2024:DHC:174-DB

$~1 (SB)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 9th January, 2024***

\+ CONT.CAS.(CRL) 4/2022

COURT ON ITS OWN MOTION ..... Petitioner

Through: Mr. Kanhaiya Singhal and Mr. Ujwal Ghai, Advocates
Mr. Sanjeev Sabharwal, Advocate

versus

VIRENDRA SINGH ADVOCATE ..... Respondent

Through: In person

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T ***(oral)***

1. The background of the present case is that the respondent Mr. Virender Singh, Advocate/contemnor filed a criminal appeal being Crl.A.107/2022 which was listed for hearing before learned Single Judge of this Court on 14.07.2022. Vide order dated 14.07.2022, the learned Single Judge noted some allegations made by the respondent/contemnor in para 18 of the aforesaid appeal which reads as under:

> 3. The allegations are contained in paragraph 18 which reads as under:-
>
> *"18. That Further, in spite of humbly praying to the Hon'ble Justice . . . . that various legal issues and some miscellaneous applications are pending adjudication before the Trial Court and that a review petition filed under Witness Protection Scheme, 2018, is also pending before the Competent Authority (North District). So, in*

view of the pending jurisdiction issue to be decided by Your Honour, the proceedings before the Trial Court be stayed as the trial court is not presided over by a Ld. Lady Judge as per mandate of Hon'ble Supreme Court of India. However, Justice . . . . . forced the Ld. Trial Court to conduct proceedings taking highly unreasonable and flimsy ground as mentioned in para 4 of the order dated 15.11.2021 reproduced hereunder:

> *"4. Ld. APP for the State submits that today, the matter was fixed for recording of the statements of the two Investigating Officers before the Ld. Trial Court. The main grievance of the learned counsel for the applicant is that it will not be convenient for the complainant to attend proceedings in cross examination before the learned Trial Court as it is presided over by the male judge. Since the examination of the Investigating Officers is going on, this court finds no ground to stay the proceedings before the learned Trial Court at the moment. It is clarified that the proceedings in the meantime will continue before the learned Trial Court. " Further, from the query regarding operation of the working by the Counsel for the victim, it is revealed that HMJ . . . . . deliberately wanted to twist the whole issue as she did, observing that convenience of the Counsel cannot be a ground for transfer of the case, however, it was nowhere the contention by the appellant victim who prayed for transfer to Saket Court or any other court except Rohini Courts and New Delhi Courts so that trial could be conducted by the court presided over by Ld. Lady Judge without any interference by any extra judicial source which was actively working since beginning of the trial at Rohini Courts and it would be affected further if the case was kept at Rohini Court premises or transferred to New Delhi District where Ld. Distt. & Sessions Judge . . . . . being relative of the prime accused as declared by . . . . . outside of Court No. 29 Delhi High Court on 29.04.2019 with threats given to PW-2 supported by further evidences, would have affected the trial as he did during his tenure at Hon'ble High Court as Registrar General. Further, HMJ . . . . illegally*

called a report from the trial court to find out whether after the transfer of the case, the trial proceeded or not? Further, the Crl. MA was not disposed as per law and stay not granted but adjourned to 03.12.2021 so that trial court proceedings would continue to secure acquittal of the accused, Respondent No.3 & 4. Hence, this type of exercise and conduct not only violated the mandate and verdict of Hon'ble Supreme Court but also infringed and snatched the right of the victim to have fare, transparent and impartial trial enshrined under Constitution of India."

4. It is also stated that:-

"HMJ. . . .. did not mention the aforesaid submission of the victim in spite of request made to her and strong objection to the false statement of the corrupt I.O. This shows the personal interest and accused favoring attitude of HMJ . . . . . The copy of order dated 23.01.2019 passed in bail application 1555/2018 is annexed as ANNEXURE-A/5."

5. Further, *the petition also states as under:-*

"9. That Hon'ble . . . . . illegally, even after objection and complaint made against her by the victim of helping the accused, being interested in the matter since beginning in the past and praying that she should send the matter to Hon'ble Chief Justice of Hon'ble High Court, decided the transfer petition in an arbitrary, prejudicial and mala-fide manner."

"14.That on 04.10.2021, during course of hearing of the above mentioned transfer petition, the victim humbly requested the Hon'ble Justice . . . . to send this case to Hon'ble Chief Justice of Delhi High Court in view of complaint made against her for accused favoritism and non-listening to bonafide and genuine issues of Constitutional Rights of victim and further requested to direct the authority who filed the petition to supply copy of the aforesaid petition to the victim but of no avail as HMJ . . . . . continued to hear the aforesaid transfer petition.

"19. Further, instead of adjudicating the aforesaid Crl. M.A for modification in the light of the aforesaid judgments in this regard passed by Hon'ble Supreme Court, and in view of the Hon'ble High Court's order passed pursuant to the

aforesaid judgment Nipun Saxena (supra) being Order No. 05/G-1/GAZ.IA.DHC/2021 dated 28.01.2021 whereby FTSC (POCSO) courts were created as special courts, HMJ . . . . . illegally and whimsically deferred the adjudication till 03.12.2021 and illegally called report from the Trial Court whereas calling report or directing the trial court to conduct proceedings in a particular way was beyond the jurisdiction of the Hon'ble High Court while adjudicating the application for modification of an order in a Transfer Petition. Thus, the whole proceedings conducted by HMJ . . . . .

on 15.11.2021 were accused favoring and not only against the interest and rights of the appellant/victim but also in derogation of the aforesaid judgments rendered by Hon'ble Supreme Court of India. The contents of the order as mentioned in para No.5 are reproduced hereunder:- "5. List this petition before this court on 3rd December 2021 when a report will be sent to this Court by the Ld. Special Fast Track Court, North-West District, Rohini Courts.""

21. That on 03.12.2021, aforesaid Crl. M.A. seeking modification of order dated 04.10.2021 was disposed of making and stating it infructuous. The apprehension of the appellant/victim that she would not get justice if the present case continued to be tried in the premises of Rohini Courts and if HMJ . . . . adjudicates any matter pertaining to this Sessions Case as complained of against her, has come true. The aforesaid modification application again was disposed of without adverting to and adjudicating the legal question of law and grounds raised therein by the appellant/victim during oral arguments as well as contentions raised in the Crl. M.A. seeking modification of the order dated 04.10.2021 whereby the Sessions Case was transferred to the North-West District without having any competent jurisdiction as per mandate of Hon'ble Supreme Court of India and in spite of grave and sincere objections raised by the appellant/victim to the jurisdiction of the Trial Court. That on 03.12.2021, HMJ . . . . . dismissed the aforesaid Crl. MA

18007/2021 on the ground that since the judgment had already been delivered by the Trial Court acquitting the respondents (accused), so, application became infructuous and reiterated the story and course of proceedings conducted in a forced manner at the direction of HMJ . . . . . which were mentioned in the report sent by the Ld. DJ, (North-West) and the order dated 12.11.2021 which was passed for making ground to acquit the accused persons Respondent No.3 & 4. HMJ . . . . . while passing the order dated 15.11.2021 when she adjourned the hearing to 03.12.2021, knew well that till then the trial court as per her directions and the orders whereby she had directed the Trial Court to continue proceedings and to send a report whether proceedings conducted or not during that period, the Trial Court would complete the trial by acquitting the Respondent No. 3 & 4. Thus, HMJ . . . . . since beginning at the time of hearing bail matter 1555/2018, W.P.(Crl.) 3961/2018 and in the whole course of proceedings in T.P. Crl. 45/2021 openly behaved and passed orders prejudicial to the rights of the victim and favoring the accused persons by violating not only the procedural law, rights of the victim but also disobeyed the mandate and verdict of Hon'ble Supreme Court of India and thus evolved and created her own whimsical and arbitrary procedure to demolish the case of the victim. Her conduct in the open court during the proceedings was clearly accused favoring and inimical to the victim of a heinous crime. The Law and Ethics do not in any way empower and permit any judge of any rank to create and evolve its own course of procedure by which any desired goal can be accomplished. This gross deliberate illegality committed by HMJ . . . . ., HMJ . . . . ., Sh. . . . .Ld. Distt. & Sessions Judge (NorthWest), Ms. . . . . Ld. Distt. & Sessions Judge (North), Sh. . . . . ., Sh. . . . ., Ld. Predecessor ASJs (FTC North) and. . . . . Ld. ASJ (FTC North-West) directly and overtly and Sh. . . .. ., covertly behind the curtain as previously being Registrar General of Hon'ble High Court of Delhi and later, Distt. & Sessions Judge, New Delhi has deeply shaken the faith of

> *the appellant /victim and PW-2 so much so that they have lost faith in the aforesaid Hon'ble Judges and still fear that given the circumstances and the experience for last three and half years multiple proceedings before the Hon'ble Courts, whether they would get fair, fearless and transparent justice in Delhi because if, extra judicial interference of any sort is not abolished in Delhi from this case, the trial or any other proceeding is improbable to be fair and impartial."*

2. It is pertinent to mention here that the dots in the afore-quoted paras are the names of learned Judges mentioned in the Crl.A.107/2022 who are the sitting Judges of this Court as well as the learned Judges of District Courts.

3. After reading the above paragraphs, the learned Single Judge had put a query to the contemnor as to whether he would like to retract these paragraphs and challenge the findings of the learned trial Court in accordance with law without making any personal, tainted and *malafide* allegations against the learned Judges.

4. However, the contemnor stated that he would not amend the appeal and that it needs to be adjudicated as it is. He further stated that these are not contemptuous, but statements of facts which can easily be seen, perused and borne-out from the record.

5. Vide order dated 14.07.2022, in para 8 to 11, the learned Single Judge observed that a bare perusal of the averments made hereinabove show that they are scandalous and aimed at lowering the dignity and majesty of this Court. They have been made *malafidely* to interfere with administration of justice and amounting to contempt. The allegations made in the petition are

intrinsically contemptuous in nature and fall within the definition of *"Criminal Contempt" of the Contempt of Courts Act, 1971 under Section 2(c)(i)."* There is a direct attack on the reputation and functioning of not only one Judge, but also the several Judges of this Court. This vilification of Judges can affect the administration of justice as it becomes a form of public mischief. An unwarranted attack on a Judge, citing an unscrupulous administration cannot be ignored by this Court. For a healthy democracy, there must be an impartial judiciary, however, it cannot be impaired by vindictive criticism. The Judiciary is not immune from criticism, but when the criticism is based on distorted facts or gross misrepresentation of material averments to intentionally lower the dignity and respect of this Court, it must be taken cognizance of. The above quoted representations and such allegations are biased and intended to scandalize this Court. To make allegations that a Judge deliberately wanted to twist issues in order to favour an accused or that they were personally interested in the matter acted illegally or impartially are unjust statements.

6. The learned Single Judge in paras 12 to 14 of order dated 14.07.2022 noted as under:

> "From the perusal of the supporting affidavit, it seems that it is not the contentions of the appellant. Paragraph 2 of the affidavit accompanying the appeal reads as under:-
>
> *"2. That I have heard and understood the contents of accompanying Criminal Appeal U/s 372 of Cr. P.C., which has been drafted by my counsel and the same are true and correct to my knowledge and may be read as part and parcel of this affidavit."*
>
> 13. From the perusal of the affidavit, it seems that these are not allegations which are being made by the appellant but are on legal advice received by the appellant from her counsel.

14. It has been held by the Hon'ble Supreme Court in '*Prashant Bhushan & Anr., In re (2021) 3 SCC 745* that:-

"This Court holds, that the judiciary is the guardian of the rule of law and is the central pillar of the democratic State. It holds, that in our country, the written Constitution is above all individuals and institutions and the judiciary has a special and additional duty to perform i.e. to oversee that all individuals and institutions including the executive and the legislature, act within the framework of not only the law but also the fundamental law of the land. It further holds, that this duty is apart from the function of adjudicating the disputes between the parties, which is essential to peaceful and orderly development of the society. It holds, that if the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. It has been held, that otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It has been held, for this purpose that the courts are entrusted with the extra-ordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. It has been held, that when the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. It has been held, the foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

56. It could thus be seen, that it has been held by this Court, that hostile criticism of judges as judges or judiciary would amount to scandalizing the Court. It has been held, that any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. This Court further observed that any caricature of a judge

> *calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It has been held, that imputing partiality, corruption, bias, improper motives to a judge is scanalization of the court and would be contempt of the court. t has been held, that the gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. This Court held, that Section 2(c) of the Act defines „criminal contempt" in wider articulation. It has been held, that a tendency to scandalize the Court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt."*

7. In view of above, the learned Single Judge issued a notice of contempt against the contemnor/respondent and the matter was directed to be posted before Division Bench handling criminal contempt subject to the orders of Hon'ble the Chief Justice. It was further directed that the matter be posted on 08.08.2022 before the Roster Bench.

8. We have heard the respondent/contemnor at length from 2:30 PM to 4.15 PM today and have perused the record and case laws cited by him.

9. The contemnor/respondent has challenged the contempt petition on its maintainability. He has argued that contempt notice issued by the learned Single Judge is not sustainable as the reference for contempt is defective, if there were some contemptuous remarks, the matter should have been referred along with the Crl.A.107/2022 before the Hon'ble the Chief Justice and after perusing the contents of the contemptuous remarks mentioned in the said appeal, it is the prerogative of Hon'ble the Chief Justice to either decide by himself or in consultation with other Hon'ble Judges of this Court whether to take cognizance of the reference for contempt or not which has

not been done in the present case.

10. We have perused the office note wherein it is mentioned that subsequent to directions passed by the learned Single Judge vide order dated 14.07.2022 in Crl.A.107/2022, the Registry had prepared a note which along with all documents were placed before the Hon'ble the Chief Justice and was approved by Hon'ble the then Chief Justice and thereafter, the contempt petition was listed before Division Bench-II, i.e. the Bench of HMJ Siddharth Mridul and HMJ Amit Sharma, as per the roster. However, on elevation of HMJ Siddharth Mridul as the Hon'ble the Chief Justice of Manipur High Court, Hon'ble the Acting Chief Justice posted this contempt petition before this Bench.

11. Contemnor further submits that present contempt is not maintainable as per Section 2(c) of the Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act') as there is no publication of the contemptuous material at all. So as to scandilise or lower the authority of the Court mentioned in aforesaid appeal, therefore, that cannot be treated as a publication of the material, hence, the present contempt petition is not maintainable.

12. He further submits that as per Section 5 of the Act, fair criticism of judicial act is not a contempt and in the criminal appeal mentioned above, contemnor/respondent has only narrated the background to manifest what happened actually during the trial which was an abuse of process of law. He further argued that the cognizance of the criminal contempt in other States as per Section 15 can be taken only after the concurrence of opinion taken from learned Advocate General but in Delhi the same can be done after the written consent of learned Standing Counsel. This also has not happened in the present case, therefore, the present contempt petition is not maintainable.

13. Insofar, the aforesaid submissions made by the contemnor, it is not disputed that a fair criticism of a judgment passed by any Court is permissible and a hierarchal structure of Indian Courts ensures upholding of justice and rule of law whereby an individual aggrieved by an order/judgment can challenge the same before the higher Court-subject thereby maintaining the dignity of the system.

14. To ascertain the plea of the contemnor that whether his averments made in the criminal appeal are merely criticism of the learned trial Court in dealing with the trial of the case, learned Judge of this Court thereby only explaining the background of filing the appeal or the same is contemptuous.

15. It is necessary to refer to the additional reply to the show-cause-notice dated 25.07.2022 filed by the contemnor, it is stated in paras 13 & 14 as under:

> *"That whatever is stated or mentioned about the role of Hon'ble Judges whether of this Court or of the learned trial Court has been mentioned and stated with bona fide intention and purpose, with the desire to redress the grievance of the appellant-victim. These statements of facts as referred and mentioned in the order dated 14.07.2022 from the record of Crl.A.107/2022 are not aimed at all, in any manner either to scandalize or lowering the dignity and majesty of this Court. The victim as well as contemnor being her counsel, has tried to make the truthful, virtual and detailed circumstances and the way, the proceedings were conducted by the Judges without following criminal procedure of law and established norms of· criminal jurisprudence and law of evidence. This was necessary to bring before the notice of High Court, where the aforesaid appeal was presented with the sole purpose and in bona fide need so that High Court, after taking into consideration, all the facts and circumstances and the proceedings of the Trial Court as well as the final impugned Order and Judgment which was passed in most unlawful manner and in a hasty way at the time when no evidence could have been recorded by the victim, can adjudicate the appeal in a holistic manner."*

16. Contemnor further stated that nothing stated in the appeal or criticism of the order passed by the Hon'ble respective Judges, has been stated *mala fidely* or with any ill motive. Because telling the truth should not be taken as blame as it is the bounden duty of the victim and the counsel to be very fair and true to the Court which always does godly work of imparting justice to the aggrieved. Therefore, it is not a justified observation against the contemnor that he made scandalous remarks or comments against the dignity and majesty of this Court, in the event the averments have been made in the appeal on behalf of the victim with *bona fide* need and good intention.

17. To substantiate his arguments, he has relied upon Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 96th Plenary Meeting dated 29.11.1985, General Assembly of UNO, the relevant paras read as under:

> *"1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental-injury, emotional suffering. economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.*
>
> *2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*
>
> *3. xxxx*

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) xxxx
(b) xxxx
(c) xxxx
(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation:

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims."

18. We candidly affirm to the Declaration of Basic Principles of Justice for Victims and Crime and Abuse of Power and the aggrieved victim enjoys complete liberty to challenge the victimization in any manner and to bring it to the notice of the concerned authorities.

19. The contemnor has further relied upon the Hon'ble Supreme Court as noted in decision passed in the case of ***Bal Thackrey vs. Harish Pimpalkhute and Ors.: (2005) 1 SCC 254*** as under:

"3. The Delhi High Court in the case of Anil Kumar Gupta v. K. Suba Rao [ILR (1974) 1 Del 1] issued the following directions: (ILR p. 7 A-C)

"The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information."

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

"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."

7. Every High Court besides powers under the Act has also the power to punish for contempt as provided in Article 215 of the Constitution. Repealing the Contempt of Courts Act, 1952, the Act was enacted, inter alia, providing definition of civil and criminal contempt and also providing for filtering of criminal contempt petitions. The Act lays down "contempt of court" to mean civil contempt or criminal contempt. We are concerned with criminal contempt. "Criminal contempt" is defined in Section 2(c) of the Act. It, inter alia, means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court. The procedure for initiating a proceeding of contempt when it is committed in the face of the Supreme Court or High Courts has been prescribed in Section 14 the Act. In the case of criminal contempt, other than a contempt referred to in Section 14 the manner of taking cognizance has been provided for in Section 15 of the Act. This section, inter alia, provides that action for contempt may be taken on court's own motion or on a motion made by—

"(a) the Advocate General, or

(b) any other person, with the consent in writing of the Advocate General".

15. A useful reference can also be made to some observations made in J.R. Parashar v. Prasant Bhushan [(2001) 6 SCC 735 : 2001 SCC (Cri) 1242] . In that case noticing Rule 3 of the Rules to Regulate Proceedings for the Contempt of the Supreme Court, 1975 which like Section 15 of the Act provides that the Court may take action in cases of criminal contempt either (a) suo motu; or (b) on a petition made by the Attorney General or Solicitor General; or (c) on a petition made by any person and in the case of a criminal contempt with consent in writing of the Attorney General or the Solicitor General as also Rule 5 which provides that only petitions under Rules 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice, it was observed that the matter could have been listed before the Court by the Registry as a petition for admission only if the Attorney General or Solicitor General had granted the consent. In that case, it was noticed that the Attorney General had specifically declined to deal with the matter and no request had been made to the Solicitor General to give his consent. The inference, therefore, is that the Registry should not have posted the said petition before the Court for preliminary hearing. Dealing with taking of suo motu cognizance in para 28 it was observed as under: (SCC p. 745)

"28. Of course, this Court could have taken suo motu cognizance had the petitioners prayed for it. They had not. Even if they had, it is doubtful whether the Court would have acted on the statements of the petitioners had the petitioners been candid enough to have disclosed that the police had refused to take cognizance of their complaint. In any event the power to act suo motu in matters which otherwise require the Attorney General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources, such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech or a document which would speak for itself. Otherwise sub-section (1) of Section 15 might be rendered otiose.""

20. The contemnor has also relied upon the case decided by the Hon'ble Bombay High Court in case of ***Vishwanath vs. E.S. Ventatramaih: 1990***

CRI. L.J. 2179, whereby the Hon'ble High Court observed as under:

> *"5 After hearing the counsel and after going through the written submissions, we are of the view that the petition is liable to be dismissed on the ground of maintainability as well as on merits. In regard to maintainability of the petition, it is necessary to examine s. 15 of the Contempt of Courts Act, which reads as under:*
>
> > *"15. (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-*
> >
> > *(a) The Advocate-General, or*
> >
> > *(b) any other person, with the consent in writing of the Advocate-General, or*
> >
> > *(c) in relation to the High Court for the Union Territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.*
> >
> > *From the above section, it is clear that there are only three modes as to how a contempt petition can be moved-*
> >
> > *(1) The Court can initiate the proceedings suo motu, or*
> >
> > *(2) on a motion made by the Advocate-General, or*
> >
> > *(3) on a motion made by any other person, with the consent in writing of the Advocate-General.*
>
> *The law does not recognise any other method or mode. As we have already pointed out above, the present petition has been filed by Mr. Palshikar, a practising lawyer of this Court, without obtaining the written consent of the Advocate General. He has also categorically stated that he has merely brought the facts to the notice of this Court for suo motu action to be taken by the Court. He has asserted that such a petition is maintainable and in support of his contention he has addressed this Court and also filed a detailed pursis. Mr. Badar has vehemently opposed the tenability of such a petition. Relying on s. 15(1)(b) of the*

Contempt of Courts Act, he has submitted that the consent of the Advocate General is a condition precedent.

6. Though Mr. Palshikar has stated in the pursis that there is a conflict of judicial opinion as to whether the consent of the Advocate General is necessary or not, he has not been able to demonstrate the same. We think, this assumption of Mr. Palshikar has no basis. The decision in P.N. Duda v. P. Shiv Shankar (cited supra) fully supports the contention of the Advocate General and the Government Pleader that a petition filed by a private person without the written consent of the Advocate General is not maintainable. Hon'ble Sabyasachi Mukharji J. has observed in para 37 of the judgment as follows ((1988) 3 SCC 167 : at page 1225 of AIR 1988 SC 1208):—

> *"It was contented that there was no doctrine of necessity applicable in this case because even if the Attorney General or the Solicitor General does not give consent a party is not without a remedy and can bring this to the notice of the Court. Discretion vested in law officers of this Court to be used for a public purpose in a society governed by the rule of law is justiciable. Indeed, it was gone into in the case of Conscientious Group (supra) and it will be more appropriate that it should be gone into upon notice to the law officer concerned. It is a case where appropriate ground for refusal to act can be looked into by the Court. It cannot be said as was argued by Shri Ganguly that the refusal to grant consent decides no right and it is not reviewable. Refusal to give consent closes one channel of initiation of contempt. As mentioned herein before there are three different channels, namely, (1) the Court taking cognizance on its motion; (2) on the motion by the Attorney General or the Solicitor General; and (3) by any other person with the consent in writing of the Attorney General or the Solicitor General. In this case apparently the Attorney General and the Solicitor General have not moved on their own. The petitioner could not move in accordance with law without the consent of the Attorney General and the Solicitor General though he has a right to move and the third is the Court taking notice suo motu. But irrespective of that there was right granted to the citizen of the country to move a motion with the consent."*

In the same para, the observations of Sanyal Committee appointed to examine this question have been quoted, which read thus-

> *"In the case of criminal contempt, not being contempt committed in the face of the court, we are of the opinion that it would lighten the burden of the court, without any way interfering with the sanctity of the administration of Justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate General in some categories of cases at least"*
>
> *His Lordship Sabyasachi Mukharji J. has observed in para 39 of the judgment as under ((1988) 3 SCC 167: at p. 1226 of AIR 1988 SC 1208):—*
>
> *"39. 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, congnizance could be taken suo motu and information contained in the application by a private individual could be utilised. As we have mentioned hereinbefore indubitably congnizance 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 s. 15 of the Act that could be investigated in an application made to the Court."*

His Lordship S. Ranganathan J. delivered a separate judgement and observed in para 62 as under (at p. 1235)

> *"62. For purposes of convenience, I may sum up my conclusions. They are:*

> *(a) This petition, if treated as one filed under or s. 15(1) read with r. 3(a) is not in proper form and, if treated as one filed under r. 3(b) and 3(c), is not maintainable as it is not filed by the Attorney General/Solicitor General or by any person with his consent.*
>
> *Thus, there appears to be no conflict in the opinion expressed by their Lordships in their separate judgements that if a motion is moved by any private person for taking action under the Contempt of Courts Act, that has to be with the consent in writing of the Attorney General or the Solicitor General.*
>
> *It is not the case of the petitioner that he applied for consent of the Advocate General and that it was refused. On the contrary, the Advocate General appeared and objected to the maintainability of the present petition on the ground that his consent was not obtained. We, therefore, adjourned the case to enable Shri Palshikar to obtain the consent as required under s. 15(1)(b) of the Contempt of Courts Act, but Mr. Palshikar refused to obtain the consent. On the contrary he has stated that he has brought the facts to the notice of the Court and requested the court to take suo motu action. In view of this, there can be no doubt that the present petition which has been filed by a private person without the consent in writing of the Advocate General is not tenable."*

21. In addition to above, contemnor has also relied upon the decision passed by the Hon'ble Supreme Court in the case of ***Om Prakash Jaiswal vs. DK Mittal and Ors: (2000) SC 1136***, whereby the Hon'ble High Court observed as under:

> *"14. In order to appreciate the exact connotation of the expression "initiate any proceedings for contempt" we may notice several situations or stages which may arise before the court dealing with contempt proceedings. These are:*
> *(i)(a) a private party may file or present an application or petition for initiating any proceedings for civil contempt; or*
> *(b) the court may receive a motion or reference from the Advocate General or with his consent in writing from any other person or a specified law officer or a court subordinate to the High Court;*
> *(ii)(a) the court may in routine issue notice to the person*

sought to be proceeded against; or

(b) the court may issue notice to the respondent calling upon him to show cause why the proceedings for contempt t not initiated;

(iii) the court may issue notice to the person sought to be proceeded against calling upon him to show cause why he be not punished for contempt.

15. In the cases contemplated by (i) or (i) above, it cannot be said that any proceedings for contempt have been initiated. Filing of an application or petition for initiating proceedings for contempt or a mere receipt of such reference by the court does not amount to initiation of the proceedings by court. On receiving any such document it is usual with the courts to commence some proceedings by employing an expression such as "admit", "rule", "issue notice" or "issue notice to show cause why proceedings for contempt be not initiated". In all such cases the notice is issued either in routine or because the court has not yet felt satisfied that a case for initiating any proceedings for contempt has been made out and therefore the court calls upon the opposite party to admit or deny the allegations made or to collect more facts so as to satisfy itself if a case for initiating proceedings for contempt was made out. Such a notice is certainly anterior to initiation. The tenor of the notice is itself suggestive of the fact that in spite of having applied its mind to the allegations and the material placed before it the court was not satisfied of the need for initiating proceedings for contempt; it was still desirous of ascertaining facts or collecting further material whereon to formulate such opinion. It is only when the court has formed an opinion that a prima facie case for initiating proceedings for contempt is made out and that the respondents or the alleged contemners should be called upon to show cause why they should not be punished; then the court can be said to have initiated proceedings for contempt. It is the result of a conscious application of the mind of the court to the facts and the material before it. Such initiation of proceedings for contempt based on application of mind by the court to the facts of the case and the material before it must take place within a period of one year from the date on which the contempt is alleged to have been committed failing which the jurisdiction to initiate any proceedings for contempt is lost. The heading of Section 20 is "limitation for actions for contempt". Strictly speaking, this section does not provide limitation in the sense in which the term is understood in the Limitation Act. Section 5 of the Limitation Act also does not,

therefore, apply. Section 20 strikes at the jurisdiction of the court to initiate any proceedings for contempt."

22. While referring the case of ***Anil Kumar Gupta (supra)***, he submitted that present contempt was initiated not by *suo moto* action of the Court but on the advice of two counsels namely Mr.Kanhaiya Singhal and Mr.Sanjeev Sabharwal.

23. We have perused the order dated 14.07.2022 whereby the learned Single Judge has *suo moto* taken notice of the contempt and subject to direction of the Hon'ble the Chief Justice directed the matter to be posted before the Roster Bench. Thereafter, vide order dated 08.08.2022, the said Bench issued the contempt notice. Thus, the present contempt petition has not been initiated by the counsels named above, however, the cognizance has been taken *suo moto* by the learned Single Judge. Thus, the aforesaid judgment is not applicable in the present contempt petition.

24. Now coming to the case of ***Bal Thackery (supra)*** wherein case of ***Anil Kumar Gupta (supra)*** was referred and it was observed that 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 before the Hon'ble the Chief Justice for orders in Chambers and the Hon'ble the Chief Justice may decide the same either by himself or in consultation with the other Judges of the Court whether to take any cognizance of the information or not.

25. The said judgment is also not applicable in the present contempt petition for the reason that the learned Single Judge took *suo moto* notice of the contemptuous material.

26. The contemnor referred the case of ***Vishwanath (supra)*** decided by Bombay High Court whereby it is observed that in regard to the maintainability of the petition, it is necessary to examine it under Section 15 of the Act which clearly states as under:

> *(1) the Court can initiate the proceedings suo motu, or*
> *(2) on a motion made by the Advocate General, or*
> *(3) on a motion made by any other person with the consent in writing of the learned Advocate General.*

27. Whereas, present contempt has been initiated *suo* moto under Section 14 of the Act.

28. The next judgment relied upon by the contemnor is ***Om Prakash Jaiswal (supra)*** and submitted that the Court may receive a motion or reference from the learned Advocate General or with his consent in writing from any other person or a specified Law Officer or a Court subordinate to High Court. The said judgment is also not applicable to the facts of the present contempt petition as the contempt is not initiated by a person.

29. In para 18 of the criminal appeal, it is specifically mentioned that HMJ…… forced the learned trial Court to conduct proceedings taking highly unreasonable and filmsy grounds as mentioned in para 4 of the order dated 15.11.2021. Further, from the query regarding operation of the working by counsel for the victim, it is revealed that HMJ…. Deliberately wanted to twist the whole issue as she did observing that convenience of the counsel cannot be a ground for transfer of the case.

30. It also stated that *"HMJ... did not mention the aforesaid submission of the victim in spite of request made to her and strong objection to the false statement of the corrupt I.O. This shows the personal interest and accused favoring attitude of HMJ.."*

31. The appeal further states that *"9. That Hon'ble illegally, even after objection and complaint made against her by the victim of helping the accused, being interested in the matter since beginning in the past and praying that she should send the matter to Hon'ble the Chief Justice of Hon'ble High Court, decided the transfer petition in an arbitrary, prejudicial and mala-fide manner."*

32. Further, it is averred that *"..... HMJ illegally and whimsically deferred the adjudication till 03.12.2021 and illegally called report from the trial Court whereas calling report or directing the trial Court to conduct proceedings in a particular way was beyond the jurisdiction of the Hon'ble High Court while adjudicating the application for modification of an order in a Transfer Petition. Thus, the whole proceedings conducted by HMJ. . . . . on 15.11.2021 were accused favoring and not only against the interest and rights of the appellant/victim but also in derogation of the aforesaid judgments rendered by Hon'ble Supreme Court of India."*

33. It is also stated that *"..... HMJ.... while passing the order dated 15.11.2021 when she adjourned the hearing to 03.12.2021, knew well that till then the trial court as per her directions and the orders whereby she had directed the Trial Court to continue proceedings and to send a report whether proceedings conducted or not during that period, the Trial Court would complete the trial by acquitting the Respondent No. 3 & 4. Thus, HMJ since beginning at the time of hearing bail matter 1555/2018,*

W.P.(Crl.) 3961/2018 and in the whole course of proceedings in TP. Crl. 45/2021 openly behaved and passed orders prejudicial to the rights of the victim and favoring the accused persons by violating not only the procedural law, rights of the victim but also disobeyed the mandate and verdict of Hon'ble Supreme Court of India and thus evolved and created her own whimsical and arbitrary procedure to demolish the case of the victim. Her conduct in the open court during the proceedings was clearly accused favoring and inimical to the victim of a heinous crime. The Law and Ethics do not in any way empower and permit any judge of any rank to create and evolve its own course of procedure by which any desired goal can be accomplished. This gross deliberate illegality committed by HMJ…., HMJ…., Sh. Ld. Distt. & Sessions Judge (NorthWest), Ms….. Ld. Distt. & Sessions Judge (North), Sh……., Sh……, Ld. Predecessor ASJs (FTC North) and ……..Ld. ASJ (FTC North- West) directly and overtly and Sh…., covertly behind the curtain as previously being Registrar General of Hon'ble High Court of Delhi and later, Distt. & Sessions Judge, New Delhi has deeply shaken the faith of the appellant /victim and PW-2 so much so that they have lost faith in the aforesaid Hon 'ble Judges and still fear that given the circumstances……"

34. The contemnor failed to mention why and in what manner the HMJ had any interest qua the accused side or bias qua the victim.

35. We refuse to accept the submissions made by the contemnor/respondent with the aforesaid averments made by him in the appeal that have been mentioned to give the entire background so as to establish the injustice suffered by the victim leading to acquittal of the accused persons. It is manifest from the above that the

contemnor/respondent has made contumacious allegations in the appeal making scandalous, unwarranted and baseless imputations against the learned Judges of this Court as well as District Courts who have been discharging their judicial function. Moreover, being an Officer of this Court making such averments in the judicial pleading are more serious in nature. It is incumbent upon the Courts of justice to check such actions with a firm hand which otherwise will have pernicious consequences.

36. We may refer to the judgment passed in the case of ***Ram Niranjan Roy vs. State of Bihar and Ors.: (2014) 12 SCC 11***, wherein the Hon'ble Supreme Court has observed as under:

> *"14. In Pritam Pal v. High Court of M.P., while dealing with the nature and scope of the power conferred upon this Court and the High Court, being courts of record under Articles 129 and 215 of the Constitution of India respectively, this Court observed that the said power is an inherent power under which the Supreme Court and the High Court can deal with contempt of itself. The jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215. This Court further clarified that the constitutionally vested right cannot be either abridged, abrogated or cut down by legislation including the Contempt of Courts Act.*
>
> *15. In Leila David this Court has discussed what is contempt in the face of the Court. In this case, the petitioners made contumacious allegations in the writ petition and supporting affidavits. Notices were issued to them as to why contempt proceedings should not be issued against them. The hearing commenced. The writ petitioners disrupted the proceedings by using very offensive, intemperate and abusive language at a high pitch. One of the petitioners stated that the Judges should be jailed by initiating proceedings against them and threw footwear at the Judges. The petitioners stood by what they had said and done in the Court. One of the learned Judges felt that there was no need to issue notice to the petitioners and held them guilty of criminal contempt of the court. The other learned Judge observed that the mandate of*

Section 14 of the Contempt of Courts Act, 1971 must be followed before sending the contemnors to jail. The question was, therefore, whether the petitioners were entitled to any opportunity of hearing. The matter was thereafter placed before a three-Judge Bench. The three-Judge Bench resolved the difference of opinion and observed as under: (SCC p. 346, para 35)

> *"35. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a court proceeding, the object is not to merely scandalise or humiliate the Judge, but to scandalise the institution itself and thereby lower its dignity in the eyes of the public."*

16. Thus, when contempt is committed in the face of the High Court or the Supreme Court to scandalise or humiliate the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalising the institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, contempt committed in the face of the court need a strict treatment. The appellant, as observed by the High Court was not remorseful. He did not file any affidavit tendering apology nor did he orally tell the High Court that he was remorseful and he wanted to tender apology. Even in this Court he has not tendered apology. Therefore, since the contempt was gross and it was committed in the face of the High Court, the learned Judges had to take immediate action to maintain honour and dignity of the High Court. There was no question of giving the appellant any opportunity to make his defence. This submission of the appellant must, therefore, be rejected.

17. In this Court also the appellant's behaviour is far from satisfactory. He told us that he had filed an application for bail in the High Court, but the High Court did not consider it. The bail application attached at Annexure A-6 to the petition

is unsigned, supported by unsigned affidavit bearing no name of the lawyer. We have gone through the entire record the tampering of the impugned order. The appellant has not filed the true copy of the impugned order. The first sentence of Para 4 of the copy of the impugned order filed in this Court reads as under:

> *"The intervenor who presents himself in person otherwise a police officer didn't shout at the Court that he is an intervenor in this case.."*
>
> *However, in the original impugned order the said sentence does not have the words "didn't shout". It reads as under:*
>
> *"the intervenor who presents himself in person otherwise a police officer shouted at the Court that he is an intervenor in this case....."*
>
> *Thus, the words "didn't shout" have replaced the word "shouted". When we asked for an explanation, the appellant stated that there is no tampering, but it is merely a typing error. We refuse to accept this explanation. In this case, by replacing the word "shouted" by the words "didn't shout" the appellant has changed the entire meaning of the sentence to suit his case that he did not shout in the Court. Thus, he is guilty of tampering with the High Court's order and filing it in this Court. This would, in our opinion, be criminal contempt as defined by Section 2(c) of the Contempt of Courts Act, 1971. There is abundance of judgments of this Court on this issue. This Court has taken a strict view of such conduct.*

18. We may usefully refer to Chandra Shashi v. Anil Kumar Verma where in a transfer petition the contemnor had filed a forged experience certificate purportedly issued by the Principal of a college from Nagpur. The principal filed an affidavit stating that the said certificate is forged. This Court observed that an act which interferes or tends to interfere or obstructs or tends to obstruct the administration of justice would be criminal contempt as defined in Section 2(c) of the Contempt of Courts Act, 1971. This Court further observed that if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede the even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do. The contemnor was, therefore, suitably sentenced."

37. In view of the aforesaid, in our considered opinion, the respondent/contemnor has committed contempt of Court the Contempt of Courts Act, 1971, accordingly, we hold him guilty.

38. We had given an opportunity to the contemnor/respondent to seek an apology in respect of contemptuous allegations made by him in the criminal appeal, but the contemnor replied in negative and stated that he stands by whatever allegations he has made, either against the learned Judges of this Court or against the Judges of the District Court and the judiciary as such. He also stated that not only the said Judge but also many other Judges, who are favoring the accused persons openly. However, at present, he has no material thereto and shall disclose the same at an appropriate stage.

39. We had put a query to the contemnor that as to whether he would like to file any affidavit on a quantum of the sentence to which he replied in negative and stated that he has not committed the contempt and whatever he has stated is correct and he stands by that.

40. Having considered the material placed on record, submissions of contemnor, this Court is of the opinion that contemnor has no repentance for his conduct and actions.

41. Consequently, we hereby sentence him to undergo simple imprisonment for a period of 6 months with fine of Rs.2,000/- and in default of payment of fine, he shall undergo simple imprisonment of 7 days. The contemnor is directed to be taken into custody by SI Prem (Naib Court), who along with SHO, Police Station Tilak Marg shall handover his custody to the Superintendent, Tihar Jail, Delhi.

42. Registry is directed to prepare arrest warrants and committal warrants against the contemnor forthwith.

43. Copy of this order be provided to the contemnor and SI Prem *dasti* under the signatures of Court Master.

44. At this stage, the contemnor/respondent has requested this Court to allow him to go to his home, change the clothes, drop his vehicle parked in the Court complex and bring required medicine with him to be taken to the jail.

45. We accept his request and direct the SHO, Police Station Tilak Marg, Delhi to depute some police officials who will take the convict to his home to meet with his requests and thereafter, he will be taken to the Tihar Jail as mentioned above. Jail authorities are also directed to allow the contemnor to take his medicines in jail, i.e. eye drops and medicine for stone in gall bladder, which are being used by him regularly.

46. With directions as aforesaid, this contempt petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SHALINDER KAUR)
JUDGE

JANUARY 09, 2024/rk/ab/su