IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION NO. OF 2024

IN

WRIT PETITION (CRI.) NO. 625 OF 2024

APPLICANT: - SHRI. PRAKASH GOPALRAO POHARE

AGED- 70 YEARS,

OCCUPATION - EDITOR IN CHIEF- DAINIK DESHONNATI,

R/O NISHANT TOWER, 3RD FLOOR,

M.G. ROAD, AKOLA

IN THE MATTER BETWEEN: -

PETITIONER: -1. **SERUM INSTITUTE OF INDIA PRIVATE LIMITED**
THROUGH ITS AUTHORISED REPRESENTATIVE
212/2, OFF SOLI POONAWALLA ROAD, HADAPSAR, PUNE,
MAHARASHTRA, PIN - 411028.

2. **MR. ADAR POONAWALLA**
AGED - 42 YEARS, OCCUPATION INDUSTRIALIST, 212/2, OFF. SOLI POONAWALLA ROAD,
HADAPSAR, PUNE,
MAHARASHTRA PIN -411028.

3. **MR. VIVEK PRADHAN**
AGED - 68 YEARS,
OCCUPATION212/ 2, SOLI POONAWALLA ROAD,
HADAPSAR, PUNE,
MAHARASHTRA PIN -411028.

VERSUS

RESPONDENT: -SHRI. PRAKASH GOPALRAO POHARE
AGED- 70 YEARS,

OCCUPATION - EDITOR IN CHIEF- DAINIK DESHONNATI,

R/O NISHANT TOWER, 3RD FLOOR,

M.G. ROAD, AKOLA

APPLICATION UNDER SECTION 379 of BHARTIYA NYAY SANHITA FOR TAKING ACTION UNDER PERJURY AND CONTEMPT AGAINST ACCUSED PETITIONERS FOR FILING FALSE AND MISLEADING AFFIDAVIT WITH SLANDALOUS AND CONTEMPTUOUS ALLEGATION AGAINST HON'BLE JUDGE.

The Applicant above named humbly submits as under;

1. That, the present Application is filed under section 379 of Bhartiya Nyay Surakasha Sanhita (BNSS) which equivalent to Section 340 Cr.P.C. for taking action under contempt & perjury against the Petitioners for making false, scandalous, unfounded, scurrilous, reckless, contemptuous, and grossly defamatory allegations against the Hon'ble Senior Division Judge in the memo of Writ petition filed by them.

2. That the petitioners while challenging the impugned order dated 02.08.2024, had made allegations to the effect that the Hon'ble Judge had acted deliberately and given undue favor to the Respondent by misusing the discretion.

3. That the Petitioners in most of the paras of their petition have made false, reckless, scandalous, contemptuous and scurrilous allegations against Hon'ble Judge that :-

"the Hon'ble Judge had acted "deliberately",

"with prejudiced mind", "callously",

"acted by abusing authority of the Judge",
"The filing of application uner sec 340 of Cr.P.C. and order passed on it is completely malafied",
"acted according to his whim and fancies" ,
"not having basic understanding of the law",
" acted arbitrarily and unreasonably" ,
"He passed the order mechanically without understanding the basic provisions of law",
" passed order mechanically & superficially"
"Judge made feeble attempt to justify his mechanical, unreasoned and superficial order".

4. The relevant scandalous, abusive and defamatory paras from the Writ petition reads thus: -

(i) At. Pg(C) pt. No. 7 of Synopsis:

"The Learned Civil Judge Senior Division, kept giving dates in the civil suit for passing of order on the Order 7 Rule 11 Application on one or the other pretext and on the other hand without even issuing a notice to the present petitioners, parallelly conducted the Miscellaneous Judicial Case bearing number 301/2024 which was filed by the respondent before the same court but was conducted on different dates ***and was***

deliberately not tagged along with the main civil suit."

(ii) " ***Ground (FF) pg. No. (30)*** . *It is submitted that it is incumbent on the court to understand the procedural law and the substantive law and pass an order by verifying its applicability to the case in hand by applying its mind. The learned trial court has not at all applied its mind and acted according to its whims and fancies while deciding the application under section 340 of Code of Criminal Procedure without a basic understanding of facts and the applicable law thereto. It could be seen from the Impugned Order that it is only last two paragraphs before the operative part of the order, where the learned trial court has made a feeble effort to somehow justify its mechanical. unreasoned and arbitrary order. This Impugned Order is liable to be quashed and set aside on this ground as well."*

(iii) "***Ground (EE) pg. No. (30)***. *It is submitted that perusal of the Impugned Order would go to show that there are a plethora of judgements purported to be discussed by The Ld. Civil Judge, which are absolutely*

irrelevant to the subject matter of the case in hand and yet the entire order does not even contain a single cogent reasoning basis any judgment, whereby a liability could be fastened on the persons against whom the orders passed. The lack of application of judicious mind is reflected from the order and even otherwise the entire application under 340 CRPC as moved by the plaintiffs before The Ld. Civil Judge, is completely malafide. The Impugned Order is therefore liable to be quashed and set aside on this ground as well."

(iv) *"**Ground (GG) pg. No. (31)**. It is submitted that it was incumbent on the trial court to decide application under order 7 rule 11, which was already pending before it and the application under section 340 of Code of Criminal Procedure was filed later as a separate proceeding. If the order sheet of the said Spl. Civil Suit filed by the plaintiff is perused, it is consistently shown in the order sheet that the learned judicial officer is busy in doing some or the other work whereas contrary to its own order sheet the learned trial court could find time to*

proceed with the application under section 340 Code of Criminal Procedure, simultaneously on several dates by keeping the application under order 7 rule 11 pending. Thus this shows that the application under section 340 of Code of Criminal Procedure was allowed with a prejudiced mind, without looking into whether the case actually falls within the parameters as laid down under section 340 of the Code of Criminal Procedure. Thus, the order impugned is absolutely illegal and is a classic case of non-application of judicious mind, arbitrariness, unreasonableness and callousness. The Impugned Order impugned is therefore liable to be quashed and set aside on this ground as well."

(v) *"**Ground (HH) pg. No. (32)**. The Impugned Order dated 2nd August, 2024 is ex-facie contrary to the law and principles of justice and equity and is clearly an abuse of authority by Ld. Civil Judge. It is submitted that grave and irreparable prejudice will be caused to the Petitioners if Impugned Order is not quashed and set aside."*

(vi) *"**Ground (R) pg. No. (23)**. […] The Impugned Order has been passed by the Ld. Trial Court Judge mechanically and superficially without applying the settled principles of law and on this ground alone, the Impugned Order requires to be set aside."*

5. That the abovesaid statements are ex-facie false, malicious, unfounded, reckless, scurrilous, scandalous, contemptuous and highly defamatory. They are made out of frustrations. The falsity and frivolity of the above said allegations made by the Petitioners is evident from the record available before this Hon'ble Court.

Hence Petitioners are liable for action under contempt and perjury.

6. That the present Application is sub divided into following points for the sake of convenience.

Sr. No.	Particulars	Para No.	Page No.
1.	As per law laid down by the Hon'ble Supreme Court, irrespective of the merits or demerits of the impugned order, the conduct of Petitioners in making blatantly false unfounded,	7	

	scandalous, reckless, malicious and scurrilous allegations against the Hon'ble Judge on the basis of overruled pleading that the Judge has passed the order to favor opposite party is grossest Contempt on the part of Petitioners and advocate who drafted such pleadings.		
2.	That as per law laid down in **Godrej &Boyce Manufacturing Co. Pvt. Ltd. v. Union of India,1991 SCC OnLine Bom 496**, and as per section 12 (4) of the Contempt Of Court Act, 1971, all the directors, office bearers of the Serum Institute of India Pvt. Ltd. are liable to be punished for contempt of Court committed on the basis of submissions made in the court by the Company.	9	
3.	False & frivolous allegations by the Petitioners in para (AA) that the Judge acted deliberately with prejudged mind and did not conducted preliminary enquiry.	11	

4.	Frivolous and overruled submissions that the Hon'ble Judge acted unlawfully and deliberately in hearing the 340 application separately and not tagging it with the suit.	12	
5.	False, derogatory & misleading allegations in ground (EE) against Hon'ble Judge that the case laws refereed and relied by the Hon'ble Judge are not related with the provisions of section 340 of Cr.P.C. and all are irrelevant case laws.	13	
6.	Malicious, scandalous, contemptuous and misleading statement on affidavit by the Petitioners that the Hon'ble Judge deliberately did not issued the notice to the Petitioners before passing an order under section 340 of Cr.P.C.	14	
7.	Attempt by petitioners to justify their falsity and dishonesty by making reckless allegations against the Hon'ble Judge.	15	
8.	False, frivolous & malicious ground that the affidavit dated 29.04.2023 was submitted by Serum Institution of Indi	18	

	Pvt Ltd and not signed by Petitioner No. 2 Mr. Adar Poonawalla & Petitioner No.3 Mr. Vivek Pradhan and therefore prosecution against petitioners No. 2 & 3 is illegal.		
9.	Misleading, frivolous, overruled and scandalous submissions in the Writ Petition that the grounds taken by the Applicant in the perjury application were new grounds and not taken by him in the reply filed to the application under Order 7 Rule 11 of CPC and the Hon'ble Judge failed to consider the said fact.	19	
10	Dishonesty of the Petitioners in not making the state through Superintendent of Hon'ble Civil Court, Nagpur as party Respondent, even if it is a mandatory party as per law.	20	
11	That apart from the maliciousness, falsity & scandalous nature of the abovesaid pleadings, it is also an attempt by the petitioners to waste the valuable time of this Hon'ble Court	21	

	and an attempt to get a favourable order by suppressing the binding precedents and by taking grounds which are already overruled by the Hon'ble Supreme Court and this Hon'ble Court. It is a separate offence of grossest Contempt.		
12	Fourth malicious & contemptuous statement that the Ld. Judge acted deliberately and arbitrarily by deciding application under section 340 of Cr.P.C. earlier by keeping the civil proceedings and application under Order 7 Rule 11 pending.	22	
13	Section 379 & Section 215 of the BNNS which are similar to Section 340 and 195 of Cr.P.C.	23	
14	The whole attempt by the Petitioners is to anyhow delay the action under section 340 against them by filing such a frivolous petition with false and misleading and overruled submissions and for such attempt they needs to be saddled with heavy cost.	25	

15	Law settled by the Supreme Court that offence of perjury is a heinous crime and the litigants making false affidavits are danger to the society and society cannot afford to have a criminal to escape his liability, as it will bring about a state of social pollution, which is neither desired nor warranted. Such persons should be sent to jail and not be granted bail either anticipatory or regular and they should be tried under trial.	26	
16	Legal position that even if there is one prosecution ordered by the sub ordinate courts, the second enquiry and prosecution under section 340 of Cr. P. C. is also necessary when the accused repeats the same false statements before Hon'ble High Court. There are two type of offences committed by the Petitioners. First is making/creating the false affidavit and second is filing it before Hon'ble High Court with no respect and fear of any legal action of playing fraud with the	27	

	Court. And therefore they need to be tried separately for two set of offences as per law laid down in the case of **Arun Dhawan Vs Lokesh Dhawan 2015 Cri LJ 2126 and in Madangopal Banarasilal Jalan and Others v/s Partha S/O Sarthy Sarkar 2018 SCC Online Bom 3525.**		
17	Legal position settled by Hon'ble Supreme Court that when false affidavit is filed in the Court to get favorable order then prosecution of such litigant under perjury and contempt is must and the Court will be failing in it's duty if such prosecution is not ordered. [**ABCD v. Union of India, (2020) 2 SCC 52**, **Sundar v. State, 2023 SCC OnLine SC 310 (3J)**]	28	
18	When reckless, false and scandalous allegations are made in the petition against the Judge of sub ordinate Court then the petitioners and their advocates are liable to be punished	29	

	under sec 193,199 r/w 120(B), 114 etc. of IPC. Judges of sub ordinate Courts are entitled to protection while carrying out their duties and that persons making grossly improper and false allegations must, in the interests of justice, be properly dealt with.		
19	Law settled by Hon'ble Supreme Court and High Court that the blame of defective and false pleading should go to the advocate and Senior Counsel. The advocate preparing false and misleading pleading shall also be held responsible for prosecution of perjury, contempt and disciplinary proceedings before Bar Council.	30	
20	PRAYER CLAUSES	31	

7. **As per law laid down by the Hon'ble Supreme Court, irrespective of the merits or demerits of the impugned order, the conduct of Petitioners in making blatantly false unfounded, scandalous, reckless, malicious and scurrilous allegations against the Hon'ble Judge on the basis of**

overruled pleading that the Judge has passed the order to favor opposite party is grossest Contempt on the part of Petitioners and advocate who drafted such pleadings.

7.1. That from the bare reading of the above said Pleadings it is crystal clear that the Petitioners have crossed all the limits of fair criticism of the judgment and out of frustration they have made grossly contemptuous, scandalous allegations against the Hon'ble Senior Division Judge that he done undue favor and acted deliberately, abused his position as a Judge, acted with prejudice mind and with malafide intention, not having an understanding of provisions of law, etc.

7.2. That, record ex-facie shows that all the allegations made by the Petitioners are ex-facie false and it's falsity is ex-facie proved from the record of the case itself. The falsity & frivolity of each allegations made by the Petitioners is given in the subsequent paras.

7.3. Furthermore, the legal grounds taken by the Petitioners such as the Hon'ble Judge committed blunder in not issuing notice and not hearing the Petitioners before taking decision to order prosecution as per Section 340 of Cr.P.C are all overruled submissions.

7.4. The position is made clear by the Full Bench of Hon'ble Supreme Court in the case of **State of Punjab v. Jasbir Singh, 2022 SCC OnLine SC 1240** , which is further explained in the case of **Al Amin Garments Haat (P) Ltd. v. Jitendra Jain, 2024 SCC OnLine Cal 110** where it is ruled that **the accused have no locus and accused should not be heard before passing an order under section 340 Cr.P.C.**

7.5. In **Pritish Vs. State of Maharashtra (2002) 1 SCC 253** & in **Union of India v. Haresh Virumal Milani, 2017 SCC OnLine Bom 1705,** Hon'ble Supreme Court and this Hon'ble Court had rejected such objection and uphold the orders under section 340 of Cr.P.C. which are passed without hearing accused.

7.6. That the order passed by the Hon'ble Senior Division Judge is in conformity with another Hon'ble Senior Division Judge which order was upheld by the Three judge Bench of Hon'ble Supreme Court in **Pritish v. State of Maharashtra, (2002) 1 SCC 253**.

The Hon'ble Apex Court had ruled as under;

> *"5. The reference court conducted an inquiry on being told by the aforesaid applicants that the above mentioned documents are forged. The court got down the relevant records from the Sub-Registry for*

the purpose of examining the correctness of the aforesaid three documents and found that they were fabricated copies of the original sale deeds. The said court further found that appellant and one Rajkumar Anandrao Gulhane have committed offences affecting the administration of justice by using forged documents. ***The court then passed the following order:***

> ***Therefore, it is expedient in the ends of justice on my part to file the complaint in writing against them before Judicial Magistrate of First Class having jurisdiction to take appropriate and proper criminal action against them, as it appears that they have not only cheated the public at large and government but have misguided or tried to misguide my learned predecessor by preparing and producing false documentary evidence as well as by giving false oral evidence just to have a wrongful gain.***

6. The persons who moved the court for taking action under Section 340 of the Code of Criminal Procedure (for short the Code) by bringing the above facts to the notice of

the reference court were not satisfied as they felt that the other persons who also secured the advantage of such enhancement were also to be proceeded against. So they filed an appeal before the District Court. On 12.8.1996 the District Judge concerned ordered that the complaint shall be filed against five more persons besides the appellant and Rajkumar Ananarao Gulhane. We are told that those five persons moved the High Court and got themselves extricated from prosecution proceedings. Appellant then filed an appeal before the High Court purportedly under Section 341 of the Code in challenge of the order of the reference court which directed the filing of a criminal complaint against him. The main contention he raised before the High Court was that the reference court has overlooked the basic principles of natural justice and proceeded to make an inquiry without giving an opportunity to him to be heard in the matter and hence great prejudice had been caused to him as he had been deprived of the opportunity to be heard. Learned single judge of the High Court while repelling the above contention observed thus:

The procedure does not contemplate that before initiating preliminary enquiry the court ought to give notice to the person against whom it may make a complaint on completion of the preliminary enquiry and, obviously so because what is contemplated is only a preliminary enquiry, and if the court chooses to take action against the said person, it does not mean that he will not have full and adequate opportunity under Section 340(1)(b) of the Criminal Procedure Code. Therefore, the contention of the learned counsel for the appellants, that the court, before initiating any enquiry into the matter, ought to have given notice to the appellants and that the appellants have a right to be heard, cannot be accepted.

19. We therefore agree with the impugned judgment that appellant cannot complain that he was not heard during the preliminary inquiry conducted by the reference court under Section 340 of the Code. In the result we dismiss this appeal.

7.7. Hence, it is crystal clear that the procedure adopted by the Hon'ble Judge was as per law and no illegality committed

by the Hon'ble Judge. But then also the petitioners have made false & scandalous allegations against the Hon'ble Judge that the Hon'ble Judge have acted "Deliberately," with prejudiced mind 'malafide intention,' 'abused position as a Judge'

7.8. The law in this regard is very well settled by the Hon'ble Supreme Court & Hon'ble High Court that such petitioners and their advocates who files petitions with scandalous allegations against the Judge of Sub-ordinate courts are liable to be punished under contempt & perjury.

7.9. Hence it is clear that in fact the Petitioners are not having knowledge of law but they are having such an audacity of making scandalous allegations of lack of understanding of law against Hon'ble Judge, who, in fact acted in accordance with the law and procedure established by the binding precedents of Hon'ble Supreme Court and Hon'ble High Court.

7.10. That, Hon'ble Supreme Court & this Hon'ble Court have time and again warned litigants and advocates that for such scandalous pleadings with scurrilous and unfounded attack upon the Judge doubting his integrity they should be punished under contempt.

7.11. In **Municipal Council Tikamgarh v. Matsya Udyog Sahkari Samiti, 2022 SCC OnLine SC 1900** it is ruled as under;

> *"We are greatly troubled by the averments contained on page 8 because of the ground set out therein and more specifically ground (b).*
>
> ***The issue is not whether the impugned order is right or wrong but the endeavor to scandalize the Division Bench of the High Court by making averments that it unduly favoured the original petitioner society and attributing judicial misconduct in recording proceedings. This is a petition filed by the Municipal Council of Tikamgarh. We have a little doubt that the endeavor is to scandalize the Court.***
>
> *On our query where is the Advocate-on-Record who has signed such a petition, learned counsel appearing before us says that he has drafted it. Be that as it may, that is no ground for an Advocate-on-Record to pen down his signatures as a filing counsel for the same.*
>
> ***Let contempt notice issue to Mr. Vijay Singh, Assistant Accountant in Municipal Counsel at Tikambarh who has signed the affidavit, the Advocate-on-Record viz. Mr. Deepak Goel and***

the counsel who claims to have drawn the petition viz. Mr. Manohar Lal Sharma, Adv., as to why they should not be proceeded against contempt and punished in accordance with law.

Mr. Manohar Lal Sharma, Adv. Accepts notice.

All the three contemnors to remain present in Court."

7.12. In **Baradakanta Mishra v. Registrar of Orissa High Court, (1974) 1 SCC 374,** it is ruled that ***the right of appeal does not give the right to commit contempt of court, nor can it be used as a cover to bring the authority of the High Court into disrespect and disregard.***

It is ruled as under;

"40. *So far as the first part of the argument is concerned, the same must be dismissed as unsubstantial because if, in fact,* ***the language used amounts to contempt of court it will become punishable as criminal contempt. The right of appeal does not give the right to commit contempt of court, nor can it be used as a cover to bring the authority of the High Court into disrespect and disregard.*** *It has been held by this Court in Jugal Kishore v. Sitamarhi Central Co-op. Bank Ltd. [AIR 1967 SC*

1494 : (1967) 3 SCR 163 : 1967 Cri LJ 1380] ***that allegations of mala fides in the grounds of appeal to the Joint Registrar of Cooperative Societies from the Order of the Assistant Registrar would constitute gross contempt.***

50. *But* ***if the attack on the Judge functioning as a judge substantially affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a judge is alleged to have done in the exercise of his administrative responsibilities.*** *A judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function.*

52. […] *in State of Bombay v. Mr 'P.' [AIR 1959 Bom 182 : 60 Bom LR 873 : 1959 Cri LJ 567] a scurrilous attack on the Court Receiver for alleged misbehaviour in his official duties and a charge against the*

Chief Justice and the administrative judges for deliberately conniving at it were held to constitute contempt. The same argument as is now put forward was made in that case (see para 14 of the report), but was rejected in these words:

"By making these foul attacks upon the Judges, the respondent has tried to create an apprehension in the mind of the public regarding the integrity of these Judges and has done a wrong to the public. He has attempted to shake the confidence of the public in the Judges of this Court and in the justice that is being administered by these Judges of this Court."

54. *We have already shown that the imputations in Annexures 8, 16 and 20 have grossly vilified the High Court tending to affect substantially administration of justice and, therefore, the appellant was rightly convicted of the offence of criminal contempt.*

95. *The facts of the present case disclose that an incorrigible contemnor, who had made it almost his latter-day professional occupation to cross the High Courts path,*

has come to this Court in appeal. ***He has been reckless, persistent and guilty of undermining the High Court's authority in his intemperate averments in both petitions.*** *But having regard to the fact that he is a senior judicial officer who has at some stage in his career displayed zeal and industry and is now in the sombre evening of an official career, a punishment short of imprisonment would have met the ends of justice and inspired in the public mind confidence in the justice administration by showing that even delinquent judges will be punished if they play with or pervert the due course of justice, as the contemnor here has done.* ***A heavy hand is wasted severity where a lighter sentence may serve as well. A fine of Rs 1000 with three months' imprisonment in default of payment will meet the ends of justice and we impose this sentence in substitution of the infliction of imprisonment by the High Court****. With this modification Civil Appeal No. 41 of 1973 is dismissed. On the appeal by the State the course adopted in the leading judgment of Palekar, J., has our concurrence.*

87. *At this stage it must be noticed that in the State of Madhya Pradesh v. Reva Shankar [AIR 1959 SC 102 : 1959 SCR 1367 : 1959 Cri LJ 251] this Court ruled that* ***aspersions of a serious nature made against a Magistrate in a transfer petition could be punishable as a contempt if made without good faith.*** *However, in Govind Ram v. State of Maharashtra [(1972) 1 SCC 740 : 1972 SCC (Cri) 446]* ***this Court reviewed the decisions on the point and ruled that if in the garb of a transfer application scurrilous attacks were made on a court imputing improper motives to the Judge there may still be contempt of Court, although the Court referred with approval to the ruling in Swarnamayi Panigrahi v. B. Nayak, [AIR 1959 Ori 89 : ILR 1958 Cut 631 : 1959 Cri LJ 626] that a latitudinarian approach was permissible in transfer applications. The core of the pronouncement is that a remedial process like a transfer application cannot be a mask to malign a judge, a certain generosity or indulgence is justified in evaluating the allegations against the Judge.*** *Eventually, Grover, J., held that the*

allegations made in the proceeding in question were not sufficiently serious to constitute contempt. A liberal margin is permissible in such cases but batting within the crease and observing the Rules of the game are still necessary. ***Irrelevant or unvarnished imputations under the pretext of grounds of appeal amount to foul play and perversion of legal process****. Here, the author, a senior judicial officer who professionally weighs his thoughts and words, has no justification for the immoderate abuse he has resorted to. In this sector even truth is no defence, as in the case of criminal insult — in the latter because it may produce violent breaches and is forbidden in the name of public peace, and in the former because it may demoralise the community about Courts and is forbidden in the interests of public justice as contempt of court."*

7.13. In **B. A. Shelar v. M. S. Menon, 2001 SCC OnLine Bom 230,** it is ruled as under;

"8. It should be borne in mind that the bed-rock on which the Courts survive, is public confidence and when lawyers make

such reprehensible imputations against judicial officers, this Court cannot remain a mute spectator. If this Court were to do so, then public confidence in Judiciary would stand eroded and the citizenry would start believing that the imputations may be true. That indeed would be distressing.

9. *It are the said circumstances which have prompted us not to accept the unconditional apology simpliciter made by Mr. M.S. Menon, the contemnor.*

6. *We have reflected over Mr. M.S. Menon's submission. We are constrained to observe that the offence of criminal contempt, under section 2(c) of The Contempt of Courts Act, 1971, is made out against Mr. M.S. Menon, the contemnor. In our view, this is not a case, where on a mere acceptance of unconditional apology, the contemnor Mr. M.S. Menon, should be allowed to go scot-free. The reasons which have warranted us to reach such a conclusion are as under:*

7. ***The contemnor, on his own admission made before us, is an advocate of 15 years' standing. He is not a layman. He was***

expected to know that the said statements made by him, were per se contemptuous. Despite that, he has made them. *We make no bones in observing that an Advocate must always remember that he is an Officer of the Court and should discharge his duties with dignity and restraint. His advocacy should not reflect his identification with the party he represents.*

10. *The question is what should be the punishment that should be inflicted on the contemnor. Since the contemnor has shown penitence and there appears to be contriteness in his apology, in our view, a fine of Rs. 2,000/-, in default, a sentence of three months S.I. would meet the ends of justice.*

11. *In the result, we find the contemnor Mr. M.S. Menon, guilty of the offence of criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971 and sentence him to pay a fine of Rs. 2,000/-, in default to undergo three months S.I. The fine shall be paid by the contemnor, within two weeks from today, before the Registrar of this Court, who shall accept the same on*

production of a true copy of this order duly authenticated by the Sheristedar of this Court.

12. *A true copy of this order shall be sent to the Court of Mr. B.A. Shelar, Metropolitan Magistrate, 21st Court, Bandra, Mumbai by the Office within one week from today."*

7.14. In **Mohan Chandra P. vs. State of Karnataka 2022 SCC OnLine SC ____**, it is ruled as under;

"The petition challenges the concurrent orders passed by the learned Single Judge as well as the Division Bench of the High Court of Karnataka, vide which the learned Single Judge dismissed the writ petition filed by the petitioner and the Division Bench has dismissed the appeal. The petitioner, in effect, challenges the selection of the Chief Information Commissioner and the Information Commissioners by the State of Karnataka. While assailing those orders before this Court, ***in the memo of special leave petition, the petitioner has made the following averments:-***

"..Therefore the reason assigned by the Division Bench

of High Court of Karnataka for extraneous reason and to harass the respondents is unwarranted one and without any basis or foundation to justify the same. *On the other hand the Division Bench of the High Court of Karnataka has taken into consideration extraneous reason and as a revenge imposed exemplary cost of Rs.5 lakh to the petitioner.*

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The further reason assigned by the lower appellate court for dismissing the writ appeal that the appellant has suppressed the material facts of his avocation and no locus standi to file writ petition and writ appeal and wasted the time of the court and imposed cost of Rs.5 lakh. Said reasoning of the Division Bench of High Court of Karnataka is totally false because the Petitioner has disclosed each

and every fact at the time of submitting application for the post of Chief Information Commissioner and State Information Commissioner. The documents appended to the writ petition and writ appeal clearly goes to show that he has disclosed everything and not suppressed the material facts ***as observed by Division Bench of High Court of Karnataka. Only to show favouritism towards the respondents and to harass the Petitioner and only to gain publicity, the Division Bench of High Court of Karnataka has imposed exemplary cost for ulterior purpose.*** *This is not a public interest litigation filed by the appellant. The writ petition and writ appeal preferred by the appellant on personal capacity to enforce judgment of Hon'ble Apex Court of India and redressal of his grievance and not for any other purpose."*

<u>The aforesaid observations are not only derogatory to the Karnataka High Court but highly contemptuous in nature.</u>

The Constitution Bench of this Court in the case of <u>M.Y. Shareef and Another v. The Hon'ble Judges of the High Court of Nagpur and Ors. (1955) 1 S.C.R. 757,</u> has held that even a lawyer who subscribes his signatures to such derogatory and contemptuous averments is guilty for committing contempt of the Court.

Issue notice, returnable on 02.12.2022, to the petitioner-Mohan Chandra P. as well as the Advocate on Record, Mr. Vipin Kumar Jai, as to why an action for contempt of the Court be not initiated against them. Both the above-named persons shall remain present in the Court on 02.12.2022."

7.15. In **<u>Court on its Own Motion v. Virendra Singh, 2024 SCC OnLine Del 145</u>**, for similar scandalous pleadings Hon'ble High Court had sentenced an advocate to six months imprisonment.

It is ruled as under;

"29. *In para 18 of the criminal appeal, it is specifically mentioned that HMJ……*

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

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

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

arbitrary, prejudicial and mala-fide manner."

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

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

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

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

38. *We had given an opportunity to the contemnor/respondent to seek an apology in respect of contemptuous allegations made by him in the criminal appeal, but the contemnor replied in negative and stated that he stands by whatever allegations he has made, either against the learned Judges of this Court or against the Judges*

of the District Court and the judiciary as such. He also stated that not only the said Judge but also many other Judges, who are favoring the accused persons openly. However, at present, he has no material thereto and shall disclose the same at an appropriate stage.

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

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

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

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

8. Hence it is just and necessary that an action is required to be taken as per law & ratio laid down by the Hon'ble Supreme Court in the case of **Municipal Council Tikamgarh v. Matsya Udyog Sahkari Samiti, 2022 SCC OnLine SC 1900** , against Petitioners Serum Institute of India Pvt. Ltd, Mr. Adar Poonawalla & Mr. Vivek Pradhan.

9. That as per law laid down in Godrej &Boyce Manufacturing Co. Pvt. Ltd. v. Union of India,1991 SCC OnLine Bom 496, and as per section 12 (4) of the Contempt Of Court Act, 1971, all the directors, office bearers of the Serum Institute of India Pvt. Ltd. are liable to be punished for contempt of Court committed on the basis of submissions made in the court by the Company.
Section 12 (1) & (4) reads thus;

Section 12(1) in The Contempt Of Courts Act, 1971

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

[…..]

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, ***every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:***

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission."

9.1. Hon'ble High Court in the case of **Raman Lal Vs State 2001 Cri. L. J. 800,** had ruled as under;

"(136). Similarly, in Shivnarayan Laxminarayan

Joshi & Ors. vs. State of Maharashtra , the Apex Court held that since it is impossible to adduce direct evidence of conspiracy, ***the offence can only be proved largely from the inference drawn from acts or illegal omissions committed by the conspirators in furtherance of a common design. Once such a conspiracy is proved, act of one conspirator becomes the act of the others. A co-conspirator, who joins subsequently and commits overt-acts in furtherance of the conspiracy, must also be held liable.*** *"*

9.2. Section 107 of IPC (Section 45 of BNS) reads thus;

"107. Abetment of a thing.—

A person abets the doing of a thing, who— (First)— Instigates any person to do that thing; or(Secondly)— Engages with one or more other person or persons in any conspiracy for the doing of that thing, if ***an***

act or illegal omission takes place in pursuance of that conspiracy, *and in order to the doing of that thing; or*

(Thirdly)— ***Intentionally aids, by any act or illegal omission, the doing of that thing.***

Explanation 1.— ***A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.***

IllustrationA, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.— ***Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.****"*

10. That the falsity, dishonesty, frivolity, recklessness, callousness and audacity of the Petitioners and their advocates in entire pleading of the Writ Petition is pointed out in detail in following paras.

11. False & frivolous allegations by the Petitioners in para (AA) that the Judge acted deliberately with prejudged mind and did not conducted preliminary enquiry.

11.1. That, the petitioners in para ground (AA) at pg. no. 28 of their petition have made following submissions;

> *"AA. The Ld. Civil Judge has passed the impugned order in complete misconception of the articulation of section 340 of the CRPC. It is submitted that the basic principle of section 340 of CRPC contemplates for conducting a preliminary enquiry by the court to whom the application is made.* ***The entire reading of the order does not even a make a single whisper of conducting of the preliminary enquiry against the persons against whom such orders passed by the learned trial court.*** *It is therefore conclusive that the learned trial court has failed to understand the basic import of the section 340 of the code of criminal procedure and has*

without application of mind, mechanically passed the impugned order."

11.2. The falsity and dishonesty of the above said scandalous submissions can be ex-facie seen from para (2) & (30) of the impugned order dated 02.08.2024.

It is reads thus;

"2] Heard Shri Nilesh Ojha, the learned counsel for the applicant. The applicant who is the plaintiff in Special Civil Suit No. 417/2023 has filed the instant application praying for action under Section 340 read with Section 195 of the Code of Criminal Procedure against the non-applicants who are defendants in the said suit. ***The applicant has adduced evidence by examining himself in support of his contentions raised in the said application.***

30] I have heard the said counsel at length and gone through the application, affidavit, documents placed on record and the judgments cited by the applicant. *[...]"*

11.3. That, it is crystal clear from the order that the Hon'ble Senior Division Judge had conducted preliminary enquiry be examining the Applicant in

support of his contentions made in the Application. The said para mentioned in the order, ex-facie prove that the statement on oath made by the petitioners is out and out false.

11.4. That evidence of Applicant was taken on record by the Judge as a part of said enquiry. The evidence on affidavit given by the Applicant during the enquiry before the Hon'ble Judge is available on the record of the MJC No. 301 of 2024.

But this fact was deliberately suppressed by the petitioners in their affidavit.

11.5. That, the petitioners have deliberately suppressed these material facts and made false, reckless and scandalous allegations against the Hon'ble Judge that he had not conducted any enquiry before passing the order.

11.6. Furthermore, law is very well settled by Hon'ble Supreme Court that no preliminary enquiry is mandatory under section 340 of Cr.P.C. It is ruled that the order directing prosecution cannot be faulted on this ground. It is also ruled that when the offence of perjury is proved from the record of the case then no further enquiry is required except the perusal of the record.

11.7. In **Amarsang Nathaji v. Hardik Harshadbhai Patel, (2017) 1 SCC 113**, the Hon'ble Apex Court has held that ;

> *"In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory.* ***In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 of the CrPC has been committed, the court may dispense with the preliminary inquiry.****"*

11.8. Needless to mention here that the abovesaid judgement in the case of **Amarsang Nathaji v. Hardik Harshadbhai Patel, (2017) 1 SCC 113,** is relied by the counsel for petitioners. But then also they are arguing against the said ratio. It shows their recklessness.

11.9. Full Bench of the Hon'ble Supreme Court in the case of **Pritish v. State of Maharashtra, (2002) 1 SCC**

253, had specifically ruled that in an action as per sec 340 of CrPC preliminary inquiry is not mandatory.

> *"9. […] In order to form such opinion, the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held**. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court.**"*

11.10. Three Judge Bench in the recent judgment in the case of **State of Punjab v. Jasbir Singh, 2022 SCC OnLine SC 1240**, had ruled as under;

> ***"1.** The matter has been placed before a three Judges Bench arising from a reference made vide order dated 26.02.2020 seeking the following questions to be answered:*
>
> > *"(i) **Whether Section 340 of the Criminal Procedure Code, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is***

made under Section 195 of the Code by a Court?

(ii) what is the scope and ambit of such preliminary inquiry?"

5. *To put the aspect in the right perspective and in sequence, we may note that the first judgment of three Judges Bench was Pritish v. State of Maharashtra*[1] *which noticed that the purpose of a preliminary inquiry under Section 340(1), Cr.P.C. was not to find whether a person is guilty or not but only to decide whether it was expedient in the interest of justice to inquire into the offence. It was thus observed that* ***the Court is not obliged to make a preliminary inquiry on a complaint*** *but if the Court decides to do so, it should make a final set of the facts which is expedient in the interest of justice that offence should be further probed into.*

9. *We have little doubt that there is no question of opportunity of hearing in a scenario of this nature and we say nothing else but that* ***a law as enunciated by the Constitution Bench in Iqbal Singh Marwah's case (supra) is in line with what was observed in Pritish'case (supra).***

10. *Interestingly both the judgments in Pritish's case and the Constitution Bench judgment in Iqbal Singh Marwah's case (supra) have not been noted in order passed in Sharad Pawar's Case (supra).* ***The answer thus to the first question raised would be in the negative****."*

11.11. In **State of Goa Vs. Jose Maria Albert Vales (2018) 11 SCC 659**, it is ruled as under;

"***57.*** *We are thus of the firm opinion that a trial Magistrate, on receipt of a complaint under Section 340 and/or Section 341 of the Code, if there is a preliminary inquiry and adequate materials in support of the considerations impelling action under the above provisions are available, would be required to treat such complaint to constitute a case, as if instituted on police report and proceed in accordance with law. However,* ***in the absence of any preliminary inquiry or adequate materials, it would be open for the trial Magistrate, if he genuinely feels it necessary, in the interest of justice***

and to avoid unmerited prosecution to embark on a summary inquiry to collect further materials and then decide the future course of action as per law*. In both the eventualities, the trial Magistrate has to be cautious, circumspect, rational, objective and further informed with the overwhelming caveat that the offence alleged is one affecting the administration of justice, requiring a responsible, uncompromising and committed approach to the issue referred to him for inquiry and trial, as the case may be. In no case, however, in the teeth of Section 343(1), the procedure prescribed for cases instituted otherwise than on police report would either be relevant or applicable qua the complaints under Section 340 and/or 341 CrPC.*

59. *In view of the determination as above, the approach of the High Court is wholly indefensible, as in the face of Section 343(1) CrPC, the procedure prescribed for cases instituted*

otherwise than on police report is not attracted qua a complaint under Section 340 and/or Section 341 of the Code. Even assuming that the trial Magistrate had examined few witnesses in support of the complaint, it was in the form of a summary inquiry, to be satisfied as to whether the materials on record would justify the framing of charge against the respondent or not and nothing further. Any other view would fly in the face of the ordainment of Section 343(1) CrPC and thus cannot receive judicial imprimatur. The impugned judgment [Jose Marie Albert Vales v. District and Sessions Judge, Margao, 2013 SCC OnLine Bom 377] of the High Court in quashing the charge framed by the trial Magistrate and remanding the case to him to follow the procedure outlined for cases, instituted otherwise than on police report, under Chapter XIX-B is on the face of it unsustainable in law and on facts. It is thus set aside. The appeals are allowed. The trial Magistrate would proceed from the

stage of framing of charge, strictly in compliance with the letter and spirit of the precept contained in Section 343(1) of the Code. We make it clear that we have not offered any observation on the merits of the charge and the trial court would further the proceedings in accordance with law."

11.12. That, the law is very well settled that when complaint is made before the Court that, the litigant had filed false-affidavit and his falsity is proved from the record then, before ordering prosecution under section 340 of Cr.P.C. no extra enquiry is required except the perusal of records.

11.13. Hence, it is crystal clear that the statement on affidavit in para (AA) at Pg. no. 28 of the petition is ex-facie false, misleading, scandalous and grossly contemptuous.

12. Frivolous and overruled submissions that the Hon'ble Judge acted unlawfully and deliberately in hearing the 340 application separately and not tagging it with the suit.

12.1. That in this regard law is very well settled as per civil municipal & by this Hon'ble Court & Hon'ble Supreme Court that the application filled under section 340 of Cr.P.C. is independent and has to be decided separately.

12.2. That in **Kenneth Desa v. Gopal, 2007 SCC OnLine Bom 1513**, it is ruled as under;

> *"**7.** **Whenever an application under Section 340 of Code of Criminal Procedure is filed, the Civil Manual Chapter XIX para 337 requires that it should be registered as Miscellaneous Judicial Case i.e. a case where a Judicial Enquiry is contemplated. The learned Civil Judge should have, therefore, directed the application to be registered as Miscellaneous Judicial Case.***
>
> ***8.** […] If there is a prima facie evidence, the court must enter into an enquiry and record a finding as to whether an offence referred to in Section 195 of Code of Criminal Procedure is committed. **It was, therefore, not proper on part of Judges of the lower courts to have rejected the application. The learned Civil Judge***

should have, in fact, upon consideration of the application, decided whether it was necessary to hold the enquiry and if found necessary should have held an enquiry. Merely because civil suit was pending, that did not prevent and could not prevent the Civil Judge from entering into an enquiry.

[…..] ***The civil judge may proceed to decide the suit and may also proceed to decide the application under Section 340 of Code of Criminal Procedure separately.*** *"*

12.3. That in **Union of India v. Haresh Virumal Milani, 2017 SCC OnLine Bom 1705**, it is ruled as under;

"18. *Thus insofar as section 340 of Code of Criminal Procedure is concerned, it is not necessary for the Judge to hear other side, but he may hear the applicant. It is not a requirement to hear the person against whom the proceedings are going to be initiated. It is entirely upto the Court to decide whether to initiate the proceedings under section 340 of Code of Criminal Procedure.* ***Thus the proceedings of the***

application under section 340 of Code of Criminal Procedure are Kangaroo Baby proceedings within the civil trial and still it is of an independent character and therefore, for the purpose of the said inquiry the powers under Code of Criminal Procedure can be enjoyed the Civil Court.

19. *Thus, I answer the Issue No. 1 in negative. It is not necessary for the Court to give notice to the said person or even to hear that person on this point."*

12.4. Hence, the ground taken by the Petitioners that the Judge committed blunder and he deliberately did not hear the sec. 340 application with the Suit and did not tagged the matters together are frivolous, misleading and overruled submissions. This ex facie proves that the allegations doubting integrity of Hon'ble Judge are false.

13. False, derogatory & misleading allegations in ground (EE) against Hon'ble Judge that the case laws refereed and relied by the Hon'ble Judge are not related with the provisions of section 340 of Cr.P.C. and all are irrelevant case laws.

13.1. That, the falsity of above said submission made by the petitioners is ex-facie proved from the bare reading of the order dated 02.08.2024.

13.2. That, all the case laws referred by the Hon'ble Judge in his order are related with the action under provisions of section 340 of Cr.P.C. and contempt against the litigants like petitioners who have filed false and misleading affidavit by suppressing, twisting and concealing the material facts.

13.3. The following judgments are the landmark judgments on this points which are referred and relied by the Hon'ble Judge.

(i) **H.S. Bedi Vs. National Highway Authority of India 2016 SCC OnLine Del 432.** (Referred in para no 9 of the order)

(ii) **ABCD v. Union of India, (2020) 2 SCC 52.** (Referred in para 26 of the order)

(iii) **Samson Arthur v. Quinn Logistic India Pvt. Ltd., 2015 SCC OnLine Hyd 403.** (Referred in para 26 of the order)

(iv) **Godrej &Boyce Manufacturing Co. Pvt. Ltd. v. Union of India,1991 SCC**

OnLine Bom 496. (Referred in para 29 of the order)

(v) **K. Jayaram Vs. Banglore Development Authority 2021 SCC OnLine SC 1194.** (Referred in para 23 of the order)

(vi) **Secretary & Hailakandi Bar Association Vs State AIR 1996 SC 1925** (Referred in para 29 of the order)

(vii) **P. Ranga Rao v. State of A.P., 2022 SCC OnLine AP 3512** (Referred in para 29 & 30 of the order)

(viii) **Dr. Sarvapalli Radhakrishnan vs Union of India (2019) 14 SCC 761** (Referred in para 29 & 31 of the order)

(ix) **Sundar v. State, 2023 SCC OnLine SC 310 (3 Judge)** (Referred in para 29 & 32 of the order)

14. Malicious, scandalous, contemptuous and misleading statement on affidavit by the Petitioners that the Hon'ble Judge deliberately did not issued the notice to the Petitioners before passing an order under section 340 of Cr.P.C.

14.1. That, such statement is firstly made in point No. 7 at page (C) of synopsis it is again reproduced here. It reads thus;

> *"The Learned Civil Judge Senior Division, kept giving dates in the civil suit for passing of order on the Order 7 Rule 11 Application on one or the other pretext and on the other hand without even issuing a notice to the present petitioners, parallelly conducted the Miscellaneous Judicial Case bearing number 301/2024 which was filed by the respondent before the same court but was conducted on different dates and was deliberately not tagged along with the main civil suit."*

14.2. Then it was also made at ground No. (C) & (D) at page No. 19. Said ground No. (C) & (D) at page No. 19 reads thus;

> *"C. The Ld. Civil Judge has passed the Impugned Order with a total non-application of mind solely to pass adverse findings against the Petitioners as the Ld. Trial Court Judge has passed the Impugned Order without hearing the Petitioners and giving them an opportunity to present their case.*
>
> *D. The Ld. Civil Judge has against the principle of natural justice passed the*

Impugned Order and subjected the Petitioners to grave hardship by setting the criminal prosecution and enquiry in motion without even considering that the Petitioners were neither served with the copy of Perjury Application, nor were they heard, and neither were they given any notice of the hearing of the Perjury Application prior to the passing of the Impugned Order."

14.3. That as per specific directions given by the Hon'ble Supreme Court and this Hon'ble Court in catena of decisions and recently by the full Bench of Hon'ble Supreme Court in the case of **State of Punjab v. Jasbir Singh, 2022 SCC OnLine SC 1240**

The Hon'ble Senior Division Judge cannot issue notice or hear the Petitioners during the enquiry under section 340 of Cr.P.C who were prospective accused.

14.4. The entire law in this regard is summarised in the recent Judgment in the case of **Al Amin Garments Haat (P) Ltd. v. Jitendra Jain, 2024 SCC OnLine Cal 110.**

15. Attempt by petitioners to justify their falsity and dishonesty by making reckless allegations against the Hon'ble Judge.

15.1. That the prosecution of petitioners is ordered on there false statement on affidavit.

15.2. First false statement made by the Petitioner was that, the complaint dated 1.10.2022 given by the petitioners to Hadaspar Police Station was not given against all the team members of Awaken India Movement and was given only given against four persons.

15.3. Secondly is was stated by the Petitioner that the suit not maintainable because just making a complaint does not amount to an offence.

15.4. Third false statement was that the plaintiff have not pointed out the exact paras from the said complaint to show as to what is the exact defamation done by the present petitioners.

15.5. These statement was made by the Petitioner in their Application under O. 7 R. 11 of CPC to obtain an order of dismissal of Suit filed against them.

15.6. That the falsity of the abovesaid statement is specifically observed by the Hon'ble Judge in para 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 of the order as under;

"4] In para No. 5 of the said affidavit dated 29.04.2023, the non-applicants

have made a statement that the said complaint filed by defendant No. 1 is not made against the plaintiff but against Mr. Ajinkya, Mr. Chetan, Mr. Hemant, Mr. Yusuf and Mr. Yohan Tengra, therefore, in the aforesaid circumstances, the plaintiff has no locus and cause of action to file the present suit against the defendants.

5] In this regard Shri Nilesh Ojha, the learned counsel for the applicant submitted that the aforesaid statement in para No. 5 of the affidavit dated 29.04.2023 is false and misleading and amounts to interference in administration of justice. He relied on the judgment in the case of Rahul Gandhi Vs. Rajesh, (2015 SCC OnLine Bom 522) and Mathrubhoomi Illustrated Weekly Vs. P. Gopalankutty and another, [(2022) SCC OnLine Ker 137] and submitted that when there is a defamation of organization, then any member of the organization can approach the Court for redressal of grievances.

6] He pointed out the subject of the complaint which reads as under:

> *" To register an offence against Group called 'Awaken India Movement' and its Team members for organizing an illegal march on 1st October 2022 towards Serum Institute to handover Hamdast to Adar Poonawala and to take precautionary measures. "*

7] The learned counsel for the applicant further submitted that on perusal of complaint including its specific subject it would be crystal clear that the said complaint was made against the group call Awaken India Movement and its team members. The plaintiff is an active member of Awaken India Movement, therefore, the statement made in para No. 5 of the said affidavit that the said complaint is

not made against the plaintiff appears to be false and misleading.

8] On perusal of the complaint including its subject it is crystal clear that the same is made against Awaken India Movement and its team members which includes the plaintiff. This being so, the statement in para No. 5 to the effect that the said complaint filed by defendant No. 1 is not made against the plaintiff appears to be a false statement.

12] The learned counsel for the applicant Shri Nilesh Ojha further points out that in para No. 4 of the said affidavit, the non-applicants made a false statement that the plaintiff has failed to highlight in the plaint the purported specific words/sentences/paragraphs of the said complaint, which according to him, are defamatory per se. He pointed out para No. 19 of the plaint and submitted that in para No. 19 relevant part of the complaint dated 1.10.2022 is reproduced. Similarly, in paras Nos.

20 and 21 of the plaint, according to him, specific contentions are made regarding defamation.

13] In support of his contentions, he relied on the judgment in the case of ***Essel Infraprojects Ltd. Vs. Devendra Prakash Mishra, (MANU/MH/2159/2014)*** *and submitted that when words are defamatory and said words are reproduced, then there is no need to give further details as to what is meaning of those defamatory allegations.*

14] In view of above facts and the law laid down in the said judgment it appears that the statement made by the non- applicants that the plaintiff failed to highlight in the plaint the purported specific words/sentences/paragraphs of the said complaint which according to him are defamatory per se is a false and misleading statement.

15] The non-applicants again in paragraph No. 4 of the said affidavit have stated that lodging of police

complaint with police authorities could not be considered to be a publication of alleged defamatory statement. In this regard, the learned counsel for the applicant submitted that this statement is nothing but dishonest and misleading pleadings.

16] The learned counsel for the applicant in respect of said police complaint submitted that the suit is not only based on the said complaint but also on publication of same allegations everywhere and repeating said defamatory allegations knowing fully well that the said allegations are false and police had rejected their complaint.

17] The learned counsel for the applicant further pointed out para 33 of the suit which reads as under :

> *" 33. That, despite the exposure of the falsity of the defendants Nos. 1 to 3 before the police, the defendants Nos. 1 to 3 repeated the said*

allegations many a times using the said letter dated 1.10.2022 everywhere including the Court proceedings."

18] The learned counsel for the applicant further pointed out the observations made in the case of ***Prabhakaran Vs. Gangadharan, (2006 SCC OnLine Ker 302); Joy Anto Vs.C.R. Jaison, (MANU/KE/0632/2021); M.N. Damani Vs. S.K. Sinha and others, [(2001)5 SCC 156]; Rosario Colaco Vs. Amelia Mariquinha Zuzarte and another (2009 SCC OnLine Bom 110) and Sopullo Datta Naik Vs. Yashwant (2009 SCC OnLine Bom 1400).***

19] The learned counsel for the applicant further submitted that the non-applicants deliberately suppressed that the said complaint was not entertained/rejected by the police as no substance was found therein. He has placed reliance on the case of ***Ram Jethmalani Vs Subramanian Swamy,***

(2006, SCC OnLine Del 14) *to submit that even otherwise law is very well settled that when any person acts with malice and ill will then they cannot claim any privilege and action under defamation cannot be challenged on this ground.*

20] The learned counsel for the applicant Shri Nilesh Ojha further submitted that the non-applicants acted with malice and ill will, therefore, now they cannot claim any privilege and the action pertains to defamation cannot be challenged in view of the law that filing of a case also amounts to publication and defamation and action upon that is maintainable.

21] In view of the abovesaid submissions and the observations of the Hon'ble High Courts and the Supreme Court it is crystal clear that even lodging of complaint/case amounts to publication and action of defamation is maintainable for such publication. Thus, prima facie I found

substances in the submission of the learned counsel for the applicant."

15.7. Despite their falsity is ex facie clear, the Petitioners are callous enough to make allegations against the Hon'ble Judge that he had failed to consider the record properly that there is no falsity.

The **ground para no. (Y) at Pg. 27 of the W.P.** reads thus;

"Y. ***The Ld. Civil Judge has failed to consider that there was no falsity in the facts/submissions pleaded in the Order 7 Rule 11 Application****."*

15.8. Needless to mention here that the petitioners here are again trying to misled this Hon'ble Court by twisting and misleading the fact that **the prosecution against them is ordered for making false statement that the suit is based only on police complaint**. In fact suit is based on publication of said false complaint everywhere despite the fact that said complaint was rejected by the Police.

15.9. They are also guilty of setting up the false narrative of counterblast in para ( ) of the Writ Petition that action

by Applicant are as a counterblast to the complaint by the Petitioners on 1.10.2022.

15.10. In fact it is a false submission by suppressing the fact that the team members of Awaken India Movement (AIM) have first approached the police on 28.09.2022 and were organizing the march with intimation to police. But Petitioners malafidely telling everywhere that the petitioners were organizing unlawful march and instigating people to commit offences and to damage property of Serum Company and therefore the petitioners company lodged police complaint to register FIR against the AIM team members and to arrest them.

15.11. The petitioners Serum Institute of India Pvt. Ltd., Mr. Adar Poonawalla & Mr. Vivek Pradhan want this Hon'ble Court to believe that they are not aware as to whether their request was accepted or rejected by the police. Needless to mention here that whenever FIR is registered is then signature of the informant is taken on it and a copy is provided to the informant forthwith.

15.12. It is shocking that the said frivolous ground is made in a petition represented by the designated Senior Counsel.

That para (W) at Pg. 26 of the Writ Petition reads thus;

*"W. The Ld. Civil Judge has failed to consider the statement made by Petitioner No.1 and 3 in its written statement dated 3rd June 2023 whereby it has clearly stated that "**the Defendants are not aware whether or not the police have taken any action against the persons referred in the complaint pursuant to their complaint. The Defendants however have no reason to believe that the police have rejected their complaint and will not take any action against the persons mentioned in the Complaint".***

Therefore, the allegations made by Respondent that the Petitioners has deliberately suppressed that the said complaint was not entertained /rejected by the police is misplaced. Therefore, in such scenario, no action could have been instituted under section 340 of the Code of Criminal Procedure."

15.13. That section 52 of IPC reads thus;

*"**52. "Good faith".—***

Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

15.14. This is a clear case of Malice in Law and Malice in fact.

15.15. That this Hon'ble Court in the case of **Vidyadhar Govind Patwardhan v. Aravind Shreedhar Ghatpande 1990 (3) Bombay High Court Reports 567,** had ruled that the 'Cock & Bull stories' of the litigants though listened to but should not be accepted.

15.16. In **New Delhi Municipal Council v. Prominent Hotels Limited, 2015 SCC OnLine Del 11910**, it is ruled as under;

" 28.13. In Vidyadhar Govind Patwardhan v. Aravind Shreedhar Ghatpande 1990 (3) Bombay High Court Reports 567, the Court held:

*4 ... While granting interim, reliefs, Courts have to be careful and **no cock and bull story entitles the author of that story to interim***

relief though in a sense even such stories may require to be listened to. The 1st respondent had committed contempt by the institution of the suit which is based on patently false averments and deserves to be dealt with therefore.*"*

16. In **Afzal v. State of Haryana, (1996) 7 SCC 397** it is ruled by

Hon'ble Supreme Court that the person neither making candid

submission nor tendering apology and then creating further false evidence in subsequent affidavit should be prosecuted and punished under perjury and contempt."

17. In **Babu Lal Vs. State of Uttar Pradesh and Ors. AIR 1964 SC 725**, it is ruled as under;

*"**A person making any document containing a false statement commits an offence of forgery.***

By making a false entry in any book or record or if the prescribed conditions of s. 463 are fulfilled. But the important ingredient which constitutes fabrication of false evidence within the meaning of s. 192 Indian Penal Code

besides causing a circumstance to exist or making a false document - to use a compendious expression - is the intention that the circumstance so caused to exist or the false document made may appear in evidence in a judicial proceeding, or before a public servant or before an arbitrator, and lead to the forming of an erroneous opinion touching any point material to the result of the proceeding. The offences of forgery and of fabricating false evidence for the purpose of using it in a judicial proceeding are therefore distinct."

18. False, frivolous & malicious ground that the affidavit dated 29.04.2023 was submitted by Serum Institution of Indi Pvt Ltd and not signed by Petitioner No. 2 Mr. Adar Poonawalla & Petitioner No.3 Mr. Vivek Pradhan and therefore prosecution against petitioners No. 2 & 3 is illegal.

18.1. That the above said ground taken in para (A) & (B) at Pg No. 18 & 19 of the W.P. read thus;

"A. The Ld. Civil Judge ought to have considered that Order 7 Rule 11 Application was filed Petitioner No.1 through its

Authorised Representative and not by Petitioner No.2 and Petitioner No.3. Therefore, in any event, the Ld. Trial Court Judge could not have initiated prosecution against Petitioner No.2 and Petitioner No.3 without there being any application/affidavit filed by Petitioner No.2 and Petitioner No.3.

B. The Ld. Civil Judge without application of mind and without considering that there is no application/affidavit filed by the Petitioner No.2 and Petitioner No.3 has erroneously initiated prosecution against Petitioner No.2 and Petitioner No.3 which is not only unfair, arbitrary but is also extremely unjust."

18.2. That the above said ground is factually & legally incorrect.

18.3. That as per law laid down by the Division Bench of this Hon'ble Court in the case of **Godrej & Boyce Manufacturing Co. Pvt. Ltd. v. Union of India, 1991 SCC OnLine Bom 496**, it is clear that, when false affidavit is filed before the Court on behalf of the company then, all responsible officers/ Directors of the Company who by their act are responsible should be

prosecuted under section 340 of Criminal Procedure Code Cr.P.C.

It is ruled as under;

> ***"105.*** *Counsel for Godrej repeatedly stressed the contention that while initiating action under section 340, the Court has necessarily to identify the accused. That submission may not have any statutory backing having regard to our earlier findings and the fact that we are directing only the filing of a com plaint. A complaint, as explained earlier could be even against persons who could not be identified at that particular stage.*
>
> ***108.*** *The identification of the accused has therefore, to be done on the basis of the material available, alerting ourselves to the need that there must be prima facie materials as against them, and they must have much more than a theoretical connection as the Directors of a corporate undertaking and guiding its destiny.*
>
> ***118.*** *In view of the aforesaid discussion, we are of the opinion that it is expedient in the interest of justice that an enquiry should be made into the offence under*

section 192 which appears to have been committed in respect of documents produced or given in evidence in the proceedings of Writ Petition No. 1110 of 1983 before the teamed Single Judge of this Court and ***the complaint under section 192 of the Penal Code, 1860 should be filed in that behalf against (1) Godrej & Boyce Manufacturing Company (P) Ltd., Godrej Bhavan, 4A, Home Street, Fort, Bombay-400001; (2) Shri K.N. Naoroji, residing at 6, Belha Court, 24, Ramchandani Marg, Appollo Bunder, Bombay-39; (3) Phiroze Dinsha Lam, Vice-President (Corporate Services) and Director, Godrej & Boyce Manufacturing Company (P) Ltd., 21/23, Mistry Park, 77, Bhulabhai Desai Road, Bombay - 400036; (4) Dr. K.R. Hathi, General Manager (Marketing), Godrej & Boyce Manufacturing Company (P) Ltd., GL Godrej Hill Side Colony, Vickroli, L.B. Shastri Marg, Bombay; (5) K.S.G. Murthi, Regional Manager, Southern Region, Godrej & Boyce Manufacturing Company (P) Ltd., 3, Nungambakkom High Road, Apex***

Plaza, 4th floor, Madras; (6) Putushbai Chandrakant Shah, Shrenik Traders, V.P. Road, Valsad; (7) Narsar Harichandra Wadia, Partner, M.H. Wadia, Porbandar, (8) Aswinibhai Dhirajilal Shah, Partner, Dhiralal Narsidas Shah, Bhavanagar, (9) Mandakini Amin, M. Amin & Co., Baroda; (10) Jagdish Vadilal Udani, Jodiavala Trading Company, Jamnagar, (11) Malcolin Kekobar Nanavati, Proprietor, Nanavati & Company, Surat.

119. *We direct that the Registrar of the High Court at Bombay shall file the complaint. The draft of the complaint to be filed shall be placed for consideration of this Court on or before 20-12-1991. We request the Advocate General to render the Registrar the necessary assistance in the matter. Having regard of the seriousness and importance of the matter, we direct that State of Maharashtra to appoint Special Prosecutor for conducting the proceedings before the Magistrate.*

<u>SOME FURTHER REMARKS</u>

120. *We have to appreciatively comment upon the troubles taken, the risks faced and devotion displayed by very many officials in unravelling what we have prima facie found to be a massive fraud. Administrators with admirable acumen have commented about the laudable roles played by such officials. An illustrative case of compliments paid in a handsome manner by an administrative wizard, can be usefully extracted in this context:—*

> *"Some men cannot resist the natural instinct to protest when they see things going wrong; others can and do. Possibly among successful officials there are more of me former type than of the latter."*
>
> *(See John P. Thompson (1922) Mont Ford Report para 310).*
>
> *Shri Harcourt Butler, an eminent administrator, referred to such officials as "spell binders who do good by stealth". Right upto the Central Board, we have refereshingly/noticed unswerving fidility to truth."*

18.4. Furthermore, the falsity of the petitioners is ex-facie proved from the petitioner's own documents.

18.5. That in another affidavit dated 3rd June 2023 the petitioners No.2 Mr. Adar Poonawalla in para 4 had repeated the same false statements. Said Written Submission is annexed by the Petitioners at Pg. No. 151 Annexure No. 03 to the Writ Petition.

Similar is the case of Petitioners No.3 Mr. Vivek Pradhan whose affidavit dated 03.06.2023 is also at Annexure No. 03.

18.6. Hence it is clear that the petitioners have made false and frivolous submissions before this Hon'ble Court for getting themselves exonerated from serous criminal charges and for that purpose they dishonestly made false allegations against the Hon'ble Judge.

19. Misleading, frivolous, overruled and scandalous submissions in the Writ Petition that the grounds taken by the Applicant in the perjury application were new grounds and not taken by him in the reply filed to the application under Order 7 Rule 11 of CPC and the Hon'ble Judge failed to consider the said fact.

19.1. Firstly law is very well settled that both the proceedings are independent and in law there is no

prohibition that the grounds not taken in the reply to application under **Order 7 Rule 11 of CPC** can not be taken in the application under section 340 of Cr.P.C.

19.2. Hon'ble Supreme Court in the case of **In K. Karunakaran v. T.V.Eachara Warrier (1978) 1 SCC 18,** the Hon'ble Apex Court has held that ;

> *" **An enquiry held by the court under section 340(1) Cr.P.C., irrespective of the result of the main case**, the only question is whether a prima facie case is made out which, if un-rebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action. "*

19.3. This ex-facie proves the falsity and dishonesty of the petitioners.

20. Dishonesty of the Petitioners in not making the state through Superintendent of Hon'ble Civil Court, Nagpur as party Respondent, even if it is a mandatory party as per law.

20.1. That in the order dated 2.08.2024 the Hon'ble Senior Division Judge has directed the Superintendent of

Civil Court to file a complaint before the Magistrate having jurisdiction.

20.2. That law is very well settled that whenever the order passed under section 340 of Cr.P.C. is challenged then the state is the first and mandatory party. The reason is that the offences are against the administration of justice, and the court is going to become the complainant. The prosecution of the offender is the obligation of the state, and in such cases, the state is the mandatory party.

20.3. This issue came for consideration before the Full Bench of this Hon'ble Court in the case of **Emperor vs. Bhatu Sadu Mali 1937 SCC OnLine Bom 62**. Where judgement in the case of **Labha Mal v. Wasawa Mal, 1927 SCC OnLine Lah 669,** is referred.

20.4. The above referred judgement in the case of **Labha Mal v. Wasawa Mal, 1927 SCC OnLine Lah 669,** reads thus;

> *"**4.** As regards (2), notice of the appeal was Rent to the Collector of the District, and his reply was that representation of the Crown was not necessary. According to s. 476-B, notice was to be sent to the parties*

concerned. In an appeal against a refusal to make a complaint the parties entitled to receive notice would be the accused person. But ***if the appeal were by the person against whom a complaint has been made, the opposite party is the Crown, as in all other criminal cases.*** *[See on this point Rashid Muhammad Khan v. Emperor [101 Ind. Cas. 192; 8 Lah. 568; 28 P.L.R. 177; 28 Cr. L.J. 416; A.I.R. 1927 lah. 57.] in which it was held that respondent in a criminal appeal or revision is the Crown only].”*

20.5. In **Madan Mohan v. State of Rajasthan, (2018) 12 SCC 30**, it is ruled by the Hon’ble Supreme Court as under;

“13. *In our considered opinion, the Single Judge seemed to have passed the impugned order without application of judicial mind inasmuch as he committed two glaring errors while passing the order. First, he failed to see that the complainant at whose instance the Sessions Judge had*

passed the order and had allowed his application under Section 193 of the Code was a necessary party to the criminal revision along with the State. Therefore, he should have been impleaded as respondent along with the State in the revision. In other words, the complainant also had a right of hearing in the revision because the order impugned in the revision was passed by the Sessions Judge on his application. This aspect of the case was, however, not noticed by the Single Judge."

20.6. That in a recent judgement, three Judge Bench of Hon'ble Supreme Court in the case of **James Kunjwal Vs. State of Uttarakhand 2024 SCC OnLine SC** _____ decided the criminal appeal against the order u/s 340 of CrPC by going through the submission of the Applicant i.e. *de-facto complainant*.

20.7. Hence the conduct of the petitioners needs to be taken in to consideration.

21. That apart from the maliciousness, falsity & scandalous nature of the abovesaid pleadings, it is also an attempt by

the petitioners to waste the valuable time of this Hon'ble Court and an attempt to get a favorable order by suppressing the binding precedents and by taking grounds which are already overruled by the Hon'ble Supreme Court and this Hon'ble Court. It is a separate offence of grossest Contempt on the part of the Petitioners.

21.1. That this Hon'ble Court in the Case of In **Hindustan Organic Chemicals Ltd. Vs. ICI India Ltd. 2017 SCC Online Bom 74** it is read as under;

> **" *Duty of advocates to not to misled the Court even accidentally – They should come before court by proper online research of case law before addressing the court.***
>
> *I have found counsel at the Bar citing decisions that are not good law.*
>
> ***The availability of online research databases does not absolve lawyers of their duties as officers of the Court. Those duties include an obligation not to mislead a Court, even accidentally. That in turn casts on each lawyer to carefully check whether a decision sought to be cited is or is not good law.*** *The performance of that duty may be more onerous with the proliferation of online research tools, but that is a burden that*

lawyers are required to shoulder, not abandon. Every one of the decisions noted in this order is available in standard online databases. This pattern of slipshod research is inexcusable.”

21.2. In **Sunita Pandey v. State of Uttarakhand, 2018 SCC OnLine Utt 933** it is ruled as under;

“19. A lawyer is supposed to have the knowledge of a judgment delivered by the Hon'ble Apex Court, which is the law of land, but the reply of counsel appearing for the petitioners Mr. Shashank Pandey is not acceptable that he is not aware of the judgment of the Hon'ble Apex Court. A lawyer cannot make excuse for unawareness of a particular judgment of the Hon'ble Apex Court and also cannot be permitted to cite a judgment, which has already been overruled. A lawyer is known for its legal acumen. He should not have argued the Writ Petition (PIL) and should have suggested his clients to withdraw the Writ Petition (PIL) but the attitude of the learned counsel for the petitioners that he has been engaged to argue the matter appears to be against the ethics of a lawyer

and further it appears to the Court that he has not given proper advice to his clients. The counsel could have adviced properly to his clients and could have also considered it appropriate to withdraw the Writ Petition (PIL), but the counsel and petitioners are not ready to accept the request of this Court to withdraw the petition and the learned counsel for the petitioners has again wasted valuable time of this Court for his own satisfaction. Numbers of litigants are waiting for their turn. *We were expecting from the learned counsel for the petitioners that he should make a statement on behalf of the petitioners that the petitioners were not aware of filing the Writ Petition (PIL) on the judgment passed by the Hon'ble Apex Court and, therefore, they have filed the aforesaid Writ Petition (PIL) on an advice or on bonafide mistake of fact, but, the petitioners and their counsel are not ready to make such submissions before this Court. Thus, this Court has no option but to decide the Writ Petition (PIL) on merits, as the counsel has insisted this Court to decide the matter on merits after giving him full opportunity.*

20. *This Court has already granted full opportunity of hearing to* ***the learned counsel for the petitioners and he has argued every paragraph of the present Writ Petition (PIL) and has wasted the court's valuable time for more than two hours. We find that the present petition is a gross abuse of process of law and time was granted to the petitioners to refute the contents of the counter affidavit, but despite time being granted to the petitioners, rejoinder affidavit has not been filed to refute the contents of the averments made in the counter affidavit.***

23. *The Hon'ble Apex Court in the case of Suraz India Trust Vs. Union of India reported in (2017) 14 SCC 416 has held that* ***a frivolous litigation should be declined and be tackled with iron hands. In the said case, the Hon'ble Apex Court has imposed a cost of ` 25 lakhs on the petitioner and issued direction to the Registry of the High Court and other High Courts that no P.I.L should be entertained in the name of Suraz India Trust.***

24. *In our view, though this is a case, which is liable to be dismissed with exemplary cost in view of the dictum of Hon'ble Apex Court*

in the case of Suraz India Trust Vs. Union of India (supra), but considering the fact that the petitioners are the residents of hilly State of Uttarakhand, they might not be in a position to pay such huge exemplary cost of ` 25 lacs, thus, we are of the considered view that nominal cost of ` 50,000/- be imposed upon the petitioners for raising their private interest in this Public Interest Litigation to suffice the purpose."

21.3. In **T.V. Choudhary, In re, (1987) 3 SCC 258**, it is ruled as under;

"10. By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honour and privilege conferred on advocates of standing and experience by the Chief Justice and the Judges of this Court. *They thus become leading counsel and take precedence on all counsel not having that rank.* ***A senior counsel though he cannot***

draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors.

11. *Lord Reid in Rondel v. Worsley [(1967) 3 All ER 993, 998] has succinctly set out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as follows:*

"Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. ***Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his***

possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him."

21.4. That, in **Kusum Kumaria Vs. Pharma Venture (India) Pvt. Ltd. 2015 SCC OnLine Del 13042** it is ruled as under;

A) Pressing pleas contrary to settled legal positions tantamount to the grossest abuse of the judicial process.

242. Filing of frivolous application, adopting dilatory tactics by taking adjournments time and again, pleading contradictory stands before this court, non-payment of costs imposed and pressing pleas contrary to settled legal positions tantamount to the grossest abuse of the judicial process. More so, the entirety of this litigation is misconceived and without any merit. It has had the effect of entangling valuable rights of the defendants in this legal tussle.

New creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals.In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

21.5. In **Prominent Hotels Case 2015 SCC OnLine Del 11910,** it is ruled as under;

"30.26[...] It cannot be gainsaid that the judgments mentioned below are binding on the Licensee who could not have bypassed or disregarded them except at the peril of contempt of this Court. This cannot be said to be a mere lapse."

21.6. That in **Sajid Khan Moyal v. State of Rajasthan, 2014 SCC OnLine Raj 1450** it is ruled as under;

"(...) citing of overruled judgment by learned counsel for the petitioner is a contempt, therefore, second contention is also rejected."

21.7. That this Hon'ble Court in **State of Orissa Vs. Nalinikanta Muduli (2004) 7 SCC 19,** had ruled as under;

"6(…) *It is a very unfortunate situation that learned*

counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned single Judge. Members of the Bar are officers of the Court. ***They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern.*** *It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it - It was certainly the duty of the counsel*

*for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment -We can only express our anguish at the falling standards of professional conducts.***"**

21.8. That in **Lal Bahadur Gautam Vs. State (2019) 6 SCC 441** it is ruled as under;

"9. *Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the respondent management of the private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal Digests which had to be studied earlier***, *reliance was placed upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary***

research. We would not be completely wrong in opining that though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment.

10. Simply, failure in that duty is a wrong against the Justice delivery system in the country. Considering that over the years, responsibility and care on this score has shown a decline, and so despite the fact that justice is so important for the Society, it is time that we took note of the problem, and considered such steps to remedy the problem. We reiterate the duty of the parties and their Counsel, at all levels, to double check and verify before making any presentation to the Court. The message must be sent out that everyone has to be responsible and careful in what they present to the Court. Time has come for these issues to be considered so that the citizen's faith in the justice system is not lost. It is also for the Courts at all levels to consider whether a particular presentation by a party or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard.

After all court time is to be utilized for justice delivery and in the adversarial system, is not a licence for waste.

11. *As a responsible officer of the Court and an important adjunct of the administration of justice,* ***the lawyer undoubtedly owes a duty to the Court as well as to the opposite side.*** *He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in* ***State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors., (2016) 6 SCC 1****:*

*"****34****....relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client....."*

12*. The observations with regard to the duty of a counsel and the high degree of fairness and probity required was noticed in* ***D.P. Chadha vs. Triyugi Narain Mishra and others, (2001) 2 SCC 221****:*

*"**22**. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a*

point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practicing deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

24. *It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called – and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.*

26. *A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception.* ***A view of the law settled by the ruling of a***

superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party."

13*. That a higher responsibility goes upon a lawyer representing an institution was noticed in State of Rajasthan and another vs. Surendra Mohnot and others, (2014) 14 SCC 77:*

"33. As far as the counsel for the State is concerned, it can be decidedly stated that he has a high responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the

public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say "things fall apart". *He should always remind himself that an advocate, while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones.*

We hope, that there would be response towards duty; the hallowed and honoured duty."

21.9. In **Priya Gupta Vs. Additional Secretary (2013) 11 SCC 404**, it is ruled as under;

"21[...] the law declared by this Court is deemed to be known to all concerned. The violation of general directions issued by this Court would attract the rigours of the provisions of the Act.

22[…] *One should ensure respect for law as its breach will demolish public faith in accepted constitutional institutions and weaken the peoples' confidence in the rule of law. It will destroy respect for the rule of law and the authority of Courts and will thus seek to place individual authority and strength of principles above the wisdom of law.*

23. *The provisions of the Act do not admit any discretion for the initiation of proceedings under the Act with reference to an order being of general directions or a specific order inter se the parties. The sine qua non to initiation of proceedings under the Act is an order or judgment or direction of a Court and its wilful disobedience. Once these ingredients are satisfied, the machinery under the Act can be invoked by a party or even by the Court suo motu.*

[…]

Looked at from a wider perspective, contempt power is also a means for ensuring participation in the judicial process and observance of rules by such participants. Once the essentials for initiation of contempt proceedings are satisfied, the Court would initiate an action uninfluenced by the nature of the direction i.e. as to whether these directions were specific in a lis pending between the parties or were of general nature or were in rem."

22. Fourth malicious & contemptuous statement that the Ld. Judge acted deliberately and arbitrarily by deciding application under section 340 of Cr.P.C. earlier by

keeping the civil proceedings and application under Order 7 Rule 11 pending.

22.1. That the petitioners in para (7) at Pg. (c) of synopsis of the petition had taken said grounds;

> *"The Learned Civil Judge Senior Division, kept giving dates in the civil suit for passing of order on the Order 7 Rule 11 Application on one or the other pretext and on the other hand without even issuing a notice to the present petitioners, parallelly conducted the Miscellaneous Judicial Case bearing number 301/2024 which was filed by the respondent before the same court but was conducted on different dates and was deliberately not tagged along with the main civil suit."*

22.2. That Para E, F, G, H of the Writ Petition (WP) are also on this point. It reads thus;

> *"E. The Ld. Civil Judge has erred in passing the Impugned Order without first deciding the Order 7 Rule 11 Application filed by the Petitioner, as in the event the Order 7 Rule 11 Application would have been decided prior in time to the Perjury Application, there would be plausible likelihood of the Order 7*

Rule 11 Application being allowed thereby rendering the Perjury Application meaningless.

F. The Ld. Civil Judge has erred in hearing and deciding the Perjury Application prior in time despite the fact that the Order 7 Rule 11 Application seeking rejection of Plaint was filed much prior in time as compared to the Perjury Application filed by Respondent.

G. The Impugned Order passed by the Ld. Civil Judge is bad in law as it virtually decides the merits of the Order 7 Rule 11 Application, albeit incorrectly, without hearing the Petitioners and under the guise of the Perjury Application. Despite the fact that the Petitioners have filed the Order 7 Rule 11 Application prior in time to the Perjury Application, the Ld. Trial Court Judge instead of deciding the Order 7 Rule 11 Application has instead decided the Perjury Application which is later in time and without hearing the Petitioners' case.

H. It is submitted that the Order 7 Rule 11 Application filed by the Petitioner No.1 before The Ld. Civil Judge has been reserved

for orders wherein both parties have filed their respective pleadings, however, instead of deciding the Order 7 Rule 11 Application, the Ld. Trial Court Judge arbitrarily and unjustly proceeded ahead with the Perjury Application and passed the Impugned Order."

22.3. That abovesaid allegations are also malicious, scandalous, overruled and against the law laid down by the Hon'ble Supreme Court & this Hon'ble Court.

22.4. That, Constitution Bench of Hon'ble Supreme Court in the case of **Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370**, in para 32 had dealt with the issue and ruled that priority should be given to the proceedings under section 340 of Cr.P.C. and in the meantime civil proceeding should be stayed.

It is ruled as under;

32. *Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of*

evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras [1954 SCR 1144 : AIR 1954 SC 397 : 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

"15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. *There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant*

consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal

proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. ***But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.*** *"*

22.5. Said law is followed by this Hon'ble Court in many cases.

22.6. That in **Union of India v. Haresh V. Milani, 2018 SCC OnLine Bom 2080**, it is ruled as under;

*"Heard learned counsel for the petitioner and respondent****, on a very short point, as to whether the Civil Application No. 2939 of 2017, filed by respondent under Section 340 of the Criminal Procedure Code, has to be decided and enquired into first before the Writ Petition filed by petitioner under Article 227 of the Constitution of India, which is challenging the order of amendment in the plaint, allowed by the trial Court****.*

2. *According to learned counsel for respondent, as some false and misleading statements are made by the petitioner, to their own knowledge, in the Writ Petition,*

therefore, respondent has moved this Civil Application for taking action against the petitioner under Section 340 CrPC. It is submitted that the writ petition can be decided as per law, only on the basis of result of the enquiry under Section 340 CrPC and therefore, this Application should be decided first.

3. *Learned counsel for the petitioner, has however, denied that any false averments are made in the writ petition and submitted that the writ petition needs to be heard first as the proceeding before the trial Court are unnecessarily stalled. It is submitted that filing of such Civil Application is an attempt on the part of respondent to continue to be in unlawful possession of the suit land, as respondent knows that the hearing of the application filed under Section 340 CrPC which is though baseless and false, is going to consume time of this Court.*

4. *Learned counsel for respondent has, in support of his submission relied upon the judgment of Allahabad High Court, in the case of Syed Nazim Husain v. The Additional Principal Judge Family Court in Writ Petition No.(M/S) of 2002, wherein also*

similar point was raised as to whether the application under Section 340 CrPC, has to be decided first before adjudicating the proceeding in which the said application was filed. By it's order, Allahabad High Court has directed the trial Court to dispose of the application moved by petitioner under Section 340 CrPC, before proceeding further in accordance with law.

5. *Learned counsel for respondent has also relied upon the order dated 15th December, 2017, passed by this Court [Coram : A.S. Gadkari, J.], in Criminal Application No. 728 of 2017; wherein also this Court has recorded the submission of learned counsel for respondent that his application preferred under Section 340 CrPC, be heard first in point of time and accordingly adjourned the matter to 2nd February, 2018.*

6. *Learned counsel for respondent has then relied upon the judgments of Hon'ble Apex Court, in the cases of i] Dalip Singh v. State of Uttar Pradesh [(2010) 2 SCC 114], ii] Rameshwari Devi v. Nirmala Devi [(2011) 8 SCC 249, and iii] Kishore Samrite v. State of Uttar Pradesh [(2013) 2 SCC 398], holding that, "It is very well*

settled that a person whose case is based on falsehood has no right to approach the Court and he is not entitled to be heard on merits and he can be thrown out at any stage of the litigation.

7. *In my considered opinion, having regard to the above said legal position spelt out by learned counsel for respondent, it would be just and proper to hear C.A. No. 2939 of 2017 filed by respondent under Section 340 CrPC before deciding the Writ Petition.*

8. *Accordingly stand over to hearing on Civil Application No. 2939 of 2017 to 20.06.2018.*

9. *Ad-interim relief granted earlier to continue till then."*

22.7. In **Dr. Praveen Vs. Dr. Arpitha 2021 SCC OnLine Kar 15703** it is ruled as under;

"Section 340, 195 of Cr.P.C – Offence of perjury is a heinous crime *– Supreme Court in Re: Suo Moto Proceedings (2001) 5 SCC 289 and in various decisions has laid down the law that the application for action under perjury has to be dealt quickly, with seriousness and at the earliest point of time as it touches with purity of judicial proceedings.* ***Such action cannot be deferred or delayed on the***

ground that main matter is pending otherwise there is all possibility of the fountain of justice being polluted. If the judicial system has to survive, an effective action is need of time.

The reason given by the Trial Court that the petitioner's application as premature and the petitioner can move similar applications subsequently after the conclusion of the trial are unsustainable and offends the sense of justice.

Application under Section 340 of Cr.P.C. has to be considered on merits and at the earliest point of time and till the decision on application under Section 340 Cr.P.C. the main matter shall be kept back so that a loud message goes to the scrupulous section of the litigant public as to what would befall the perjuring parties.

The order of lower court set aside. Matter is remanded for consideration afresh. ***Till the decision on application under Section 340 of Cr.P.C. the main matter shall be stayed."***

22.8. That Division Bench of this Hon'ble Court in the case **Aakar Infraprojects (P) Ltd. v. Municipal Corpn. for Greater Mumbai, 2020 SCC OnLine Bom 4991**, had followed the similar procedure and in a case of similar

nature had deferred the pronouncement of judgment because an application under section 340 was filed. In that case also arguments were concluded and case was reserved for pronouncement of the judgment.

It is ruled as under;

> *"**1.** On 19th December, 2019, the above Writ Petition alongwith the above Notice of Motion and Chamber Summons were heard finally. On 19th December, 2019, the same was reserved for orders. Though the Order was ready by March 2020, the same remained to be pronounced due to the prevailing pandemic. Since the preceipe was received from the Advocate for the Petitioners by the Court Office in September, 2020 that the Judgment/Order has remained to be pronounced, the matters were today placed for directions to enquire from the Advocates as to whether they wish to reiterate their submissions.*
>
> ***2.** Earlier i.e. on 19th December, 2019, Advocate M.V. Raut had represented Respondent No. 14 before us. Ms. Kruti Bhavsar has today informed us that in February 2020, she had filed Vakalatnama for Respondent No. 14 after obtaining 'No*

Objection' from the Advocate who was earlier representing Respondent No. 14. She has informed the Court that in July 2020 she has filed an Interim Application seeking declaration that the above Writ Petition is not maintainable. She admits that she has not served the Interim Application on the Advocate for the Petitioners till date. She further states that she has very recently filed another Interim Application under Section 340 Cr. P.C. and that Advocate Vijay Kurle is appearing as her Counsel in the said Interim Application. She states that the said Application is also not served on the Advocate for the Petitioners.

***7.** In the circumstances, we pass the following Order:—*

(i) We defer the pronouncement of the final Judgment/Order in the above Writ Petition"

22.9. That this Hon'ble Court in the case of **Surendra Vishwanath Mishra v. State of Maharashtra, 2019 SCC OnLine Bom 291**, had also relied upon para 32 of the constitution disposal of the application under section 340 of Cr.P.C.

It is observed by this Hon'ble Court as under;

"Upon urgent mentioning, taken on Production Board.

2. Rule. Rule made returnable forthwith by consent of the parties and heard finally at the stage of admission.

3. This petition is filed for a limited relief that the application filed by the petitioner under sections 340 r/w 195 of the Code of Criminal Procedure in C.C. No. 2436 PW of 2017, be decided expeditiously.

4. Considered para 32 of the judgement of the Constitution Bench of the Supreme Court in the case of Iqbal Singh Marwah v. Meenakshi Marwah (2005) 4 SCC 370.

5. In view of the limited relief prayed for, the petition is disposed of by directing the learned Metropolitan Magistrate, 67 Court, Borivali, to decide the application filed by the petitioner under section 340 r/w section 195 of the Code of Criminal Procedure in CC No. 2436 PW of 2017 within two months from the date of receipt of the copy of this order.

6. Rule made absolute accordingly."

22.10. Hence it is also clear that the procedure adopted by the Hon'ble Senior Division Judge was just and lawful. But then also the petitioners have made reckless allegations against Hon'ble Judge that he acted deliberately and arbitrarily to give undue favour to the Respondent.

22.11. That law is very well settled that such tendency of litigants in threatening/ browbeating the Hon'ble Judges when they don't get the favourable order has to be dealt with stern hands, otherwise it will be very difficult for Hon'ble Judges to work in a fair and impartial manner and the course of justice will suffer and the ultimate sufferer will be the common man, for whose protection this judicial system is established.

23. That section 379 & Section 215 of the BNNS are similar to Section 195 of Cr.P.C. It read thus;

> ***"379.*** *(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 215, which appears to have been committed in or in relation to a proceeding in that*

Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) ***take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate;***

and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 215.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such

officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 215.

215. (1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 204 to 224 (both inclusive but excluding section 207) of the Bhartiya Nyaya Sanhita, 2023, or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,"

24. That when false defence is taken by the defendant in denial to obtain a favorable order to obtain then it is an offence Under section 209 of IPC, Which is Section 246 of BNS.

Section 246 of BNS reads thus;

"246. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court any claim which he knows

to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine."

25. The whole attempt by the Petitioners is to anyhow delay the action under section 340 against them by filing such a frivolous petition with false and misleading and overruled submissions and for such attempt they needs to be saddled with heavy cost.

25.1. In the case of **Mohan Lal Jatia v. Registrar General, Supreme Court of India, 2010 SCC OnLine Del 2727,** it is ruled that the person who is an accused under proceedings initiated as per section 340 of Cr.P.C., if tries to delay the proceeding by filing Frivolous petitions then such accused must be saddled with heavy cost. And a cost of Rs. 1 Lakh was imposed upon him.

It is ruled as under;

"9. Even otherwise, I consider that in view of clear mandate of the statute that the complaint under Section 340 Cr. P.C. is to be treated as a police report, the procedure to be followed by the learned CMM is that of a warrant trial case on a police report and not of a warrant trial case on a complaint.

10.[...] The judicial process is often used as a tool to see that even if there is documented proof of commission of crime, the accused gets scot free because of multifarious levels of appeals, writs, revisions, 482 Cr. P.C. petitions and SLPs to which the accused and petitioners have unlimited access under the present system. The real judicial reform can come in this country only when, despite the strength of money power and political power, one is not able to capture the judicial system and hold it to ransom on the strength of this power.

11. The present petition is a gross misuse of the judicial process. The accused persons have came second time before this Court assailing the procedure being adopted by the learned MM. The whole effort of the accused persons seems to be not to allow the trial to proceed further. The case is a glaring example how the trial can be stalled by adopting delaying tactics. The complaint of an offence committed in 1986 in respect of administration of justice in Supreme Court, where a false affidavit was filed, despite investigation got done from CBI by the Supreme Court followed by a complaint to

CMM, Delhi through its Registrar General in the year 1994 is still at initial stage. From the year 1994, we are in 2010. For these 16 long years, the trial has not proceeded an inch. Those who talk of judicial reforms must take note of such numerous cases pending in Courts where the judicial process is misused to see that the trials do not proceed further.

12. The petition being frivolous is dismissed with cost of Rs. 1,00,000/- to be deposited with Delhi High Court Legal Services Committee."

25.2. That three Judge Bench in the case of **Sarvepalli Radhakrishnan University v. Union of India, (2019) 14 SCC 761**, had in the case of filling of frivolous petition with false affidavit had ordered prosecution Under section 193 of IPC and also imposed a cost of Rs. 5 crores upon such dishonest portioners.

25.3. That the law regarding quantifying the amount of cost is very well settled by catena of decision by Hon'ble Supreme Court & this Hon'ble Court.

25.4. In **New Delhi Municipal Council v. Prominent Hotels Limited, 2015 SCC OnLine Del 11910**, it is ruled as under;

"26. <u>Imposition of Costs</u>

26.1. *In Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder : -*

"43. .....We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the

following steps are taken by the trial courts while dealing with the civil trials.

xxx xxx xxx

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation."

(Emphasis supplied)

26.2. *In Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (2012) 5 SCC 370, the Supreme Court held that heavy costs and prosecution*

should be ordered in cases of false claims and defences as under : -

"85. This Court in a recent judgment in Ramrameshwari Devi (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by

the parties. ***In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings****."*

(Emphasis supplied)

26.3. *In Subrata Roy Sahara v. Union of India (2014) 8 SCC 470, the Supreme Court again held that costs must be imposed on frivolous litigation:*

"191. ***The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims****. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he*

should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault?

(Emphasis Supplied)

26.4. *In Harish Relan v. Kaushal Kumari Relan in RFA(OS) 162/2014 decided on 03rd August, 2015, the Division Bench of this Court considered the pronouncements of the Supreme Court with respect to false claims as well as costs and held that there is no limitation on the imposition of costs by the Courts in appeals. Relevant portion of the said judgment is as under.*

"88. It is important to note that Section 35A has no application to appeal or revision proceedings. Given the fact that this court is adjudicating an appeal assailing the judgment passed in exercise of original jurisdiction. Therefore, the jurisdiction of this court to impose costs by virtue of Section 35 of the CPC is unhindered by the limitation contained in Section 35A.

xxx xxx xxx

95. On the issue of costs, Sections 35, 35A, 35B as well as Order XXA and Order XXIII of the Code of Civil Procedure apply to civil suits alone. There is no statutory provision even providing for imposition of costs, let alone restricting the exercise the power to do so in appellate jurisdiction. We also find that even under the Delhi High Court Rules, 1967 only, the manner in which counsel's fee may be computed in the appeal against the decree on the original side, is provided. There is no provision in the Delhi High Court Rules as to the manner in which the costs in appeals are to be evaluated or imposed. Guidance on the consideration by this court would therefore, be taken from the principles laid down in the several precedents by the Supreme Court of India. There is therefore, no limitation by statute or the Rules at all on the appellate court to impose actual, reasonable costs on the losing party at all.

25.5. In the case of **Baduvan Kunhi Vs. K.M. Abdulla 2016 SCC OnLine Ker 23602** it is ruled as under;

***"51.** In Ritesh Tewari and Amar Singh, as quoted in V. Chandrasekharan, it is observed*

that the truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess; therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings.

***52.** In **Vijay Mallya** v. **Enforcement Directorate** **(2015) 8 SCC 799** the Apex Court speaking J. Chelameswar, J., has invoked Anatole France, who poetically, poignantly observed that "The law in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread." Having found on facts that the appellant abused the process of court, the Apex Court imposed exemplary costs of ten lakh rupees to be paid to the Supreme Court Legal Services Authority.*

***53.** In **Phool Chandra v. State of U.P.(2014) 13 SCC 112,** the Apex Court, per curiam, observed, "It is high time that the courts should come down heavily upon such frivolous litigation, and unless we ensure that the wrongdoers are denied profit or undue*

benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on the learned counsel who act in an irresponsible manner."

54. *In* ***Messer Holdings Ltd. v. Shyam Madanmohan Ruia (2016) 11 SCC 484*** *the Apex Court has observed that enormous amount of judicial time of that Court and High Courts (in that case) was spent on litigation that was eminently avoidable and could have been well spent on more deserving cases. All that was in the name of "fight for justice." It has, in that process, quoted with approval* ***Ramrameshwari Devi v. Nirmala Devi (2011) 8 SCC 249*** *to hold that the courts must consider, while imposing costs, pragmatic realities and also the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards conducting litigation. The Court deemed it appropriate to impose twenty-five lakh rupees on each of the three parties.*

55. *Accordingly, taking a cue from the above, apart from allowing the writ appeal, we impose an exemplary cost of Rs. 1,00,000/- on the first respondent to be payable within one month from today to Kerala State Mediation and Conciliation Centre (KSMCC), High Court of Kerala. If the first respondent fails to pay the costs, the Director, KSMCC, shall require the District Collector to recover as revenue arrears the costs imposed now. For that purpose, the District Collector shall treat the communication from the Director, KSMCC, as a proceeding under Section 69 (2) of the Revenue Recovery Act and take further steps accordingly.*

56. *The registry is further directed to send a copy of this judgment to the Bar Council of Kerala. After receiving a copy of the judgment, treating that as a complaint, the Bar Council, shall initiate appropriate disciplinary proceedings under Section 35 of the Advocates Act, 1961, and the Rules made thereunder, agasint Sri. A. K. Abdul Azeez, the advocate.*

57. We further direct the registry to place the matter before the jurisdictional Bench to further adjudicate on the issue of contempt."

25.6. Hon'ble Supreme Court in the case of **Sciemed Overseas Inc. Vs. BOC India Limited and Ors. (2016) 3 SCC 70,** it is ruled as under;

"The only question for our consideration is whether the High Court was correct in imposing costs of Rs. 10 lakhs on the Petitioner for filing a false or misleading affidavit in this Court - In our opinion, the imposition of costs, was fully justified.

This Court had observed that the sanctity of affidavits filed by parties has to be preserved and protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand."

26. Law settled by the Supreme Court that offence of perjury is a heinous crime and the litigants making false affidavits are danger to the society and society cannot afford to have a criminal to escape his liability, as it will bring about a state of social pollution, which is neither desired nor

warranted. Such persons should be sent to jail and not be granted bail either anticipatory or regular and they should be tried under trial.

26.1. That there is no remorse shown by the Petitioners but attempts were made to justify their dishonesty and their serious offences against the administration of justice by once again creating false affidavit and making false and baseless allegations against the Hon'ble Judge.

26.2. That Division Bench of Hon'ble High Court in the case of **Koppala Venkataswami v. Satrasala Lakshminarayana Chetti, 1956 SCC OnLine AP 228**, had ruled that the person who creates false documents to support his claim in the court is dangerous to the society and in such cases prosecution must be ordered and no stay should be granted by the Appellate Court in such cases.

26.3. Division Bench of this Hon'ble Court while ordering prosecution under sec. 340 of cr. P.C. against Police Officers in the case of **State of Maharashtra v. Mangesh, 2020 SCC OnLine Bom 672**, has ruled as under;

> *"**21.** The Hon'ble Supreme Court in **Manohar Lal v. Vinesh Anand reported in 2001 AIR SCW 1590** has held that to prosecute the offender is a social need and concept of locus standi is foreign to*

criminal jurisprudence. In para no. 5, it is observed thus:—

> *"5. Before adverting to the matter in issue and the rival contentions advanced one redeeming feature ought to be noticed here pertain to Criminal jurisprudence : To pursue an offender in the event of commission of an offence, is to sub-serve a social need.* ***Society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted*** *and this is irrespective of the concept of locus the doctrine of locus-standi is totally foreign to criminal jurisprudence."*

26.4. In **Dr. Praveen Vs. Dr. Arpitha 2021 SCC OnLine Kar 15703** it is ruled as under;

> ***"Section 340, 195 of Cr.P.C – Offence of perjury is a heinous crime*** *– Supreme Court in Re: Suo Moto Proceedings (2001) 5 SCC 289 and in various decisions has laid down the law that the application for action under perjury has to be dealt quickly, with seriousness and at the earliest point of time as it touches with purity of judicial proceedings.* ***Such action cannot be deferred or delayed on the***

ground that main matter is pending otherwise there is all possibility of the fountain of justice being polluted. If the judicial system has to survive, an effective action is need of time.

26.5. That the present complaint is regarding serious offences against the administration of Justice and therefore, strict action is required to be taken against the accused. Hon'ble Supreme Court & Hon'ble High Court have time and now ruled that no leniency should be shown to such accused who are playing fraud upon the court and such accused should not be granted bail.

Relied on: -

(i) **Naveen Singh v. State of U.P., (2021) 6 SCC 191**

(ii) **Dilip v. State of Gujarat, 2011 SCC OnLine Guj 7522**

(iii) **Ashok MotilalSaraogi Vs. State of Maharashtra 2016 ALL MR (CRI.) 3400**

27. Legal position that even if there is one prosecution ordered by the sub ordinate courts, the second enquiry and prosecution under section 340 of Cr. P. C. is also necessary when the accused repeats the same false statements before Hon'ble High Court.

There are two type of offences committed by the Petitioners. First is making/creating the false affidavit and second is filing

it before Hon'ble High Court with no respect and fear of any legal action of playing fraud with the Court. And therefore they need to be tried separately for two set of offences as per law laid down in the case of **Arun Dhawan Vs Lokesh Dhawan 2015 Cri LJ 2126 and in Madangopal Banarasilal Jalan and Others v/s Partha S/O Sarthy Sarkar 2018 SCC Online Bom 3525.**

27.1. In **Madangopal Banarasilal Jalan and Others v/s Partha S/O Sarthy Sarkar 2018 SCC Online Bom 3525** it is ruled as under;

> ***"3…*** *When the facts available on record unmistakably point out that the accused has continued to make defamatory and false statements, even after those statements made previously by him have been found to be false, the Court has no option but to take cognizance of the complaint made by the aggrieved person and the Court shall be within it's right to direct the Registrar (Judicial) to file an appropriate complaint.***"**

27.2. In **Arun Dhawan Vs Lokesh Dhawan 2015 Cri LJ 2126** it is ruled as under;

"4. *The question that arises for consideration is : Whether the court would be barred from entertaining an application under Section 340 CrPC even in cases where a party files pleadings being aware that the document on which such pleading is based is forged and fabricated?*

10[…] *the said averment was a positive averment and was false to the knowledge of the Respondent and was based on a forged and a fabricated document which was supported by an affidavit of the Respondent.*

47 […] *8.7. Making false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it must be treated as an offence.*

*8.8****. Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt.*** *But it must be remembered that the very essence of crimes of this kind is not how such statements may injure this or that party to litigation but how they may deceive and mislead the Courts and thus produce*

mischievous consequences to the administration of justice. A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law.

8.9. Consequently, there cannot be any doubt that if a statement or averment in a pleading is false, it falls within the definition of offence under Section 191 of the Code (and other provisions). It is not necessary that a person should have appeared in the witness box. The offence stands committed and completed by the filing of such pleading. There is need for the justice system to protect itself from such wrong doing so that it can do its task of justice dispensation.

46[…]

10[…] A document, which is tampered or forged and is produced during the Court proceedings, the Court would have jurisdiction to conduct an inquiry under Section 340 of the Code and decide whether the bar contained under Section 195 partially or in its entirety is attracted in the facts and circumstances of the case or not. ***An offender***

cannot take advantage of its own offence and wrongs committed, and give an interpretation of the provisions of law, which is destructive of the legislative intent and spirit of the statute.

9. What constitutes the offence?

*9.1****. Inasmuch as on a complaint of Respondent No. 2, a prosecution of the Petitioner is pending before the Metropolitan Magistrate, the question also arises as to what constitutes the offence because it may be said that since prosecution is pending, why should a second inquiry or prosecution be called for. On the face, such a contention appears attractive, but there are more compelling reasons why the Court must take cognizance and proceed as per law.***

9.2. The learned amicus curiae, Dr. Arun Mohan has submitted that the two offences are separate and are to be prosecuted and tried separately. ***According to him, the first offence was of forging the document and then using it before the DDA in order to cause injury to the Respondent No. 2.*** *It was*

carried out by and before 12th March, 2004 when public notice was also published by Sanjeev Kumar Mittal.

9.3. ***The complaint of 21st March, 2004 by Respondent No. 2 was in relation to that offence. If the matter had rested there, it would have been one thing, but on 12th April, 2004, when the present petition containing false averments and relying on forged documents (which were also filed) was filed, a second offence stood committed.***

That second offence was of :

> ***(1) making a false averment in the petition duly verified and filing the same in Court; and***
>
> ***(2) asking the Court for a judgment on the basis of false averments and forged documents.***

9.4. The learned amicus curiae submits that ***if a person prepares a petition containing false averments, relying on forged documents, and signs and verifies it, and then comes to the Court, but on seeing the building, develops cold feet and returns***

home, the second offence would not have been committed. But when he presents these papers at the filing counter, it is filing in Court. The moment they cross the window at the filing counter is precisely the point of time when the second offence stands committed.

9.6 The rationale will equally apply to a situation where, as here, the complaint will be in respect of subsequent and independent offences, i.e., filing before a Court of law, pleadings containing false averments and also filing of documents that were forged as distinct from forgery at home. It will also be contempt of Court.

48. This Court has thus held that even if a document was tampered/forged prior to institution of the legal proceedings, the Court will have jurisdiction to entertain an application under section 340 of the Code if the document has been produced in Court proceedings. Further it is laid down that making of false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it must be treated

as an offence. Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt.

9[…] *As per the Appellant, the Respondent, knowing fully well that the Resolution was forged and fabricated, filed the petition.*

10. *As per the Appellant not only were the Minutes forged but the Respondent had specifically in the petition averred that the said Board Resolution was passed in the meeting held on 16.08.2010 and the shares were, accordingly, transferred. As per the Appellant, the said averment was a positive averment and was false to the knowledge of the Respondent and was based on a forged and a fabricated document which was supported by an affidavit of the Respondent."*

28. Legal position settled by Hon'ble Supreme Court that when false affidavit is filed in the Court to get favorable order then prosecution of such litigant under perjury and contempt is must and the Court will be failing in it's duty if such prosecution is not ordered. [**ABCD v. Union of India, (2020) 2 SCC 52, Sundar v. State, 2023 SCC OnLine SC 310 (3J)**]

28.1. In **ABCD v. Union of India, (2020) 2 SCC 52**, it is ruled as under;

> ***"17.*** *In K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481] it was observed: (SCC p. 493, para 39)*
>
> *"39. If the primary object as highlighted in Kensington Income Tax Commrs. [R. v. General Commissioners for Purposes of Income Tax Acts For District of Kensington, ex p Princess Edmond De Polignac, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind,* ***an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the***

<u>case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."</u>

18. *In Dhananjay Sharma v. State of Haryana [Dhananjay Sharma v. State of Haryana, (1995) 3 SCC 757 : 1995 SCC (Cri) 608] filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the persons concerned were punished.*

19. *In the circumstances a notice is required to be issued to the petitioner in suo motu exercise of power of this Court "why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code". The Registry is directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who is directed to appear in-person before this Court on 14-1-2020."*

28.2. Three-Judge bench of Hon'ble Supreme Court had ruled that the court will be failing in its duty if the

court did not take action under contempt against such litigants/officers who files false affidavit by suppressing material facts.

In the case of **Sundar v. State, 2023 SCC OnLine SC 310** (3 Judge); it is ruled as under;

> *"87. The non-disclosure of material facts amounts to misleading this Court and to an attempt at interfering with the administration of justice. In the Suo Motu Contempt Petition (Civil) No 3 of 2021 titled In Re: Perry Kansagra, this Court discussed the line of precedent of this Court dealing with tendering of affidavits and undertakings containing false statements or suppressing/concealing material facts amounting to contempt of court:*
>
> > *15. It is thus well settled that a person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court. The extracted portion above*

clearly shows that in such circumstances, the Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court.

98. Separately, a notice is required to be issued to the Inspector of Police, Kammapuram Police Station, Cuddalore District, State of Tamil Nadu to offer an explanation as to why action should not be taken for the filing of the affidavit dated 26 September 2021. In this case, prima facie, material information regarding the conduct of the petitioner in the prison was concealed from this Court. Accordingly, the Registry is directed to register the matter as a suo motu proceeding for contempt of court."

28.3. In **H.S. Bedi Vs. National Highway Authority of India 2016 SCC OnLine Del 432** it is ruled that;

"15.5. *The word 'claim' for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law.*

15.1. *Section 209 of the Indian Penal Code makes dishonestly making a false claim in a Court as an offence punishable with imprisonment upto two years and fine.*

15.2. *The essential ingredients of an offence under Section 209 are : (i) The accused made a claim; (ii) The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv) That the accused knew that the claim was false; and (v) The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person.*

15.12. *Whether the litigant's 'claim' is false, is not considered merely from whatever he pleads (or omits to plead) : that would be to elevate form over substance. To make out the offence, the Court does not merely inspect*

how a litigant's pleadings have been drafted or the case has been presented. The real issue to be considered is whether, all said and done, the litigant's action has a proper foundation which entitles him to seek judicial relief.

15.15. *Section 209 was enacted to preserve the sanctity of the Court of Justice and to safeguard the due administration of law by deterring the deliberate making of false claims. Section 209 was intended to deter the abuse of Court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy.*

15.16. *False claims delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude.*

15.17. *False claims cause direct injury to honest litigants. But this injury appears to us to be only part, and perhaps not the greatest part, of the evil engendered by the practice. If there be any place where truth ought to be held in peculiar honor, from which falsehood ought to be driven with peculiar severity, in which exaggerations, which elsewhere would*

be applauded as the innocent sport of the fancy, or pardoned as the natural effect of excited passion, ought to be discouraged, that place is Court of Justice.

15.21. *Filing of false claims in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false claims.*

15.22. *The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. More often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.*

15.23. *The disastrous result of leniency or indulgence in invoking Section 209 is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result.*

15.24. *Unless lawlessness which is all pervasive in the society is not put an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the litigants making false claims are allowed to go scot free, every law breaker would violate the law with immunity. Hence, deterrent action is required to uphold the majesty of law. The Court would be failing in its duties, if false claims are not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Courts would lose its efficacy to the litigant public.*

15.25. *Truth is foundation of Justice. Dispensation of justice, based on truth, is an essential and inevitable feature in the justice delivery system. Justice is truth in action.*

15.26. *It is the duty of the Judge to discover truth to do complete justice. The entire*

judicial system has been created only to discern and find out the real truth.

15.28. *Every trial is a voyage of discovery in which truth is the quest. Truth should be reigning objective of every trial. The Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth.*

15.30. *Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this Section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.*

15.31. *The Judge contemplated by Section 165 is not a mere umpire at a wit-combat*

between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or wilfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15.32. *The Trial Judge is the key-man in the judicial system and he is in a unique position to strongly impact the quality of a trial to affect system's capacity to produce and assimilate truth. The Trial Judge should explore all avenues open to him in order to discover the truth. Trial Judge has the advantage of looking at the demeanour of the witnesses. In spite of the right of appeal, there are many cases in which appeals are not filed. It is mostly with the Trial Judge rather than with the appellate Judge that the*

*members of the general public come in contact, whether as parties or as witnesses.***"**

28.4. That three Judge Bench in the case of **Sarvepalli Radhakrishnan University v. Union of India, (2019) 14 SCC 761**, had in the case of filling of frivolous petition with false affidavit had ordered prosecution Under section 193 of IPC and also imposed a cost of Rs. 5 crores upon such dishonest portioners. It is ruled as under;

> ***"6.1.*** *By referring to the Assessment Report pursuant to the inspection done on 25-9-2017 and 26-9-2017, learned Senior Counsel for Respondents 1 and 2 submitted that the College was indulging in fraud by showing persons who were not sick as patients only for the purpose of showing compliance of the minimum requirements. The learned Senior Counsel appearing for the College refuted the said contention and argued that all the patients were genuine. As this Court was in no position to determine the truth or otherwise of the allegations, an enquiry was directed to be conducted into the correctness of the statistics, reports and material placed before this Court by the College along with the writ petition.*

12.(…) *The impunity with which the College has manufactured records to convince us that they were being unnecessarily hounded by MCI in spite of their compliance with the required standards is deprecated. The brazen attempt by the College in taking this Court for a ride by placing on record manoeuvred documents to obtain a favourable order is a clear-cut act of deceit. The justification given by the College regarding the absence of certain residents has turned out to be a concocted story. Had we not initiated an enquiry by the Committee of Experts, the fraud played by the College on this Court would not have come to light. It is trite that every litigant has to approach the Court with clean hands. A litigant who indulges in suppression of facts and misrepresentation is not entitled for any relief. The conduct of the College in this case to mislead this Court for the purpose of getting a favourable order is reprehensible and the College deserves to be dealt with suitably.*

13. *In R. Karuppan, Advocate, In re 15, this Court observed as under: (SCC p. 293, para 13)*

"13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice- dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings is to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of

irresponsible statements, without any regard to accuracy."

14. *In Mohan Singh v. Amar Singh, it was observed by this Court: (SCC p. 704, para 36)*

"36.....Tampering with the record of judicial proceedings and filing of false affidavit in a court of law has the tendency of causing obstruction in the due course of justice. It undermines and obstructs free flow of the unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity."

15.4. *All this goes to show that the College has indulged in large-scale malpractices in showing compliance of the minimum required standards to obtain permission for admission of students. The College further tried to mislead this Court that it is compliant in all respects, to get permission for the admission of students.*

16. *The brazen manner in which the College has indulged in relying upon manipulated records to mislead this Court for the purpose of getting favourable order deserves to be*

dealt with in a serious manner. We find that this is a fit case where Mr S.S. Kushwaha, Dean of the College must be held liable for prosecution under Section 193 IPC.

20. *For the aforementioned reasons, we pass the following order:*

20.1. *Mr S.S. Kushwaha, Dean of RKDF Medical College Hospital and Research Centre ie. Petitioner 2 herein is liable for prosecution under Section 193 IPC. The Secretary General of this Court is directed to depute an officer to initiate the prosecution in a competent court having jurisdiction at Delhi.*

20.2. *The College is barred from making admissions for the MBBS course for the next two years i.e. 2018-19 and 2019-2020. first yea*

20.3. *A penalty of Rs five crores is imposed on the College for playing fraud on this Court. The amount may be paid to the account of the Supreme Court Legal Services Committee.*

20.4. *The students are entitled to receive the refund of fee paid by them for admission to the College for the academic year 2017-2019. In addition, the College is directed to*

pay a compensation of Rs one lakh to the said students. 21. The writ petition is dismissed accordingly.

Writ Petition (Civil) No. 731 of 2018

***22.** The writ petition is hereby dismissed in terms of the above judgment."*

29. When reckless, false and scandalous allegations are made in the petition against the Judge of sub-ordinate Court then the petitioners and their advocates are liable to be punished under sec 193,199 r/w 120(B), 114, etc. of IPC. Judges of sub-ordinate Courts are entitled to protection while carrying out their duties and that persons making grossly improper and false allegations must, in the interests of justice, be properly dealt with.

29.1. In **Ganwar s/o Bangul Vs. Emperor AIR 1944 Sindh 155,** it is ruled that when reckless, false and scandalous allegation are made against the Judge in the petition then the petitioner and his advocate are liable to be punished under sec 193,199 r/w 120(B),114, etc. of IPC.

It is ruled as under;

*" **1.** […] **It is alleged that the Magistrate is "impartial (meaning partial) and biased in favour of the accused."***

9. [……] It is quite clear that there is no ground made out for transfer of the case and that the facts relied upon in support of the transfer application are false and in my opinion deliberately so and that they have been put forward with a reckless disregard of the consequences. The transfer application is therefore dismissed.

10. It seems to me that I cannot let the matter pass without taking notice of these false allegations. It is necessary to maintain public confidence in the administration of justice and if good grounds are made out this Court is not slow to transfer a case. Bona fide allegations made with due care and caution will receive due attention. On the other hand, it appears to me that <u>Magistrates are entitled to protection while carrying out their duties and that persons making grossly improper and false allegations must, in the interests of justice, be properly dealt with.</u>

[..] One would have expected any advocate not himself instigating such allegations to have looked more closely into them before setting them out in a transfer application, and

a superficial inquiry should have made it obvious that the allegations were false. Advocates have certain reponsibilities in these matters. I therefore consider this matter should be looked into a little more closely with a view to deciding whether it is expedient in the interests of justice that a complaint should be filed against the applicant himself, against the deponent Chuto son of Mewo and/or against Mr. Amarlal advocate. ***I direct the issue of notice to these three persons under Section 476, Criminal P.C. to show cause why a complaint should not be filed against them under Section 193 read with Section 120B and/or Section 114, Penal Code, or any other provisions of law applicable, in respect of the various false statements referred to above made in the transfer application, affidavits in support thereof and the deposition of the applicant in this Court.***

14. *I have already expressed the opinion in my previous order on the materials then before me that the allegations are false. The further arguments addressed to me confirm me in that opinion. The material question for*

decision is as to whether the interests of justice require that there should be a prosecution. I am clearly of opinion that it is expedient in the interests of justice that both Ganwar and Chuto should be prosecuted. I consider, indeed, that the interests of justice demand it.

Incidentally, Section 589A authorizes a Court to order evidence to be given of the facts stated in the affidavit, as was done in this case. ***Magistrates in the discharge of their duties are entitled to be protected from scandalous accusations which have no basis in fact. The matter must therefore be thrashed out in the proper proceedings and truth ascertained.***

[….] ***The material question is, as to whether mens rea is provable, that is, whether there is, a prima facie case against him for having abetted an offence under Section 198 or Section 199, Penal Code, whether there is evidence that the false statements originated with him and he instigated his clients to make them, or whether he was in conspiracy with his clients or intentionally aided them in any***

way to commit the offences for which they are to be tried.

15. There is no direct evidence against Mr. Amarlal. What evidence there is, is circumstantial. A matter of inference to be drawn from the facts. There is no doubt, I think that convictions for offences under Section 193 or Section 199, Penal Code, may be based purely on circumstantial evidence. As was pointed out in Miranbaksh v. Emperor A.I.R. 1931 Lah. 529, in the definition of 'proof in Section 3, Evidence Act, no distinction is drawn between circumstantial and other evidence. *Reference was also made to the definition of proof in Section 3, Evidence Act, in Arjun Singh v. Emperor MANU/UP/0015/1931 : AIR1931All362 ,* ***a case in which there had been a conviction under Section 193, Penal Code.***

17. [....] It is also a matter of common knowledge that unscrupulous advocates are commonly given to filing transfer application of this kind, to frighten Magistrates so as to acquire an ascendancy over them.

18. […] This would also account for the prima facie absurd nature of the allegations.

19. *In the result the rule nisi issued to Mr. Amarlal is discharged.* ***I direct that a comiplaint be filed in the Court of the City Magistrate, Karachi, against Ganwar, son of Bangui under Section 199, Penal Code, in respect of the allegations against the Magistrate (already sufficiently indicated by my previous order) in his affidavit of 16th February 1943 read with the transfer application and under Section 193, Penal Code, in respect of the same allegations in his evidence before me and against Chuto, son of Mewo under Sections 199 and/or 109, Penal Code, read with Section 199, Penal Code, in respect of the allegations made by him against the Magistrate in his affidavit dated 16th February 1943 filed in support of the transfer application. I direct that the papers be sent to the Public Prosecutor of Sind to draft the necessary complaint and that after scrutiny by me it be signed by the Registrar and thereafter filed in the Court of the City Magistrate.*** *I direct that Ganwar and Chuto do each execute a personal bond for*

its. 500 with one surety for like amount to appear in the Court of the City Magistrate, Karachi on 15th October 1943.

20. *Before concluding this order it is necessary to revert to the question of Mr. Amarlal's conduct as an advocate in relation to the allegations in the transfer application and to Mr. Fatehchand's contention that no duty is cast upon an advocate to consider or weigh any allegations his clients instruct him to make before putting them forward. The attitude taken by Mr. Fatehchand appears to me to be entirely misconceived.* ***Obviously an advocate cannot pledge himself for the truth of his client's allegations, but he is an officer of the Court and as such it is his bounden duty to take some steps to verify the truth of the allegations he is instructed to make. An advocate is presumed to be a person of education and standing, whose duty it is to assist the Court in the administration of justice and is not mere mouthpiece of his client, the mere instrument hired by a litigant to make any allegations, howsoever reckless, false or scandalous****. The following observations of*

Courtney-Terrell C.J. in Shiv Kumar Jha v. Emperor A.I.R. 1929 Pat. 151, are much in point:

It is said on behalf of the mukhtar that he took the instructions of his client and was bound to act upon those instructions. It is perfectly true in one sense that a legal adviser must accept statements of fact from his client. But that privilege of the legal adviser has a tendency and a very grave tendency to be very much abused and nowhere is the abuse so manifest as in applications for transfer. ***It has become notorious that applications for transfer based upon the alleged prejudice and unfairness of the Magistrate have developed to an extent which is a scandal and it would be well that professional advisers and more particularly young professional advisers should bear in mind that there are certain kinds of duties which they have to perform in setting forth the case of their clients in relation to which they cannot take shelter, as they are in the habit of doing, behind the instructions of the client.*** *[....]* ***Statements imputing prejudice or unfairness or corruption to Magistrates***

should not be made unless statements of the clients as tested by the adviser are found sustainable, unless they are found to be corroborated and unless the adviser has taken some steps not necessarily to pledge himself for his client's veracity but such as to give him as a reasonable man ground for belief that the statements at any rate, are such as should be properly investigated. The duty of the legal profession is a very serious one both with regard to applications of the kind I have mentioned and also in respect of pleadings.

21. *These observations were cited with approval in* ***Kedarnath v. Emperor A.I.R. 1934 Pat. 598,*** *as also the following observations of the Court in* ***Dwarka Prasad v. Emperor A.I.R. 1924 All. 253****:*

Members of the legal profession are under no duty to their clients to make grave and scandalous charges either against Judges or the opposite parties on the mere wish of their clients. They are not puppets compelled to obey the dictates of their clients where matters of good faith and honourable conduct are concerned. They are

responsible to the Court for the fair and honest conduct of a case. They are not mere agents of the man who pays them, but are acting in the administration of justice, and in matters of this kind they are bound to exercise an independent judgment, and to conduct themselves with a sense of personal responsibility. If they fail to act with reasonable care and caution they are unfit to enjoy the privileges conferred upon them by law and serious breaches must be visited with punishment.

There has not been any suggestion put forward in this case on behalf of Mr. Amarlal that he made any effort whatever to satisfy himself that the allegations of his client had any foundation. It is on the contrary argued on his behalf that no such duty devolved on him. I do not consider the matter should be permitted yet to rest where it is. Apart from the question of Mr. Amarlal's conduct, it seems to me that if the prevailing view at the Karachi Bar is that put forward by Mr. Fatehchand steps should be taken to correct it. It is obviously inexpedient that any further enquiry be held

in this matter until the proceedings before the City Magistrate against Ganwar and Chuto have terminated. I therefore direct that immediately those proceedings have terminated, this matter be brought before me to consider what further steps should be taken, if any.

30. Law settled by Hon'ble Supreme Court and High Court that the blame of defective and false pleading should go to the advocate and Senior Counsel.

The advocate preparing false and misleading pleading shall also be held responsible for prosecution of perjury, contempt and disciplinary proceedings before Bar Council.

30.1. Hon'ble Supreme Court in the case of **(E.S. Reddy) T.V. Choudhary, A Member Of The Indian Administrative Service (Under Suspension) Vs. Chief Secretary Of Andhra Pradesh (1987) 3 SCC 258** it is ruled as under;

"10. By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the

Attorney General and the Solicitor General. It is an honour and privilege conferred on advocates of standing and experience by the Chief Justice and the Judges of this Court. *They thus become leading counsel and take precedence on all counsel not having that rank.* ***A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors****."*

30.2. In **Ahmad Ahmad Ashrab, Vakil Vs. State 1926 SCC OnLine ALL 365**it is ruled as under;

> *"A) Indian Penal Code, Sec. 466, 193 – 10 years imprisonment to defendants and Lawyer for filling false reply to defeat the lawful claim of the plaintiff. – Practitioner Suspended.*
>
> *In the suit filed by the plaintiff, the defendant used forged documents. Jokhul Lal having only four sons. But defendants tried to create confusion to show that he had fifth. This forgery was carried out by ganjeshri. Based*

on the aforesaid false documents a document, which was answer to the application for review, was prepared and filed in the court. The said document /reply was signed by Vakil, Ahmad Ashrat.

B) I.P.C. 466, 193 – A Defendant was sentenced to two rigorous imprisonment of 5 years for filling document containing false statement – Held, If Legal practitioner signs a document it is presumed that he fixes signatory with knowledge of contents – A Vakil so signing cannot plead that he did not know the contents – A man who signs his name to a document makes himself responsible in every way – He is bound to answer for every word, line, sentence and paragraph, and it will be no defence that somebody else wrote it and he only signed it – signature implies association and carries responsibility – He will be bound by all the implications arising from it just as much as if he had written every word – Practitioners must realize that if they associate themselves with statements which they know to be dishonest and untruthful for the purpose of

misleading the Court then they should be punished - practitioner suspended."

30.3. In the case of **Baduvan Kunhi Vs. K.M. Abdulla 2016 SCC OnLine Ker 23602** it is ruled as under;

"***13.*** *At the initial hearing, the learned counsel for the appellant has highlighted what is said to be the objectionable conduct of the first respondent in securing the impugned judgment. He has urged that both the first respondent and Sri. A.K. Abdul Aziz,* ***the first respondent's counsel here and in the previous writ petition, too, have committed contempt of court. Prima facie satisfied, we put the first respondent, and also his learned counsel, on notice. On 25.05.2016, we suspended the impugned judgment and called upon the first respondent and his counsel why they should not be proceeded against under the Contempt of Courts Act for sheer of abuse of process they have taken recourse to.***

THE COUNSEL'S CONDUCT:

45. We may note another aspect of the issue that concerns the learned Counsel Sri. A.K. Abdul Azeez: He is, prima facie, guilty of professional misconduct under Section 35 of Advocates Act,

which is in addition to and apart from his putative guilt under the Contempt of Courts Act.

46. *In N.G. Dastane[11] the Supreme Court has held that the collocation of the words "guilty of professional or other misconduct" has been used to confer power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with binoculars as well as a whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanour or misdeed or misbehaviour can become an act of delinquency if it infringes such norms or standards and it can be regarded as misconduct. So much so, an advocate abusing the process of court is guilty of misconduct.*

47. *A lawyer owes a duty to be fair, held the Hon'ble Supreme Court in P.D. Gupta[12] not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice does not concern only the Bench. It concerns the Bar as well. The Bar is the principal ground for*

recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer.

Result:

48. *Without going into the merits of the rival contentions on the issue of the first respondent's entitlement to temporary permit, we allow the writ appeal, as a result of which the impugned judgment stands set aside, and the writ petition dismissed because the first respondent has been guilty of abuse of process, suppression of material facts and fraud. The learned counsel has fared no better. The reply affidavits filed by both have only aggravated their conduct and prima facie established, we are constrained to conclude that there is compunction in neither of them, and their approach to the whole issue is deliberate and calculated.*

56. *The registry is further directed to send a copy of this judgment to the Bar Council of Kerala. After receiving a copy of the judgment, treating that as a complaint, the Bar Council, shall initiate appropriate disciplinary proceedings under Section 35 of the Advocates Act, 1961, and the Rules made thereunder, agasint Sri. A. K. Abdul Azeez, the advocate.*

57. *We further direct the registry to place the matter before the jurisdictional Bench to further adjudicate on the issue of contempt."*

30.4. In **<u>Silloo Danjishaw Mistri Vs State of Maharashtra and Others 2016 SCC OnLine Bom 3180</u>** it is ruled as under;

"5. *We, therefore, issue notice to the above five persons under Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960 and Article 215 of the Constitution of India and under section 9 Contempt of Courts Act, 1971 to show cause as to why action under the Contempt of Courts Act should not be taken against them. Office to register the contempt proceedings as suo moto Contempt Petition (Criminal)*

6. *The learned APP has given the addresses of the above five persons which are as under; Registry to issue notice to them on these addresses.*

(1) Piloo Parvez Mehta, Malegaonwala Building, Ground Floor, Room No. 2, Gildor Lane, Opp. Navjeevan Society, Mumbai Central, Mumbai - 400 008.

(2) Kersi Minoo Guard, Nilgiri Co-op. Hsg. Society, Flat No. 1208, 12th Floor, Agripada, Mumbai.

(3) Ashok Hire, Kanakiya Complex, C-wing, Flat No. 1202, Thane, Near Eternity Mall. Office address - F-12-1, 1st Floor, Ragini Group, Near Eternity Mall, Thane City.

(4) Gilbert John Mendonca, House No. 14, Lopora Street, Bhayander (West), Taluka and District.

(5) Advocate G.B. Lal, B-104, Vrindavan Paradise CHS Ltd., Vasant Valley Road, Gandhare Village, Khadakpada, Kalyan (West)

7. Mr. Dhakephalkar, learned senior counsel appearing for Advocate Mr. Lal submits that name of Mr. Lal is shown as accused, however, he is innocent and seeks protection from arrest. Liberty to avail the appropriate remedy is available to Mr. Lal and in the present petition such protection cannot be given. *In the event, such an application is filed, it shall be decided independently and on its own merits.*

8. *Notice of contempt petition is made returnable 7th June, 2016.*

9. *State of Maharashtra shall be impleaded as respondent No. 6.*

10. *Learned APP is directed to file a report of investigation in the said C.R. on or before 1st April, 2016. For the purpose of filing compliance report, this Writ Petition is adjourned to 1st April, 2016.****"***

30.5. In **Silloo Danjishaw Mistri *Vs* State of Maharashtra and Others 2016 SCC OnLine Bom 11331** it is ruled as under;

> ***"9****. We direct the Tahasildar, Thane to produce the entire file of Takrar No. SR-16769 of 2015 for perusal of the Court on the next date i.e. 18 October 2016.*
>
> ***10.*** *The Tahasildar shall depute his representative who shall remain present in the Court on the next date along with the entire record.*
>
> ***11****. We may also put Shri. Shailesh Thakur to notice that prima facie it appears to us that he has indulged in professional misconduct and therefore****, this will be a fit case to make a reference to the Bar Council of Maharashtra and Goa for initiating disciplinary proceedings against him."***

30.6. Hon'ble Bombay High Court in the case of **Ashok Kumar Sarogi Vs State of Maharashtra 2016 ALLMR (Cri) 3400 it** is ruled as under;

> ***"7.*** *Mr. Shirish Gupte, the learned Senior Counsel would then contend that section 464 of the Indian Penal Code has been amended with effect from 17.10.2000 and in his submission antidating a document is in itself, not an offence at all. He submitted that in the present case, it is the allegation that, the applicant has only antidated the MoU dated 15.4.2010 and therefore it is not an offence. He further submits that if a case under section 464 itself is not made out, sections 465, 466, 467, 468 and 471 which are aggravated form of section 464 cannot at all be applied in the present case. It is to be noted here that section 464 of the Indian Penal Code defines, 'making false documents' and sections 465, 466, 467, 468 and 471 prescribes punishment for commission of the offence mentioned therein. In the present case, it is not only the allegation that the applicant antidated the document which was already in existence, but it is the specific case of the prosecution that the applicant in furtherance of the conspiracy and in connivance with the other accused persons fabricated the documents namely MoU dated 15.4.2010 and the Award dated 9.6.2014 and*

subsequently used the said documents in the Court proceedings before the High Court in Arbitration Petition No. 140 of 2015. In my opinion in the present case the definition of section 464 of the Indian Penal Code squarely applies and therefore there is no substance in the contention of the learned Senior Counsel for the applicant.

14.** In view of the above, the anticipatory bail application is rejected. Application dismissed.**"

30.7. Hon'ble Delhi High Court in **Ranbir Singh vs State 1990 (3) Crimes 207** it is ruled as under;

> ***''Even if there had been a compromise between Applicant and Mr. Siddiqui, the same would have been of no consequence. We are actually dealing with a very serious matter of the forging of the judicial records of the High Court. The allegations of such forgery and other allied offences are against an Advocate.***
>
> *(5) Mr. Siddiqui has also argued that there had also been a compromise between him and Mr. Saini in proceedings pending in the revision petition in the court of Sh.Lokeshwar Pd. Addl. Sessions Judge, Delhi. According to the compromise both of them had decided*

to withdraw their cases' against each other. He has filed an affidavit of Sh. R.C.Chopra, Advocate in which he has sworn that Mr Saini had undertaken at that time that he will withdraw his petition which he had filed before this Court i.e. the present criminal petition. It is not necessary for me to go into the merits of that argument or the alleged compromise. ***I am of the view that even if there had been such a compromise between Mr. Saini and Mr. Siddiqui, the same would have been of no consequence. We arc actually dealing with a very serious matter of the forging of the judicial records of the High Court. The allegations of such forgery and other allied offences are against an Advocate. A very heavy responsibility is cast upon Advocates. They are the custodians of the liberty of citizens. Infact, the Courts may be inclined some time to forego the commission of such offences by ordinary litigants. But in case of an Advocate, it seems very difficult to over look the commission of such serious offences. It is only through the agency of the- Advocates that the courts function smoothly. In fact, they are part and parcel of the system of the***

Administration of justice and if such offences committed by Advocates are not dealt with properly, the faith of the common man may be very adversely affected in the very system of Administration of justice. This action of Mr. Siddiqui also amounts to gross professional misconduct. It is not the professional duty of an Advocate to fabricate false evidence in order to get some benefit to his client. His position is like a bridge between his client and the court for the removal of the traces of any injustice which might have been suffered by his client either before coming to the court or during the trial of his case. .It doles not enable to transcend the lawful limitations imposed upon him by the very nature of the ethics of the legal profession. If any such crossing of the permissible limits by a lawyer is brought to the notice of the court, certainly it becomes the incumbent duty of the court to rise to the occasion, and in the interest of orderliness in Society in which we live, it painfully has to take steps in order to halt the downward trend of long accepted values. In all humility, therefore, it is noted with regret that the conscience of this Court has

been deeply hurt by the commission of such an act by a brother Advocate.

(6) Another fact convassed by Mr, Siddiqui that Mr. Saini had been giving discharges to some debtors of the father of Mr. Siddiqui would not be a relevant consideration in this matter. If Mr. Saini is guilty of any such acts of commission or omission, the remedy of Mr. Siddiqui lies somewhere else and not in these proceedings before this Court. ***The only point involved in these proceedings is as to whether Mr. Siddiqui is guilty of tampering with the records of this Court for deriving and unlawful gain. This fact is prima facie found to be established as discussed earlier.***

(7) ***It now remains to be seen as to what offences prima fade appear to have been committed by Mr. Siddiqui. He seems to be guilty firstly under Section 193 of the Code. The government of the charge under this Section is against one who fabricates false evidence for the purpose of being used in. any stage of the Judicial proceedings. Prima face there is no doubt that this second revision petition had been filed by Mr. Siddiqui and it was during pendency of the***

judicial proceedings in the second revision petition that fabrication of false evidence by substituting one page for the other prima fade appears to have been committed by Mr. Siddiqui. He is also shown to have issued false certificate of non filing of the revision petition in the Supreme Court India or in the High Court relating to a very material fact. Under the relevant rules he is required to issue such certificate of non filing. Prima fade he appears to have appended this false certificate knowing or believing that such certificate is false in a material respect. This covers his action under Section 197 of the Code also. He also used this certificate as true knowing it to be false. It was only on the basis of this certificate that the revision petition was admitted by me on the point of sentence. If he had disclosed the true fact of earlier having filed a criminal revision petition, I would not at all have been inclined to entertain this revision petition. Therefore, his action is also covered under Section 198 of the Code prima fade. This certificate can also be called a declaration. Therefore, it will also fall

within the mischief of Sections 199 and 200 of the Code.''

30.8. In **H.S. Bedi Vs. National Highway Authority of India 2016 SCC OnLine Del 432** it is ruled that;

> ***"6.11*** *In* ***National Insurance Company Limited v. Babloo Pal. (1999) ACJ 388****, two persons impersonated themselves as son and daughter of the deceased victim of a road accident to claim compensation under Section 166 of the Motor Vehicles Act, 1988. The Madhya Pradesh High Court directed the Claims Tribunal to conduct an inquiry into the matter. From the inquiry report, it was clear that the claimants were not the son and daughter of the deceased and had impersonated to claim compensation.* ***The High Court directed the Registrar to initiate proceeding for prosecution of the two litigants and their lawyer under Section 207, 209, 419 and 420 of the Indian Penal Code****. Relevant portion of the judgment is reported hereunder : -*
>
> > *"5.* ***After considering objection and the report of the Enquiry Officer, it is apparent that Babloo Pal had impersonated himself as son of deceased Patiram, whereas lady***

Sukhi, sister of Babloo Pal had impersonated herself as Sukhi, though her name is Ramko.

6. Babloo Pal has moved an application, after the award, in this inquiry, claiming himself to be adopted son of the deceased Patiram. These facts were not mentioned by him in the application for claim filed under Section 166 of Motor Vehicles Act. From entire proceedings, it is apparent that plea of adoption is an after-thought. The adoption was also not proved by Babloo Pal. There is no evidence on record to demonstrate that there was any ceremony of give and take of Babloo Pal by natural parent to adoptive father. The Claims Tribunal has rightly held that Babloo Pal was not adopted son and he had misrepresented before the Tribunal in getting the claim. Similar finding is recorded that claimant Sukhi in the application is not Sukhi but her name is Ramko and she had impersonated herself as Sukhi. The court also found that complainant is the real daughter of Patiram. The conduct of Mr. N.D. Singhal, Advocate, was also considered and from going through the conduct of Mr. N.D.

Singhal, it appears that Mr. N.D. Singhal himself was also involved in playing fraud with the court, and was in a position to get an award in favour of fictitious persons.

7. It is really distressing that ***an advocate, who is an officer of the court, has neglected to perform his duty. It is the duty of an advocate to be fair in the court and should apprise the court about the correct facts. He being officer of the court is duty bound to assist the court in administration of justice, but the act of Mr. N.D. Singhal was unbecoming of an advocate and he has denied the real claimant of her legitimate right in receiving compensation****. The objections of claimants and of Mr. N.D. Singhal are considered. After considering the entire evidence on record, we are of the opinion that the findings recorded by the Claims Tribunal are proper, which have been recorded after appreciating the evidence on record. Therefore, the report is accepted. As ordered in M.C.C. No. 302 of 1996,* ***the Registrar is directed to report in order to initiate proceedings for prosecution against Babloo Pal, Ramko (who impersonated***

herself as Sukhi) and Mr. N.D. Singhal, Advocate under the provisions of Sections 207, 209, 419 and 420 of Indian Penal Code. It is further ordered that notice of criminal contempt for playing fraud upon the court be also issued to Mr. N.D. Singhal, Advocate, Babloo Pal and Ramko by registering separate proceeding and for their appearance in the court on 24.10.1997.

8. The grave misconduct is committed by Mr. N.D. Singhal, Advocate. Therefore, a copy of this order be sent to the State Bar Council at Jabalpur for appropriate action against Mr. N.D. Singhal, Advocate.

9. The amount of compensation paid to Babloo Pal and Ramko be recovered from them. Since Mr. N.D. Singhal, Advocate, was instrumental in getting the fraudulent claim, he is also jointly and severally liable to refund the amount of compensation received by the claimants. It is, therefore, ordered that the compensation with interest paid to aforesaid persons, shall be recovered from Babloo Pal, Ramko and Mr. N.D. Singhal, jointly and severally with interest at the rate

of 14 per cent per annum from the date of payment till realization."

30.9. In **M. Veerabhadra Rao v. Tek Chand, 1984 Supp SCC 571,** it is ruled as under;

***"23.** Provisions contained in Chapter II in Part VI of the Bar Council of India Rules of 1975 prescribe "Standards of Professional Conduct and Etiquette". In the preamble to this part, it is stated that **"an advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate".** There follows enumeration of the conduct expected of a member of the profession. It is however, made clear that the rules in Chapter II contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned. It inter alia includes that an advocate shall not act on the instructions of any person other than his client or authorised agent. **If Mulchand followed the respondent as admitted by**

<u>the appellant to his office and if Mulchand presented the forged documents to the Income Tax Officer, one can say that the appellant has acted to the detriment of his client at the instance of an outsider whose interest was detrimental to his client.</u>

[…]

One can legitimately expect an advocate of 10 years' standing to know that under Rule 34, the appellant was not entitled to attest an affidavit which includes administration of oath which was likely to be used in a proceeding other than a judicial proceeding and yet he pretended to act in his assumed capacity, arrogated to himself the jurisdiction which he did not possess and attested the affidavit in the name of someone whom he knew personally and who was not present before him personally and successfully misled the Income Tax Officer to issue the income-tax clearance certificate. ***<u>Add to this that he made a blatantly false statement in the proceedings of disciplinary enquiry that the respondent had appeared before him and admitted his signature. This is not only a false statement but it is false to his knowledge. If this is not professional misconduct, it would be time to wind up this jurisdiction.</u>***

32. *Accordingly this appeal fails and is dismissed and the punishment of reprimand imposed upon the appellant is varied and he is suspended from practice for a period of five years i.e. up to and inclusive of October 31, 1989. The appellant shall pay the costs of the respondent quantified at Rs 3000."*

30.10. In **K. Rama Reddy Vs. State of A. P. 1997 SCC OnLine AP 1210,** the advocates were prosecuted under perjury for committing forgery to get favourable order for their clients.

30.11. In **P.V.R.S. Manikumar v. Krishna Reddy, 1999 SCC OnLine Mad 107**, it is ruled as under;

"28. *The counsel is endowed with noble duties. He has not only got duty towards his client, but also to his colleague. He has not only got duty towards the court, but also towards society. Therefore, he should see the case of his client conducted fairly and honestly. The advocate are responsible to the court for the fair and honest conduct of the case. In matters of this kind, they are bound to exercise an independent judgment and the conduct themselves with a sense of personal responsibility.*

29. *According to the Supreme Court in Hari Shankar Rastogi v. Girdhari Sharma and Another, AIR 1978 SC 1019, the Bar is not different from the Bench. They are the two sides of the same coin. Bar is an extension of the system of justice ; lawyer is an officer of the court. He is a master of an expertise, but more than that, kindful to the court and governed by high ethics. The success of judicial process often depends on the service of the legal profession.*

30. Normally, in dealing with the application for quashing etc., while passing interim orders, the court naturally takes the facts and grounds contained in the petition at their face value and the oral submission made by the counsel before this Court. Therefore, it may not be fair and proper on the part of the counsel to betray the confidence of the court by making statements which are misleading.

31. *Mr. N.R. Elango, the learned Government Advocate, who was asked to assist in this matter as amicus curiae, has cited the judgment of the Supreme Court in P.D. Khandekar v. Bar Council of Maharashtra, AIR 1984 SC 110, wherein it has been held that the members of the legal procession should stand free from suspicion and that nothing*

should be done by any member of the legal fraternity which might tend to lessen any degree of confidence of the public in the fidelity, honesty and integrity of the profession.

32. *As the Apex Court would point out, giving a wrong legal advice cannot be said to be unethical, but giving an improper legal advice cannot be said to be ethical.* ***When a client consults with a lawyer for his advice, the client relies upon his requisite experience, skill and knowledge as a counsel. In such a situation, the counsel is expected to give proper and dispassionate legal advice to the client for the protection of his interests.****"*

31. Request: - It is therefore humbly requested that this Hon'ble Court may pleased to;

(a) Take cognizance of false, unfounded, scandalous scurrilous, reckless, contemptuous and gross defamatory allegations made against Hon'ble Senior Division Civil Judge by the Petitioners, in their memo of petition which is sworn on affidavit;

(b) To take action as per Section 379 of BNSS and Contempt, as per law laid

down by the Hon'ble Supreme Court in the case of **Municipal Council Tikamgarh v. Matsya Udyog Sahkari Samiti, 2022 SCC OnLine SC 1900, ABCD v. Union of India, (2020) 2 SCC 52, Dr. Sarvapalli Radhakrishnan vs Union of India (2019) 14 SCC 761 , New Delhi Municipal Council v. Prominent Hotels Limited, 2015 SCC OnLine Del 11910 and Godrej &Boyce Manufacturing Co. Pvt. Ltd. v. Union of India,1991 SCC OnLine Bom 496.**

(c) Impose heavy cost as per sec 381 of BNS upon the Petitioners by quantifying it in proportion with the valuation of the Suit, which is Rs. 10,000 Crores, by applying the ratio laid down in **Dr. Sarvapalli Radhakrishnan vs Union of India (2019) 14 SCC 761** & **New Delhi Municipal Council v. Prominent Hotels Limited, 2015 SCC OnLine Del 11910;**

(d) Order non-baillable warrant of arrest against accused as per sec. 379 of BNS as per law and ratio laid down in the case of **Arvinder Singh Vs UOI (1998) 6SCC 352**;

(e) Direct Registrar of this Hon'ble Court to file a complaint against the Petitioners Serum Institute of India Pvt. Ltd., Mr. Adar Poonawalla, Mr. Vivek Pradhan & others under relevant sections of BNSS applicable for filing false and misleading affidavit to obtain favourable order.

(f) Record a specific findings about the role, duty, responsibility and complicity of advocates for Petitioners about their act of commission & omission in filling such false & frivolous petition by suppression of material facts on affidavit and take action against them as per law laid down in **Lal Bahadur Gautam Vs. State of U.P. (2019) 6 SCC 441 & A Vakil: In re, 1926 SCC OnLine All**

365, M. Veerbhadra Rao Vs Tek Chand AIR 1985 SC 28, ;

(g) Pass any other order which this Hon'ble Court deems fit & proper under the facts and circumstances of this case.

_____

APPLICANT

16.08.2024

NAGPUR/AKOLA

SOLEMN AFFIRMATION

I, Prakash S/o Gopalrao Pohare, Aged about 70 yrs, Occ. Editor-in-Chief, Dainik Deshonnati, R/o Nishant Tower, 3rd Floor, M.G. Road, Akola, do hereby take an oath and state on solemn affirmation that the contents of above application in paras 1 to are drafted by my counsel as per my instructions. The contents have been readover and explained to me in vernacular i.e. in Marathi which I admit them to be true and correct to my personal knowledge, belief and information.

Hence, verified and signed this ____ day of August, 2024 at Nagpur.

DEPONENT

I know & identify the deponent

[C.D. Rohankar]

Advocate