by him forthwith. The contempt petition is disposed of in the above terms.

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C. Ravichandran Iyer v. *Justice A.M. Bhattacharjee*

(1995) 5 SCC 457

K. RAMASWAMY, J. - The petitioner, a practising advocate, has initiated the public interest litigation under Article 32 of the Constitution seeking to issue an appropriate writ, order or direction restraining permanently the Bar Council of Maharashtra and Goa (BCMG), Bombay Bar Association (BBA) and the Advocates' Association of Western India (AAWI), Respondents 2 to 4 respectively, coercing Justice A.M. Bhattacharjee (the 1st respondent), Chief Justice of Bombay High Court, to resign from the office as Judge. He also sought an investigation by the Central Bureau of Investigation etc. (Respondents 8 to 10) into the allegations made against the 1st respondent and if the same are found true, to direct the 5th respondent, Speaker, Lok Sabha to initiate action for his removal under Article 124(4) and (5) read with Article 218 of the Constitution of India and Judges (Inqui3ry) Act, 1968 (for short, 'the Act'). This Court on 24-3-1995 issued notice to Respondents 2 to 4 only and rejected the prayer for interim direction to the President of India and the Union of India (Respondents 6 and 7 respectively) not to give effect to the resignation by the 1st respondent. We have also issued notice to the Attorney General for India and the President of the Supreme Court Bar Association (SCBA). The BBA filed a counter-affidavit through its President, Shri Iqbal Mahomedali Chagla. Though Respondents 2 and 4 are represented through counsel, they did not file any counter-affidavit. The SCBA informed the Court that its newly elected office-bearers required time to take a decision on the stand to be taken and we directed them to file their written submission. Shri F.S. Nariman, learned Senior Counsel appeared for the BBA and Shri Harish N. Salve, learned Senior Counsel, appeared for AAWI, the 4th respondent. The learned Attorney General also assisted the Court. We place on record our deep appreciation for their valuable assistance.

3. The petitioner in a well-documented petition stated and argued with commitment that the news published in various national newspapers does prove that Respondents 2 to 4 had pressurised the 1st respondent to resign from the office as Judge for his alleged misbehaviour. The Constitution provides for independence of the Judges of the higher courts, i.e., the Supreme Court and the High Courts. It also lays down in proviso (*a*) to clause (2) of Article 124; so too in Article 217(1) proviso (*a*) and Article 124(4), procedure for voluntary resignation by a Judge, as well as for compulsory removal, respectively from office in the manner prescribed therein and in accordance with the Act and the Rules made thereunder. The acts and actions of Respondents 2 to 4 are unknown to law, i.e., removal by forced resignation, which is not only unconstitutional but also deleterious to the independence of the judiciary. The accusations against the 1st respondent without proper investigation by an independent agency seriously damage the image of judiciary and efficacy of judicial adjudication and thereby undermine credibility of the judicial institution itself. Judges are not to be judged by the Bar. Allowing adoption of such demands by collective pressure rudely shakes the confidence and competence of judges of integrity, ability, moral vigour and ethical firmness, which in turn, sadly destroys the very foundation of democratic polity. Therefore, the pressure tactics by the Bar requires to be nipped in the bud. He, therefore, vehemently argued and requested the Court to adopt such procedure which would safeguard the

independence of the judiciary and protect the judges from pressure through unconstitutional methods to demit the office.

4. Shri Chagla in his affidavit and Shri Nariman appearing for the BBA explained the circumstances that led the BBA to pass the resolution requesting the 1st respondent to demit his office as a Judge in the interest of the institution. It is stated in the affidavit that though initially he had in his custody the documents to show that the 1st respondent had negotiated with Mr S.S. Musafir, Chief Executive of Roebuck Publishing, London and the acceptance by the 1st respondent for publication and sale abroad of a book authored by him, viz., ***Muslim Law and the Constitution*** for two years at a royalty of US $ 80,000 (Eighty thousand US Dollars) and an inconclusive negotiation for US $ 75,000 (Seventy-five thousand US Dollars) for overseas publishing rights of his book ***Hindu Law and the Constitution*** (2nd Edn.), he did not divulge the information but kept confidential. From about late 1994, there was considerable agitation amongst the members of Respondents 3 and 4 that certain persons whose names were known to all and who were seen in the court and were being openly talked about, were bringing influence over the 1st respondent and could "influence the course of judgments of the former Chief Justice of Bombay". "The names of such persons though known are not being mentioned here since the former Chief Justice of Bombay has resigned as Chief Justice and Judge of the Bombay High Court." It was also rumoured that "the former Chief Justice of Bombay has been paid a large sum of money in foreign exchange purportedly as royalty for a book written by him, viz. ***Muslim Law and the Constitution***. The amount of royalty appeared to be totally disproportionate to what a publisher abroad would be willing to pay for foreign publication of a book which might be of academic interest within India (since the book was a dissertation of Muslim Law in relation to the Constitution of India). There was a growing suspicion at the Bar that the amount might have been paid for reasons "other than the ostensible reason". He further stated that the 1st respondent himself had discussed with the Advocate General on 14-2-1995 impressing upon the latter that the Chief Justice "had decided to proceed on leave from the end of February and would resign in April 1995". The Advocate General had conveyed it to Shri Chagla and other members of the Bar. By then, the financial dealings referred to above were neither known to the public nor found mention in the press reports. Suddenly on 19-2-1995 the advocates found to their surprise a press interview published in *The Times of India* said to have been given by the 1st respondent stating that "he had not seriously checked the antecedents of the publishers and it was possible that he had made a mistake in accepting the offer". He was not contemplating to resign from judgeship at that stage and was merely going on medical leave for which he had already applied for and was granted. The BCMG passed a resolution on 19-2-1995 seeking "resignation forthwith" of the 1st respondent. On 21-2-1995 the BBA received a requisition for holding its general body meeting to discuss the financial dealings said to have been had by the 1st respondent "for a purpose other than the ostensible purpose thereby raising a serious doubt as to the integrity of the Chief Justice". The meeting was scheduled to be held at 2.15 p.m. on 22-2-1995 as per its bye-laws. The 1st respondent appears to have rung up Shri Chagla in the evening on 21-2-1995 but he was not available. Pursuant to a contact by Shri W.Y. Yande, the President of AAWI, at the desire of Chief Justice to meet him, Shri Chagla and Shri Yande met the 1st respondent at his residence at 10.00 a.m. in the presence of two Secretaries of the 1st respondent, who stated thus to Shri Chagla as put in his affidavit:

The Bar Council of Maharashtra and Goa had already shot an arrow and that the wound was still fresh and requested me to ensure that he would not be hurt any further by a resolution of the Bombay Bar Association. The 1st respondent informed me that he had already agreed to resign and in fact called for and showed me a letter dated 17-2-1995 addressed by him to the Honourable the Chief Justice of India in which he proposed to go on medical leave for a month and that at the end of the leave or even earlier he proposed to tender his resignation.

5. They had reminded the 1st respondent of the assurance given to the Advocate General expressing his desire to resign and he conveyed his personal inconveniences to be encountered etc. The 1st respondent assured them that he would "resign within a week which resignation would be effective some 10 or 15 days thereafter and that in the meanwhile he would not do any judicial work including delivery of any judgment". Shri Chagla appears to have told the 1st respondent that though he would not give an assurance, he would request the members of the Association to postpone the meeting and he had seen that the meeting was adjourned to 5.00 p.m. on 1-3-1995. On enquiry being made on 1-3-1995 from the Principal Secretary to the 1st respondent whether the 1st respondent had tendered his resignation, it was replied in the negative which showed that the 1st respondent had not kept his promise. Consequently, after full discussion, for and against, an overwhelming majority of 185 out of 207 permanent members resolved in the meeting held on 1-3-1995 at 5.00 p.m. demanding the resignation of the 1st respondent.

6. Since the 1st respondent has already resigned, the question is whether a Bar Council or Bar Association is entitled to pass resolution demanding a Judge to resign, what is its effect on the independence of the judiciary and whether it is constitutionally permissible. Shri Nariman contended that the Supreme Court and the High Court are two independent constitutional institutions. A High Court is not subordinate to the Supreme Court though constitutionally the Supreme Court has the power to hear appeals from the decisions or orders or judgments of the High Courts or any Tribunal or quasi-judicial authority in the country. The Judges and the Chief Justice of a High Court are not subordinate to the Chief Justice of India. The constitutional process of removal of a Judge as provided in Article 124(4) of the Constitution is only for proved misbehaviour or incapacity. The recent impeachment proceedings against Justice V. Ramaswami and its fall out do indicate that the process of impeachment is cumbersome and the result uncertain. Unless corrective steps are taken against Judges whose conduct is perceived by the Bar to be detrimental to the independence of the judiciary, people would lose faith in the efficacy of judicial process. Bar being a collective voice of the court concerned has responsibility and owes a duty to maintain the independence of the judiciary. It is its obligation to bring it to the notice of the Judge concerned the perceived misbehaviour or incapacity and if it is not voluntarily corrected they have to take appropriate measures to have it corrected. Bar is not aware of any other procedure than the one under Article 124(4) of the Constitution and the Act. Therefore, the BBA, instead of proceeding to the press, adopted democratic process to pass the resolution, in accordance with its bye-laws, when all attempts made by it proved abortive. The conduct of the Judge betrayed their confidence in his voluntary resignation. Consequently, the BBA was constrained to pass the said resolution. Thereby it had not transgressed its limits. Its action is

in consonance with its bye-laws and in the best tradition to maintain independence of the judiciary. Shri Nariman also cited the instance of non-assignment of work to four Judges of the Bombay High Court by its former Chief Justice when some allegations of misbehaviour were imputed to them by the Bar. He, however, submitted that in the present case the allegations were against the Chief Justice himself, and so, he could not have been approached. He urged that if some guidelines could be laid down by this Court in such cases, the same would be welcomed.

7. The counsel appearing for the BCMG, who stated that he is its member, submitted that when the Bar believes that the Chief Justice has committed misconduct, as an elected body it is its duty to pass a resolution after full discussion demanding the Judge to act in defence of independence of the judiciary by demitting his office.

9. The learned Attorney General contended that any resolution passed by any Bar Association tantamounts to scandalising the court entailing contempt of the court. It cannot coerce the Judge to resign. The pressure brought by the Chief Justice of India upon the Judge would be constitutional but it should be left to the Chief Justice of India to impress upon the erring Judge to correct his conduct. This procedure would yield salutary effect. The Chief Justice of India would adopt such procedure as is appropriate to the situation. He cited the advice tendered by Lord Chancellor of England to Lord Denning, when the latter was involved in the controversy over his writing on the jury trial and the composition of the black members of the jury, to demit the office, which he did in grace.

***Rule of Law and Judicial Independence -Why need to be preserved*?**

10. The diverse contentions give rise to the question whether any Bar Council or Bar Association has the right to pass resolution against the conduct of a Judge perceived to have committed misbehaviour and, if so, what is its effect on independence of the judiciary. With a view to appreciate the contentions in their proper perspective, it is necessary to have at the back of our mind the importance of the independence of the judiciary. In a democracy governed by rule of law under a written constitution, judiciary is sentinel on the *qui vive* to protect the fundamental rights and to poise even scales of justice between the citizens and the State or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. In ***S.P. Gupta* v. *Union of India*** [1981 Supp SCC 87], this Court held that if there is one principle which runs through the entire fabric of the Constitution it is the principle of the rule of law, and under the Constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. Judicial review is one of the most potent weapons in the armoury of law. The judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and

prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.

***Judicial individualism - Whether needs protection*?**

11. Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived) undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. Judicial individualism, in the language of Justice Powell of the Supreme Court of United States in his address to the American Bar Association, Labour Law Section on 11-8-1976, is "perhaps one of the last citadels of jealously preserved individualism ...."

14. The arch of the Constitution of India pregnant from its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles) is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice - social, economic and political - to every citizen through rule of law. Existing social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law. The Judge cannot retain his earlier passive judicial role when he administers the law under the Constitution to give effect to the constitutional ideals. The extraordinary complexity of modern litigation requires him not merely to declare the rights to citizens but also to mould the relief warranted under given facts and circumstances and often command the executive and other agencies to enforce and give effect to the order, writ or direction or prohibit them to do unconstitutional acts. In this ongoing complex of adjudicatory process, the role of the Judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. Therefore, the Judge is required to take judicial notice of the social and economic ramification, consistent with the theory of law. Thereby, the society demands active judicial roles which formerly were considered exceptional but now a routine. The Judge must act independently, if he is to perform the functions as expected of him and he must feel secure that such action of his will not lead to his own downfall. The independence is not assured for the Judge but to the judged. Independence to the Judge, therefore, would be both essential and proper. *Considered judgment of the court would guarantee the constitutional liberties which would thrive only in an atmosphere of judicial independence*. Every endeavour should be made to preserve independent judiciary as a citadel of public justice and public security to fulfil the constitutional role assigned to the Judges.

15. The Founding Fathers of the Constitution advisedly adopted a cumbersome process of impeachment as a mode to remove a Judge from office for only proved misbehaviour or incapacity which implies that impeachment process is not available for minor abrasive behaviour of a Judge. It reinforces that independence to the Judge is of paramount importance to sustain, strengthen and elongate rule of law. Parliament sparingly resorts to the mechanism of impeachment designed under the Constitution by political process as the extreme measure only upon a finding of proved misbehaviour or incapacity recorded by a committee

constituted under Section 3 of the Act by way of address to the President in the manner laid down in Article 124(4) and (5) of the Constitution, the Act and the Rules made thereunder.

16. In all common law jurisdictions, removal by way of impeachment is the accepted norm for serious acts of judicial misconduct committed by a Judge. Removal of a Judge by impeachment was designed to produce as little damage as possible to judicial independence, public confidence in the efficacy of judicial process and to maintain authority of courts for its effective operation.

17. In United States, the Judges appointed under Article III of the American Constitution could be removed only by impeachment by the Congress. The Congress enacted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (the 1980 Act) by which Judicial Council was explicitly empowered to receive complaints about the judicial conduct "prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability".

18. Jeffrey N. Barr and Thomas E. Willging conducted research on the administration of the 1980 Act and in their two research volumes, they concluded that "several Chief Judges view the Act as remedial legislation designed not to punish Judges but to correct aberrant behaviour and provide opportunity for corrective action as a central feature of the Act". From 1980 to 1992, 2388 complaints were filed. 95 per cent thereof resulted in dismissal. 1.7 per cent of the complaints ended in either dismissal from service or corrective action of reprimands - two of public reprimands and one of private reprimand. Two cases were reported to judicial conference by the judicial councils certifying that the grounds might exist for impeachment.

19. Our Constitution permits removal of the Judge only when the motion was carried out with requisite majority of both the Houses of Parliament recommending to the President for removal. In other words, the Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by Parliament. In ***Sub-Committee on Judicial Accountability*** **v.** ***Union of India*** [(1991) 4 SCC 699], this Court at p. 54 held that the removal of a Judge culminating in the presentation of an address by different Houses of Parliament to the President, is committed to Parliament alone and no initiation of any investigation is possible without the initiative being taken by the Houses themselves. At p. 71 it was further held that the constitutional scheme envisages removal of a Judge on proved misbehaviour or incapacity and the conduct of the Judge was prohibited to be discussed in Parliament by Article 121. Resultantly, discussion of the conduct of a Judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose.

20. Articles 124(4) and 121 would thus put the nail squarely on the projections, prosecutions or attempts by any other forum or group of individuals or Associations, statutory or otherwise, either to investigate or inquire into or discuss the conduct of a Judge or the performance of his duties and on/off court behaviour except as per the procedure provided under Articles 124(4) and (5) of the Constitution, and Act and the Rules. Thereby, equally no other agency or authority like the CBI, Ministry of Finance, the Reserve Bank of India

(Respondents 8 to 10) as sought for by the petitioner, would investigate into the conduct or acts or actions of a Judge. No mandamus or direction would be issued to the Speaker of Lok Sabha or Chairman of Rajya Sabha to initiate action for impeachment. It is true, as contended by the petitioner, that in ***K. Veeraswami* v. *Union of India*** [(1991) 3 SCC 655], majority of the Constitution Bench upheld the power of the police to investigate into the disproportionate assets alleged to be possessed by a Judge, an offence under Section 5 of the Prevention of Corruption Act, 1947 subject to prior sanction of the Chief Justice of India to maintain independence of the judiciary. By interpretive process, the Court carved out primacy to the role of the Chief Justice of India, whose efficacy in a case like one at hand would be considered at a later stage.

***Duty of the Judge to maintain high standard of conduct. Its judicial individualism — Whether protection imperative*?**

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

22. In ***Krishna Swami* v. *Union of India*** [(1992) 4 SCC 605], one of us (K. Ramaswamy, J.) held that the holder of office of the Judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guidelines for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

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

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

Scope and meaning of 'misbehaviour' in Article 124(4)

24. Article 124(4) of the Constitution sanctions action for removal of a Judge on proved misbehaviour or incapacity. The word 'misbehaviour' was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct as opposed to good conduct. In the *Law Lexicon* by P. Ramanatha Aiyar, 1987 Edn. at p. 821, collected from several decisions, the meaning of the word 'misconduct', is stated to be vague and relative term. Literally, it means wrong conduct or improper conduct. It has to be construed with reference to the subject-matter and the context wherein the term occurs having regard to the scope of the Act or the statute under consideration. In the context of disciplinary proceedings against a solicitor, the word misconduct was construed as professional misconduct extending to conduct "which shows him to be unworthy member of the legal profession". In the context of misrepresentation made by a pleader, who obtained adjournment of a case on grounds to his knowledge to be false a Full Bench of the Madras High Court in ***First Grade Pleader, Re*** [AIR 1931 Mad 422], held that if a legal practitioner deliberately made, for the purpose of impeding the course of justice, a statement to the court which he believed to be untrue and thereby gained an advantage for his client, he was guilty of gross improper conduct and as such rendered himself liable to be dealt with by the High Court in the exercise of its disciplinary jurisdiction. Misconduct on the part of an arbitrator was construed to mean that misconduct does not necessarily comprehend or include misconduct of a fraudulent or improper character, but it does comprehend and include action on the part of the arbitrator which is, upon the face of it, opposed to all rational and reasonable principles that should govern the procedure of any person who is called upon to decide upon questions in difference and dispute referred to him by the parties. Misconduct in office was construed to mean unlawful behaviour or include negligence by public officer, by which the rights of the party have been affected. In ***Krishna Swami*** case, one of us, K. Ramaswamy, J., considered the scope of 'misbehaviour' in Article 124(4) and held in para 71 that:

> Every act or conduct or even error of judgment or negligent acts by higher judiciary per se does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of mens rea by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the Judge or wilful abuse of the office *dolus malus* would be misbehaviour. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. Even administrative actions or omissions too need accompaniment of mens rea.

25. Guarantee of tenure and its protection by the Constitution would not, however, accord sanctuary for corruption or grave misbehaviour. Yet every action or omission by a judicial officer in the performance of his duties which is not a good conduct necessarily, may not be

misbehaviour indictable by impeachment, but its insidious effect may be pervasive and may produce deleterious effect on the integrity and impartiality of the Judge. Every misbehaviour in juxtaposition to good behaviour, as a constitutional tautology, will not support impeachment but a misbehaviour which is not a good behaviour may be improper conduct not befitting to the standard expected of a Judge. Threat of impeachment process itself may swerve a Judge to fall prey to misconduct but it serves disgrace to use impeachment process for minor offences or abrasive conduct on the part of a Judge. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution.

26. Bad conduct or bad behaviour of a Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate Judge. When the Judge cannot be removed by impeachment process for such conduct but generates widespread feeling of dissatisfaction among the general public, the question would be who would stamp out the rot and judge the Judge or who would impress upon the Judge either to desist from repetition or to demit the office in grace? Who would be the appropriate authority? Who would be the principal mover in that behalf? The hiatus between bad behaviour and impeachable misbehaviour needs to be filled in to stem erosion of public confidence in the efficacy of judicial process. Whether the Bar of that Court has any role to play either in an attempt to correct the perceived fallen standard or is entitled to make a demand by a resolution or a group action to pressurise the Judge to resign his office as a Judge? The resolution to these questions involves delicate but pragmatic approach to the questions of constitutional law.

***Role of the Bar Council or Bar Associations - Whether unconstitutional*?**

27. The Advocates Act, 1961 gave autonomy to a Bar Council of a State or Bar Council of India and Section 6(1) empowers them to make such action deemed necessary to set their house in order, to prevent fall in professional conduct and to punish the incorrigible as not befitting the noble profession apart from admission of the advocates on its roll. Section 6(1)(*c*) and rules made in that behalf, Sections 9, 35, 36, 36-B and 37 enjoin it to entertain and determine cases of misconduct against advocates on its roll. The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional standards among the members of the Bar are preconditions even for high ethical standards of the Bench. Degeneration thereof inevitably has its eruption and tends to reflect the other side of the coin. The Bar Council, therefore, is enjoined by the Advocates Act to maintain high moral, ethical and professional standards which of late is far from satisfactory. Their power under the Act ends *thereat* and extends no further. Article 121 of the Constitution prohibits discussion by the members of Parliament of the conduct of any Judge of the Supreme Court or of High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as provided under Article 124(4) and (5) and in the manner laid down under the Act, the Rules and the rules of business of Parliament consistent therewith. By necessary implication, no other forum or fora or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a Judge of the Supreme Court or the High Court, much less a Bar Council or group of

practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf.

28. Section 2(*c*) of the Contempt of Courts Act, 1971, defines "criminal contempt" to mean publication whether by words spoken or written, signs, visible representations or otherwise of any matter or the doing of any act whatsoever which scandalises or tends to scandalise, lowers or tends to lower the authority of any court or prejudices or interferes or tends to interfere with the due course of any judicial proceeding, or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

Freedom of expression and duty of Advocate

31. It is true that freedom of speech and expression guaranteed by Article 19(1)(*a*) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So the nation's interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary.

32. It is enough if all of us bear this in mind while expressing opinions on courts and Judges. But the question that still remains is when the Bar of the Court, in which the Judge occupies the seat of office, honestly believes that the conduct of the Judge or of the Bench fouls the fountain of justice, or undermines or tends to undermine the dignity expected of a Judge and the people are tending to disbelieve the impartiality or integrity of the Judge, who should bear the duty and responsibility to have it/them corrected so as to restore the respect for judiciary?

33. In ***Brahma Prakash Sharma* v. *State of U.P.*** [AIR 1954 SC 10], the Bar Association passed resolutions and communicated to the superior authorities that certain judicial officers were incompetent due to their conduct in the court and High Court took action for contempt of the court. The question was whether the members of the Executive Committee of the Bar Association had committed contempt of the court? This Court held that the attack on a Judge is a wrong done to the public and if it tends to create apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge and to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties, it would be scandalising the court and be dealt with accordingly.

34. The threat of action on vague grounds of dissatisfaction would create a dragnet that would inevitably sweep into its grasp the maverick, the dissenter, the innovator, the reformer - in one word the unpopular. Insidious attempts pave way for removing the inconvenient. Therefore, proper care should be taken by the Bar Association concerned. First, it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of a reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehaviour. In all fairness to the Judge, the responsible office-bearers should meet him in camera after securing interview and apprise the Judge of the information they had with them. If there is truth in it, there is every possibility that the Judge would mend himself. Or to avoid embarrassment to the Judge, the office-bearers can approach the Chief Justice of that High Court and apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately.

Primacy of the Chief Justice of India

35. It is true that this Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehaviour of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. It is of importance to emphasise here that impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. It seems to us that self-regulation by the judiciary is the only method which can be tried and adopted. Chief Justice of India is the first among the Judges. Under Articles 124(2) and 217(1), the President of India always consults the Chief Justice of India for appointment of the Judges in the Supreme Court and High Courts. Under Article 222, the President transfers Judges of High Courts in consultation with the Chief Justice of India. In ***Supreme Court Advocates-on-Record Assn.* v. *Union of India*** [(1993) 4 SCC 441], it was reinforced and the Chief Justice of India was given centre stage position. The primacy and importance of the office of the Chief Justice was recognised judicially by this Court in ***Veeraswami*** case. This Court, while upholding power to register a case against a retired Chief Justice of the High Court, permitted to proceed with the investigation for the alleged offence under Section 5 of the Prevention of Corruption Act. The Constitution Bench per majority, however, held that the sanction and approval of the Chief Justice of India is a condition precedent to register a case and investigate into the matter and sanction for prosecution of the said Judge by the President after consultation with the Chief Justice of India.

36. In ***Sub-Committee on Judicial Accountability*** also the same primacy had been accorded to the Chief Justice at p. 72 thus:

> "It would also be reasonable to assume that the Chief Justice of India is expected to find a desirable solution in such a situation to avoid embarrassment to the learned Judge and to the institution in a manner which is conducive to the independence of judiciary and should the Chief Justice of India be of the view that in the interests of

the institution of judiciary it is desirable for the learned Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the learned Judge accordingly. It is further reasonable to assume that the concerned learned Judge would ordinarily abide by the advice of the Chief Justice of India."

40. Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

41. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India.

42. It would thus be seen that yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure.

* * * * *

P.D. Gupta v. *Ram Murti*

(1997) 7 SCC 147

D.P. WADHWA, J. - The appellant is an advocate practising in Delhi. He has filed this appeal under Section 38 of the Advocates Act, 1961 ("the Act") against order dated 4-5-1996 of the Disciplinary Committee of the Bar Council of India holding him guilty of misconduct and suspending him from practice for a period of one year. This order by the Bar Council of India was passed as the Disciplinary Committee of the Bar Council of Delhi could not dispose of the complaint received by it within a period of one year and proceedings had thus been transferred to the Bar Council of India under Section 36-B of the Act. Section 36-B enjoins upon the Disciplinary Committee of the State Bar Council to dispose of the complaint received by it under Section 35 of the Act expeditiously and in any case to conclude the proceedings within one year from the date of the receipt of the complaint or the date of initiation of the proceedings if at the instance of the State Bar Council. Under Section 35 of the Act where on the receipt of a complaint or otherwise the State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee.

2. One Srikishan Dass died on 5-1-1980 leaving behind extensive properties, both moveable and immovable. One Vidya Wati claiming to be the sister and the only legal heir of Srikishan Dass filed a petition under Section 276 of the Indian Succession Act in the Court of District Judge, Delhi for grant of probate/letters of administration to the estate of deceased Srikishan Dass. This she filed in February 1980. It is not that there was any Will. The complainant Ram Murti (who is now respondent before us) and two other persons also laid claim to the properties of Srikishan Dass claiming themselves to be his heirs and propounding three different Wills. They also filed separate proceedings under Section 276 of the Indian Succession Act before the District Judge, Delhi. Since there was dispute regarding inheritance to the properties of Srikishan Dass, Vidya Wati also filed a civil suit in the Delhi High Court for declaration and injunction against various defendants numbering 23, including the complainant Ram Murti who is Defendant 21. This suit was filed on 10-2-1982. Vidya Wati had prayed for a decree of injunction against the defendants restraining them from trespassing into property bearing No. 4852 Harbans Singh Street, 24 Daryaganj, New Delhi or from interfering with or disturbing peaceful possession and enjoyment of immovable properties detailed in Schedule A to the plaint. She also sought a declaration that she was the absolute owner of the properties mentioned therein in the Schedule. It is not necessary for us to detail the properties shown in Schedule A except to note two properties at 24 Daryaganj, New Delhi bearing No. 4852 and 4852-A. It is stated that this suit is still pending in the Delhi High Court and all the proceedings under Section 276 of the Indian Succession Act filed by various persons relating to the estate of Srikishan Dass have also been transferred from the Court of District Judge, Delhi to the High Court and are being tried along with the suit filed by Vidya Wati as aforesaid.

3. It would appear that Vidya Wati also filed various other proceedings respecting the properties left by deceased Srikishan Dass against the occupants or otherwise. P.D. Gupta, Advocate, who is the appellant before us had been her counsel throughout in all these

proceedings. The complaint alleged against him is that though he knew that there was doubt cast on the right of Vidya Wati inheriting the properties of Srikishan Dass on account of pendency of various proceedings and further that the complainant and others had alleged that she was in fact an impostor and her claim to be sister of Srikishan Dass was false yet P.D. Gupta purchased the ground floor of property bearing No. 4858-A, 24 Daryaganj from Vidya Wati by a sale deed dated 30-12-1982. The complainant also alleged that Vidya Wati had been describing herself either as the real sister, stepsister or even half-blood sister of Srikishan Dass which fact was well known to P.D. Gupta, her counsel.

4. It is not for us to go into the merits or demerits of the controversy raised by the parties in various proceedings pending in the courts and still awaiting adjudication, the grievance of the complainant is as to how an advocate could purchase property from his client which property is the subject-matter of dispute between the parties in a court of law. During the course of hearing of this appeal it was also brought to our notice that the second floor of the property bearing No. 4858-A, 24 Daryaganj was purchased by Suresh Kumar Gupta, son-in-law of Advocate P.D. Gupta from Vidya Wati. Then again it was brought to our notice that Advocate P.D. Gupta sold the property purchased by him in November 1987 for a consideration of Rs 3,40,000 when he himself had purchased the property for Rs 1,80,000 in December 1982. It is pointed out that the facts relating to purchase of different portions of property No. 4858-A, 24 Daryaganj and subsequent sale by P.D. Gupta were not brought on record of the said suit filed by Vidya Wati.

5. Be that as it may the Bar Council of India has commented upon the conduct of P.D. Gupta in buying the property from Vidya Wati in the circumstances aforesaid who had been describing herself sometimes as a half-blood sister and sometimes as real sister or even stepsister of Srikishan Dass. The explanation given by P.D. Gupta is that though Vidya Wati was the stepsister of Srikishan Dass but the latter always treated her like his real sister and that is how Vidya Wati also at times described herself as his real sister.

6. There are some more facts which could also be noted. Vidya Wati herself has died and she is stated to be survived by her only daughter Maya Devi who is also now dead. Before her death Vidya Wati allegedly executed a Will in favour of her grandson Anand Prakash Bansal who is stated to be the son of Maya Devi bequeathing all her properties to him. Vidya Wati died on 26-10-1991 and Maya Devi on 13-4-1992. It is stated that P.P. Bansal, husband of Maya Devi and father of Anand Prakash Bansal, has been acting as General Attorney of Vidya Wati and instructing P.D. Gupta.

7. In support of his case P.D. Gupta filed affidavit of Anand Prakash Bansal wherein it is claimed that sale deeds executed by Vidya Wati in favour of P.D. Gupta and his son-in-law Suresh Kumar Gupta were without any pressure from anyone and were by free will of Vidya Wati. P.D. Gupta has claimed that the complaint filed by Ram Murti is motivated and he himself had no title to the properties of Srikishan Dass being no relative of his and the Will propounded by him had been found to be forged as opined by the CFSL/CBI laboratory. The fact that the Will propounded by Ram Murti is forged or not is still to be decided by the Court. In the affidavit filed by P.D. Gupta, in answer to the complaint of Ram Murti, he has stated that “Lala Srikishan Dass left behind his sister Smt Vidya Wati who succeeded to the estate on the death of Lala Srikishan Dass and took over the entire moveable and immovable

estate. Thereafter the complainant and two other persons propounded the Will of Lala Srikishan Dass". This statement of P.D. Gupta has been verified by him as true and correct to his knowledge. It does appear to us to be rather odd for a lawyer to verify such facts to his knowledge. It is claimed that when Srikishan Dass died, subject immovable property was plot bearing No. 4858-A, 24 Daryaganj measuring 1500 sq. feet and the same was got mutated in the name of Vidya Wati in the records of the Municipal Corporation of Delhi and then she got plans sanctioned from the Municipal Corporation of Delhi for construction of the house on this plot and which she did construct and got completion certificate on 28-8-1981. It is peculiar, rather astounding, how Vidya Wati could get the property of Srikishan Dass mutated in her name when she is yet to be granted letters of administration or declaration to her title.

8. We examined the two sale deeds transferring this property, one executed in favour of P.D. Gupta and the other in favour of his son-in-law Suresh Kumar Gupta and we have also examined the proceedings on the basis of which the Bar Council of India came to the conclusion that P.D. Gupta was guilty of misconduct and he be debarred from practising for the period of one year. When Ram Murti complained that P.D. Gupta had fraudulently purchased the property of deceased Srikishan Dass being the entire ground floor property bearing No. 4858-A, 24 Daryaganj, Delhi as per sale deed executed on 30-12-1982 from Vidya Wati as also in the name of his son-in-law Suresh Kumar, son of Suraj Bhan, knowing fully well that Vidya Wati was not the owner of the property, the reply given by P.D. Gupta is as under:

> "*5.* Para 5 as stated is false, misleading and ill-motivated, in view of the above submissions. This respondent did purchase the ground floor portion from Smt Vidya Wati by a registered sale deed and sold the same by a registered sale deed in November 1987, and has no longer any concern with any of the properties of Smt Vidya Wati. (As per) the information of the respondent, no proceedings disputing the title of Smt Vidya Wati or cancellation of sale deed in favour of any of the buyers from Smt Vidya Wati who are more than 20 in number, has been filed so far. One of such buyers is Shri P.P. Sharma, the ex-Registrar of the Delhi High Court. This respondent believed Smt Vidya Wati as the right owner according to the facts and law and sold it as aforesaid. The applicant is in no way concerned with the rights of the respondent and the matter pending for adjudication is between the complainant and the parties concerned."

9. In the sale deed which is dated 30-12-1982 executed in favour of P.D. Gupta recitals show that the agreement for sale was entered into on 3-9-1980. The completion certificate of the building was obtained on 28-8-1981, payment of Rs 1,50,000 made before execution of the sale deed on various dates from 3-8-1980 to 20-11-1981 by means of cheques except one payment of Rs 10,000 made by cash on 3-9-1980. Balance amount of consideration of Rs 30,000 was paid at the time of registration of the sale deed. In the sale deed there is no mention of any civil suit respecting this property pending in the High Court. Rather it is stated that the vendor had constructed various floors and had assured/represented to the vendee that she had a good and marketable title to the property and the same was free from all sorts of liens, charges, encumbrances or other like burdens, and in case any defect in the title of the vendor was later on proved, the vendor undertook to compensate the vendee for all losses,

damages and claims, which might be caused to him in this regard. In the other sale deed dated 2-12-1982 executed in favour of the son-in-law of P.D. Gupta, which was filed during the course of the hearing of this appeal, it is mentioned that after obtaining completion certificate on 28-8-1981 Vidya Wati let out the second floor of the property comprising five rooms, kitchen, two bathrooms on a monthly rent of rupees five hundred to Suraj Bhan Gupta. Recitals to this deed show that in order to fetch a better price Vidya Wati agreed to sell the property being on the second floor which according to her was not giving good returns for consideration of Rs 1,75,000 to Suresh Kumar Gupta. Now this Suresh Kumar Gupta, son-in-law of P.D. Gupta, is no other person than the son of Suraj Bhan Gupta, the tenant. There is no mention of any agreement to sell in this sale deed but what we find is that first payment of Rs 20,000 towards consideration was made on 5-11-1981, second payment of Rs 25,000 on 20-2-1982 and third of Rs 30,000 on 26-4-1982. Balance payment has been made at the time of execution of the sale deed on 2-12-1982.

10. The Bar Council of India has taken note of the following facts:

1. P.D. Gupta claims to know Vidya Wati since 1980 when Srikishan Dass was alive. He knew Vidya Wati closely and yet contradictory stands were taken by Vidya Wati when she varyingly described herself as half-blood sister, real sister or stepsister of Srikishan Dass. These contradictory stands in fact cast doubt on the very existence of Vidya Wati herself. This also created doubt about bona fides of P.D. Gupta who seemed to be a family lawyer of Vidya Wati.

2. P.D. Gupta knew that the property purchased by him from Vidya Wati was the subject-matter of litigation and title of Vidya Wati to that property was in doubt.

3. Huge property situated in Daryaganj was purchased by P.D. Gupta for a mere sum of Rs 1,80,000 in 1982.

4. The agreement for sale of property was entered into as far back on 3-9-1980 and P.D. Gupta had been advancing money to Vidya Wati from time to time which went to show that as per the version of P.D. Gupta he knew Vidya Wati quite well. When P.D. Gupta knew Vidya Wati so closely how could Vidya Wati take contradictory stands vis-à-vis her relationship with Srikishan Dass?

11. The Bar Council of India was thus of the view that the conduct of P.D. Gupta in the circumstances was unbecoming of professional ethics and conduct. The Bar Council of India also observed:

> "It is an acknowledged fact that a lawyer conducting the case of his client has a commanding status and can exert influence on his client. As a member of the Bar it is in our common knowledge that lawyers have started contracting with the clients and enter into bargains that in case of success he will share the result. A number of instances have been found in the cases of Motor Accident Claims. No doubt there is no bar for a lawyer to purchase property but on account of common prudence specially a law-knowing person will never prefer to purchase the property, the title of which is under doubt."

Finally it said:

> "But for the purpose of the present complaint, having regard to all the facts and circumstances of the case, the Committee is of the opinion that the conduct of the respondent is patently unbecoming of a lawyer and against professional ethics. Consequently, we feel that as an exemplary punishment, Shri P.D. Gupta should be suspended from practice for a period of one year so that other erring lawyers should learn a lesson and refrain themselves from indulging in such practice."

12. The question which arises for consideration is:

> In view of the aforementioned facts is P.D. Gupta guilty of professional or other misconduct and if so is the punishment awarded to him disproportionate to the professional or other misconduct of which he has been found guilty?

13. Mr Y.K. Jain, learned counsel appearing for the appellant P.D. Gupta, submitted that if in a case like this it was held that a lawyer was guilty of professional misconduct particularly on a complaint filed by an interested person like Ram Murti no lawyer would be able to conduct henceforth the case of his client fearlessly. Mr Jain said that the aggrieved person, if any, in this case would have been either Vidya Wati, her daughter Maya Devi or her grandson Anand Prakash Bansal and neither of them had complained. It was also submitted that though the property was purchased by P.D. Gupta in late 1982 the complaint by Ram Murti was filed only on 16-12-1992. Mr Jain explained that as to how Vidya Wati had been varyingly described in various litigations was on account of instruction from her or her attorney and it was no fault of P.D. Gupta on that account. Then it was submitted that no specific charges had been framed in the disciplinary proceedings which had caused prejudice to P.D. Gupta in the conduct of his defence. Lastly, it was contended that P.D. Gupta was no longer concerned with the property as he had sold away the same.

14. There appears to be no substance in the submissions of Mr Jain. P.D. Gupta was fully aware of the allegations he was to meet. It was not a complicated charge. He has been sufficiently long in practice. The argument that a charge had not been formulated appears to be more out of the discontentment of P.D. Gupta in being unable to meet the allegation. Now, P.D. Gupta says that he has washed his hands off the property and thus he is not guilty of any misconduct. That is not the issue. It is his conduct in buying the property, the subject-matter of litigation between the parties, from his client on which he could exercise undue influence especially when there was a doubt cast on his client's title to the property. Had P.D. Gupta sold the property back to Vidya Wati and got the sale deed in his favour cancelled something could have been said in his favour. But that is not so. He sold the property to a third person, made profit and created more complications in the pending suit. P.D. Gupta purchased the properties which were the subject-matter of the dispute for himself and also for his son-in-law at almost throw-away prices and thus he himself became a party to the litigation. The conduct of P.D. Gupta cannot be said to be above board. It is not material that Vidya Wati or anyone claiming through her has not complained against him. We are concerned with the professional conduct of P.D. Gupta as a lawyer conducting the case for his client. A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to

be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as an officer of the court. Here, P.D. Gupta in buying the property has in effect subverted the process of justice. His action has raised serious questions about his fairness in the conduct of the trial touching his professional conduct as an advocate. By his action he has brought the process of administration of justice into disrepute.

15. The Bar Council of India and the State Bar Councils are statutory bodies under the Act. These bodies perform varying functions under the Act and the rules framed thereunder. The Bar Council of India has laid standards of professional conduct for the members. The code of conduct in the circumstances can never be exhaustive. The Bar Council of India and the State Bar Councils are representative bodies of the advocates on their rolls and are charged with the responsibility of maintaining discipline amongst members and punishing those who go astray from the path of rectitude set out for them. In the present case the Bar Council of India, through its Disciplinary Committee, has considered all the relevant circumstances and has come to the conclusion that P.D. Gupta, Advocate is guilty of misconduct and we see no reason to take a different view. We also find no ground to interfere with the punishment awarded to P.D. Gupta in the circumstances of the case.

17. The appeal is dismissed.

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T.C. Mathai v. *District & Sessions Judge, Thiruvananthapuram*

(1999) 3 SCC 614

K.T. THOMAS, J. - 2. The appellant claims to be the power-of-attorney holder of a couple (husband and wife) now living in Kuwait. He sought permission of the Sessions Court, Trivandrum to appear and plead on behalf of the said couple who are arrayed as respondents in a criminal revision petition filed before the said Sessions Court (they will be referred to as the respondent-couple). But the Sessions Judge declined to grant permission as the request for such permission did not emanate from the respondent-couple themselves. Thereupon the appellant moved the High Court of Kerala under Article 226 of the Constitution for issuance of a direction to the Sessions Judge concerned to grant the permission sought for. A Single Judge of the High Court dismissed the original petition against which the appellant filed a writ appeal which too was dismissed by a Division Bench of the High Court.

3. Undeterred by the successive setback in securing a right of audience on behalf of the aforesaid couple the appellant travelled a long distance from the southern end of the country right up to the national capital to personally argue before the Apex Court that he is entitled to plead for the respondent-couple in the Sessions Court. We heard the appellant-in-person though we are still now unable to appreciate why he, instead of incurring so much expenses and strain, did not advise the respondent-couple to engage a counsel for pleading their cause before the Sessions Court.

4. The appellant, during the course of his arguments, referred to a commentary on criminal law to support his contention that a power-of-attorney holder has all powers to act on behalf of his principal. We would assume that the respondent-couple would have executed an instrument of power of attorney empowering the appellant to act on their behalf. Can he become a pleader for the respondent-couple on the strength of it?

5. Section 303 of the Code of Criminal Procedure ("the Code") entitles a person to the right of being defended by a "pleader" of his choice when proceedings are initiated against him under the Code. "Pleader" is defined in Section 2(*q*) as thus:

> "2.(*q*) 'pleader', when used with reference to any proceeding in any court, means a person authorised by or under any law for the time being in force, to practise in such court, and includes any other person appointed with the permission of the court to act in such proceeding;"

6. The definition envelopes two kinds of pleaders within its ambit. The first refers to legal practitioners who are authorised to practise law and the second refers to "any other person". If it is the latter, its essential requisite is that such person should have been appointed with the permission of the court to act in such proceedings. This is in tune with Section 32 of the Advocates Act, 1961 which empowers a court to permit any person, who is not enrolled as an advocate to appear before it in any particular case. But if he is to plead for another person in a criminal court, such permission should be sought for by that person.

7. It is not necessary that the "pleader" so appointed should be the power-of-attorney holder of the party in the case. What seems to be a condition precedent is that his appointment should have been preceded by grant of permission of the court. It is for the court to consider

whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case.

8. The work in a court of law is a serious and responsible function. The primary duty of a criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

9. Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practise in all the courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

10. But if the person proposed to be appointed by the party is not such a qualified person, the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause [Section 2(*q*) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned.

11. V.R. Krishna Iyer, J. had occasion to deal with a similar matter while considering a plea like this in a chamber proceeding in the Supreme Court. In that case, a party sought permission to be represented by another person in a criminal case. Learned Judge then struck a note of caution in the following terms in ***Harishankar Rastogi* v. *Girdhari Sharma*** [AIR 1978 SC 1019]:

> "If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter-productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly or blockheadedly private representatives filing arguments at the court. Likewise, the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the court. Other situations, settings and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice."

12. The appellant submitted that he is the duly appointed attorney of the respondent-couple by virtue of an instrument of power of attorney executed by them and on its strength he contended that his right to represent the respondent-couple in the court would be governed by the said authority in the instrument.

14. Under the English law, "every person who is sui juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right". But this Court has pointed out that the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation,

15. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party-in-person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with "the personal attendance of the accused, and permit him to appear by his pleader" if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power-of-attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.

16. In this context reference can be made to a decision rendered by a Full Bench of the Madras High Court in ***M. Krishnammal* v. *T. Balasubramania Pillai*** [AIR 1937 Mad 937], when a person, who was the power-of-attorney holder of another, claimed right of audience in the High Court on behalf of his principal. A Single Judge referred three questions to be considered by the Full Bench, of which the one which is relevant here was whether an agent with the power of attorney to appear and conduct judicial proceedings has the right of audience in court. Beasley, C.J., who delivered the judgment on behalf of the Full Bench stated the legal position thus: (AIR Headnote)

> "An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of the principal, either in the appellate or original side of the High Court. ... There is no warrant whatever for putting a power of attorney given to a recognized agent to conduct proceedings in court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney [which] is confined only to pleaders, i.e., those who have a right to plead in courts."

17. The aforesaid observations, though stated sixty years ago, would represent the correct legal position even now. Be that as it may, an agent cannot become a "pleader" for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. The respondent-couple have not even moved for such a permission and hence no occasion has arisen so far to consider that aspect.

18. The appeal is accordingly dismissed.

R.D. Saxena v. *Balram Prasad Sharma*

(2000) 7 SCC 264

K.T. THOMAS, J. (*for himself and Sethi, J.*) The main issue posed in this appeal has sequential importance for members of the legal profession. The issue is this: has the advocate a lien for his fees on the litigation papers entrusted to him by his client? In this case the Bar Council of India, without deciding the above crucial issue, has chosen to impose punishment on a delinquent advocate debarring him from practising for a period of 18 months and a fine of Rs 1000. The advocate concerned was further directed to return all the case bundles which he got from his respondent client without any delay. This appeal is filed by the said advocate under Section 38 of the Advocates Act, 1961.

The appellant, now a septuagenarian, has been practising as an advocate mostly in the courts at Bhopal, after enrolling himself as a legal practitioner with the State Bar Council of Madhya Pradesh. According to him, he was appointed as legal advisor to Madhya Pradesh State Cooperative Bank Ltd. ("the Bank" for short) in 1990 and the Bank continued to retain him in that capacity during the succeeding years. He was also engaged by the said Bank to conduct cases in which the Bank was a party. However, the said retainership did not last long. On 17-7-1993 the Bank terminated the retainership of the appellant and requested him to return all the case files relating to the Bank. Instead of returning the files the appellant forwarded a consolidated bill to the Bank showing an amount of Rs 97,100 as the balance payable by the Bank towards the legal remuneration to which he is entitled. He informed the Bank that the files would be returned only after settling his dues.

3. Correspondence went on between the appellant and the Bank regarding the amount, if any, payable to the appellant as the balance due to him. The respondent Bank disclaimed any liability outstanding from them to the appellant. The dispute remained unresolved and the case bundles never passed from the appellant's hands. As the cases were pending the Bank was anxious to have the files for continuing the proceedings before the courts/tribunals concerned. At the same time the Bank was not disposed to capitulate to the terms dictated by the appellant which they regarded as grossly unreasonable. A complaint was hence filed by the Managing Director of the Bank, before the State Bar Council (Madhya Pradesh) on 3-2-1994. It was alleged in the complaint that the appellant is guilty of professional misconduct by not returning the files to his client.

4. In the reply which the appellant submitted before the Bar Council he admitted that the files were not returned but claimed that he has a right to retain such files by exercising his right of lien and offered to return the files as soon as payment is made to him.

5. The complaint was then forwarded to the Disciplinary Committee of the District Bar Council. The State Bar Council failed to dispose of the complaint even after the expiry of one year. So under Section 36-B of the Advocates Act the proceedings stood transferred to the Bar Council of India. After holding inquiry the Disciplinary Committee of the Bar Council of India reached the conclusion that the appellant is guilty of professional misconduct. The Disciplinary Committee has stated the following in the impugned order:

> "On the basis of the complaint as well as the documents available on record we are of the opinion that the respondent is guilty of professional misconduct and thereby he is liable for punishment. The complainant is a public institution. It was the duty of the respondent to return the briefs to the Bank and also to appear before the Committee to revert his allegations made in application dated 8-11-1995. No such attempt was made by him."

6. In this appeal learned counsel for the appellant contended that the failure of the Bar Council of India to consider the singular defence set up by the appellant i.e. he has a lien over the files for his unpaid fees due to him, has resulted in miscarriage of justice. The Bank contended that there was no fee payable to the appellant and the amount shown by him was on account of inflating the fees. Alternatively, the respondent contended that an advocate cannot retain the files after the client terminated his engagement and that there is no lien on such files.

7. We would first examine whether an advocate has lien on the files entrusted to him by the client. Learned counsel for the appellant endeavoured to base his contention on Section 171 of the Indian Contract Act which reads thus:

> "171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

8. Files containing copies of the records (perhaps some original documents also) cannot be equated with the "goods" referred to in the section. The advocate keeping the files cannot amount to "goods bailed". The word "bailment" is defined in Section 148 of the Contract Act as the delivery of goods by one person to another for some purpose, upon a contract that they shall be returned or otherwise disposed of according to the directions of the person delivering them, when the purpose is accomplished. In the case of litigation papers in the hands of the advocate there is neither delivery of goods nor any contract that they shall be returned or otherwise disposed of. That apart, the word "goods" mentioned in Section 171 is to be understood in the sense in which that word is defined in the Sale of Goods Act.

9. Thus understood "goods" to fall within the purview of Section 171 of the Contract Act should have marketability and the person to whom they are bailed should be in a position to dispose of them in consideration of money. In other words the goods referred to in Section 171 of the Contract Act are saleable goods. There is no scope for converting the case files into money, nor can they be sold to any third party. Hence, the reliance placed on Section 171 of the Contract Act has no merit.

10. In England the solicitor had a right to retain any deed, paper or chattel which had come into his possession during the course of his employment. It was the position in common law and it was later recognized as the solicitor's right under the Solicitors Act, 1860.

12. After independence the position would have continued until the enactment of the Advocates Act, 1961 which has repealed a host of enactments including the Indian Bar Council Act. When the new Bar Council of India came into existence it framed rules called

the Bar Council of India Rules as empowered by the Advocates Act. Such Rules contain provisions specifically prohibiting an advocate from adjusting the fees payable to him by a client against his own personal liability to the client. As a rule an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client (vide Rule 24). In this context a reference can be made to Rules 28 and 29.

13. Thus, even after providing a right for an advocate to deduct the fees out of any money of the client remaining in his hand at the termination of the proceeding for which the advocate was engaged, it is important to notice that no lien is provided on the litigation files kept with him. In the conditions prevailing in India with lots of illiterate people among the litigant public it may not be advisable also to permit the counsel to retain the case bundle for the fees claimed by him. Any such lien if permitted would become susceptible to great abuses and exploitation.

14. There is yet another reason which dissuades us from giving approval to any such lien. We are sure that nobody would dispute the proposition that the cause in a court/tribunal is far more important for all concerned than the right of the legal practitioner for his remuneration in respect of the services rendered for espousing the cause on behalf of the litigant. If a need arises for the litigant to change his counsel pendente lite, that which is more important should have its even course flow unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such course and the cause pending judicial disposal would be badly impaired. If a medical practitioner is allowed a legal right to withhold the papers relating to the treatment of his patient which he thus far administered to him for securing the unpaid bill, that would lead to dangerous consequences for the uncured patient who is wanting to change his doctor. Perhaps the said illustration may be an overstatement as a necessary corollary for approving the lien claimed by the legal practitioner. Yet the illustration is not too far-fetched. No professional can be given the right to withhold the returnable records relating to the work done by him with his client's matter on the strength of any claim for unpaid remuneration. The alternative is that the professional concerned can resort to other legal remedies for such unpaid remuneration.

15. A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative.

16. In civil cases, the appointment of an advocate by a party would be deemed to be in force until it is determined with the leave of the court [vide Order 3 Rule 4(1) of the Code of Civil Procedure]. In criminal cases, every person accused of an offence has the right to consult and be defended by a legal practitioner of his choice which is now made a fundamental right under Article 22(1) of the Constitution. The said right is absolute in itself and it does not depend on other laws. The words "of his choice" in Article 22(1) indicate that the right of the accused to change an advocate whom he once engaged in the same case,

cannot be whittled down by that advocate by withholding the case bundle on the premise that he has to get the fees for the services already rendered to the client.

17. If a party terminates the engagement of an advocate before the culmination of the proceedings that party must have the entire file with him to engage another advocate. But if the advocate who is changed midway adopts the stand that he would not return the file until the fees claimed by him are paid, the situation perhaps may turn to dangerous proportions. There may be cases when a party has no resources to pay the huge amount claimed by the advocate as his remuneration. A party in a litigation may have a version that he has already paid the legitimate fee to the advocate. At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees were yet to be paid.

18. Even if there is no lien on the litigation papers of his client an advocate is not without remedies to realise the fee which he is legitimately entitled to. But if he has a duty to return the files to his client on being discharged the litigant too has a right to have the files returned to him, more so when the remaining part of the lis has to be fought in the court. This right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate.

19. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression "misconduct, professional or otherwise". The word "misconduct" is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct.

20. ***Corpus Juris Secundum*** contains the following passage at p.740 (Vol. 7):

> "Professional misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it."

23. We, therefore, hold that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct.

24. However, regarding the quantum of punishment we are disposed to take into account two broad aspects:

> (*1*) This Court has not pronounced, so far, on the question whether the advocate has a lien on the files for his fees.
>
> (*2*) The appellant would have bona fide believed, in the light of decisions of certain High Courts, that he did have a lien.

In such circumstances it is not necessary to inflict a harsh punishment on the appellant. A reprimand would be sufficient in the interest of justice on the special facts of this case.

25. We, therefore, alter the punishment to one of reprimanding the appellant. However, we make it clear that if any advocate commits this type of professional misconduct in future he would be liable to such quantum of punishment as the Bar Council will determine and the lesser punishment imposed now need not be counted as a precedent.

D.P. Chadha v. *Triyugi Narain Mishra*

(2001) 2 SCC 221

R.C. LAHOTI, J. - Shri D.P. Chadha, Advocate, the appellant, has been held guilty of professional misconduct by the Rajasthan State Bar Council and punished with suspension from practice for a period of five years. Shri Anil Sharma, Advocate was also proceeded against along with Shri D.P. Chadha, Advocate and he too having been found guilty was reprimanded. An appeal preferred by Shri D.P. Chadha, Advocate under Section 37 of the Advocates Act, 1961 has not only been dismissed but the Bar Council of India has chosen to vary the punishment of the appellant by enhancing the period of suspension from practice to ten years. The Bar Council of India has also directed notice to show cause against enhancement of punishment to be issued to Shri Anil Sharma, Advocate. The Bar Council of India has further directed proceedings for professional misconduct to be initiated against one Shri Rajesh Jain, Advocate. Shri D.P. Chadha, Advocate has preferred this appeal under Section 38 of the Advocates Act, 1961 ("the Act").

2. It is not disputed that Upasana Construction Pvt. Ltd. had filed a suit for ejectment based on landlord-tenant relationship against the complainant Shri Triyugi Narain Mishra, who was running a school in the tenanted premises wherein about 2000 students were studying. Shri D.P. Chadha was engaged by the complainant for defending him in the suit.

3. It is not necessary to set out in extenso the contents of the complaint made by Shri Triyugi Narain Mishra to the Bar Council. It would suffice to notice in brief the findings concurrently arrived at by the State Bar Council and the Bar Council of India constituting the gravamen of the charge against the appellant. While the proceedings in the ejectment suit were going on in the civil court at Jaipur, the complainant was contesting an election in the State of U.P. Polling was held on 18-11-1993 and again on 22-11-1993 on which dates as also on the days intervening, Shri Triyugi Narain Mishra was in Chilpur in the State of U.P. looking after the election and was certainly not available at Jaipur. Shri D.P. Chadha was in possession of a blank vakalatnama and a blank paper, both signed by the complainant, given to him in the first week of October 1993. These documents were used for fabricating a compromise petition whereby the complainant has been made to suffer a decree for eviction. The blank vakalatnama was used for engaging Shri Anil Sharma, Advocate, on behalf of the complainant, who got the compromise verified. Though the compromise was detrimental to the interest of the complainant yet the factum of compromise and its verification was never brought to the notice of the complainant in spite of ample time and opportunity being available for the purpose. The proceedings of the court show a deliberate attempt having been made by three erring advocates to avoid the appearance of the complainant before the court, to prevent the complainant from gathering knowledge of the compromise filed in court and creating a situation whereby the court was virtually compelled to pass a decree though the court was feeling suspicious of the compromise and wanted presence of the complainant to be secured before it before the decree was passed.

4. The proceedings of the court and the several documents relating thereto, go to show that earlier the plaintiff Company was being represented by Shri Vidya Bhushan Sharma, Advocate. An application was moved on behalf of the plaintiff discharging Shri Vidya

Bhushan Sharma from the case and instead engaging Shri Rajesh Jain, Advocate on behalf of the plaintiff and in place of Shri Vidya Bhushan Sharma, Advocate. On 17-11-1993 Shri D.P. Chadha was present in the court though the defendant was not present when an adjournment was taken from the court stating that there was possibility of an amicable settlement between the parties whereupon hearing was adjourned to 14-2-1994 for reporting compromise or framing of issues. On 20-11-1993, which was not a date fixed for hearing, Shri Rajesh Jain and Shri Anil Sharma, Advocates appeared in the court on behalf of the plaintiff and the defendant respectively and filed a compromise petition. Shri Anil Sharma filed Vakalatnama purportedly on behalf of the complainant.

5. The compromise petition purports to have been signed by the parties as also by Shri Rajesh Jain, Advocate on behalf of the plaintiff and Shri Anil Sharma, Advocate on behalf of the defendant. The compromise petition is accompanied by another document purporting to be a receipt executed by the complainant acknowledging receipt of an amount of Rs. 5 lakhs by way of damages for the loss of school building standing on the premises. The receipt is typed but the date 20-11-1993 is written in hand. A revenue stamp of 20 p is fixed on the receipt in a side of the paper and at a place where ordinarily the ticket is not affixed. The factum of the defendant having received an amount of Rs 5 lakhs as consideration amount for the compromise does not find a mention in the compromise petition.

6. The Learned Additional Civil Judge before whom the compromise petition was filed directed the parties to remain personally present before the court on 17-12-1993 so as to verify the compromise. Instead of complying with the orders, Shri Rajesh Jain, Advocate filed a miscellaneous civil appeal raising a plea that the trial court was not justified in directing personal appearance of the parties and should have recorded the compromise on verification by the advocates. The complainant Shri Triyugi Narain Mishra was impleaded as respondent "through advocate Shri Anil Sharma" - as stated in the cause title of memo of appeal. The appeal was filed on 20-12-1993. Notice of appeal was not issued to the complainant; the same was issued in the name of Shri Anil Sharma, Advocate, who accepted the same. Shri Anil Sharma, Advocate did not file any vakalatnama on behalf of the complainant in the appeal and instead made his appearance by filing a memo of appearance reciting his authority to appear in appeal on the basis of his being a counsel for the complainant in the trial court. This appeal was dismissed by the Learned Additional District Judge on 24-1-1994 holding the appeal to be not maintainable.

7. On 30-1-1994, the trial court's record was returned to it by the appellate court. On 17-12-1993 also the trial court had directed personal appearance of the parties. On 16-2-1994 the counsel appearing for the parties (the names of the counsel not mentioned in the order-sheet dated 16-2-1994) took time for submitting case-law for the perusal of the court. Similar prayer was made on 21-2-1994 and 18-3-1994. On 8-4-1994, the plaintiff was present with his counsel. The defendant/complainant was not present. Shri D.P. Chadha, Advocate appeared on behalf of the defendant and argued that personal presence of Shri Triyugi Narain Mishra was not required for verification of compromise and the presence of the advocate was enough for the court to verify the compromise and take the same on record. The court was requested to recall its earlier order directing personal appearance of the parties. A few decided cases were cited by Shri D.P. Chadha, Advocate before the court for its consideration. The

trial court suspected the conduct of the counsel and passed a detailed order directing personal presence of the defendant to be secured before the court. The trial court also directed a notice to be issued to the defendant for his personal appearance on the next date of hearing before passing any order on the compromise petition.

8. Shri Rajesh Jain, Advocate again filed an appeal against the order dated 8-4-1994. Again the complainant was arrayed as a respondent in the cause title "through Shri Anil Sharma, Advocate". An application was moved before the appellate court seeking a shorter date of hearing as the defendant was likely to go out. On 21-8-1994 the appellate court directed the record of the trial court to be requisitioned. Shri Anil Sharma, Advocate appeared in the appellate court without filing any vakalatnama from the complainant. He conceded to the appeal being allowed and personal appearance of the defendant not being insisted upon for the purpose of recording the compromise. The appellate court was apparently oblivious of the legal position that such a miscellaneous appeal was not maintainable under any provision of law.

9. Certified copy of the order of the appellate court was obtained in hot haste. Unfortunately, the Presiding Officer of the trial court who was dealing with the matter, had stood transferred in the meanwhile. An application was filed before the successor trial Judge by Shri Rajesh Jain, Advocate requesting compliance with the order of the appellate court and to record the compromise and pass a decree in terms thereof, dispensing with the necessity of personal presence of the parties. On 23-7-1994, the trial Judge, left with no other option, passed a decree in terms of compromise in the presence of Shri Rajesh Jain and Shri Anil Sharma, Advocates. The decree directed the suit premises to be vacated by 30-11-1993 (the date stated in the compromise petition).

10. Shri Triyugi Narain Mishra, the complainant, moved the State Bar Council complaining of the professional misconduct of the three advocates who had colluded to bring the false compromise in existence without his knowledge and also made all efforts to prevent the complainant gathering knowledge of the alleged compromise.

11. In response of the notice issued by the State Bar Council, Shri Anil Sharma, Advocate submitted that he did not know Shri Triyugi Narain Mishra personally. The vakalatnama and the compromise petition were handed over to him by Shri D.P. Chadha, Advocate for the purpose of being filed in the court. Shri Anil Sharma was told by Shri D.P. Chadha, Advocate that he was not well and if there was any difficulty in securing the decree then he was available to assist Shri Anil Sharma. In the two miscellaneous civil appeals preferred by Shri Rajesh Jain, Advocate, Shri Anil Sharma accepted the notices of the appeals on the advice of Shri D.P. Chadha, Advocate.

12. Shri D.P. Chadha, Advocate took the plea that he was not aware of the compromise petition and the various proceedings relating thereto, leading to verification of the compromise and passing of the decree. He submitted that he never obtained blank paper or blank vakalatnama signed by anyone at any time and not even Shri Triyugi Narain Mishra, the complainant. He also submitted that on 8-4-1994 his presence had been wrongly recorded in the proceedings and he had not appeared before the court to argue that the personal presence of the parties was not required for verification of compromise petition filed in the court and

that the counsel was competent to sign and verify the compromise whereon the court should act.

13. Amongst other witnesses the complainant and the three counsel have all been examined by the State Bar Council and cross-examined by the parties to the disciplinary proceedings. The defence raised by the appellant has been discarded by the State Bar Council as well as by the Bar Council of India in their orders. Both the authorities have dealt extensively with the improbabilities of the defence and assigned detailed reasons in support of the findings arrived at by them. Both the authorities have found the charge against the appellant proved to the hilt. The statement of the complainant has been believed that he had never entered into any compromise and he did not even have knowledge of it. His statement that Shri D.P. Chadha, the appellant, had obtained blank paper and blank vakalatnama signed by him and the same have been utilised for the purpose of fabricating the compromise and appointing Shri Anil Sharma, Advocate, has also been believed. Here it may be noted that Shri D.P. Chadha had denied on oath having obtained any blank paper or vakalatnama from Shri Triyugi Narain Mishra. However, while cross-examining the complainant first he was pinned down in stating that only one paper and one vakalatnama (both blank) were signed by him and then Shri D.P. Chadha produced from his possession one blank vakalatnama and one blank paper signed by the complainant.

The Bar Council has found that the blank paper, so produced by the appellant, bore the signature of the complainant almost at the same place of the blank space at which the signature appears on the disputed compromise. Production of signed blank vakalatnama and blank paper from the custody of the complainant before the Bar Council belied the appellant's defence emphatically raised in his written statement. On 8-4-1994 the presence of the appellant is recorded by the trial court at least at two places in the order-sheet of that date. It is specifically recorded in the context of his making submissions before the court relying on several rulings to submit that personal appearance of the party was not necessary to have the compromise verified and taken on record. The appellant had not moved the court at any time for correcting the record of the proceedings and deleting his appearance only if the order-sheet did not correctly record the proceedings of the court. On and around the filing of the compromise petition before the trial court the appellant was keeping a watch on the proceedings and noting the appointed dates of hearing though he was not actually appearing in the court on the dates other than 8-4-1994. In short, it has been found both by the State Bar Council and the Bar Council of India that the complainant had not entered into any compromise and that he was not even aware of it. Blank vakalatnama and blank paper entrusted by him in confidence to his counsel, i.e. the appellant, were used for the purpose of bringing a false compromise into existence and appointing Shri Anil Sharma, Advocate for the defendant, without his knowledge, to have compromise verified and brought on record followed by a decree. Shri Vidya Bhushan Sharma, the counsel originally appointed by the plaintiff might not have agreed to a decree being secured in favour of the plaintiff on the basis of a false compromise and that is why he was excluded from the proceedings and instead Shri Rajesh Jain was brought to replace him. The decree resulted into closure of the school, demolition of school building and about 2000 students studying in the school being thrown on the road.

14. We have heard the learned counsel for the parties at length. We have also gone through the evidence and the relevant documents available on record of the Bar Council. We are of the opinion that the State Bar Council as well as the Bar Council of India have correctly arrived at the findings of the fact and we too find ourselves entirely in agreement with the findings so arrived at.

15. In the very nature of things there was nothing like emergency, not even an urgency for securing verification of compromise and passing of a decree in terms thereof. Heavens were not going to fall if the recording of the compromise was delayed a little and the defendant was personally produced in the court who was certainly not available in Jaipur being away in the State of U.P. contesting an election. The counsel for the parties were replaced apparently for no reason. The trial court entertained doubts about the genuineness of the compromise and therefore directed personal appearance of the parties for verification of the compromise. The counsel appearing in the case made all possible efforts at avoiding compliance with the direction of the trial court and to see that the compromise was verified and taken on record culminating into a decree without the knowledge of the defendant/complainant. Instead of securing presence of the defendant before the court, the counsel preferred miscellaneous appeals twice and ultimately succeeded in securing an appellate order, which too is collusive, directing the trial court to verify and take on record the compromise without insisting on personal appearance of the defendant. Such miscellaneous appeal, as was preferred, was not maintainable under Section 104 or Order 43 Rule 1 CPC or any other provision of law. In an earlier round the appellate court had expressed that view. The proceedings in the appellate court as also before the trial court show an effort on the part of the counsel appearing thereat to have the matter as to compromise disposed of hurriedly, obviously with a view to exclude the possibility of the defendant-complainant gathering any knowledge of what was transpiring.

17. ***Byram Pestonji Gariwala*** **v.** ***Union of India*** [AIR 1991 SC 2234] is an authority for the proposition that in spite of the 1976 Amendment in Order 23 Rule 3 CPC which requires agreement or compromise between the parties to be in writing and signed by the parties, the implied authority of counsel engaged in the thick of the proceedings in court, to compromise or agree on matters relating to the parties, was not taken away. Neither the decision in ***Byram Pestonji Gariwala*** nor any other authority cited on 8-4-1994 before the trial court dispenses with the need of the agreement or compromise being proved to the satisfaction of the court. In order to be satisfied whether the compromise was genuine and voluntarily entered into by the defendant, the trial court had felt the need of parties appearing in person before the court and verifying the compromise. In the facts and circumstances of the case the move of the counsel resisting compliance with the direction of the court was nothing short of being sinister. The learned Additional District Judge who allowed the appeal preferred by Shri Rajesh Jain unwittingly fell into trap. It was expected of the learned Additional District Judge, who must have been a senior judicial officer, to have seen that he was allowing an appeal which was not even maintainable. But for his order the learned Judge of the trial court would not have taken on record the compromise and passed decree in terms thereof unless the parties had personally appeared before him.

In our opinion the appellant Shri D.P. Chadha was not right in resisting the order of the trial court requiring personal appearance of the defendant for verifying the compromise. The resistance speaks volumes of sinister design working in the minds of the guilty advocates. Even during the course of these proceedings and also during the course of hearing of the appeal before us there is not the slightest indication of any justification behind resistance offered by the counsel to the appearance of the defendant in the trial court. The correctness of the proceedings dated 8-4-1994 as recorded by the court cannot be doubted. The order-sheet of the trial court dated 8-4-1994 records as under:

"*8-4-1994*

(Cutting). Plaintiff with counsel present. *Defendant's counsel Shri D.P. Chadha present.* Arguments heard. Judicial precedents ***Tashi Dorji* v. *Birendra Kumar Roy*** [AIR 1980 Cal 51], ***Vishnu Kumar* v. *State Bank of Bikaner and Jaipur*** [AIR 1976 Raj 195], ***Byram Pestonji*** *cited by Shri D.P. Chadha* perused. In the matter under consideration, compromise was filed on 20-11-1993 and the same day the counsel were directed to keep the parties present in court but parties were not produced. On behalf of the plaintiff-appellant, an appeal was also preferred against the order dated 20-11-1993 before the Hon'ble District and Sessions Judge but the order of trial court being not appealable, appeal has been dismissed.

Para 40 of the decision ***Byram Pestonji*** is as under:

'Accordingly, we are of the view that the words 'in writing and signed by the parties' inserted by the CPC (Amendment) Act, 1976, must necessarily mean, to borrow the language of Order III Rule 1 CPC:

"any appearance, …or by a pleader, appearing, applying or acting as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person."'

Thus in my view the court can direct any party to be present in court under Order III Rule 1 in compliance with the said decision of the Hon'ble Supreme Court. The counsel for the defendant has not produced the defendant in court. Therefore, notice be issued to the defendant to appear personally in court. For service of notice, the case be put up on 5-5-1994. Before (cutting) preparing the decree on the basis of compromise, I deem it proper in the interest of justice to direct the opposite party to personally appear in the court.

Sd/- Illegible Seal of Additional Civil Judge and Additional Chief Judicial Magistrate No. 6, Jaipur City."

18. The record of the proceedings made by the court is sacrosanct. The correctness thereof cannot be doubted merely for asking. In ***State of Maharashtra* v. *Ramdas Shrinivas Nayak*** [AIR 1982 SC 1249], this Court has held:

"(T)he Judges' record was conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else. The court could not launch into inquiry as to what transpired in the High Court.

The Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. It cannot allow the statement of the Judges

to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of facts as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

20. The explanation given by the appellant for not moving the trial court for rectification in the record of proceedings is that the presiding Judge of the court had stood transferred and therefore it would have been futile to move for rectification. Such an explanation is a ruse merely. The application for rectification should have been moved as the only course permissible and, if necessary, the record could have been sent to that very Judge for dealing with the prayer of rectification wherever he was posted. In the absence of steps for rectification having been taken a challenge to the correctness of the facts recorded in the order-sheet of the court cannot be entertained, much less upheld. We agree with the finding recorded in the order under appeal that the proceedings dated 8-4-1994 correctly state the appellant having appeared in the court and argued the matter in the manner recited therein.

21. The term "misconduct" has not been defined in the Act. However, it is an expression with a sufficiently wide meaning. In view of the prime position which the advocates occupy in the process of administration of justice and justice delivery system, the courts justifiably expect from the lawyers a high standard of professional and moral obligation in the discharge of their duties. Any act or omission on the part of a lawyer which interrupts or misdirects the sacred flow of justice or which renders a professional unworthy of right to exercise the privilege of the profession would amount to misconduct attracting the wrath of disciplinary jurisdiction.

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 practising 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.

25. An advocate while discharging duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.

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.

28. We are aware that a charge of misconduct is a serious matter for a practising advocate. A verdict of guilt of professional or other misconduct may result in reprimanding the advocate, suspending the advocate from practice for such period as may be deemed fit or even removing the name of the advocate from the roll of advocates which would cost the counsel his career. Therefore, an allegation of misconduct has to be proved to the hilt. The evidence adduced should enable a finding being recorded without any element of reasonable doubt. In the present case, both the State Bar Council and the Bar Council of India have

arrived at, on proper appreciation of evidence, a finding of professional misconduct having been committed by the appellant. No misreading or non-reading of the evidence has been pointed out. The involvement of the appellant in creating a situation resulting into recording of a false and fabricated compromise, apparently detrimental to the interest of his client, is clearly spelled out by the findings concurrently arrived at with which we have found no reason to interfere. The appellant canvassed a proposition of law before the court by pressing into service such rulings which did not support the interpretation which he was frantically persuading the court to accept. The provisions of Rule 3 of Order 23 are clear. The crucial issue in the case was not the authority of a counsel to enter into a compromise, settlement or adjustment on behalf of the client. The real issue was of the satisfaction of the court whether the defendant had really, and as a matter of fact, entered into settlement. The trial Judge entertained a doubt about it and therefore insisted on the personal appearance of the party to satisfy himself as to the correctness of the factum of compromise and genuineness of the statement that the defendant had in fact compromised the suit in the manner set out in the petition of compromise.

29. The power of the court to direct personal presence of any party is inherent and implicit in jurisdiction vesting in the court to take decision. This power is a necessary concomitant of court's obligation to arrive at a satisfaction and record the same as spelt out from the phraseology of Order 23 Rule 3 CPC. It is explicit in Order 3 Rule 1. This position of law admits of no doubt. Strong resistance was offered to an innocuous and cautious order of the court by canvassing an utterly misconceived proposition, even by invoking a wrong appellate forum and with an ulterior motive. The counsel appearing for the defendant, including the appellant, did their best to see that their own client did not appear in the court and thereby, gather knowledge of such proceedings. At no stage, including the hearing before this Court, the appellant has been able to explain how and in what manner he was serving the interest of his client, i.e. the defendant in the suit by raising the plea which he did. What was the urgency of having the compromise recorded without producing the defendant in person before the court when the court was insisting on such appearance? The compromise was filed in the court. The defendant was away electioneering in his constituency. At best or at the worst, the recording of the compromise would have been delayed by a few days. In the facts and circumstances of the case we find no reason to dislodge the finding of professional misconduct as arrived at by the State Bar Council and the Bar Council of India.

30. It has been lastly contended by the learned counsel for the appellant that the Bar Council of India was not justified in enhancing the punishment by increasing the period of suspension from practice from 5 years to 10 years. It is submitted that the order enhancing the punishment to the prejudice of the appellant is vitiated by non-compliance with principles of natural justice and also for having been passed without affording the appellant a reasonable opportunity of being heard.

32. Very wide jurisdiction has been conferred on the Bar Council of India by sub-section (2) of Section 37. The Bar Council of India may confirm, vary or reverse the order of the State Bar Council and may remit or remand the matter for further hearing or rehearing subject to such terms and directions as it deems fit. The Bar Council of India may set aside an order dismissing the complaint passed by the State Bar Council and convert it into an order holding

the advocate proceeded against guilty of professional or other misconduct. In such a case, obviously, the Bar Council of India may pass an order of punishment which the State Bar Council could have passed. While confirming the finding of guilt the Bar Council of India may vary the punishment awarded by the Disciplinary Committee of the State Bar Council which power to vary would include the power to enhance the punishment. An order enhancing the punishment, being an order prejudicially affecting the advocate, the proviso mandates the exercise of such power to be performed only after giving the advocate reasonable opportunity of being heard. The proviso embodies the rule of fair hearing. Accordingly, and consistently with the well-settled principles of natural justice, if the Bar Council of India proposes to enhance the punishment it must put the guilty advocate specifically on notice that the punishment imposed on him is proposed to be enhanced. The advocate should be given a reasonable opportunity of showing cause against such proposed enhancement and then he should be heard.

33. In the case at hand we have perused the proceedings of the Bar Council of India. The complainant did not file any appeal or application before the Bar Council of India praying for enhancement of punishment. The appeal filed by the appellant was being heard and during the course of such hearing it appears that the Disciplinary Committee of the Bar Council of India indicated to the appellant's counsel that it was inclined to enhance the punishment. This is reflected by the following passage occurring in the order under appeal:

> "While hearing the matter finally parties were also heard as to the enhancement of sentence."

34. The appellant himself was not present on the date of hearing. He had prayed for an adjournment on the ground of his sickness which was refused. The counsel for the appellant was heard in appeal. It would have been better if the Bar Council of India having heard the appeal would have first placed its opinion on record that the findings arrived at by the State Bar Council against the appellant were being upheld by it. Then the appellant should have been issued a reasonable notice calling upon him to show cause why the punishment imposed by the State Bar Council be not enhanced. After giving him an opportunity of filing a reply and then hearing him the Bar Council could have for reasons to be placed on record, enhanced the punishment. No such thing was done. The exercise by the Bar Council of India of power to vary the sentence to the prejudice of the appellant is vitiated in the present case for not giving the appellant reasonable opportunity of being heard. The appellant is about 60 years of age. The misconduct alleged relates to the year 1993. The order of the State Bar Council was passed in December 1995. In the facts and circumstances of the case we are not inclined to remit the matter now to the Bar Council of India for compliance with the requirements of proviso to sub-section (2) of Section 37 of the Act as it would entail further delay and as we are also of the opinion that the punishment awarded by the State Bar Council meets the ends of justice.

35. For the foregoing reasons the appeal is partly allowed. The finding that the appellant is guilty of professional misconduct is upheld but the sentence awarded by the Rajasthan State Bar Council suspending the appellant from practice for a period of five years is upheld and restored. Accordingly, the order of the Bar Council of India, only to the extent of enhancing the punishment, is set aside.

Shambhu Ram Yadav v. *Hanuman Das Khatry*

(2001) 6 SCC 1

Y.K. SABHARWAL, J. - Legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice to their clients, if it is legally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. There is a heavy responsibility on those on whom duty has been vested under the Advocates Act, 1961 to take disciplinary action when the credibility and reputation of the profession comes under a clout (*sic* cloud) on account of acts of omission and commission by any member of the profession.

A complaint filed by the appellant against the respondent Advocate before the Bar Council of Rajasthan was referred to the Disciplinary Committee constituted by the State Bar Council. In substance, the complaint was that the respondent while appearing as a counsel in a suit pending in a civil court wrote a letter to Mahant Rajgiri, his client inter alia stating that another client of his has told him that the Judge concerned accepts bribe and he has obtained several favourable orders from him in his favour; if he can influence the Judge through some other gentleman, then it is a different thing, otherwise he should send to him a sum of Rs 10,000 so that through the said client the suit is got decided in his (Mahant Rajgiri's) favour. The letter further stated that if Mahant can personally win over the Judge on his side then there is no need to spend money. This letter is not disputed. In reply to the complaint, the respondent pleaded that the services of the Presiding Judge were terminated on account of illegal gratification and he had followed the norms of professional ethics and brought these facts to the knowledge of his client to protect his interest and the money was not sent by his client to him. Under these circumstances it was urged that the respondent had not committed any professional misconduct.

3. The State Bar Council noticing that the respondent had admitted the contents of the letter came to the conclusion that it constitutes misconduct. In the order the State Bar Council stated that keeping in view the interest of the litigating public and the legal profession such a practice whenever found has to be dealt with in an appropriate manner. Holding the respondent guilty of misconduct under Section 35 of the Advocates Act, the State Bar Council suspended him from practice for a period of two years with effect from 15-6-1997.

4. The respondent challenged the aforesaid order before the Disciplinary Committee of the Bar Council of India. By order dated 31-7-1999 the Disciplinary Committee of the Bar Council of India comprising of three members enhanced the punishment and directed that the name of the respondent be struck off from the roll of advocates, thus debarring him permanently from the practice. The concluding paragraph of the order dated 31-7-1999 reads thus:

> In the facts and circumstances of the case, we also heard the appellant as to the punishment since the advocate has considerable standing in the profession. He has served as an advocate for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the Judge and he admittedly

demanded Rs 10,000 from his client and he orally stated that subsequently order was passed in his client's favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question. We cannot impose any lesser punishment than debarring him permanently from the practice. His name should be struck off from the roll of advocates maintained by the Bar Council of Rajasthan. Hereafter the appellant will not have any right to appear in any court of law, tribunal or before any authority. We also impose a cost of Rs 5000 on the appellant which should be paid by the appellant to the Bar Council of India which has to be paid within two months.

5. The respondent filed a review petition under Section 44 of the Advocates Act against the order dated 31-7-1999. The review petition was allowed and the earlier order modified by substituting the punishment already awarded permanently debarring him with one of reprimanding him. The impugned order was passed by the Disciplinary Committee comprising of three members of which two were not members of the earlier Committee which had passed the order dated 31-7-1999.

6. The review petition was allowed by the Disciplinary Committee for the reasons, which, in the words of the Committee, are these:

"(*1*) The Committee was under the impression as if it was the petitioner who had written a letter to his client calling him to bribe the Judge. But a perusal of the letter shows that the petitioner has simply given a reply to the query put by his client regarding the conduct of the Judge and as such it remained a fact that it was not an offer on the side of the delinquent advocate to bribe a Judge. This vital point which touches the root of the controversy seems to have been ignored at the time of the passing of the impugned order.

(*2*) The petitioner is an old man of 80 years. He had joined the profession in the year 1951 and during such a long innings of his profession, it was for the first time that he conducted himself in such an irresponsible manner although he had no intention to bribe.

(*3*) The Committee does not approve the writing of such a letter on the part of the lawyer to his client but keeping in view the age and the past clean record of the petitioner in the legal profession the Committee is of the view that it would not be appropriate to remove the advocate permanently from the roll of advocates.… The Committee is of the considered view that ends of justice would be met in case the petitioner is reprimanded for the omission he had committed. He is warned by the Committee that he should not encourage such activities in life and he should be careful while corresponding with his client.

In view of the aforesaid observations, the review petition is accepted and the earlier judgment of the Committee dated 31-7-1999 is modified to the extent and his suspension for life is revoked and he is only reprimanded."

7. We have perused the record. The original order has been reviewed on non-existent grounds. All the factors taken into consideration in the impugned order were already on record and were considered by the Committee when it passed the order dated 31-7-1999. The power of review has not been exercised by applying well-settled principles governing the exercise of such power. It is evident that the reasons and facts on the basis whereof the order

was reviewed had all been taken into consideration by the earlier Committee. The relevant portion of the letter written by the advocate had been reproduced in the earlier order. From that quotation it was evident that the said Committee noticed that the advocate was replying to a letter received from his client. It is not in dispute that the respondent had not produced the letter received by him from his client to which the admitted letter was sent requiring his client to send Rs 10,000 for payment as bribe to the Judge concerned. We are unable to understand as to how the Committee came to the conclusion that any vital point in regard to the letter had been ignored at the time of the passing of the order dated 31-7-1999. The age and the number of years the advocate had put in had also been noticed in the order dated 31-7-1999. We do not know how the Committee has come to the conclusion that the respondent "had no intention to bribe the Judge". There is nothing on the record to suggest it. The earlier order had taken into consideration all relevant factors for coming to the conclusion that the advocate was totally unfit to be a lawyer having written such a letter and punishment lesser than debarring him permanently cannot be imposed. The exercise of power of review does not empower a Disciplinary Committee to modify the earlier order passed by another Disciplinary Committee taking a different view of the same set of facts.

8. The respondent was indeed guilty of a serious misconduct by writing to his client the letter as aforesaid. Members of the legal profession are officers of the court. Besides courts, they also owe a duty to the society which has a vital public interest in the due administration of justice. The said public interest is required to be protected by those on whom the power has been entrusted to take disciplinary action. The disciplinary bodies are guardians of the due administration of justice. They have requisite power and rather a duty while supervising the conduct of the members of the legal profession, to inflict appropriate penalty when members are found to be guilty of misconduct. Considering the nature of the misconduct, the penalty of permanent debarment had been imposed on the respondent which without any valid ground has been modified in exercise of power of review. It is the duty of the Bar Councils to ensure that lawyers adhere to the required standards and on failure, to take appropriate action against them. The credibility of a Council including its disciplinary body in respect of any profession whether it is law, medicine, accountancy or any other vocation depends upon how they deal with cases of delinquency involving serious misconduct which has a tendency to erode the credibility and reputation of the said profession. The punishment, of course, has to be commensurate with the gravity of the misconduct.

9. In the present case, the earlier order considering all relevant aspects directed expulsion of the respondent from the profession which order could not be lightly modified while deciding a review petition. It is evident that the earlier Committee, on consideration of all relevant facts, came to the conclusion that the advocate was not worthy of remaining in the profession. The age factor and the factor of number of years put in by the respondent were taken into consideration by the Committee when removal from the roll of the State Council was directed. It is evident that the Bar Council considered that a high standard of morality is required from lawyers, more so from a person who has put in 50 years in the profession. One expects from such a person a very high standard of morality and unimpeachable sense of legal and ethical propriety. Since the Bar Councils under the Advocates Act have been entrusted with the duty of guarding the professional ethics, they have to be more sensitive to the

potential disrepute on account of action of a few black sheep which may shake the credibility of the profession and thereby put at stake other members of the Bar. Considering these factors, the Bar Council had inflicted in its earlier order the condign penalty. Under these circumstances, we have no hesitation in setting aside the impugned order dated 4-6-2000 and restoring the original order of the Bar Council of India dated 31-7-1999.

10. The appeal is thus allowed in the above terms with costs quantified at Rs 10,000.

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Pravin C. Shah v. *K.A. Mohd. Ali*

(2001) 8 SCC 650

K.T. THOMAS, J. - We thought that the question involved in this appeal would generate much interest to the legal profession and hence we issued notices to the Bar Council of India as well as the State Bar Council concerned. But the Bar Council of India did not respond to the notice. We therefore requested Mr Dushyant A. Dave, Senior Advocate, to help us as amicus curiae. The learned Senior Counsel did a commendable job to help us by projecting a wide screen focussing on the full profiles of the subject with his usual felicity. We are beholden to him.

2. When an advocate was punished for contempt of court can he appear thereafter as a counsel in the courts, unless he purges himself of such contempt? If he cannot, then what is the way he can purge himself of such contempt? That question has now come to be determined by the Supreme Court.

3. This matter concerns an advocate practising mostly in the courts situated within Ernakulam District of Kerala State. He was hauled up for contempt of court on two successive occasions. We wish to skip the facts in both the said cases which resulted in his being hauled up for such contempt as those facts have no direct bearing on the question sought to be decided now. [The detailed facts leading to the said proceedings have been narrated in the two decisions of the High Court of Kerala reported in ***C.N. Presannan*** **v.** ***K.A. Mohammed Ali,*** 1991 Cri LJ 2194 (Ker) & 1991 Cri LJ 2205 (Ker)]. Nonetheless, it is necessary to state that the High Court of Kerala found the respondent Advocate guilty of criminal contempt in both cases and convicted him under Section 12 of the Contempt of Courts Act, 1971, and sentenced him in one case to a fine of Rs 10,000 (to be credited, if realised, to the funds of Kerala Legal Aid Board). In the second case he was sentenced to pay a fine of Rs 2000. Though he challenged the conviction and sentence imposed on him by the High Court, he did not succeed in the Supreme Court except getting the fine of Rs 2000 in one case deleted. The apology tendered by him in this Court was not accepted, for which a two-Judge Bench made the following observation:

> "We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the Constitution, which we do hereby."

4. The above conviction and sentence and refusal to accept the apology tendered on his behalf did not create any ripple in him, so far as his resolve to continue to appear and conduct cases in the courts was concerned. The present appellant (who represents an association "Lalan Road Residents' Association, Cochin") brought to the notice of the Bar Council of Kerala that the delinquent Advocate continued to conduct cases before the courts in Ernakulam District in spite of the conviction and sentence.

5. The Bar Council of Kerala thereupon initiated disciplinary proceedings against the respondent Advocate and finally imposed a punishment on him debarring him from "acting or pleading in any court till he gets himself purged of the contempt of court by an order of the appropriate court". The respondent Advocate challenged the order of the State Bar Council in

an appeal filed before the Bar Council of India. By the impugned order the Bar Council of India set aside the interdict imposed on him.

6. This appeal, in challenge of the aforesaid order of the Bar Council of India, is preferred by the same person at whose instance the State Bar Council initiated action against the respondent Advocate.

8. The above Rule shows that it was not necessary for the Disciplinary Committee of the Bar Council to impose the said interdict as a punishment for misconduct. Even if the Bar Council had not passed proceedings (which the Disciplinary Committee of the Bar Council of India has since set aside as per the impugned order) the delinquent Advocate would have been under the disability contained in Rule 11 quoted above. It is a self-operating rule for which only one stipulation need be satisfied i.e. the advocate concerned should have been found guilty of contempt of court. The terminus of the period of operation of the interdict is indicated by the next stipulation i.e. the contemnor purges himself of the contempt. The inhibition will therefore start operating when the first stipulation is satisfied, and it would continue to function until the second stipulation is fulfilled. The latter condition would remain eluded until the delinquent Advocate himself initiates steps towards that end.

9. Regarding the first condition there is no difficulty whatsoever in the present case because it is an admitted fact that the respondent Advocate has been found guilty of contempt of court by the High Court of Kerala in two cases successively. For the operation of the interdict contained in Rule 11 it is not even necessary that the Advocate should have been sentenced to any punishment after finding him guilty. The difficulty arises in respect of the second condition mentioned above.

10. The Disciplinary Committee of the Bar Council of India seems to have approached the question from a wrong angle by posing the following question:

> "The fundamental question arising for consideration in this appeal is whether Rule 11 of the Rules framed by the Hon'ble High Court of Kerala under Section 34(1) of the Advocates Act, 1961, is binding on the Disciplinary Committee of the State Bar Council and if not, whether the Disciplinary Committee was justified in ordering that on account of the disqualification under Rule 11 the appellant could not be allowed to appear, act or plead till he gets himself purged of the contempt by an order of the appropriate court."

11. There is no question of Rule 11 being binding on the Disciplinary Committee or any other organ of the Bar Council. There is nothing in the said Rule which would involve the Bar Council in any manner. But there is nothing wrong in the Bar Council informing a delinquent advocate of the existence of a bar contained in Rule 11 and remind him of his liability to abide by it. Hence the question formulated by the Disciplinary Committee of the Bar Council of India, as aforequoted, was unnecessary and fallacious.

12. In the impugned order the Disciplinary Committee rightly stated that "the exercise of the disciplinary powers over the advocates is exclusively vested with the Bar Council and this power cannot be taken away by the High Court either by a judicial order or by making a rule". This is precisely the legal position adumbrated by the Constitution Bench of this Court in ***Supreme Court Bar Assn.* v. *Union of India*** [(1998) 4 SCC 409]. In fact the relevant

portions of the said decision have been quoted in the impugned order in extenso. But having informed themselves of the correct legal position regarding the powers of the Bar Council the members of the Disciplinary Committee of the Bar Council of India embarked on a very erroneous concept when it observed the following:

> "But to say that an advocate who had been found guilty of contempt of court shall not be permitted to appear, act or plead in a court unless he has purged himself of the contempt would amount to usurpation of powers of Bar Council."

13. After examining Rule 11 of the Rules the Disciplinary Committee of the Bar Council of India held that

> "there cannot be an automatic deprivation of the right of an advocate to appear, act or plead in a court, since such a course would be unfair and even violative of the fundamental rights guaranteed under Articles 14, 19(1)(*g*) and 21 of the Constitution of India".

In the end the Disciplinary Committee of the Bar Council of India made an unwarranted proposition on a misplaced apprehension as follows:

> "The independence and autonomy of the Bar Council cannot be surrendered to the provisions contained in Rule 11 of the Rules made by the High Court of Kerala under Section 34(1) of the Advocates Act."

14. By giving expression to such a proposition the Bar Council of India has obviously overlooked the legal position laid down by the Constitution Bench in ***Supreme Court Bar Assn.* v. *Union of India***. In para 57 of the decision the Bench said thus:

> "*57*. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing 'professional misconduct', depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts."

15. Thereafter in para 80, the Constitution Bench said the following:

> "*80*. In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals."

16. Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

17. When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

22. We have already pointed out that Rule 11 of the Rules is a self-operating provision. When the first postulate of it is completed (that the advocate has been found guilty of contempt of court) his authority to act or plead in any court stands snapped, though perhaps for the time being. If he does such things without the express permission of the court he would again be guilty of contempt of court besides such act being a misconduct falling within the purview of Section 34 of the Advocates Act. The interdict as against him from appearing in court as a counsel would continue until such time as he purges himself of the contempt.

23. Now we have to consider the crucial question - how can a contemnor purge himself of the contempt? According to the Disciplinary Committee of the Bar Council of India, purging oneself of contempt can be done by apologising to the court. The said opinion of the Bar Council of India can be seen from the following portion of the impugned order:

> "Purging oneself of contempt can be only by regretting or apologising in the case of a completed action of criminal contempt. If it is a case of civil contempt, by subsequent compliance with the orders or directions the contempt can be purged of. There is no procedural provision in law to get purged of contempt by an order of an appropriate court."

24. Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters. In ***Black's Law Dictionary*** the word "purge" is given the following meaning: "To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt." It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

25. We are told that a learned Single Judge of the Allahabad High Court has expressed a view that purging process would be completed when the contemnor undergoes the penalty [vide ***Madan Gopal Gupta (Dr)*** **v.** ***Agra University,*** AIR 1974 All 39]. This is what the learned Single Judge said about it:

> "In my opinion a party in contempt purged its contempt by obeying the orders of the court or by undergoing the penalty imposed by the court."

26. Obeying the orders of the court would be a mode by which one can make the purging process in a substantial manner when it is a civil contempt. Even for such a civil contempt the purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong. If that is the position in regard to civil contempt the position regarding criminal contempt must be stronger. Section 2 of the Contempt of Courts Act categorises contempt of court into two categories. The first category is "civil contempt" which is the wilful disobedience of the order of the court including breach of an undertaking given to the court. But "criminal contempt" includes doing any act whatsoever, which tends to scandalise or lowers the authority of any court, or tends to interfere with the due course of a judicial proceeding or interferes with, or obstructs the administration of justice in any other manner.

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforecited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.

29. This Court has held in ***M.Y. Shareef* v. *Hon'ble Judges of the Nagpur High Court*** [AIR 1955 SC 19], that

> "an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness".

Ahmadi, J. (as the learned Chief Justice then was) in ***M.B. Sanghi, Advocate* v. *High Court of Punjab and Haryana*** [(1991) 3 SCC 600], while considering an apology tendered by an advocate in a contempt proceeding has stated thus:

> "And here is a member of the profession who has repeated his performance presumably because he was let off lightly on the first occasion. Soft justice is not the answer - not that the High Court has been harsh with him - what I mean is he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse - no regret - it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned Judge was lying - adding insult to injury - and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape."

30. A four-Judge Bench of this Court in ***Mulk Raj* v. *State of Punjab*** [(1972) 3 SCC 839] made the following observations which would throw considerable light on the question before us:

> "9. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence. If apology is offered at a time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward. The High Court was right in not taking any notice of the appellant's expression of apology 'without any further word'. The High Court correctly said that acceptance of apology in the case would amount to allow the offender to go away with impunity after having committed gross contempt."

31. Thus a mere statement made by a contemnor before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court the delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules.

32. Shri Sadrul Anam, learned counsel for the respondent Advocate submitted first, that the respondent has in fact apologised before this Court through the counsel engaged by him, and second is that when this Court observed that "this course should set everything at rest" it should be treated as the acknowledgement made by this Court that the contemnor has purged himself of the guilt.

33. We are unable to accept either of the said contentions. The observation that "this course should set everything at rest" in the judgment of this Court cannot be treated as anything beyond the scope of the plea made by the respondent in that case. That apart, this Court was certainly disinclined to accept the apology so tendered in this Court which is clearly manifested from the outright repudiation of that apology when this Court said thus:

> "We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the Constitution, which we do hereby."

34. The respondent Advocate continued to appear in all the courts where he was earlier appearing even after he was convicted by the High Court for criminal contempt without being objected by any court. This is obviously on account of the fact that presiding officers of the court were not informed of what happened. We, therefore, direct that in future, whenever an advocate is convicted by the High Court for contempt of court, the Registrar of that High Court shall intimate the fact to all the courts within the jurisdiction of that High Court so that presiding officers of all courts would get the information that the particular advocate is under the spell of the interdict contained in Rule 11 of the Rules until he purges himself of the contempt.

35. It is still open to the respondent Advocate to purge himself of the contempt in the manner indicated above. But until that process is completed the respondent Advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent Advocate.

* * * * *

Bhupinder Kumar Sharma v. *Bar Assn., Pathankot*

(2002) 1 SCC 470

SHIVARAJ V. PATIL, J. - The appellant has filed this appeal, under Section 38 of the Advocates Act, 1961 (hereinafter referred to as "the Act") against the judgment and order dated 4-11-1998 passed by the Disciplinary Committee of the Bar Council of India, confirming the order passed by the Disciplinary Committee of the Bar Council of Punjab and Haryana removing the name of the appellant from the State's Roll of Advocates under Section 35(3)(*d*) of the Act.

2. The appellant was enrolled with the State Bar Council as an advocate on 16-9-1994 vide Enrolment No. P/771/94. On 9-9-1995, the respondent-Association made a written complaint to the State Bar Council making allegations of misconduct against the appellant. The State Bar Council took cognizance of the complaint and referred the complaint to its Disciplinary Committee. After the completion of the proceedings in DCE No. 1 of 1996, order was passed by the Disciplinary Committee of the State Bar Council to remove the name of the appellant from the State's Roll of Advocates and the same was confirmed by the Disciplinary Committee of the Bar Council of India, in appeal. Hence, this appeal.

3. The learned Senior Counsel for the appellant strongly contended that the allegations made in the complaint were not established or proved, judged by the standard of proof required in a case like this; the appellant was not actually carrying on business and the evidence on this point was not properly appreciated; at any rate, the punishment imposed on the appellant is grossly disproportionate even assuming that the misconduct was proved.

4. Per contra, the learned Senior Counsel for the respondent made submissions supporting the impugned order. He drew our attention to the evidence brought on record to show how the findings recorded against the appellant are justified. He also strongly contended that the misconduct of the appellant before and even after filing of the appeals before the Bar Council of India and this Court in continuing the business cannot be condoned; further in spite of giving undertaking before this Court, he is still continuing his business as is supported by the report of the Sub-Judge made to this Court. According to him, the punishment imposed on the appellant is proper in the absence of any good ground to take any lenient view.

6. The complaint contained allegations of misconduct against the appellant for the period prior to the date of enrolment as an advocate and also subsequent to his enrolment. Since the Disciplinary Committee of the State Bar Council did not go into the allegations of misconduct pertaining to the period prior to the date of enrolment, it is unnecessary to refer to them.

7. According to the complainant, the appellant was guilty of professional misconduct as he was carrying on and continued his business and business activities even after his enrolment as an advocate, stating thus:

> "(*i*) he was running a photocopier documentation centre in the court compound, Pathankot, and the space for the same was allotted to the appellant in his personal capacity on account of his being handicapped;
>
> (*ii*) he was running a PCO/STD booth which was allotted in his name from the P&T Department under handicap quota;

(*iii*) he was the Proprietor/General Manager of the Punjab Coal Briquettes, Pathankot, a private concern and he was pursuing the business/his interest in the said business even on the date when his statement was recorded by the Disciplinary Committee on 12-5-1996."

8. The defence of the appellant was that although he was running business prior to his enrolment, he did not continue the same after his enrolment as an advocate and he ceased to have any business interest, and that it is his father and brother who were carrying on the business after he became an advocate under some oral arrangement. The Disciplinary Committee of the State Bar Council, after considering the evidence placed on record, both oral and documentary, recorded a finding that the appellant was guilty of professional misconduct in carrying on business in the aforementioned concerns even after his enrolment as an advocate and passed order to remove his name from the State's Roll of Advocates under Section 35(3)(*d*) of the Act and debarred him from practising as an advocate. The Disciplinary Committee of the Bar Council of India, in the appeal filed by the appellant on reappreciation of the material on record, concurred with the finding recorded by the Disciplinary Committee of the State Bar Council and held that the appellant was guilty of professional misconduct and that the punishment imposed on him debarring the appellant from practising for all time was just. Hence, dismissed the appeal.

9. In the impugned order, it is also noticed that the appellant submitted his application form for enrolment. Column 12 of the application form reads:

"*12*. Whether or not applicant was engaged or has ever been engaged in any trade, business or profession, if so the nature of such trade, business/profession and the place where it is or was carried on. The answer submitted by the appellant Advocate is as under:

'No, not applicable.' "

10. According to the Disciplinary Committee of the Bar Council of India, the appellant had not only procured enrolment by submitting the false declaration but also suppressed the material fact; otherwise the appellant would not have been enrolled at all. In the said order, it is further stated that as a matter of fact, besides it being a case of misconduct, it is also a case where the name of the appellant could be removed for suppressing the material fact; anyhow, since the reference had not been made for the same, it is left open to the State Bar Council to take such action under Section 26 of the Act.

11. CW 1 Shri Manohar Lal, Senior Telecommunication Office Assistant, has deposed that STD/PCO has been allotted to the appellant on 6-4-1992 in the handicap quota and the same is continuing in the name of the appellant as per the record even after his enrolment as an advocate; no intimation was given by the appellant to the Department to transfer STD/PCO in the name of his brother Satish Mohan. CW 3 Shri Vipin Tripathi, a clerk in the office of SDO in his evidence has stated that space for kiosk for installation of photocopy machine on payment of Rs 120 per month, was allotted on lease basis on 6-5-1991 by the Deputy Commissioner, Gurdaspur, to the appellant in the handicap quota; there was no intimation to change lease in favour of anybody and there is no transfer of lease in favour of any other person; the lease amount is paid even after the appellant's enrolment as an advocate in his

name. CW 3 H.S. Pathania, in his evidence has supported the allegations made in the complaint. The appellant in his evidence has stated that he has no concern with the business of STD/PCO and photostat machine. RW 2 Satish Mohan, the brother of the appellant has stated that he has no arrangement with the appellant regarding PCO. In his cross-examination he has admitted that he is still in the service of Sugar Mills, Dasuya. Hence, it was rightly concluded that STD/PCO business is being run by the appellant himself even after becoming an advocate. RW 3 Shri Puran Chand Sharma, the father of the appellant in his evidence has admitted that the appellant is having his office in the same cabin where the photocopier machine is installed. In the evidence led on behalf of the complainant, it is stated that the site of kiosk for running the photostat business is still in the name of the appellant and lease money is also being paid by the appellant and in the absence of the appellant giving intimation to the Department/authorities concerned regarding handing over of business to Shri Puran Chand Sharma or Satish Mohan, the assertion regarding the oral agreement was not believed by the Disciplinary Committee of the State Bar Council and rightly so in our opinion. The Disciplinary Committee of the State Bar Council in its order has objectively considered the evidence brought on record. As already stated above, the Disciplinary Committee of the Bar Council of India on reappreciation of the evidence has concurred with the findings recorded by the Disciplinary Committee of the State Bar Council based on oral and documentary evidence.

12. Having perused both the orders and the evidence placed on record, we are of the view that the finding recorded holding the appellant guilty of professional misconduct is supported by and based on cogent and convincing evidence even judged by the standard required to establish misconduct as required to prove a charge in a quasi-criminal case beyond reasonable doubt. We do not find any merit in the argument that the misconduct alleged against the appellant was not properly proved by the standard required to prove such a misconduct. There is also no merit in the contention that the evidence was not properly appreciated by both the Disciplinary Committees; nothing was brought on record to discredit the evidence led on behalf of the complainant and no material was placed to support the allegation of the appellant that the members of the respondent-Association had any grudge or ill will against the appellant.

13. It is to be further noticed that this Court on 26-2-1999 passed the following order:

> "Learned counsel for the appellant wants to file an affidavit in the form of an undertaking that the petitioner is not personally engaging himself in any of the family businesses. Adjourned for two weeks."

14. Pursuant to the said order, the appellant has filed affidavit/ undertaking. Para 3 of the affidavit/undertaking reads:

> "I state on oath before this Hon'ble Court that since the day of my enrolment as an advocate, I have not engaged myself in any business except my practice of law as an advocate and I undertake before this Hon'ble Court that I shall not ever engage either actively or otherwise, in any other business or profession while I continue my enrolment as an advocate."

15. The order made by this Court on 2-9-1999 reads:

> "Mr Sudhir Walia, learned counsel appearing for the Bar Association, Pathankot placed before us the photographs of the cabin where the photocopying machine is installed. The photograph discloses the name board of the petitioner and also an inscription in Punjabi language 'Bhupindra Photostat Centre'. The learned counsel appearing for the Bar Association, Pathankot says that these photographs placed before us have been taken yesterday only. It is contended that, therefore, the undertaking filed in this Court that the petitioner was not conducting any business in his name, could not be accepted. This fact is disputed by learned Senior Counsel appearing for the petitioner.
>
> We are, therefore, constrained to call for a report from the learned Sub-Judge at Pathankot as to whether the cabin in which the photocopying machine is installed contains, apart from the name board of the petitioner an inscription 'Bhupindra Photostat Centre' and whether such inscription was there till yesterday and is continuing as of today. The learned Sub-Judge shall also furnish the details regarding the allotment of the place within the court compound wherein this cabin has been put up. The report will be submitted within four weeks from today. A copy of this order will be sent to the learned Sub-Judge at Pathankot today itself.
>
> List the matter after the report from the learned Sub-Judge at Pathankot is received."

17. We are unable to say that the concurrent finding recorded by both the Disciplinary Committees against the appellant as to his professional misconduct, is a finding based on no evidence or is based on mere conjecture and unwarranted inference. Hence, the same cannot be disturbed.

18. What remains to be seen is whether the punishment imposed on the appellant is grossly disproportionate. Having regard to the nature of misconduct and taking note of the handicap of the appellant, in our opinion, debarring him from practising for all time is too harsh. We consider it just and appropriate to modify the punishment to debar the appellant from practising up to the end of December 2006. Except the modification of punishment as stated above, the impugned order remains undisturbed in all other respects. The appeal is disposed of in the above terms.

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Ex-Capt. Harish Uppal v. *Union of India*

(2003) 2 SCC 45

S.N. VARIAVA, J - All these petitions raise the question whether lawyers have a right to strike and/or give a call for boycott of court/s. In all these petitions a declaration is sought that such strikes and/or calls for boycott are illegal. As the questions vitally concerned the legal profession, public notices were issued to Bar Associations and Bar Councils all over the country. Pursuant to those notices some Bar Associations and Bar Councils have filed their responses and have appeared and made submissions before us.

2. In Writ Petition (C) No. 821 of 1990, an interim order came to be passed. This order is reported in ***Common Cause, A Regd. Society* v. *Union of India*** [(1995) 1 SCALE 6]. The circumstances under which it is passed and the nature of the interim order are set out in the order. The relevant portion reads as under:

> "2. The Officiating Secretary, Bar Council of India, Mr C.R. Balaram filed an affidavit on behalf of the Bar Council of India wherein he states that a 'National Conference' of members of the Bar Council of India and State Bar Councils was held on 10-9-1994 and 11-9-1994 and a working paper was circulated on behalf of the Bar Council of India by Mr V.C. Misra, Chairman, Bar Council of India, inter alia on the question of strike by lawyers. In that working paper a note was taken that the Bar Associations had proceeded on strike on several occasions in the past, at times, State-wide or nationwide, and 'while the profession does not like it as members of the profession are themselves the losers in the process' and while it is not necessary to sit in judgment over the wider question whether members of the profession can at all go on strike or boycott of courts, it was felt that even if it is assumed that such a right enures to the members of the profession, the circumstances in which such a step should be resorted to should be clearly indicated. Referring to an earlier case before the Delhi High Court, it was stated that the Bar Council of India had made its position clear to the effect
>
> > '(*a*) the Bar Council of India is against resorting to strike excepting in *rarest of rare* cases involving the dignity and independence of the judiciary as well as of the Bar; and (*b*) whenever strikes become inevitable, efforts shall be made to keep it short and *peaceful* to avoid causing hardship to the litigant public.'
>
> It was in response to the above that a consensus emerged at the Bar at the hearing of the matter that instead of the court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from appearing in cases in court in which they are engaged, the court may see the working of the interim arrangement and if that is found to be satisfactory it may perhaps not be required to go into the wider question at this stage. Pursuant to the discussion that took place at the last hearing on 30-11-1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India's thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to avoid causing hardship to the litigant public. The

learned counsel suggested that to begin with, the following interim measures may be sufficient for the present:

(*1*) In the rare instance where any association of lawyers including statutory Bar Councils considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps.

(*2*) No such member who appears in court or otherwise practises his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat of expulsion therefrom.

(*3*) The above will not preclude other forms of protest by practising lawyers in court such as, for instance, wearing of armbands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.

(*4*) Office-bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (*1*) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (*1*), (*2*) and (*3*) above.

3. Mr P.N. Duda, Senior Advocate representing the Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate clauses (*1*), (*2*), (*3*) and (*4*) in the Bar Council of India (Conduct and Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in clauses (*1*) to (*4*) above for a period of at least six months by making the said clauses the rule of the court. Accordingly we make clauses (*1*) to (*4*) mentioned above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. We also suggest to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in court notwithstanding strike calls given by the Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of Judges of different courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases."

The above interim order was passed in the hope that better sense could prevail and lawyers would exercise self-restraint. In spite of the above interim directions and the statement of Mr P.N. Duda, the Bar Council of India has not incorporated clauses (*1*) to (*4*) in the Bar Council of India (Conduct and Disciplinary) Rules. The phenomenon of going on strike at the slightest provocation is on the increase. Strikes and calls for boycott have

paralysed the functioning of courts for a number of days. It is now necessary to decide whether lawyers have a right to strike and/or give a call for boycott of court/s.

4. Mr Dipankar Gupta referred to various authorities of this Court and submitted that the reasons why strikes have been called by the Bar Associations and/or Bar Councils are:

(*a*) confrontation with the police and/or the legal administration;
(*b*) grievances against the Presiding Officer;
(*c*) grievances against judgments of courts;
(*d*) clash of interest between groups of lawyers; and
(*e*) grievances against the legislature or a legislation.

Mr Gupta submitted that the law was well established. He pointed out that this Court has declared that strikes are illegal. He submitted that even a call for strike is bad. He submitted that it is time that the Bar Council of India as well as various State Bar Councils monitor strikes within their jurisdiction and ensure that there are no call for strikes and/or boycotts. He submitted that in all cases where redressal can be obtained by going to a court of law there should be no strike.

9. The learned Attorney-General submitted that strike by lawyers cannot be equated with strikes resorted to by other sections of the society. He submitted that the basic difference is that members of the legal profession are officers of the court. He submitted that they are obliged by the very nature of their calling to aid and assist in the dispensation of justice. He submitted that strike or abstention from work impaired the administration of justice and that the same was thus inconsistent with the calling and position of lawyers. He submitted that abstention from work, by lawyers, may be resorted to in the rarest of rare cases, namely, where the action protested against is detrimental to free and fair administration of justice such as there being a direct assault on the independence of the judiciary or a provision is enacted nullifying a judgment of a court by an executive order or in case of supersession of judges by departure from the settled policy and convention of seniority. He submitted that even in cases where the action eroded the autonomy of the legal profession e.g. dissolution of Bar Councils and recognized Bar Associations or packing them with government nominees, a token strike of one day may be resorted to. He submitted, even in the above situations the duration of abstention from work should be limited to a couple of hours or at the maximum one day. He submitted that the purpose should be to register a protest and not to paralyse the system. He suggested that alternative forms of protest can be explored e.g. giving press statements, TV interviews, carrying banners and/or placards, wearing black armbands, peaceful protest marches outside court premises etc. He submitted that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. He submitted that all attempts should be made to seek redressal from the authorities concerned. He submitted that where such redressal is not available or not forthcoming, the direction of the protest can be against that authority and should not be misdirected e.g. in cases of alleged police brutalities, courts and litigants should not be targeted in respect of actions for which they are in no way responsible. He agreed that no force or coercion should be employed against lawyers who are not in agreement with the "strike call" and want to discharge their professional duties.

11. Before considering the question raised it is necessary to keep in mind the role of lawyers in the administration of justice and also their duties and obligations as officers of this Court. In the case of ***Lt. Col. S.J. Chaudhary* v. *State (Delhi Admn.)*** [(1984) 1 SCC 722], the High Court had directed that a criminal trial goes on from day to day. Before this Court it was urged that the advocates were not willing to attend day to day as the trial was likely to be prolonged. It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend.

12. In the case of ***K. John Koshy* v. *Dr Tarakeshwar Prasad Shaw*** [(1998) 8 SCC 624], one of the questions was whether the court should refuse to hear a matter and pass an order when counsel for both the sides were absent because of a strike call by the Bar Association. This Court held that the court could not refuse to hear the matter as otherwise it would tantamount to the court becoming a privy to the strike.

20. Thus the law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since ***Mahabir Singh*** case that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court/s. Lawyers have also known, at least since ***Ramon Services*** case [(2001) 1 SCC 118], that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy. In the words of Mr H.M. Seervai, a distinguished jurist:

> "Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For,

once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts. '*In my submission*', he said that 'it is high time that the Supreme Court and the High Courts make it clear beyond doubt that they will not tolerate any interference from any body or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Courts maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill will."

22. It was expected that having known the well-settled law and having seen that repeated strikes and boycotts have shaken the confidence of the public in the legal profession and affected administration of justice, there would be self-regulation. The abovementioned interim order was passed in the hope that with self-restraint and self-regulation the lawyers would retrieve their profession from lost social respect. The hope has not fructified. Unfortunately strikes and boycott calls are becoming a frequent spectacle. Strikes, boycott calls and even unruly and unbecoming conduct are becoming a frequent spectacle. On the slightest pretence strikes and/or boycott calls are resorted to. The judicial system is being held to ransom. Administration of law and justice is threatened. The rule of law is undermined.

23. It is held that submissions made on behalf of the Bar Council of U.P. merely need to be stated to be rejected. The submissions based on the Advocates Act are also without merit. Section 7 of the Advocates Act provides for the functions of the Bar Council of India. None of the functions mentioned therein authorise paralysing of the working of courts in any manner. On the contrary, the Bar Council of India is enjoined with the duty of laying down standards of professional conduct and etiquette for advocates. This would mean that the Bar Council of India ensures that advocates do not behave in an unprofessional and unbecoming manner. Section 48-A gives a right to the Bar Council of India to give directions to the State Bar Councils. The Bar Associations may be separate bodies but all advocates who are members of such Associations are under disciplinary jurisdiction of the Bar Councils and thus the Bar Councils can always control their conduct. Further, even in respect of disciplinary jurisdiction the final appellate authority is, by virtue of Section 38, the Supreme Court.

25. In the case of ***Supreme Court Bar Assn.* v. *Union of India*** [(1998) 4 SCC 409], it has been held that professional misconduct may also amount to contempt of court (para 21). It has further been held as follows:

"*79*. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor-General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for 'professional misconduct', on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate

by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution 'all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court'. The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act 'in aid of the Supreme Court'. It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving 'reference' from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals."

Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils

to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott the State Bar Council concerned and on their failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott.

26. It must also be noted that courts are not powerless or helpless. Section 38 of the Advocates Act provides that even in disciplinary matters the final appellate authority is the Supreme Court. Thus even if the Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an appeal the Supreme Court can and will. Apart from this, as set out in ***Ramon Services*** case every court now should and must mulct advocates who hold *vakalats* but still refrain from attending courts in pursuance of a strike call with costs. Such costs would be in addition to the damages which the advocate may have to pay for the loss suffered by his client by reason of his non-appearance.

28. The Bar Council of India has since filed an affidavit wherein extracts of a joint meeting of the Chairmen of various State Bar Councils and members of the Bar Council of India, held on 28-9-2002 and 29-9-2002, have been annexed. The minutes set out that some of the causes which result in lawyers abstaining from work are:

(I) Local issues

1. Disputes between lawyer/lawyers and the police and other authorities.

2. Issues regarding corruption/misbehaviour of judicial officers and other authorities.

3. Non-filling of vacancies arising in courts or non-appointment of judicial officers for a long period.

4. Absence of infrastructure in courts.

(*II*) *Issues relating to one section of the Bar and another section*

1. Withdrawal of jurisdiction and conferring it to other courts (both pecuniary and territorial).

2. Constitution of Benches of High Courts. Disputes between the competing District and other Bar Associations.

(*III*) *Issues involving dignity, integrity, independence of the Bar and judiciary*

(*IV*) *Legislation without consultation with the Bar Councils*

(*V*) *National issues and regional issues affecting the public at large/the insensitivity of all concerned.*

29. At the meeting, it is then resolved as follows:

"RESOLVED to constitute Grievance Redressal Committees at the taluk/sub-division or tehsil level, at the district level, High Court and Supreme Court levels as follows:

(*I*)(*a*) A committee consisting of the Hon'ble Chief Justice of India or his nominee, Chairman, Bar Council of India, President, Supreme Court Bar Association, Attorney-General of India.

(*b*) At the High Court level a committee consisting of the Hon'ble Chief Justice of the State High Court or his nominee, Chairman, Bar Council of the State, President or Presidents of the High Court Bar Association, Advocate-General, Member, Bar Council of India from the State.

(*c*) At the district level, District Judge, President or Presidents of the District Bar Association, District Government Pleader, member of the Bar Council from the district, if any, and if there are more than one, then senior out of the two.

(*d*) At taluk/tehsil/sub-division, seniormost Judge, President or Presidents of the Bar Association, Government Pleader, representative of the State Bar Council, if any.

(*II*) Another reason for abstention at the district and taluk level is arrest of an advocate or advocates by the police in matters in which the arrest is not justified. Practice may be adopted that before arrest of an advocate or advocates, President, Bar Association, the District Judge or the seniormost Judge at the place be consulted. This will avoid many instances or abstentions from court.

(*III*) IT IS FURTHER RESOLVED that in the past abstention of work by advocates for more than a day was due to inaction of the authorities to solve the problems that the advocates placed.

(*IV*) IT IS FURTHER RESOLVED that in all cases of legislation affecting the legal profession which includes enactment of new laws or amendments of existing laws, matters relating to jurisdiction and creation of tribunal, the Government both Central and State should initiate the consultative process with the representatives of the profession and take into consideration the views of the Bar and give utmost weight to the same and the State Government should instruct their officers to react positively to the issues involving the profession when they are raised and take all steps to avoid confrontation and inaction and in such an event of indifference, confrontation etc. to initiate appropriate disciplinary action against the erring officials and including but not limited to transfer.

(*V*) The Councils are of the view that abstentions of work in courts should not be resorted to except in exceptional circumstances. Even in exceptional circumstances, the abstention should not be resorted to normally for more than one day in the first instance. The decision for going on abstention will be taken by the General Body of the Bar Association by a majority of two-third members present.

(*VI*) It is further resolved that in all issues as far as possible legal and constitutional methods should be pursued such as representation to authorities, holding demonstrations and mobilising public opinion etc.

(*VII*) It is resolved further that in case the Bar Associations deviate from the above resolutions and proceed on cessation of work in spite or without the decision of the Grievance Redressal Committee concerned except in the case of emergency the Bar Council of the State will take such action as it may deem fit and proper, the discretion being left to the Bar Council of the State concerned as to enforcement of such decisions and in the case of an emergency the Bar Association concerned will inform the State Bar Council.

The Bar Council of India resolves that this resolution will be implemented strictly and the Bar Associations and the individual members of the Bar Associations should take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated above."

30. Whilst we appreciate the efforts made, in view of the endemic situation prevailing in the country, in our view, the above resolutions are not enough. It was expected that the Bar Council of India would have incorporated clauses as those suggested in the interim order of this Court in their disciplinary rules. This they have failed to do even now. What is at stake is the administration of justice and the reputation of the legal profession. It is the duty and obligation of the Bar Council of India to now incorporate clauses as suggested in the interim order. No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. It must be remembered that if such omission continues, particularly when there is an apparent threat to the administration of justice and fundamental rights of citizens i.e. the litigating public, courts will always have authority to compel or enforce the exercise of the power by the statutory authority. The courts would then be compelled to issue directions as are necessary to compel the authority to do what it should have done on its own.

31. It must immediately be mentioned that one understands and sympathises with the Bar wanting to vent their grievances. But as has been pointed out there are other methods e.g. giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. More importantly in many instances legal remedies are always available. A lawyer being part and parcel of the legal system is instrumental in upholding the rule of law. A person cast with the legal and moral obligation of upholding law can hardly be heard to say that he will take the law in his own hands. It is therefore time that self-restraint be exercised.

34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take

note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right

to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.

35. In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. It is held that lawyers holding *vakalats* on behalf of their clients cannot refuse to attend courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all courts to go on with matters on their boards even in the absence of lawyers. In other words, courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a *vakalat* of a client, abstains from attending court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.

36. It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self-restraint will be exercised. The petitions stand disposed of accordingly.

37. Hence, it is directed that (*a*) all the Bar Associations in the country shall implement the resolution dated 29-9-2002 passed by the Bar Council of India, and (*b*) under Section 34 of the Advocates Act, the High Courts would frame necessary rules so that appropriate action can be taken against defaulting advocate/advocates.

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ADVOCATES RIGHT TO TAKE UP LAW TEACHING

The Advocates Right to take up Law Teaching Rules, 1979

[Rules made by the Bar Council of India under Section 49A of the Advocates Act, 1961]

"3. ***Right of practicing advocates to take up law teaching.-*** (1) Notwithstanding anything to the contrary contained in any rule under this Act, an advocate may, while practising, take up teaching of law in any educational institution which is affiliated to a University within the meaning of the University Grants Comission Act, 1956 (3 of 1956), so long as the hours during which he is so engaged in the teaching of law do not exceed three hours a day."

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Anees Ahmed v. *University of Delhi*

AIR 2002 Del 440

CW. 3412/97 : This writ petition was filed by the petitioners by way of public interest litigation for a direction to respondent No. 1/Delhi University to take disciplinary action against all Full Time Law Teachers of the Delhi University, who were practicing in the courts and also praying for a direction to prohibit all Full Time Law Teachers of the Faculty of Law of the University of Delhi from carrying on legal practice/profession and also from appearing in the courts of law any manner. The petitioner had also sought for a direction to the Delhi State Bar Council, respondent No. 3 to cancel the enrolment/licence to practice given to Full Time Law Teachers. The petitioner No. 1 was an Advocate practicing in the High Court of Delhi and had filed the writ petition as he was interested in the advancement of legal education in India. The petitioner No. 2, at the time of filing of the writ petition, was a Law Graduate, who passed out and obtained Degree of law at the relevant time when the writ petition was being filed.

C.W. 3519/97 : This writ petition was filed by the petitioner, who was a Professor of Law the Faculty of Law, of the University of Delhi. The petitioner was initially appointed as a Lecturer in Law and posted at Law Centre-II of the Faculty of Law of the University of Delhi in August, 1971. Thereafter the petitioner got his promotion and in due course of time, became a Professor in Law in the Faculty of Law of the University of Delhi. The petitioner filed the present petition challenging the order passed by the Bar Council of India on 9-8-1997 cancelling and removing the name of the petitioner from the roll of Advocates of the Bar Council with a further direction that it would be open to the petitioner to make a fresh application for enrolment as an Advocate on his ceasing to be in employment.

The common question that arose for consideration was whether a faculty member in the Faculty of Law, University of Delhi could subsequently enroll himself as an advocate and appear in a court of law and simultaneously carry on the duties of a full-time faculty member of the Faculty of Law, University of Delhi.

The private respondents in the writ petition filed by way of public interest litigation were all full time faculty members of the University of Delhi, who employed as full time faculty members in the University of Delhi and subsequently got themselves enrolled as Advocates with Delhi State Bar Council.

DR. MUKUNDAKAM SHARMA, J. - 7. The petitioners No. 1 in the writ petition filed by way of public interest litigation, appeared in person and during the course of his arguments referred to various statutes and ordinances or the University of Delhi as also the provisions of The Advocates Act, 1961 and the rules framed by the Bar Council of India and in the light thereof submitted that the aforesaid provisions prohibit Full Time Law Teachers from practicing in the law courts and, therefore, the Full Time Law Teachers, who are taking up law practice in law courts subsequently, after enrolling themselves as advocate are liable to be prohibited/restrained from pursuing the aforesaid two avocations simultaneously. He submitted that in view of the fact that most of the full time law teachers are also practicing as advocates, the students community pursing the law course in the University of Delhi has been neglecting their obligation to their students and number of complaints to their students and number of complaints on that count have been lodged. In support of his contention, the petitioner No. 1 relied upon the report submitted by a committee comprising of Prof. Andre Beteille of Delhi School of Economics and Prof.. K.R. Sharma of the Faculty of Law, University of Delhi. He also relied upon various decisions of the Supreme Court of India in support of his contention and also to the Keynotes address in American Bar association Meeting in August, 2000 by John Sexton of the new York Universities Law School.

8. The Bar Council of India was also represented by their counsel at the time of arguments, who had drawn our attention to the various provisions of the Advocates Act, 1961 read with rules framed by the Bar Council of Delhi, particularly to Rule 103 of the Rules as also the rules framed by the Central Government called Advocates (Right to take up Law Teaching) Rules, 1979, hereinafter referred to in short the 1979 Rules. Referring to the said provisions, it was submitted by the counsel that under rule 103 of the Rules framed by the State Bar Council any person, who is either in part time or full time service cannot be enrolled as an Advocate, whereas a part-time teacher of law could be admitted as an Advocate under the proviso to the aforesaid rule 103 of the Delhi Bar Council Rules. He further submitted that Full Time Law Teachers could not have been enrolled as Advocates as provided for under rule 103 of the Delhi Bar Council Rules and that the 1979 Rule is a rule that operates post-enrolment and has no application to a person, who is not an Advocate. He also referred to the provisions of Rules 49 of Chapter - II (Standards of Professional Conduct and Etiquette). Section VII (Restrictions on other employment) of the Bar Council of India rules laying down that an Advocate shall not be a full time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council, on whose roll his name appears and shall thereupon cease to practice as an Advocate so long as he continues in such employment.

9. He also referred to Resolution No. 108 of 1996, which was passed by the Bar Council of India giving stress to the need of improving the standards of legal education in India. The said resolution states that the Bar Council of India disapproves the practice of enrolling full

time salaried teachers in law, who were not enrolled as advocates at the time of their whole time appointment as teachers by misinterpreting the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 viz. Advocates (Right to take up Law Teaching) Rules, 1979 and direct all the Star Bar Councils to take immediate steps to initiate removal proceedings under the provisions of the Advocates Act and the Rules framed thereunder against such full time salaried law teachers, who have been enrolled as advocates. He submitted that Theban on legal practice by Full Time Law Teachers has salutary objective to achieve, namely, to maintain high standards of legal standards. He further submitted that so far the right of the practicing Advocates to take up the law teaching is concerned, the same is a right, which has been conferred on the practicing Advocates to take up teaching of law under the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 and , therefore, the members of the Bar would have a right to take up teaching of law. He also submitted that the Full Time Teachers of Law were never entitled to be enrolled as Advocates and were wrongly enrolled by the Bar Council of Delhi by misinterpreting the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 and as such the Bar Council of India has initiated action against such persons, who have been wrongly enrolled as advocates.

10. He also relied upon various statutes and ordinances of the University of Delhi and, particularly referred to Clause 5 of Ordinance XI, which provides that a teacher shall devote his/her whole time to the service of the University and shall not, without the permission of the University, engage directly or indirectly, in any trade or business whatsoever, or in any private tuition or other work to which and emolument or honorarium is attached.

11. Counsel appearing for the University of Delhi also relied upon various ordinances and statutes of the University of Delhi, in support of his contention that the service conditions of Full Time Teachers of the University of Delhi incorporated in the contract of service, are statutory in nature and that they are binding on the teachers and that a Full Time Teacher of the University of Delhi is required to devote his/her time only to teaching and research in the University and that a Full time Teacher can not undertake any other professional activity such as practicing law as an Advocate, without the express permission of the University authorities and that the University has not granted any permission to Full Time Teachers either in the Faculty of Law or any other Faculty to practice as a Lawyer and only Sh. N.S. Bawa was granted a very limited permission to appear in the case of riot victims of 1984. Counsel reiterated the stand taken in the counter affidavit filed by University of Delhi that no Full Time Teacher of the University of Delhi, be it a teacher in the Law Faculty or any other Faculty of the University, is entitled to practice as a Lawyer so long as he is a Full time Teacher in the University.

12. In support of his contention, he referred to various clauses of the University ordinances and the resolutions of the University as also of the University Grants Commission, Referring to the same he submitted that it is imperative that the Full time Teachers devote their time and energy to teach the students in the Faculty of Law and to do research and publication and that the said teachers are not simultaneously entitled to also practice law, as a lawyer.

40. The Petitioner Nos. 1 and 2 were students in the Law Faculty of the Delhi University. During their tenure as students they had first hand knowledge about the manner and mode in which legal education is imparted in the Delhi University. After being enrolled as Advocates the petitioner No.1 filed the present petition in the Court with the intention for betterment and advancement of legal education in Delhi. The other two writ petitions are directed against the impugned orders passed by the Bar Council of India removing two of the full time Law teachers from the roll of Advocates. The teachers from the roll of Advocates. The aforesaid orders are also challenged before this Court on the ground that the Bar Council of India has no such jurisdiction.

41. In view of the aforesaid position, the issues that are raised in the Public Interest Litigation shall have to be dealt with and decided even in order to answer the issues raised by Shri Vats and Shri Srivastav in their writ petitions. Besides if a writ petition is filed by a person driven by public interest and such a writ petitioner comes with clean heart, clean mind and clean objectives and is filed bona fide for the purpose of only serving a public interest, such a petition cannot be dismissed. This was what was held by the Supreme Court in the decision in ***K. R. Srinivas* v. *R. M. Premchand*** [(1994) 6 SCC 620], wherein the Supreme Court held that the writ petitioner who comes to the Court for relief in public interest petition must come not only with clean hands, like any other writ petitioner but must further come with a clean heart, clean mind and clean objective.

42. In a Public Interest Litigation the Court in order to check and prevent misuse of the remedy ought to examine the motive, if any, of the petitioner and ask itself the question, "Is there anything more than what meets the eyes"? That was exactly what was laid down by the Supreme Court in ***Sachidanand Pandey* v. *State of West Bengal*** [AIR 1987 SC 1109].

43. The motive for filing a Public Interest writ petition must be examined by the Court with care and caution. In case the High Court finds the filing of the Public Interest Litigation to be motivated by self interest of the petitioner for wreaking vengeance it will not entertain the same. In ***Dr. Ambedkar Basti Vikassabha* v. *Delhi Vidyut Board*** [AIR 2001 Del. 223] it was held by the Division Bench of this Court that the Court has to be satisfied about, (a) the correctness of the credentials of the applicant; (b) the prime facie correctness of nature of information given by him; (c) the information being not vague and indefinite. It was also held by this Court that the Court has to strike balance between two conflicting interest namely, (i) no body should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitioner seeking to assail, for oblique motives, justifiable executive actions.

44. The allegations of the full time Law teachers against the petitioners are based on surmises and conjecture. The petitioner No. 1, who has filed the present public interest litigation is an Advocate of this Court and is a responsible officer of the Court. No clear evidence is led by the Respondents - Full time Law teachers to prove and establish that filing of the writ petition is in any manner motivated or instigated by the aforesaid two Professors of the Law Faculty of Delhi, who according to the said respondents were inimical towards them. The cause which is sought to be espoused through the present writ petition is of public importance. The same is also required to be looked into as the Bar Council of India which is the primary body for maintaining discipline amongst the enrolled Advocates has also

proceeded to take action against some of the full time Law teachers and against the rest it is dependent on the outcome of these petitions. Therefore, in our considered opinion this writ petition cannot be dismissed on the ground of maintainability. This writ petition filed under the category of Public Interest Litigation by the writ petitioner, who is an Officer of the Court is maintainable and the issues raised being important and having wide remifications are required to be dealt with and answered.

45. Having held thus, we may now proceed to examine the issues that arise for consideration on merits of the case. Reference is made to the provision of Section 2 (1) (a) of the Advocates Act, 1961 which defines the term "advocate" meaning an Advocate entered in any roll under the provisions of the said Act. Rule 103 of the Rules framed by the Bar Council of Delhi has been extracted above. In the aforesaid rule it is provided that any person either in part-time or full time employment cannot be enrolled as an advocate but under the proviso is provided that a part-time teacher of Law could be admitted as an advocate. Therefore, under the aforesaid provision a part-time Law teacher could be enrolled as an advocate but no such privilege or benefit is available to a full time Law teacher.

46. Strong reliance was placed by the respondent-Full time Law teachers on the provisions of Advocates rights to take up Law Teaching Rules, 1979 ("the 1979 Rules"). The said provisions are also extracted hereinabove. A bare reading of the said Rules indicate that the said rule uses the terminology "advocates" and deals with the right of practicing advocate to take up law teaching. By virtue of the aforesaid provision an advocate is empowered to take up law teaching provided the same does not exceed three hours a day. Therefore, the said rules clearly establish that the same are applicable and come into operation post enrollment and have no application to a person prior to his enrollment as an advocate. It was sought to be contended by all the law teachers that a person can combine law teaching and law practice simultaneously provided law teaching does not exceed three hours a day. It was submitted by them that after adaptation of the aforesaid rules, a lawyer could take up full time law teaching in regular scale of pay and, therefore, the converse is also possible and, therefore, a Law teacher could also be enrolled as an Advocate. However, on proper reading of the said provision would make it crystal clear that such an interpretation is not only fallacious but also absurd. It is settled law that an interpretation which leads to absurdity should always be avoided.

47. It is also settled law that when the provisions of a statute is plain, clear and unambiguous, no word could be added to such a plain wordings of the statute nor it is permissible to add words into it which are not there. In this connection reference may be made to the decision of the Supreme Court in ***Union of India* v. *Deoki Nandan Aggarwal*** [AIR 1992 SC 96] wherein it is held as follows at page 101:

> "It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of 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. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by

the Legislature the Court could not go its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be."

51. When in the context of the aforesaid decisions the wordings used in the Notification issued by the Central Government is read it would make it explicit that under the said notification a right is given to practicing advocate to take up law teaching but no such parallel right is given to teachers of law to be enrolled as advocates. The wordings used in the aforesaid provisions is plain and unambiguous and requires no addition of words to the said statute. The intention of the legislature is also clear and apparent and, therefore, the Court would not proceed to reframe the legislation by giving a meaning which the respondent teachers seek to give.

52. It is true that the course of law particularly the LL.B. course being a professional course, there is a necessity of association of and guidance of the Advocates to the law students so as to enable such students to gain practical experience and to acquire Court craft and professional skills. But at the same time the obligation of the teaching faculty to the students cannot be ignored. There are several facts of teaching namely, delivering lectures, taking tutorials and seminars. Over and above the teaching Faculty also has an obligation of doing research which includes one's own research as well as supervision of research required to be done by the students. Besides there are other responsibilities to be discharged by a teacher like, administrative responsibilities etc. In order to give an exposure to the students undergoing the law course to acquire some practical experience, permission is granted to lawyers practicing in the Courts to undertake such law teaching provided such teaching does not take up more than three hours a day.

53. It was argued by the law teachers that they are in fact not required to teach for more than three hours in a day and that they are, therefore, eligible to practice in the Courts and to retain their membership of the Bar Council. When the statute does not by itself permit such a situation and when Rule 103 has specifically prohibited full time law teachers from enrolling as advocate, no such permission could be granted to a full time law teacher to be enrolled as an advocate. The aforesaid interpretation is also in consonance with Statutes, Ordinance and the Resolutions adopted by the Delhi University and the University Grants Commission. Since both Rule 103 of the Delhi State Bar Council Rules and Rule 3 of the Rules framed by the Central Government operate in two distinct and different fields and relate to different set of persons, there is no repugnancy as sought to be submitted by the full time law teachers and, therefore, the said contention is rejected. It is also worthwhile to mention at this stage that the validity of the 1979 Rules is not under challenge before us. Therefore, we are to decide this matter proceeding on the basis that the said Rules are valid and are applicable to the set of persons who are specifically mentioned in the said Rules. No deviation or addition is permissible to the clean and the plain intention and meaning. Therefore, we also hold that reliance by the full time law teachers on the said Rules to advance their cause is misplaced.

54. The service conditions of full time teachers of the Delhi University are incorporated in the Contract of Service and, therefore, they are statutory in nature and they are binding on the teachers. Reference is already made to Clause 5 of the Ordinance which provides that a full time teacher of the Delhi University is required to devote his time only to teaching and research in the University and, therefore, a full time teacher cannot undertake any other

professional activity, such as practicing law as an advocate. The University which is arrayed as one of the respondents in the present cases has specifically stated in the counter affidavit filed by it that the University has not granted any permission to full time teachers either in the Law Faculty or in any other Faculty to practice as a Lawyer and that one Mr. N. S. Bawa was granted a very limited permission to appear in the case of Riot Victims of 1984. The averments in the Public Interest writ petition disclose that request made by the members of the Law Faculty of Delhi that in legal aid cases teachers of the Law Faculty may be permitted to appear in Court was considered by the Executive Council of the Delhi University and it was rejected by the Executive Council, which is the final administrative Body of the University. The same position was again reiterated by the University in a communication to all the teachers dated 3-11-1995. It is, therefore, the specific stand of the Delhi University that no full time teacher of the Delhi be he or she is in the Law Faculty or in any other Faculty of the University is not entitled to practice as a lawyer as long as he is a full time teacher in the University. If such a privilege is granted to the law teacher to be enrolled as an advocate, there could be no reasonable ground to deny the same privilege to other Faculty Members of other departments of the University. The aforesaid stand of the Delhi University is found to be valid and reasonable. Under the 1979 Rules and Advocate is permitted to take up law teaching based no the number of hours of teaching being undertaken. The Committee constituted by the University upon enquiry has held that the obligation of a teacher, though somewhat diffuse but is extensive in nature which include not only class from teaching but also research and administration. It was held that such obligations even though cannot be put down to departmental time table the same, however, exists and such time should be included and read into their daily routine. The directions of the University Grants Commission are based on the aforesaid analogy when it conveyed the decision that in order to promote quality education full time law teachers would not be permitted to enroll as members of the Bar entitling them to full time practice in law. Even the permission granted to such teacher to appear and represent in social action/public interest litigation is in the nature of legal aid and social activity and not as a lawyer.

55. In our considered opinion, the same would not by itself empower or enable a full time teacher of the Delhi University to practice as a Lawyer. Even in a case where enrolment is granted by the Bar Council and thereafter the advocate seeks to take up law teaching, the same could be permitted only within the parameter of the 1979 Rules read with the University Statutes and Ordinance.

56. The University Grants Commission also by its letter dated 7-12-1995 informed the Registrar of the Delhi University that full time law teachers in University Departments and affiliated Law Colleges would not be permitted to enroll as members of the Bar entitling them to be a full time lawyer but they should be allowed and permitted to appear in Courts for social action or public interest litigation matters as well as legal aid/public interest litigation connected therewith. The aforesaid permission is restricted and limited to the aforesaid extent only and was allowed to give impetus to the concept of legal aid and making the students of law also aware of the aforesaid concept. The Report of the Committee which was adopted by the Executive Council of the Delhi University on 19-4-1998, the extract of which is quoted hereinbefore would also support the same position.

57. In that view of the matter we hold that the interpretation sought to be given by the respondent-Faculty Members to Rule 103 and to the 1979 Rules cannot be accepted. We also hold that the said teachers are bound by the provisions of Rule 103 of the Bar Council of Delhi Rules and the Rules of 1979 are neither applicable to their cases nor they can seek assistance from the said Rules unless the rules framed by the Competent Authority allow the privilege specifically. No such privilege could be claimed by way of implication or on the basis of surmises or conjectures. Therefore, no such right or privilege could be claimed by the full time law teachers of the Delhi University which is not permitted under the rules.

58. Reference could also be made to Rule 49 of Chapter II, (Standards of Professional Conduct and Etiquette) Section VII (Restrictions on other employments) of the Bar Council of India Rules which provides that an advocate shall not be a full time salaried employee of any person, government, firm corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.

59. We are also of the considered opinion that the Resolution adopted by the Bar Council of India in 1996 under Resolution No. 108 correctly lays down the law and the practice and we hold that no objection could be taken as against the said Resolution. The said decision is in consonance with the observations of the Supreme Court in the decision of ***Dr. Haniraj L. Chulani***. Therefore, if the interpretation sought to be given by the full time law teachers are accepted the same would not only run counter to the statutory legal position but the same would also be contrary to the law of the land.

60. In terms of the said Resolution the Bar Council of India has proceeded to take suo motu action and has directed all the State Bar Councils to take necessary steps to implement the aforesaid Resolution. The Bar Council of India proceeded to take suo motu action initiating removal proceedings against such full time salaried teachers of law who were subsequently enrolled as advocates by an erroneous interpretation of 1979 Rules. It was held by the Bar Council of India that full time law teachers were enrolled as advocates by misinterpreting the rules made by the Central Government under Section 49A of the Advocates Act, 1961. By adopting the aforesaid Resolution No. 108 of 1996 the Bar Council of India has tried to rectify the mistake by removing the names of such persons who are full time salaried law teachers and who were enrolled as Advocates overlooking the specific provisions of Rule 103 of Bar Council of Delhi Rules and by misinterpreting the provisions of the 1979 Rules.

61. It was contended that no such power could be exercised by the Bar Council of India and that also after expiry of about 20 years from the date of enrolment. Counsel appearing for the Bar Council of India, however, submitted that such a power could be exercised by the Bar Council of India under the provisions of Section 48A of the Advocates Act, 1961.

62. In the foregoing discussions it is held that no full time law teacher drawing regular salary from the University could enroll himself as an advocate. Such full time teachers were allowed to take enrolment by the State Bar Council misinterpreting the provisions of the 1979 Rules. The said full time law teachers were not eligible to be enrolled as an advocate and, therefore, enrolment itself was clearly contrary to Rule 103 of the Rules. When such persons who suffered a bar at the threshold are given enrolment in violation of and contrary to rules,

they cannot take up a plea of estoppel. In this connection reference may be made to the decision of the Supreme Court in ***Satish Kumar Sharma* v. *Bar Council of Himachal Pradesh*** [AIR 2001 SC 509], wherein it was held as follows at page 517, of AIR:-

> "The contention that the respondent could not have cancelled enrolment of the appellant almost after a decade and half and that the respondent was estopped from doing so on the principle of promissory estoppel, did not impress us for the simple reason that the appellant suffered threshold bar and was not eligible to be enrolled as an Advocate and his enrolment itself as clearly contrary to Rule 49 of the Rules in the light of the facts stated above. Hence neither the principles of equity not promissory estoppel will come to the aid of the appellant."

63. It is also a settled law that there cannot be any estoppel as against statue to defeat the provisions of law. That is exactly what was laid down by the Supreme Court in ***Indira Bai* v. *Nand Kishore*** [AIR 1991 SC 1055] wherein it was held as follows:-

> "There can be no estoppel against statute. Equity, usually, follows law. Therefore that which is statutorily illegal and void cannot be enforced by resorting to the rule of estoppel."

64. As the full time law teachers suffered a threshold bar to get themselves enrolled as advocate the enrolment given to them by the State Bar Council was per se void and illegal and contrary to Rule 103 of the State Bar Council Rules and, therefore, the Bar Council of India acted within its jurisdiction in canceling such enrolment which was done in violation of the extent rules.

65. A power of revision is vested in the Bar Council of India which is a power of general superintendence over the powers exercised by the State Bar Council. As and when the Bar Council of India is of the opinion that a particular action is taken by such a State Bar Council without any proper sanction of law the same can always be corrected and rectified by exercising the powers of Revision by the Bar Council. A similar plea raised by the aggrieved person in the case of Satish Kumar Sharma (supra) was rejected by the Supreme Court holding that such a contention that the respondent could not have cancelled enrolment after a decade and half is not acceptable, Section 26 of the Advocates Act may not be strictly applicable to the facts of the present cases but if such action could be taken by the Bar Council of India in exercise of its other statutory powers the same would be held to be valid.

66. In terms of the aforesaid observations and directions all the writ petitions stand disposed of holding that the full time law teachers of the Law Faculty of the Delhi University could not have enrolled themselves as advocates and, therefore, enrolment given to the said teachers by the State Bar Council was per se void and illegal and any action taken by the Bar Council of India to rectify the said mistake in exercise of its powers cannot be said to be bad or illegal. We also hold that a part time teacher of law could be enrolled as an advocate and also that an advocate after being enrolled could take up part time law teaching. We find no fetter put to the aforesaid position. Interim order stands vacated.

* * * * *

PART – B : PLEADINGS

OBJECT OF PLEADINGS

The whole object of pleading is to give fair notice to each party of what the opponent's case is and to ascertain, with precision, the points on which the parties agree and those on which they differ, and thus to bring the parties to a definite issue. The purpose of pleading is also to eradicate irrelevancy. In order to have a fair trial it is imperative that the party should state the essential facts so that other party may not be taken by surprise. The parties thus themselves know what are matters left in dispute and what facts they have to prove at the trial and are thus given an opportunity to bring forward such evidence as may be appropriate. They are saved the expense the trouble of calling evidence which may prove unnecessary in view of the admissions of the opposite party. And further, by knowing before hand, what points the opposite party will raise at the trial, they are prepared to meet them and are not taken by surprise as they would have been, had there been no rules of pleadings to compel the parties to lay bare their cases before the opposite party prior to the commencement of the actual trial.

Construction of Pleadings

It is well settled that in the absence of pleadings, evidence if any produced by the parties cannot be considered and no party should be permitted to travel beyond its pleadings and all necessary and material facts should be pleaded by the party in support of the case set up by it. Where a claim has never been made in the defence presented, no amount of evidence can be looked into upon a plea, which was never put forwarded. No evidence can be led on a fact not pleaded. It is also not open to the parties to give up the case set out in the pleadings and propound a new and different case. Evidence on a matter which is not actually in issue cannot be looked into. Where the parties go to trial knowing fully well what they are required to prove, adduce evidence and the Court considers the same, the parties cannot have grouse that the evidence should not be looked into in the absence of proper pleading or issue for determination.

Fundamental Rules of Pleadings

The fundamental rules of pleadings are four, viz. 1. Every pleading must state facts and not law.2; It must state all the material facts, and material facts, only (O. 6, R.2.); 3. It must state only the facts on which the party pleadings relies, and not the evidence by which they are to be proved and 4. It must state such facts concisely but with precision and certainty. Each of these rules is so important that is deserves a separate chapter for discussion.

First Rule of Pleading : The first fundamental rule of pleading is that neither provisions of law nor conclusions of law be alleged in a pleading. A plea on mixed question of fact and law should be specifically taken, but mere conclusion of mixed law and fact should not be alleged. The pleadings should be confined to facts only, and it is for the judge to draw such inferences from those facts as are permissible under the law, of which he is bound to take judicial notice. A judge is bound to apply the correct law and draw correct legal inference from facts even if the party has been foolish enough to make a wrong statement about the law

applicable to those facts. It is a mistake to think that the judge is not bound to consider, or rather is bound, not to consider, any view of the law in respect of the facts before him except such as laid in before him formally by the parties. If a plaintiff asserts a right in himself without showing on what facts his claim of rights if founded, or asserts that defendant is indebted to him or owes him a duty, without alleging the acts out of which such indebtedness or duty arises, his pleading is bad. On the other hand it is not necessary to specify in the plaint the provision under which the suit is being filed. Accordingly, the mention of a wrong provision will not prevent the Court from granting relief under the correct provisions.

Second Rule of Pleading : The second fundamental rule of pleading is that every pleading shall contain, and contain only, a statement of the material facts on which the party pleading relies for his claim or defence. The rule requires:

1. That the party pleading must plead all material facts on which he intends to rely; and
2. That the must plead material facts only, and no fact which is immaterial should be pleaded nor the evidence.

Their Lordship of the Privy Council have pointed out that the rule that all material facts should be pleaded is not mere technicality and that an omission to observe it may increase the difficulty of the court's task of ascertaining the rights of the parties. The word, "material" meant necessary for the purpose of formulating a complete cause of action, and if any one material statement is omitted the statement of claim is bad." If all the material facts constituting the cause of action are not averred in the plaint the suit has to fail.

The plaintiff had alleged that he was "entitled to get free supply of water for wet crops raised" on the land "irrespective of the nature of the crops", but the facts on which he relied as the foundation of his right were not set out in the plaint. It is submitted that this pleading was bad also because an inference of law was pleaded. The legal inference should be left to be drawn by the courts.

Third Rule Of Pleading : The third fundamental rule of pleading is that every pleading must contain a statement of the material facts, but no the evidence by which they are to be proved. The material facts on which a party relies are Facta Probanda (i.e. the facts to be proved), and they should be stated in the pleading. The evidence or the facts by means of which they are to be proved are Facta Probantia, and they are not to be stated. They are not the facts in issue, but only relevant facts which will be proved at the trial in order to establish the facts in issue.

Fourth Rule of Pleading : The fourth rule of pleading is that the material facts should be stated in the pleading "in a concise form" but with precision and certainty. The pleading shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures, as well as in words to ensure that the parties to not at a later stage take the plea that wrong dates, sums and numbers had been mentioned due to accidental, clerical or typographical error.

It must be remembered that, while the pleadings should be concise, they should never be obscure. They should be both concise as well as precise. If the facts are lengthy they should certainly be given in all their particulars and prolixity along will not justify the striking out of pleadings, if the facts stated are all material. The aim of the pleader should be to state all his material fact with precision, but as briefly as he can.

FORMS OF PLEADINGS

*[**NOTE** : All pleadings must be neatly typed/printed in one and a half space]*

IN THE COURT OF DISTRICT JUDGE (DISTRICT _____) DELHI
SUIT UNDER ORDER XXXVII OF THE CIVIL PROCEDURE CODE 1908
SUIT NO ……. OF 2010

In the matter of :-

M/s ABC Pvt. Ltd.
A Company Incorporated Under The
Companies Act, Having Its Registered Office
At New Delhi.
Through its Director
Shri……

…….. PLAINTIFF

VERSUS

M/s XYZ Ltd.
A Company Incprporated Under The
Companies Act. Having Its Registered
Office At Delhi
Through its Director
Shri…… …….. DEFENDANT

SUIT FOR RECOVERY OF RS. 4,19,200/-(Four lakh nineteen thousand two hundred Only) under order XXXVII OF CODE OF CIVIL PROCEDURE, 1908

The Plaintiff abovenamed most respectfully showeth:

1. That the Plaintiff is a Company constituted under the Companies Act having its registered office at B-40, Safdarjung Enclave, New Delhi. Mr. P. Executive Director or the Plaintiff-company, is a duly constituted attorney of the Plaintiff-company and is authorized and competent to sign and verify the plaint, vakalatnama etc. and to institute this suit on behalf of the Plaintiff.

2. That the Plaintiff-company inter-alia carry on the business of construction, engineering and designing. The Plaintiffs are builders of international repute and have earned a big name in their business.

3. That the Defendant is a Company incorporated under the Companies Act having their registered office at Chandigarh. However, the Administrative office of the Defendant is situated at Delhi i.e. within the jurisdiction of this Hon'ble Court.

4. That the Defendant approached the Plaintiff for construction of a building for their paper mill at Chandigarh some time in the year 2000 whereupon the Plaintiff constructed the

building and handed over the possession of the same to the Defendant sometime in December, 2007.

5. That the on 4th April, 2008, the Plaintiff raised the final bill for Rs. 4,19,200/- on the Defendant on account of the aforesaid construction of their paper mill at Chandigarh against which the Defendant handed over cheque No. 213456 dated 18.4.2008 for Rs. 4,19,200/- drawn on Punjab National Bank, Shahdara, Delhi to the Plaintiff, which was dishonoured upon presentation.

6. That the Plaintiff immediately informed the Defendant about the dishonour of the said cheque and called upon the Defendant to make the payment of the said amount along with interest @ 18% per annum. However, the Defendant failed to pay the same to the Plaintiff despite repeated requests and reminders.

7. That the Plaintiff therefore finally issued a legal notice dated 6th April, 2009 to the Defendant calling upon the Defendant to clear the outstanding amount of Rs. 1,39,492/- along with interest at the rate of 18% per annum w.e.f. 4-4-2008 upto the date of payment. However, no payment has been made by the Defendant despite the said notice.

8. That the Defendant is now liable to pay a sum of Rs. 4,19,200/- along with interest @ 18% per annum from the date on the Plaintiff's bill. The Plaintiff is however, claiming interest form 18-4-2008 upto the date of filing of this suit @ 18% per annum.

9. That the cause of action in favour of the Plaintiff and against the Defendant first arose in 2000 when the Plaintiff was approached by the Defendant for construction of their paper mill. It further arose in December, 2007 when the said building was completed and handed over to the Defendant and on 4th April, 2008 when the Plaintiff submitted the final bill for Rs. 4,19,200/- to the Defendant. The cause of action arose on all dates when the Plaintiff called upon the Defendant to make the payment and the later failed to comply with it. The cause of action is still subsisting as the Defendant has failed to pay the outstanding amount despite repeated oral and written requests and reminders from the Plaintiff.

10. The suit is within the period of limitation.

11. This Hon"ble Court has jurisdiction to entertain this suit because the part of the cause of action arose at Delhi. The contract for construction of the paper mill was entered at Delhi, all the payments upto this date have been made at Delhi and the payment of the outstanding amount was also to be made at Delhi. The Administrative Office of the Defendant is situated at Delhi where they carry on the work for their gain.

12. The value of this suit for the purposes of court fee and jurisdiction is Rs. --------- on which court fee of Rs. _____is paid.

13. That this suit is filed under Order XXXVII of the Code of Civil Procedure and no relief has been claimed which does not fall within the ambit of Order XXXVII.

PRAYER

It is, therefore most respectfully prayed that this Hon,ble Court may be pleased to :-

(a) Pass a decree for Rs. 4,19,200/-(Four Lakhs Nineteen Thousand and Two

Hundred only) with interest @ 18% per annum from 18.4.2008 upto the date of filing the suit in favour of the Plaintiff and against the Defendant;

(b) award pendentlite and future interest at the rate of 18% per annum on the above stated amount of Rs. 4,19,200/-(Four Lakhs Nineteen Thousand and Two Hundred only) with interest @ 18% per annum from 18.4.2008 upto the date of filing the suit in favour of the Plaintiff and against the Defendant;

(c) award cost of the suit in favour of the Plaintiff and against the Defendant; and

(d) pass such other and further order(s) as may be deemed fit and proper on the facts and in the circumstances of this case.

Plaintiff

Through Advocate

VERIFICATION:

Verified at Delhi on this 1st day of January 2010 that the contents of paras 1 to 8 of the plaint are true to my knowledge derived from the records of the Plaintiff maintained in the ordinary course of its business, those of paras 9 to 13 are true on information received and believed to be true and last para is the humble prayer to this Hon,ble Court.

Plaintiff

[***NOTE*** **:** The above plaint must be supported by an Affidavit]

* * * * *

IN THE COURT OF SENIOR CIVIL JUDGE (DISTRICT _____), DELHI
CIVIL SUIT NO. _____ OF 2010

IN RE :

Sh. Om Veer Singh S/o. _____-, R/o. Sainik Nagar, New Delhi …. PLAINTIFF

VERSUS

1. Dr. U. Basu S/o_____,R/o Pragati Vihar Society, Delhi - 92
2. Tapan Kumar, S/o _____R/o Pragati Vihar Society, Delhi – 92 ….. DEFENDANTS

SUIT FOR PERMANENT INJUNCTION

Sir,

The plaintiff respectfully submit as under:

1. That the plaintiff is the permanent resident of the above mentioned address in property bearing no. _____ Uttam Nagar, New Delhi for the last many year and is living with wife and minor children, as a tenant.

2. That the plaintiff is a tenant in respect of the above said property bearing no_____Uttam Nagar, New Delhi consisting two rooms, latrine and kitchen in the above said premises of Rent Rs. 150/- (Rs. 150/-) p.m. excluding electricity and water charges under the tenancy of late Sh_____ who died on 17.10.2007 and late Sh. _____ used to collect the rent from the plaintiff but late Sh. _____did not issued any rent receipt to the plaintiff even after several demands made by the plaintiff but he always used to postpone the issue of rent receipt.

3. That the plaintiff spent a huge amount on the construction of these two rooms in the above said premises at the request of Late Sh. _____and Sh. _____assured the plaintiff to adjust the said rent (the plaintiff is having the necessary documents/proofs of material for construction of rooms in the above said property). It is also pertinent to mention here that the plaintiff looked after late Sh. _____ many a times, whenever he fell ill.

4. That at present the plaintiff is having the peaceful possassion of premises no. _____Uttam Nagar, New Delhi and is having the whole necessary documents/record regarding possession (photocopy of Ration Card, School Card is enclosed herewith) but the above said defendants are internded to disturbe the peaceful physical possession of the plaintiff of the above said premises.

5. That the plaintiff is having the whole necessary household goods which are lying/kept in the above said premises and is living peacefully.

6. That the plaintiff has paid the agreed rent @ Rs. 150/- p.m. to late Sh. _____upto Oct. 2007. It is also pertinent to mention hare that the legal hairs of late Sh. _____are not in the knowledge of the plaintiff and at present also the plaintiff is ready to tender the rent before the legal heirs of late Sh. _____.

7. That on dt. 30.1.2009 the above said defendant came to the above said premises of the plaintiff and threatened the plaintiff to vacate the tenanted premises immediately otherwise the plaintiff would have to face dire consequences, when the plaintiff asked about their identity then they did not disclosethe same, instead started throwing household goods forcibly and illegally and started to quarrel with the plaintiff when the local residents/neighbourers intervened in the matter then the defendents left the spot after threatening for dire consequences and to dispossess the plaintiff forcibly and illegally in the near future with the help of local goondas. The defendants openly stated that the staff of police post Matiala dances at their tune and it is very easy job for them to dispossess any person or to grab the property of any one with the help of the police staff.

8. That immediately on the same date the plaintiff rushed to the police post Matiala to lodge his report against the defendants regarding such incident but duty officer did not lodge the report of the plaintiff. The plaintiff was surprised to see that both the defendants were already present at the Police Post Matiala.

9. That on 10.2.2009, the plaintiff sent a Registered Notice to the defendant no. 1 and copy to Chowki Incharge Police Post Matiala by Regd. A.D. (copy of the same is enclosed herewith) but P.P. Matiala staff has not taken any action against the defendants for reasons best known to them.

10. That on 11.2.2009, the defendants along with two unknown persons/ whom the plaintiff can recognise by face, came to the above said premises bearing no. _____ Uttam Nagar, and knocked at the door at odd hours and threatened the plaintiff to come out of the room. The plaintiff saw their faces from gaps of the door and the plaintiff got nervous, and therefore did not come out of two-room apartment. The said persons threatened the plaintiff to vacate the premises immediately. However, then the neighbourers gathered there and they restrained the defendants from dispossessing the plaintiff from the above said premises forcibly and illegally. When the neighbourers threatened them, they left the spot with a threat to come after one or two days with heavy force to dispossess the plaintiff from the above said premises forcibly and illegally.

11. That on de. 12.2.2009, the plaintiff again went to the police post Matiala to lodge the report against the defendants but no Police Officer of P. Post Matiala is ready to listen against the defendants and they advised the plaintiff to approach to the competent court of law to seek his remedy and to get injunction order against the defendants and the P.S. Matiala.

12. That the plaintiff has no other efficatious remedy except to approach to this Hon'ble court for seeking relief of injunction against the defendants from interfering in the peaceful possession of the premises no. _____Uttam Nagar, New Delhi.

13. That the cause of action arose on different date when the defendants threatened the plaintiff to vacate the premises no. _____Uttam Nagar, New Delhi and threatened the plaintiff of dire consequences and further to dispossess him from the above premises bearing no._____Uttam Nagar, New Delhi forcibly and illegally. The cause of action lastly arose on dt. 11.2.2009 when the defendants again threatened and tried to dispossess the plaintiff from the premises no. _____ Uttam Nagar, New Delhi forcibly and illegally with the connivance of the Local Police. The cause of action still subsists as the threat of the defendants to dispossess the plaintiff and to create disturbance in the peaceful possession of the premises no._____ Uttam Nagar, New Delhi continues.

14. That the parties to the suit for the purpose (s) of court fee and jurisdiction is Rs. 130/- on which the requisite court fee has affixed.

PRAYER

It is, therefore, prayed to this Hon'ble court that the decree for Permanent Injunctin may kindly be passed in favor of the plaintiff and against the defenants thereby restraining the defendants, their representatives, employees, agents etc. from dispossessing the plaintiff forcibly and illegally from the tenanted premises bearing no. _____ Uttam Nagar, New Delhi and also from interfering in the peaceful possession of the above said premises in question as shown read in the site plain. Cost of the suit be also awarded to the plaintiff.

Any other relief which Hon'ble Court may deems fit and proper in the circumstances of the case may also be granted to the plaintiff and against the defendants.

Delhi Plaintiff

Dated:……..

Through Advocate

VERIFICATION:

Verified at Delhi on this 12th day of February 2009 that the contents of para 1 to ___ are true to my knowledge and para _____ to _____ are believed to be true on the information received and rest is prayer to this Hon'ble Court.

Plaintiff

[***NOTE :*** This plaint has to be supported by an affidavit]

IN THE COURT OF SENIOR CIVIL JUDGE (DISTRICT _____), DELHI

IA NO. _____ IN CIVIL SUIT NO. _____OF 2010

IN RE:

Sh. Om Veer Singh, S/o _____
R/o Sainik Nagar, Mansaram Park, New Delhi PLAINTIFF/APPLICANT

VERSUS

1. Dr. U. Basu S/o _____,
   R/o Pragati Vihar Society, Vasundhara Enclave, Delhi - 91
2. Sh. Tapan Kumar, S/o _____,
   Pragati Vihar Society, Vasundhara Enclave, Delhi - 91 DEFENDANTS

APPLICATION FOR TEMPORARY INJUNCTION UNDER ORDER 39, RULE 1 & 2 READ WITH SECTION 151, C.P.C.

Sir,

The plaintiff/applicant respectfully submits as under:

1. That the plaintiff has filed a suit for permanent injunction which is pending for disposal before this Hon'ble Court.

2. That the contents of the accompanying suit for permanent injunction may kindly be read as a part and parcel of this application which are not repeated here for the sake of brevity.

3. That the plaintiff/applicant has got a prima-facie case in his favour and there is likelihood of success in the present case.

4. That in case the defendants are not restrained by means of ad-interim injunction for dispossessing the plaintiff from the above said premises no. _____ Uttam Nagar, New Delhi and from interfering in physical peaceful possession of the above said premises, the plaintiff shall suffer irrepairable loss and injury and the suit shall become anfractuous and would lead to multiplicity of the cases.

5. That the balance of convenience lies in favour of the plaintiff and against the defendants.

Therefore, it is prayed to this Hon'ble Court that dafenants, their associates, servants, agents and their representatives may kindly be restrained by means of ad interim ex-party injujnction from interfering into the peaceful physical possession of the plaintiff in the premises no. _____ Uttam Nagar, New Delhi and from dispossessing the applicent/plaintiff from the above said premises till the final dispossel of the case (An affidavit is enclosed herewith). Which is necessasry in the interest of justice and law.

Plaintiff/Applicant

Through

Dated : Advocate

New Delhi [***NOTE :*** This Application has to be supported by an affidavit].

IN THE COURT OF SH._____SENIOR CIVIL JUDGE (DISTRICT _____), DELHI

IA NO._____IN CIVIL SUIT NO._____OF 2010

In the matter of:-

ABC . . .Plaintiff/applicant

Versus

XYZ …Defendant/respondent

APPLICATION U/O XXXIX R 2-A READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE ON BEHALF OF THE PLAINTIFF

Respectfully Showeth:-

1. That the above noted suit for injunction is pending before this Hon'ble Court and the contents of the plaint be read as part of this application. The plaintiff/applicant is tenant in suit premises bearing House No……., Uttam Nagar, New Delhi and the defendant is landlord of the same.
2. That on an application U/O 39, R 1 & 2 for interim stay against interference in peaceful possession of the plaintiff/applicant as well as dispossession from the said premises, without due process of law was filed by the plaintiff/applicant against the defendant/respondent alongwith the plaint.
3. That on dt. ……..this hon'ble Court was pleased to grant interim injunction in favour of the plaintiff/applicant and against the defendant/respondent for not to interfere in the peaceful possession of the plaintiff/applicant and not to dispossess him without due process of law from the suit property.
4. That on dt. ……..the defendant/respondent inspite of the service and knowledge of the above interim injunction orders dt ……., took forcible possession of the suit premises with the help of anti social elements in utter disregard of the orders of this Hon'ble Court and the applicant/plaintiff's household goods were thrown on the roadside.
5. That the defendant/respondent has thus knowingly and willfully disobeyed and violated the injunction orders issued by this hon'ble Court on dt. …… and he is as such guilty of disobedience of the orders of this hon'ble Court and has

rendered himself liable to be detained in civil imprisonment and attachment of his property. List of properties is attached.

It is, therefore, most respectfully prayed that appropriate action U/O 39 R 2-A of the Code of Civil Procedure and other provisions of law may be taken against the defendant/respondent and his property may be directed to be attached and he may be directed to be kept in civil imprisonment for the maximum term. The possession of the suit property may also be directed to be restored to the plaintiff/applicant.

Any other appropriate orders/directions may also be passed as may be deemed fit in the facts and circumstances of the case in favour of plaintiff/applicant.

Delhi. Plaintiff/Applicant

Dated: Through

Advocate

(Note: An affidavit, duly attested by oath commissioner, in support of this application is to be attached with to this application)

* * * * *

BEFORE THE SENIOR CIVIL JUDGE (DISTRICT _____), DELHI
SUIT NO._____OF 2010

IN THE MATTER OF,

Mrs. Surjit Kaur Sahi
Mr. Avinder Singh Sahi
Both R/o _____,Chandigarh……..PLAINTIFFS

VERSUS

Power Grid Corporation of India Ltd.
Hemkunt Chamber, Nehru Place, New Delhi-110029
Through its Chairman/Managing Director… …… …DEFENDANT

SUIT FOR EJECTMENT AND DAMAGES FOR WRONGFUL USE AND OCCUPATION

Respectfully Showeth:

1. The plaintiff being the owners of flat no. _____Nehru Place, New Delhi let out the said flat to M/s. National Power Transmission Corporation Limited (a Government of India undertaking) now called as Power Grid Corpn. of India Limited, having their registered office at Hemkunt Chamber, Nehru Place, New Delhi-110 019 for a period of three years with effect from 17.10.2005 vide unregistered lease deed (copy annexed as Annexure 'A'). The delivery of the possesson of the said premises was simultaneous on the said date.

2. That the period of three years referred above starting from 7.10.2005 expire on 16.10.2008. That after the expiry of the said lease the defendant became a month to month tenant of the plaintiffs.

3. That the plaintiffs being in need of the premises in question approached the defendant for vacation of the same on various dates (*give dates*). However, the defendant who were approached through their officers did not agree to the plaintiff's demand. The plaintiffs thereafter served a legal notice through their Counsel, Shri _____(copy annexed as Annexure 'B') under section 106 of Transfer of Property Act terminating the said tenancy on mid-night of 30.6.2009.

4. That the defendant received the plaintiff's legal notice U/s. 106 of the Transfer of property Act on 11.6.97 i.e. clear 15 days before the last day of June, 1997 i.e. 30.6.97 and thus is a valid notice under the Transfer of Property Act (proof of the service of legal notice is annexed to same as Annexure 'B')

5. **That however, the defendant even after receiving the said legal notice have neither vacated the premises nor shown their intention to vacate. Thus the defendant from 1.7.97 are in wrongful use and occupation @ Rs. 1,000/- per day as the rate of rent in the area are for such premises prevailing and the plaintiffs have rightly assessed the rate of Rs. 1,000/- per day. The same rate was demanded in the legal notice dated 6.6.97. That since the premises were needed** by the plaintiffs for their own purposes they will have

to take on rent the premises of same size in the same area where the flat is situated and the plaintiffs have done a market survey during the search for the flat and found that the rate of reht in the area is Rs. 100/- to Rs. 150/- per sq. feed. This the plaintiffs own flat which is 370 sq. ft. super area will be available in the market for Rs. 37000/- to 55,500/- per month. The plaintiffs does not have means totake on rent a flat for own purposes at such high rates and thus needed the flat and for this reason asked the defendant to facate the premises.

6. The defendant is presently paying a monthly rent of Rs. 6808/- per month (Rupees six thousand eight hundred eight) for the plaintiffs flat measuring 370 sq. ft. super area. The plaintiffs premises are not governed by Delhi Rent Control Act as the rate of rent is more than Rs. 3,500/- and thus the Hon'ble Court has jurisdiction to try the matter.

7. The cause of action in the present case arose on _____when the plaintiffs approached the defendant for the vacation of the said flat. The cause of action further arose on_____ when the plaintiffs again approached the officers of the defendant company for the vacation of flat who however did not oblige. The cause of action further arose when the plaintiffs served a legal notice dated 6.6.97 through their advocate Shri Ajit Panday asking the defendant to vacate the same by 30.6.97. The said notice was duly received on 11.6.97 However, the defendant did not vacate the flat in question. The cause of action in the present case is a continuing one.

8. That since the property whose possession is sought is situated in Delhi. The Lease for the premises was executed in Delhi and delivery of possession made in Delhi. And since the premises are not covered by Delhi Rent Control Act. The Hon'ble Court has jurisdiction to try and settle the claim.

9. That the court fee payable has been calculated advalorem as per the chart/section 7 of the Court Fee Act on the annual rent received by the plaintiffs. The annual rent is Rs. 81,696/- (Rupees eight one thousand six hundred ninety six) arrived at by multiplying monthly rent of Rs. 6808/- by 12. On this a court fee of Rs. 3174/- is paid. The plaintiffs undertakes to pay any additional court fee that may be found due by the Hon'ble court.

In the circumstances mentioned herein above it is respectfully prayed that:

PRAYER

The Hon'ble Court may be pleased to –

(i) pass a decree for ejectment against the defendant and in favour of plaintiffs ;

(ii) pass a decree for payment of damages @ Rs. 1,000/- per day for wrongful use and occupation of the flat by the defendant ;

(iii) Any other relief deemed fit and proper may also be given. Costs of the case may also by given.

PLAINTIFFS

Delhi through

Dated ADVOCATE

VERIFICATION :

Verification at Delhi on 18th day of July, 1997 that the contents of paras 1 to 6 are true to our personal knowledge and those of paras 7 to 9 are true & correct on the basis of legal advice received and belived to be true. Last para is prayer to the Hon'ble Court.

PLAINTIFFS

[*NOTE* : This plaint has to be supported by an affidavit]

* * * * *

MODEL DRAFT FOR WRITTEN STATEMENT

IN THE COURT OF SHRI …… CIVIL JUDGE
(DISTRICT _____), DELHI
SUIT NO. ……OF 2010

X_____ …. PLAINTIFF

VERSUS

Y_____ ….. DEFENDENT

WRITTEN STATEMENT OF BEHALF OF THE DEFENDANT

The Defendant above named submits.

PRELIMINARY OBJECTIONS :

1. That the suit is barred by limitation under Article ..... of the Limitation Act and is liable to be dismissed on this short ground alone.

2. That this Hon'ble Court has no jurisdiction to entertain and try this suit because.....

3. That the suit has not been properly valued for the purpose of court fees and jurisdiction and is therefore liable to rejected outrightly.

4. That there is absolutely no cause of action in favour of the Plaintiff and agianst the Defendant. The suit is therefore liable to be rejected on this ground also.

5. That the suit is bad for non-joinder of necessary parties, namely .....

6. That the suit is bad for mis-joinder of Z.

7. That the suit is barred by the decree dated ..... passed in suit No..... titled Y Versus X by Sh. ....., Sub-Judge, Delhi, The present suit is therefore

barred by the principle of res-judicata and therefore liable to be dismissed on this short ground alone.

8. That the suit is liable to be stayed as a previously instituted suit between the parties bearing No..... is pending in the Court of Sh. ....., Sub-Judge, Delhi

9. That the suit has not been properly verified in accordance with law.

10. That the Plaintiff's suit for permanent injunction is barred by Section 41 (h) of the Specific Relief Act since a more efficacious remedy is available to the Plaintiff. The Plaintiff has alleged breach of contract by the Defendant. Assuming, though not admitting, that the Defendant has committed any alleged breach, the remedy available to the Plaintiff is by way of the suit for specific performance and not sent for specific performance.

11. That the Plaintiff's suit for permanent injunction is also barred by Section 41 (i) of the Specific Relief Act because he has not approached this Hon'ble Court with clean hands and his conduct has been most unfair, dishonest and tainted with illegality.

12. That the Plaintiff's suit for declaration is barred by Section 34 of the Special Relief Act as the plaintiff has omitted to claim further consequential relief available to him.

13. That the suit is barred by Section 14 of the Specific Relief Act as the contract of personal service cannot be enforced.

14. That the suit is liable to be dismissed outrightly as the Plaintiff has not given the mandatory notice under Section 80 of the Code of Civil Procedure/Section 14 (1) (a) Rent Control Act/Section 478 of the Delhi Municipal Corporation Act.

15. That the suit is liable to be dismissed as the Plaintiff firm is not registered under Section 69 of the Indian Partnership Act and as such is not competent to institute this suit.

16. That the present suit is barred by Section 4 of the Benami Transaction (Prohibition) Act, 1988, and is therefore liable to be dismissed outrightly.

ON MERITS :

Without prejudice to the preliminary objections stated above, the reply on merits, which is without prejudice to one another, is as under:-

1. That para 1 of the plaint is correct and is admitted.

2. That the contents of para 2 of the plaint are denied for want of knowledge. The Plaintiff is put to the strict proof of each and every allegation made in the para under reply.

3. That the contents of para 3 of the plaint are absolutely incorrect and are denied. It is specifically denied that the Plaintiff is the owner of the suit properly. As a matter of fact, Mr. N is the owner of the suit properly.

4. That with respect to para 4 of the plaint, it is correct that the Defendant is in possession of the suit properly. However, the remaining contents of para under reply are absolutely incorrect and are denied. It is specifically denied that.....

5-10. (Each and every allegation must be replied specifically depending upon the facts of each case. The above reply on merits is therefore only illustrative in nature.)

11. That para 11 of the plaint is incorrect and is denied. There is no cause of action in favour of the Plaintiff and against the Defendant because..... The plaintiff is therefore liable to be rejected outrightly.

12. That para 21 is not admitted. This Hon'ble Court has no jurisdiction to entertain this suit because the subject matter of this suit exceed the peciniary jurisdiction of this Hon'ble Court.

13. The para 13 is not admitted. The suit has not been properly valued for the purpose of court fee and jurisdiction. According to the Defendant the correct valuation of the suit is Rs.....

DEFENDANT

Through

Dated _____ ADVOCATE

[NOTE : Counter Claim, Set off can be joined in the Written Statement and the same may be verified and supported by affidavit]

* * * * *

PETITIONS UNDER THE HINDU MARRIAGE ACT, 1955

IN THE COURT OF DISTRICT JUDGE (DISTRICT _____), DELHI

HMA PETITION NO. OF 2010

IN THE MATTER OF :

X ……s/o …. PETITIONER

R/o ……..

VERSUS

Y ……w/o …. RESPONDENT

R/o ……..

PETITION FOR RESTITUTION OF CONJUGAL RIGHTS UNDER SECTION 9 OF THE HINDU MARRIAGE ACT, 1955 (NO. 25 OF 1955)

Most Respectfully showeth:

1. That a marriage was solemnized between the parties according to Hindu rites and ceremonies on dt. ……at (Give place). The said marriage is registered with the Registrar of marriage. A certified copy of the relevant extract from the Hindu Marriage Register……

is filed herewith. An affidavit, duly attested declaring and affirming these facts is also attached.

2. That the status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

	Husband			Wife		
	Status	Age	Place of Residence	Status	Age	Place of Residence
(i) Before marriage						
(ii) At the time of filling the petition						

(Whether a party is a Hindu by religion or not is as part of his or her status).

3. That the (In this paragraph state the names of the children, if any, of the marriage together with their sex, dates of birth or ages).

4. That the respondent has, without reasonable excuse, withdrawn from the society of the petitioner with effect from……..

(The circumstances under which the respondent withdrew from the society of the petitioner be stated).

5. That the petition is not presented in collusion with the respondent.

6. That there has not been any unnecessary or improper delay in filing the petition.

7. That there is no other legal ground why relief should not be granted.

8. That there have not been any previous proceedings with regard to the marriage by or on behalf of any party.

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties:

Serial	Name of Parties	Nature of Proceedings with Section of that Act	Number and year of the case	Name and location of court	Result
(i)					
(ii)					
(iii)					

9. That the marriage was solemnized at……. The parties last resided together at…… The parties are now residing at……

(Within the local limit of the ordinary original jurisdiction of this Court.)

10. That the petitioner submits that this Hon'ble Court has jurisdiction to try and entertain this petition

PRAYER

In view of the above facts and circumstances, it is, therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to grant a decree of restitution of conjugal rights under Section 9 of HMA in favor of petitioner.

Any other relief/order/Direction this Hon'ble Court may deem fit in the intrest of justice and equity.

PETITIONER

Through

Delhi
Dated ADVOCATE

VERIFICATION

The above named petitioner states on solemn affirmation that paras 1 to ……..of the petition are true to the petitioner's knowledge and paras…….to……. are true to the petitioner's information received and believed to be true by him/her.

Verified at……(Place)
Dated…….. PETITIONER

[***Note :*** An affidavit of petitioner is to be appended]

* * * * *

IN THE COURT OF DISTRICT JUDGE (DISTRICT _____), DELHI

HMA PETITION NO. _____ OF 2010

IN THE MATTER OF :

IN THE MATTER OF :
X ……s/o …. PETITIONER
R/o ……..

VERSUS

Y ……w/o …. RESPONDENT
R/o ……..

PETITION FOR JUDICIAL SEPARATION UNDER SECTION 10

OF THE HINDU MARRIAGE ACT, 1955 (NO. 25 OF 1955)

The petitioner prays as follows:

1. That A marriage was solemnized between the parties according to Hindu rites and ceremonies on dt ……at……The said marriage is registered with the Registrar of marriage. A certified copy of the relevant extract from the Hindu Marriage Register…….is filed herewith.

An affidavit, duly attested.

2. that the status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

	Husband			Wife		
	Status	Age	Place of Residence	Status	Age	Place of Residence
(i) Before marriage						
(ii) At the time of filling the petition						

(Whether a party is a Hindu by religion or not is as part of his or her status).

3. that the (In this paragraph state the names of the children, if any, of the marriage together with their sex, dates of birth or ages).

4. that the respondent has……..(any one or more of the grounds available under section 10 may be pleaded here. The matrimonial offences charged should be set in separate paragraphs with times and places of their alleged commission. The facts on which the claim to relief is founded should be stated in accordance with the Rules and as distinctly as the nature of the case permits.)

5. (where the ground of petition is on the ground specified in clause (i) of section 13 (1). The petitioner has not in any manner been necessary to or connived at or condoned the acts complained of.

6. (Where the ground of petition is cruelty). The petitioner has not in any manner condoned the cruelty.

7. that the petition is not presented in collusion with the respondent.

8. that there has not been any unnecessary or improper delay in filing the petition.

9. that there is no other legal ground why relief should not be granted.

10. that there have not been any previous proceedings with regard to the marriage by or on behalf of any party.

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties:

Serial	Name of Parties	Nature of Proceedings with Section of that Act	Number and year of the case	Name and location of court	Result
(i)					
(ii)					
(iii)					
(iv)					

11. that the marriage was solemnized at……. The parties last resided together at…… The parties are now residing at…… (Within the local limit of the ordinary original jurisdiction of this Court)

12. that the petitioner submits that this Hon'ble Court has jurisdiction to try and entertain this petition

PRAYER

In view of the above facts and circumstances, it is, therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to grant a decree of Judicial Separation under Section 10 of HMA in favor of petitioner.

Any other relief/order/Direction this Hon'ble Court may deem fit in the intrest of justice and equity.

PETITIONER

Through

Delhi
Dated

ADVOCATE

VERIFICATION:

The above named petitioner states on solemn affirmation that paras 1 to____ of the petition are true to the petitioner's knowledge and paras____ to_____ are true to the petitioner's information received and believed to be true by him/her.

Verified at_____ (Place)
Dated_____

PETITIONER

[***Note :*** An affidavits of petitioner is to be appended]

* * * * *

IN THE COURT OF DISTRICT JUDGE (DISTRICT _____), DELHI

HMA PETITION NO. _____ OF 2010

IN THE MATTER OF :

X_____ … PETITIONER

VERSUS

Y_____ … RESPONDENT

PETITION FOR DISSOLUTION OF MARRIAGE BY A DECREE OF DIVORCE UNDER SECTION 13 OF THE HINDU MARRIAGE ACT, 1955 (NO 25 OF 1955)

The petitioner prays as follows

1. That a marriage was solemnized between the parties according to Hindu rites and ceremonies after the commencement of the Hindu Marriage Act on_____ at _____.The said marriage is registered with the Registrar of marriage.

A certified copy of the relevant extract from the Hindu Marriage Register…….is filed herewith.

An affidavit, duly attested stating above facts has also been filed.

2. that the status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

	Husband			Wife		
	Status	Age	Place of Residence	Status	Age	Place of Residence
(i) Before marriage						
(ii) At the time of filling the petition						

(Whether a party is a Hindu by religion or not is as part of his or her status).

3. (In this paragraph state the names of the children, if any, of the marriage together with their sex, dates of birth or ages).

4. that the respondent…….(one or more of the grounds specified in section 13 may be pleaded here. The facts on which the claim to relief is founded should be stated in accordance with the Rules and as distinctly as the nature of the case permits. If ground as specified in clause (i) of Section 13 (i) is pleaded, the petitioner should give particulars as nearly as he can, of facts of voluntary sexual intercourse alleged to have been committed. The matrimonial offences/offences charged should be set is separate paragraphs with the time and places of their alleged commission.

5. (Where the ground of petition is on the ground specified in clause (i) of sub-section (1) of Section 13. The petitioner, has not in any manner been accessary to or connived at or condoned the acts(s) complained of).

6. (Where the ground of petition is cruelty). The petitioner has not in any manner condoned the cruelty.

7. that the petition is not presented in collusion with the respondent.

8. that there has not been any unnecessary or improper delay in filing the petition.

9. that there is not other legal ground why relief should not be granted.

10. that there have not been any previous proceedings with regard to the marriage by or on behalf of any part.

Or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties:

Serial	Name of Parties	Nature of Proceedings with Section of that Act	Number and year of the case	Name and location of court	Result
(i)					
(ii)					
(iii)					
(iv)					

11. that the marriage was solemnized at……. The parties last resided together at…… The parties are now residing at…… (Within the local limit of the ordinary original jurisdiction of this Court.)

12. that the petitioner submits that this Hon'ble Court has jurisdiction to try and entertain this petition

PRAYER

In view of the above facts and circumstances, it is, therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to grant a decree of divorce under Section 13 of HMA in favor of petitioner.

Any other relief/order/Direction this Hon'ble Court may deem fit in the intrest of justice and equity.

PETITIONER

VERIFICATION:

The above named petitioner states on solemn affirmation that paras 1 to_____of the petition are true to the petitioner's knowledge and paras_____ to _____ are true to the petitioner's information received and believed to be true by him/her.

Verified at_____ (Place)

Dated_____

PETITIONER

[***Note :*** An affidavits of petitioner is to be appended]

* * * * *

IN THE COURT OF DISTRICT JUDGE (DISTRICT _____), DELHI
HMA PETITION NO. _____ OF 2010

IN THE MATTER OF:

X_____ … PETITIONER NO. 1

AND

Y_____ … PETITIONER NO. 2

PETITION FOR DISSOLUTION OF MARRIAGE BY A DECREE OF DIVORCE BY MUTUAL CONSENT UNDER SECTION 13-B(1) OF THE HINDU MARRIAGE ACT, 1955 (NO. 25 TO 1955)

Most Respectfully showeth:

1. that a marriage was solemnized between the parties according to Hindu rites and ceremonies on_____ at_____. A certified copy of the relevant extract from the Hindu Marriage Register is filed herewith. An affidavit, duly attested statting these facts is filed herewith.

2. that the status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:

	Husband			Wife		
	Status	Age	Place of Residence	Status	Age	Place of Residence
(i) Before marriage						
(ii) At the time of filling the petition						

(Whether a party is a Hindu by religion or not is as part of his or her status).

3. (In this paragraph state the place where the parties to the marriage last resided together and the names of the children, if any, of the marriage together with their sex, dates of birth or ages.)

4. That the parties to the petition have been living separately since_____ and have not been able to live together since then.

5. That the parties to the petition have mutually agreed that their marriage should be dissolved.

6. That the mutual consent has not been obtained by force, fraud or undue influence.

7. That the petition is not presented in collusion.

8. That there has not been any unnecessary or improper delay in instituting the proceedings.

9. That there is no other legal ground why relief should not be granted.

10. that the petitioners submit that this Court has jurisdiction to entertain this petition.

PRAYER

In view of the above facts and circumstances, it is, therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to grant a decree of divorce on mutal consent thereby dissolving the marriage between petitioner No. 1 and Petitioner oNo. 2 on the ground of mutual consent.

PETITIONER NO. 1
PETITIONER NO. 2

VERIFICATION

The above named petitioner states on solemn affirmation that paras 1 to_____.of the petition are true to the petitioner's knowledge and paras_____ to_____ are true to the petitioner's information received and believed to be true by him/her.

Verified at_____(Place)
Dated_____

PETITIONER NO. 1
PETITIONER NO. 2

[***Note :*** An affidavits of petitioners is to be appended]

* * * * *

IN THE HIGH COURT OF DELHI AT NEW DELHI
(TESTAMENTARY & INTESTATE JURISDICTION)

PROBATE CASE NO. ……OF 2010

IN THE MATTER OF

X _____ … APPLICANT/PETITIONER

VERSUS

1. State_____

2. Y _____ … RESPONDENTS

PETITION FOR GRANT OF PROBATE

To

The Hon'ble Mr Justice……, Chief Justice and his Companion
Justices of this Hon'ble Court

The humble petition of……residing at…….in the town of Calcutta the sole executor of the Will of the said deceased most respectfully sheweth

1. That the said……the deceased above named lately residing at…..in the town of Calcutta within the jurisdiction aforesaid who was in his life-time and at the time of his death a Hindu governed by the…..School of Hindu Law departed his life at his dwelling house at No……in the town of Calcutta on the……date of…….2006……..having duly executed his Will and Testament in English language and character bearing date the……..and a **Codicil** thereto also in the English language and character bearing date the…….2006……...whereby and whereof he appointed your petitioner his sole executor.

2. That the signature of the testator of the said Will was duly attested amongst others by……and the signature of the testator in the codicil was duly attested amongst others by……The execution of the said Will is proved by a declaration of…….one of the attesting witnesses to the said will and the execution of the said codicil is proved by a declaration of……one of the attesting witnesses to the said **codicil.** The said declarations are hereto annexed.

3. The deceased above-named died leaving properties within the jurisdiction of this Hon'ble Court to be administered and your petitioner is desirous of obtaining from the Hon'ble Court a probate of the said Will above named with effect throughout the union of India.

4. That the particulars of the estate of the deceased above-named with so far as your petitioner has been able to ascertain are likely to come into the hands of your petitioner as such executor as aforesaid are set out in the affidavit of assets of your petitioner affirmed on the…..day of……and the value of the estate will not after deducting the liabilities, with the best of petitioner's information and belief, exceed the sum of Rs……

5. That so far as your petitioner has been able to ascertain and is aware there are no properties and effects other than those specified in the afidavit of assets.

6. The petitioner undertakes in case of any other properties and effects coming to his hands to pay Court-fees payable in respect thereof.

7. That no intimation has been received by this Hon'ble Court from any other High Court or any other Court in the Union of India of any Grant of Probate or Letters of Administration to the estate and credits and effect of the said deceased as appeared from the Registrar's Certificate hereto annexed and marked with letter "B".

8. That the amount of the value of the estate likely to come to your petitioner's hands does not exceed Rs……..and the duty payable in respect of the said estate as will appear from the certificate of the Taxing Officer hereto and marked with the letter "C" has been paid.

9. That your petitioner is desirous of obtaining Grant of Probate of the said last Will and Testament dated the……..as also the said codicil dated……..of the deceased above-named out of and under the seal of this Hon'ble Court as sole executor named in the codicil.

The petitioner therefore humbly prays to Your Lordships for an order:-

(1) That probate of the last Will and Testament dated…….together with the Codicil thereto dated…….of the deceased above-named be granted to your petitioner the said……..as the sole executor named therein with effect throughout the Union of India.

(2) That your petitioner hereby undertake to pay to the State or other party entitled thereto the fees of Court in case the estate shall hereafter be found to be of greater gross value than Rs…….

(3) That your petitioner be at liberty to pay in the first instance out of the funds of the estate to come into his hands the costs of and other incidental expenses to this application and all costs that might be necessary in the premises to be taxed by the Taxing Officer of this Hon'ble Court.

(4) That such further and other orders be made and directions given as to this Hon'ble Court may seem fit and proper.

And your petitioner, as is duty bound, shall every pray.

Delhi. PETITIONER

Dated : THROUGH ADVOCATE

[***NOTE*** **:** To be supported by an affidavit]

* * * * *

IN THE COURT OF THE DISTRICT JUDGE (DISTRICT _____), DELHI

CASE NO……UNDER ACT XXXIX OF 1925

IN THE MATTER OF A PETITION FOR LETTERS OF ADMINISTRATION
OF THE ESTATE OF THE LATE _____

IN THE MATTER OF :

X _____ … PETITIONER

VERSUS

1. STATE _____
2. Y _____ … RESPONDENTS

PETITION FOR GRANT OF LETTERS OF ADMINISTRATION

The humble petition of……..of…….most respectfully showeth:-

1. That the late A.B. of……died at……on the …….day of …….2004……leaving properties situate within the jurisdiction of this Court. A description of the said properties is set forth in the affidavit annexed to the petition.

2. That a description of the relatives of the deceased, and their respective residences are given below:

(1) Son (Petitioner)

(2) Brother, Sri…….resident of……

(3) Widow, Sreemati…….resident of…….

(4) Mother, Sreemati…….resident of…….

(5) Daughter, Sreemati…….resident of……..

3. The petitioner is the son of the deceased, and as such is entitled to letters of administration to the estate of the deceased.

4. The deceased abovenamed died leaving properties in the suchedule annexed.

5. That, to the best of your petitioner's belief, no application has as yet been made by anybody to any other Court for letters of administration of the estate of the said deceased.

6. Under the circumstances set forth above, your petitioner prays that letter of administration to the estate of A.B. may be granted to your petitioner.

And your petitioner as in duty bound shall every pray.

I _____ the petitioner in the above petition, do hereby declare that what is stated therein is true to the best of my information and belief.

Delhi. PETITIONER

Dated : THROUGH

[***NOTE*** **:** To be supported by an affidavit] ADVOCATE

IN THE HIGH COURT OF DELHI AT NEW DELHI

CONTEMPT PETITION NO. _____ OF 2010

IN

CIVIL WRIT NO. _____ OF _____ 2003

IN THE MATTER OF :

1. X _____ S/o _____
   R/o _____, New Delhi
2. Y _____ W/o _____
   R/o _____, New Delhi … PETITIONERS

Versus

1. Union of India through its Standing Counsel Delhi High Court, New Delhi.
2. Land & Acquisition Collector Delhi Administration, Delhi.

3. Delhi Development Authority, through its Vice Chairman, New Delhi
4. Shri _____, Asstt. Director Task Force, DDA, New Delhi … RESPONDENTS

Contempt Petition Under Sections 11, 12 of the Contempt of Courts Act, 1971

RESPECTFULLY SHOWETH :

1. That the President Residents Welfare Association, _____ New Delhi filed Civil writ Petition No. 2420/2003 in the High Court of Delhi at New Delhi. The respondents in the said petition were the Union of India, Land Acquisition Collector and the DDA. The said petition is still pending and awaiting final disposal.

1. That the Hon'ble court on 1.10.2003 issued notice to the respondents and granted status quo thereby restraining the respondents including D.D.A. from demolishing the construction raised in the impugned area. The said area included plot No. 1, 2, 3, 4, 21, 22, 35 and 36 belonging to petitioners named above. The above plot were in Khasra No. 78/21/2. The copy of the orders for grant of status quo are annexed herein as Annexures A-1, A-2, A-3, After the issue of Rule on 10.1.2005 (the said order is Annexure A-2) the petition has not come up for hearing.

2. That the petitioners herein the contempt petition have also annexed the site plan. The same is Annexure A-4. The Plot area belonging to the petitioners is marked. Red.

3. The respendent D.D.A. had been conducting demolition in the said area in December/1998 and January, 1999 and since the petitioners apprehended that their property minght also be demolished and therefore, approached the D.D.A. several times and made them aware of the court orders and specially the orders for grant of status quo. A written representation dated 3.12.98 was also routed through the Residents Welfare Association, Vijay Nagar, Phase-I, Delhi to Deputy Director, Land, D.D.A., Delhi.

Annex. A-5 : The copy of the same is annexed as Annexure A-5 alongwith its English Translation. However, despite making the D.D.A. aware of the above/orders of grant of status quo in the Writ Petition (Civil) 2420/2003 the D.D.A. officials namely _____ alongwith Shri _____ , came to the site on 4.1.99 at 3.45 P.M. and demolished the construction raised on plot No. 1, Block 'L', Plot No. 2, Block'L', Plot No. 3, Plot No. 4, Plot No. 21, Plot No. 22, Plot No. 35 and 36 belonging to petitioners.

4. That as a result of demolition the petitioners have suffered loss al all the plots had the constructions on it. The details of constructions and the damage incurred is given herein below :

5. That it will not be out of place to mention that the respondent D.D.A. had earlier in the years 2001 and 2002 demolished the construction in the area for which status quo was granted but after the petitioners apprised them of the Court orders they got constructed the building demolished by them at their expense.

5. That the petitioners herein annex as Annexure A-6, the photo graphs of the place where their building situates and have been demolished by the respondent D.D.A.

6. That as detailed above, the petitioners being the owners of plot in Khasra No. 78/21/2 who had been given status quo orders by the Hon'ble Court in Civil Writ Petition 2420/2003 titled Resident Welfare Association v. Union of India and others had every right not to get the

construction demolished from the D.D.A. The said status quo is still continuing by virtue of order dated 10.1.2003 of Justice _____ and Justice _____. By not complying with the said status quo orders of the Hon'ble Court, the respondent D.D.A. has committed the contempt of court, It is worthwhile to mentiion that the following officers are the Contemners as they were conducting the demolition. They are Shri _____ respondent no.___ , Shri ___respondent no._____ and Shri _____, respondent no. ___.

7. The cause of action in the present petition arose when the respondent D.D.A. and specially its officers respondents no. 5, 6, 7, herein were apprised of the status quo orders in Civil Writ Petition 2420/2003 (C.M. No. 3592/2003) and the concerned officers refused to comply with the orders of the court. The cause of action is still continuing as the demolition had already been done on 4.1.2003.

It is therefore most respectfully prayed that the Hon'ble Court may be pleased to initiate contempt proceedings against the above named contemners. It is further prayed that the Hon'ble Court may be pleased to pass such further orders/directions as it may deem fit and proper.

Dated_____

Petitioner

Through Advocate

[***Note:*** The petition must be supported by an affidavit].

IN THE HIGH COURT OF DELHI AT NEW DELHI
(WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2010

IN THE MATTER OF :

X _____ S/o _____R/o _____ … PETITIONER

VERSUS

Muncipal Corporation of Delhi,
Through Its Commissioner … RESPONDENT

WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA
FOR ISSUANCE OF PREROGATIVE WRIT OF MANDAMUS
OR ANY OTHER APPROPRIATE WRIT

Respectfully showeth :

1. That the petitioner is a citizen of India residing at_____. The respondent is Muncipal Corporation of Delhi having their office at Town Hall, Chandni Chowk, Delhi.

BRIEF FACTS :-

2. That the petitioner is aggrieved by the illegal appointments of daily wage workers by the M.C.D. office in defiance of Notification No. MCD/LF/01-103 dated 1.2.2008 which requires the M.C.D. to appoint only those person as Daily wage worker who are below the age of 30 years as an 01.10.2008. The said Notification was issued after it was duly approved.
3. That the petitioner is of 27 yrs of age and was working as a daily wage worker, when on 1.12.2008 his services were terminated without notice/prior intimation. The Petitioner during his service worked to the satisfaction of his superiors. The respondent has appointed Sh. Ompal, Sh. Ram and Smt Maya in defiance of the said notification M.C.D./LF/01-/03 at 01.02.2008 as all the three person namely Om Pal, Sh. Ram and Smt. Maya are more than 30 years of age as on 01.10.2008. The about named persons were appointed in utter disregard of Notification. The respondent, however, removed the petitioner from service although petitioner met the requirements.. That the Petitioner made representation to the respondent vide letter dated 1.12.2008, 2.1.2009 and also met the commissioner personally and apprised them of his grievance, however nothing materialized .
4. That in spite of oral and written representations the respondent have not cared to act and are maintaining stoic silence on the whole issue.
5. That the petitioner have thus approached the Hon'ble court on amongst others the following grounds

GROUNDS:

(a) Because the action of the respondent is contrary to law and good conscience.

(b) Because the action of the respondent is arbitrary, unreasonable, irrational and unconstitutional.

(c) Because respondent have no right to play with the career of the petitioner.

(d) Because the petitioner was removed from job inspite of the fact that he was below age and fulfilled all requirements.

(e) Because respondent appointed. Sh. Ompal, Sh. Ram and Smt Maya despite their being overage and not meeting requirements of Notification No. MCD/LF/01-103 dated 1.2.2008.

(f) Because the action of the respondent is bad in law

(g) That the Petitioner craves, leave of this Honorable Court to add, amend, alter the grounds raised in this petition.

6. That the cause of action in present case arose on 1.2.2008 when the respondent brought out the Notification No. MCD/LF/01-103 dated 1.2.2008., it further arise when on

1.12.2008 the petitioner was removed from job inspite of the fact that he was below age and fulfilled all requirements, it further arose when respondent appointed. Sh. Ompal, Sh. Ram and Smt Maya despite their being overage and not meeting requirements of Notification No. MCD/LF/01-103 dated 1.2.2008, it further arose when representations were made to respondent orally and in writing on 1.12.2008, and 2.1.2009. The cause of action further arose when respondent did not act inspite of the fact having brought to their notice. The cause of action is continuing one.

7. That the Petitioner has no other alternative efficacious remedy except to approach this Hon'ble Court by way of this writ petition
8. That the petitioner has not filed any other similar writ petition either before this Hon'ble Court or before the Supreme Court of India.
9. That there has been no undue delay in filing of this petition.
10. That the honorable court has territorial jurisdiction to entertain the writ petition.
11. That the requisite court fee of Rs. 50/- has been affixed on this petition.

PRAYER :

The petitioner most humbly prays that this Hon'ble Court may be pleased to :-

(a) issue appropriate writ in the nature of mandamus or any other appropriate writ directing the Respondents to cancel the illegal appointment made in disregard of Notification No. MCD/LF/01-103 dated 1.2.2003 : and

(b) issue necessary directions to appointment of petitioner and

(c) issue any other further order/orders or direction/directions as this Hon'ble Court may deem fit and appropriate no the facts and the circumstances of this case.

FOR THIS ACT OF KINDNESS THE PETITIONER ABOVENAMED SHALL EVER PRAY.

Delhi PETITIONER
Date_____ THROUGH ADVOCATE

[NOTE : The petition will be supported by an affidavit]

IN THE HIGH COURT OF DELHI AT NEW DELHI

CAVEAT NO. /2010

(ARISING OUT OF THE JUDGMENT AND ORDER DATED …… IN SUIT NO. …… TITLED AS ABC v. XYZ PASSED BY SH. _____, CIVIL JUDGE, _____ DISTRICT, DELHI)

In the matter of:

XYZ
S/o
R/o . . Petitioner

Versus

ABC
S/o

R/o . . Respondent/Caveator

CAVEAT UNDER SECTION 148-A OF C.P.C.
PROCEDURE BY RESPONDENT/CAVEATOR.

Most respectfully Showeth:

1. That Sh. _____, Civil Judge, _____ District, Delhi has passed order against appellants in Civil Suit No. …….. titled as ABC v. XYZ on ……., whereby application for amendment U/O VI Rule 17 CPC filed by plaintiff/would be petitioner, was dismissed.
2. That the caveator is expecting that the plaintiff/would-be petitioner may file a Civil Misc. (Main) Petition under Article 227 of Constitution of India against said order in this Hon'ble Court as such this caveat is being filed.
3. That the caveator has a right to appear and contest the Civil Misc. (Main) Petition if preferred by the plaintiff/would-be petitioner.
4. That the caveator desires that he may be given the notice of the filling of the Civil Misc. (Main) Petition as and when the same is filed by the plaintiff/would-be petitioner, to enable caveator to appear at the time of hearing for admission and no stay may be granted without hearing the caveator/respondent.
5. That a copy of this caveat has been sent by Regd. A/D post to the plaintiff/would be Petitioner.

It is, therefore, most respectfully prayed that nothing may be done in Civil Misc. that may be filed by the petitioner without notice to the caveator or his counsel.

Caveator

Delhi Through
Dated: Advocate

(Note: An affidavit of the caveator, duly attested by oath commissioner, in support of this application is to be attached with to this application.)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No. OF 2010

(From the Impugned Judgment and Final Order dated 19.12.2008 passed by the High Court for the State of Punjab and Haryana at Chandigarh in C.M. No. 8507-C-OF 2002 in R.A.No. 14-C of 2002 in R.S.A. No. 2543 of 2001).

IN THE MATTER OF:

Manohar …. EXPECTED PETITIONERS

VERSUS

Improvement Trust Phagwara.
Distt. Kapurthala, Punjab …. EXPECTED RESPONDENT/ CAVEATOR

CAVEAT

To,
The Registrar
Supreme Court of India
New Delhi

Sir,

Let nothing be done in the above mentioned matter without notice to the undersigned. The parties as arrayed in the High Court are the same in this Hon'ble Court.

Filed on _____ Yours faithfully

Advocate-on-Record for Caveator

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

[ORDER XVI RULE 1 (4) (a)]

SPECIAL LEAVE PETITION (CIVIL) No. OF 2010

(Arising out of Judgment and order dated 14.12.2009 passed in Writ Petition No. 5427 of 2004 by Hon'ble High Court of Judicature of Bombay Bench at Aurangabad)

Between	Position of the Parties	
	In the High Court	In this court

Vasant S/o Shankar Bhavsar Age: Major, Occu: Residing at & Post Faijpur, Taluka Yawal, Dist: Jalgaon.	…	Petitioner	Petitioner
	AND		
1. D _____ S/o _____ R/o _____, Taluka: Bhusawal, Dist: ____	… …	Contesting Respondent	Contesting Respondent
2. H _____ S/o _____, R/o _____, Taluka: Bhusawal, Dist: ____	… …	Contesting Respondent	Contesting Respondent
3. C_____ S/o _____ R/o _____ Taluka: Bhusawal, Dist: ____	… …	Contesting Respondent	Contesting Respondent
4. P ____ S/o _____ R/o:_____, Dist:_____	… …	Contesting Respondent	Contesting Respondent

SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF CONSTITUTION OF INDIA

To

The Hon'ble Chief Justice of India and His Companion Justice of the Supreme Court of India.

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:

1. That the present petition has been filed seeking special leave to appeal in the final judgment and order dated 14.9.2012.200908 of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in Civil Writ Petition No. 5427 of 2004 titled "Vasant S/o Sh. Shankar Bhavsar Versus Digambar & Ors." which was dismissed by the Hon'ble High Court.

2. **QUESTIONS OF LAW:**

That the following questions of law arise for consideration herein:

a)Whether in the facts and circumstances of the case the Hon'ble High Court was justified in dismissing the Civil Writ Petition

3.**Declaration in terms of Rule 4 (2):**

That the Petitioner states that no other petition for special leave to appeal has been filed by him against the judgment and order impugned herein.

4.**Declaration in terms of Rule 6:**

The Petitioner states that the Annexures filed along with the special leave petition are true copies of the pleading's and documents which formed part of the records of the case in the court below against whose order the leave to appeal is sought for in this petition.

5.**GROUNDS:**

That the special leave to appeal is sought on the following grounds:

I) Because the High Court had erred in passing the impugned judgment.

II) Because the High Court could not have allowed the errors to prevail by dismissing the writ petition.

III) Because the impugned judgments and orders of Hon'ble High Court and of Maharashtra Revenue Tribunal, Mumbai, dated 24.10.1997, of the Sub-Divisional Officer, Bhusawal dated 31.3.1997, of Tehsildar and Agricultural Lands Tribunal, Yawal, dated 1.10.1996 suffer from error apparent on the face of record.

IV) Because the reasoning of the authorities mentioned above that the will executed by Vishnu on 7.1.1968, the original tenant and owner under the Bombay Tenancy Act; and the registered Hakka Sod Patrak dated 18.12.1981 executed by Digambar S/o Vishnu do not come in the definition of transfer as envisaged in Section –43 of the Bombay Tenancy Act, is unsustainable in law.

V) Because with respect to the Authorities below that the incidents of transfer mentioned in Section 43 of Bombay Tenancy Act viz. sale, Gift, Exchange, mortgage, lease, assignment or partition are not the only incidents of transfer to be considered in reference to Section 43 of the Act but they are only mentioned by way of examples. It does not mean the other incidents of transfer like will or Hakka Sod Patrak do not amount to transfer and are not to be considered by the authorities under the Bombay Tenancy Act.

VI) Because the ground No. V above is further supported by other provisions of Bombay Tenancy Act. For example Section 32-R lays down that purchaser U/s. 32 of the Act is to be evicted if he fails to cultivate land personally. Section 43 of the Act lay down restrictions on the purchaser not to transfer the purchased land under the Act without the sanction of the Collector. Section 43 (2) of the Act says "any transfer or partition of land in contravention of Sub-Section (1) shall be invalid". Section 70 (mb) lays down a duty on Mamlatdar to decide U/s. 48B or 84 C whether a transfer or acquisition of land is invalid and to dispose off land as provided in Section 84 C. Section 83 A (1) lays down that no person shall acquire land by transfer which is invalid under any of the provisions of the Act. Section 83 A(2) lays down that a persons acquiring land by invalid transfer shall be liable to consequences as laid down in Section 84 or 84 C of the Act. Section 84 of the Act provides for summary eviction of unauthorised or wrongful occupant of the land. Section 84 C of the Act gives authority to the Mamlatdar to hold enquiry of any such illegal transfer and to decide it accordingly. Section 84 C (3) lays down that land declared to be invalidly transferred to

vest in the State. Section 84 C (1) gives the power to the Collector to dispose the land which are declared to be invalidly transferred.

VII) Because in the Section 32 R, 43 (1), 43 (2), Section 70 (mb), Section 83 A (1), 83 A (2), Section 84, 84 C, 84 C(3) and 84 CC (1) of the Bombay Tenancy Act, at many places the words "any transfer" are used as these sections are having wider scope covering all types of transfers, and not only to the six kinds of transfers mentioned in Section 43 of the Act. Therefore the reasoning of these authorities below that the will and Hakka Sod Patrak are not covered by Section 43 of the Act do not stand good in law.

VIII) Because the language and effect of the will and registered Hakka Sod Patrak are to be taken into consideration in reference to Section 43 and other provisions mentioned above of Bombay Tenancy Act. The three Authorities have failed to consider the effect of two documents viz, will and Hakka Sod Patrak.

IX) Because the will and registered Hakka Sod Patrak have resulted into permanent transfer in perpetuity of this land purchased by the tenant U/s 32 of the Act, without sanction from the Collector U/s. 43 of the Act and therefore the application filed U/s 43 read with section 84 C of the Act was liable to be allowed completely.

X) Because the very intention of the legislature in putting restriction on a tenant – purchaser under the Bombay Tenancy Act to transfer the land is that the tenant who has purchased the land U/s 32 of should be owner and cultivator and the unconcerned third persons should not be benefited. Obviously this is because of the social reform to be achieved by implementing Bombay Tenancy Act effectively. This intention is defeated because of the judgments and orders of the three authorities below after remand.

XII) Because the definition of transfer as given in Section 5 Chapter II in Transfer of property Act is totally neglected by the learned Three authorities below.

XII) Because the registered Hakka Sod Patrak (relinquishment Deed) is practically nothing but a sale as defined in Section 54, Chapter III of the Transfer of property Act because Digamber s/o Original tenant purchaser has accepted a consideration of Rs.25,000/- from the transferee Govinda Telele.

XIII) Because that the original document i.e. the Will and Hakka Sod Patrak are never produced by the respondent Nos. 1 to 4 in evidence. In the absence of these documents the findings of authorities below that the will and Hakka Sod Patrak do not come in the definition of transfer are not justified in law.

XIV) Because the families of Vishnu and Govinda were never joint families. Except the contention of respondents no.1 to 4 no evidence has come up on record. Therefore transfer of land to Govinda is hit by the provisions of Bombay Tenancy Act.

XV) Because respondent No.2 Harchand S/o Govinda Telele in his deposition recorded before Tahsildar and Agricultural Lands Tribunal Yawal, recorded after remand by Maharashtra Revenue Tribunal Mumbai in his examination in chief has said that the status of joint family has come to an end in the year 1959. Therefore the contention of the petitioner that the families of Vishnu and Govinda were never joint is supported by evidence of Harchand.

XVI) Because the learned authorities below have not taken into consideration all the circumstances of this case while deciding the matter.

XVII) Because the prayer of petitioner that the land in question should have been allotted to him as he has no other land to cultivate should have been granted U/s 32 P (2) (b) of the Bombay Tenancy Act.

XVIII) Because Digamber, son of original Tenang Vishnu Telele, did not file any restoration application to set aside the judgment and order dated 5.1.1993 in Tenancy Case No. 68 of 1982, nor he filed any Revision before Maharashtra Revenue Tribunal Mumbai against judgment and order of Sub-Divisional Officer, Bhusawal dated 16.5.1994. Therefore, the judgment and order dated 5.1.1993 in Tenancy Case No. 68 of 1982 have become final against him. The respondent Nos. 2 to 4 who are the heirs of transferred from Vishnu and Digamber, have also all rights, title and interest in the land.

XIX) Because the judgments and orders of three authorities below are contrary to law and good conscience.

XX) The petitioner crave, leave of this Honorable Court to add, amend, alter the grounds raised in this petition

6. **GROUNDS FOR INTERIM RELIEF:**

A. That the petitioner apprehends that the respondents may sell, alienate or part with the property illegally.

7. **MAIN PRAYER:**

Wherefore, it is respectfully prayed that this Hon'ble Court may kindly be pleased to:

a) Grant the special leave petition from the final judgment and order dated 14.12.2009 of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in Civil Writ Petition No.5427 of 2009 titled "Vasant S/o Sh. Shankar Bhavsar Versus Digambar & Ors." And

b) Be pleased further to pass such other order or orders as deemed fit and proper in the facts, reasons and other attending circumstances of the case.

8. **PRAYER FOR INTERIM RELIEF:**

(a) It is prayed that interim directions be issued to the Respondent may be directed not to sell, alienate or part with the property. Gat No. 2752 comprising of Survey No. 638/1, 638/3-A, 639/1, 639/3 area measuring 2 Hectares 87 Ares situated at village Nhavi, Taluka Yawal.

(b) Be pleased further to pass such other order or orders as deemed fit and proper in the facts, reasons and other attending circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER REMAIN GRATEFUL AS IN DUTY BOUND

Drawn and Filed by:

New Delhi

Date of drawn : Advocate for the Petitioner

Date of filing:

[***NOTE*** **:** To be supported by an affidavit]

* * * * *

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2010

IN THE MATTER OF :

X _____ … PETITIONER

VERSUS

Y _____ … RESPONDENT

COUNTER AFFIDAVIT

Y, _____ S/o _____ R/o _____ presently at Delhi, do hereby solemnly affirm and state as follows :

1. That the Deponent is respondent in the aforesaid Special Leave Petition and as such fully acquainted with the facts circumstances and records of the case. Hence competent to swear and affirm the present affidavit.

2. That before giving parawise reply to the Special Leave Petition the Deponent craves leave of this Hon'ble Court to bring certain facts on record which have not been mentioned in the Special Leave Petition by Petitioners.

3. That pursuant to the direction given by Hon'ble Single Judge, affirmed by the Division Bench of the Hon'ble High Court, the Deponent has been reinstated and has been working with effect from 1-6-2009. In these circumstances, the Special Leave Petition filed by Petitioners hereinabove has become infructuous and is liable to be rejected.

Even otherwise the said Special Leave Petition is not maintainable as Petitioners before the Division Bench have never raised any point which has been raised by Petitioners before this Hon'ble Court. Before the Division Bench of the Hon'ble High Court the Petitioners had contended only very limited point and rather they sought clarification in LPA of judgment and order passed by Hon'ble Single Judge. The Division Bench of the Hon'ble High Court disposed of the LPA accordingly. On this ground alone the Special Leave Petition is liable to be rejected.

PARAWISE REPLY

1. In reply to paragraph-1 of the Special Leave Petition, it is submitted that there is no merit in the Special Leave Petition filed by Petitioners and as such the SLP deserves to be out rightly rejected with costs in favour of the Deponent.

2. In reply to paragraph-2, the plea taken by Petitioners has no legal force and hence the Petitioners are not entitled to any relief in terms of misplaced assertions under paragraphs A and B. As regards assertions under sub paragraph C, it is most respectfully submitted that such a stand of Petitioners is in itself contradictory with their pleadings inasmuch as that they have stated that since 42nd Amendment to Article 311 of the Constitution of India is not applicable to the State of Jammu and Kashmir, therefore, the opportunity by way of show

cause notice in terms of decision of the Petitioners for removal of Deponent from Government service could not be issued. Such pleadings on the face of record do not entitle the Petitioners for any relief.

3. Paragraph-3 of the Special Leave does not merit any reply.

4. Paragraph-4 of the Special Leave does not call for any reply.

5A. In reply to Ground-A, the assertion of Petitioners holds no legal force and as such the Petitioners because of their conduct as highlighted heretofore are not entitled to any relief because of the established fact that all the issues have been minutely and carefully gone into by the Hon'ble High Court at its Single Bench level, which on facts and law, did not warrant any interference by the Division Bench of the Hon'ble High Court.

B. In reply to paragraph-B it is most respectfully submitted that without affording due opportunity, the Petitioners could not be permitted to remove Deponent from Government service and that too by an incompetent authority, namely, Petitioner No. 4, who is neither the appointing authority of Deponent nor any such powers stood delegated to him. It is in this context most respectfully submitted that a void action by an incompetent authority remains void and illegal and void order cannot be resuscitated.

C. In reply to this Ground, it is most respectfully submitted that this aspect of the matter stood elaborately dealt with by the Hon'ble High Court of Jammu and Kashmir and as such no issue survives and hence the Petitioners are not entitled to any relief much less in terms of misplaced assertions to the Petitioners. When the Petitioners had full knowledge that the Deponent had applied for leave on health grounds and also that the records of Petitioners did establish that mother of the Deponent was suffering from cancer, still the Petitioners could not have treated the Deponent as on unauthorized absence. The Petitioners were expected to conduct themselves as custodian and guardians of their employees but unfortunately, they acted in violation of settled procedure and rules for satisfaction of their personal ego, administrative obstinacy and for their personal ends. Hence, they are not entitled to any relief.

D. In reply to Ground-D, the assertions of Petitioners under this Ground are also not tenable because action of Petitioners in transferring the Deponent firstly to Nowshera and then to Amritsar or Chandigarh was based merely to satisfy their ego, and was attributed to extraneous considerations and that is why the Petitioners 2, 3 and 4 have been resorting to such illegal practices with oblique motive of harassing the Deponent and likewise other employees including one Mr. Pradeep Sharma, as submitted heretofore.

6. In reply to paragraph-7 of the Special Leave Petition, the prayer of Petitioners under this paragraph cannot be granted in the light of facts and circumstances submitted heretofore. The petition of the Petitioners deserves to be dismissed with exemplary costs in favour of the Deponent.

7. In reply to paragraph-8 of the Special Leave Petition, the Petitioners are not entitled to any interim relief as prayed for and their prayer to this effect also merits to be rejected out rightly in interest of justice.

I, the above-named Deponent do hereby verify and declare that the facts stated in the foregoing paragraphs of my affidavit are true to my knowledge and nothing of it is false and nothing material has been concealed there from.

Verified at Delhi on this the 05th day of January, 2010.

DEPONENT

* * * * *

IN THE COURT OF SESSIONS JUDGE (DISTRICT _____), DELHI
BAIL APPLICATION NO. _____ OF 2010

IN THE MATTER OF :

STATE. ….. COMPLAINANT

VERSUS

X _____ S/o _____R/o _____ …. ACCUSED/APPLICANT
(Presently in jail)

FIR NO. _____
U/S_____
POLICE STATION _____

APPLICATION FOR GRANT OF BAIL

The accused above named most respectfully showeth :-

1. That the accused above named was arrested by the police on 1st January, 2010 and is in judicial custody since then. It is alleged that on 1st January, 2010, the accused was suspiciously moving on Baba Kharak Singh Marg, New Delhi when the police apprehended him, conducted the search an recovered 3 gms. of smack from his pocket.
2. That the accused has been falsely implicated in the instant case and he has nothing to do with the alleged offence.
3. That nothing was recovered from the possession of the accused or at his instance and the so called case property has been planted upon the accused.
4. That the accused is a law abiding citizen and belongs to a very respectable family. He has never indulged in any illegal activities and commands respect and admiration his locality.

5. That in November, 2009, the accused found some persons selling smack near Hanuman Mandir Cannaught Place, New Delhi. The accused immediately reported the mater to police as the result of which police also arrested some of the persons. Since that time, those persons who were arrested at the instance of the accused, were threatening the accused to falsely implicate him in a criminal case in collusion with police. The accused made a complaint in this regard to the Dy. Commissioner of Police, true copy of which is annexed hereto as Annexure-A.

6. That after the said complaint, the accused was called by the Vigilance Department, Delhi Police who enquired into his complaint. True copy of the said notice issued by the Vigilance Cell is enclosed herewith as Annexure-B.

7. That it is unimaginable that the accused who made a complaint against the sellers of smack, would himself indulge in such activities.

8. That the accused is a permanent resident of Delhi and there are no chance of his absconding in case he is released on bail.

9. That there is no chance of the accused absconding or tempering with the prosecution evidence in the event of release on bail.

10. That the accused undertakes to join the investigation as and when directed to do so.

11. That the accused is not a previous convict and has not been involved in any case of this nature except the present case.

12. That the present case is a result of clear manipulation by the police.

13. That the accused from all accounts is an innocent person.

It is therefore respectfully prayed that the accused may kindly be released on bail during the pendency of this case.

ACCUSED

THROUGH

New Delhi.

Dated : ..... ADVOCATE

Note: to be supported by affidavit of Pairokar and Vakalatnama duly Attested by Jail Authorities.

* * * * *

BEFORE THE SESSIONS JUDGE (DISTRICT _____), DELHI
TIS HAZARI COURTS DELHI

ANTICIPATORY BAIL APPLICATION NO _____ OF 2010

IN THE MATTER OF;-

STATE …. COMPLAINANT

VERSUS

X _____ S/o _____ R/o _____ ….. ACCUSED/APPLICANT

FIR NO. _____ OF 2010

UNDER SECTION:_____

POLICE STATION_____

APPLICATION FOR THE GRANT OF ANTICIPATORY BAIL UNDER SECTION 438 OF THE CODE OF CRIMINAL PROCEDURE, 1973

The Applicant above named most respectfully submits as under:-

1. That the Applicant is a youngman aged 20 years residing at _____, Delhi. He is also a Director of M/s. ABC Ltd. which is a very leading company engaged in the manufacture of electrical appliances.
2. The Applicant is a very respectable person of his locality and is a peace loving citizen.
3. That the Applicant was on friendly terms with Miss Y major daughter of the Complainant. However, the relationship of the Applicant with Miss Y was not liked by her family members so much so that they had stopped Y from meeting the Applicant and had threatened her that in case she meet the Applicant, they will implicate the Applicant in some false criminal case.
4. That Miss. Y had also written number of letters to the Applicant calling upon him to marry her as she had feared that her family members may sabotage her relationship with the Applicant, which shows that family members of Miss. Y were deadly against the Applicant and were looking for some opportunity to falsely implicated him in some false criminal case in order to pressurize him to severe his relationship with Y.
5. That on 5th January, 2010, the Applicant had gone to meet his friend, who is residing in the neighborhood of Miss. Y. When the Applicant reached the house of his friend, he was suddenly attacked by father, uncle and brother of Miss. Y as a result of which he fell down and sustained abrasion/injuries. The Applicant's friend came to the

rescue of the Applicant and with great difficulty, the Applicant was saved from the clutches of Miss. Y's family members by other neighbors and passersby.

6. That the police has registered a false FIR against the Applicant. A bare on perusal of the said FIR reveals that the brother of Miss. Y attacked the Applicant and not vice-versa. As a mater of fact, the aggressor has manipulated with the police and has falsely implicated the Applicant. The Applicant is in fact the victim at the hands of the Complainants who have conspired with the police and got this case registered against them. The Photostat copies of the letters written by Miss. Y to the Applicant are annexed herewith.

7. That the FIR registered against the Applicant is absolutely false and incorrect. The Applicant is not at all involved in the alleged offence and has been falsely implicated by the police.

8. That the Applicant apprehends that he may be arrested in pursuance of the aforesaid false and fictitious complaint.

9. That the police officials have visited the premises of the Applicant in his absence and there is every likelihood of his being arrested in the instant case.

10. That the Applicant undertakes to join the investigation as and when directed to do so.

11. That the Applicant is a permanent resident of Delhi and there is no chance of his absconding in case he is granted anticipatory bail.

12. That the Applicant has never been involved in any criminal case except the present one.

PRAYER

It is, therefore most respectfully prayed that the Applicant be released on bail in the event of his arrest and appropriate directions in this regard may please by sent to the concerned Investigating officer/S.H.O. Any other order/orders which this Hon'ble Court may be deem fit and proper on the facts and circumstances of this case may also be.

ACCUSED/APPLICANT

THROUGH

New Delhi.

Dated :_____

ADVOCATE

[***Note***: To be supported by affidavit]

* * * * *

IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE (DISTRICT _____), DELHI

CRIMINAL COMPLAINT NO. _____ OF 2010

X _____ S/o _____ … COMPLAINANT

VERSUS

Y _____ S/o _____ … ACCUSED

JURISDICTION : P. S. _____

COMPLAINT UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881

THE COMPLAINANT ABOVE NAMED MOST RESPECTFULLY SHOWETH :-

1. That the Complainant is the owner and landlord of flat bearing No. _____, New Delhi.

2. That the accused is a tenant under the Complainant in respect of flat bearing No. _____ New Delhi, comprising of two bed-rooms, drawing-cum-dining room, study room, kitchen-room, two bathrooms-cum-toilets and a terrace at a monthly rent of Rs. 2500/- for residential purposes w.e.f. _____. True copy of the lease-deed dated _____ is annexed hereto as Annexure – 'A'.

3. That on _____ the accused handed over cheque bearing Nos. _____ dated _____for Rs. _____ drawn on _____ Bank, New Delhi to the complainant towards rent of the said premises for the months of September, October and November,2009 the said original cheque is annexed hereto as Annexure – B.

4. That the Complainant deposited the said cheque in his account with the S____ Bank of India, New Delhi on _____- but the same was dishonoured on presentation with the remarks 'REFER TO DRAWER'. The original returning memos dated _____ in respect of the said cheque is annexed hereto as Annexure – 'C'.

5. That vide letter dated 17th December, 2009, the Complainant called upon the accused to make the payment of the amount covered by the dishonoured cheque. The said letter was sent to the accused by Regd. A.D. as well as U.P.C. However, the accused failed to make the payment of the Amount in question to the Complainant.

6.That the cheque in question were returned unpaid because the amount standing to the credit in the Accused's account was insufficient to honour the cheque in question and as such the Accused is liable to be prosecuted an punished under Section 138 of the Negotiable Instruments Act, 1881 as amended upto-date.

7. That the Complainant has complied with all the requirements of Section 138 of the Negotiable Instruments Act, 1881 as amended upto-date namely the cheque in question were presented on _____ i.e. within the period of its validity, the demand for payment was made to the Accused on 17th December 2009 i.e. within fifteen days of the date or receipt of information regarding the dishonouring of the cheque. True copy of the said demand dated 17th December 2009 is annexed hereto as Annexure – 'D'. The postal receipt and the U.P.C. thereof are annexed hereto as Annexure-E collectively. The accused failed to make the payment within fifteen days of the said notice and as such the Complainant has approached this Hon'ble court within one month of the date of he cause of action. The Compain is therefore within time.

8. That the Hon'ble Court has jurisdiction to entertain and try the present complaint because the offence is committed within the jurisdiction of this Hon'ble Court. The dishonoured cheque was drawn on _____Bank, Delhi the same was deposited by the Complainant in S _____ Bank, New Delhi and the intimation regarding the dishonour of the said cheque was also given by the said banks, and as such the offence has been committed within the jurisdiction of this Hon'ble Court.

It is, therefore most respectfully prayed that his Hon'ble Court may be pleased to summon the accused under Section 138 of the Negotiable Instruments Act, 1881 as amended upto-date and the Accused be tried and punished in accordance with law for the aforesaid offence committed by him.

New Delhi

COMPLAINANT

Date : THROUGH

ADVOCATE

* * * * *

Note : List of witnesses to be mentioned at the end of the complaint or separately after writing short title of the complaint case –

1. Complainant;
2. Banker(s) of the complainant with record of the cheque.
3. Banker(s) of the accused with record of the cheque
4. Any other witness, if needed, as per the facts of the case

COMPLAINANT

IN THE COURT OF CHIEF METROPOLITAN MAGISTERATE
(DISTRICT _____), DELHI.

CRIMINAL COMPLAINT NO. _____ OF 2010

IN THE MATTER OF :-

1. Smt. X _____ W/o Z._____ R/o _____

2. Master R _____ S/o Z _____ R/o _____
through his mother and natural guardian Smt X … COMPLAINANTS

VERSUS

Z _____ S/o _____R/o _____ … RESPONDENT/ACCUSED

APPLICATION UNDER SECTION 125 OF THE CODE OF CRIMINAL PROCEDURE, 1973

The Complainant above named most respectfully submits as under :-

1. That Complainant No. 1 is the legally wedded wife of the Respondent while Complainant No. 2 is the legitimate son of the Respondent. Both the Complainants are residing within the jurisdiction of this Hon'ble Court.

2. That Complainant No.1 was married to the Respondent according to the Hindu Rites and ceremonies on _____- at New Delhi and Complainant No. 2 was born out of their wedlock on _____. Complainant No. 2 is staying with Complainant No. 1 at present.

3. That Complainant No. 1 and Respondent stayed together after their marriage and for the last two years proceeding_____, they were staying at Delhi.

4. That sometime during the period June-July, _____, the matrimonial life of Complainant No. 1 and the Respondent got disturbed on account of the illegitimate affair of the Respondent with a girl named Mrs. A. Complainant No. 1 made best possible efforts to persuade the Respondent to desist from indulging in an affair outside their wedlock. However, the same had no effect on the Respondent. Rather, the behavior of the Respondent towards Complainant No. 1 became rude, cruel and oppressive, and finally on _____, the Respondent compelled Complainant No. 1 to leave the matrimonial home along with Complainant No. 2, since then, the Complainants are staying with Complainant No. 1's father.

5. That the Complainant No.1 has made repeated attempts to join the Respondent in the matrimonial home. However, the Respondent has refused to take back the Complainants and has clearly informed Complainant No. 1 that he was planning to

marry Mrs. A though the same is not permissible under law. As such, the Respondent has deserted the Complainants without any reasonable cause.

6. That the Respondent is liable to maintain the Complainants who have repeatedly requested the Respondent to provide them the appropriate maintenance. However, the Respondent has not only refused/neglected to maintain the Complainants, but has also refused to ever part with/return the articles belonging to Complainant No. 1 towards the dowry and Stridhan which are lying at the Respondent's house.

7. That the Respondent is a man of status and is working as a Wing Commander in Indian Air Force. He is getting monthly emoluments of about Rs. _____ per month and as such has sufficient means to maintain himself and the Complainants. He has no encumbrances or liabilities except that of maintenance of the Complainants.

8. That Complainant No. 1 has no independent source of livelihood and as such is unable to maintain herself. She is staying with her father at Delhi and as such both the Complainants are dependant upon him.

9. That Complainant No. 2 is a minor and is also staying with Complainant No. 1. He is studying in Delhi Public School, New Delhi, and his monthly expenditure including school fees, dresses etc. etc. is more than Rs. _____ Apart form this, Complainant No. 1 has also kept a maidservant to properly look after Complainant No. 2 and is paying her Rs. ____ per month which is presently being borne by her father.

10. That the Complainants are residing at Delhi. This Hon'ble Court therefore is competent to entertain and try this petition.

PRAYER

It is, therefore, most respectfully prayed that the orders for maintenance of the Complainants be passed in favour of the Complainant and against the Respondent directing the Respondent to pay the monthly allowance of Rs. ___ towards the maintenance of Complainant No. 1 and Rs _____ towards the maintenance of Complainant No. 2. The costs of these proceedings be also awarded to the Petitioner.

COMPLAINANTS

THROUGH

Delhi.
Dated : _____

ADVOCATE

(***Note*** :- An affidavit is to be attached to this petition)

* * * * *

Note : List of witnesses to be mentioned at the end of the complaint or separately after writing short title of the complaint case.

COMPLAINANT

IN THE SUPREME COURT OF INDIA

(CRIMINAL APPELLATE JURISDICATION)

SPECIAL LEAVE PETITION (CRL) No._____ OF 2010

(FROM THE FINAL JUDGEMENT AND ORDER DATED _____ PASSED BY THE HIGH COURT OF _____ AT _____ IN CRIMINAL APPEAL NO. ___ OF _____)

IN THE MATTER OF:-

N. _____ S/o _____,
R/o _____
lodged in Model Jail, Chandigarh … PETITIONER/ORIGINAL ACCUSED

VERSUS

1. Union Territory of _____
through Home Secretary,
Secretariat, _____ … RESPONDENT

2. S Singh S/o ___ R/o _____. … PROFORMA RESPONDENT/
ORIGINAL ACCUSED.

PETITION FOR SPECIAL LEAVE TO APPEAL UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

To,

The Hon'ble Chief Justice of India
And his Companion Justices of
The Supreme Court of India

The humble petition of the
Above named petitioner

MOST RESPECTFULLY SHOWETH

1. That the present Special leave Petition (Criminal.) is filed against order dated 26.11.2009 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 305-DB of 2007, titled "Subeg Singh & Anr., versus The State Union Territory of Chandigarh" whereby the Hon'ble Court dismissed the appeal of the petitioner.

2. That the present petition raises an important question of law for consideration before this Hon'ble Court. _____-

3. BRIEF FACTS

On the night intervening 11/12.2.2007 murder of Shri Bachna Ram, who was a cook and domestic servant of Shri Devinder Singh Brar, resident of house No. 53, Sector 28-A Chandigarh, was committed in the kitchen of his house when Shri Devinder Singh Brar and his sister Smt. Gurmail Kaur were in Aurngabad. The F.I.R. was registered on the statement of Capt Jagat Pal Singh PW-11 who resides in the nmeighborhood of house No. 53. The

offence came into light when Smt. Babita the sweeper of House No. 53 informed Capt. Jagat Pal Singh PW-11 that on 11.2.2007 and again on 13.2.2007. Smt. Babita informed Capt. Jagat Pal Singh PW-11. On the information given by Catpain Jagat pal Singh, PW-11 S.I. Puran Chand aforesaid recorded D.D.R. No. 46 dated 13.2.2007 in the Rojnamcha of the police-Station East, Chandigarh and formed a Police party and the came to House No. 53. The investigation of this case remained pending with S.I. Puran Chand up to 8.3.2007. The police remained unsuccessful in tracing out the crime till 8.4.2007. On that day, Balwan Singh S.I. PW-24 of the CIA staff, took over the investigation of this case. He along with members of the police party including S.I. Partap Sing PW-23 visited House No. 53. Sector 28-A Chandigarh where Mr. Devinder Singh Brar PW-12 was present. In his presence, appellant Gurdev Singh was interrogated and he made certain disclosures after which the further story unfolded. After completion of the investigation the accused were challaned on the charges under Section 120-B, 392/120-B, 302/34, 302/114, I.P.C. The accused pleaded not guilty to the charge framed against them and claimed trial. The Court of Sh. B.S.Bedi, Session Judge, Chandigarh convicted the accused U/s. 120-B, 302/34 and in alternative 302/114 IPC.

4. That the copy of the Trial Court judgment passed by Sessions Judge Chandigarh convicting and sentencing the petitioner in Sessions Case No.15 of 2007 U/s. 120-B, 302/34 and in alternative 302/114 IPC is Annexure P-1.

5. **GROUNDS**

Being aggrieved and dissatisfied with the impugned order, the Petitioner approaches this Hon'ble Court by way of Special Leave Petition on the following amongst other grounds:-

A. Because the judgment and order dated 26.11.2009 passed by the Hon'ble High Court which dismissed the appeal of the appellant is contrary to law and facts and hence the same is liable to set aside both on the point of law and equity.

B. Because the prosecution only produced the partisan or the interested persons as witnesses in order to prove the commission of crime by the petitioner. This fact doubts the truthfulness of the case of prosecution.

C. Because the prosecution has suppressed the origin and genesis of the occurrence and has thus not presented the true version.

D. Because the prosecution has miserable failed to prove its case beyond doubt against the petitioner.

E. Because the witnesses have not deposed correctly and there is discrepancy in the depositions of witnesses and the conviction of the petitioner is bad.

F. Because the Hon'ble Court ignored the fact to be considered in the case was as to whether the evidence of PW-5 Gurpartap Singh, the approver, was reliable and if so whether there was corroboration to his evidence on material particulars so as to warrant conviction. It is high-lighted that it was a case of no evidence from the side of the prosecution and, therefore, the evidence of the approver and other circumstances, corroborated by his statement cannot be the base of conviction of the appellant.

G. Because Gurpartap Singh PW-5 lost his status as an approver when he appeared before the learned Committing Magistrate and his statement was recorded as PW-1 on 11.9.1995. The relevant portion of the same is as follows:-

"Before 7.4.2006 I had no conversation with anybody. On 7.4.2006 my self, accused Subeg Singh and accused Nand Singh were coming from Rajpura to Chandigarh on a Motorcycle. I had come to Chandigarh on that date for the first time. When we crossed Zirakpur, we were apprehended on the first Chowk by the Chandigarh Police. From there we were apprehended and implicated in this case. I do not know where Sector 28 is. I was threatened by the Police that I should give a statement in favour of the Polcie otherwise I would be involved in a TADA case and should suffer imprisonment for whole of the life. In the Jail also, the police people used to visit me and threaten and intimidate me. I made statement before the Chief Judicial Magistrate on account of fear of the police. I have nothing more to say about this Case"

H. Because the above statement will show that the tender of pardon given to Gurpartap Singh by the Learned Chief Judicial Magistrate, Chandigarh on 1.5.2006 was no, more available and he lost the status of an approver. It is stated here that the Learned Committing Magistrate was entirely wrong in permitting the cross-examination of Gurpartap Singh by the prosecution by declaring him hostile. This could not have been done for the simple reason that he did not attain the status of a witness. This being so, all the proceedings after 11.9.2006 with regard to the examination of Gurpartap Singh as a witness by the Learned committing Magistrate or by the Learned Sessions Judge, Chandigarh stood vitiated being totally illegal. It is submitted that from the date 11.5.2006 when Gurpartap Singh made the above statement, he is to be taken as an accused and not an approver, he had made altogether different statement from the one alleged to have been made after alleged acceptance of tender of pardon.

6. That the Petitioner has not filed any other Special Leave Petition against the Impugned Order dated 26.09.2002 before the Hon'ble Supreme Court of India.

7. **PRAYER**

In the premises the Petitioner herein prays that this Hon'ble Court may graciously be pleased to:

a) Grant special leave to appeal to the petitioner against judgment and order dated 26.11.2009 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 305-DB of 2007, titled "Subeg Singh & Anr., versus The State Union Territory of Chandigarh"

a) Pass any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner.

DRAWN AND FILED BY

NEW DELHI ADVOCATE FOR THE PETITIONER

DRAWN ON:_____

FILED ON: _____ [*NOTE* **:** To be supported by an affidavit]

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL JURISDICTION

TRANSFER PETITION (CIVIL) NO. _____ OF 2010

(UNDER SECTION 25 OF THE CODE OF CIVIL PROCEDURE, READ WITH ORDER XXXVI, SUPREME COURT RULES.)

IN THE MATTER OF:

J _____ S/o _____ R/O _____ … PETITIONER

VERSUS

1. Union of India,
   Through its Secretary,
   Ministry of Defence,
   South Block, New Delhi-110001
2. Chief of Air Staff,
   Vayu Bhawan,
   New Delhi-110001.
3. Air Officer Commanding –in-Chief
   Western Air Command,
   Subrato Park, New Delhi-110010
4. Group Captan A _____
   Station Commander, Air Force
   Station Suratgarh.
5. Presiding Officer
   Court Martial, Subrato Park, New Delhi. … RESPONDENTS

AND IN THE MATTER OF:

TRANSFER OF CIVIL WRIT PETITION NO.727/2009 FILED BY THE PETITIONER AGAINST THE RESPONDENTS PENDING IN THE HIGH COURT OF DELHI AT NEW DELHI, TO THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

To

The Hon'ble Chief Justice of India, And his Companion Justices of the Hon'ble Supreme Court of India at New Delhi

The above named petitioner most respectfully, showeth as under:

MOST RESPECTFULLY SHOWETH

1. That the petitioner is seeking Transfer of Civil Writ Petition No. 727/2009 filed by the Petitioner against the respondents pending in the High Court of Delhi at New Delhi, to the High Court of Judicature of Allahabad, titled "JWO BP Misra Versus Union of India & Ors."

2. BRIEF FACTS:

i. The Petitioner joined as Airmen in the Trade Flight Mechanic Air Frame and later after conversion course became Air Frame Fitter after passing the necessary examination and training. During the period petitioner also gained a promotion to the rank of Corporal, Sergeant and later Junior Warrant Officer – Class-II, a Gazetted post. The Petitioner was also awarded three good conduct badge Pay each after 4 year of Services for very good character and good proficiency in his trade. There was no whisper of any kind of misconduct while working at various places during 22 year of service as per the directions of the Respondents. The same is a matter of record and speaks in volumes about the Character and Trade proficiency of the petitioner.

ii. The Petitioner got his last rank after passing due examination and consideration of last Annual Confidential Report (ACRS) Significantly in the year 1998 the Petitioner was awarded in assessment 94 / 100 as exceptional which speaks about the high caliber of the Petitioner in his trade.

iii. The Petitioner was compelled to file a Redress of Grievances ROG against Respondent No.6 for non grant of leave and unwanted harassment in many ways i.e. sending on temporary duty assigning Secondary Duties, not granting of leave and denial of even monthly salary for four months which is a matter of record. The Petitioner has one son suffering with asthmatic problem and came on posting to present place as per the Medical advice of the authorities.

iv. The Petitioner was charge sheeted and later the same was dropped as he has complained about the grievances against his Squadron Technical Officer (STO) for illegal harassment.

v. The petitioner has to face the wrath of his previous Commanding Officer (C.O.) and Squadron Technical Officer (S.T.O.) by means of various methods of harassment which even adversely affected the health of his one son and even wife was got effected by Tuberculosis. The harassment of the respondents did not end there and hence continued which compelled the Petitioner to file a application for interview with the Station Commander but all in vain.

vi. The Petitioner applied for further extension of service after fulfilling all the conditions. The Petitioner was compelled to raise redressal of Grievances ROG against the Respondent No.6 Commanding Officer Wg. Cmr. Raj Shekhar. This further aggravated the attitude of the Commanding Officer and Squadron Technical Officer (STO).

vii. The petitioner has all the apprehensions of his life as such filed a FIR at the Police Station for seeking protection from the officials of the Respondents. The Security Officer of the Respondents gave undertaking before the Police on behalf of Respondents that no harm will be done to the Petitioner. After withdrawing the Complaint by the Petitioner, the Petitioner was immediately sent on temporary duty to Nalia in Gujarat due to irritation of

complaint. The Petitioner had no alternative but to proceed as directed without being his turn. The harassment of the Petitioner continued at the behest of the Respondent No.6 Commanding Officer C.O. and his Subordinates. After strong and heavy earth quake in whole of the Gujarat in the morning the Petitioner was directed to go back to his Unit knowing fully well of non-availability of transport which was totally abandoned due to the earth quake, the same is matter of record. However the Petitioner has to beg for his food and somehow reached his unit to avoid wrath of the Respondents by way of disciplinary action for mis-conduct of not disobedience.

viii. The Petitioner aggrieved by such highhandedness of the Respondents filed an Appeal under 26 of Air Force Act for redressal of his grievances. The Petitioner gave a reminder for disposal of his appeal under Section 26 of the Air Force Act. The Appeal was rejected without speaking order with stereo type of order devoid of merits. The Petitioner filed application for permission to file Civil Case and for grant of leave. The same was not granted by the Respondents and even denied the acknowledgment of the receipt. Application for extension of service was rejected and ordered to be discharged.

ix. The Petitioner was posted out to Nalia with effect from 25.6.2008 at the behest of Respondents 5 and 6 knowing fully well that Petitioner is likely to be discharged from service with effect from May, 2009 and he is not to be disturbed in his last days of service as per the custom and usage of service.

x. The Petitioner applied for cancellation of his posting as Nalia is a wet place and sons is suffering from Asthma besides there is no education facilities beyond Class-XII which would effect the career and studies of the Children of the Petitioner. It is also a matter of record that Petitioner's wife is suffering from Tuberculosis and is under the treatment of the Respondent's Medical authorities. The Petitioners application was not even forwarded in time to the higher authorities.

xi. The Petitioner applied for leave but was not granted. The Petitioner was directed to clear the unit by way of clearance certificate and proceed on posting without disposal of leave application under Escort forcibly. There was direct threat from Commanding Officer C.O. and no assistance was provided by Police.

xii. The Petitioner again was under threat of his posting under escort and danger to his life at the hands of the Respondents. The Petitioner feeling apprehension of danger to his life as such came to Delhi to see higher authorities but all in vain. As such decided to file a Writ Petition before this Hon'ble Court. As similarly one Sgt Pathak of 737 SU was killed in mysterious circumstances, petitioner has apprehension of raising Mental checking Form P-10 making/declaring a mental case. The Petitioner filed a Writ Petition for cancellation of his transfer posting. The Hon'ble Vacation Judge directed to produce the transfer policy and adjourned the matter to 2.7.2008. On 2.7.2008, the Petitioner failed to procure the policy as such the matter was again adjourned to 4.7.2001. On 4.7.2008 the matter was again adjourned to 13.8.2008 as even the Respondents Lawyer failed to produce the transfer policy of the Respondent just to avoid the wrath of the Hon'ble Court.

xiii. The Petitioner being relieved of his fear due to the interference of the Court, joined his duty at the then place of posting and informed and prayed for regularization of the leave.

The Petitioner was charge sheeted for 'Absent without leave' (AWOL) and disobedience order by not going on posting as directed to Nalia.

xiv.The charge sheet tried by Commanding Officer C.O. without jurisdiction in a discourteous manner asking the Petitioner to remove his Cap and Belt like Non-Commissioned Officer ignoring willfully the status and rank of the Petitioner who is junior warrant officer-Class-II Post, for which no such procedure is prescribed. The Ist Summary of evidence was ordered without application of Rule 24 of A.F. Rules, 1969 which prescribes principles of natural justice. The Petitioner prayed for loan from his Air force Public Provident (AFPP) fund to meet the legal expenses and the same was denied by the Respondents and the same is a matter of record.

xv. The Petitioner's posting was cancelled to avoid the wrath of this Hon'ble Court. Accordingly Writ Petition No.3978/2008 was allowed by this Hon'ble Court, however, without specifying the date of absence, Respondents got orders for disciplinary action against Petitioner. It is worth while to note that petitioner also come to Delhi to avoid death threat of Respondent No.4 and 6.

xvi. All Application under Section 26 of the Air Force Act, was rejected by Chief of Air Staff, Respondent No.2 without speaking order again in Stereo Type order devoid of merits, hence rejected. This is usual order in all such appeals u/s. 26 of Air Force Act, 1950 is matter of record. The Respondents themselves admitted the illegalities in the record of summary of evidence is also a matter of Record. The Petitioner again filed Appeal under Section 26 of the Air Force Act for redressal of his grievances as prescribed under the Act. The Petitioner was orally threatened to abstain from raising such applications.

xvii. The Petitioner was put under Close arrest without informing his family as even directed by the Hon'ble Supreme Court in D.K. Basu's case, which curtails the liberty of the Petitioner in a illegal manner. The reasons are yet to be known. The Petitioner sought interview with the Station Commander which was granted later on 9.10.2001. The Station Commander instead of redressing of the grievance and consoling the Petitioner for his illegal close arrest, further threatened the Petitioner with a dire consequence and of further putting him under close arrest and threatened for Court Martial.

xviii. The Petitioners Summary of Evidence 2nd is completed in any illegal manner without providing him a copy of the previous Summary of Evidence which is mandatory to meet the requirements of principles of Natural Justice. The petitioner is now informed that he is likely to Court martialled by way of GCM. and since last 4 months the Petitioner is under constant threat of disciplinary action at the hands of the Respondents for no fault of his where as all officials under the Respondents have joined hands together to harass the Petitioner by all means and make example case for others. The Petitioners extension application is also rejected as the last Respondent has spoiled his ACR for the year 2003 and 2005 without any communication to the Petitioner or in a Counseling to the Petitioner as provided under the provisions of the Air Force Act. Hence Writ Petition No.727 of 2009 filed for initiation of appropriate enquiry and disciplinary action against the officials for illegal harassment of the Petitioner and for quashing of the ACRs 2003 & 2005 and subsequent order of discharge.

xix.Petitioner filed C.W.P. No. 6989 of 2008. In spite of several directions of the Hon'ble Court, the Respondent did not filed the Counter – Affidavit in time and the same is now fixed for 11.2.2009. Respondents decided to conduct General Court Martial in retaliation to certain observations and queries by this Hon'ble Court to explain the reason of close arrest in September, 2008. That no legal aid or defence Advocate was provided. All members were ignorant about law and worked at the tune of the Judge Advocate and all pleas of petitioner were disallowed in arbitrary manner. Preliminary objections were not taken by General Court Martial on record. The Petitioner approached Hon'ble High Court of Delhi by way of Civil Misc. Application in which notice was issued. General Court Martial without adhering to law and provisions and principles of natural justice passed the order, "to be reduced to the rank of Cpl. From JWO (JCO) subject to confirmation." The copy of the order was not given to the Petitioner to deprive him to approach this Hon'ble Court. The Petitioner was released form open arrest which speaks in volumes about the high-handedness of the Respondents to deprive him of any legal aid or counseling by any one. Proceeding copy of General Court Martial were denied to the Petitioner by which denied the statutory right of Appeal u/s 161 (1) of Air Force Act. Even affidavit of defence witness was not taken on record. The Court orders dated 4.7.2008 and 13.8.2008 were not taken on record by the General Court Martial which were passed for illegal posting which actuated the absence of the Petitioner.

xx. The Petitioner was discharged. Pension stopped Regular threat to life is given as numerous incidents of elimination of Airmen who raise voice against commissioned officers. The Petitioner is in bad financial state and has no money to meet his day to day expenses. The petitioner has no means to incur heavy expenditure in travelling to Delhi for conduct of his case. The petitioner also feels that his life will be put to an end by the respondents. Fearing safety of his life the petitioner has moved his family bag and baggage to District Pratap Garh (U.P.). That the High Court of judicature at Allahabad are near to the place of residence of the petitioner and the petitioner feels that the writ Petition No. 727 of 2009 titled B.P. Mishra V/s U.O.I. be transferred to the High Court of Judicature at Allahabad as the petitioner has no trust and faith in the respondent and they can stoop to any level and the petitioner fears for his life. Hence the petitioner is seeking transfer of his case to the High Court at Allahabad.

3. This Transfer Petition is being filed by the Petitioner for transferring the Civil Writ Petition No.727/2009 filed by the Petitioner at the High Court of Delhi at New Delhi on amongst others the following grounds.

GROUNDS

I. Because the Petitioners have no trust and faith in the respondents as they are prejudiced and using influence and every other illegal method to defeat the petitioner. Thus the petitioner is seeking the transfer of the case from the High Court of Delhi at New Delhi to High Court of Judicature at Allahabad.

II. Because the petitioner have no trust and faith in Opposite party as they had in past acted with malice and making life threatening attempts and petitioner fears for his and of his family's life.

III. Because the petitioner is discharged from service and is not getting Pension and dues and petitioner is reduced in state of penury and is not in a position to conduct case in Delhi.

IV. Because on 31.5.2009 the Petitioner was discharged. His pension stopped and he received regular threat to life is given as numerous incidents of elimination of Airmen who raise voice against commissioned officers.

V. Because the Petitioner is in bad financial state and has no money to meet his day to day expenses. The petitioner has no means to incur heavy expenditure in travelling to Delhi for conduct of his case. The petitioner also feels that his life will be put to an end by the respondents. Fearing safety of his life the petitioner has moved his family bag and baggage to District Pratapgarh (U.P.). That the High Court of judicature at Allahabad are near to the place of residence of the petitioner and the petitioner feels that the writ Petition No. 727 of 2009 titled B.P. Mishra V/s U.O.I. be transferred to the High Court of Judicature at Allahabad as the petitioner has no trust and faith in the respondent and they can stoop to any level and the petitioner fears for his life.

VI. Because in the facts and circumstances stated above, it would be in the interest of justice that the said Civil Writ Petition No. 727/2002 filed by the petitioner against the respondents pending in the High court of Delhi at New Delhi be transferred to High Court of Judicature at Allahabad (U.P.). Even otherwise there is no likelihood of disposal of writ petition No. 727/2009 due to heavy back log of cases. The copy of the civil writ petition No.727 / 2009 is Annexure P-1.

4. That the petitioner has not filed any other similar transfer petition before this Hon'ble Court so far in respect of this matter.

PRAYER

In view of the above facts and circumstances, it is respectfully submitted that this Hon'ble Court may be pleased:

a) To pass order for transfer of the Civil Writ Petition No. 727/2009 filed by the Petitioner against the respondent titled "JWO BP Mishra Vs. Union of India" from High Court Delhi at New Delhi to the High Court of Judicature at Allahabad.

b) Any other and further order as may be deemed fit and proper may also be passed.

FILED BY:

DATE OF DRAWN _____

DATE OF FILING ADVOCATE FOR THE PETITIONER

NEW DELHI

[***NOTE*** **:** To be supported by an affidavit]

* * * * *

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CURATIVE PETITION (CIVIL) NO. _____ OF 2010

IN THE MATTER OF :

X _____ R/o _____ … PETITIONER

VERSUS

Y _____ R/o _____ … RESPONDENT

CURATIVE PETITION UNDER ARTICLE 129, 137, 141 AND 142 OF CONSTITUTION OF INDIA

To

The Hon'ble Chief Justice of India
And His Lordships Companion Judges
of the Supreme Court of India.

The Humble Petition on behalf
of Petitioner abovenamed.

MOST RESPECTFULLY SHOWETH :-

1. That the petitioner is desirous of filing the present Curative Petition against the Judgment and Final Order dated _____ passed in Review Petition (Civil) No. _____ in SLP (Civil) No. _____ which was dismissed by this Hon'ble Court vide Judgment and Final Order dated _____.

2. QUESTION OF LAW :

In the present Review Petition the following questions of law of general public importance arise for the consideration of this Hon'ble Court ;

(a) Whether the Court is justified to refuse the decree for divorce when advocates appearing for both the sides argued and submitted that since 1976 there is no cohabitation between the parties and there is no chance of reunion and therefore there is no harm if the decree for divorce is passed in favour of the petitioner husband ?

(b) Whether the courts below erred in holding that the petition filed by the petitioner was barred by the principle of resjudicata ?

(c) Whether the High Court as well as the courts below erred is not appreciating the aspect that the marriage is irretrievably broken and there is no possibility of reunion and hence the decree for divorce is to be granted ?

(d) Whether the courts below erred in holding that the ground of desertion is not proved and can not be taken ?

(e) Whether efflux of time and admitted fact that the cohabitation is not resumed is not sufficient to grant decree of divorce ?

3. **GROUNDS**

That the petitioner is filing the present Curative Petition on the following amongst other grounds :-

A …….. B…… C…… D ……..

The Grounds mentioned in the curative petition had been taken in the Review Petition and that it was dismissed by circulation; and that no new grounds have been taken in this curative petition.

4. **MAIN PRAYER :-**

It is therefore, most respectfully prays to this Hon'ble Court may graciously be pleased to :-

(a) reconsider the Judgment and Final Order dated _____ passed by the Hon'ble Supreme Court of India in Review Petition No. _____.

(b) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY.

FILED BY :-

FILED ON :- _____ 2010
NEW DELHI ADVOCATE FOR THE PETITIONER

[***NOTE*** **:** To be supported by an affidavit]

* * * * *

NOTE: To be supported by affidavit of the petitioner and a certificate by **Senior Advocate**

CERTIFICATE

Certified that the Curative Petition has been examined by me and it appears to that following very strong grounds exists for facts of the curative parties

The curative Petition fulfils the requirements as laid down in the judgment dated _____ in the matter of Rupa Ashok Hurra Vs. Ashok Hurra [W.P. (C) No. 509/97 etc.] reported as 2002 (4) SCC 388, as the Review Petition was dismissed by Circulation and the grounds taken herein had been taken in the review petition and a specific averment has been made in the Curative Petition to this effect.

SENIOR ADVOCATE

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM (DISTRICT _____)

CONSUMER COMPLAINT NO. _____ OF 2010

IN THE MATTER OF:-

D _____ S/o Shri _____ R/o _____ … COMPLAINANT

VERSUS

1. District Manager, Telephones _____- … OPP. PARTY NO. 1

2. Sub-Divisional Officer Phones, … OPP. PARTY NO. 2

COMPLAINT UNDER SECTION 12 OF THE CONSUMER PROTECTION ACT, 1986

MOST RESPECTFULLY SHOWETH:-

This complaint is present under Section 12 of the Consumer Protection Act, 1986 on the ground stated herein under:

1. That Complainat is a subscriber of telephone No. ____ prior to _____ number whereof was _____.

2. That his telephone went out of order on _____. Several complaints were lodged with the department concerned which did not yield any result.

3. That a written complaint was lodged by him in the office of the opposite party No. 1 on _____ and also on _____. Nothing happened. He then approached personally to the Sub-Divisional Officer Phones _____and filed a written complaint with him on _____. On ____ his telephone line was made operational.

4. That on _____, the communication system installed at the residence of the complainant was again found paralysed. The matter was again reported to the department. Authorities did not take any action. He then lodged a written complaint in the office of the opposite party No. 2 on _____. It did not find any response from the opposite parties. Another written complaint was lodged in the office of the opposite party No. 2 on _____. It also remained unattended. Complainant then moved to the opposite party No. 1 and presented before him a written complaint on _____ whereafter the telephone service of the complainant was revived on the same day after continuous 24 days fault in the line.

5. That the complainant paid his telephone bill dated _____ amounting to Rs. _____ on _____ vide receipt No. ____ . On _____ he was asked by the Opposite Party to pay bill dated _____ by _____ failing which telephone connection was liable to be disconnected by 5 p.m. same day. The complainant never received bill dated _____ till date in original. He approached the opposite party for a duplicate bill dated _____ when he was told by him that another bill dated _____ be paid on the same day itself without which the payment of bill dated _____ would not be accepted. Request of the complainant to trace and produce receipt

of payment of bill dated _____ was turned down by the opposite parties and the complainant was forced to pay both the bills on _____ although the bill dated _____ stood paid vide receipt No. _____ dated _____.

6. That bill dated _____ charged Rs. _____ on account of rent from _____ to ____. Bill dated _____ charged for rent from _____ to _____. Thus applicant has been charged rent for the month of July ____ twice.

7. That on account of dereliction of duty and negligence on part of the opposite parties No. 1 and 2 the complainant suffered loss and injury due to deprivation, harassment, mental agony and loss of professional practice and for which he is entitled to compensation and refund of excess amount charged by the department.

8. That the complainant sent a notice to each of the opposite parties by registered post asking them to pay him a sum of Rs. _____which now stands to Rs. _____ along with interest thereon till date of the actual payment to which none of them responded.

9. That in interest of justice the complainant should be paid by the department through the opposite parties as under :

(1) Compensation of Rs. ____ @ _____ per day for 69 days during which the telecommunication system remained paralysed, for the loss and injury caused to the complainant due to negligence and derelication of duly on the part of the opposite parties.

(2) Payment of Rs. _____ as stated in para 5 hereto along with interest @12% p.a. till the date of actual payment.

(3) Payment of Rs. _____ as refund of rental for 69 days as stated in paras 2,3 and 4 thereof.

(4) Payment of a sum of Rs. _____ being amount of rent for the month of July charged by the opposite parties twice as stated in Para. 6 hereto.

(5) Payment of a sum of Rs. _____ towards cost of notices including charges for stationary postage etc., given tyo the opposite parties.

10. That in support of the above averments and claims documents have been enclosed alongwith this complaint.

11. That the cause of action arose on _____ when the telephone of the complainant went out of the order and the system remained disputed for long 60 days merely due to the dereliction of duty and negligence of the opposite parties.

12. That for the purposes of Section 11 of the Act compensation claimed by the complainant is below Rs. _____ so this Forum has jurisdiction to determine and adjudicate upon this consumer dispute.

13. That there is a duty cast upon the District Manager Telephones, the opposite party No. 1 and the officials working under him to maintain trouble free service of the communication system installed at the premises of the complainant and to which they have miserable failed which has put the complainant to great deal of inconvenience, expense and mental agony.

14. That in the interest of justice the claims of compensation and refund should be allowed and also the interest as stated here before

PRAYER

It is therefore, most respectfully prayed that this petition be kindly allowed, an amount of Rs_____and interest wherever due be declared payable to the complainant by the opposite parties and the Opposite parties be directed to pay the amount as aforesaid to the complainant within 30 days of the Hon'ble Forum

Complainant

Dated _____-

Note : An affidavit in suport to be annexed

* * * * *

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM (DISTRICT _____), DELHI

CONSUMER COMPLAINT NO. _____ OF 2010

IN THE MATTER OF:-

D _____- S/o _____R/o _____ … COMPLAINANT

VERSUS

Telecom Distt. Manger … OPPOSITE PARTY

WRITTEN STATEMENT FILED BY OPPOSITE PARTY

RESPECTFULLY SHOWETH:-

1 That the contents of para 1 of the application need no reply.

2 That in reply to the contents of para 2 of the application it is submitted that the complaint was attended as soon as possible.

3 That the contents of para 3 of the application need no reply.

4. That in reply to the contents of para 4 of the application it is submitted that due to underground cable fault the telephone of the applicant remained out of service for considerable period. It is further submitted that after rectification of cable fault, telephone was put into operation.

5. That in reply to the contents of para 5 of the application it is submitted that no doubt the applicant it is submitted that no doubt the applicant has paid twice the Bill dated _____and the amount stands credit in his name in the account books. It is further submitted that this amount is liable to refund or the adjustment in subsequent bills of the applicant, as he pleases.

6 That in reply to the contents of para 6 of the application it is submitted that on transfer of area telephone No. _____ was converted in to _____ on ____. It is further submitted that applicant paid the Bill dated ____ pertaining to the telephone No.____- which was

no longer his telephone. It is also submitted that correct bill for telephone No. ____ was issued on _____ which the applicant paid on _____. By paying bill dated ___ and ____ the applicant has paid twice rent of the month of July. This amount of Rs. ____ also stands credit in the name of applicant and liable to refund or adjustment.

7. That the contents of para 7 of the application are not admitted. It is submitted that all possible care is taken while preparing and issuing bills. But due to transfer of area or large number of telephones, inadvertent mistakes occur for which opposite party express their regret. It is further submitted that no injury loss or harassment or mental agony has been caused to the applicant. It is also submitted that excess amount paid by the applicant is liable to refund or adjustment.

8 That the contents of para 8 of the application are not admitted. It is submitted that no notice have been received in the office of opposite party.

9 That the contents of para 9 of the application needs no reply.

10. That the applicant is not entitled to receive any relief claimed in sub-paras 1 to 5 of the paragraph 10 of the application.

11 That the contents of para 11 of the application are matters of record as such need no reply.

12 That the contents of para 12 of the application need no reply.

13 That the Act and application of its provisions need no reply.

14 That the contents of para 14 of the application are not admitted. It is submitted that all possible efforts are being made to give satisfactory telephone services. But the department has to work within many constraints. Mostly under ground cable is damaged due to indiscriminate digging operations undertaken by the other Government agencies without prior intimation to the telephone authority. Considerable time is taken in locating damaged part inconvenience to the telephone users.

15 That the opposite parties are ready to refund or adjust excess amount paid by the applicant and also willing to consider rebate in rent for the entire period telephone actually remained out of service. It is submitted that applicant is not entitled to receive any other relief. The application merits dismissal.

OPPOSITE PARTY

* * * * *

PART - C : CONVEYANCING

DEEDS

An ordinary deed of transfer may conveniently be divided into the following parts :

Description of the deed; Date; Parties; Recitals; Testatum; Consideration; Receipt; Operative words; Parcels; Exception and Reservations (if any); Habendum; Covenants (if any); Testimonium.

The part of the deed which precedes the habendum is termed "the premises". Each of these parts will now be separately considered.

A) DESCRIPTION OF THE DEED

All deeds should be described by the name of the transaction which they evidence, such as "THIS DEED OF MORTGAGE", THIS DEED OF SALE", THIS LEASE", THIS DEED OF GIFT", etc. When the deed is of a complex character and evidences different transactions known by different legal names, or the conveyances is not sure what name should properly be given to it, it would be best to describe it simply as "THIS DEED". The description is usually written in capitals.

B) DATE

After the description of the deed is stated, the date on which it is executed, thus:

"THIS LEASE made on the first day of February one thousand nine hundred and ninety nine."

The date of a deed is the date on which it is singed by the party or parties executing it. When there is only one party to a deed, as in the case of deed poll, or when all the parties sign it on one and the same date, or when, though there are several parties to a deed, all do not sign and those who sign do so on one date, there is no difficulty. But if several parties to a deed sign it on different dates, the question is which date should be entered as the date of deed. The practice is to regard the last of such dates as the date of the deed.

The date should, in order to avoid mistake and risk of forgery, be written in words and not in figures. Figures may be added within parenthesis, if desired thus -

"The first day of March one thousand nine hundred ninety nine (The Ist March, 1999)".

In every case in which a deed is executed by more than one person, the date on which each signs the deed must be shown in the deed, preferably against his signature.

C) PARTIES TO THE DEED

1. Transferee

After the date, the names and description of the parties to the deed are mentioned. Who are the necessary and proper parties to a deed depends on the circumstances of each case. Although a transferee is not a necessary party, and a deed will not be invalid or ineffective if he is not mentioned as such, except in the case of a lease, he is certainly a proper party. It is always advisable to make him a party.

2 Third person

Sometimes it is necessary or expedient, in order to validate a transfer or to give a complete title to the transferee, or to avoid possible disputes or doubts in that regard, to obtain the consent or concurrence of a third person. In such cases, such third person may also be joined as parties.

3. Description

Full description of the parties so as to prevent difficulty of identification should follow the name. In India, parentage, occupation and residence including Municipal or survey number, street and city and in the case of resident of a rural area the village, sub-division, tehsil and/or development block are generally regarded as sufficient to identify a man, but if there is any other description which is sufficient, the same may be normally adopted. Where the transferor is as member of a scheduled caste or scheduled tribe for whose protection the statute places restrictions on his right to transfer it may be necessary to mention such casts or tribe while reciting the fact of permission for the transfer having been obtained from the competent authority.

4. Juridical Person

A party to a transfer need not be a living individual but may be a company, or association or body of individuals or an idol or a corporation sole or aggregate, or in fact, any juridical person capable of holding property and entering into contracts.

5. Idol

As an idol has to act through some natural person, the name of the latter should be disclosed.

6. Reference Labels of Parties

In order to avoid the repetition of the full name and description at every place, the parties are generally referred to in the body of the deed by some easy and convenient names which generally have reference to the character in which they join the deed, such as “the vendor”, “the purchaser”, “the lessor”, “the lessee”, In order to avoid mistakes in writing words resembling each other for opposite parties, e.g., a combination of “morgagor” and “mortgagee” or “vendor” and “vendee”, they prefer to use a combination of “borrower” and “mortgagee”, or “vendor” and “purchases”. If no such name is adopted, the parties can be referred to as “the party of the first part” (or “the first party”), “the party of the second part” (or “the second party”), “the said AB”, “the said CD”, but is is always preferable to give each party some short name for reference. Whatever short name is adopted the party should be referred to throughout by the same name.

The form, in which the parties will be described in the beginning of the deed. Would thus be as follows:

"This SALE DEED Is made on the_____day of _____between AB, etc. (hereinafter called 'the vendor') of the one part and CD, etc., (hereinafter called ' the purchaser'), of the other part."

If the transferor along is made a party, this clause will run as follows:

"The SALE DEED is made on the _____day of_____by AB etc., (hereinafter called 'the vendor')".

If there are more than two parties, instead of the works "of the one part" and "of the other part" the works " of the first part", "of the second part", "of the third part", etc., should be used.

D) RECITALS

Recitals are of two kinds : (1) Narrative recitals, which relate the past history of the property transferred and set out facts and instruments necessary to show the title and the relation of the parties to the subject-matter of the deed; and (2) Introductory recitals, which explain the motive for the preparation and execution of the deed.

Form of Recitals

Recitals generally begin with the word "Whereas", but, when there are several recitals, one can either repeat the word before every one of them, by beginning the second and subsequent ones with the words "And Whereas", or divide the recitals into numbered paragraphs with the word "Whereas" at the top.

E) Testatum

The next Part of a deed consists of the operative part. It commences with a witnessing clause termed the "testatum", which refers to the introductory recitals of the agreement (if any) and also states the consideration (if any) and recites acknowledgement of its receipt. The witnessing clause usually begins with the words "Now this deed witnesses". These words of testatum are of no importance as affecting the operation of the deed and their sole use is to direct attention to the object which the deed is intended to serve several objects, use the words "as follows" after the testatum, thus:

"Now this deed witnesses as follows:"

F) CONSIDERATION

As contracts are necessarily for consideration (Sec. 10 of the Contract Act), it is advisable to express the consideration. This is necessary in many cases of transfer for ascertaining the stamp duty payable on the deed as Sec. 27 of the Indian Stamp Act requires that the consideration should be fully and truly set forth in the deed. The penalty for omission to comply with this requirements is a fine which may extend to RS. 5,000 (vide Sec. 64).

G) RECEIPT

Acknowledgment of receipt of consideration may be embodied in the deed itself instead of passing a separate receipt. Thus:

"Now this deed witnesses that in pursuance of the aforesaid agreement and in consideration of Rs._____paid by the purchases to the vendor before the execution hereof, the receipt of which the vendor hereby acknowledges".

H) OPERATIVE WORDS

Then follow the real operative words which very according to the nature of the estate and of the transaction. What words are necessary in a particular kind of transaction will be dealt with in the preliminary note to the precedents relating to that kind of transaction.

Parcels

This is a technical expression meaning description of the property transferred and it follows the operative words. Care must be taken, on the one hand, to include in the particular description or in general words, all the lands, etc., Which are intended to pass so that no doubt may arise as to the extent and operation of the deed; and on the other hand not insert words which will pass more than what is intended.

Map : Sometimes it is necessary to have a map or a plan of the property in order to avoid mistake about its identity and to indicate the actual property conveyed with greater definiteness and precision. A map referred to in a transfer deed is treated as incorporated in the deed, and if it is drawn to scale and demarcates the boundaries clearly it is not permissible to attempt to correct them with reference to revenue records.

Great care should be taken in describing the property, as a slight mistake or omission may cause immense loss to a party and if the property is described both in the body and the schedule, a conflict between the two should be carefully avoided.

I) EXCEPTIONS AND RESERVATIONS

All exceptions and reservations out of the property transferred should follow the parcels.

An exception is something in existence at the date of transfer which, if not expressly excepted, would pass with the property as described in the parcels, such as trees.

A reservations is something not in existence at the date of the transfer but is newly created by the grant, e.g. when the vendor reserves a right of way very the property. But since both "excepting and reserving" are used in practice it is immaterial whether what follows is an exception or a reservation.

K) HABENDUM

This is familier " to have and to hold" (in Latin, Habendumet tenendum) clause of the English precedents. In India such phrases as 'to have and hold" or such an expression as "to the use of the purchaser" are not strictly necessary but there is no harm in continuing the established practice.

L) CONVENANTS AND UNDERTAKINGS

If the parties to a transfer enter into covenants, such covenants should be entered after the Habendum.

Where several covenants follow each other, they may run on as one sentence, each being introduced with the words " and also" or by the words " First", "Secondly", etc. or they may be sent out in paragraph form with the heading.

"The vendor hereby covenants with the purchaser as follows—"

It is better to put in the transferor's and the transferee's covenants separately, and any covenants mutually entered into by the parties with each other may be inserted separately. If the transferer's and transferee's covenants are separately mentioned in the deed, care should be taken that no covenant which should really by the covenant of one party is entered in the covenants of the other. For example, if a lessee is given the right to cut trees of a certain kind and not to cut tree of a different kind, the latter covenant is a covenant by the lessee and the former is a covenant by the lessor and both should not be inserted in one covenant by either. When it is found inconvenient or awkward to split up, what really is one covenant into two parts, it is better to insert such a covenant as a mutual covenant by the parties.

Sometimes the terms and conditions of a transfer cannot be conveniently separated into transferor's covenants and transferee's covenants. In such cases, it would be better to include all the covenants under one head as parties' covenants thus: "The parties aforesaid hereto hereby mutually agree with each other as follows:"

M) TESTIMONIUM

The last part of a deed is the testimonium which sets forth the fact of the parties hving signed the deed. This is not an essential part of the deed, but as it marks the close of the deed there is no harm in continuing the established practiee. The usual English form of testimonum is as follows:

"In witness whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written.

The use of seals is not common in India except in cases of companies and corporations, and the proper form in simple language would be somewhat as follows:

"In witness whereof the parties hereto have signed this deed on the date first above written."

N) SIGNATURES AND ATTESTATION

After testimonium should follow the signatures of the executants and those of attesting witnesses. If exeutant is not competent to contract or is a juristic person, the deed must be signed by the person competent to contract on his or its behalf.

* * * * *

WILL

THIS IS THE LAST WILL TESTAMENT of me A B son of C D resident of E District M by caste Hindu by profession merchant, I being in a bad state of health and being desirous of making provisions as regards my properties specifically mentioned in the Schedule A below after my death do hereby declare this to be my last will being in possession of full senses. This will be effective after my death.

I have two sons, one widowed daughter and my wife. My first son P.R. is aged 20 year; he is prosecuting his studies in the Presidency College. I do hereby give a 6 annas share in my properties to my said son P.R. My second son T.R. is 15 years old; he is dull in understanding and, I am afraid, may not be able to earn a decent livelihood in future. In consideration of his intellectual debility and as also of the fact that he is my last born child and I am specially fond of him, I give half of my properties to my son T.R. My daughter Sreemati R.D. became a widow at the age of 20, some 7 years ago, and she has not inherited any property whatsoever from her husband's side; and so I bequeath a two annas interest in my properties to my said widowed daughter Sreemati R.D. She will absolutely get the said two annas share after my death and will be at liberty to sell or dispose of in any way she may please the share assigned to her. My wife Sreemati S.D. will get Rs. 50 per month as maintenance from the estate and the said payment shall be a charge on my estate and my sons and daughter will be bound to pay the said maintenance to my wife in proportion to the share of my property in their hands. I do hereby appoint my wife Sreemati S.D. executrix to my Will. My wife so long as she shall be alive will remain executrix to my Will and will take probate of this Will and administer my properties. In case she does not survive me, my eldest son P.R.Will take probate of this Will and I do hereby appoint him executor for the purpose. Be it understood that during my wife's lifetime my eldest son will not be entitled to take probate of the Will and to act as an executor. Be it also mentioned that the executrix or executor, as the case may be, will pay off the costs of the probate proceedings, that of my funeral expenses and sradh ceremony and the debts specifically mentioned in the Schedule B below, out of the sum of Rs. 2595 (Rupees two thousand five hundred fifty five only) only deposited in my Saving Bank Account as per Book NO.___ in the Bhowanipur Post Office.

In Witness Whereof I do hereunto put my signature on the 6th day of _____.

SCHEDULE A

1 Government Securities 3 Paper Rs.39,000 2 Postal Cash Certificates Rs. 5,000
3 Land (Full Description) Rs. 1,90,000 4. Post Office S.B. A/c. No. 5 at _____ Post Office Rs. 2,595

Total _____

SCHEDULE B

A hand note executed on _____ in favour of _____ for Rs. 1,000 Interest on the same @ 9 p.c. per annum

The testator knowing the contents of this will signed it in our presence and we all sign in his presence: Signature of the Testator

Witness: (1) (2)

GENERAL POWER OF ATTORNEY

THIS POWER OF ATTORNEY IS EXECUTED AT THE NEW DELHI on this 1st day of JANUARY2004 by M/s. TINRIN, a company incorporated under the Companies Act having its registered office at E-1 WESTEND, New Delhi through its Managing Director Mr. X, duly empowered under Article 15 of the Articles of Association to appoint and substitute further attorney in favour of Sh. Y, Executive Director of M/s TINRIN,

NOW, the said X, do hereby nominate, constitute and appoint Mr. Y, Executive Director of M/s TINRIN,as the Attorney of M/s. TINRIN,, to do, execute and perform all or any of such acts and things namely.

(i) To institute, commence and conduct any action, suit or other legal proceedings before any Court, Arbitrator, Quasi-judicial or authorities, Offices, Tribunals, Labour Courts, Conciliation Officers, Land Acquisition Officers, etc. on behalf of the company for claiming any right, relief, recovery, title, interest, property or in respect of any matter connected with or arising out of the Company's business and subject to aforesaid, to settle, adjust, compromise or submit to Arbitration any such actions, suits or proceedings.

(ii) To defend all actions, suits, proceedings, applications, petitions, appeals, revisions, reviews, arbitrations, conciliations, taxation and labour matters and other disputes that are now pending or may hereafter be brought or made or instituted in any Court or office or Tribunal, Arbitrator, Conciliation Officer, or any other Judicial or Quasi-judicial authorities in the name of the company.

(iii) To appear and represent the Company in any Court of Justice or Tribunal whatsoever and for the purpose aforesaid or any of them to sign and verify plaints, written statements, applications and swear affidavits and to sign petitions and other necessary documents including Valalatnama and to appoint any Solicitor, Advocate, Pleader or other Legal Advisor with the necessary power and such again at pleasure, to revoke and appoint others in their place.

(iv) To continue and conduct or defend any appeal, review, revision, arbitration in any Court or Tribunal or office against any order, judgment or decree made in suits, actions, proceedings, application etc.

(v) Generally for and in the name and as the act and deed of the Company to make, execute and do all and every such further and other acts. Deeds, matters and things as shall be fit, requisite and necessary in and about the premises and for all or any of the purposes aforesaid and as the Company could do if acting in the premises.

And I, the said Managing Director of the Company and also for the said Company hereby agree to ratify and confirm whatsoever the said Attorney shall lawfully do or cause to be done in or about the premises by virtue of these presents.

IN WITNESS WHEREOF I have hereunto signed this document on the date and place first above written in the presence of following witnesses.

WITNESSES (1)]

(2) EXECUTANT

SPECIAL POWER TO ATTORNEY TO EXECUTE A SALE DEED

KNOW ALL MEN BY THESE PRESENTS that (or, BY THIS POWER OF ATTORNEY) I, AB etc., hereby appoint CD, etc., as my attorney in my name and on my behalf to do or execute all or any of the acts or things which I have to do in pursuance of an agreement dated……between me and XY and which are hereinafter mentioned, that is to say:

1. To receive from the purchaser or his heirs or assigns the sum of Rs……being the price agreed to be paid to me by XY for the purchase of (description of property) under an agreement dated the……and to give an effectual receipt and discharge for the same;

2. To execute a proper sale deed of the said property or any other deed or assurance necessary for the completion of the sale of such property and to get the same duly registered;

And I hereby agree, etc.

In Witness, etc.

Witness Executant

1.

2.

* * * * *

Sale Deed for Rs. 2,50,000/-

THIS SALE DEED is made at New Delhi on the……day of …….. between Shri Kamal Talwar S/o. Shri S.L. Talwar R/o. BA/43-A, Janakpuri, New Delhi hereinafter called the 'VENDOR' of the one part, and Smt. Sudarshan Kaur W/o. Gp. Capt. Sardar Paramjit Singh (Retd.) R/o. Flat No. 46, D.D.A. (S.F.S.) Near Desh Bandhu Gupta College, Kalkaji, New Delhi hereinafter called the 'VENDEE' of the other part.

The terms 'VENDOR' and the 'VENDEE' wherever occurring in these presents unless repugnant to law or expressly excluded by context hereof, shall always be deemed to mean the vendor/vendee and include their respective legal heirs, successors, survivors, executors, administrators and assigns.

WHEREAS the vendor purchased a freehold residential plot measuring 300 sq. yds. and bearing No.170 in 'M' Block of the residential colony known as Greater Kailash Part-II, New Delhi vide sale deed dated 6.8.85 registered in the office of the Sub-Registrar, New Delhi as document No. 5560 Addl. Book No. I, Vol. No. 5318 at pages 136 to 152 on 6.8.85.

The aforementioned plot is bounded as under :-

EAST ... ROAD NORTH … PLOT NO. M-168

WEST… SERVICE LANE SOUTH… PLOT NO. M-172

AND WHEREAS the Vendor after purchasing the said plot, got the building plan sanctioned from the Municipal Corporation of Delhi vide their letter/file No. 400/B/85 dated 13.12.85. Then the Vendor caused construction thereon of residential building on different floor levels.
AND WHEREAS the Vendor to sell and the Vendee has agreed to purchase part of Basement (760 Sq. ft. approx), one front Bed Room if First Floor (with attached bath room and small balcony) of the said building on 'as is where is' basis for a total consideration of Rs. 2,50,000/- (Rupees two lacs and fifty thousand only) on the terms and conditions setforth hereinafter:-

Now This Sale Deed Withnesseth and Under :-

1. That in pursuance of this agreement, the Vendor has already received from the Vendee a sum of Rs. 2,00,000/0 (Rupees two lacs only) as part sale consideration, the receipt of which the Vendor doth hereby admit and a cknowledge.

The balance amount of Rs. 50,000/- (Rupees fifty thousand only) has been paid by the Vendee to the Vendor by cheque No. 010806 dated 29.9.86 drawn on Central Bank of India, Kalkaji, New Delhi-110019.

2. That is view of the amount of sale consideration received as per para 1 above, the Vendor doth hereby grant, convey and transfer all his rights, titles and interests as held on the date hereof in the said part of basement and part of First Floor of M-170, Greater Kailash Part-II, New Delhi together with undivided, indivisible and impartible proportionate ownership rights on the land underneath the said building, on the terms and conditions contained herein, provided that common staircase, water tanks and other common facilities, fittings etc. shall be used and enjoyed by the Vendee alongwith other owners/occupants of the said building.
3. That the Vendor is free to sell the remaining portion (s) of the said residential building to any other party/parties with common rights for use of common entrances, common passages, staircases, water tanks, common facilities etc. and the Vendee will not make any objection thereto.
4. That the Vendor assures that the sale of the said residential portion/domestic storage space is free from attachment, tenancies gifts, decree, prior sale and religious disputes and if it is proved otherwise at any time and the Vendee suffers any loss due to any of the aforementioned reasons, then the Vendor shall be liable to make good the loss thus suffered by the Vendee.
5. That the Vendee has perused the original title deed, sanctioned plans. Sale plans etc. and has fully satisfied herself.
6. That the Vendee/occupants shall have no right to use or affix or exhibit any display boards or any big writing or any sing boards at the external face of the said building.
7. That all expenses of registration, Corporation tax etc. have been borne and paid by the Vendee.
8. That charges for maintenance/consumption for common amenities such as lights in staircases etc. and booster and charges for major repairs etc. shall be paid by the owners of all the portions proportionately.
9. That all taxes from the date of the Agreement to sell the said portion shall be borne and paid by the Vendee.

If assessment of taxes in not made separately for each portion, then all the owners of the said building shall pay such charges proportionately directly to the authorities concerned and the Vendor shall in no way be responsible for the same.

10. That the Vendee shall keep the said property in properly repaired and good condition and shall not do anything or omit to do anything which may endanger or affect the other portions of the said building or hinder the proper and reasonable use of such portions by the other owners/occupants of the said building.
11. That the existing use of the said portion of first floor is residential and that on Basement domestic storage. The Vendee shall neither use the said portion for any illegal, immoral or commercial purpose nor use it so as to cause annoyance or nuisance to the other owners/occupants of the said building. Common parts e.g. staircase, passage, driveway etc. will in no case be used for keeping/chaining pets/does or any other animal/bird or storing cycles, scooter, motor-cycles etc.
12. The Vendee has also satisfied herself about the soundness of the title of the Vendor and his power to sell the said portion in the manner stated herein.
13. While building is under construction, the Vendee shall have the right to make at her own discretion any internal alternations (except structural) in the said portion at her own cost and expenses.
14. That the Vendee shall not construct anything whatsoever upon or over hanging the said land or the portion of the said land kept uncovered and unbuilt upon the building (including terrace). The Vendee shall not make any alterations involving structural changes in the said protion/building. The Vendee shall have no right to use the terrace at the top of the building.
15. That the Vendee and owners/occupants (alongwith servants/workmen) of all the portions of the said building will have full right for access to booster pump (tubewell), water meter, sewer tank, overhead water tank etc. at all reasonable times only on notice (except in the case of emergency) to get their underground and overhead tanks, booster pump etc. repaired/cleaned.
16. That photostat copies of title deeds etc. have been handed over by the Vendor to the Vendee and physical, vacant possession of the said floor/portion has also been taken by the Vendee.
17. That this transaction has taken place at New Delhi. As such Delhi Court shall have exclusive jurisdiction to entertain any dispute arising out of or in any way touching or concerning this deed.

In Witness Whereof the Vendor has Hereunto set his Hand the day, month and year First above written.

WITNESS:
(1)
(2)

VENDOR

VENDEE

* * * * *

RELINQUISHMENT DEED

THIS DEED OF RELINQUISHMENT is executed at Delhi on this 3rd day of July, 1990

By

1. Smt. Avadh wife of Sh._____ daughter of late Sh. X, Resident of _____
2. Smt. Bala wife of Sh._____ daughter of late Sh. X, Resident of _____
3. Smt. Chand wife of Sh._____ daughter of late Sh. X, Resident of _____
4. Sh. Devi lal Son of late Sh. X, resident of _____ Delhi, hereinafter called the RELEASORS which expression shall, unless repugnant to the context or meaning hereof, mean and include their heirs, successors, legal representatives and executors, of the First Part :

IN FAVOUR OF

Smt, Ragini Smt, Ragini wife of late Sh. X, resident of _____, Delhi, hereinafter called the RELEASEE which expression shall, unless repugnant to the context or meaning hereof, mean and include her heirs, successors, legal representatives and executors, of THE SECOND PART.

WHEREAS late Sh. X was the sole and absolute owner of property bearing No.____, Delhi consisting of double Storey house built over an area of 200 sq yds;

AND WHEREAS the said Sh. X expired on 25th April, 1990;

AND WHEREAS releasors No. 1 to 3 are the daughters of late Sh. X Releassor No. 4 is the son and the Releasee is the wife of late Sh. X. and each has got 1/5th share in the above mentioned house according to the law of inheritance;

AND WHEREAS besides the Relasors and the Releasee, there is no other legal heir of the deceased nor anybody else is entitled to or claims any right, title or interest in the above mentioned property;

AND WHEREAS the Releasors and desirous of giving up their 4/5th share in the above mentioned property in favour of the Releasee on account of natural love and affection without receipt of any consideration amount from her.

NOW THIS DEED OR RELINQUISHMENT WITNESSETH AS UNDER

1. That the Releasors voluntarily, without any outside pressure from any side and in their full senses give-up and release all their right, title and interest in property No._____, Delhi alongwith the land beneath the same measuring 200 sq. yds. In favour of the Releasee without taking or receiving any consideration from them to the extent of their 4/5th share and now the Releasee is the absolute and the sole owner

of the above mentioned property in to (4/5th share of the Releasors and 1/5th share of the Releasee herself).

2. That the Releasors, their heirs, successors and assigns have been left with no claim, title or interest in the property hereby relinquished and the Releasee is the sole and absolute owner thereof.

3. That the possession of the above mentioned property is exclusively with the Releasee and the Releasee is entitled to continue the same.

4. That the Releasee is fully entitled to get the above mentioned property mutated and transferred in her name on the basis of this deed of Relinquishment.

5. That the original sale-deed and other relevant papers regarding the above mentioned property are with the Releasee.

IN WITNESS WHEREOF the Releasors ad the Releasee have set their respective hands to this deed of Relinquishment at Delhi on the date mentioned above.

1. Smt. Avadh
2. Smt. Bala
3. Smt. Chand
4. Sh. Devi lal

RELEASORS

WITNESSES :

1. Mr. P son of _____
   Resident of _____

2. Mr. Q son of _____
   Resident of _____

Smt, Ragini
RELEASEE

* * * * *

PARTNERSHIP DEED

THIS DEED OF PARTNERSHIP is executed at New Delhi on this 20th day of January,2004

BETWEEN

Sh. X S/o _____ R/o____, hereinafter called 'the First Party' which expression shall mean and include his heirs, successors, executors and legal representatives.

AND

Sh. Y S/o Sh. ____ R/o _____, hereinafter called 'the Second Party' which expression shall mean and include his heirs, successors, executors and legal representatives.

WHEREAS the First Party is in occupation as a tenant of property measuring 1000 sq. ft. on the ground floor bearing No. E-1 Ram Nagar, Delhi.

AND WHEREAS the First Party is desirous of carrying on the business of interior decoration and the Second Party, being experienced in this trade, has approached the First Party to run this business with him jointly in partnership; AND WHEREAS the parties have agreed to commence and run the business of interior decoration, furnishing, manufacture and sale of furnishing, manufacture and sale of furniture, soft furnishing and accessories in partnership.

NOW, THEREFORE, THIS DEED WITNESSES AS UNDER:

1. The name and style of the this partnership business shall be M/s XYZ
2. The business of this partnership shall be considered to have commenced on 20th day of January ,2004
3. That the principal place of business of this partnership shall be at . E-1 Ram nagar, Delhi. However, the same may be shifted or carried on elsewhere as well with the mutual consent of both the parties from time to time.
4. That the business of the partnership shall be interior decoration, furnishing, manufacture and sale of furniture, soft furnishing and accessories. However, the parties will also be entitled to extend their activities into business or manufacturing of any other item as well.
5. The shares of the parties in the profits and losses shall be as follows :

   i) First Party – 51% ii) Second Party – 49%

6. The initial capital has been contributed by both the parties by investing a sum of Rs. 15,000/- each. If and when more funds are required for the business, the partners shall invest the same. However, any capital investment of the partners shall not carry any interest. In case loans or deposits are raised from outside i.e. friends and relations of the partner or the financial institutions then only those loans or deposits, which are taken with the written consent of both the partners and are entered in the books of accounts of the partnership, shall be binding on the firm. The partnership shall maintain regular books of accounts in accordance with the customs of trade and all dealings of the partnership shall be duly recorded in the same. The account books etc. shall be maintained in the place of business at . E-1 Ram Nagar, Delhi.

7. Each of the partners shall be entitled to withdraw a sum of Rs. 2000/- every month which shall be adjustable in the final profit and loss account to be prepared every year.
8. The First Party shall also be entitled to withdraw a sum of Rs. 5000/- per month towards the rent he is paying to the Landlord in respect of the portion of property No.E-1 Ram Nagar, Delhi
9. The tenancy rights in respect of property No. . E-1 Ram Nagar, Delhi shall always vest in the First Party and whenever the partnership is dissolved for any reason whatsoever, the Second Party shall not be entitled to any right, title or interest in the same.
10. That the partnership shall maintain proper books of accounts in the normal course of business at the principal place of its business and the same shall always be open for inspection to the partners.
11. That the first accounting period of the partnership shall close on 31st March, 2005 and thereafter the financial year, shall run from 1st April every year to 31st March of the subsequent of the English calendar.
12. That the bank accounts of the partnership and / or its branches shall be operated under the signatures of any of the partners.
13. That at the close of the accounting period / year, a trial balance, profit and loss account and balance-sheet etc. shall be prepared and the profit and loss in the ration enumerated above shall be credited / debited to the capital account of the partners.
14. That either of the parties would not be entitled to carry on similar or competitive trade individually or in partnership and in any other manner.
15. The partnership shall be at Will. However, whenever any party intends to dissolve the same or retire from the same, he shall give an advance notice of 15 days to the other party and during the period of notice, profit and loss account, balance sheets shall be completed to finalize the accounts in between as partiers as well as with the outsiders.
16. That in the event of any dispute arising between the partnership with respect to any clause of this document or the working of the partnership or for anything indicated thereof, the same shall be decided by arbitration in accordance with the provisions of the Arbitration Act and by no other process.
17. That in all other matters not provided herein, the partnership shall be governed by the Indian Partnership Act as applicable from time to time.

IN WITNESS WHEREOF the parties have signed this document on the date first above written in presence of the following witnesses.

FIRST PARTY

WITNESSES (1) (2) SECOND PARTY

DEED OF DISSOLUTION OF PARTNERSHIP

THIS DEED OF DISSOLUTION is executed at Delhi on this 31st days of January,2004

BETWEEN

A son of _____ resident of _____, hereinafter called 'the First Party', which expression shall, unless repugnant to the context or meaning hereof, mean and include his heirs, successors, executors and legal representatives, of the First Part.

AND

B son of _____ resident of _____, hereinafter called 'the Second Party', which expression shall, unless repugnant to the context or meaning hereof, mean and include his heirs, successors, executors and legal representatives, of the Other Part.

WHEREAS the parties have been carrying on business in partnership under the name and style of 'M/s ABC', from premises bearing No. . E-1 Ram Nagar, Delhi, on the basis of a partnership deed executed between them on 20th March, 2002;

AND WHEREAS it has been mutually decided by the parties hereto to dissolve this partnership and to reduce the terms of this dissolution into writing;

NOW, THEREFORE, THIS DOCUMENT WITNESSES AS UNDER;

1. That the partnership constituted by the parties hereto vide the partnership deed dated 20.3.2002 on the basis of which business under the name and style of 'M/s. ABC' was carried at premises No. . E-1 Ram Nagar, Delhi has been dissolved with effect from today i.e. 31.1.2004.
2. That all the accounts of the partnership have been agreed and understood by the parties and all trading results, profits and losses and personal debit and credit entries and balances, have been checked and accepted by them as per the account books.
3. That all records, account books, etc. of the dissolved partnership have been delivered to the First Party hereto, who shall be responsible to notify all concerned authorities about the fact of this dissolution and shall also be responsible to get the assessments, if any pending, completed.
4. That the First Party shall produce the account books of the partnership, whenever reasonably required by the Second Party, either before the assessment authorities or before any other authority.
5. That the partners shall be liable for their individual taxes. However, any taxes or payments raise against the dissolved partnership, shall be met by the individual parties, in accordance with his ratio of profits and losses in terms of the partnership deed.
6. That none of the parties shall be liable for any liability raised by the other in the name of the erstwhile partnership firm.

FIRST PARTY

WITNESSES: (1) (2) SECOND PARTY

HIRE-PURCHASE AGREEMENT

AN AGREEMENT made this 18th day of July one thousand Nine hundred and Eighty Eight BETWEEN AB etc. (hereinafter called 'The Owner' which expression shall unless excluded by or repugnant to the context be deemed to mean and include his/her heirs, executors administrators, legal representatives and assigns) of the One Part AND CD etc., (hereinafter called 'The Hirer' which expression shall unless excluded by or repugnant to the context be deemed to mean and include his/her heirs, executors, administrators, legal representatives and assigns) of the Other Part.

WHEREAS it is agreed as follows:

(1) The owner will let and the hirer will take on hire the pump set fully described in the schedule hereto annexed for a term of…….months from the date hereof at a rent of Rs……..(……only) to be paid by instalments in the manner hereinunder stated subject nevertheless the termination clause hereunder contained.

(2) The hirer has already paid to the owner the sum of Rs……..(Rupees……only) being the first month's rent (the receipt of which sum the owner hereby acknowledges), and the hirer shall continue to pay as installment of such rent on the ……..day of each succeeding month during the said term, the next payment to be made on the……day of……

(3) The hirer shall, until and unless all instalments or rents are paid keep and maintain the said pumping set in good order and condition and preserve it against loss or injury by theft etc. (reasonable wear and tear being expected), and make good all damages accidental or otherwise, and allow the owner, his agent or servants to inspect the same whenever demanded.

(4) In the event of the goods being damaged or destroyed beyond repairs or replacement or lost by fire, theft or in other cause, the hirer shall nevertheless remain liable for and pay the owner of the remaining installments due on the goods.

(5) The hirer shall not, without the owner's previous written consent, remove or permit removal of the said pump set from the above address of the hirer. The hirer shall not, until and unless he become the full owner, sell, assign, pledge or otherwise transfer the pump set or subject the pump set or hire suffer any decree or order of any Court whereby the pump set may be attached or charged or otherwise ceased or taken in execution nor commit any act or insolvency nor enter into any scheme or composition with his creditors.

(6) If the hirer fails and/or neglects to carry out any of the terms of this agreement the owner may without prejudice to his right to recover any areas of rent and damages for breach of this agreement terminate the hiring and retake possession of the said pump set, where the same shall be in the possession of the hirer or of any other person and for that purpose the hirer hereby gives the owner, his agents or servants all facilities to enter in or upon any premises occupied by the hirer, to search for, seize and retake possession of the said pump set without being liable in any way for any action for trespass or otherwise or at all.

(7) Notwithstanding anything herein before contained, the hirer may terminate this agreement at any time by surrender and return of the said pump set to the owner but nevertheless he shall remain liable for the balance of interest still to be paid.

(8) The hirer may, at any time during the time of hiring, become the absolute owner of the said pump set hereby hired by paying the owner all arrears or rent, if any, and all rents which would become due on this agreement during the said term without any discount or detection or subject to a discount of Rs……..(Rupees……..only) on all payments anticipated.

(9) The hirer shall keep the aforesaid pump set insured against fire, theft, injury, accident in the name of the owner or in their joint names and regularly and punctually pay each premium as and when the same shall become due.

(10) Any time, concession or indulgence granted or shown on the part of the owner will not prejudice his rights under this agreement.

IN WITNESS WHEREOF the parties hereto put their signature in the deed.

Witness……

Signature of the Owner

Witness…….

Signature of the Hirer

* * * * *

DEED OF A FAMILY SETTLEMENT BETWEEN RIVAL CLAIMANTS OF AN ESTATE

THIS DEED OF FAMILY SETTLEMENT is made on the……..day of…….Between AB, CD, EF and GH.

WHEREAS ……

Recitals

(1) XY, owner of the property mentioned in Schedules J, K, L, M and N dies on the…….

(2) AB claims the whole of the said property as the adopted son of XY and the other parties deny the alleged adoption;

(3) CD claims the whole property as the widow of XY and the other parties deny that she is his widow and assert that she was XY's mistress;

(4) EF claims the whole property as the son of Z, a sister of Xy but the other parties deny his claim, alleging that EF is not the son of Z but is the son of Z's husband by another wife;

(5) GH claims the whole property as a collateral of XY;

(6) Each of the four parties has obtained possession of a small portion of the estate of XY and has put in the an application for mutation of his name on the whole of the estate;

(7) As the prosecution of the mutation cases and of the civil suits which will necessarily follow, the final decision in the mutation cases will entail heavy expenditure and is likely to ruin the parties, besides further accentuating the existing disharmony among them, the parties on the advice of mutual friends and relations and after taking competent legal advice to ensure amity and goodwill have agreed to settle the dispute amicably by a family settlement in the following manner.

(8) All the conditions of the proposed family settlement have been fully explained to CD by her counsel shri……and CD has in consultation with Shri……..fully examined and considered the same and has given her free consent to them.

TERMS OF SETTLEMENT

Now this Deed Witness and the parties are as follows :

(1) AB, EF and GH shall be absolute owners of the properties mentioned in Schedules J, K and L respectively;

(2) CD shall be owner of the property mentioned in Schedule M for life and shall have no right to alienate except with the consent of AB, EF and GH or in the case of death of either of them, with the consent of the survivor of survivors and of the heirs of the deceased, and on the death of CD, the property shall devolve upon AB, EF and GH or their respective heirs in equals shares;

(3) The property mentioned in Schedule N shall be set apart for the upkeep and other expenses of the temple of……...at……...which was built by XY deceased and shall remain in possession of GH in trust for this purpose. GH will apply the whole of the income of the property after deducting. Government revenue, cesses, taxes and expenses of collection, on the upkeep of the temple and other necessary expenses in connection with the temple. After the death of GH, his eldest male heir and after him his eldest male heir and so on shall be the trustee provided he is able and willing to act as such trustee.

IN WITNESS WHEREOF the parties have signed on the date first above written in the presence of following witnesses

Witness

(1)

(2) Signature

* * * * *

LEASE DEED

This lease made on its Sept. 1993 Between Smt. Sudarshan Kaur W/o Sh. Paramjit Singh R/o H. No. M-170, Greater Kailash-II, New Delhi hereinafter called the LESSOR (which expression shall unless excluded or repugnant to the context to be deemed to include legal heirs i.e. Mr. Paramjit Singh, Husband of Lessor herein, successors, executors, administrators, representatives and assigns) of the one part and M/s. Dave Thomson Associates (India) Pvt. Ltd. Office at Satyug-Villa 1st Floor, 5, Gurunanak Nagar off Shankarshet Road, Pune through, their Director Mr. H. R. Srinivas to enter into these presences hereinafter referred to as the LESSOR which expression unless excuded or repugnant to the context shall include and mean, successors, successors in interest and assigns of the second part.

WHEREAS THE LESSOR has represented to the LESSOR that she is the owner/landlady of the Basement portion of the construction at M-170, Greater Kailash-II, New Delhi admeasuring 760 Sq. ft. approximate covered area in the said premises and is desirous of letting out the same, hereinafter referred to as the demised premises.

AND WHEREAS the Lessee has offered to take the demised premises on lease and the lessor has agreed to let out the same on the terms and conditions hareinafter specified.

NOW THIS AGREEMENT WITNESSETH AS UNDER:

That the lessor hereby conveys to the lessee the Basement portion of the said premises admeasuring 760 Sq. ft. Approx for a period of 24 months with effect from 1st Sept. 1993 at a monthly, rent of Rs. 4000/- (Rs. Four thousand only) exclusive of Electricity, water charges, actual bills/ rental charges of Telephone/Fax whenever installed in the demises premises.

That the Lease will be for an initial period of 24 months with effect from 1st Sept. 1993, in case the Lease is reminded at the option of the Lessor and with an enhances increase of 10% of rent payable per annum immediately after expire of every 12 months period. The duration of lease period 24 months is the essence of this agreement with the provision that both, the Lessor and the Lessee have the right to either terminate the Lease even before the expiry of the lease period, by giving 3 months written notice. The lease is therefore for a fixed period of 24 months w.e.f. 1st Sept. 1993 ending on 31st Aug. 1995 thereafter the Lessor shall have the option to renew the lease for a further period of 2 years at the terms and conditions as laid out by the Lessor.

That on the date of execution of this Lease Deed the Lessee had paid a sum of Rs. 36000/- (Rs. Thirty Six Thousand only) vide pay order No._____dated_____drawn on

As security deposit which will be kept by the Lessor for the due performance of the terms and conditions of this lease, free of interest. On termination of the lease, the Lessor shall refund the security deposit/unadjusted Advance rent, if any. In case the Lessor fails to refund the security Deposit/balance advance rent, the lessee shall be entitled to charge interest 21% P.A. from the date of termination of lease till the date of refund. Aditionally, the lessee shall be entitled to hold possession of the property till the refund of security deposit/unadjusted advance rent alongwith interest, if any is made without payment of rent/lease money. This

will be applicable only on production of documentary proof by the lessee to the Lessor that all dues pertiaining to electricity and any other charges payable by the lessee have been cleared upto date.

2. The Lessee covenants with Lessor as under :

i) That the Lessee agrees to pay a monthly rent of Rs. 4000/- (Rs. Four thousand only) mentioned above on or before 7th day of every month.

ii) The Lessee agree to carry out minor repairs or replacement of broken parts in electrical and sanitary installations and glasses himself, but major repairs pertaining to the structure of the house will have to be done by the Lessor, as and when considered necessary by him. However, the Lessee shall handover the vacant physical possession to the Lessor on termination of this lease in the same conditions as it has been handed over to him on 1-9-93.

iii) That the lease is for a period of 24 months only commencing from 1-9-93. The Lessee shall give vacant possession of the premises to the Lessor after the expiry of the lease period.

iv) That the Lessee shall duly comply with all the local rules and regulations of local authorities with regard to the use of the premises.

v) That the Lessee shall pay the electricity charges in accordance with the bills at rates determined by DESU and accordance with bills/demands received from DESU, NDMC including meter rents etc. The meter readings on the date of possession will be duly recorded.

vi) That the demised premises have been let out to the lessee for authorised use only.

vii) That the lessee shall permit the Lessor or his duly authorised agents during reasonable hours in the day time to enter upon the demised premises for inspection of the Lessor's fixtures and fittings therein, and the premises as may be deemed fit by the Lessor.

viii) That the Lessee at the expiry of this lease shall deliver peaceful and vacant possession of the demised premises to the Lessor together with the fittings and fixtures installed in good condition as the same are at present, reasonable wear and tear and damage by fire, earthquake, civil commotion, act of God excepted including lightening to fittings etc. but excluding telephones, fax computers and air conditioners. No fixtures, wood work etc. carried by the lessee shall be removed/damaged at the time of handing over vacant possession of the demised premises.

ix) That the Lessee shall not make any8 alteration of permanent nature within the premises as well as in the open space, without the written consent of the Lessor.

x) That the Lessor shall not interfere with the peaceful enjoyment of the property by the Lessee whether directly on indirectly.

xi) That the Lessee shall keep the premises in good tenantable condition and shall not cause any loss/ damage to it, subject to normal wear and tear of the premises.

The Lessee shall observe and perform at all time during the continuance of the terms hereby created all the terms and conditions herein as contained.

xii) That the Lessee shall in the event of unfortunate and unseen demise or incapacitation of Lessor will for all purposes treat Mr. Paramjit Singh, Husband of Lessor as the rightful receipt of rents or anyother dues payable by the lessee as per the terms set forth above in this deed without any let or hinderances. The said Mr. Paramjit Singh will have the full authority to enforce any or all provisions contained in this agreement. He shall by my sole beneficiary and executor.

xiii) That the Lessee will not park any motor car or any other vehicle in this outer drive way of the premises at any time both inside and outside the main gate.

3. That the Lessor hereby covenants with Lessee as follow:-

i) That the Lessor has good right and full power and absolute authority to lease the demised premises to the Lessee in manner herein contained.

ii) To observe and perform t all times during the continuance of their terms hereby created, all the terms and conditions contained in the lease by virtue of which the lessor is holding the said premises and to keep the lessee indeminified against any breach or consequences thereof.

iii) To pay discharge all rates and taxes whether Municipal or otherwise and to her assessments and outgoing which pare payable in respect of lessor failing to pay any such amount when the same shall fall due for payment, the lessee shall be entitled to pay the same on behalf of the lessor and to deduct the amount so paid from the rent payable by the lessee to the lessor hereunder.

iv) To comply with, at his own cost, all requirements and regulations of the Municipals or other lawful authority concerning the demised premises to the observed by the owner/landlady.

v) That the lessee paying the lease money hereby reserved and performing the several covenants conditions and agreements herein contained and on its part to be observed and performed, the lessee shall peaceably hold and enjoy the demised premises together with the lessor fixtures and fittings therein during the said terms without any interruption or disturbance from or by the Lessor or any person claiming through under or in trust for the Lessor.

4. It is hereby mutually agreed and declared by the parties hereto as follows :-

i) In the event of the demised premises or any part thereof being destroyed or damaged by fire, earth quake, flood war air raid civil commotion, roits or other act of God or irrestible force during the period of the lease, this lease shall at the option of the Lessee be terminated. And in the event of the Lessee being desirous of any part thereof as the case may be so as to enable the Lessor to repair the damage or reinstate the same and the rents hereby reserved shall remain suspended till the demised premises or any part thereof as the case may be reinstated or restored to its former state and possession if delivered over to the Lessee for the remaining part of this lease, if any.

ii) That in the event of any dispute or difference arising out of this agreement, the matter will be referred to the Arbitrator apporved by common consent of both the parties and his decision will be binding on both parties.

iii) That the parties to the agreement have specifically agreed that considering the location, accommodation, and condition of the said property, the lease rent is fair rent and in consonance with the property, market rates.

iv) That the terms and conditions of this agreement as stated above shall be binding on both the parties.

v) If the rents or other amounts due under the Lease deed or any part thereof shall remain unpaid for more than one month and if any covenant on the lessee's part herein contained shall not be performed or observed by the lessee and shall continue to do so for the period of 30 days after written notice by the lessor thereof to the lessee then and in any of the said cases it shall be lawful for the lessor to renter the demised premises or upon any part thereof in the name of the whole and the lease shall thereupon be terminated, but without prejudice to any claim or action or remedy which either of the parties may have against the other as on that date in respect of any branch, non-performance or non-observance of the covenants or conditions herein contained.

vi) The Lease shall automatically come to an and determined on the expiry of the lease period. Hence peaceful and vacant possession of the demised premises will be deemed to have been handed over by the lessee to the lessor.

vii) The cost of preparation of the original lease and duplicate thereof and stamps and registration fee and in connection with the same shall be borne and paid by the lessee. The Lessor shall retain the original of the lease deed and the lessee the duplicate thereof.

viii) IN WITNESS WHEREOF THESE presents have been executed by the parties hereto on the day, month and year first mentioned herein above in presence of witness:

LESSOR

Witnesses : (1) (2) LESSEE

* * * * *

MORTAGAGE DEED

THIS DEED OF MORTGAGE IS EXECUTED AT DELHI ON THIS 31st DAY OF JANUARY 2010 BY

Mr. A son of Sh. ____ resident of ____ hereinafter called the Mortgagor, which expression shall mean and include his heirs, legal representatives, executors, administrators and assigns of the First Part;

IN FAVOUR OF

M/s ABC Ltd., A company incorporated under the Companies Act having its registered office at ___ hereinafter called the Mortgagee, which expression shall mean and include its successors

WHEREAS the Mortgagor has vide lease-deed dated 5.1.1988 purchased / taken on perpetual leases from the President of India , a vacant residential plot bearing Municipal No. A-25 situated at Ashok vihar , Delhi

AND WHERE AS per the terms of the said perpetual lease-deed, the Mortgagor is required to construct a residential building on the aforesaid vacant plot of land;

AND WHEREAS the Mortgagor is not possessed with the financial means to undertake the construction of the residential building on the aforesaid plot of land;

AND WHEREAS the Mortgagee, with whom the Mortgagor is presently employed, has agreed to advance a lone of Rs.2,00,000/- (RUPEES Two lakhs only) to the Mortgagor, and which loan shall be utilized by the Mortgagor towards the construction of a residential house on the above vacant plot of land.

AND WHEREAS in consideration of the aforesaid amount of Rs. 2,00,000/- borrowed by the Mortgagor from the Mortgagee, the Mortgagor has agreed to execute this Mortgageed, deed of the vacant plot of land in favour of the Mortgagee.

THE DEED, THEREFORE WITNESSES AS UNDER :-

1. The Mortgagor admits and acknowledges that he owes a sum of Rs.2,00,000/- to the Mortgagee on the basis of promissory note and receipt dated 1.6.1990 executed by him in favour of the Mortgagee.

2. The Mortgagor shall be lible to pay interest on the above stated principal sum of Rs. 2,00,000/- @Rs. 12/- per cent per annum form the date of the loan until payment and in this manner the total charge of the referred property of the Mortgagor shall be the principal sum of Rs. 2,00,000/- and interest accruing thereupon.

3. The Mortgagor will pay to the Mortgagee the said sum of Rs. 2,00,00/- in equal monthly installment of Rs.2000/- per month on or before the 31st December, 2000 and in the meantime interest thereon or on such thereof as shall for the time being remain unpaid, at the rate of 12% percent per annum by half yearly payments on the 30th day of June and the 31st day of December in each year.

4. That any interest not paid on the due dates shall be treated as principal and added to the principal sum herby secured and bear interest at the rate and payable on the half yearly days aforesaid.

5. In consideration of the aforesaid, the Mortgagor hereby transfer by way of simple mortgage to the Mortgagee, a vacant residential plot bearing Municipal No. A-25, Ashok Vihar, Delhi.

6. By this deed, the Mortgagor also mortgages to the Mortgagee any building and all other permanent structures that shall be built on the aforesaid vacant plot by the Mortgagor.

7. The Mortgagor hereby covenants with the Mortgagee as follows :

(i) That the said premises are free from all encumbrances and the Mortgagor undertakes that until the entire principal amount and interest, if any due, is not paid back to the Mortgagee, the Mortgagor shall not create any fresh mortgage, charge, pledge, or in any other manner, alienate the corpus or his interest in the aforesaid property to any third person.

(ii) If the Mortgagor fails to pay the sum with interest after it has become payable under the provisions of the this deed, the Mortgagee shall, in addition to any other remedy available to him under the law, have the power to sell without the intervention of a Court the mortgaged property or any part thereof for the realization of the money due to it hereunder.

(iii) During the continuance of the Mortgage, the Mortgagor shall keep any building or permanent structure erected on the aforesaid plot of land insured against damage by fire in the name of the Mortgagor with an Insurance Company and shall punctually pay all premium on such insurance and shall produced to the Mortgagee on demand, the policy of such insurance and the receipt for the premium so paid.

Provided always, that if the Mortgagor shall make default in any of the above matters, the Mortgagee may, in its discretion, insure and keep insured all or any of the said building and permanent structures to the amount aforesaid and that the expenses of doing shall be repaid to it by the Mortgagor on demand, and until so paid shall be added to the principal money hereby secured and bear interest accordingly and be secured in the like manner as the said principal.

IN WITNESSES WHEREOF the Mortgagor has executed this document on the date, first above written.

MORTGAGOR

MORTGAGEE

WITNESSES

1.

2.

* * * * *

NOTICE OF EJECTMENT THROUGH ADVOCATE

(SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882)

X ADVOCATE _____

Dated……

To

……..

Dear Sir,

Under instructions from my client ……of ……I hereby give you notice that you are to quit and vacate the premises described below of which you are now in possession of as a monthly (or yearly) tenant under my said client immediately on the expiry of the last day of……...2004.

On and from the Ist of……..(month next following the last day of the month on which the tenant is required to quit) the tenancy hereto before subsisting shall terminate and all relationship of landlord and tenant between my client and you shall absoulutely cease. You are requested to deliver vacant possession of the said premises unto my client on that date as stated above. In case of your failure to quit the premises as desired, you will be considered as a trespasser and ejected in due course of law and you will have to pay damages at rate of Rs……..per diem until you are evicted.

Description of the premises

……..

Yours faithfully

……

Advocate

* * * * *

NOTICE OF SUIT UNDER SECTION 80 OF THE CODE OF CIVIL PROCEDURE AGAINST THE CENTRAL GOVERNMENT

REGD A/D / U.P.C.

Dated……

X ADVOCATE _____

To

The Secretary to the
Government of India
Education Department
Central Secretariat
New Delhi

NOTICE UNDER S. 80 OF THE C.P.CODE

Dear Sir,

Under instructions from my client……an employee in Section……...of the Department of Education, Central Secretariat, New Delhi I hereby give you notice under S.80 of the C.P.Code and state that my aforesaid client intends to sue the Union of India owing and representing the Department of Education, Central Secretariat, New Delhi after the expiry of two months after the service of this notice unless reliefs claimed herein below are granted to my said client within the said period of two months. The following particulars of the nature of the claim, cause of action and reliefs claimed are given below:

(1) Name and description of the Plaintiff	Sri……..son of…….by occupation…….residing at…….
(2) Cause of Action	(a) Sri……..was an employee…….section of the department of education, Government of India, Central Secretariat, New Delhi. He has been dismissed from service illegally with effect from……..
	(b) Sir…….. was charged falsely for an alleged theft in the office on……...and charge sheeted and ultimately dismissed from service with effect from…….
	(c) Cause of action for the suit arose on…….the date of dismissal.
(3) Reliefs sought for	(a) Reinstatement of Sri…….
	(b) Recovery of salary for the period of……...to……..

Yours faithfully

T H E E N D