2020 INSC 373

REPORTABLE

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

SUO MOTU CONTEMPT PETITION (CRIMINAL) NO. 2 OF 2019

RE : VIJAY KURLE & ORS. …ALLEGED CONTEMNOR(S)

J U D G M E N T

Deepak Gupta, J.

A Bench of this Court while dealing with Suo Motu Contempt Petition (Criminal) No.1 of 2019 took note of a letter dated 23.03.2019 received by the office of the Judges of the Bench on 25.03.2019. This was a copy of the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society to the President of India, Chief Justice of India and the Chief Justice of the Bombay High Court. In the said letter, reference was made to two complaints – one made by the Indian Bar Association, dated 20.03.2019 through alleged contemnor no. 1, Shri Vijay Kurle, State President of

Maharashtra and Goa of the Indian Bar Association, and the second complaint dated 19.03.2019 made by alleged contemnor no. 2, Shri Rashid Khan Pathan, National Secretary of the Human Rights Security Council. It was mentioned that these complaints have not only been sent to the President of India and the Chief Justice of India but also have been circulated in the social media and the complaints were attached as Annexures-1 and 2 to the said letter. The Bench took note of the letter and the complaints attached to the said letter and specifically noted the prayers made in both the complaints and found that both the complaints are substantially similar. The Bench on noting the allegations made in the complaints was of the view that scandalous allegations have been made against the members of the said Bench and, therefore, notice was issued to Shri Vijay Kurle, alleged contemnor no. 1, Shri Rashid Khan Pathan, alleged contemnor no. 2, Shri Nilesh Ojha, alleged contemnor no. 3 and Shri Mathews Nedumpara, alleged contemnor no. 4. The Bench also directed that the matter be placed before the Chief Justice of India to constitute an appropriate Bench to hear and decide the contempt case.

2. After notice was issued, Shri Nedumpara filed an application, being Criminal M.P. No. 60568/2019 for discharge in which he stated that he barely knew Shri Vijay Kurle and Shri Nilesh Ojha, and did not know Shri Rashid Khan Pathan at all. He denied any role in sending those complaints. Therefore, vide order dated 02.09.2019 we had discharged Shri Mathews Nedumpara but made it clear that if during the course of proceedings any evidence comes up against him, he would be summoned again. On the same date, Shri Nilesh Ojha who appears in person stated that the Registry has not given complete copy of the annexures attached with the letter of the Bombay Bar Association and Bombay Incorporated Law Society to him along with the notice. The Registry was directed to supply the annexures to him. On 30.09.2019 we were informed that the Registry has not given complete annexures. Thereafter, we had directed the Registry to supply 3 sets of Annexures P1 to P15 attached with the letter which were sent to alleged contemnor nos. 1 to 3. On the same date, we appointed Shri Sidharth Luthra, learned senior counsel, as amicus curiae to assist the Court. On 04.11.2019, alleged contemnor nos. 1 to 3 admitted

that all the documents have been supplied to them and thereafter, fresh replies were permitted to be filed.

3. In the letter of the Bombay Bar Association and the Bombay Incorporated Law Society reference was made not only to the allegations in the complaints levelled against the 2 Hon'ble Judges of this Court but also other allegations were made which indicated that alleged contemnor nos. 1 to 3 had committed contempt of the Bombay High Court also. On 09.12.2019 we had clarified that in view of the original order taking *suo motu* notice and the documents placed on record, the charge against Shri Vijay Kurle, alleged contemnor no. 1 was only in respect of the scandalous allegations levelled against 2 Judges of this Court in the letter dated 20.03.2019 sent by him as State President of Maharashtra and Goa of the Indian Bar Association. We have also clarified that as far as Shri Rashid Khan Pathan, alleged contemnor no. 2, is concerned, the charge against him only relates to the scandalous allegations made against 2 Judges of this Court in the letter dated 19.03.2019 sent by him. As far as Shri Nilesh Ojha, alleged contemnor no. 3 was concerned, the only document against him was also the letter dated 20.03.2019

which letter was not signed by him, but admittedly, he is President of the Indian Bar Association. We had given opportunity to Shri Nilesh Ojha to explain his position whether the letter dated 20.03.2019 was sent with his consent or under his authority.

4. It would be pertinent to mention that Shri Vijay Kurle and Shri Rashid Khan Pathan have not denied that they are the authors of the letters which are signed by them.

5. The basis of the present contempt are the two letters dated 20.03.2019 and 19.03.2019 admittedly signed by alleged contemnor nos. 1 and 2 i.e. Shri Vijay Kurle and Shri Rashid Khan Pathan respectively. These letters are very lengthy running into more than 250 pages combined. Therefore, it would not be feasible to extract the entire letters but we have no doubt in our mind that the tenor of the letters is highly disrespectful, and scandalous and scurrilous allegations have been levelled against 2 Judges of this Court.

6. The three alleged contemnors have raised a number of preliminary issues. We may summarise the same as follows:-

(i) That the Bench of Justice R. F. Nariman and Justice Vineet Saran could not have taken cognizance of the case because the case was not assigned to them by the Chief Justice and that both the Judges acted as Judge in their own cause.

(ii) That the Bench has not *suo motu* taken notice of the contempt and therefore the Registry cannot treat it as a *suo motu* petition.

(iii) That even in *suo motu* contempt proceedings the consent of the Attorney General is necessary.

(iv) That the proper procedure of framing a charge is not followed because the defects at the initial stage cannot be cured by later orders/developments.

(v) That the Judges were bound to disclose the source of information.

Powers of the Supreme Court

7. Before we deal with the objections individually, we need to understand what are the powers of the Supreme Court of India in relation to dealing with contempt of the Supreme Court in the light of Articles 129 and 142 of the Constitution of India when read in conjunction with the Contempt of Courts Act, 1971. According to the alleged contemnors, the Contempt of Courts Act

is the final word in the matter and if the procedure prescribed under the Contempt of Courts Act has not been followed then the proceedings have to be dropped. On the other hand, Shri Sidharth Luthra, learned amicus curiae while making reference to a large number of decisions contends that the Supreme Court being a Court of Record is not bound by the provisions of the Contempt of Courts Act. The only requirement is that the procedure followed is just and fair and in accordance with the principles of natural justice.

Article 129 of the Constitution of India reads as follows:

> "**129. Supreme Court to be a court of record.**- 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."

A bare reading of Article 129 clearly shows that this Court being a Court of Record shall have all the powers of such a Court of Record including the power to punish for contempt of itself. This is a constitutional power which cannot be taken away or in any manner abridged by statute.

Article 142 of the Constitution of India reads as follows:

> "**142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.**- (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
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> (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

Article 142 also provides that this Court can punish any person for contempt of itself but this power is subject to the provisions of any law made by parliament. A comparison of the provisions of Article 129 and clause (2) of Article 142 clearly shows that whereas the founding fathers felt that the powers under clause 92) of Article 142 could be subject to any law made by parliament, there is no such restriction as far as Article 129 is concerned. The power under clause (2) of Article 142 is not the primary source of power of Court of Record which is Article 129 and there is no such restriction in Article 129. Samaraditya Pal

in the Law of Contempt[1] has very succinctly stated the legal position as follows:

> "Although the law of contempt is largely governed by the 1971 Act, it is now settled law in India that the High Courts and the Supreme Court derive their jurisdiction and power from Articles 215 and 129 of the Constitution. This situation results in giving scope for "judicial self-dealing".

The High Courts also enjoy similar powers like the Supreme Court under Article 215 of the Constitution. The main argument of the alleged contemnors is that notice should have been issued in terms of the provisions of the Contempt of Courts Act and any violation of the Contempt of Courts Act would vitiate the entire proceedings. We do not accept this argument. In view of the fact that the power to punish for contempt of itself is a constitutional power vested in this Court, such power cannot be abridged or taken away even by legislative enactment.

8. To appreciate the rival contention, we shall have to make reference to a number of decisions relied upon by both the parties. The first judgment on the point is ***Sukhdev Singh Sodhi*** v. ***The Chief Justice and Judges of the Pepsu High***

[1] Pgs. 9-10, The Law of Contempt: Contempt of Courts and Legislatures, Fifth Edn., LexisNexis Butterworths Wadhwa, Nagpur (2013)

Court[2]. It would be pertinent to mention that the said judgment was given in the context of the Contempt of Courts Act, 1952. The issue before this Court in the said case was whether contempt proceedings could said to be the proceedings under the Criminal Procedure Code, 1973 (Cr.PC) and the Supreme Court had the power to transfer the proceedings from one court to another under the Cr.PC. Rejecting the prayer for transfer, this Court held as follows:-

> "....We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council in *In re Pollard* (L.R. 2 P.C. 106 at 120) and was followed in India and in Burma in *In re Vallabhdas* (I.L.R. 27 Bom. 394 at 390) and *Ebrahim Mamoojee Parekh* v. *King Emperor* (I.L.R. 4 Rang. 257 at 259-261). In our view that is still the law."

9. A Constitution Bench of this Court in ***Shri C. K. Daphtary and Others*** v. ***Shri O.P. Gupta and Others***[3] was dealing with a case where the contemnor had published a pamphlet casting scurrilous aspersions on 2 Judges of this Court. During the

[2] 1954 SCR 454
[3] 1971 (1) SCC 626

course of argument, the contemnor raised a plea that all the evidence has not been furnished to him and made a request that the petitioner be asked to furnish the "pamphlet" or "book" annexed to the petition. The Court rejected this argument holding that the booklet/pamphlet had been annexed to the petition in original and the Court had directed that the matter be decided on affidavits.

10. In respect of the absence of a specific charge being framed, the Court held that a specific charge was not required to be framed and the only requirement was that a fair procedure should be followed. Dealing with the Contempt of Courts Act, 1952 this Court held as follows:-

> "**58**. We are here also not concerned with any law made by Parliament. Article 129 shows that the Supreme Court has all the powers of a Court of Record, including the power to punish for contempt of itself; and Article 142(2) goes further and enables us to investigate any contempt of this Court."

11. Thereafter, this Court approved the observations in ***Sukhdev Singh Sodhi's*** case (supra) and held as follows:-

> "**78**. In our view that is still the law. It is in accordance with the practice of this Court that a notice was issued to the respondents and opportunity given to them to file affidavits stating facts and their contentions. At one stage, after arguments had begun Respondent No. 1 asked for postponement of the case to engage some

> lawyers who were engaged in fighting elections. We refused adjournment because we were of the view that the request was not reasonable and was made with a view to delay matters. We may mention that the first respondent fully argued his case for a number of days. The procedure adopted by us is the usual procedure followed in all cases."

12. According to the alleged contemnors, both the aforesaid judgments are *per incuriam* after coming into force of the Contempt of Courts Act, 1971. They are definitely not *per incuriam* because they have been decided on the basis of the law which admittedly existed, but for the purposes of this case, we shall treat the argument of the alleged contemnors to be that the judgments are no longer good law and do not bind this Court. It has been contended by the alleged contemnors that both the aforesaid cases are overruled by later judgments. We shall now refer to some of the decisions cited by the parties.

13. In ***P.N. Duda*** v. ***P.Shiv Shanker and Others***[4] the respondent, Shri P. Shiv Shiv Shanker, who was a former judge of the High Court and was the Minister for Law, Justice and Company Affairs delivered a speech which was said to be contemptuous. A petition was filed by the petitioner P. N. Duda who was an advocate of this Court but this Court declined to

[4] (1988) 3 SCC 167

initiate contempt proceedings. At the outset, we may note that while giving the reasons for not initiating contempt, though this Court held that the contempt petition was not maintainable, it went into the merits of the speech delivered by Shri P. Shiv Shanker and held that there was no imminent danger of interference with the administration of the justice and bringing administration into disrepute. It was held that Shri P. Shiv Shanker was not guilty of contempt of this Court. Having held so, the Court went on to decide whether the petition could have been entertained on behalf of Shri Duda. In the said petition, Shri Duda had written a letter to the Attorney General seeking consent for initiating contempt proceedings against Shri P. Shiv Shanker. A copy of the said letter was also sent to the Solicitor General of India. While seeking consent, the petitioner had also stated that the Attorney General may be embarrassed to give consent for prosecution of the Law Minister and in view of the said allegations, the Attorney General felt that the credibility and authority of the office of the Attorney General was undermined and therefore did not deny or grant sanction for prosecution. The Court held that the petitioner could not move the Court for initiating contempt proceedings against the respondent without

consent of the Attorney General and the Solicitor General. The relevant portion of the judgment reads as follows:-

> "**39.** The question of contempt of court came up for consideration in the case of *C.K. Daphtary* v. *O.P. Gupta.* In that case a petition under Article 129 of the Constitution was filed by Shri C.K. Daphtary and three other advocates bringing to the notice of this Court alleged contempt committed by the respondents. There this court held that under Article 129 of the Constitution this Court had the power to punish for contempt of itself and under Article 143(2) it could investigate any such contempt. This Court reiterated that the Constitution made this Court the guardian of fundamental rights. This Court further held that under the existing law of contempt of court any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of court. A scurrilous attack on a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary ; and if confidence in Judiciary goes administration of justice definitely suffers. In that case a pamphlet was alleged to have contained statements amounting to contempt of the court. As the Attorney General did not move in the matter, the President of the Supreme Court bar and the other petitioners chose to bring the matter to the notice of the court. It was alleged that the said President and the other members of the bar have no locus standi. This Court held that the court could issue a notice suo motu. The President of the Supreme Court bar and other petitioners were perfectly entitled to bring to the notice of the court any contempt of the court. The first respondent referred to Lord Shawcross Committee's recommendation in U.K. that "proceedings should be instituted only if the Attorney General in his discretion considers them necessary". This was only a recommendation made in the light of circumstances prevailing in England. But that is not the law in India, this Court reiterated. It has to be borne that decision was rendered on March 19, 1971 and the present Act in India was passed on December 24, 1971. Therefore that decision cannot be of any assistance. We have noticed Sanyal Committee's recommendations in India as to why the Attorney General

> should be associated with it, and thereafter in U.K. there was report of Phillimore Committee in 1974. In India the reason for having the consent of the Attorney General was examined and explained by Sanyal Committee Report as noticed before."

14. The alleged contemnors contended that the last portion of the aforesaid paragraph shows that the judgment in ***C. K. Daphtary's*** case (supra) having been delivered prior to the enactment of Contempt of Courts Act, 1971 is no longer applicable. We may however point out that in the very next paragraph in the same judgment, it was held as follows:-

> "**40.** Our attention was drawn by Shri Ganguly to a decision of the Allahabad High Court in *G.N. Verma* v. *Hargovind Dayal* (AIR 1975 All 52) where the Division Bench reiterated that Rules which provide for the manner in which proceedings for contempt of court should be taken continue to apply even after the enactment of the Contempt of Courts Act, 1971. Therefore cognizance could be taken suo motu and information contained in the application by a private individual could be utilised. As we have mentioned hereinbefore indubitably cognizance could be taken suo motu by the court but members of the public have also the right to move the court. That right of bringing to the notice of the court is dependent upon consent being given either by the Attorney General or the Solicitor General and if that consent is withheld without reasons or without consideration of that right granted to any other person under Section 15 of the Act that could be investigated in an application made to the court."

15. The alleged contemnors rely on certain observations in the concurring judgment of Justice Ranganathan in the same judgment wherein he has approved the following passage from a judgment of the Delhi High Court in ***Anil Kumar Gupta*** v. ***K. Subba Rao and Ors.***[5]:-

> "The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it."

Thereafter Justice Ranganathan made the following observation:-

> "**54.**...I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts...."

16. Relying upon the aforesaid observations in the judgment delivered by Justice Ranganathan it is submitted that the petition could not have been placed for admission on the judicial side but should have been placed before the Chief Justice and

[5] ILR (1974) 1 Del 1

not before any other Bench. We are not at all in agreement with the submission. What Justice Ranganathan observed is an obiter and not the finding of the Bench and this is not the procedure prescribed under the Rules of this Court.

17. This Court has framed rules in this regard known as The Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 (for short 'the Rules') and relevant portion of Rule 3 of the Rules reads as follows:-

> "**3.** In case of contempt other than the contempt referred to in rule 2, the Court may take action –
> (a) *suo motu*, or
> (b) on a petition made by Attorney-General, or Solicitor-General, or
> (c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney-General or the Solicitor-General."

18. A bare perusal of Rule 3 shows that there are 3 ways for initiating contempt proceedings. The first is *suo motu*, the second is on a petition made by the Attorney General or the Solicitor General, and the third is on the basis of a petition made by any person and where criminal contempt is involved then the consent of the Attorney General or the Solicitor General is necessary. Rules 4 and 5 prescribe for the manner of filing of a petition under Rules 3(b) and 3(c). Rule 4 lays down the requirements of

a petition to be filed under Rules 3(b) and 3(c) and Rule 5 requires that every petition under Rule 3(b) or Rule 3(c) shall be placed before the Court for preliminary hearing. Rule 6 requires notice to the person charged to be in terms of Form I. Rule 6 reads as follows:-

> "**6.** (1) Notice to the person charged shall be in Form I. The person charged shall, unless otherwise ordered, appear in person before the Court as directed on the date fixed for hearing of the proceeding, and shall continue to remain present during hearing till the proceeding is finally disposed of by order of the Court.
>
> (2) When action is instituted on petition, a copy of the petition along with the annexure and affidavits shall be served upon the person charged."

19. These Rules have been framed by the Supreme Court in exercise of the powers vested in it under Section 23 of the Contempt of Courts Act, 1971 and they have been notified with the approval of Hon'ble the President of India.

20. In ***Pritam Pal*** v. ***High Court of Madhya Pradesh, Jabalpur Through Registrar***[6], a 2 Judge Bench of this Court held as follows:-

> "**15**. Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to

[6] 1992 (1) SCALE 416

> deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate Legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act of 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be 'Courts of Record' under Articles 129 and 215 of the Constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to Contempt of Courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971..."

21. In ***Delhi Judicial Service Association, Tis Hazari Court, Delhi*** v. ***State of Gujarat and Ors***.[7] a three-Judge Bench of this Court relied upon the judgment in the case of ***Sukhdev Singh Sodhi*** (supra) and held that the Supreme Court had inherent jurisdiction or power to punish for contempt of inferior courts under Article 129 of the Constitution of India.

[7] (1991) 4 SCC 406

22. A three-Judge Bench of this Court ***In Re: Vinay Chandra Mishra***[8] discussed the law on this point in detail. The Court while holding the respondent guilty for contempt had not only sentenced him to simple imprisonment for a period of 6 weeks which was suspended but also suspended his advocacy for a period of 3 years, relying upon the powers vested in this Court under Article 129 and 142 of the Constitution of India.

23. We may now refer to certain other provisions of Constitution, Entry 77, Union List (List I) of VII Schedule reads as follows:

> "**77**. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court."

Entry 14, Concurrent List (List III of VII Schedule) reads as follows :

> "**14**. Contempt of court, but not including contempt of the Supreme Court."

In exercise of the aforesaid powers the Contempt of Courts Act, 1971 was enacted by Parliament. Section 15 deals with cognizance of criminal contempt and the opening portion of

[8] (1995) 2 SCC 584

Section 15 clearly provides that the Supreme Court or the High Courts may take action (i) *suo motu* (ii) on a motion moved by the Advocate General in case of High Court or Attorney General/Solicitor General in the case of Supreme Court and (iii) on a petition by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General as the case may be. Section 17 lays down the procedure to be followed when action is taken on a motion moved by the Advocate General/Attorney General/Solicitor General or on the basis of their consent and Section 17(2) does not deal with *suo motu* contempt petitions. Section 17(2)(a) of the Contempt of Courts Act will not apply to *suo motu* petitions because that deals with the proceedings moved on a motion and not *suo motu* proceedings. Section 17(2)(b) deals with contempt initiated on a reference made by the subordinate court. It is only in these cases that the notice is required to be issued along with a copy of the motion. As far as *suo motu* petitions are concerned, in these cases the only requirement of Form-I which has been framed in pursuance of Rule 6 of the Rules of this Court is that the brief nature of the contempt has to be stated therein.

24. The correctness of the judgment in ***Vinay Chandra Mishra's case*** (supra) was considered by a Constitution Bench of this Court in ***Supreme Court Bar Association*** v. ***Union of India***[9]. We shall be referring to certain portions of that judgment in detail. That being a Constitution Bench judgment, is binding and all other judgments which may have taken a view to the contrary cannot be said to be correct. Before we deal with the judgment itself, it would be appropriate to refer to certain provisions of the Contempt of Courts Act, 1971. Section 2 is the definition clause defining "*contempt of court*", "*civil contempt*", "*criminal contempt*" and "*High Court*". Sections 3 to 5 deal with innocent publication, fair and accurate reporting of judicial proceedings and fair criticism of judicial act, which do not amount to contempt. Sections 10 and 11 deal with the powers of the High Court to punish for contempt. Section 12(2) provides that no court shall impose a sentence in excess of that specified in sub-section (1) of Section 12. Section 13 provides that no court should impose a sentence under the Act for contempt unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends to substantially interfere with

[9] (1998) 4 SCC 409

the due course of justice. It also provides that truth can be permitted to be raised as a valid defence if the court is satisfied that the defence has been raised in the public interest and is a *bona fide* defence. Section 14 deals with the powers of the Supreme Court or the High Courts to deal with contempt in the face of the Court. We have already dealt with Section 15 which deals with cognizance of the criminal contempt other than contempt in the face of the Court. Section 17 lays down the procedure after cognizance. It is in the background of this Act that we have to read and analyse the judgment of the Constitution Bench.

25. The Constitution Bench referred to the provisions of Article 129 of the Constitution of India and also Entry 77 of List I of Seventh Schedule and Entry 14 of List III of the Seventh Schedule and, thereafter, held as follows:-

> "**18**. The language of Entry 77 of List I and Entry 14 of List III of the Seventh Schedule demonstrates that the legislative power of Parliament and of the State Legislature extends to legislate with respect to matters connected with contempt of court by the Supreme Court or the High Court, subject however, to the qualification that such legislation cannot denude, abrogate or nullify, the power of the Supreme Court to punish for contempt under Article 129 or vest that power in some other court."
>
> (emphasis supplied)

26. This Court referring to Article 142 of the Constitution held as follows:-

> "**21**. It is, thus, seen that the power of this Court in respect of *investigation* or *punishment* of any contempt including contempt of itself, is expressly made "subject to the provisions of any law made in this behalf by Parliament" by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that *inherent* jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself, (we shall refer to Section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India."

27. This Court then made reference to the provision of the Contempt of Courts Act, 1926, the Contempt of Courts Act, 1952 and the Contempt of Courts Act, 1971 and thereafter held as follows:-

> "**29**. Section 10 of the 1971 Act like Section 2 of the 1926 Act and Section 4 of the 1952 Act recognises the power which a High Court already possesses as a court of record for punishing for contempt of itself, which jurisdiction has now the sanction of the Constitution

also by virtue of Article 215. The Act, however, does not deal with the powers of the Supreme Court to try or punish a contemner for committing contempt of the Supreme Court or the courts subordinate to it and the constitutional provision contained in Articles 142(2) and 129 of the Constitution alone deal with the subject."

28. It would also be pertinent to refer to the following observations of the Constitution Bench:-

"**38**. As already noticed, Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2). Since, no such law has been enacted by Parliament, the *nature of punishment* prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes *procedural mode* for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh case* (AIR 1954 SC 186 : 1954 SCR 454) as regards the *extent* of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned Solicitor General that the *extent of punishment* which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971. We, however, do not express any final opinion on that question since that issue, strictly speaking, does not arise for our decision in this case. The question regarding the restriction or limitation on the *extent* of punishment, which *this* Court may award

while exercising its contempt jurisdiction may be decided in a proper case, when so raised."

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"**40**...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."

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"**43**. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court."

xxx xxx xxx

"**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."

29. A careful analysis of the Constitution Bench decision leaves no manner of doubt that Section 15 of the Act is not a substantive provision conferring contempt jurisdiction. The Constitution Bench finally left the question as to whether the maximum sentence prescribed by the Act binds the Supreme Court open. The observations made in Para 38 referred to above clearly indicate that the Constitution Bench was of the view that the punishment prescribed in the Act could only be a guideline and nothing more. Certain observations made in this judgment that the Court exceeded its jurisdiction in ***Vinay Chandra Mishra's case*** (supra) by taking away the right of practice for a period of 3 years have to be read in the context that the Apex Court held that Article 129 cannot take over the jurisdiction of the Bar Council of the State or the Bar Council of India to punish an advocate. These observations, in our opinion have to be read with the other observations quoted hereinabove which clearly show that the Constitution Bench held that "*Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself*". The Court also held that Section 15 is not a substantive provision

conferring contempt jurisdiction and, therefore, is only a procedural section especially in so far as *suo moto* contempts are concerned. It is thus clear that the powers of the Supreme Court to punish for contempt committed of itself is a power not subject to the provisions of the Act. Therefore, the only requirement is to follow a procedure which is just, fair and in accordance with the rules framed by this Court.

30. As far as the observations made in the case of ***Pallav Sheth*** v. ***Custodian & Ors.***[10] are concerned, this Court in that case was only dealing with the question whether contempt can be initiated after the limitation prescribed in the Contempt of Courts Act has expired and the observations made therein have to be read in that context only. Relevant portion of Para 30 of the ***Pallav Seth's case*** (supra) reads as follows:

> "**30.** There can be no doubt that both this Court and High Courts are Courts of Records and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215 there can be little doubt that such law should not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment ow what may or may not

[10] 2001 (7) SCC 549

> be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution."

The aforesaid finding clearly indicates that the Court held that any law which stultifies or abrogates the power of the Supreme Court under Article 129 of the Constitution or of the High Courts under Article 215 of the Constitution, could not be said to be validly enacted. It however, went on to hold that providing the quantum of punishment or a period of limitation would not mean that the powers of the Court under Article 129 have been stultified or abrogated. We are not going into the correctness or otherwise of this judgment but it is clear that this judgment only dealt with the issue whether the Parliament could fix a period of limitation to initiate the proceedings under the Act. Without commenting one way or the other on ***Pallav Seth's case*** (supra) it is clear that the same has not dealt with the powers of this Court to issue *suo motu* notice of contempt.

31. In view of the above discussion we are clearly of the view that the powers of the Supreme Court to initiate contempt are not in any manner limited by the provisions of the Act. This Court is

vested with the constitutional powers to deal with the contempt. Section 15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated and this procedure provides that there are three ways of initiating a contempt – (i) *suo motu* (ii) on the motion by the Advocate General/Attorney General/Solicitor General and (iii) on the basis of a petition filed by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General. As far as *suo motu* petitions are concerned, there is no requirement for taking consent of anybody because the Court is exercising its inherent powers to issue notice for contempt. This is not only clear from the provisions of the Act but also clear from the Rules laid down by this Court.

Objections as to issuance of notice

32. The alleged contemnors have filed applications for discharge of notices issued to them. Vide our order dated 09.12.2019 we had made it clear that we are dealing with both the applications and the main petition together. The main ground for discharge is

that notice sent was not in accordance with the provisions of the Contempt of Courts Act. This Court, as mentioned above, has its own Rules and Form I lays down the manner in which notice is to be issued. The same is as follows:

"**FORM I**

NOTICE TO A PERSON CHARGED WITH CONTEMPT OF COURT

(See rule 6)

IN THE SUPREME COURT OF INDIA

(Original Jurisdiction)

Whereas your attendance is necessary to answer a charge of Contempt of Court by (here briefly state nature of the contempt).

You are hereby required to appear in person (or by Advocate if the Court has so ordered) before this Court at New Delhi on the ……day of……20…at 10.30 o'clock in the forenoon.

You shall attend the Court in person* on the…… day of ……20……, and shall continue to attend the Court on all days thereafter to which the case against you stands adjourned and until final orders are passed on the charge against you.

Herein fail not.

Dated this …… day of……20….

(SEAL)

REGISTRAR

*To be omitted where the person charged is allowed or ordered to appear by Advocate."

The only requirement of the Rules and the Form is that the brief nature of the contempt is to be stated in the Form. There is no

requirement of giving all the documents with the Form. A perusal of the order whereby contempt proceedings were initiated clearly shows that the grounds for initiating contempt were reflected in the order itself. This order was admittedly sent to the alleged contemnors. Therefore, in our opinion, the notice was strictly in accordance with Form-1, which only requires that the notice should briefly state the nature of the contempt. Once the order was attached to the notice that became part and parcel of the notice itself. In any event, non-supply of any document would only be an irregularity and not an illegality going to the root of the matter. The only documents which are the basis for issuing notice of contempt are the complaints sent by Shri Vijay Kurle and Shri Rashid Khan Pathan which were annexed to the letter of the Bombay Bar Association and Bombay Incorporated Law Society. The letters of the Bombay Bar Association and Bombay Incorporated Law Society along with all the annexures attached to the said letter have been supplied to the alleged contemnors and they were permitted to file additional replies after receiving all these documents. As mentioned above, this Court had clarified that the action against alleged contemnors is being restricted to the allegations made in the two complaints by

Shri Vijay Kurle and Shri Rashid Khan Pathan of which they are admittedly the authors. Since this Court has not relied upon any of the other documents, we do not see how any prejudice has been caused to the alleged contemnors by the non-supply of the documents along with the notice. As per the Rules of this Court, the notice was only to briefly state nature of the contempt and in the order itself reference has been made to the complaints of Shri Vijay Kurle and Shri Rashid Khan Pathan. We accordingly see no merit in the argument of the alleged contemnors that the notice was not in consonance with the Rules of this Court or in consonance with the principles of natural justice or fair procedure. Accordingly, we reject the contention and hold that the notice was a legal and valid notice. Consequently, the applications for discharge of notice are also dismissed.

Whether these proceedings can be termed suo motu?

33. The next contention of the alleged contemnors is that the proceedings in the present case are not *suo motu* proceedings and, therefore, should not have been entertained without the consent of the Attorney General or Solicitor General. The alleged contemnors have placed strong reliance on the judgment of this

Court in the case of ***Biman Basu*** v. ***Kallol Guha Thakurta & Another.***[11] The issue in that case was whether the High Court had issued notice of contempt *suo motu.* In our view, that judgment has no applicability here. The facts of that case were that a contempt petition was filed by the respondents (in the Supreme Court) alleging that the appellant (in the Supreme Court) had made deliberate and wilful derogatory, defamatory and filthy statements against a Judge of the Calcutta High Court. The Division Bench before whom the matter was placed passed the following order:

> "**7.** Heard.
>
> After hearing Mr. Ali, learned counsel moving this petition and perusing the issue of *Bartaman* dated 5-10-2003, we are of the view that a rule be issued. Rule is made returnable on 7-11-2003.
>
> This Court, however, makes it clear that the records of this case may be placed before the Hon'ble the Chief Justice for assignment of this rule for hearing before any Bench that the Hon'ble the Chief Justice may think fit and proper."

The main issue which arose before this Court was whether the contempt proceedings were initiated against the appellant therein *suo motu* by the High Court or by the respondents. Keeping in

[11] (2010) 8 SCC 673

view the language of the order passed in the case it was held that this was not a case where the Court had taken *suo motu* action and therefore relying upon the judgments of this Court in the case of ***P.N. Duda*** (supra) and in ***Bal Thackrey*** v. ***Harish Pimpalkhute and Ors.***[12] it was held that the contempt petition could not have been filed without the consent of the Advocate General. The Court further held that from the record it was apparent that the respondent was always shown as the petitioner in the contempt petition and, therefore, there was nothing which indicated that the proceedings had been initiated *suo motu*.

34. As far as the present case is concerned, the order passed by this Court clearly shows that this Court after taking note of the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society, the annexures attached to this letter and after specifically noting the prayers made in the complaints of Shri Vijay Kurle and Shri Rashid Khan Pathan along with the allegations made in both the complaints was of the view that the allegations levelled against the Members of the Bench were scandalous in nature and therefore, notice was issued to the alleged contemnors and

[12] 2005 (1) SCC 254

against Shri Nedumpara who has since been discharged. The alleged contemnors are basically urging that the order does not use the word "*suo motu*". In our view, that would not make any difference. The relevant portion of the order dated 27.03.2019 reads as follows:

> "Given the two complaints filed, it is clear that scandalous allegations have been made against the members of this Bench. We, therefore, issue notice of contempt to (1) Shri Vijay Kurle; (2) Shri Rashid Khan Pathan; (3) Shri Nilesh Ojha and (4) Shri Mathews Nedumpara to explain as to why they should not be punished for criminal contempt of the Supreme Court of India, returnable within two weeks from today."

When we read the aforesaid order as a whole, it is more than obvious that the Court itself took cognizance of the complaints and the documents thereto as well as the allegations levelled therein.

35. Contempt is basically a matter between the Court and the contemnor. Any person can inform the Court of the contempt committed. If he is to be arrayed as a party then the contempt will be in his name but when the Court does not array him as a party, the Court can on the basis of the information itself take *suo motu* notice of the contempt. In the present case, the Court on the basis of the information itself took *suo motu* note of the

contempt and the matter was then placed before Hon'ble the Chief Justice for listing it before the appropriate Bench. The matter has been listed as a *suo motu* contempt petition right from the beginning and dealt with as such.

36. In ***Biman Basu's case*** (supra) the Court after referring to earlier decisions of this Court held as follows:

> "**25**. It is true that any person may move the High Court for initiating proceedings for criminal contempt by placing the facts constituting the commission of criminal contempt to the notice of the Court. But once those facts are placed before the Court, it becomes a matter between the Court and the contemner. But such person filing an application or petition does not become a complainant or petitioner in the proceeding. His duty ends with the facts being placed before the Court. The Court may in appropriate cases in its discretion require the private party or litigant moving the Court to render assistance during the course of the proceedings..."
>
> xxx xxx xxx
>
> "**28**. In the case in hand, it is evident from the record, the respondents were continued to be shown as the petitioners in the contempt case before the High Court and participated throughout as if they were prosecuting the appellant. There is no order reflecting that the Court having taken note of the information made before it, initiated suo motu proceedings on the basis of such information furnished and required the respondents only to assist the Court till the disposal of the matter. On the contrary, the respondents are shown as the petitioners in the contempt case before the High Court. It is thus clear, it is the respondents who initiated the proceedings and continued the same but without the written consent of the Advocate General as is required in law. The proceedings, therefore, were clearly not maintainable."

37. As pointed out above, in the present case the Bombay Bar Association and the Bombay Incorporated Law Society have never been shown as petitioners. The letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society is not addressed to this Court to initiate contempt proceedings. The letters were addressed to the President of India, the Chief Justice of India and the Chief Justice of the High Court of Bombay and the prayer made therein was that the complaints by the Indian Bar Association and Human Rights Security Council should be rejected. There is no prayer for initiating contempt proceedings. These letters were placed in the office of the Judges of this Court and after taking note of the averments made therein they decided to issue notice of contempt. This is nothing but a *suo motu* action on reading the complaints and the letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society and hence this cannot be termed to be a contempt petition requiring the consent of the Attorney General.

Judge in their own Cause

38. We shall now deal with the arguments of the alleged contemnors that the Bench could not have issued the notice without the matter being placed before it and further that this amounted to them acting as judges in their own cause. A number of judgments have been cited in this regard but we need not refer to all of them. Strong reliance is placed by the alleged contemnors on the judgment of Justice Ranganathan in ***P.N. Duda's case*** (supra) that the practice being followed by the Delhi High Court should be followed in this Court also. We are unable to accept this contention and find no merit in the same. As already observed above, those observations were in the nature of *obiter* and the said observations cannot override the statutory rules.

39. It is true that the Chief Justice is the master of the roster and in normal course a matter can be listed before a Bench only on the basis of orders issued by the Chief Justice. However, here the situation is totally different. The Bench was already dealing with Suo Motu Contempt Petition (Crl.) No. 1 of 2019. The letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society was placed before the

Bench. Along with this letter the complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan were annexed. The Bench took *suo motu* notice of the allegations made in these two complaints and directed that contempt proceedings be initiated. Thereafter, in accordance with the principles of natural justice and also the principle that the Chief Justice is the master of the roster the Bench directed that the matter may be listed before the Chief Justice for placing it before the appropriate Bench. The Chief Justice, though no doubt, master of the roster, is first amongst the equals and every Judge of the Supreme Court is as much part of this Court as Hon'ble the Chief Justice. The Judges of this Court can exercise their powers under Article 129 of the Constitution which is a constitutional power untrammelled by any rules or convention to the contrary. Even so, the Bench in deference to the principle of master of the roster, after taking cognizance of the scandalous allegations made in the complaints of the alleged contemnors and issuing notice to them directed that the matter be placed before Hon'ble the Chief Justice for listing before an appropriate Bench. This, in our view, is the proper procedure. If an article, letter or any writing or even something visual circulating in electronic, print or social media or

in any other forum is brought to the notice of any Judge of this Court which *prima facie* shows that the allegation is contemptuous or scandalises the court then that Judge can definitely issue notice and thereafter place it before Hon'ble the Chief Justice for listing it before an appropriate Bench.

40. The alleged contemnors have relied upon the judgment *in* ***Divine Retreat Centre*** v. ***State of Kerala & Others.***[13] wherein it was observed that individual writing should be placed before the Chief Justice as to the proposed action on such petitions. It was held:

> "**71.** …The individual letters, if any, addressed to a particular judge are required to be placed before the Chief Justice for consideration as to the proposed action on such petitions. Each Judge cannot decide for himself as to what communication should be entertained for setting the law in motion be it in PIL or in any jurisdiction."

At the outset, we may note that these observations were made in the context of public interest litigations and not for contempt petitions and the jurisdiction of this Court to punish for contempt of itself is a very wide jurisdiction. Furthermore, it is not as if the letter were addressed to the Members of the Bench.

[13] (2008) 3 SCC 542

As observed above, the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society was addressed to the President of India, the Chief Justice of this Court, and the Chief Justice of the High Court of Bombay. Presumably, it must have been the Office of the Chief Justice which sent the letters to the Bench. In any event, that will not have any bearing on this case. We are clearly of the view that the Bench was fully justified in taking note of the letter sent by the Bombay Bar Association and the President of the Bombay Incorporated Law Society and the documents annexed thereto which included the complaints sent by Shri Vijay Kurle and Shri Rashid Khan Pathan. After issuing notice the bench directed that the matter be placed before Hon'ble the Chief Justice for placing before the appropriate bench. This is valid and proper procedure and the bench did not act as judge in their own cause. Only notice was issued and thereafter the matter was assigned to this bench.

Source of Information

41. Another argument raised is that the Bench should have disclosed from where it got the information. The alleged

contemnors have cited a number of decisions in this regard. Dealing with the issue of disclosure of source of information in ***C. K. Daphtary's*** case (supra) this Court held as follows:-

> "**79**....The first respondent said that the source of information had not been disclosed. Para 2 of the petition refers to proceedings in this Court and it was not necessary to have disclosed any further source of information. As far as paras 3 and 4 are concerned, the first respondent admits that he approached members of Parliament to file a motion of impeachment against Mr. Justice Shah. Calling this a "campaign" is only to describe in a word his activities. Whether it should be strictly called a campaign is beside the point. The essential facts mentioned in Para 5 are admitted by the first respondent. Therefore the fact that the source of information was not disclosed does not debar us from taking the facts into consideration. The last sentence of Para 5 viz., "The said pamphlet was, as the petitioners believe, sold or offered for sale to the public by Respondent No. 3" is a matter of belief. Para 6 contains inferences and submissions in respect of which there was no question of disclosing the source of information. Para 7 contains extracts from the booklet or the pamphlet which was attached as an annexure. In view of the document having been attached it was not necessary that the source of information regarding Para 7 should have been disclosed. The allegations in Para 9 of the petition are supported by an affidavit of Mr. B.P. Singh, Advocate, who has verified that the contents in his affidavit are true to his knowledge...."

42. We fail to understand how Shri Vijay Kurle can urge that the source of information should be disclosed. His complaint is addressed amongst all others to Judges of this Court which

obviously includes the two Judges who are members of the Bench.

43. In the instant case, the disclosure of the information is made in the order itself where it is clearly recorded that the action has been taken on the basis of the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society to the President of India and the Chief Justice of India in response to the complaints made by the alleged contemnors. The complaints of Shri Vijay Kurle and Shri Rashid Khan Pathan were also attached with the letters and after taking note not only of the letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society but also the prayer clauses of both the complaints sent by the alleged contemnors and the scandalous allegations made in the complaints, the notice was issued. The source of information is the letter sent by the Bombay Bar Association and the President of the Bombay Incorporated Law Society, as is apparent from the order initiating contempt proceedings. Therefore, we find no merit in this plea.

Freedom to criticise

44. Before dealing with these allegations it would be apposite to set out the law with regard to fair criticism of the judgments of the Court. There can be no manner of doubt that every citizen is entitled to criticise the judgments of this Court and Article 19 of the Constitution which guarantees the right of free speech to every citizen of the country must be given the exalted status which it deserves. However, at the same time, we must remember that clause (2) of Article 19 of the Constitution also makes it clear that the right to freedom of speech is subject to existing laws for imposing reasonable restrictions as far as such law relates to contempt of Court. This right of freedom of speech is made subject to the laws of contempt which would not only include Contempt of Courts Act but also the powers of the Supreme Court to punish for contempt under Article 129 and 142(2) of the Constitution. Similar powers are vested with the High Courts.

45. The purpose of having a law of contempt is not to prevent fair criticism but to ensure that the respect and confidence which the people of this country repose in the judicial system is not

undermined in any manner whatsoever. If the confidence of the citizenry in the institution of justice is shattered then not only the judiciary, but democracy itself will be under threat. Contempt powers have been very sparingly used by the Courts and rightly so. The shoulders of this Court are broad enough to withstand criticism, even criticism which may transcend the parameters of fair criticism. However, if the criticism is made in a concerted manner to lower the majesty of the institution of the Courts and with a view to tarnish the image, not only of the Judges, but also the Courts, then if such attempts are not checked the results will be disastrous. Section 5 of the Contempt of Courts Act itself provides that publishing of any fair comment on the merits of any case which has been heard and finally decided does not amount to contempt.

46. In ***Dr. D.C. Saxena*** v. ***Hon'ble the Chief Justice of India***[14] after referring to a large number of judgments to which we need not refer, this Court held that though freedom of speech is an essential part of democracy, it is equally necessary for society to regulate such freedom of speech or expression in terms of the exceptions to Article 19 of the Constitution. *Bonafide* criticism of

[14] (1996) 5 SCC 216

any institution including the judiciary is always welcome. Healthy and constructive criticism of the judgments cannot amount to contempt of Court. However, if the allegations levelled go beyond the ambit of criticism and scandalise the Court then there can be no manner of doubt that such utterances or written words would amount to contempt of Court. This Court ***In Re: Arundhati Roy***[15] while dealing with Section 2 of the Act held as follows:

> "**28**. As already held, fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself…"

47. The alleged contemnors have relied on certain observations made in the case of ***P.N. Duda*** (supra). That was a case where a former Judge of the High Court, who was Minister for Law, Justice and Company Affairs in the Central Government,

[15] (2002) 3 SCC 343

criticised the functioning of the Supreme Court and one of the principal criticisms of this Court was that it was comprised of Judges belonging to the upper echelons of society and therefore, the Court was more sympathetic to industrialists and representatives of elitist culture etc. The Court while discharging the notice held that the speech of the Minister must be read in proper perspective. However, this Court observed that the Minister would have been better advised to avoid certain portions of the speech and held that the speech did not amount to interference with the administration of justice or bringing the administration of justice into disrepute. Dealing with the aforesaid observations in ***Dr. D.C. Saxena's case*** (supra) this Court held as follows:

> "**34.** In *P.N. Duda* v. *P. Shiv Shankar* [(1988) 3 SCC 167 : 1988 SCC (Cri) 589 : AIR 1988 SC 1208] this Court had held that administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e., to defend and uphold the Constitution and the laws without fear and favour. Thus the judges must do, in the light given to them to determine, what is right. Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised. Motives to the judges need not be attributed. It brings the

> administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market-place of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and judges to punish a person for an alleged contempt by taking notice of the contempt suo motu or at the behest of the litigant or a lawyer. In that case the speech of the Law Minister in a Seminar organised by the Bar Council and the offending portions therein were held not contemptuous and punishable under the Act. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as a contempt of court."

48. There can be no manner of doubt that any citizen of the country can criticise the judgments delivered by any Court including this Court. However, no party has the right to attribute motives to a Judge or to question the *bona fides* of the Judge or to raise questions with regard to the competence of the Judge. Judges are part and parcel of the justice delivery system. By and large Judges are reluctant to take action under contempt laws when a personal attack is made on them. However, when there is a concerted attack by members of the Bar who profess to be the members of an organization having a large following, then the Court cannot shut its eyes to the slanderous and scandalous

allegations made. If such allegations which have not only been communicated to the President of India and the Chief Justice of India, but also widely circulated on social media are permitted to remain unchallenged then the public will lose faith not only in those particular Judges but also in the entire justice delivery system and this definitely affects the majesty of law.

49. Though the alleged contemnors claim that they are not expressing any solidarity with Shri Mathews Nedumpara nor do they have anything personal against Justice R.F. Nariman, the entire reading of the complaints shows a totally different picture. When we read both the complaints together it is obvious that the alleged contemnors are fighting a proxy battle for Shri Nedumpara. They are raking up certain issues which could have been raised only by Shri Nedumpara and not by the alleged contemnors.

50. Both the complaints are *ex-facie* contemptuous. Highly scurrilous and scandalous allegations have been levelled against the two judges of this Court. In our view, the entire contents of the complaints amount to contempt. Since both the complaints run into more than 250 pages it is not possible to quote the

entire complaints and we are dealing with some of the more scandalous allegations levelled in the said complaints. We have grouped certain allegations together.

1st Complaint dt.20.03.2019 by Shri Vijay Kurle

51. On pages 49-51 of the 1st complaint, the following allegations have been made:

> "**III) CHARGE # :- PERSONAL BIAS PROCEEDING VITIATED.**
>
> The another illegality is regarding conflict of interest & violation of law laid down by Hon'ble Supreme Court in the case of **State of Punjab Vs. Davinder Pal Singh Bhullar & Ors. (2011) 14 SCC 770.**
>
> That since last 2 years, Advocate Nedumpatra is posting articles against Advocate Fali S. Nariman. He also filed Writ Petition before Delhi High Court being W.P. (C) No.2019 of 2019, where he raised the issue of Advocate Fali Nariman practising in Supreme Court where his son Rohington Fali Nariman is a Judge.
>
> Under these circumstances having direct conflict of interest and having prejudice with Advocate Nedumpara, Justice Rohington Fali Nariman was disqualified to hear the case and he should have recused himself from the cases where Advocate Nedumpara is appearing.
>
> xxx xxx xxx
>
> But instead of maintaining dignity & sobriety of the Supreme Court the Respondent Judge Rohington Fali Nariman heard the case and brought the dignity & majesty of Hon'ble Supreme Court into disrepute."

The alleged contemnors have alleged that Shri Nedumpara was posting articles against Shri F. S. Nariman, a senior advocate

who happens to be the father of Justice R. F. Nariman. It is alleged that therefore there was a direct conflict of interest and Justice R.F Nariman was disqualified from hearing the case involving Shri Nedumpara. We fail to see how there is any conflict of interest. Shri F.S. Nariman, Senior Advocate is a doyen of the Indian Bar and a legal luminary in his own right. Justice R.F. Nariman is his son and a Judge of this Court. That however would not create any conflict of interest between Justice Nariman and Shri Nedumpara because Shri F.S. Nariman and Justice R. F. Nariman are two different entities. The purported article has not been placed on record. In any event, it was Shri Nedumpara who could have raised this defence before the Bench and he, in fact, has filed an affidavit of apology accepting that he has committed contempt. The alleged contemnors have unnecessarily and without any reason questioned the impartiality of Judges of this Court.

52. As far as the allegations made at Page 55 of the first complaint are concerned, we find that the Shri Vijay Kurle could have said what he wanted to say in the first paragraph quoted hereinabove but what is totally unacceptable is the second part of the paragraph where Shri Vijay Kurle assumes the role of a judge

and says that "*The only irresistible conclusion that can be drawn is that there were no malafides on the part of Advocate Nedumpara and if it were put in notice calling explanation in open Court then would have exposed Justice Nariman in front of advocates and public and that's why a very strange and different method is adopted by Justice Nariman by pronouncing conviction of advocate*." This shows that he is fighting a proxy battle for Mr. Nedumpara. What is even more objectionable is the language used thereafter that if Shri Nedumpara was put to notice then it would have exposed Justice Nariman in front of advocates and public. This allegation also is a scandalous allegation. We are not looking into the merits of the decisions. We cannot comment on the merits of the decisions of the Bench headed by Justice Nariman but we must note that after holding Shri Nedumpara guilty he was heard on the point of sentence and thereafter he filed an affidavit which reads as follows:

"AFFIDAVIT

> I, Mathews J. Nedumpara, Advocate, aged 60 years, Indian Inhabitant, residing at Harbour Heights, "W" Wing, 12-F, 12th Floor, Sassoon Docks, Colaba, Mumbai-400 005, now in Delhi, do hereby swear and state as follows:-

1. A Bench of this Hon'ble Court comprising Hon'ble Shri Justice Rohinton F. Nariman and Hon'ble Shri Justice Vineet Saran, by judgment and order dated 12th March, 2019, was pleased to hold me guilty for contempt in the face of the Court and list the case for hearing on the question of punishment.

2. I happened to mention the name of Shri Fali S. Nariman to buttress my proposition that even legendary Shri Fali Nariman is of the view that the seniority of a lawyer should be reckoned from the date of his enrolment and nothing else. However, I was misunderstood. I along with some office bearers of the National Lawyers' Campaign for Judicial Transparency and Reforms have instituted Writ Petition No.2199/2019 in the High Court of Delhi for a declaration that the Explanation to Rule 6 of the Bar Council of India Rules is void inasmuch as it explains that the word "Court" does not mean the entire Court, but the particular Court in which the relative of a lawyer is a Judge. I instituted the said petition only to raise the concern many lawyers share with me regarding the immediate relatives practising in the very same Court where their relative is a Judge. In retrospection I realize that it was an error on my part to have arrayed Shri Fali Nariman as a Respondent to the said petition. I regret the same; no words can sufficiently explain my contrition and regret. I also in retrospection realize that I have erred even during the conduct of the above case before this Hon'ble Court and I probably would not have kept upto what is expected of me as a lawyer in the Bar for 35 years and crossed the age of 60. I feel sorry, express my contrition and tender my unconditional apology, while maintaining that some of the accusations levelled against me in the judgment dated 12th March, 2019 are absolutely wrong, which are, ex facie, black and white, and as incontrovertible as day and night.

3. The apology tendered by me hereinabove be accepted and I may be purged of the contempt.

Solemnly sworn at Delhi Sd/-
this 27th day of March, 2019 (Mathews J. Nedumpara)"

53. A close perusal of the affidavit filed by Mr. Nedumpara shows that in retrospect Shri Nedumpara felt that it was an error

on his part to have arrayed Shri F.S. Nariman as respondent in the writ petition filed by him in the Delhi High Court. He states that he regrets the same and no words can sufficiently explain his contrition and regret. He also states that he realises that he had erred during the conduct of the case before this Court. The two complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan were sent even before Shri Nedumpara had been heard on the issue of sentence. What the complainants alleged in the complaints is disproved from the apology of Shri Nedumpara submitted to the Court. This unqualified apology of Shri Nedumpara was accepted by the Court. In this background we are unable to find any plausible explanation for Shri Vijay Kurle to have used the words "*exposed Justice Nariman in front of advocates and public*". No lawyer can threaten to expose a judge in front of the advocates and public on the basis of some vague and reckless allegations. This language is highly disrespectful and scandalises the Court and, therefore, amounts to committing contempt of the Court.

54. On Page 60 of the first complaint Shri Vijay Kurle has stated as follows:

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

55. What has been published in Bar & Bench has not been placed on record. Shri Vijay Kurle has filed a large number of documents but has not stated on what basis he has alleged that Shri Nedumpara was threatened by Justice Nariman. Admonishment by a Judge cannot be said to be a threat. Since the alleged contemnors have not placed any material on record to show how Justice Nariman threatened Shri Nedumpara, this itself amounts to making a false accusation against a Judge. Shri Nedumpara in his affidavit has not made any reference to any threats given to him by any Member of the Bench. This clearly shows that the allegation made by Shri Vijay Kurle is false.

56. It is alleged by Shri Vijay Kurle, that Justice Nariman had "*misused his power to use material outside the court record and received by personal knowledge without disclosing its source*" and therefore, his action was against earlier judgments of this Court and amounted to contempt of this Court. Various judgments have been cited but most of them are not at all relevant to the

case in hand. Furthermore, even if he wanted to criticise the judgment on this ground, Shri Vijay Kurle could have used temperate language but what has been said at Page 69 of the first letter is highly contemptuous. The said allegations read as follows:

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

57. A judge may be right or wrong and a party may criticise the judgment on any ground. However, in the allegations quoted hereinabove various serious charges of *malafide* have been levelled against a sitting Judge of this Court. Further, it is stated that material relied upon by Justice Nariman was supplied by Justice Kathawala of Bombay High Court, who is close to Justice Nariman and also happens to be a rival of Shri Nedumpara. Shri Vijay Kurle has failed to place any material on record to show that the material relied upon by Justice Nariman was supplied by Justice Kathawala. In fact, a perusal of the material shows that the materials relied upon were a matter of public record and were part of orders passed in cases that Shri Nedumpara appeared in

or part of petitions filed by Shri Nedumpara himself. There is not an iota of evidence on record to show that Justice Kathawala is close to Justice Nariman. We also fail to understand on what basis the Shri Vijay Kurle has stated that Justice Kathawala is a rival of Shri Nedumpara. There is no question of rivalry between the Bar and the Bench or between a Judge and a lawyer. Justice Nariman in his judgment has relied upon the orders passed by the Bombay High Court in various cases. These are all public documents and we fail to understand how the alleged contemnors assumed that these documents were supplied by Justice Kathawala.

58. Some allegations made on Pages 2-3 of the first complaint are as follows:

> "**CHARGE 2 #** Lack of basic knowledge to interpret the ratio decidendi of any case law.
>
> xxx xxx xxx
>
> **CHARGE 3 #** Don't know the basic law of criminal jurisprudence and basic law of evidence and acted in denial of whole basis of indian constitutional."

59. Similarly, the allegations made at Pages 71-72 of the first complaint are as follows:

> "Hence Justice Rohington Fali Nariman by placing reliance on the Notice in Contempt proceeding, and making it as a basis to draw conclusion of conduct of an advocate knowing fully well that the said matter is still subjudice before sub-ordinate court, have violated Fundamental rights of Advocate Nedumpara and acted against the Constitutional mandate and thereby breached the oath taken as a Supreme Court Judge and is unbecoming of a Judicial officers.
>
> Therefore reliance placed by Justice Rohington Fali Nariman on show cause Contempt notice is illegal and shows his lack of knowledge.
>
> Hence the one-sided blanket reliance by some illiterate Judges having half-backed knowledge of law will broke the fabric of cardinal principles of criminal and civil jurisprudence.
>
> **VI) CONSPIRACY TO DISTROY IMAGE AND KEEP ADVOCATE AWAY FROM HIS CLIENTS CAUSING SERIOUS PREJUDICES TO THEIR SUBJUDICE CAUSE EX-FACE PROVED:**
>
> In the present case Justice Nariman is being aggrieved by Petitions filed by Nedumpara against his father Fali Nariman and also against his close Justice Kathawalla and therefore had taken reference of different irrelevant cases and inadmissible evidences. The object of the Justice Nariman as stated eatlier, is not really to cleanse and purify the legal profession, or to protect dignity and majesty of justice but to silence the advocates who appear for his opponents, so that litigation could be won on a different turf."

As far as these allegations are concerned, the Bench was only referring to various cases where action had been initiated against Shri Nedumpara and noted that he is in a "*habit of terrorising Tribunal members and using intemperate language to achieve his ends before several Judges of the Bombay High Court*". Shri

Nedumpara filed a discharge application in these proceedings stating that he has nothing to do with these complaints. Therefore, how can the alleged contemnors now raise issues which were never raised by Shri Nedumpara. On Page 71 of the first complaint it has been alleged that by placing reliance on the notice issued in contempt proceedings the learned Judge has violated fundamental rights of Shri Nedumpara and therefore breached his oath taken as a Judge of this Court.

60. The allegations made at Page 72 of the first letter are highly derogatory and scandalous. The Bench placed reliance on a show cause notice in reference to Shri Nedumpara to show that the "*advocate has embarked on a course of conduct which is calculated to defeat the administration of justice in this country*". This in no way reflects lack of knowledge. The language used in the latter portion quoted hereinabove indicating that Justice Nariman is an illiterate Judge having half baked knowledge of law is a scandalous and scurrilous allegation which definitely amounts to contempt of Court.

61. In Charge VI at Page 72, Shri Vijay Kurle has alleged that Justice Nariman wanted to keep advocates away from his Court.

62. The alleged contemnors by saying that the object of Justice Nariman while taking action against Shri Nedumpara was "*not really to cleanse or purify legal profession or to protect the dignity and majesty of justice but to silence the advocates who appear for his opponents, so that the litigation could be won on a different turf*" have made allegations that are scandalous and challenge the impartiality of Judges of this Court.

63. Again, in Para 79 for the first letter, the alleged contemnors have stated as follows:

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

These allegations that Justice Nariman is wanting to create an atmosphere of prejudice against some clients is a false allegation for which no supporting material has been given by the alleged contemnors in their reply. We do not even understand how the order passed in Writ Petition (C) No. 191 of 2019 or in Suo Motu Contempt Petition No. 1 of 2019 would lead to the conclusion that some clients would be prejudiced as no advocate would

accept their brief. There is no basis for this absolutely false allegation which also amounts to contempt of Court.

64. On Page 81 of the first complaint Shri Vijay Kurle has stated as follows:

> "It is settled law that person having half backed knowledge of law should not be allowed to participate in court proceedings [**Vide:N. Natarajan Vs. B.K. Subba Rao AIR 2003 SC 541**]
>
> Then how the person having half backed knowledge will be allowed to hold the post of Judges in the of the Highest Court of Country i.e. Supreme Court.
>
> This Country had seen the activities of Justice Karnan, where he had passed sentence of punishment against the Judges of Supreme Court. In the present case, the advocate, who is also officer of the Court is being punished by Justice Rohington Nariman & Justice Vineet Saran (both are Justice Karnan in making) in an arbitrary manner at their whim & fancies, rather to satisfy their personal grudges and settle the scores of people who are interested to see Adv. Nedumpara is out of his mission of Transparency. If this is not checked in time then this evil get propagated as tolerance will boost their confidence."

These allegations on the face of it are highly contemptuous. Shri Vijay Kurle is saying that both the Judges who comprised the Bench have half baked knowledge of law and they could not have been allowed to hold the post of Judges in the Supreme Court of India. The language used is highly intemperate and scandalises the Court and, therefore, amounts to contempt.

65. The next allegations on Pages 86-87 are as follows:

> "Hence the Observation by Justice Rohington Fali Nariman are Unconstitutional and is Contempt of Supreme Court and also reflects their poor level of understanding and lack of basic knowledge of law.
>
> As per section 52 of Indian Penal Code Justice Rohington Fali Nariman is not entitled for any protection of good faith.
>
> **Section 52** reads as under;
>
> ***"Good faith.- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."***
>
> **33.** Furthermore in para 8 of the Judgment dated 12th March, 2019 Justice Rohington Fali Nariman as he felt aggrieved of case against his close Judge of Bombay High Court (Justice S.J. Kathawala) had observed that the prayers of W.P.(L) No.1180 of 2018 are contemptuous. This is again travesty of Law on two counts:
>
> **(i)** Said Petition was decided by Division Bench of High Court vide order dated 26.07.2018 and at that time High Court did not find it contemptuous then how Justice Rohington Fali Nariman after a period of 8 months can not comment it to be contemptuous.
> **(ii)** Secondly the prayers were regarding initiation of Criminal proceeding against Justice S.J. Kathawalla who acted against various Supreme Court Judgments and making such prayers is fundamental right of the victim it cannot be termed as Contempt."

66. Further on Page 124 of the first complaint it is alleged as follows:

> "Hence it is clear that Justice Rohington Fali Nariman is a person who neither knows the law nor knows its

application i.e. neither Command over shastras nor put it into practice."

The alleged contemnors could have criticised the correctness of the judgment, but the allegation that observations of Justice Nariman amount to contempt of Court or show his poor level of understanding and lack of basic understanding of law is not language which a lawyer is expected to use against a sitting Judge of the Supreme Court. Again, in this very quoted portion a totally unfounded allegation has been made that Justice Nariman was aggrieved since allegations had been levelled against his close Judge of the Bombay High Court (Justice S.J. Kathawala). The conclusion drawn by Shri Vijay Kurle is not only incorrect but totally false and appears to have been done with the *mala fide* intention of harming the reputation of Justice Nariman and raising questions with regard to his impartiality or ability. In fact, Writ Petition No.(L)-1180 of 2018 was filed by Shri Nedumpara before the Bombay High Court praying that criminal action under Contempt of Courts Act be initiated against Justice Kathawala. This writ petition was dismissed by the Bombay High Court. The Bombay High Court did not decide whether Shri Nedumpara had committed contempt of Court or not. But the allegations made by Shri Nedumpara were not accepted. This

means that the Bombay High Court did not find any merit in the petition of Shri Nedumpara and dismissed the same. Nothing has been placed on record to show that this judgment is under challenge before this Court. The Bombay High Court was not dealing with the contempt proceedings. The Bench has only relied upon the judgment to support his observation that Shri Nedumpara was in the habit of making such accusations against sitting Judges of the Court.

67. We also fail to understand how Shri Vijay Kurle who is a lawyer claims that it is his fundamental right to initiate criminal proceedings against Judges. Some members of the Bar cannot hold the judiciary to ransom by threatening Judges of initiating criminal action. If this trend is not dealt with firmly then any party against whom a case is decided will start filing criminal cases against judges.

68. The relationship between the Bench and the Bar should be a cordial relationship with mutual respect for each other. Lawyers who try to browbeat or threaten judges have to be dealt with firmly and there can be no ill-founded sympathy for such

lawyers. Such lawyers do nothing to help the legal fraternity much less the Bar.

69. Shri Vijay Kurle has further made the following observations in Para 35 on page 103 of the first complaint:

> "**35.** In view of the above settled law it is clear that Justice Rohington Fali Nariman is not having basic knowledge of law or he has a tendency to lower down the authority of Hon'ble Supreme Court by treating him above law."

Again, these allegations are not only totally baseless but the allegations themselves lower the majesty of this Court.

70. Shri Vijay Kurle in Para 36 on page 112 of his letter has stated as follows:

> "**36.** Worst part is that Justice Justice Rohington Fali Nariman in para 8 of his order tried give a certificate to Justice Kathawalla that he is being attacked for lawful order. In fact the petition was filed by advocate for observations against an advocate without issuing any notice to him which is are prima-facie illegal and against the settled legal principle by various Supreme Judgments and more particularly in **Sarwan Singh Lamba's Case (Supra).** Said matter being subjudice should not be commented by Justice Rohington Fali Nariman.
>
> So the Criminal minded Judges by twisting material facts, by misleading legal position and by misinterpreting the settled law of Hon'ble Supreme Court are trying to make the Court as their personal property. **Absolute Power corrupts Absolutely.** And such type of Judge are running syndicate to extort money for giving favourable orders to the underserving people."

We are constrained to observe that Shri Vijay Kurle has totally misread and misquoted the order of Justice R.F. Nariman. In Para 8 of the said order in Writ Petition (C) No. 191 of 2019 after referring to the order passed by a learned Single Judge of the Bombay High Court it is recorded that Shri Nedumpara filed Writ Petition No.L-1180 of 2018 in his own name against the learned Single Judge of the Bombay High Court who has passed the order and the learned Single Judge was arrayed as the sole respondent in the said writ petition. The Court records that the petition was dismissed as not maintainable. Therefore, the allegations made, that the matter was *subjudice* are totally false and misleading. The Court has noted that the matter has been finally decided and no material has been placed on record to show that this judgment has been challenged.

71. What is even more shocking is the next paragraph where it is stated that criminal minded judges by twisting facts and by misleading legal position and misinterpreting the laws of this Court are trying to make the Court as their personal property. In the context in which these allegations have been made it is apparent that though not named, these allegations are against the Judges who constitute the Bench which decided Writ Petition

(C) 191 of 2019. No discussion is required to hold that such allegations are scandalous and amount to contempt of Court. Shri Vijay Kurle has the temerity and gall to make the accusations against 2 sitting Judges of this Court alleging that they are criminal minded Judges, that they have twisted material facts and have misinterpreted the settled laws of this Court. We fail to understand what is meant by 'misleading legal position'. The allegations that these Judges are trying to make the Court their personal property and are running a syndicate and passing favourable orders to undeserving people to extort money are scandalous and scurrilous and no great discussion is required to hold that they amount to contempt of Court.

72. In Para 37, on page 113 of the first complaint, Shri Vijay Kurle alleges that Shri Nedumpara wanted prosecution of a learned Judge of the Bombay High Court and also wanted compensation for violation of his fundamental rights. That petition has been dismissed by the Bombay High Court. As far as we know that judgment has not been challenged which clearly indicates that the Bombay High Court did not accept the contention of Shri Nedumpara that the judge was liable to be prosecuted or that Shri Nedumpara was entitled to any

compensation. It is surprising that thereafter the alleged contemnors made the following submissions on page 114 of the first letter:

> "So observation of Justice Justice Rohington Fali Nariman are prima-facie seems to be the outcome of his frustrated mind or done to help Justice Kathawala of Bombay High Court whose orders are set aside by Higher Benches for his misuse of power with strict & harsh observation.**[Trident Steel and Engineering Co. Vs. Vallourec 2018 SCC OnLine Bom 4060].** The said Justice Kathawala who is caught in sting opertation & his corrupt practices are under scrutiny before **(Five – Judge Bench of Hon'ble Bombay High Court).** Hence it is clear that Justice Rohington Fali Nariman tried to save an accused Judge and in both the eventuality he is unfit to work as a Judge of a Highest Court and is liable to be removed forthwith by using powers under **"In-House-Procedure'** as done in Justice Karnan's case."

Again, the allegations made are totally scandalous. Alleging that a judge has passed an order as an outcome of his frustrated mind is, in our opinion, a highly scandalous allegation. The other allegation that the order was passed with a view to help Justice Kathawala is equally scandalous. These allegations also amount to contempt.

73. On Page 93 of the first letter the following allegations have been made:

> "So Division Bench of Hon'ble Bombay High Court which decided the Writ Petition of Mr. Nedumpara did not find it as Contempt. Full Bench of Supreme Court did not find

it as Contempt but after 8 months Justice Rohington Fali Nariman call it as contemptuous it not only being judicial impropriety to be abide by views of larger bench but even by brother Judges but also proves ulterior motive of Justice Nariman.

The Petition for prosecution of Judge can never be contempt if not being frivolous. Rather it is duty of the advocate to make complaint of corrupt Judges."

74. Further on Page 134 of the first letter the alleged contemnors have made the following allegations:

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

XOXO) Under these circumstances since Justice Nariman is Judge of a Supreme Court, he does not deserve any leniency..."

75. On Page 135 of the first letter, Shri Vijay Kurle has made the following allegations:

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

But Justice Rohington Fali Nariman had acted against the procedure without any explanation as to what is the urgency to not to follow the procedures mandated under the law. This itself is a ground to infer that he have been actuated by an oblique motive or corrupt practice.

[Vide :- R.R. Parekh Vs. High Court of Gujarat (2016) 14 SCC 1]"

The allegations that "*this itself is a ground to infer that he have been actuated by an oblique motive or corrupt practice*" is a totally baseless and unfounded allegation which scandalises this Court and lowers the majesty of this Court. When any person whether he be a party to the proceedings or not criticizes a judgment of a court he could do so as long as that party does not level allegations of malafide, ulterior motives, extraneous reasons etc. In the portions quoted above Shri Vijay Kurle has levelled allegations challenging the impartiality of Judges of this Court and he has also stated that the orders were passed with malafide intention and ulterior purpose. These allegations amount to scandalising the court and therefore there can be no manner of doubt that Shri Vijay Kurle is guilty of having committed contempt of this Court.

76. On Pages 150-154 of the first complaint Shri Vijay Kurle has stated as follows:

"**XIII) #CHARGE# PASSING ORDER WITH ULTERIOR MOTIVE TO SAVE ACCUSED JUDGE S.J.KATHWALA AGAINST WHOM "INDIAN BAR ASSOCIATION" GOT DEEMED SANCTION MAKES JUSTICE ROHINGTON FALI NARIMAN LIABLE FOR**

PROSECUTION UNDER SECTION 218 OF INDIAN PENAL CODE.

xxx xxx xxx

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

XIV) CHARGE # INABILITY TO INTERPRET THE SUPREME COURT JUDGMENT:

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

The allegation that Justice Nariman acted with ulterior motive to save his friend Justice Kathawala for the reasons stated above is a totally scandalous and contemptuous allegation. The next allegation is that Justice Nariman acted in violation of a judgment of this Court in ***Sukhdev Singh Sodhi's case*** (supra). Without commenting on the correctness or otherwise of the allegations, the following observations under this heading are totally contemptuous:

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

....

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

The language used by Shri Vijay Kurle that Justice Nariman does not even know the basic law and, therefore, is incapacitated due to his poor level of understanding to be removed forthwith from the judiciary is highly intemperate language which amounts to gross contempt of Court.

77. At Page133 of the first complaint it is alleged as follows:

> "In **Kapol Co-op. Bank Ltd. Vs. State of Maharashtra 2005 Cri.L.J.765** it is ruled that the term **"Abuse of Process of Court"** means act of bringing frivolous, vexations and oppressive proceedings.
>
> The same is the act of Justice Rohington Fali Nariman by bringing Contempt case against Advocate Nedumpara."

78. Again, at Pages 167-168 of the first complaint following has been observed:

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

CHARGE # BREACH OF OATH TAKEN AS A HON'BLE SUPREME COURT JUDGE BY ACTING PARTIALLY, WITH ILL-WILL AND NOT UPHOLDING **THE CONSTITUTION AND LAW.**"

For the reasons stated above the allegation that 2 Judges consider this Court as their personal property is a scandalous allegation and amounts to contempt.

79. In the complaint filed by Shri Vijay Kurle in Para 49 on pages 171-173, there is a reference to the complaint filed by Shri Rashid Khan Pathan and it is stated that the other complaint filed by Human Rights NGO is self-explanatory. The allegations read as follows:

> "That the another complaint by Human Right (N.G.O.) in other matter against Justice Rohington Fali Nariman & Justice Vineet Saran, is self-explanatory about incapacity, poor level of understanding, tendency to undermine the authority of Supreme Court and bringing the rule of law into disrepute and committing fraud on power to grant unwarranted relief to the undeserving accused and denying relief to the deserving victim woman.
>
> xxx xxx xxx
>
> That accused Justice Rohington Fali Nariman & Vineet Saran in Criminal Appeal No.387 of 2019 **[Aarish Asgar Qureshi vs. Fareed Ahmed Qureshi 2019 SCC OnLine SC 306]** had with malafide intention to help accused had observed that police report have no evidentiary value for directing enquiry against the accused husband on the application given by wife.
>
> xxx xxx xxx

> But accused Judges in a hurry to help accused entertained the appeal against the order directing the compliant and passed order in utter disregard and defiance of law laid down by Hon'ble Supreme Court and also against the statutory provisions of Section 341 of Criminal Procedure Code and acted unconstitutionally."

Not only are these allegations scandalous and contemptuous and undermine the authority of this Court, but this clearly shows that the Shri Vijay Kurle was aware of the complaint filed by Shri Rashid Khan Pathan. This clearly indicates that Shri Rashid Khan Pathan had not only sent the complaint to the Hon'ble President of India and the Chief Justice of India but had communicated the same to others including Shri Vijay Kurle and therefore, this complaint was available in the public domain.

2nd Complaint dt.19.03.2019 by Shri Rashid Khan Pathan

80. We now take up the complaint filed by Shri Rashid Khan Pathan, who is said to be the National Secretary of the Human Right Security Council (N.G.O). The basis of the complaint is an order passed by two Judges of this Court (Justice R. F. Nariman and Justice Vineet Saran) in Criminal Appeal No.387 of 2019. In paragraphs 4 and 6 of this complaint, the complainant made the following allegations:-

Pgs. 4-5

"**4.** The present Complaint is regarding the misuse of power of Justice Rohinton Fali Nariman & Justice Vineet Saran while quashing the prosecution ordered by Hon'ble Bombay High Court against accused Under Section 340 of Criminal Procedure Code."

xxx xxx xxx

6. The reasoned and lawful order of High Court was set aside by accused Judge for extraneous consideration and in contempt of Constitution Bench judgment of Hon'ble Supreme Court."

81. Criminal Appeal No. 387 of 2019 was filed by a person who was aggrieved by the order whereby the High Court had directed that action be taken against him under Section 340 of the Cr.PC. Vide judgment dt. 26.02.2019 in ***Aarish Asgar Qureshi*** v. ***Fareed Ahmed Qureshi and Anr.***[16] this court set aside the said order. In that case the respondent before this Court was represented by Shri Nilesh Ojha, alleged contemnor no.3 herein. It was virtually a private case between two parties having no element of public interest and therefore we do not understand as to why Shri Rashid Khan Pathan was so upset by this order that he filed a complaint in his capacity as National Secretary of the Human Rights Security Council.

[16] 2019 (4) SCALE 606

82. Even assuming that Shri Rashid Khan Pathan, could criticise the judgment he should have stopped there. But in this case, Shri Rashid Khan Pathan did not stop at criticising the judgment. He has unambiguously attributed motives to the Judges by using phrases such as "*judges deliberately ignored the settled legal position*" or "*deliberately and conveniently ignored*" reference to certain observations, and "*deliberately misinterpreted*" certain judgments cited before the Court. Further, it is alleged that the fact that the Bench acted in defiance of the Constitution Bench judgment of the Court is sufficient to prove the *mala fide* of the accused Judges. First of all, it is not for Shri Rashid Khan Pathan to decide whether the judgment is correct or not. There is a legal procedure established whereby a review petition or a curative petition could be filed. We cannot go into the merits of the judgment but even assuming that the judgment is not in consonance with the judgment of the Constitution Bench then also that is no ground to allege *mala fide* against the Judges comprising the Bench. He has also made allegations that the Judges have breached the oath of office and acted in a biased manner.

83. One of the reasons given by Shri Rashid Khan Pathan for filing the complaint is that he had filed a complaint against Shri Fali S. Nariman, Senior Advocate of this Court, alleging anti-national activities being committed by Shri Fali S. Nariman. In that case, Shri Rashid Khan Pathan was represented by Shri Nilesh Ojha, alleged contemnor no.3. On this ground, it is averred that Justice Nariman should not have heard the matter. The complaint in question is stated to have been filed on 19.02.2019. No material has been placed on record to show whether notice, if any, was issued on this complaint. The judgment in question was delivered on 26.02.2019 and there was no request by Shri Nilesh Ojha that any of the Judges should recuse from the hearing of the matter. There is no material to show that the factum of this complaint was brought to the notice of the Hon'ble Bench. Even if that had been brought to the notice, we find that this should not be a sufficient ground for recusal. If Judges start recusing on any such frivolous grounds, it would lead to forum hunting. If a litigant wants to avoid any Judge, he can easily ensure that a complaint, frivolous or otherwise, is filed against a Judge or a member of his family and then ask for recusal of the Judge. We cannot permit the

judiciary to be held ransom at the hands of such litigants or lawyers.

84. There are other parts of the complaint by Shri Rashid Khan Pathan that we would like to highlight:-

> Pg.16
> "11) xxx
> So the observations of Justice Rohinton Fali Nariman & Justice Vineet Sareen are not only per-incuriam but Contempt of law laid down by Full Bench of Hon'ble Supreme Court and also reflects their lack of basic knowledge."
>
> Pg. 20
> "But while passing the final order, the reference to said observations were deliberately and conveniently ignored by the accused Judges more particularly by Justice Rohinton Fali Nariman."
>
> Pg. 33
> "This judgement was relied and referred by respondent Judges in their judgment dated 26th February, 2019 but deliberately misinterpreted it with a view to set aside the lawful order thereby giving undue advantage to accused."
>
> Pg. 34
> "But the Respondent Judges deliberately ignored the settled legal position by Supreme Court and various High Courts."
>
> Pg. 39
> "Both these judgments were relied by Counsel for wife and are in the compilation filed in the Supreme Court. These judgments are also referred by Ld. Sessions Judge in its order dated 12th December, 2018. Said order is annexed with Appeal before Hon'ble Supreme Court at Page No.172- 194 and abovesaid two judgments are referred in para 21 (**Page No.** 185 of S.L.P.) & Para 22 (**Page No.** 186 of S.L.P.)

But Respondent Judges deliberately ignored the said legal position settled by Hon'ble Supreme Court and Therefore the said order dated 26th February, 2019 is not only per-incurriam but Contempt of Hon'ble Supreme Court."

Pg. 43
"But the Respondent Judges deliberately ignored to reproduce these paras in their order with ulterior motive to help the accused.

Moreover how the said case law is either applicable or not applicable is not discussed in the judgment except referring it in a cursory manner."

Pg. 52
"But Justice Rohinton Fali Nariman acted in utter disregard and difiance of Constitution Bench's judgment even if it was brought to his notice.

This is sufficient to prove the malafides of the accused Judges i.e. Justice Rohinton Fali Nariman & Justice Vineet Saran."

Pg. 62
"But here the Respondent Judges breach the oath taken as a Judge by acting contrary to law and in a biased manner and therefore they forfeited their right to sit on the chair of highest Court of the Country."

Pg. 71
"**38). <u>POOR LEVEL OF UNDERSTANDING OF A JUDGE:-</u>**

xxx xxx xxx"

Pg. 77
"**45).** Under these circumstance Justice Rohington Fali Nariman having knowledge of personal enmity between his father and Adv. Nilesh Ojha, instead of recusing himself, heard the case represented by Adv. Nilesh Ojha and out of his earlier prejudices passed the illegal order by willful disregard and defiance of the various law laid down by the Hon'ble Supreme Court."

85. The allegations in the portions which have been quoted above allege that the Bench passed orders in wilful disobedience of law and committed contempt of court, that the judges deliberately and conveniently ignored certain portions of the judgment cited, that they deliberately misinterpreted the orders, that they deliberately ignored the settled legal position, that the judges acted with ulterior motive to help the accused, and that all this is sufficient to prove the *malafides* of the two judges whom Shri Rashid Khan Pathan describes as accused. These allegations are not only false but have been made only with a view to ensure that Justice Nariman should have recused himself from hearing the case in which he was still to hear Shri Nedumpara on the question of punishment. Further there is an allegation that Justice Nariman had the knowledge of personal enmity between his father and Shri Nilesh Ojha. The language used is not only objectionable, but by questioning the impartiality, integrity, ability of the Judges and by saying that the judges deliberately acted in a particular manner and raising allegations of malafide against them Shri Rashid Khan Pathan has also committed contempt of Court.

86. We have already extracted large portions of the letters. Both the letters on their face are totally contemptuous in nature. No litigant has a right to attribute motives to a Judge. No litigant has a right to question the integrity of a Judge. No litigant has a right to even question the ability of a Judge. When the ability, integrity and dignity of the Judges are questioned, this is an attack on the institution. It is an attack on the majesty of law and lowers the impression of the Courts in the public eye. The allegations in the complaints are scurrilous and scandalous. Shri Vijay Kurle and Shri Rashid Khan Pathan do not deny that they have sent these letters. They, in fact, justify the sending of these letters. There is not even a word of regret in any of the affidavits filed by them.

87. We now examine the context in which these allegations have been made. The first complaint by Shri Vijay Kurle dated 20.03.2019 is basically in relation to the order dated 12.03.2019. Shri Nedumpara was held guilty of contempt vide order dated 12.03.2019. Notice was issued to him for being heard on the issue of punishment. This notice was made returnable within two weeks and the record shows that this notice was actually

made returnable on 27.03.2019. In the meantime, both Shri Vijay Kurle and Shri Rashid Khan Pathan sent these complaints praying that action be taken against the Members of the Bench. This, in our opinion, is the grossest form of contempt because the intention was to intimidate the Judges so that they should desist from taking action against Shri Nedumpara. Shri Nedumpara in his affidavit filed in this Court stated that he barely knew Shri Vijay Kurle and Shri Nilesh Ojha. According to him, he did not know Shri Rashid Khan Pathan at all. On the basis of the statement we have discharged Shri Nedumpara. He, in fact, stated that he came to know about these complaints only after notice was issued and his colleague Mrs. Amin took out the complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan from the social media.

88. In the complaint filed by Shri Vijay Kurle there are references to many documents and allegations that certain issues raised in the Court were ignored. The order dated 12.03.2019 convicting Shri Nedumpara which is the fulcrum of the complaint of Shri Vijay Kurle was passed without issuing notice to Shri Nedumpara. Shri Vijay Kurle alleges ignorance of law and failure to comply with various Constitution Bench judgments without

even caring to ascertain whether these judgments were actually cited before the Bench or not. There can be no manner of doubt that this complaint by Shri Vijay Kurle was filed with a view to intimidate the Judges so that no action against Shri Nedumpara is taken.

89. Coming to the complaint of Shri Rashid Khan Pathan. The same relates to the case in which Shri Nilesh Ojha was a counsel for the respondent. Any party who loses a matter in a Court may turn out to be disgruntled and may feel that justice had not been done to it. The judgment in ***Aarish Asgar Qureshi*** (supra) was delivered on 26.02.2019. Shri Rashid Khan Pathan in his complaint made reference to various cases which, according to him, were cited before the Bench. He urges that these cases were ignored or misinterpreted by the Bench. The question is as to how Shri Rashid Khan Pathan came to know about these facts. The only source of information could be Shri Nilesh Ojha.

90. No doubt, any citizen can comment or criticise the judgment of this Court. However, that citizen must have some standing or knowledge before challenging the ability, capability, knowledge, honesty, integrity, and impartiality of a Judge of the highest court of the land. We are informed that Shri Vijay Kurle has

hardly 7 years standing at the Bar. His complaint is full of mistakes and he has not even cared to check the spelling of the name of the Judge who he claims has no knowledge of law. His professional credentials are not known and we fail to understand how can he adorn the robes of a Judge to pass judgment on the Judges of the highest court, that too by using highly intemperate language and language which casts a doubt not only on the ability of the Judges but scandalises the Court and lowers the dignity and reputation of this Court in the eyes of the general public. These sort of scandalous allegations have to be dealt with sternly and nipped in the bud. As far as Shri Rashid Khan Pathan is concerned, he professes to be the National Secretary of an NGO. Other than that, it does not even appear that he is a lawyer. What was the public interest in raking up issues with regard to a litigation which had no element of public interest? It deals mainly with quashing of the proceedings initiated by the Bombay High Court against a party under Section 340 of the CrPC. There is no explanation as to what the case of ***Aarish Asgar Qureshi*** (supra) has got to do with this case. It is not as if somebody has been put behind bars or the human rights of any person had been violated. Shri Rashid Khan Pathan is basically

waging a war against the Members of the Bench and against this Court at the instance of Shri Nilesh Ojha, if not Shri Nedumpara because in his complaint he states that Shri Nilesh Ojha was the lawyer for the respondent before the Court and could be the only person who could have supplied the material to Shri Rashid Khan Pathan.

Alleged Contemnor No. 3-Shri Nilesh Ojha

91. This brings us to Shri Nilesh Ojha, alleged contemnor no. 3. At the outset, we may point out that Mr. Nedumpara in his discharge application has very clearly disassociated himself from the letters and has stated that he barely knows Shri Vijay Kurle and Shri Nilesh Ojha and has also stated that he has no concern with the communication sent by them. This is not the stand of alleged contemnor no. 3, Mr. Nilesh Ojha. He is the National President of the Indian Bar Association of which Mr. Vijay Kurle is the State President. During these entire proceedings he has relied upon a technical objection that he has not signed the letters, but the tenor of his written submission as well as the various affidavits again show that he has not disassociated from what has been said in the complaint. In fact, he has tried to

justify the same. The cat comes out of the bag when we go through Para 12.41 of the discharge application filed by Shri Nilesh Ojha. The following averments are extremely relevant:

> "**12.41.** That, the entire letter dated 23.03.2019 sent by Adv. Milind Sathe nowhere states that which part of Complaint given by me, Adv. Vijay Kurle,& Rashid Khan Pathan is wrong or incorrect..."

This clearly indicates that the letters sent by Shri Vijay Kurle and Rashid Khan Pathan were sent with the knowledge and consent of Shri Nilesh Ojha.

92. We may also now refer to some other facts. The complaint of Rashid Khan Pathan is based on the case which was argued by Shri Nilesh Ojha. He has made various allegations that some arguments were raised by Shri Nilesh Ojha which were not considered by the Bench or were brushed aside. He could have come to know about this only if Shri Nilesh Ojha had told him and therefore, it cannot be believed that Shri Nilesh Ojha was not aware or did not support what was said in the complaint of Shri Rashid Khan Pathan. The conduct of Shri Nilesh Ojha even while arguing the matter was to support each and every thing said in the complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan. He may not have signed the complaint but we have no

doubt in our mind that both these complaints were sent in coordination with each other. In fact, Shri Vijay Kurle in his complaint refers to the complaint made by Shri Rashid Khan Pathan. If the complaint of Shri Rashid Khan Pathan is addressed only to the President of India and the Chief Justice of India, which was sent on 19.03.2019 how could Shri Vijay Kurle on 20.03.2019 make reference to the allegations in the complaint made by Shri Rashid Khan Pathan and support the same unless he had read them.

93. As far as the complaint of Shri Vijay Kurle is concerned, it is nothing but a proxy battle for Shri Nedumpara. If Shri Nedumpara did not know Shri Vijay Kurle, how could such a detailed complaint running into 183 pages have been filed by Shri Vijay Kurle on 20.03.2019 when the matter of Shri Nedumpara was still pending in this Court. This Court convicted Shri Nedumpara for contempt of Court by judgment dated 12.03.2019 and directed Shri Nedumpara to appear so that punishment could be imposed on him for contempt of Court. The matter was listed on 27.03.2019. In our opinion, both these complaints were sent to the President of India with a view to

browbeat this Court so that this Court is terrorised into not taking action against Shri Nedumpara. In a matter which was still pending in so far as imposition of punishment was concerned, Shri Vijay Kurle and Shri Rashid Khan Pathan had no business sending these communications. These communications were widely circulated on social media, as is apparent from the affidavit of Mrs. Rohini M. Amin filed in the present case where she has stated that she obtained a copy of the complaint from the social media. Shri Rashid Khan Pathan had addressed his complaint only to the President of India and the Chief Justice of India. As far as the complaint of Shri Vijay Kurle is concerned, it is addressed to many other persons including all Judges of the Supreme Court, all Judges of all the High Courts, all State Bar Councils and the Bar Council of India. Obviously, the President of India or the Chief Justice of India did not put this complaint on social media and only Shri Rashid Khan Pathan could have done so. It was also obvious that this was done only with the active connivance and with the consent of Shri Nilesh Ojha since he is the President of the Indian Bar Association. It is only when notice of contempt was issued, that Shri Nedumpara stated that he does not know Shri Vijay Kurle, Shri Nilesh Ojha and Shri

Rashid Khan Pathan and totally disassociated himself from the complaints. As far as Shri Nilesh Ojha is concerned, he says that he has not sent the complaint nor the same was issued with his knowledge. However, till date Shri Nilesh Ojha has not sent any communication to anybody or in the public domain that he has disassociated himself with the complaint of Shri Vijay Kurle. Shri Nilesh Ojha is the President of the Indian Bar Association. The complaint is sent by Shri Vijay Kurle who is the State President of the Maharashtra and Goa Unit of Indian Bar Association. This was a complaint by Shri Vijay Kurle not in person but in his official capacity as State President of the Maharashtra and Goa Unit of the Indian Bar Association. Shri Nilesh Ojha is the President of the Indian Bar Association. When a member of the body of lawyers sends such a vitriolic communication making scandalous allegations against Judges the head of such body cannot shirk responsibility for the same. The head should either immediately send a contradiction or otherwise it has to be presumed that the complaint has been sent with his knowledge, consent and approval.

94. In view of the facts discussed above, we are of the clear view that the complaint sent by Shri Vijay Kurle was in connivance and at the behest of Shri Nilesh Ojha. Therefore, we have no doubt in our mind that all three i.e. Shri Vijay Kurle, Shri Rashid Khan Pathan and Shri Nilesh Ojha were working in tandem and making scurrilous and scandalous allegations against the Members of the Bench, probably with the intention that the Members of the Bench would thereafter not take action against Shri Nedumpara.

Defence of Truth

95. Though not so much in the oral arguments but in the written arguments the alleged contemnors have also raised the plea of truth as a defence. Truth as a defence is available to any person charged with contempt of Court. However, on going through all the written arguments and the pleadings, other than saying that the Judges had misinterpreted the judgments of this Court or had ignored them or that Justice R.F. Nariman was biased, there is no material placed on record to support this defence. The allegations are also scurrilous and scandalous and

such allegations cannot be permitted to be made against the Judges of highest Court of the country.

96. Keeping in view the aforesaid discussion, we hold all three alleged contemnors i.e. Shri Vijay Kurle, Shri Rashid Khan Pathan, and Shri Nilesh Ojha, guilty of contempt.

97. We place on record our appreciation for the valuable assistance rendered by Shri Siddharth Luthra, amicus curiae. We also reject all the baseless allegations levelled against him by the contemnors.

98. The matter be now listed on 01.05.2020 for hearing the contemnors on the issue of sentence, through video conferencing.

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi
April 27, 2020