2024:KER:78880

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 18TH DAY OF OCTOBER 2024 / 26TH ASWINA, 1946

CONT.CAS.(CRL.) NO. 2 OF 2023

PETITIONER:

SUO MOTU

BY ADVS.
SRI S.SANAL KUMAR (SENIOR) – AMICUS CURIAE

RESPONDENT:

YESHWANTH SHENOY, ADVOCATE, 951, 9TH FLOOR, KHCAA CHAMBER COMPLEX, HIGH COURT OF KERALA CAMPUS, ERNAKULAM, KERALA - 682031.

BY ADVS.
YESHWANTH SHENOY(PARTY-IN-PERSON)

THIS CONTEMPT OF CASE (CRIMINAL) HAVING BEEN FINALLY HEARD ON 18.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

JUDGMENT

Devan Ramachandran, J.

Majesty of law never is, nor must be reduced to, a mere claptrap; but to be assuredly exemplified in and by everything Courts do. This is not a daunting task, but an inherent imperative.

2. We commence, being fully cognizant of the limited role that we have to play at this stage.

3. This is because, another learned Bench of this Court had heard this matter in detail and has issued an order on 30.05.2024 – reported as **Suo Motu v. Yeshwanth Shenoy [2024 KHC 439]**, which takes into its fold most of the facts involved, if not all; as also the legal and forensic issues and aspects, as are necessarily and vitally attracted.

4. In order to maintain brevity and avoid prolixity - as is essentially required, we proceed to write as an augment to the order aforementioned, confirming ourselves strictly to the issues

not dealt with in it.

5. This contempt case is registered as a *suo motu* one under Section 15(1) of the Contempt of Courts Act, 1971 [for brevity, 'the Act']. This case has been initiated on the basis of a letter addressed by a learned Judge of this Court to the Hon'ble Chief Justice, on 09.02.2023. The same was taken as an "information" as postulated under the "Act"; and the Registrar General initiated action, as ordered by the Hon'ble Chief Justice.

6. It transpires that this Court, on 28.02.2023, took cognizance of this case, thus issuing a notice to the respondent; and that the latter filed his first Counter Affidavit on 22.05.2023, after having taken time for the same on 03.04.2023; followed by another Counter Affidavit dated 25.09.2023. In the second Counter Affidavit, the respondent raised several objections – stating to be "procedural violations" - *inter alia,* that the "information", namely the letter of the Hon'ble Judge dated 09.02.2023, had neither been annexed to the notice which he received, nor was a

part of the Judges Papers; which led to another Bench to issue an order on 11.10.2023 to the following effect:

> 'One of the contentions raised in the affidavit filed by the respondent is that he is not furnished with a copy of the letter dated 09.02.2023 referred to in the statement of facts. That letter is not seen incorporated in the Judges papers of this contempt case.
>
> In such circumstances, we deem it appropriate to direct the Registry to incorporate that letter along with connected records in the Judges papers of this contempt case.
>
> A copy of the same along with connected records shall be served on the respondent and also the learned Senior Counsel who has been appointed under Rule 15 of the Contempt of Courts (High Court of Kerala) Rules, 1971 to assist this Court, within a week.'

7. The files reveal that, the respondent, thereupon and obviously after having obtained a copy of the "information" - being the letter of the learned Judge dated 09.02.2023, in terms of the afore order, filed an additional affidavit dated 01.01.2024, impelling further contentions, including that he is not liable to be proceeded under the provisions of the "Act" and that this Court is

bound to discharge him within the rigour of Rule 14 of the Rules under the Contempt of Court Act, 1971 [for brevity, 'the Rules'].

8. The order dated 30.05.2024 was issued by this Court in such backdrop, answering all the "procedural violations" alleged by the respondent in his Counter Affidavits dated 22.05.2023 and 25.09.2023, save one; and this is evident from paragraph 8.22 and 8.23 of the said order, reproduced *ut infra*:

> "8.22. In the instant case, though the notice issued to the respondent, which we have extracted hereinbefore at paragraph 8.14, is one in Form No.I, the gist of the accusation made in the 'information' finds no place in that notice. However, the contents of that letter dated 09.02.2023 are there in the statements of facts constituting the alleged contempt and also in the draft charges prepared and signed by the Registrar General, which we have extracted hereinbefore at paragraphs 8. 4 and 8. 5 . After the order of this Court dated 11.10.2023, the Registry furnished a copy of the letter dated 09.02.2023 and connected records to the respondent. Thereafter, the respondent has filed an additional affidavit dated 01.01.2024.
>
> 8.23. Having considered the arguments advanced by the respondent and also the learned Senior Counsel appointed under Rule 15 of the Rules, we are of the view that the legal issues on

account of the letter dated 09.02.2023 not forming part of the contempt petition , when it was filed on 27.02.2023 , and the notice issued in Form No.I not containing the gist of accusations made in the 'information' are matters which require detailed consideration with specific reference to the provisions under the Act and the Rules and also the law on the point, which has to be dealt with in detail in the later stage of the proceedings in this contempt case."

9. Thereafter, the same learned Bench indited a further order on 10.06.2024, which is also extracted for ease of reference, since it is vitally relevant:

"On 30.05.2024, a detailed order was passed on ten procedural violations pointed out by the respondent. In that order it was made clear that the legal issues on account of the letter dated 09.02.2023, written by Justice Mary Joseph, not forming part of this contempt petition, when it was filed on 27.02.2023, and the notice issued in Form No.I not containing the gist of accusations made in the 'information' are matters which require detailed consideration at a later stage of the proceedings, with specific reference to the provisions under the Contempt of Courts Act and the Rules made thereunder and also the law on the point.

2. Today, when this matter is listed for consideration, the respondent, who appeared in person, and

also the learned Senior Counsel appointed under Rule 15 of the Rules seek a short adjournment to address arguments on the above aspect.

List on 25.06.2024 at 2.00 p.m.”

10. The events which followed, led to a situation where the learned Bench dealing with this matter recused, consequently it being listed before us on 12.09.2024. On that day, Sri.S.Sreekumar, learned Senior Counsel, who had been requested to assist this Court earlier, expressed his inability to do so; upon which, we requested Sri.S.Sanal Kumar, learned Senior Counsel, to guide us through the processes, which he agreed.

11. Sri.S.Sanal Kumar – learned Senior Counsel, made very incisive and meticulous submissions with respect to the frame and scheme of the “Act” and the “Rules”; however, making it limpid that he was doing so only as an Amicus Curiae because, the stage at which he can be a “Prosecutor” has not arisen. He explained to us that, as matters today stand, this Court is only at the stage of Rule 14 of the “Rules” because, a *prima facie* case

has not been yet recorded against the respondent to continue with the matter; nor has an opinion entered as to whether it is expedient to do so.

12. The learned Senior Counsel then submitted that, after this case was registered and the respondent given an opportunity to file his Counter Affidavit - which he did, as has been recorded above - it is incumbent upon this Court to first act as per Rule 14 of the "Rules", which mandates that the reply ought to be first evaluated to see if the respondent has tendered an apology after admitting that he has committed contempt, then frame charges; or, in the alternative, if it is found otherwise, discharge him/her, if it is satisfied that there is no *prima facie* case, or that it is not expedient to proceed.

13. Sri.Sanal Kumar thus predicated that, either way, it is for this Court to now decide whether there is *prima facie* case, or if it is expedient to proceed with the matter because, the course we are to adopt in furtherance, will depend upon this

singular consideration.

14. Sri.Sanal Kumar then explained to us that the only question, which is now relevant for consideration of this Court - after the other learned Bench had delivered the order dated 30.05.2024 - is if the defect, projected by the respondent - to the effect that the "information" against him was not part of the Judges' Papers when this Court took cognizance of this case; nor enclosured with the notice issued to him under Form 1 - can be cured. He pointed that the respondent also appears to be taking a contention that the notice itself, issued to him in Form 1, was inept, being not in its prescribed format; but argued that this, perhaps, would be irrelevant because, in his view, the materials on record would indicate that there was substantial compliance.

15. Coming to the question of curability of the aforementioned alleged defect in the proceedings, the learned Senior Counsel submitted that he can draw lumination from the judgment of the Hon'ble Supreme Court in **State of Kerala v.**

M.S.Mani [(2001) 8 SCC 82], in which, the law has been declared crystally that an incompetent proceedings or petition cannot be converted into a maintainable one subsequently, by curing the defects. He then showed us that, in one of the judgments, which have already been referred to by the learned Bench in its order dated 30.05.2024, the High Court of Gujarat dealt with this particular issue in **Suo Motu v. Nandlal Thakkar** [2013 Crl.L.J. 3391], to hold that the declarations of the learned Supreme Court in **Muthu Karuppan v. Parithi Ilamvazhuthi** [(2011) 5 SCC 496 : AIR 2011 SC 1645] and **Anup Bhushan Vohra v. Registrar General, High Court of Judicature at Calcutta** [(2011) 13 SCC 393], would render it irrefutable that a serious lapse in strictly following the procedure, as laid down in the "Act" and "Rules", would leave no other option but to discharge the person charged with the contempt. He showed us that this judgment has gone even to the extent of warning that "*this is an eye opener for the Registry of this Court to ensure that henceforth any notice issued by the High*

Court, be it on its own motion, or otherwise, has to be in model form No.1, and all other Rules governing the procedure should be scrupulously followed and observed".

16. Sri.Sanal Kumar then cited **J.R. Parashar v. Prasant Bhushan** [(2001) 6 SCC 735], explaining that, in this case, the Hon'ble Supreme Court was dealing with the validity of a notice, which do not specify the contumacious acts, with which the respondent is charged and with only a copy of the petition served on him, to hold that this was not sufficient and thus to dismiss proceedings.

17. The learned Senior Counsel concluded saying that, therefore, on a dispassionate and comprehensive analysis of all the precedents covering the field – which he pointed out, in fact, having been already done by the learned Bench which issued the order dated 30.05.2024 – it will not be expedient for this Court to proceed against the respondent because, the defect which he has pointed out is incurable.

18. Sri.Yeshwanth Shenoy – respondent appearing in person, began vehemently that he had never said anything to the learned Judge in question, as imputed by her in her letter dated 09.02.2023; further asserting that he could have proved this if the video recording of that day had been made available to him – as he had applied before the Registry of this Court – which, he says, has been denied citing the reason that there is no such. He then proceed to argue that, even going by the opinion of the other learned Bench dated 30.05.2024 on the issue with which we are presently seized with, it has been more or less found that the proceedings cannot continue against him on account of the 'information' not having been placed before this Court when the cognizance of this case was taken and for it not having accompanied the notice in Form No.1. He then went one step forward – as anticipated by Sri.Sanal Kumar – to predicate that the notice issued to him cannot be even construed to be under Form No.1, because it contains none of the attributes as statutorily

stipulated, to be thus construed as inept and incompetent.

19. Sri.Yeshwanth Shenoy then made an adscititious argument that the initiation of suo motu proceedings against him was impossible and impermissible under Section 15 of the 'Act' because, even going by the 'information' against him, he is stated to have shouted at the Judge and to have threatened her of being removed from Office. He vehemently asserted that this – even if assumed to be true, *ex argumento* – would only come within the ambit of Section 14 of the 'Act'; and hence that the learned Judge could have never addressed the Honourable the Chief Justice in the manner that she did; thus that it cannot be even construed to be an 'information' as has now been made out. He asserted that when the learned Judge in question did not invoke the provisions of Section 14 of the 'Act', it can only be that the alleged contempt was never committed in the presence of a Court or its hearing; and that this is even more implicit from the factum of the alleged 'information' calling for no action to be initiated

against him under the 'Act'.

20. In a manner adjunct to the above argument, Sri.Yeshwanth Shenoy proceeded to submit that the learned Judge very well had an option to act under Rule 7 of the 'Rules'; by directing a Contempt Case to be initiated; and that, had it been done, it would not have even required the sanction or permission of the Honourable Chief Justice, but would have been then placed before the appropriate Bench for consideration. He contended that the factum of this not having been done by the learned Judge in question, would render it now impermissible for any further proceedings against him in this case; and therefore, reiteratingly prayed that it be dropped.

21. Sri.Yeshwant Shenoy concluded his submissions contending that, in fact, the order dated 30.05.2024 itself now gives him a separate cause of action to seek discharge, since his case has been prejudged even before trial; and that this is one more reason why it becomes not expedient for this Court to

proceed against him.

22. We have recorded only the most expendable facts and submissions as are required for our consideration at the moment because, as we said prefatorily, save the one issue reserved for later assessment, the earlier order of the learned Bench dated 30.05.2024 covers every other. The facts involved in this case have been recorded therein in detail in the first seven paragraphs; while, paragraphs 8.8 to 8.23 exclusively touches upon the question if the above mentioned defect is capable of being cured, but without conclusively answering it. We further see that most of the relevant and applicable precedents have also been taken into account and cited; and that in the afore extracted paragraph 8.22 of the order, the learned Bench poses a question, if the contents of the letter of the learned Judge – being available in the statement of facts, as also in the draft charges prepared and signed by the Registrar General – could satisfy the mandatory requirements under Rule 9 of the 'Rules'; leaving it to be decided

separately.

23. It is thus apodictic that, all we are called upon to consider is whether the alleged defects at the time of taking cognizance of this case and that *qua* the notice issued to the respondent, can be construed to have been cured by the subsequent order of this Court dated 11.10.2023, which, being acme for our consideration, is reproduced *ut infra*:

> One of the contentions raised in the affidavit filed by the respondent is that he is not furnished with a copy of the letter dated 09.02.2023 referred to in the statement of facts. That letter is not seen incorporated in the Judges papers of this contempt case.
>
> In such circumstances, we deem it appropriate to direct the Registry to incorporate that letter along with connected records in the Judges papers of this contempt case.
>
> A copy of the same along with connected records shall be served on the respondent and also the learned Senior Counsel who has been appointed under Rule 15 of the Contempt of Courts (High Court of Kerala) Rules, 1971 to assist this Court, within a week.
>
> List on 07.11.2023 at 2.00 p.m.

24. The afore order renders it without cause to further ponder that, as on its date, namely 11.10.2023, the 'information' – being the letter of the learned Judge dated 09.02.2023, was not

available even in the Judge's Papers, nor was it an enclosure or annexure to the notice issued to the respondent in Form 1.

25. Before we proceed further, we need to answer the first argument of the respondent, that the Notice issued to him is not in conformity with Form 1 of the 'Rules'. We have gone through the said Notice and see that, though it is not verbatim in the manner as specified in Form 1, it substantially subscribes to the prescriptions therein – it containing a synopsis of the facts, as also draft charges. We, therefore, do not propose to dwell on that argument any further.

26. As regards the second argument of the respondent, that when the learned Judge in question did not initiate action under Section 14 of the 'Act', this *suo motu* case is incompetent, this can no longer be urged by him, since the order of the other learned Bench dated 30.05.2024 has already answered it against him.

27. Returning to the primary question before us, whether

the admitted defect can be taken to have been cured subsequently; permitting further proceedings in this case to be taken forward, we must surely advert to Rule 9 of the 'Rules' which is as under:

> **9. Preliminary hearing and notice.--** (i) Every petition, reference, information or direction shall be placed for preliminary hearing before the appropriate Bench.
>
> (ii) (a) The Court, if satisfied that a *prima facie* case has been made out, may direct issue of notice to the respondent, otherwise, it shall dismiss the petition or drop the proceedings.
>
> (b) The notice shall be in Form No.1 and shall be accompanied by a copy of the petition, reference, information or direction and annexures, if any, thereto.

28. As the Honourable Supreme Court has rendered it ineluctable in **Muthu Karuppan** (supra), the proceedings under the 'Act' and the 'Rules' have to be reckoned strictly as per the statutory provisions and it must also be ensured that there are no processual violations. This is because, the 'Act' and the 'Rules' thereunder provides stringent consequences for a proven act of contempt; and the nature, burden and standard of proof required in a proceedings under it – being quasi criminal in nature – answers what is required in a criminal case. Therefore, **Muthu**

Karuppan (supra), which has also been referred to by the learned Bench which issued the order dated 30.05.2024, does not brook any confusion, that the procedural requirements under the 'Act' and the 'Rules' have to be construed and complied with implicitly.

29. Contextually confined, the judgment of this Court cited by the learned Senior Counsel, namely **State of Kerala v M.S.Mani**, becomes crucially vital and relevant. This judgment was delivered in the bedrock of the facts that a contempt petition was filed on 17.05.1999; while the consent of the learned Attorney General was obtained only on 11.05.2000. An argument was made that Section 15 of the 'Act' has been fully complied with; but the Honourable Supreme Court stated that '*we are unable to accede to this contention*' and then went on to declare emphatically that '*the fact remains that the motion to take action against the respondent under Section 15 was not made with a consent of the learned Attorney General or Solicitor General and therefore, is incompetent*'. Its next holding is what governs us, namely that,

'subsequent obtaining of the consent, in our view, does not cure the initial defect, so as to convert the incompetent motion into a maintainable petition'.

30. Though the facts involved are not similar, the situation before us is analogous because, at the time when this Court took cognizance of this case, ordering issuance of notice to the respondent on 28.02.2023, the information – being the letter of the learned Judge dated 09.02.2023, was not available even in the Judge's Papers. Consequently, the notice issued to the respondent also did not contain a copy of the same; and as we have already said above, we do not require to expatiate on this because, the order of this Court dated 11.10.2023 makes this undeniable.

31. On the underpinning of the afore factual scenario, when one examines Rule 9 of the 'Rules', it becomes inevitable that, every petition, reference or information, which leads to the initiation of any Contempt Case – be that suo motu or otherwise - shall be placed for preliminary hearing before the appropriate

Bench. The word used is 'shall' and therefore, every such input is required to be mandatorily placed before the Bench for consideration. The 'Rule' thereafter stipulates that, if the Court is satisfied that a *prima facie* case has been made out, it may direct issue of notice to the respondent; and if otherwise, it shall dismiss the petition, or drop the proceedings. Interestingly, if the Court chooses the former, then Rule 9(1) (b) of the 'Rules' affirms that the Notice shall be in Form 1, and shall be accompanied by a copy of the petition, reference, information, or direction and annexures, if any, thereto. We do not require to reemphasize that the word used in both these limbs is, again, specifically 'shall'.

32. Therefore, in normal circumstances, when the phraseology used has a mandatory tenor, it would require little edification as to what would be the consequence when it is violated, particularly in the backdrop of the declarations of the Honourable Supreme Court in **Muthu Karuppan** (supra).

33. But, before that, we must also have a look at Rule 14

of the 'Rules', which we extract as below:

> **14. Hearing of the case and trial.--** Upon consideration of the reply filed by the respondent and after hearing the parties.
>
> (a) If the respondent has tendered an unconditional apology after admitting that he has committed the contempt, the Court may proceed to pass such orders as it deems fit;
>
> (b) if the respondent does not admit that he has committed contempt, the Court may –
>
> (i) proceed to frame the charge (subject to modification or addition by the Court at any time) if it is satisfied that there is a *prima facie* case; or
>
> (ii) drop the proceedings and discharge the respondent, it is satisfied that there is no *prima facie* case, or that it is not expedient to proceed.
>
> (c) the respondent shall be furnished with a copy of the charge framed, which shall be read over and explained to the respondent. The Court shall then record his plea, if any;
>
> (d) if the respondent pleads guilty, the Court may adjudge him guilty and proceed to pass such sentence as it deems fit;
>
> (e) if the respondent pleads not guilty, the case may be taken up for trial on the same day or posted to any subsequent date as directed by the Court.

34. The afore 'Rule' obtains its operational genesis after a Notice is issued to the respondent under Form 1 and after he/she files a reply to it. If the respondent tenders an apology after admitting the contempt, certainly, this Court will obtain every power to issue orders as is necessary; but, on the contrary, if he/she does not do so, then there are two avenues available,

namely, to frame charge against him/her, but only after it is satisfied that there is a *prima facie* case against him/her and that it is expedient to proceed; or, in the alternative, if no such satisfaction is possible, to drop the proceedings and discharge the respondent.

35. Thus, if this Court is to travel along the former limb afore, the concomitant question, whether it is expedient to proceed with the case, would also become inevitable to be weighed.

36. Thus, we are in a stage where we are enjoined to decide whether there is a *prima facie* case, consequent to which, we are to frame charges against the respondent – he having filed counter affidavit, denying every allegation against him; or whether we must discharge him, either because there is no *prima facie* case, or if it is not expedient to proceed against him.

37. In the admitted factual umbra before us, we do not require to labour to verify whether the respondent had been made available a copy of the 'information' - being the letter of the

learned Judge dated 09.02.2023, along with a Notice issued to him under Form 1 by the Registry of this Court. This is admitted and evident from the order dated 11.10.2023.

38. It is also beyond the pale of contest, again going by the order of this Court dated 11.10.2023, that the respondent was not furnished with a copy of the afore information, along with the Notice issued to him in Form No.1.

39. What would be the forensic fallout of such omissions?

40. The observations of the other learned Bench of this Court, indited in their order dated 30.05.2024, now spring into importance when we are contemplating further action on the above stated statutory lines. Paragraphs 8 to 8.23 of the said order luculently indicate the mind of the learned Judges that, what they were mulling was whether the subsequent furnishing of information to the respondent and the subsequent placing of the same in the Judge's Papers would cure the defects, noticed and recorded in their order dated 11.10.2023.

41. When answering the above, we are to be implicitly guided by **Muthu Karuppan** (supra), which reminds us that any action under the Contempt of Courts Act and its Rules will have to be construed strictly, it being a quasi-criminal action. When Rule 9 of the 'Rules' renders it indubitable that every petition, reference, information or direction, shall be placed for preliminary hearing before the appropriate Bench; and when the word used is 'shall', one cannot countenance an exception to it in any manner. Furthermore, when the said Rule then requires that the Notice to be issued to the respondent shall be in Form 1 and shall be accompanied by a copy of the petition, reference, information and direction or annexures, if any thereto, it again sounds an imperative tenor, which will have to be inviolably complied with.

42. We, consequently, find great force in the opinion of the learned Senior Counsel – Sri.Sanal Kumar, that a proceeding which was incompetent at the beginning – particularly at the time when this Court took cognizance of the same – cannot be thereafter

converted into a competent one, by rectification of the conceded defect, since it snuffs out life of the very initiation of jurisdiction.

43. In such view, before we verify if there is a *prima facie* case against the respondent, we will have to confirm whether it is expedient to proceed with this matter. To paraphrase, our satisfaction of a *prima facie* case arises only if we are sure that the proceedings can continue without statutory inhibition, notwithstanding the noticed processual defect.

44. The word 'expedient' takes into its fold various attributes, including whether we are acting with jurisdiction and in proper exercise of the same. The famed **Anisminic Principles** apply to some rigour here because, if the proceedings are seen to have been initiated without jurisdiction, or in violation of the statutory provisions, continuation of the same would also be liable to be declared impermissible.

45. Though with persuasive precedential value, the judgment of the Honourable High Court of Gujrat in **Suo Motu v.**

Nandal Thakkar [2013 CRL. L.J. 3391], authored by His Lordship J.B.Pardiwala (as his Lordship was then), certainly is of great help to us in this regard. The learned Court again referred to **Muthu Karuppan** (supra) and abided by the holdings in it, that any 'violation' or 'deviation' from the Rules, which are framed by the High Court in exercise of powers under Section 23 of the 'Act', should not be accepted or condoned lightly and must be deemed to be fatal to the proceedings taken to initiate action for contempt. It then went on to say that it is convinced that there was gross violation of the 'Rules', because the notice issued to the respondent was not in Form No.1, as provided in the schedules to the Rules which govern Gujrat; thus concluding, as below extracted from Para 14 of it:

> 14. In the above view of the matter, and more particularly in view of the dictum as laid down in Muthu Karuppan (AIR 2011 SC 1645) (supra) and Anup Bhushan Vohra (2011 AIR SCW 6599) (supra), we are left with no other option but to discharge the notice issued upon the respondent for contempt. It is bit disturbing to discharge the notice due to a serious lapse in strictly following the procedure as laid down under the Act and the Rules. This is

> an eye-opener for the Registry of this High Court to ensure that henceforth any notice issued by the High Court, be it on its own motion or otherwise, has to be in model Form No.1 and all other Rules governing the procedure should be scrupulously followed and observed. We, therefore, deem fit to direct the Registry of the High Court to ensure that the notice for contempt issued by the High Court shall be drawn in the model Form No.1 annexed to the Contempt of Courts (Gujrat High Court) Rules, 1984, and other Rules of 1984 are followed without any deviation. It is also not permissible for us now at this stage to ask the Registry to issue notice in Form No.1 as prescribed in Rule 13 of the Rules, as fresh contempt action would be time barred under Section 20 of the Contempt of Courts Act, 1971.

46. We are in respectful agreement with and in affirmation of the opinion in afore judgment and this is wholly justified because, in **Anup Bhushan Vohra** (supra), the Honourable Supreme Court quoted **Muthu Karuppan** (supra) and reiterated that any deviation from the prescribed Rules should not be accepted or condoned lightly; reaffirming that it should be then deemed to be fatal to the proceedings initiated.

47. In the case at hand, when the most important of the mandatory input, namely the 'information' – being the letter of the Judge dated 09.02.2023, had neither been seen by this Court

at the time when cognizance was taken and had not been made available to the respondent along with the Notice issued to him in Form No.1, we are certain that **Muthu Karuppan** (supra) and **Anup Bhushan Vohra** (supra) would enjoin us to permit no further proceedings in this matter.

48. When we so hold, any further exercise of jurisdiction would defeat and is likely to be viewed merely to be in defence of the action initiated by this Court. When we have noticed an error in jurisdiction, even at the time of inception, an attempt to rectify would strike at the root of the sacrosanct notions of majesty of law – it perhaps then being construed as being almost valetudinarian.

49. Bound by the Constitution, as we are, this would maim Public Trust – the *sine qua* of any jurisdictional exercise; and would render legal processes – particularly in *Suo Motu* Contempt motions – vulnerable to deleterious impressions of being one-sided and vitiated.

50. At this juncture, we do not require to expatiate that the principles enunciated in **Taylor v. Taylor** [(1875) 1 Ch D 426] have been adopted by Courts of this country, including the Honourable Supreme Court to a great extent. Where a power is given to do a certain thing in any certain way, the thing must be done in that way or not at all; and all other methods of performance are necessarily forbidden. The Hon'ble Supreme Court has spoken on this in great detail in several judgments, including **Ramchandra Keshav Adke & Ors vs Govind Joti Chavare and others** [1975 (1) SCC 559] and **Vanaja v. State of Karnataka** [2001(4) SCC 9]. In fact, in the latter precedent, the Honourable Supreme Court restated that when law requires a thing to be done in a certain manner it has to be done in that manner or not at all; and that a power must only be exercised in the manner provided by law. This applies even against any attempt to do something which cannot be done directly, in an indirect manner. (See for support, (I) **Madanlal Fakirchand Dudhediya v. Shree Changdeo**

Sugar Mills Ltd. and Others [AIR 1962 SC 1543];(ii) **H.H.Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur and Others v. Union of India** [AIR 1971 SC 530].

51. Thus, in our deeply considered opinion, the defect noticed is incurable and incapable of rectification through subsequent service of 'information' to the respondent, more so when it is beyond controversy that this Court had taken cognizance of the case with such being not available in the Judge's Papers and thus without having adverted to it. This surely is fatal to the continuance of this case.

52. In summation, we are without doubt that it would not be expedient to proceed – the above noticed defect in proceedings being incurable and thus fatal – against the respondent further; and that it is axiomatically necessary for us to drop the proceedings and discharge him. It is so ordered.

We close this judgment placing on record our deepest appreciation for Sri.S.Sreekumar, learned Senior Counsel, who had

earlier assisted us; as also for Sri.Sanal Kumar, learned Senior Counsel, who was kind enough to step in, virtually in substitution, at our request. The incisive insights that Sri.Sanal Kumar provided to us have made it much more easy for us to deliver this judgment, with all relevant and germane principles and provisions luculently explained by him, underpinned on the precedential declarations that governs the field.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B. SNEHALATHA

JUDGE

SP/RR

APPENDIX OF CONT.CAS.(CRL.) 2/2023

RESPONDENT EXHIBITS

Annexure R1(14)	The copy of article written by the Respondent and published in Linkedin titled A wake up call to the Judiciary
Annexure R1(1)	A copy of the order dated 9 June 2022 in RPFC No.189 of 2019
Annexure R1(2)	Copy of Crl.M.A No.1 of 2022 in RPFC No.189 of 2019
nnexure R1(4)	Copy of Crl.M.A No.1 of 2023 in RPFC No.189 of 2019
Annexure R1(5)	A copy of the order dated 9 February 2023 in Crl.M.A No. 1 of 2023 in RPFC No.189 of 2019
Annexure R1(6)	The friends list of Adv.Gisa Susan Thomas in Facebook
Annexure R1(7)	A copy of in-house complaint against Justice Mary Joseph
Annexure R1(8)	Copy of the Counter Affidavit filed by the Registrar General in W.P (C) 6912 of 2023
Annexure R1(9)	Facebook post of the then President of Kerala High Court Advocates Association
Annexure R1(10)	copy of the complaint filed with the Registrar (Vigilance)
Annexure R1(11)	A copy of the order passed in W.P (Crl) No. 742 of 2022
Annexure R1(12)	Copy of the Counter Affidavit filed by the Registrar General in W.P (C) 8750 of

	2023
Annexure R1(13)	A copy of the order dated 27 March 2023 in W.P (C) 10334 of 2023 of this Hon'ble Court
Annexure R1(30)	copy of the Counter affidavit filed by Respondent No.6 in SLP 5563 of 2023
Annexure R1(31)	copy of the show cause notice issued by the Bar Council of Kerala to the Respondent
Annexure R1(32)	copy of the letter dated 27 February 2023 written by the Respondent to the Bar Council of Kerala
Annexure R1(33)	copy of the letter dated 27 February 2023 written by the Respondent to the Registrar General
Annexure R1(34)	copy of the interim order dated 28 February 2023 in Con Cas (Crl) 2 of 2023
Annexure R1(35)	copy of the order dated 7 March 2023 in W.P (C) 7660 of 2023
Annexure R1(36)	copy of the order dated 9 June 2023 in W.P (C) 6912 of 2023
Annexure R1(37)	copy of the in-house complaint against Justice P.V.Kunhikrishnan
Annexure R1(38)	copy of the order in Unnumbered I.A 1 of 2022 in W.P (C) 9816 of 2021
Annexure R1(39)	The video transcript of the proceeding in W.P(C) 6912 of 2023 before Justice P.V.Kunhikrishnan
Annexure R1(40)	copy of the order dated 8 September 2023 in W.A 1316 of 2023

Annexure R1(42)	copy of the order in Con.Cas (C) 1756 of 2022
Annexure R1(41)	copy of the order dated 09-08-2023 in unnumbered Con. Cas (C) 948 of 2023
Annexure R1(15)	The copy of article written by the Respondent and published in Linkedin titled Hanging Justice to Justify the Unjustifiable
Annexure R1(16)	A copy of the letter addressed to the Attorney General
Annexure R1(17)	A copy of the W.P (C) 13221 of 2022 filed by the State
Annexure R1(18)	Copy of the the order of the Hon'ble Supreme Court in Civil Appeal 4643 of 2021
Annexure R1(19)	Copy of the the order of the Hon'ble Supreme Court in Review Petition (C) No. 1285 of 2021
Annexure R1(20)	Copy of the interim order dated 15 June 2022 in W.P (C) 13221 of 2022
Annexure R1(21)	copy of the I.A 1 of 2023 in W.P (C) 13221 of 2022
Annexure R1(22)	copy of the written arguments in I.A 1 of 2023 in W.P (C) 13221 of 2022
Annexure R1(23)	copy of the order dated 17.02.2023 in I.A 1 of 2023 in W.P (C) 13221 of 2022
Annexure R1(24)	copy of the order dated 24 March 2023 of the Hon'ble Supreme Court in SLP (Civil) 5563 of 2023
Annexure R1(25)	the extract of the causelist dated 31 March 2023 before Justice Viju Abraham

Annexure R1(28)	A copy of the order dated 16 November 2022 in W.P (C) 35120 of 2022
Annexure R1(26)	A copy of the interim order dated 31 March 2023 in W.P 17340 and 13221 of 2022
Annexure R1(27)	A copy of the interim order passed on 13 April 2023 in W.P (C) 35120 of 2022
Annexure R1(29)	copy of the Counter Affidavit filed by the State of Kerala in SLP Civil 5563 of 2023
Annexure R1(3)	A copy of Crl.MA No.2/2022 in RP(FC)No.189/2019 dated 27-05-2022
Annexure R1(43)	A TRUE COPY OF THE E MAIL DATED 3 NOV 2023 SENT BY THE APPLICANT TO THE REGISTRY
Annexure R1(44)	A TRUE COPY OF THE E MAIL DATED 4 NOV 2023 SENT BY THE REGISTRY TO THE APPLICANT WITHOUT THE ATTACHED DOCUMENT
Annexure R1(45)	letter written by Justice Mary Joseph
Annexure R1(46)	The communication between Registrar General and the then Chief Justice