Allahabad High Court

State Of U.P. vs Asok Pande on 25 August, 2017 Bench: Sudhir Agarwal, Ravindra Nath Mishra-Ii

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

AFR

Reserved on 01.03.2017

Delivered on 25.08.2017

Court No. - 3

Case :- CONTEMPT No. - 103 of 2017

Applicant :- State of U.P. Opposite Party :- Asok Pande

Counsel for Applicant :- Govt. Advocate

Hon'ble Sudhir Agarwal,J. Hon'ble Ravindra Nath Mishra-II,J. (Delivered by Hon'ble Sudhir Agarwal, J.)

1. This Criminal Contempt has been registered pursuant to a Division Bench's (Hon'ble A. P. Sahi and Hon'ble Sanjai Harkauli, J.J.) order dated 10.01.2017, passed in Public Interest Litigation (hereinafter referred to as "PIL") Civil No. 383 of 2017 (Pratima Pandey Vs. Election Commission of India and others), which was argued as a fresh matter before aforesaid Court on 10.01.2017, by Contemner.
2. Finding behavior and conduct of Contemner, who argued PIL Civil No. 383 of 2017, not only as counsel for Petitioner but Court's order also shows that Petitioner was daughter of Contemner and Court found prima facie that on the part of Contemnor there was some misbehavior and conduct,

with ulterior motive to lower down esteem of Court, during Court proceedings, hence, it formulated a charge against Contemner vide order dated 10.01.2017, in terms of Section 15 of Contempt of Courts Act, 1971 (hereinafter referred to as the "Act, 1971") read with Chapter 35-E of Allahabad High Court Rules, 1952 (hereinafter referred to as "Rules, 1952") and plenary powers of High Court under Article 226 of Constitution of India.

1. Charge framed against Contemner reads as under:

"You Asok Pande, Advocate on 10.1.2017 moved an application extracted here-in-above the contents whereof were pressed into service by you openly in Court during Court proceedings in the present writ petition, clearly reveal the description of the orders passed on 6.1.2017 in Special Appeal No. 2 of 2017 and your anguish about the same describing the judicial order passed and recorded in open Court on 6.1.2017 to be an outcome of bad behaviour and misbehaviour of one of us [A.P. Sahi, J.], and that such application was moved in the presence of all concerned including Lawyers, litigants and Court officials which appears to be clearly intended to defile the image of the Court, cast insinuations and personally insult a Judge in open Court and is clearly intended to bring the Court into disrepute by making scandalous allegations that are contemptuous, which contempt coupled with your demeanour in levelling such allegations in writing that have been reduced in the form of an application by you and placed on record, amounts to a clear contemptuous behaviour as envisaged under Section 15 of the Contempt of Courts Act, 1971 defining criminal contempt that makes you liable to be punished and to be debarred from practicing in this Court in view of the provisions of the Contempt of Courts Act, 1971 read with the judgments referred to here-in-above particularly the observations made by the Full Bench in Writ Petition No.2599 (MB) of 2014 vide order dated 5.1.2017, and therefore you are hereby called upon to answer the aforesaid charge in person or through counsel and present yourself to be tried on Monday, i.e., 16.1.2017 before the Bench concerned." (emphasis added)

1. Division Bench then directed the matter to be placed before Chief Justice and pursuant thereto, it has been nominated to the Bench presided by one of us (Hon'ble Sudhir Agarwal, J.) vide Chief Justice's order of 15.01.2017.
2. Matter was listed before nominated Bench on 16.01.2017, when Contemner was also present. As prayed by him, four weeks' time was allowed to file reply to the charge. Court appointed Sri Zafaryab Jilani, Advocate (the then Additional Advocate General) as "Amucus Curiae" to assist the Court.
3. Contemner did not file any reply. Instead an application was filed before Chief Justice on 03.02.2017 in which he made allegations not only against Bench nominated to hear contempt matter but also in regard to nomination of Bench by Chief Justice. He said that Bench has been nominated/constituted with some specific design. He requested for recall of order dated 15.01.2017 passed by Chief Justice nominating Bench and requested to assign the matter to routine Bench having jurisdiction in criminal contempt matters. This application was rejected by Chief Justice on 14.02.2017.
4. Thereafter, again matter came up before Court on 17.02.2017 when further two weeks time was allowed to Contemner to file reply to charge and the matter was fixed for 01.03.2017. Order was passed in presence of Contemner.
5. Instead of filing any reply to charge, Contemner filed a Misc. Application along with an affidavit sworn on 01.03.2017, having twenty paragraphs, running in 11 pages. He also appended three annexures running from pages 12 to 81 to the said application/affidavit. Prayer in the application was for deferment of hearing of criminal contempt for the reason stated in accompanying affidavit.
6. When questioned, Contemner stated that he has moved another application on 28.02.2017 before Chief Justice requesting for nomination of a Bench for hearing his recall application filed on 03.02.2017. He argued before us that Chief Justice neither has authority to nominate criminal contempt to this Bench nor could have rejected his recall application dated 03.02.2017. He also submitted that a writ petition has been filed by him challenging authority of Chief Justice and the said writ petition is likely to be taken up by Court, therefore, hearing in criminal contempt should be deferred.
7. On the charge, he addressed Court at length and placed various annexures appended to application filed on 01.03.2017 requesting for deferment of hearing and during course of arguments, named a large number of Judges of this Court, including former Chief Justice, making serious allegations/aspersions against them.
8. During course of hearing, when Contemner was addressing Court, we repeatedly enquired whether he wants to file any reply to the charge or not. Instead of giving any straight answer, he said that his application should be taken positively and matter should be deferred and this Court should not hear the matter at all till his application moved before Chief Justice on 28.01.2017 or writ petition challenging authority of Chief Justice for nominating Bench is decided. He also levelled serious allegations against Division Bench which initiated contempt proceedings and framed charge, during course of address in this Court.
9. Since we had already granted Contemner, enough opportunity to file reply to the charge, which he did not avail, and even on 01.03.2017, despite repeated query, no specific reply came forward, whether he wants to file reply to the charge or not, looking to the entire conduct in the Court itself as also the manner and demeanor with which he addressed Court for almost an hour, we had no option but to close proceedings and reserve judgment. We passed a detailed order, whereby we also restrained his entry in Court premises at Lucknow and Allahabad, both, till judgment is delivered. Order dated 01.03.2017 reads as under:

"1. Heard Shri Ashok Pande, contemner, at length.

2. Twice time was granted to contemner to file reply to charges framed against him. On 17.02.2017, we passed following order giving last opportunity to file reply:-

"1. The contempt proceedings are drawn by a Division Bench and the charge was also framed against contemnor. This matter has been assigned by Hon'ble the Chief Justice to a Bench presided by one of us [Sudhir Agarwal,J.].

1. On 16th January, 2017, at the request of contemnor he was granted four weeks time to file reply but that has not been done. The contemnor states that he has filed a recall application and, therefore, reply is not being filed. The above reason does not justify contemnor action of non filing of reply.
2. List this matter on 1st March, 2017, by which date if contemnor does not file reply, this Court will proceed with the matter in accordance with law, to hear and decide."

However, contemner has chosen not to file reply to the charge.

1. Today, an application has been filed by contemner requesting that hearing of this contempt should be deferred, Addressing Court, for almost an hour, contemner stated that he has filed an application seeking recall of order dated 10.01.2017 and, therefore, so long as that matter is pending this criminal contempt should not be heard. He, however, admitted that on 27.02.2017, Division Bench has passed an order referring to Hon'ble Chief Justice's order passed on administrative side on 15.01.2017 and copy of that order has been filed at page 17 of application filed today. He has also moved an application on 28.02.2017 to the Chief Justice requesting for nomination of Bench for hearing his recall application filed on 03.02.2017. He further stated that Hon'ble the Chief Justice has no authority to nominate this criminal contempt to a Bench which is not ceased with regular jurisdiction of criminal contempt, but for the purpose of this criminal contempt, specially nominated. He further argued that the Chief Justice has passed some order that till contempt is decided no further application shall be taken up and challenging the same, he has filed a writ petition which is likely to come up before Court, tomorrow.
2. Addressing on propriety of this Court, Contemner said that it is illegal, improper and against propriety that this Court should hear this contempt matter. He took us through various documents he has filed along with application filed today and read documents at length. Commenting upon merit of matter, he submitted that has not committed any criminal contempt. His conduct has been always to help judiciary by taking up issues which are in the interest of improvement of judicial system by filing frequent Public Interest Litigations, from time to time. He submitted that before proceeding in the matter of criminal contempt conduct of contemner has also to be seen. The allegations made by him in various documents against various Judges are not without any reason. It is also said that he was detained by Police at the instance of Bench who framed charges against him, for about 3 hours, illegally, and he has sent a letter to President of India seeking permission to prosecute above two Judges for his illegal detention and the matter is pending. Contemner levelled serious allegations with regard to integrity, conduct and honesty of various Judges of this Court in general and also by repeated names of several Judges in Court, packed with Lawyers, their staff and litigants.
3. Since he has not filed any reply and neither proposed to adduced any evidence not intended to file any statement, we have proceeded to hear the matter finally. However, looking into the entire facts and circumstances and also what has been argued before us, we find it in the interest of justice that till judgment is delivered Contemner should be restrained from entering this Court premises at Lucknow and Allahabad both, except when his presence is needed in a case before a Court in which he is a litigant himself.
4. We, accordingly restrain Contemner from entering in this Court premises at Lucknow and Allahabad both till judgment is delivered. However, whenever his presence as a party in a case is required in any Court, subject to issue of pass, which are issued to litigants, only on such pass Contemner may be allowed to attend his case and that too till the time it is needed in that Court. We make it clear that in order to attend Court cases, as an Advocate, he shall not be allowed entry in Court premises.
5. Registrar General/Senior Registrar shall take appropriate steps in this regard to comply aforesaid order.
6. Since arguments in the contempt matter have completed, we reserve judgment.
7. List for delivery of judgment on 23.04.2017.
8. Copy of this order shall be forwarded to Registrar General/Senior Registrar today itself for compliance with effect from tomorrow i.e. 02.03.2017 itself." (emphasis added)
9. We have perused the record of PIL (Civil) No. 383 of 2017, orders passed therein by Court and various application filed by Contemnor in different proceedings which have been relied on and filing whereof is also not disputed by Contemnor.
10. It appears that matter started from Special Appeal No. 2 of 2017, heard by a Bench consisting of Hon'ble A.P. Sahi and Sanjai Harkauli, J.J. On 06.01.2017, Contemnor argued matter on behalf of appellant. Order dated 06.01.2017 passed in aforesaid appeal, reads as under:

"This appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 has been preferred against an interim order dated 19.12.2016 passed by a learned Single Judge in Writ Petition No.23736 (SS) of 2016.

The writ petition giving rise to this appeal was entertained and an interim order was passed on 20.10.2016 to the following effect:-

"Shri Shukla learned standing counsel appearing for the State submits on the basis of instructions that the selection in which the petitioner had participated was cancelled by the State government on 5-5-2016 on account of illegalities detected therein during enquiry as revealed in the enquiry report dated 29-4-2015 and further orders were issued for fixing liability of the concerned officials in this regard which matter is still pending.

Let the aforesaid facts be brought on record by way of an affidavit along with documentary proof in support thereof annexing therewith the material and indicating the illegalities detected which formed the basis for cancellation of selection as aforesaid. Let it be done within two weeks.

List on 10-11-2016.

One post as ordered by the Division Bench earlier shall not be filled up by the next date of listing. Selection for the remaining posts shall be subject to further orders of this Court.

Original records shall be produced again on the next date.

It is made clear that the selection has not been stayed on the remaining posts."

Aggrieved the appellant herein filed Special Appeal No.491 of 2016. The said Special Appeal was taken up on 13.12.2016 which was the date fixed before the learned Single Judge as well. The Special Appeal was dismissed at that stage directing the authorities to produce the enquiry that had been conducted in relation to the selections before the learned Single Judge. The order dated 13.12.2016 is extracted hereunder:-

"Heard Shri Onkar Pandey, learned counsel for the petitioner.

This appeal has been filed questioning the correctness of the interim order dated 20.10.2016 passed by the learned Single Judge.

We had adjourned the matter on previous occasions as we wanted to satisfy ourselves as to whether any enquiry pursuant to the judgment dated 03.12.2014 had been hold or not.

Today, Shri Abhinav Trivedi learned counsel for the State has produced before us the report dated 18.03.2015 by the enquiry officer Shri Dev Pratap Singh which indicates that the enquiry was conducted in relation to the same subject matter.

Let this enquiry report be also produced before the learned Single Judge who is stated to be hearing the matter today.

Accordingly, we are not inclined to entertain this appeal and the same is dismissed at this stage."

When the matter was taken up before the learned Single Judge, the learned Single Judge passed the following order on 13.12.2016:-

"Heard.

As complete instructions are not available with the learned Standing Counsel put up on 15.12.2016, on which date learned Standing Counsel shall apprise the Court about the result of the enquiry

which was ordered to be completed by the Division Bench in the Special Appeal of the petitioner pertaining to the selection against 208 posts of Lab Technician.

Let Special Secretary from the State Government appear before the Court on the next date to assist the Standing Counsel and the Court."

The matter was again taken up on 15.12.2016 where the following order was passed:- "List/put up on Monday, as prayed by learned Addl. C.S.C.

Counter affidavit be filed before the next date.

Officer who is present today, shall again be present on the next date."

Thereafter, the matter appears to have been heard and the learned Single Judge then passed a detailed order on 19.12.2016 which is impugned in the present Appeal.

As is evident from the interim order, the next date fixed is 18.1.2017 and thus it is clear that the learned Single Judge himself has taken care to hear out the matter at the earliest and has been fixing dates in order to dispose of the matter.

The present appeal has again been filed questioning the correctness of the impugned order dated 19.12.2016 which is an intermediary order while the writ petition is to be again heard on 18.1.2017.

We heard Sri Asok Pande, learned Counsel for the appellant and during the course of the arguments and after having considered the aforesaid facts, it was pointed out to him that the present appeal would not be maintainable under Chapter - VIII Rule 5 of the Allahabad High Court Rules, 1952 nor it is desirable to entertain the same, inasmuch as the interim order already granted by the learned Single Judge on 20.10.2016 adequately protected the interest of the parties.

Sri Pande then started continuously insisting upon the hearing of the matter and during the course of his submissions raised a pointer specifically stating about the conduct of the learned Single Judge while passing a judicial order. On this statement having been made, we immediately warned Sri Pande not to utter any such word that may amount to scandalizing the Court or calling upon the repute of the Court and also not to further impede the proceedings as sufficient time had been given for hearing out the matter.

Sri Pande instead of adhering to the request of the Court again repeated his performance aforesaid and he did not refrain from disturbing the proceedings of the Court as a result whereof the Court was left with no option but to warn him of initiation of proceedings of criminal contempt. Since he insisted upon his submissions, the Court was also compelled to call upon the Court Officer and to take Sri Pande into custody.

This entire episode consumed more than sufficient time of more than half an hour during which period the entire proceedings of the Court were forestalled and obstructed.

A little after the aforesaid incident and after the proceedings had virtually culminated in passing of an order for drawing criminal contempt, some respected members of the Bar intervened and made a request not to proceed with the criminal contempt proceedings and offered their apology on behalf of Sri Pande. Later on, Sri Vishal Dixit, the President of the Oudh Bar Association along with Pt. S. Chandra, the General Secretary of the Oudh Bar Association and other counsel who had earlier made the request handed over a written note of Sri Asok Pande which is taken on record where Sri Pande has stated that he never intended to make any comment against any Judge and he is taking his words back.

Not finding the said communication of Sri Pande to be worth a remorseful apology, the matter was taken up after lunch when Sri Pande was again produced before the Court and he appeared in person and expressed his sorrow in unequivocal terms.

We would have proceeded further in the matter keeping in view the judgment in Writ Petition No.8216 (MB) of 2016 and the facts narrated therein, and also in view of the latest pronouncement by the Full Bench dated 5.1.2017 in Writ Petition No. 2599 (MB) of 2014 particularly paragraphs 17 to 19 thereof, which is in our notice being a Full Bench decision of the Court but we exercised our discretion to repose constraint in view of the request as made by the members of the Bar present in Court. It is therefore evident that Sri Pande by his conduct had attempted to lower the majesty of the Court and any attempt to cast insinuation on any Judge of the Court during discharge of his judicial function without there being any rhyme or reason clearly amounted to an indiscretion on his part and unbecoming of the conduct of a Lawyer. In the background aforesaid, as a last measure, Sri Pande is hereby warned not to repeat any such conduct in future or else the directions of the Full Bench dated 5.1.2017, the ink whereof has not dried as yet may have to be pressed into service.

For all the aforesaid reasons, we do not find any merit in the instant appeal which is hereby dismissed and we further do not propose to issue any notice for criminal contempt against Sri Pande subject to the aforesaid warning. Sri Pande would therefore stand released from custody as per our oral directions given earlier during the course of the day.

The Registrar General is directed to ensure the safe custody of the letter that has been taken on record.

Let a copy of this order be supplied to the learned counsel for the parties today." (emphasis added)

1. Court thus reproduced what transpired in the open Court as also statements made by Contemnor and his conduct. It is evident that while arguing appeal it is not the order which was sought to be assailed before Court, in intra-Court appeal, but conduct of learned Single Judge was sought to be attacked/assailed.
2. Thereafter when PIL Civil No. 383 of 2017 was filed, Contemnor filed a handwritten application dated 10.01.2017 addressed to Chief Justice, and contents thereof are reproduced as under:

"To Hon'ble the Chief Justice, My above noted case is listed today in Court No. where Hon'ble Sri

A.P. Sahi & Sri Sanjai Harkauli are holding the bench.

While hearing of Special Appeal No. 2 of 2017 on 6.1.2017, there Judges directed the police to take me in custody and admittedly, I was kept in police custody for three hours during which I was misbehaved. Later on, I was compelled to say sorry and only then after convicting me, I was released from the police custody.

I have done a lot for the betterment of judicial system but sadly I am in tears, due to bad behaviour/misbehaviour of Sri A.P. Sahi, J. It appears to me that there is state of emergency in the said Court for me and so, I deny to argue this matter or any matter in future in the bench of which Sri A.P. Sahi, J. will be member.

Please nominate some other bench to hear this case and to direct the registry not be list my case before this Bench."

(emphasis added)

1. We have also gone through the Full Bench order dated 05.01.2017 passed in Writ Petition No. 2599 (MB) of 2014 and paras 17, 18 and 19 thereof, which also includes and reproduces paras 14 and 15 of affidavit of Contemnor filed before Court and the same read as under:

"17. Insofar as the application filed by Ashok Pande for intervention in the writ petition is concerned, we reject the same outright for more than one reason. Firstly, he has absolutely no locus to address the Full Bench on merits of the writ petition, and secondly because he has refused to delete paragraphs 14 and 15 of his affidavit which the Division Bench vide order dated 28.04.2014 had directed him to consider. It would be relevant to reproduce those paragraphs so as to demonstrate that Mr. Ashok Pande has been wholly irresponsible and callous in his assertions. This, we note, is apart from the fact that this Court has observed, time and again, that he is in a habit of making unfounded and reckless allegations not only against the judiciary but against any person:

"14. That in view of it the constitution of the three judges bench to hear this matter is highly illegal and unconstitutional. This amounts to indictment, insult and misbehavior with the Sri Uma Nath and Sri Zaki Ulla. Though the Chief Justice is master of the roster but that does not give an authority to the Chief Justice to insult and misbehave the good, honest, bold judges.

15. That one more fact the applicant intends to bring on the record of the matter is that a friend of mine Sri R.N.S. Chauhan advocate who is also a close friend of Sri Imtiaz Murtaza J. informed me that some contractor approached him with a offer of 25 lakh rupees in case he is able to manage a contract in his favor with the Ashirvad/blessing of Sri Imtiaz Murtaza J. Sri R.N.S. Chauhan denied the offer but even then later on he was informed that the same person has got the contract. This

shows that the contractors are moving around the High Court, the resident of the judges and the resident of their nears and dears with huge money for getting the contract. The question is why the judges are so involved in the award of contract? Whether it is judges work or it is work of the bureaucracy? The bribe which was offered to Mr. R.N.S. Chauhan Advocate went to whom? How many such more contracts were awarded and who received the bribe? On whose recommendations and directions the contract of Civil Court and High Court building are being awarded?"

1. When we commenced hearing, we once again requested Mr. Pande to consider the deletion of paragraphs 14 and 15 of his affidavit but he refused to do so. Further, he repeatedly made an attempt to make submissions in support of the observations made in the order dated 01.04.2014 and on the merits of the writ petition, and did not make any submission on the question formulated for the opinion of this Bench. In the circumstances, we reject his application for intervention on this ground as also on the ground that he advanced no submissions on the merits of the reference and continued to only repeat the allegations, as made in the aforesaid paragraphs 14 and 15.
2. The request made by Mr. J.N. Mathur, learned Senior Counsel appearing for UPRNN, that an action needs to be taken against Mr. Pande, who is appearing in person, for making irresponsible, baseless, reckless and unfounded allegations in paragraphs 14 and 15 of his affidavit, either for having committed criminal contempt of this Court and/or to restrain him from entering the precincts of this Court at Lucknow and at Allahabad in exercise of the powers under Rule 11 falling in Chapter XXIV of the Allahabad High Court Rules, 1952, is kept open to be considered at an appropriate stage."

(emphasis added)

18. Contemnor has not shown any remorse and has also not denied as to what has been reproduced in Court's order but in the application dated 03.02.2017, which is not supported by any affidavit, he has continued his spirit of making wild allegations against one and all. Order of Chief Justice nominating Bench has been levelled by him as an effort at forum trading, Bench hunting and making a ground of pre-judgment and pre-determination. He has said in paras 5 to 14 of application dated 03.02.2017 as under:

"5. That but while criminal contempt has been initiated against me for some alleged efforts at forum-trading and bench-hunting, the same seems to be have been done in the above criminal contempt case.

1. That this is because as per the roaster dated : 23.12.2016 passed by the Chief Justice as regards Constitution of Benches at Lucknow Bench of the Court with effect from 02.01.2017, Criminal Contempt has been assigned to the bench consisting of Hon'ble Mr. Ajai Lamba, J. and Hon'ble Dr. Vijay Laxmi JJ.
2. That despite the above bench already being in existence and taking up all the criminal contempt cases, in my case a special bench has been constituted, which does not seem prima-facie proper.
3. That there does not seem any reason for any such deviation from the routine bench and to act against the assigned roaster.
4. That on hearing of the matter on 16.01.2017, Hon'ble Mr. Sudhir Agarwal, J., the Senior member of the Bench told me that before he was assigned the Criminal contempt area, 54 cases of criminal contempt were pending in High Court at Allahabad. Out of which except 02, he has decided all the matters and the cases in which he imposed 05 years ban of practice to the advocates, the Supreme Court enhanced it.
5. That Hon'ble Mr. Sudhir Agarwal, J. also said that I shall be very careful in my reply. He also said that I can direct that you will only enter in the High Court only when the date in this matter is fixed.
6. That it is very obvious that this was a threatening statement and had been made to make me feel threatened.
7. That these words also spoke the mind of the concerned Judge, who wanted to make it very clear to me that it is very difficult for me now to escape the contempt and I shall definitely be punished.
8. That thus the Bench seems to have already made up its mind and this fact becomes more evident when one understands that this is not a routine bench but a specially constituted bench through a special order.
9. That it is also obvious that there was no need for such specially constituted Bench and the routine Bench would have been good enough for this case as well, unless the special bench has been constituted with some specific design, which Hon'ble Mr. Sudhir Agarwal J. made clear through his words and gestures during the first hearing itself." (emphasis added)
10. The said application was rejected by Hon'ble Chief Justice on 14.02.2017.
11. Contemnor placed before us application and affidavit filed on 01.03.2017 and all its annexures and read contents thereof in extensio. He said that he has applied to President of India to grant sanction to get criminal case registered against the two Judges, namely, Hon'ble A.P. Sahi and Sanjai Harkauli, JJ. for his wrongful confinement for three hours. Copy of said application dated 02.02.2017 he has filed as Annexure-2 to affidavit dated 01.03.2017, which he read in extensio in open Court in presence of Advocates, litigants and other staff of Court etc. We may reproduce paras 7, 11, 16, 17, 18, 19, 20, 21, 22, 25, 26 and 27 as under:

"7. That thus merely on the personal opinion of the two judges, they called police personals in the court room who thrashed me from the dais I was compelled to remain in confinement for 3 hours in Police outpost situated in the premises of the High Court at Lucknow. Later on, I was compelled to say sorry without there being any fault of mine and then I was released from the police custody after issuing warning. During police custody, I was humiliated and misbehaved. This incidence was noted down by the Court in its order dated : 06.01.2017 which was dictated not in the open Court in the

chamber. As stated above, the only allegation for which I was taken in custody, as per the Court itself, is that I raised some finger on the conduct of the single Judge of the High Court against whose order the Special Appeal was being argued. A copy of the above order dated : 06.01.2017 in Special Appeal No. 02 of 2017 is being attached as Annexure No. 1.

11. That such an action of the Judges is frequent in the Courts and it is the routine that for removing one or another person from the dais/ court, who is making his submission, the Police are called in the Courts by the Judges and under their oral orders, the person is sent in police custody. Sri A.P. Sahi tops in it as under his orders so many persons were removed from the Dais by force and were sent in police custody and later on were released. The similar happening took place with me, when from the dais, I was forcibly taken outside the Court by the police and was escorted by 20 police personnel from the Court to the police outpost, including Armed police personnel of CRPF. The question is, as to whether, without any order in writing or in the form of warrant as provided in the Code of Criminal Procedure of 1973, the Judges are free to ask the police to take a person in its custody and to confine him for certain hours or days? And whether the police can do so?

1. That I am the president of Hindu Personal Law Board and Rastra Raksha Manch and have done so many good works under the banner of these two organizations. I am also a P.I.L. activist and so far has filed about 200 PILs in different high courts including the supreme court as such I am a person of repute and so I have been badly defamed by the action of judges as the same was also reported in several news papers. Defamation is also a criminal act defined in Section 499 IPC which is an offence punishable under Section 500 IPC and so please also grant sanction to me to prosecute above-mentioned two judges under section 499 r/w section 500 IPC.
2. That for three hours I remained in police custody and I was under wrongful restrain and wrongful confinement and due to that wrongful restrain and wrongful confinement I was not able to even attend the other Courts where my two fresh cases were listed and permission to attend those cases were refused by the judges. This was also an illegal and improper act done by the judges.
3. That it is being stated that while arguing the Appeal a person/ counsel for the appellant always has the right to make submissions in the Court on the merits of the orders as well as on the conduct of the Judge who passed that order, in case the facts and grounds permit for such submissions. In the present case the facts and grounds were so where it was clear that for the reasons best known to the Single Judge, he did perform his Judicial duty honestly and hence I raised the issue of conduct of the Judge as warranted in the facts and circumstances of the case, but even without hearing the same, the two Judges became too agree and called the police and I was sent to the police lock-up.
4. That when I searched the reason why the bench behaved in this manner, I found no reason except that I had challenged the recommendations made by the Allahabad High Court Collegiums for the appointment of Judges of High Court in which I submitted that the criteria of recommendation appears to be that the recommendee should either be some relation of the present/ ex Judge of the High Court or Supreme Court or he is a State Law Off8icer of the Union or the State government. After filing of this writ petition, which is still unnumbered, the Ministry of Law and Justice took cognizance of the matter. The matter was also boldly reported by responder Sri Prabhat

Ranjan Deen in Hindi weakly Chauthi Dunia. In this view of the matter the Government of India ordered some enquiry by the Intelligence Bureau regarding search of Judge's relation in the list and on the basis of the said enquiry the recommendations made by the Allahabad High Court Collegiums as well as other High Courts were finally cancelled. The intimation to this effect was given to the Supreme Court in the matter listed on 02 January 2017. The list sent by Allahabad High Court had around 14 direct relations of the Judges (past/present) including the brother in law (Sala) of Sri A.P. Sahi, one of the two Judges on whose order the police kept me in illegal custody. The true copy of the memo of writ petition filed by me before Allahabad high court sitting at Lucknow is being filed herewith as Annexure No. 2.

1. That another reason for taking me in police custody and harassing me is that in Writ Petition No. 2599 (M/B) of 2014 Dinesh Kumar Singh @ Sonu Vs. State of U.P. & Ors., I moved an Intervention application in which I raised the issue of large scale corruption and humiliation to the honest Judges who reserved the order for CBI enquiry in bribery in construction of the new High Court building. On 05.01.2017, the full bench dismissed my intervention application and recorded for taking action against me under the Contempt of Courts Act and under the Advocates Act and on the next day the bench of Sri A.P. Sahi sent me to police custody.
2. That the order dated 05.01.2017 itself states that facts I had raised in the above writ petition through my intervention application. I says-"17. Insofar as the application filed by Ashok Pande for intervention in the writ petition is concerned, we reject the same outright for more than one reason. Firstly, he has absolutely no locus to address the Full Bench on merits of the writ petition, and secondly because he has refused to delete paragraphs 14 and 15 of his affidavit which the Division Bench vides order dated 28.04.2014 had directed him to consider. It would be relevant to reproduce those paragraphs so as to demonstrate that Mr. Ashok Pande has been wholly irresponsible and callous in his assertions. This, we note, is apart from the fact that this Court has observed, time and again, that he is in a habit of making unfounded and reckless allegations not only against the judiciary but against any person: "14. That in view of the constitution of the three judges bench to hear this matter is highly illegal and unconstitutional. This amounts to indictment, insult and misbehavior with that Sri Uma Nath and Zaki Ulla. Though the Chief Justice is master of the roaster but that does not give an authority to the Chief Justice to insult and misbehave the good, honest, bold judges. 15. That one more fact the application intends to bring on the record of the matter is that a friend of mine Sri R.N.S. Chauhan advocate who is also a close firend of Sri Imtiaz Murtaza J. informed me that some contractor approached him with an offer of 25 lakh rupees in case he is able to manage a contract in his favour with the Ashirvad/ belessing of Sri Imtiaz Murtaza J. Sri R.N.S. Chauhan denied the officer but even then later on he was informed that the same person has got the contract. This shows that the contractors are moving around the High Court, the resident of the judges and the resident of their nears and dears with huge money for getting the contract. The question is why the judges are so involved in the award of contract? Whether it is judges work or it is work of the bureaucracy? The bribe which was offered to Mr. R.N.S. Chauhan Advocate went to whom? How many such more contracts were awarded and who received the bribe? On whose recommendations and directions the contract of Civil Court and High Court building are being awarded.
3. That thus para 14 and 15 of my Intervention Application make it amply clear that I had presented important facts as regards alleged corruption in construction of High Court building in Lucknow with respect to which a division bench comprising of Hon'ble Uma Nath Singh reserved the judgment for C.B.I. enquiry but before the bench could deliver the order, Uma Nath Singh, the senior member of bench and senior judge of the Lucknow bench was removed from his office, asked to sit at Allahabad and by nominating a new bench the whole episode of giving the clean chit to the persons involved in large scale corruption was acted upon. While my allegations were not enquired into, I was threatened with dire consequences, when the order said-"19. The request made by Mr.

J.N. Mathur, learned Senior Counsel appearing for UPRNN, that an action needs to be taken against Mr. Pande, who is appearing in person, for making irresponsible, baseless, reckless and unfounded allegations in paragraphs 14 and 15 of his affidavit, either for having committed criminal contempt of this Court and/or to restrain him from entering the precincts of this Court at Lucknow and at Allahabad in exercise of the powers under Rule 11 falling in Chapter XXIV of the Allahabad High Court Rules, 1952, is kept open to be considered at an appropriate stage." The intervention application moved by me and order of the full bench dated 05.01.2017 is being filed herewith as Anenxure No. 3, 4 and 5 respectively.

1. That even on 5.1.2017 the behavior of Mr A.P. Sahi was very unusual with me. On that date a case filed by one Satendra Kumar Mishra (WPIL Civil No. 187 of 2017) was called out from the fresh list. My case listed in the cause list at serial number 12 (WPIL Civil No. 29799 of 2016) was identical in some manner as both the writ petitions were asking the court to direct the election commission to decide the first date of meeting of 16th legislative assembly of U.P. and to ascertain the tenure of the present legislative assembly of the State and the date till which the present assembly and the government can function. When I stood up to request the court to kindly take my matter also alongwith the case of Satendra Kumar Mishra, Sri A.P. Sahi rebuked me and dismissed the case of Satendra Kumar Mishra without any hearing and my case was not heard on that date. It was urgent but it has not been heard till date.
2. That I am being harassed without any valid reason is also clear from the fact that when I appeared before the bench of Mr. A.P. Sahi and Mr. Sanjay Harkauli on 10.01.2017 challenging the election of U.P. Legislative Assembly to be held in seven schedule and I moved an application addressed to the Chief Justice that I would not like to argue before a bench of which Mr. A.P. Sahi is a member, for the reason that he was a member of the bench which illegally directed my detention and during this period, I was misbehaved by U.P. Police. The bench of Mr. A.P. Sahi and Mr. Sanjay Harkauli treated it as contempt and the matter was referred to another bench where I am being prosecuted for criminal contempt. The true copy of the said order is being filed herewith as Annexure No. 6.
3. That all the above facts clearly establish that there are enough reasons and motives for Mr. A.P. Sahi to punish, harass, defame, humiliate and insult me and Mr. Sanjay Harkauli has been a mute spectator. I do not find any motive against Sri Harkauli but even then he is guilty because he permitted the senior member of the bench to commit crime."

(emphasis added)

21. He also placed before us a copy of memo of Writ Petition No. Nil of 2016 (M/B) Civil, wherein Annexure No. 2 is the application sent to President of India dated 02.02.2017, which is part of Annexure-2 to Criminal Misc. Application No. Nil of 2017 (hereinafter referred to as the "Deferment Application") filed on 01.03.2017 and read the same in extensio in open Court. Some of the paras of writ petition read as under:

"20. That though writ petition no. 1838 (M/B) of 2000, Ashok Pandey vs Hon'ble Prime Minister of India and others, the petitioner challenged the recommendations of the high court collegiums recommending 17 names on two grounds firstly that in the list of 13 advocates, 8 are the judges relations and secondly in whole list Brahmin, Kshatriya and ladies are 0.

The said petition was dismissed but on the basis of information contained in that petition, when the government headed by Prime Minister Atal Bihari Vajpai got conducted the enquiry, it found that in the list of 151 recommendations pending with the government, about 90 persons are the judges relations and so the government cancelled the list and the information of cancellation was given by the changed law minister Sri Arun Jaitely in Rajya Sabha in reply to a question raised by Late Janeshwar Misra.

Sri Ram Jejhamalani, the then law minister praised my work of filing the petition and providing the information to the government. When I said, "Sir you took very bold step" he said "step was yours bold. When the information has been received to the government, it was my duty to take required action."

Chief Justice S.K. Sen also prayed my that work from dias by saying that your petition helps me in selection of judges.

1. That the petitioner has mentioned above said talk of me with Sri Ram Jethamalani purposely. The purpose is to request the present Prime Minister Sri Narendra Damodardas Modi and minister for law and justice Sri Sadanand Gauda to take similar action as was taken by Vajpai government in the year 2000 as similar situation has again arisen after 16 years. This is clear from the following list of recommended persons and their relationship with the judges.

i. Sri Mohd Mansoor Ahmad s/o Late S Sagir Ahmad Ex, Judge SC ii. Sri Manish Mehrotra s/o Sri SP Mehrotra retired judge of high court.

1. Sri Rajneesh Kumar s/o Sri O P Srivastava, retired judge of high court.
2. Sri R.N. Tilhari s/o Sri H.N. Tilhari retired judge of high court.
3. Abdul Moin, real brother of Sri Abdul Mateen, retired judge of high court.
4. Sri Upendra Misra-an advocate of a family whose two real under and one cousin brother has been judge of high court.

Similar is the position from Allahabd from where also, so many judges' relations including son of Ex CJI Sri V.N. Khare has been recommended.

1. That from the facts mentioned above it is crystal clear that only criteria of selection by Allahabad high court collegiums was to get elevated judges relations and that too, who are or has been SLO.
2. That one more criteria is not to recommend any person who belongs to common family with rural background and only so the representation to village is 0.

That Chief justice Chandrachud has commended about 50 persons for judgeship but representation to OBC, SC and ST is 0. The high court at Lucknow was established about 65 years back but not even a single Vaisya, Yadav, Maurya or schedule caste was alleviated for judgeship though during this period though yadav chief minister worked for 15 years and Scheduled Caste chief minister worked for 10 years. In view of these facts it was duty of collegiums to firstly consider to give proper representation to unrepresented class and then to consider other suitable persons but it is indeed sad that the high court has failed to do justice in administrative side and only its judicial powers are being invoked to seek justice. Collegiums was also created and manager. It was held twice but just after getting transferred the senior member of natural collegiums.

1. That matter become more serious when the injustice is done by the Chief justice and he is promoted for doing injustice. It appears that whatever was done by CJ, it was done under the dictate of CJI and only so just after making in bulk recommendation, he was recommended for promotion. The petitioner submits that for making very poor recommendations and giving press, public and parliamentarians to condemn judiciary for doing bhai bhatijabad, jatibad and jatidroh, chief justice Chandrachud was liable to condemn and punishment but awarding for wrong acts means that the chief justice of India Sri T.S. Thakur is not fair and his tears were not original rather by weeping before the PM, he was asking the PM to ignore all points and to approve the list without verifying as to how many judges relations are there in the list and whether proper representation to OBC and SC is there are not. By weeping he was compelling the PM not to ask for following any procedure and to approve the list prepared chori chori chupke chupke.

26. That it is also pertinent to mention that the petitioner moved intervenor application in SC in the matters challenging validity of constitutional amendment with respect to judges appointment. He requested the constitutional bench to provide a transparent mechanism so that the a common lawyer willing to serve the justice delivery system of nation as judge may know that as to whom he is to approach and apply for being considered as judge but as the required system has not been evolved and taking the benefit of the same, CJ Chandrachud, a son of ex CJI, has recommended mostly judges relations for judgeship and hence this petition on behalf of a person aggrieved due his non consideration and the consideration of an eligible persons." (emphasis added)

22. He also placed before us entire affidavit filed in support of Deferment Application dated 01.03.2017 and we would find it appropriate to quote paras 10, 11, 12, 15D, 17, 18, 19 and 20 of affidavit as under:

"10. That except giving the application addressed to the chief justice to the bench secretary, I don't think that I have said any word in the court on that day. Even on 06.01.2017, I said nothing contemptuous but by use of power rather by gross misuse of power, I was thrashed by the police from the Dais under the orders of the court and cordoned by about 20 police personals, I was kept in the police out pot. In the order judges admit that I remained in police custody under their oral orders and remained in custody till the order of release was passed after lunch. Whether such action of the judges is liable to be criminally prosecuted or not is to be decided by the President of India as per opinion of chief justice of India on the application moved by me and so the further hearing of this matter needs to be deferred.

1. That such action of judges is contempt of court and not the applicant. The judges who sent me to police custody and who referred this criminal contempt have committed the contempt of their own court and so they should be prosecuted not the applicant.
2. That I have said nothing contemptuous can be verified by the court by summoning the CCTV footage of 06.01.2017 and 10.01.2017 during which I was present in the court room or my matter was discussed. I have been told that even during the period of my custody in police outpost, a lot of things were said against me by Sri A.P. Sahi from the Dais in present of office bearers and hundreds of the members of the bar.

15. That the applicant further submits that he is being subjected to cruelty inspite of the fact that he always acted as the friend of the court and well wishes of the judicial system. This is clear from the following facts.

......

D. That he helped the two chief justices of this court namely Sri Tarun Chaterjee and Sri H.L. Gokhale when they were in tears due forceful transfer. Due to effort of mine the proposal of Jabaria (forceful) transfer of these two judges was cancelled and they got their due as judge of Supreme Court.

Against the injustice being done with Sri Tarun Chaterjee, he prepared representation addressed to President and Prime Minister, sat on Dharna where the representation was signed by hundres of lawyers, it was sent to all concerned, I met the Prime Minister Bajpai and minister for law and justice Sri Arun Jaitely to pursue the representation and it's result was the cancellation of proposal of his transfer and promotion to supreme court. The true copy of the representation mentioned above is being filed herewith as Annexure no. 3 to this affidavit.

As for as the matter of chief justice Gokhale is concerned, his lordship with wet eyes asked me as to whether he can do something so that his file of transfer is not signed by the President tomorrow. It was a day when inspite of being in high court, he did held the court as it was a day when the chief justice of the Madras High Court took oath as judge of Supreme Court and his file was scheduled to be presented before the President on the next day. I filed the PIL writ petition challenging the proposal, requested Sri Ritu Raj Awasthi (now judge of this Court), the then Assistant solicitor

general to sent the copy of the writ petition to all concerned today itself. The result of this exercise was the cancellation of proposal of his transfer. This fact can be verified from these two judges apart from the record.

1. That the application submits that he is being the terrorized only because of certain petitions filed by him before this Hon'ble Court which includes a petition filed by him as a result of which the judges relations including the relation of Sri A.P. Sahi could not become the judge of this court. I have detailed it in my application addressed to the President dated: 02.02.2017 and I retreated the same.
2. That judiciary is a place where the right to speech and expression should not be curtained unless it is abusive or undermines the authority of the court but I am sorry to say that it is otherwise. So many persons are having unlimited right to speech and expression but so many persons are having no right to speech and expression. The applicant is in second category which clears from the orders passed on 06.01.2017 and 10.01.2017.
3. That I am in tears due to bad behavior of Sri A.P. Sahi and Sri Sanjay Harkauli. I am also sad with the treat extended to me by Hon'ble Sri Sudhir Agarwal J to the effect to ban my entry in the High Court and to start multiple contempt proceedings. I have loved a lot to the judicial system. Through the use of judicial power I have caused benefits to government and public at large. My services in the field of PIL was also availed by Prime Minister to chief justice of this court. I am satisfied with the works done by me and so even if I am convicted and debarred from practice of advocacy, I will say what Napoleon said "O. God, I have done my duty" but my advice to the judiciary will to promote and award such persons who have done something for the betterment of judiciary not to jail them or expel them from the system.
4. That at the last I submit that I have not committed any contempt of the court and I will reply the charge at an appropriate time in case the order of which the recall has been sought or which I am going to file, are not recalled." (emphasis added)
5. The utterances, conduct and attitude of Contemnor from what we have stated and reproduced is writ large. Despite repeated opportunity Contemnor did not avail opportunity to file any reply to the charge. In these facts and circumstances and also looking to entire facts we are satisfied that the charge levelled against Contemnor is true, well fortified and hence stand proved. In our view, it clearly constitute a "criminal contempt" defined under Section 2(c) of Act, 1971 and punishable thereunder.
6. The definition of "Criminal Contempt" under Section 2(c) reads as under:

"2(c). Criminal contempt 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

1. scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
2. prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
3. interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"
4. Publication whether by words spoken or written etc. on any matter or doing of any other act, which scandalizes or tends to scandalize or lowers or tends to lower the authority of any Court constitutes 'criminal contempt'. Such act, as aforesaid, if prejudices or interferes or tends to interfere with due course of any judicial proceeding also amounts to 'criminal contempt'. Thirdly, if such an act interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner, again it would constitute 'criminal contempt'.
5. The word 'scandalize' has not been defined in Act, 1971. In Black's Law Dictionary word 'scandal' has been described as under:

"Scandal consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to decency or good manners, or which charges some person with a crime not necessary to be shown in the cause, to which may be added that any unnecessary allegation, bearing cruelly upon the moral character of an individual, is also scandalous. The matter alleged, however, must be not only offensive, but also irrelevant to the cause, for however, offensive it be, if it is pertinent and material to the cause the party has a right to plead it. It may often be necessary to charge false representations, fraud and immorality, and the pleading will not be open to the objection of scandal, if the facts justified the charge."

1. In Aiyer's Law Lexicon, second edition, Page 1727, reference has been made to Millington Vs. Loring (1880) 6 QBD 190, where the word 'scandalous' has been explained as under:

"A pleading is said to be 'scandalous' if it alleges anything unbecoming the dignity of the court to hear or is contrary to good manners or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading."

1. In Narmada Bachao Andolan Vs. Union of India, (1999) 8 SCC 308, in para 7 of the judgment the Court said:

"7. We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the court and deliberately paint an absolutelty wrong and incomplete picture which has the tendency to scandalise the court and bring it into disrepute or ridicule."

1. Recently, the aforesaid definitions of the term 'scandalise' has been quoted with approval in Indirect Tax Practitioners' Association Vs. R.K. Jain 2010 8 SCC 281.
2. In P.N. Duda Vs. P. Shiv Shankar and others 1988 3 SCC 167 the Court said that justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful, even though outspoken,

comments of ordinary men. Administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to defend and uphold the Constitution and the laws without fear and favour, but any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of Judges and brings administration of justice into ridicule must be prevented. Courts cannot ignore attempts made to decry or denigrate the judicial process, when it is done with quite seriousness.

1. The Contemnor has made serious allegations on the conduct of Judges of this Court in one or other way. Language used by him and apparently couched, not only in improper terms but with an intention of threat in the garb of alleged prosecution etc. He has conveniently made allegations against all subsequent Judges who have passed orders, may be Chief Justice or even this Bench. When an imputation of partiality or bias or pre-judgment, unfairness etc. are leveled openly in Court against Presiding Judicial Officers, we have no manner of doubt that same comes within the ambit of lowering or tending to lower the authority of Court and also scandalizing or tends to scandalize the Court.
2. A Constitution Bench in Lalit Mohan Das Vs. Advocate General, Orissa, AIR 1957 SC 250 considered conduct of a legal practitioner with reference to Section 14 of Legal Practitioners Act, 1879. Therein, Lalit Mohan Das (hereinafter referred to as the "appellant") was a Pleader having 25 years of standing and also President of Anandapur Sub Divisional Bar Association. Three incidents occured. First, on 15.07.1953 when appellant's case was adjourned by Munsif of Anandpur observing that he proposed to take an oldest suit for hearing, appellant made a remark, "if the Peshkar is gained over, he can do everything" and then he left Court. Munsif was surprised on remark and required appellant to explain his conduct who did not reply to first letter and when second letter was sent, he responded that Munsif is issuing memo after memo for some imaginary act of appellant for which no explanation is warranted officially. He also said that Munsif should be more polite while addressing letters to lawyers. Second incident took place on 25.09.1953 when appellant sought adjournment which was declined by Munsif on the ground that adjournment was required on the ground of illness without placing medical certificate in support of alleged illness whereupon appellant remarked, "the Court is unfair to me, while the Court was fair to Mr. Misra. The Court is accommodating and granting adjournments to Mr. Misra while it was not accommodating me." Third incident took place on 29.09.1953 when a preliminary objection raised by appellant was rejected whereupon appellant stood up and shouted, "I on behalf of the Bar Association, Anandpur, challenge the order of the Court. The Court has no principle as it is passing one kind of order in one suit and another kind of order in another suit." Munsif thereafter issued proceeding, framed charge under Section 13 of Legal Practitioners Act, 1879 referring all three incidents therein and required appellant to show cause. Appellant denied allegations and also raised issue of competence of Munsif in holding such inquiry on the ground that he was a complainant and cannot initiate such an inquiry. Thereafter Bar Association passed a resolution on 08.10.1953 making insinuation on Munsif concerned alleging that behaviour against one Hon'ble Member of Bar Association was quite unprecedented, undesirable and affect prestige of Bar and may cause apprehension in the mind of litigant public not to get fair justice. Munsif sent record to District Judge in connection with plea of appellant that Munsif being complainant should not make inquiry. District Judge took a view that

under Sections 13 and 14, inquiry is to be made by Munsif himself hence sent matter back. Thereafter appellant did not cooperate and did not appear at enquiry though more than one communication was sent to him. Munsif concluded inquiry and sent report to High Court through District Judge. Thereafter appellant moved an application before Additional District Judge seeking time to move High Court to get an order to have the matter heard by some other judicial officer. Additional District Judge granted time and also sent record back to Munsif. Simultaneously, Additional District Judge also made an attempt of reconciliation between Members of Bar and Munsif. He proposed a draft resolution on the part of Bas Association but resolution passed by Bar was not in terms of proposal made by Additional District Judge and that is how ultimately matter proceeded. High Court finding appellant guilty of professional misconduct suspended him from practice for a period of five years w.e.f. 15.03.1955. In the appeal taken up before Supreme Court, the Court found that appellant undoubtedly was guilty of grave professional misconduct. Having said so, Court said that member of Bar undoubtedly owes a duty to his client and must place before Court all that can fairly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time Court said:

"a member of the Bar is an officer of the Court and owes a duty to the Court in which he is appearing. He must uphold the dignity and decorum of the Court and must not do any thing to bring the Court itself into disrepute. The appellant before us grossly overstepped the limits of propriety when he made imputations of partiality and unfairness against the Munsif in open Court. In suggesting that the Munsif followed no principle in his orders, the appellant was adding insult to injury, because the Munsif had merely up held an order of his predecessor on the preliminary point of jurisdiction and Court fees, which order had been upheld by the High Court in revision. Scandalizing the Court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice. From that point of view, the conduct of the appellant was highly reprehensible." (emphasis added)

1. Court thereafter upheld guilt of "grave professional misconduct" on the part of appellant and also observed that in such matters Court would be reluctant to interfere with the order of High Court when a member of Bar is found guilty of professional misconduct but thereafter finding two mitigating circumstances, it reduced period of suspension to two years.
2. In L.D. Jaikwal Vs. State of U.P., 1984(3) SCC 405, Contemnor was to appear before Special Judge in a matter where his client was already convicted for an offence under Section 5(2) of Prevention of Corruption Act and only question of sentence was to be considered. Contemnor appeared in a shirt and trouser disregarding rules of Court to appear in Court-attire while appearing in professional capacity. Special Judge asked him to appear in professional attire for being heard in professional capacity. Contemnor took umbrage of this statement and left Court. Thereafter some other Advocates appeared for accused and ultimately sentence was pronounced by Special Judge. Matter would have ended there and it was remedy of appeal available to convict but Contemnor then sent a written application to Special Judge couched in scurrilous language making imputation that the Judge was a corrupt Judge and contaminating the seat of justice. A threat was also held out that a complaint was being lodged to higher authorities that he is corrupt and did not deserve to be

retained in service. Copy of this application was forwarded to various authorities not only in High Court and Supreme Court but also administrative authorities like Chief Secretary, U.P. Government; Director, Vigilance Commission and Bar Association etc. Taking language of letter as constituting apparent intimidation and an attempt to terrorize and harass a Judge, which constitute "criminal contempt" under Section 2(c) of Act, 1971, High Court held Contemnor guilty and sentenced simple imprisonment of one week with fine of Rs. 500/-. While considering appeal filed by Contemnor, Supreme Court held that, it cannot subscribe to "slap-say sorry and forget" school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper poorer. Nor does the cheek which has taken the slap smart less upon said hypocritical word being uttered through the very lips which not long ago slandered a judicial officer without the slightest compunction. Court observed that it is not permissible to a member of Bar to terrorize and harass a Judge for passing a judicial order by adopting course of intimidation in order to frighten the Judge. If such an attitude on the part of members of Bar and that too without any remorse coming from heart, is taken lightly, it would virtually give a licence to such members of Bar and others to scandalize Court and commit contempt of Court with impunity. Court further observed:

"It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalized and persecuted by an Advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of Courts." (emphasis added)

1. Court in L.D. Jaikwal (supra) further observed that it has yet to come across a judge who can take a decision which does not displease one side or other. By the very nature of work a Judge has to decide matter against one or other parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound death knell of the institution, line has therefore to be drawn somewhere, some day, by some one. Court said that an attitude of unmerited leniency at the cost of principle and at the expense of Judge who has been scandalized, cannot be adopted. Court also said:

"We are fully aware that it is not very difficult to show magnanimity when some one else is the victim rather than when oneself is the victim. To pursue a populist line of showing indulgence is not very difficult in fact it is more difficult to resist the temptation to do so rather than to adhere to the nail- studded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. We, therefore, cannot take a lenient or indulgent view of this matter. The day must be dreaded when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disgrace on him with impunity, if any of his orders, or the decision rendered by him, displeases any of the Advocates appearing in the matter." (emphasis added)

1. Court reminded and reassured its believe that considerations regarding maintenance of independence of judiciary and morale of Judges demand that no person should be allowed to escape with impunity on mere tendering of an apology having committed an act of intimidation and veiled threat to a Judge, by accepting his apology. It would not wipe out the mischief.
2. In C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and others, 1995(5) SCC 457, referring to earlier judgment in Brahma Prakash Sharma vs. State of U.P., AIR 1954 SC 10, Court said that attack on a Judge is a wrong done to public and if it tends to create apprehension in the minds of people regarding integrity, ability or fairness of Judge and to deter actual and prospective litigants for placing complete reliance upon Court's administration of justice, or if it is likely to cause embarrassment in the mind of Judge himself in discharge of his judicial duties, it would be scandalizing the Court and would constitute "criminal contempt" as defined under Section 2(c) of Act, 1971.
3. Defining term "scandalizing", in Dr. D.C. Saxena Vs. Hon'ble The Chief Justice of India, 1996(5) SCC 216 Hon'ble K. Ramaswamy, J., in para 40 of judgment, said:

"40. Scandalising the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with office he holds is dealt with under law of libel or slender. 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 majesty of justice. 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 majesty of justice. It would therefore, be scandalising the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt." (emphasis added)

1. Court also held that in order to construe, whether imputations levelled constitute "criminal contempt" or not, will not be diluted on the defence that there was no personal gain on the part of Contemnor and he has made allegations bona fide. If words do constitute to have the effect of lowering prestige of Judges and Courts in the eyes of people, it will amount to "criminal contempt" under Section 2(c) of Act, 1971 liable for punishment. In this regard Court further in para 42 of judgment said:

"The reason is obviously that the court does not sit to try the conduct of a judge to whom the imputations are made. It would not be open to the contemnor to bring forward evidence or circumstances to justify or to show whether and how fairly imputations were justified because the judge is not before the Court. The defence justification to an imputation would not, therefore, be available to the contemnor. The imputation of improper motives or bias cannot be justified on the

principle of fair contempt." (emphasis added)

1. Baradakanta Mishra Vs. Registrar of Orissa High Court, 1974(1) SCC 374 a District Judge was suspended. The order of suspension was set aside by Government. High Court in exercise of power under Article 235 of Constitution further ordered suspension pending inquiry on allegation made against Judges in memorandum and letters sent to Governor, in a vilification criticism of Judges in their function on administrative side. When contempt action was initiated, it was challenged on the ground that act on administrative side would not constitute contempt. A Full Bench of High Court negatived it. In appeal, a Constitution Bench of Supreme Court held that allegations against Court in the memo submitted to Governor constituted scurrilous allegations against High Court. Further some of the allegations made in memo of appeal and various communications to Supreme Court were held contempt of Court and Court confirmed sentence. It held that imputation of improper motives, bias and prejudice constitutes contempt under Section 2(c) of Act, 1971.
2. Referring to an earlier Constitution Bench judgment in Special Reference No. 1 of 1964 In re, Keshav Singh, AIR 1965 SC 745, Court in Baradakanta Mishra (supra) said that in a democracy, though every one is entitled to express his honest opinion about the correctness or legality of a judgment or an order or sentence. Judges do require degree of detachment and objectivity in judicial dispensation. They being duty bound with the oath of office taken by them in adjudicating the disputes brought before the Court. The objectivity or detachment cannot be obtained if Judges have constantly to look over their shoulders for fear of harassment and abuse and irresponsible demands for prosecution, resignation or to refrain from discharging their duties pending further action. It was also observed, if forum of judiciary process is allowed to mount scurrilous attack on a Judge, the question arises, whether forum of judicial process of vilification of Judges or imputations to Judges in pleadings presented to Court would give liberty of freedom of expression to an advocate or a litigant. Answering the same, Court said, that it has little doubt to conclude that when an advocate or a party appear before Court, requires to conduct himself in a manner befitting to dignity and decorum of Court, he cannot have a free licence to indulge in writing in pleadings scurrilous accusations or scandalisation against Judge or Court. If reputation and dignity of Judge, who decides case are allowed to be prescribed in the pleadings, the respect for Court would quickly disappear and independence of judiciary would be a thing of past.
3. It was also held in Dr. D.C. Saxena (supra) that an assertion that Chief Justice was liable for prosecution is nothing but an outrageous tendency to lower the authority of Court and constitute interference in judicial administration. It is a clear case of contumacious conduct of Contemnor. The accusation is a culmination of contumacious conduct of wanton scandalisation of Court and reckless denigration.
4. The imputations made and noticed above no doubt are unbelievable outrageous affront to the majesty of justice on the part of Contemnor and scandalisation of this Court. It tends to lower dignity and authority of Court and also sows seeds for persons with similar propensity to undermine authority of Court or judiciary as a whole. Contemnor, in our view, has crossed all boundaries of recklessness and indulged in wild accusations.
5. When an accusation is made so as to press recusal by Court and place matter before another Judge or Bench, it amounts to a deliberate interference in judicial management tending to sow disaffection in the efficacy of dispensation of justice. It precedes the assumption that Judges are amenable to influence and would not decide the case posted before them legally and objectively. Court is made to subject all pressure to decide cases under influence. These accusations are flagrantly outrageous to scandalize the Court.
6. Repeatedly it has been observed that object of discipline enforced by Court in the case of contempt of Court is not to vindicate dignity of Court or to prevent undue interference with administration of justice. Judicial decisions are well subjected to criticism and they can but not the Judges who took them. This power is exercised to uphold the authority and dignity of Court of law which on behalf of State, deliver justice and protect public confidence that is reposed in them.
7. We cannot forget that prime responsibility of Court while administering justice is also to keep the foundation of justice pure. Nobody should be allowed to tarnish the image and majesty of Court, whosoever he is, howsoever high he may be or whatsoever he may be. Aberrations by lawyers in Court are generally ignored but when it goes to the extent of lowering image of Court, appropriate serious action has to be taken. Judges cannot be hyper sensitive in the matter but simultaneously they are not supposed to maintain angelic silence also. It is the seat of justice which needs protection. It is the image of judicial system which needs protection. None can be permitted to tarnish image of temple of justice. Majesty of Court has to be maintained and there cannot be any compromise or leniency in that regard.
8. In Prem Surana Vs. Additional Munsif & Judicial Magistrate and another, 2002(6) SCC 722 where a judicial officer was slapped in open Court by an Advocate and punished for contempt of Court by High Court, in appeal, Supreme Court observed that slap on the face of judicial officer is, in that, a slap on the face of justice delivery system in the country. As such question of acceptance of any apology or undertaking does not and cannot arise. Neither there can be any question of leniency, as regards sentence.
9. In O.P. Sharma and others Vs. High Court of Punjab and Haryana, 2011(6) SCC 86 Court reminded Advocates of their duty to the litigants as well as Court. It referred to Section I, Chapter II, Part VI of Bar Council of India Rules titled as "Standards of Professional Conduct and Etiquette" of Bar Council of India Rules. In para 24 of judgment, Court said:

"24. Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech. Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice. It plays its part in helping to secure the protection or other fundamental human rights, freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practicing the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. But they equally owe countervailing duty to maintain

dignity, decorum and order in the court proceedings or judicial processes. Any adverse opinion about the judiciary should only be expressed in a detached manner and respectful language. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary." (emphasis added)

1. Further in para 32 of judgment Court said:

"32. A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client in maligning the reputation of judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalize the Court which would shake the confidence of the litigating public in the system and would cause a very serious damage to the name of the judiciary." (emphasis added)

1. In para 40 of the judgment, Court said that an Advocate being a member of legal profession has a social duty to show people a beacon of light by his conduct and actions, rather than being adamant on an unwarranted and uncalled for issue.
2. Contemnor pointed out that truth is a defence in contempt proceedings. In other words he appears to seek a protection under Section 13(b) which came to be inserted by Act 6 of 2006 in Act, 1971. In Subramanian Swamy Vs. Arun Shourie (2014) 12 SCC 344, Court had occasion to examine Section 13(b) as came to be amended by Act 6 of 2006. Court observed that amended provision enables Court to permit justification by truth as a valid defence in any contempt proceeding if it is satisfied that such defence is in public interest and request for invoking defence is bona fide, unless Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice.
3. During the course of argument we pointed out to Contemnor that wild allegations levelled upon conduct or otherwise of Judges is a serious act and within the definition of "criminal contempt" though truth is a valid defence in view of amendment made under Section 13(b) vide by Act 6 of 2006 but for that purpose Contemnor will have to substantiate his allegations by placing relevant material on record for which he simply reiterated what was already contained in various documents filed alongwith his Deferment Application and said that the things may be directed to be enquired into by appropriate investigation agency.
4. Of late we find that a tendency has developed of making allegations and aspersions upon Judges hearing cases when a counsel argue it and finds some inconvenience in one or the other way. Every Judge knows that Judges presiding Courts have no platform to speak and clear allegations made against them. At the best they can confine entire thing to the matter which is under consideration in the order, to be passed therein. Such orders are not to be taken as a pretext to explain conduct of Judges also and that is how Judges are always in a position where they can be condemned ex parte by Advocates and others, knowing it well that there is no platform available to Judges for clarification. It is a situation where an honest Judge, working bona fide and wholesome integrity, sometimes due to his strict adherence to Rule of Law and unquestionable integrity, suffers, in the hands of naive and mischievous parties or sometime scrupulous advocates who show more sincerity

to their clients instead of devotion to Court, of which they are officers. We need not go into the reasons and considerations behind such conduct which may be many. Many a times we find that stakes in the matter are very high. Counsel show more adherence to interest of their clients than an objective and independent persuasion in accordance with law, in Court.

1. Instances of open threat as well as veiled threat are now occurring frequently. Many a times undue pressure on the part of members of Bar, keeping in view sole right or wrong interest of their clients is also writ large when they proceed to exert pressure by a collective decision of abstention of Court or otherwise outside condemnation of Presiding Officers of Court.
2. Another unfortunate part is that in the name or pretext of harmony and smooth functioning of Institution, by possession an attitude, not to become a party to any controversy or conflict, those responsible to manage the entire institution, keep such instances under the carpet and avoid to take appropriate action, forgetting golden rule that anything rotten kept and covered is bound to decay and stink. It would ultimately prove disastrous for the institution as a whole. Inaction or lack of appropriate action on the part of those responsible to take action, many a times, has the effect of demoralization to others, and encouraging nasty members of Bar and litigants to continue with their pressure tactics and other nefarious activities. Those who stand on judicial side are a few individuals and become an eyesore to remaining stakeholders of Institution, in one or other way. To stand in such a situation for a Judicial Officer is an act of courage and valiant but many a times he finds people supporting him, almost negligible. It is high time when an inside, deep and thorough review of entire situation is needed to check such instance and growing tendency amongst other side of stakeholders, otherwise independence, objectivity and strength of Institution would be in jeopardy.
3. Nobody is above law and everybody is under an obligation to adhere to rule of law. This principle every stakeholder of an institution of dispensation of justice has to follow, in words and spirit. If we allow any deviation or distraction in the name of convenience, harmony, smooth functioning or such other clumsy pretext, it will do more harm to system. We however find it our duty to stand in such a situation to maintain majesty, honour and independence of institution of justice instead of surrendering to individual interest of anybody, whatsoever, in the name of sympathy, leniency, compassion etc.
4. Power of justice has been handed down to Courts from sovereignty of State. Amongst all other kinds of sovereign functions, dispensation of justice is treated to be a power which would have been exercised by King as a representative of God. It is treated a divine power. A divine power does not mean compassion to wrong doer and allow or continue or to cause irreparable injury and loss to wronged one. Power to do justice includes power of punishment. When someone has done something wrong, adequate punishment for such wrong is also a divine obligation upon the Court of law wherethrough such power is to be exercised.
5. In the present case in the zeal of so called public service no one including an officer of Court, i.e., a member of Bar can be allowed to make insinuations, allegations and aspersions on the Judges of this Court or, in that way, even of any other Court which has the effect of lowering down majesty of Court as a whole in the eyes of general public. Contemnor has not only made allegations, wild and

unsubstantiated, in various writings but also sought to make public in different ways and also during course of argument by reading these allegations in open Court in presence of Advocates, litigants and staff.

1. We find also no sense of remorse, repentance or apologetic attitude on the part of Contemnor at any point of time. We, therefore, find that act of Contemnor of committing criminal contempt, in view of our finding with regard to charge, that it stands proved, is quite serious and deserves an appropriate stringent punishment.
2. In these facts and circumstances, holding Contemnor guilty of charge levelled against him, we sentence him three months simple imprisonment and fine of Rs. 2,000/-. In case of failure of payment of fine within one month from today, Contemnor shall undergo further simple imprisonment of three months.
3. Besides, we also restrain Contemnor from entering premises of High Court of Judicature at Allahabad and Lucknow, for a period of two years. In computing above period, the period he has already undergone pursuant to our order dated 01.03.2017 shall be adjusted. In other words, period of two years shall be treated to commence from 02.03.2017.
4. The criminal contempt accordingly stands allowed.
5. A copy of this order shall be communicated to Registrar General as well as Senior Registrar at Allahabad and Lucknow respectively for communication and compliance.

Order Date:-25.08.2017 AK Case :- CONTEMPT No. - 103 of 2017 Applicant :- State of U.P. Opposite Party :- Asok Pande Counsel for Applicant :- Govt. Advocate Hon'ble Sudhir Agarwal,J. Hon'ble Ravindra Nath Mishra-II,J.

1. After delivery of judgement, Contemnor prays that sentence imposed by this Court vide judgement of date be suspended to enable him to avail statutory remedy of appeal under Section 19 of Contempt of Courts Act, 1971 (hereinafter referred to as "Act, 1971") before the superior Court.
2. In the circumstances, we suspend the sentence for a period of 60 days to enable Contemnor to avail remedy of appeal. In case, the appeal is not filed or if filed but no otherwise order is passed in appeal, Contemnor shall surrender before Chief Judicial Magistrate, Lucknow immediately after 60 days, who would immediately take appropriate steps for serving out sentence by Contemnor as directed in the judgement of date passed in this contempt application.

Order Date:-25.08.2017 AK