IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Contempt Petition No. 03 of 2018

Chhitij Kishore Sharma

....Petitioner

Versus

Mr. Justice Lok Pal Singh

....Respondent

Present: Mr. Akhilesh Kalra, Advocate for the petitioner.

Coram: Hon'ble Mr. Justice Rajiv Sharma, J.
Hon'ble Mr. Justice Sudhanshu Dhulia, J.

Hon'ble Sudhanshu Dhulia, J.

This petition before us has been filed by a practicing Advocate of this Court, bringing to our notice an alleged "Contempt of Court", said to be committed by a sitting Judge of this Court, who is the present respondent.

2. The allegations are that on 09.05.2018 and 11.05.2018, while the petitioner was in the Court of the learned Judge, the learned Judge lost his temper and used intemperate language against the petitioner, his client, and even made sarcastic comments against his brother Judges.

3. The petitioner states that the learned Judge commented that "unlike other Judges he is not in a habit of changing orders in his chamber". The petitioner gives two references of dates where such unsavory innuendos were allegedly used. On 09.05.2018, the petitioner was intimidated and threatened, and warned that he would be sent to jail.

4. There is also an allegation that the learned Judge passed similar remarks against a Senior Advocate,

who was also a former Judge of a High Court. These remarks were made in "Hindi", but if loosely translated would read "Yes, I know what kind of a lawyer he is, and what kind of a Judge he was"!

5. There are also allegations that the learned Judge had used strong language against a high government official, and threatened to send him to jail.

6. Lastly there is an allegation that the respondent had dismissed a writ petition on 25.01.2018, in which was arrayed as one of the respondents, a former client of the present respondent. Instead of recusing from the case, the matter was heard and dismissed. The argument of the petitioner is simply that the learned Judge should not have heard the matter but still he did.

7. The alleged behaviour of the learned Judge, according to the petitioner, tends to scandalize this Court and at least lowers the authority of the Court, such utterances and behaviour of the learned Judge also amount to an obstruction in the administration of justice, says the petitioner.

8. We must record that this whole exercise has not been pleasant for us. It is a very unusual case, to say the least. Still we must give a decision and we do that "with malice towards none, with charity for all, we must strive to do the right, in the light given to us to determine that right."*

* We found this reference of Abraham Lincoln's speech in the seminal judgment of Justice Sabyasachi Mukharji in the case of **P.N. Duda v. P. Shiv Shanker** reported in (**1988) 3 SCC 167,** and that is to be taken as our source.

9. We have not sent any notice to the learned Judge, as before we do that, two questions must be answered. First question is whether a contempt petition is at all maintainable against a Judge of a High Court, where the allegations are that he has committed a contempt "of his own Court". The second question, which is equally important, is whether a contempt petition can be entertained by this Court under Section 15 of the Contempt of Courts Act, where the learned Advocate General of the State has not granted his "consent", on a motion made by a person under sub-section (1)(b) of Section 15 of the Act.

10. This criminal contempt petition has been filed under Section 15 of the Contempt of Courts Act, 1971. Save a case which is under Section 14 of the Contempt of Courts Act i.e. a contempt in the face of the Court, in all other matters of criminal contempt Section 15 is the relevant provision, which reads as under:

> **"15. Cognizance of criminal contempt in other cases. –** (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 to 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.
>
> (2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the

> Advocate-General or, in relation to a Union Territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.
> (3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.
> Explanation. – In this section, the expression "Advocate-General" means –
> (a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;
> (b) in relation to the High Court, the Advocate-General of the State of any of the States for which the High Court has been established;
> (c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."

11. A Full Bench of Patna High Court has held that a criminal contempt would not lie against a Judge of a Court of Record. The reference here is of the majority opinion in **Shri Harish Chandra Mishra and others v. The Hon'ble Mr. Justice S. Ali Ahmed** (**AIR 1986 Patna 65 Full Bench).** A similar view was taken late by a Division Bench of Rajasthan High Court in the case of **Sikandar Khan v. Ashok Kumar Mathur** reported in **1991 (3) SLR 236.** This aspect was later settled by the Hon'ble Apex Court in the case of **State of Rajasthan v. Prakash Chand and others, (1998) 1 SCC 1**, where a three-Judges Bench of Apex Court has held that a contempt petition does not lie against a Judge of Court of Record.

12. We must reproduce here in full Section 16 of the Contempt of Courts Act, 1971 as a very heavy

reliance has been placed on this provision. Section 16 of the Contempt of Courts Act reads as under:

> "**16. Contempt by Judge, Magistrate or other person acting judicially**.—
>
> (1) Subject to the provisions of any law for the time being in force, a Judge, Magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.
>
> (2) Nothing in this section shall apply to any observations or remarks made by a Judge, Magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such Judge, Magistrate or other person against the order or judgment of the subordinate court."

13. The Full Bench of Patna High Court in **Harish Chandra Mishra** (supra) gives precise reasons as to why contempt petition will not lie against a Judge of Court of Record. What the learned Judges in this Full Bench have held is that Section 9 and Section 16 of the Contempt of Courts Act, 1971 have to be read together, and when we do that we find that though Section 16 says that even a Judge or a Magistrate "or other person acting judicially" is also liable for contempt of his own Court, yet this provision has to be seen alongwith Section 9 of the Act. Section 9 of the Contempt of Courts Act, 1971 reads as under:

> "**9. Act not to imply enlargement of scope of contempt. –** Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act."

14. The reasoning of the majority opinion in the said Full Bench was based on an interpretation of Section 9 and Section 16 of the Act. According to the Full Bench, Section 9 of the Act makes only such acts punishable for contempt, which have been stated in the Act itself. Section 16 of the Act makes the provision "applicable subject to the provisions of any law for the time being in force". Thus, since on the day the Contempt of Courts Act, 1971 came into force, there was no law or decision of the Supreme Court or the High Court which made a Judge of Court of Record answerable to a charge of contempt of court, therefore logically a Judge of Court of Record is not liable to be punished for committing a contempt of his own court. The Full Bench of Patna High Court while doing this also distinguished the position as it was with the judges of the subordinate courts, who were at the relevant time in any case liable to be punished for having committed a contempt of either superior court or of their own court. In the words of the Hon'ble Judges, it was said as follows:

> "In view of section 9 nothing contained in the Act shall be construed as implying to make an act punishable as contempt of Court which would not have been so punishable apart from the Act. In other words an act or action which was not contempt of Court before the Act came into force shall not be punishable as contempt of Court under the

Act. The provision incorporated in the Act are supplemental to already existing law of contempt as interpreted by the Supreme Court and different High Courts. Now in this background can it be said that section 16 has purported to enlarge the scope of the Act to cover even the acts and actions of the Supreme Court and High Court Judges while administering justice to make them punishable under the provisions of the Act, having said in section 9 that, nothing shall be punishable as contempt of Court which would not be so punishable apart from the Act? In this connection it may also be pointed out that section 16 opens with the words "subject to the provisions of any law for the time being in force", which means that section 16 is subject to the existing law which was in force before the Act was enacted. On the day the Act came into force neither the Supreme Court nor any High Court had held that even a Judge of Supreme Court or High Court was answerable to a charge of contempt of Court. If the framers of the Act wanted to make a change in this respect they should have introduced *a non obstante* clause in section 16 by saying 'notwithstanding anything contained in any other law', instead of making it 'subject to the law for the time being in force'. The Judges of the subordinate Courts were liable to be punished for having committed contempt of superior Courts or of their own Court even before the act came in force in view of series of judgments of different Courts. Reference in this connection may be made to a Full Bench judgment of the Lahore High Court in the case of Mohd. Shafi v. Chowdhary Quadir Baksh AIR 1949 Lah 270 and Bar Association and Library, Moradabad v. Kothari S.D.M. 1966 All LJ 953. IN view of Section 9 and the language of section 16 itself it has to be held that section 16 does not purport to enlarge the scope of the Act by including even the Judges of the Courts of Record….it only gives statutory recognition in respect of contempt of Court committed by Judges and Magistrates presiding over subordinate Courts."

15. The learned counsel for the petitioner Mr. Akhilesh Kalra, would, all the same, argue that in view of the recent Supreme Court judgment by a Constitution Bench of seven Judges in the case of **In re, Hon'ble Sri Justice C.S. Karnan (Reported in (2017) (7) SCC 1)**, the position would now be different, as in the aforementioned case the Hon'ble Apex Court had held a sitting Judge of a High Court for committing a contempt of court and had sentenced him for six moths imprisonment.

16. We, however, have not been able to accept this proposition of the learned counsel for the petitioner.

17. We must first look closely to the facts of Justice Karnan's case. The series of events, which ultimately led to the unenviable task for the Hon'ble Apex Court, where a suo motu cognizance of the matter was taken under Article 129 of the Constitution of India, actually falls under the rarest of rare cases. A sitting Judge of a High Court was held for contempt of Court and was sentenced for six months of imprisonment! This had never happened before. In our most humble view, while doing so, the Hon'ble Judges of the Apex Court have purposely refrained from laying down a law of universal application. This is evident from the cautioning note used at the beginning of the order, by the Hon'ble Chief Justice J.S. Khehar, which explains everything. The opening lines of the judgment read as under:

> "The task at our hands is unpleasant. It concerns actions of a Judge of a High Court. The instant proceedings pertain to alleged

> actions of criminal contempt, committed by Shri Justice C.S. Karnan. The initiation of the present proceedings suo motu, is unfortunate. In case this Court has to take the next step, leading to this conviction and sentencing, the Court would have undoubtedly traveled into virgin territory. This has never happened. This should never happen...."
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> *(Emphasis provided)*

18. But then even assuming for the sake of argument that we are wrong in our above assessment, yet before we accept the proposition of the learned counsel for the petitioner that the case is a binding precedent, we must examine this on the facts of the two cases. The case before the Hon'ble Apex Court, we find was not of the nature as the one before us. Unlike the situation before us, the charge against Justice Karnan was not of committing a contempt "of his own Court". Moreover, the sentence in that case was awarded, as there the learned Judge had also committed a contempt "on the face of the Court", apart from the fact that the Apex Court had also taken the matter suo motu. On the other hand, we are dealing with a completely different situation. Firstly, we have a case where the allegations are that a Judge of a Court of Record has committed a contempt "of his own Court", and secondly, it is not a case where a contempt has been committed "on the face of the Court", nor is it being taken up suo motu by this Court. Therefore, in our most humble opinion, the Constitution Bench Judgment of the Hon'ble Apex Court would not be applicable to the facts of the present case.

19. In our opinion, the reasoning given by the Full Bench of Patna High Court referred above, gives the correct position of law, and we wholly agree with it.

20. The duty of a Judge after all is to dispense justice – without fear or favour, affection or ill will, without passion or prejudice. It is not a part of his duty to please litigants, or keep lawyers in good humour. The principal requirement for all Judges, and particularly for a Judge of Court of Record, is to maintain his independence. Often a times, he has to deal with cases having high stakes, which are fiercely contested by both sides. Lawyers and litigants sometimes can be cantankerous, even unruly. Unpleasant situations and angry exchange of words at the Bar, are not uncommon. A Judge can also be very helpless in situations like this. Irresponsible accusations may be thrown against a Judge by a disgruntled lawyer or litigant. Therefore, for the sake of the independence of judiciary, a Judge has to be protected, from vexatious charges and malicious litigations.

21. It is for this reason that common law also does not permit prosecution of a Judge of Court of Record for committing a contempt of his own Court. Oswald* refers to a case** in order to elaborate this point. We must give a brief summary of the fact of this case.

It starts with an action which brought against three Judges of the Supreme Court of Trinidad and

* Oswald's contempt of court: Committal, attachment, and arrest upon civil process: with an appendix of forms – James Francis Oswald.

** Anderson Vs. Gorrie and others
[Court of Appeal]
(1895 1 QB, 668

Tobago, which was then a British colony. The Court gave its decision in favour of the defendants on grounds that no action can lie against a judge of a Court of Record in respect of act done by him in his judicial capacity. Against this the plaintiff filed an appeal before the Court of Appeal in England, which was dismissed by a Three-Judges Bench, where the leading judgment is of Lord Esher M.R. It is a short order and the relevant portion of this needs to be stated :

> "The defendants were judges of a Supreme Court in a colony, and the first question is whether these matters were matters with which they had jurisdiction to deal. As to the contempt of Court, it cannot be denied that they had jurisdiction to inquire whether a contempt had been committed, and further, it cannot be denied that they had power to hold a person to bail in the cases provided for by the colonial statute which expressly gives that power. These two matters were obviously within the jurisdiction of the Court. No one can doubt that if any judge exercises his jurisdiction from malicious motives he has been guilty of a gross dereliction of duty; but the question that arises is what is to be done in such a case. In this country a judge can be removed from his office on an address by both Houses of Parliament to the Crown. In a colony such an address is not necessary. The governor of the colony represents the Sovereign, and over him is the Secretary of State for the Colonies, who represents Her Majesty, and can direct the removal of the judge. But the existence of a remedy would not in either of these cases of itself prevent an action by a private person; so that the question arises whether there can be an action against a judge of a Court of Record for doing something within his jurisdiction, but doing it maliciously and contrary to

> good faith. By the common law of England it is the law that no such action will lie. The ground alleged from the earliest times as that on which this rule rests is that if such an action would lie the judges would lose their independence, and that the absolute freedom and independence of the judges is necessary for the administration of justice."
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> *(Emphasis provided)*

At another place in the order, Lord Esher emphasising the point further states as under:

> "To my mind there is no doubt that the proposition is true to its fullest extent, that no action lies for acts done or words spoken by a judge in the exercise of his judicial office, although his motive is malicious and the acts or words are not done or spoken in the honest exercise of his office. If a judge goes beyond his jurisdiction a different set of considerations arise. The only difference between judges of the Superior Courts and other judges consists in the extent of their respective jurisdiction."
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> *(Emphasis provided)*

22. The underlying principle behind this "immunisation" of Judges, is the 'independence of judiciary'. This independence, we must add, is absolutely essential in a constitutional democracy. It is for this reason then that the findings given in the majority opinion of Full Bench of Patna High Court (referred earlier), becomes even more relevant, and in our humble opinion these findings are well supported by strong reasoning and common law principles.

23. The philosophy as referred above also lies at the root of the principle which gives immunity to the Judges in India, under the Judges (Protection) Act,

1985, which is an immunity from any civil or criminal action in the judicial work of a Judge. The Statement of Objects and Reasons for introducing the Bill, when introduced read as under:

> "Judiciary in one of the main pillars of parliamentary democracy as envisaged by the Constitution. It is essential to provide for all immunities necessary to enable Judges to act fearlessly and impartially in the discharge of their judicial duties. It will be difficult for the Judges to function if their actions in court are made subject to legal proceedings, either civil or criminal."

24. The question whether a Judge of Court of Record is liable for a contempt of his own court stands settled now by a Three Judge Bench decision of the Apex Court in **State of Rajasthan v. Prakash Chand & others (1998) 1 SCC, pg 1**. The above judgment arose out of proceedings from the Rajasthan High Court. A learned Judge of the High Court had issued a contempt notice to his Chief Justice, as in his view the Chief Justice had committed a contempt of court as a writ petition, which was part heard before the learned Judge was assigned to a Division Bench, which finally decided the matter after its assignment. While issuing notices a detail order was passed by Justice Shethna, making certain remarks against the Chief Justice, the Judges of the Division Bench who had decided the case, as well as against former Chief Justice of the High Court.

25. A special appeal was thus filed by the State of Rajasthan against this order. The Hon'ble Apex Court

while deciding the case had set up the following four questions before itself.

> "Did Shethna, J. have any judicial or administrative authority to send for the record of a writ petition which had already been disposed of by a Division Bench- that too while hearing a wholly unconnected criminal revision petition- and pass "comments" and make "aspersions" against the Chief Justice of the High Court and the Judges constituting the Division Bench regarding the merits of the writ petition and manner of its disposal?
>
> Can a Single Judge of a High Court itself direct a particular roster for himself, contrary to the determination made by the Chief Justice of the High Court? Is not such an action of the Single Judge subversive of judicial discipline and decorum expected of a puisne Judge?
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> Could a notice to show cause as to why contempt proceedings be not initiated against the Chief Justice of the High Court for passing a judicial order on the application of the Additional Advocate General of the State in the presence of counsel for the parties transferring Writ Petition No.2949 of 1996, heard in part by Shethna, J., for its disposal in accordance with law to a Division Bench be issued by the learned Single Judge?
>
> Did Shethna, J. have any power or jurisdiction to case "aspersions" on some of the former Chief Justices of that Court, including the present Chief Justice of India, Mr. Justice J.S. Verma, behind their backs and that too on half-baked facts and insinuate that they had "illegally" drawn daily allowances at the full rate of "Rs. 250" per day, to which "they were not entitled", and had thereby committed "criminal misappropriation of public funds" while making comments on the merits of the disposed of writ petition?

26. For our purposes what was essential is the following observation of the Hon'ble Apex Court.

> "Even otherwise it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a Judge of a Court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings. Their immunity is essential to enable the Judges of the Court of Record to discharge their duties without fear or favour, though remaining within the bounds of their jurisdiction. Immunity from any civil or criminal action or a charge of contempt of court is essential for maintaining independence of the judiciary and for the strength of the administration of justice."

27. In arriving at the above findings, the Hon'ble Apex Court, inter alia, also referred to Salmond and Heuston*. The reference to Salmond and Heuston here would be relevant. It says:

> "A Judge of one of the superior courts is absolutely exempt from all civil liability for acts done by him in the execution of his judicial functions. His exemption from civil liability is absolute, extending not merely to errors of law and fact, but to the malicious, corrupt or oppressive exercise of his judicial powers. For it is better that occasional injustice should be done and remain unaddressed under the cover of this immunity than that the independence of the judicature and the strength of the administration of justice

*Salmond and Heuston on the Law of Torts, 21st Edn., 1996 in Chapter XIX.

> should be weakened by the liability of judges to unfounded and vexatious charges of errors, malice, or incompetence brought against them by disappointed litigants- 'otherwise no man but a beggar, or a fool, would be a judge'."

28. In view of the above position of law, we hold that contempt proceedings cannot be initiated against a Judge of Court of Record, on allegations of committing a contempt of his own Court.

28. In the light of our answer to the first question, we may not be required to answer the second question, but we are doing that nevertheless, for two reasons. Firstly for the peculiar facts of the case, and secondly to set the procedure right, as we are also of the view that in these matters (matter relating to criminal contempt), the Registry has not followed the correct procedure. We would elaborate on this aspect in a while.

30. In a case where allegations are in the nature of obstruction to the administration of justice, or of scandalizing the Court, then an approval of the Advocate General of the State is a statutory requirement under sub-section (1) of Section 15 of the Act. Though we may add that in exceptional cases, the Court may dispense with it, but till it is done i.e. until such a requirement is dispensed with and a suo motu cognizance is taken by the Court, what is there before the Court is strictly speaking not even a contempt petition. We can call it merely an "information".

31. Referring again to the Full Bench decision of Patna High Court, we find that one of the grounds taken by the majority Judges of Patna High Court for rejecting the petition which was before it was that in that case too there was no approval of the Advocate General, and hence it was not maintainable.

32. Since the present 'contempt petition', has been filed before us by a person other than the Advocate General of the State, it had necessarily to be accompanied by the consent of the Advocate General. There is no clear consent of the Advocate General before us. For the records, though we have to state here that on 27.06.2018, when the matter was first taken up before this Court, a pointed question was put to the learned Advocate General who was present in the Court, about his consent, to which the reply of the learned Advocate General was that under peculiar facts and circumstances of the case he has not granted his consent. The reason for putting this question to the learned Advocate General Sri Babulkar was essential, as the letter of the Advocate General is not a clear statement as to his consent. Let us see the language of the letter which has been annexed to the petition by means of a supplementary affidavit by the petitioner, which is said to be written by the learned Advocate General in reply to the request for his consent. The letter dated 30.05.2018 states as under:

> "I have gone through the contents of the contempt petition and the affidavit and I find that the instance of 11th May, 2018 occurred with myself and consequently the Hon'ble Judge has

> passed an order against me and the Government Advocate, hence, although the facts as mentioned do make out a case of sanction, yet in order to avoid any allegations of bias, I am not in a position to accord formal sanction."

33. According to the learned Advocate General, he was a witness to the incident which occurred in the courtroom on 11.05.2018, as he was present in the courtroom of Justice Lok Pal Singh on that fateful day. Later he was not allowed to appear in the matter and the behaviour of the Court towards him was rude, even offensive. Under these circumstances he is not giving his consent in the matter in order to avoid any allegation of bias against him.

34. Be that as it may, the nature of the opinion given by the learned Advocate General in any case does not make this task any easier for us. The opinion is neither here nor there. The Advocate General has chosen to vacillate in the matter, rather than give a clear opinion. We are of the view, that if under the facts and circumstances of the present case, the learned Advocate General had reached a conclusion that he should not give his consent, then he should have simply said so. He would have been perfectly justified in not giving his consent on the facts and circumstances of the case, as his apprehensions for any allegation of bias are not unreasonable. All the same, he has not done that, instead he has recused himself by saying that he is not giving his consent as the remarks of the learned Judge were addressed against him as well. Till this point he was right, but he does not stop here as he adds, that

though he is not giving his consent, the facts of the case do make out a case for consent! What do we do with this!

35. It is a statutory requirement of getting the consent of the Advocate General in a motion made by "any other person". Until then it cannot be treated as a contempt petition. The statute mandates the inclusion of such a provision in the interest of justice and fair play, for obvious reasons as a motion for criminal contempt is a serious matter. It has penal consequences. Therefore unless the motion is made by the Advocate General himself, or the matter is taken suo motu, (or an act is committed in its presence or during hearing, i.e. under Section 14 of the Act), it must be accompanied by the consent of the Advocate General. The Advocate General is a Constitutional Authority. He is the leader of the Bar and therefore Parliament in its wisdom thought it best that a motion of criminal contempt must be screened by a proper and unbiased authority, before it becomes a motion for criminal contempt.

36. We do understand the compulsions of the learned Advocate General in the present matter, who is a senior and respected member of the Bar. Yet we are not very happy in the manner in which the opinion has been given to us. It would have been better if a clear opinion had come, one way or the other. An Advocate General may be justified in simply recusing himself, as there is no rule of necessity here, since the petitioner can always persuaded the court to take the matter suo motu in absence of a consent of the learned Advocate General. But this has not happened.

37. The fact of the matter, however, is that the petition before us is not accompanied with the "consent" of the Advocate General, as is the requirement of law. We say this both from the language of the letter of the Advocate General and the statement of the learned Advocate General before us in the Court.

38. The question now remains whether this Court can proceed in the matter where the Advocate General has refused to grant his consent.

39. The Hon'ble Apex Court in the case of **Bal Thackrey v. Harish Pimpalkhute and others** reported in **(2005) 1 SCC 254** has held that there are three channels for initiating proceedings of a criminal contempt under Section 15 of the Contempt of Courts Act – (a) either it can be done suo motu by a Court or (b) on a motion by the Advocate General or (c) by any other person with the consent in writing of the Advocate General. All three procedures have been clearly prescribed in law and though the earlier practice was that a Court of Record having the power to punish for its contempt under Article 215 of the Constitution of India could draw a procedure on its own, which had to be fair and reasonable, after the Contempt of Courts Act in the year 1971, a procedure has been laid down which has to be followed. This is not a case where a suo motu cognizance has been taken in the matter, nor is it a proceeding initiated by the learned Advocate General. Any other person, can only initiate a proceeding for a criminal contempt with the consent in writing of the Advocate General.

40. In the case of **S.K. Sarkar, Member, Board of Revenue, U.P. v. Vinay Chandra Misra,** reported in **(1981) 1 SCC 436,** the Hon'ble Apex Court has held as follows:

> "…Section 15 does not specify the basis or the sources of the information on which the High Court can act on its own motion. If the High Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate court or the Advocate-General, it can be said to have taken cognizance on its own motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate-General, can the High Court refuse to entertain same on the ground that it has been made without the consent in writing of the Advocate General? It appears to us that the High Court has, in such a situation, a discretion to refuse to entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to it in that petition."

41. Therefore, though a petition moved by any other person, without the consent of the Advocate General, can still be treated as a contempt petition, depending upon the nature of the "information", and discretion of the Court, but till a suo motu cognizance is taken by the Court, the petition is merely in the nature of an "information".

42. As far back as in the year 1973, a Division Bench of Delhi High Court in the case of **Anil Kumar Gupta v. K. Suba Rao and Ors. (Criminal Original Appeal No. 51 of 1973)*** had in fact directed that such matters (matter as we have before us), should not be listed as a criminal contempt straightway but should be placed first before the Chief Justice on the administrative side. The directions given by the Division Bench are as follows:

> "(10) 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

* (1974) ILR, Delhi, 1

> should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it."

43. The above procedure was approved by the Hon'ble Apex Court in the Case of **P.N. Duda v. P. Shiv Shanker** reported in **(1988) 3 SCC 167**, and in **Bal Thackrey** (supra).

44. The whole object of prescribing a procedure in such matters, particularly in cases of criminal contempt is also to safeguard the valuable time of the Court from being wasted by frivolous contempt petitions.* Therefore, the requirement of obtaining consent in writing of the Advocate General for contempt proceeding by any person is necessary. A motion under Section 15 which is not in conformity with the requirement of that section is not maintainable."** In Bal Thackrey, therefore, it was held as follows:

> "23. In these matters, the question is not about compliance or non-compliance of the principles of natural justice by granting adequate opportunity to the appellant but is about compliance

*__Bal Thackrey v. Harish Pimpalkhute and others__ reported in __(2005) 1 SCC 254__

**__State of Kerala v. M.S. Mani__ reported in __(2001) 8 SCC 22__ and __Bal Thackrey v. Harish Pimpalkhute and others__ reported in __(2005) 1 SCC 254__

> with the mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15 is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were under Section 15 of the Act. From the material on record,it is not possible to accept the contention of the respondents that the Court had taken suo motu action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose consent of the Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take suo motu action in rare cases. In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions under Section 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as suo motu petitions. In absence of compliance with mandatory requirement of Section 15, the petitions were not maintainable."

45. In view of the above position, this petition which is before us cannot be treated as a contempt petition, as in the absence of a consent of the learned Advocate General, it is only in the nature of an "information". It is not a contempt petition, at least not yet. Consequently, we direct the Registry of this Court that it shall henceforth follow the following procedure in such matters:

If any other person (i.e. any other person except the Advocate General of the State), moves a petition under Section 15 of the Act or under Article 215 of the Constitution of India, alleging a case of criminal contempt against any person, and if such a petition is not accompanied by the consent of the Advocate General then the Registry shall not list the case as a criminal contempt petition, as at this stage the petition is only in the nature of an "information". Such matters shall always be captioned as "in Re.....(the name of the alleged contemnor)", and be placed before the Hon'ble Chief Justice in chamber. The Chief Justice may either himself or in consultation with other Judges of the Court may take further steps in the case as deem to be necessary.

46. Hypothetically speaking therefore it is always open for a Court to proceed with the matter, even where the Advocate General has refused to grant his consent, since powers are given to the Court to take a suo motu cognizance, but this can be done only after the due procedure is first followed – procedure as referred above.

47. Although in the absence of a consent of the Advocate General, this Court can take action on its own motion, but presently this channel is not open to us here, as proceeding of contempt cannot be initiated against a Judge of a Court of Record, on a charge of "committing a contempt of his own court".

48. We therefore dismiss the present petition, being not maintainable.

49. We have made the above determination and dismissed the petition on pure questions of law, without having to go in detail to the facts of the case. We say nothing on facts. We have, inter alia, held that henceforth a petition like the one at hand shall not be listed as a 'contempt petition', unless so ordered by the Hon'ble Chief Justice. This is so as it is easy to make baseless allegations against a Judge, who ironically due to the office he holds, does not enjoy the same liberty and freedom, as compared to the petitioner who is pointing fingers at him. In this case a practicing lawyer of this Court, of reasonable standing, has filed the present petition. In our considered opinion he should have shown more restrain and circumspection before resorting to this course; a course which is not open to him in any case, as clearly held by the Apex Court in **State of Rajasthan v. Prakash Chand and others** (supra).

50. We have dismissed this petition, but we must end this case with a note of caution made by the Hon'ble Apex Court in a case arising out of a decision of Madhya Pradesh High Court. The case came to be known as "M.P. Liquor Case". The subject was grant of new distilleries, which was being done under a policy decision of the Government of Madhya Pradesh. This decision was challenged before the High Court in several writ petitions. These writ petitions were allowed by the Division Bench. The two Hon'ble Judges, however,

gave concurrent, but separate judgments. While allowing the writ petition, Justice B.M. Lal made certain observations attributing mala fide, corruption and underhand dealing against the State Government officials. The decision of the High Court was challenged by the State of Madhya Pradesh before the Hon'ble Apex Court in appeal (in **State of M.P. and others v. Nandlal Jaiswal and others, (1986) 4 SCC 566)**, which was allowed and the judgment of the High Court was set aside, and while doing so, Justice P.N. Bhagwati (C.J.) observed that the remarks made by B.M. Lal, J. "were clearly unjustified". While doing so, the Hon'ble Apex Court observed:

> "We may observe in conclusion that judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Here, in the present case, the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made."

The matter, however, did not end here. After the judgment of Hon'ble Apex Court and a delay of 738 days, one Mr. Pramod Kumar Gupta, Advocate, who had no connection with the earlier litigation, filed a review petition before the Madhya Pradesh High Court. The matter was listed for admission before the Division

Bench on 29.10.1988 and one of the Hon'ble Judges dictated the order in open Court dismissing the review petition on grounds of locus standi as well as inordinate delay. The other Hon'ble Judge (B.M. Lal, J.) did not pass the order on 29.10.1988, but on a later date. Ultimately, Justice B.M. Lal also dismissed the review petition, but while doing so made certain comments on the Senior Advocate and the former Advocate General of Madhya Pradesh as follows:

> "It is the moral duty of a lawyer, much less the Advocate General, to act faithfully for the cause of his client and to furnish information about the court's proceedings correctly. In the past the chair of Advocate General was adorned by glorious and eminent lawyers who never showed any sycophancy and never suffered from mosaifi. As such, the action on the part of the Advocate General, was not befitting to the status of the high office."

It was also remarked that the said Advocate General had "skillfully succeeded in his attempt to abstain himself from the case on August 28, 1988, presumably, he had no courage to face the situation".

An appeal was filed before the Hon'ble Apex Court, which was allowed and all the remarks made by Justice B.M. Lal against the appellant were expunged from the impugned order. The Hon'ble Apex Court in **A.M. Mathur v. Pramod Kumar Gupta and others, (1990) 2 SCC 533,** in para 13 and 14 said as follows:

> "13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our

> judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.
>
> 14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of he highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. [See (i) R.K. Lakshman v. A.K. Srinivasan, (1975) 2 SCC 466, 9ii) Niranjan Patnaik v. Sashibhusan Kar, (1986) 2 SCC 569)."

51. Intemperate comments and undignified banter, as the Hon'ble Apex Court refers above, also undermines the public confidence in a judge. Public confidence, which is an absolutely essential condition for realizing the judicial role*. Public confidence does not mean being popular in the eyes of the public or

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being pleasant. “On the contrary, public confidence means ruling according to the law and according to the judge’s conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria”*. Public confidence is also the ultimate strength of a judge. Eugen Ehrlich, the noted sociologist had famously said “there is no guarantee of justice except the personality of the judge”. This personality we must remember, is always under a close watch of a litigant, who quietly sits in a corner of a courtroom, judging the justice!

(Sudhanshu Dhulia, J.) **(Rajiv Sharma, J.)**
04.09.2018

Avneet/

* Aharon Barak (supra) page 110