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IN THE HIGH COURT OF DELHI AT NEW DELHI
C.C.P.(CRL.)NO.6/2007

Date of pronouncement 14th September, 2009

LALIT MADHAN Petitioner
Through : Mr.Vijay Aggarwal and Mr.Rakesh
Mukhija, Advocates

Versus
P.C. SRIVASTAVA Respondent
Through : Mr.Tripurari Ray, Mr.Ravi Shankar
and Mr.Aashutosh Dubey, Advs.

CORAM:

HON'BLE MR. JUSTICE B.N. CHATURVEDI
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **Yes**
2. To be referred to the Reporter or not? **Yes**
3. Whether the Judgment should be reported in the Digest? **Yes**

G.S. SISTANI, J.

CRL.M.A.No.5495/2008

1. Present application has been filed by the respondent/contemnor for recalling the judgment dated 10.4.2008 by virtue of which this Court had allowed the contempt petition and held the respondent guilty of criminal Contempt of Court and the matter was adjourned for hearing on the aspect of quantum of punishment. Counsel for respondent /applicant submits that respondent has been convicted for committing contempt on the basis of an alleged letter dated 5.5.2006, which is contrary to section 20 of the Contempt of Courts Act, and the proceedings are barred by limitation. It has also been contended that the judgment dated 10.4.2008 is in fact a nullity in the eyes of law, as no rules for proceedings have been framed by the Delhi High

Court, as per section 23 of the Contempt of Courts Act, 1971. Counsel for respondent –applicant further contended that no evidence was recorded nor specimen signatures of respondent /applicant were taken to arrive at an opinion that the impugned letter was actually signed and sent by the contemnor. It is further contended that this Court had failed to enquire as to how the petitioner received letters dated 5.5.2006 and 1.10.2003, when they were not addressed to him.

2. Elaborating his submissions further, it is contended that the judgment is a nullity in the eyes of law, being based on a forged document i.e. letter dated 5.5.2006 and the fact of forgery could not be investigated, as there is no procedure enacted by the High Court on its administrative side for trial of cases of criminal contempt, thus in the absence of rules in this behalf, this Court had no jurisdiction to proceed to hear or punish for contempt. Counsel further contends that a judgment which has been rendered on the basis of a forged document i.e. letter dated 5.5.2006, is a nullity in the eyes of law and thus such a judgment cannot be enforced, as it is contrary to and in violation of fundamental rights. In support of his submissions, he has placed reliance on **Kiran Singh Vs. Chaman Paswan** 1955 (1) SCR 117, **S.P. Chengalvaraya (Dead thr. LR's) Vs. Jagannath (dead by LR's) & Ors.** 1994 (1) SCC 1 and **S.Nagraj Vs. State of Karnataka** (1993) Suppl. 4 SCC 495, paras 36 and 37.
3. It is also submitted that if a judgment which is a nullity is challenged at the stage of enforcement, this Hon'ble Court

should refuse to enforce the same and recall its order (ex-debito-justitie).

4. Counsel for the applicant/contemnor also submits that the judgment rendered by this court is in violation of Article 21 of the Constitution of India and void-ab-initio, therefore, cannot be enforced and any violation of law of procedure amounts to violation to Article 21 of the Constitution of India. Reliance has also been placed on **Maneka Gandhi Vs. U.O.I.** 1978 (1) SCC 248 @ 401 para 219 and **Attorney General Vs. Lachma Devi** 1989 Suppl. (1) SCC 264. It is also submitted that it is settled principle of administration of justice that mistake of court should not prejudice any litigant and therefore it is in the interest of justice that this Court may correct its mistake nunc-protanc i.e. by placing the respondent in the same position as was existing prior to the mistake of the Court, reliance has been placed on (1993) Suppl. 4 SCC 595.
5. Counsel for respondent-applicant also submits that in the absence of Rules framed by this court for trial of cases of criminal contempt as required under Article 21 of the Constitution of India read with section 23 of the Contempt of Courts Act, 1971 this Court has no jurisdiction to exercise its power to punish for criminal contempt of court itself.
6. It is also contended that Article 21 of the Constitution of India creates a two-fold duty i.e. to establish a procedure for trial of cases in which any person is liable to be deprived of his right or liberty. This duty is on the legislatures or executive and to follow the procedure so established by law and is the duty of the

judiciary. In support of this submission he placed reliance on **A.K. Gopalan Vs. The State** 1950 SCR 88 195 and also contended that High Courts and the Supreme Court are constituted as the protector and enforcers of fundamental rights, therefore it is their constitutional duty to enforce the fundamental rights. Thus the High Court or the Supreme Court would not knowingly enforce an order which is contrary to a fundamental right or which has the effect of violating a fundamental right. In support of this plea, reliance has been placed on **Premchand Garg Vs. Excise Commissioner U.P.** (1963) Suppl. 1 SCR 885. It is also submitted that the Courts have no inherent power to violate a fundamental right. Article 21 of the Constitution of India is the ground-norms of all judicial process. Thus the power of Article 215 of the Constitution of India to punish for its Contempt is coupled with the duty to act according to the procedure established by law. For this a procedure has to be established by law. If no procedure is established by law the High Court lacks power/ jurisdiction to proceed as the High Court would be proceeding on the basis of ad-hoc procedure. In support of this submission reliance has been placed on 1950 SCR 88 and (1978) 1 SCC 248.

7. Counsel for applicant-contemnor submits that it is in this context that section 23 of the Contempt of Court Act, 1971 has delegated the power to the High Court to frame Rules for Trial of cases of criminal Contempt on its administrative side. In the absence of a procedure established by law the power to punish for its Contempt is like a automobile without an engine or ammunition

without a gun. It is submitted that Articles 20, 21 and 22 of the Constitution of India are rights guaranteed against the judiciary and therefore, if the same are violated by the Courts order, the same would be void-ab-initio by the force of Article 13(2) of the Constitution of India and unenforceable.

8. It is also submitted that sections 15 and 17 of the Contempt of Courts Act, 1971 do not lay down the entire procedure for trial of cases of contempt by the High Court. They only provide for broad outlines or the policy on the basis of which Rules relating to procedure for trial of contempt cases is to be framed. He also submits that the manner in which and the procedure according to which such evidence is to be taken is not provided under the Contempt of Courts Act, 1971. It is this further procedure which is to be provided by framing Rules under section 23 of the Contempt of Courts Act, 1971. This further procedure is the procedure for trial where facts are disputed. The manner of proof of allegations and defence of the respondent needs to be provided by Rules. And it is the only safeguard to ensure a fair trial in an orderly manner and in accordance with the principles of natural justice. It is a settled principle of interpretation of statutes that the legislature inserted every part thereof for a purpose and the intention is that every part of the statute should have effect. Reliance has also been placed on (1997) 3 SCC 511 and (2002) 2 SCC 135.
9. Counsel for respondent has filed written submissions as well. Counsel for the petitioner/non-applicant has opposed this application and raised a *preliminary* objection with regard to the

maintainability of this application, as no grounds are made out for recall of the judgment dated 10.4.2008 which would amount to review.

10. Counsel for non-applicant/ petitioner submits that section 23 of the Contempt of Courts Act is not a mandatory provision and further this Court has followed the principles of natural justice before passing the final order, as show cause notice was issued, the applicant was granted an opportunity to file his reply and thereafter arguments were addressed. It is next contended that during the course of hearing of the Contempt Petition neither any objection was raised with regard to non-framing of rules by the High court nor any grievance was made with regard to the procedure adopted by this Court.
11. We have heard counsel for the parties and given our thoughtful consideration to the matter.
12. Section 23, Contempt of Courts Act, 1971, deals with power of Supreme Court and the High Court to make rules. Section 23 Contempt of Courts Act, 1971, reads as under:-

"23. Power of Supreme Court and High Courts to make rules.-The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure."
13. Bare reading of Section 23, Contempt of Courts Act, 1971, would show that power to make rules is not mandatory, but the contempt jurisdiction has to be exercised in accordance with procedure prescribed by law.
14. In the case of **Dr. L.P. Misra Vs. State of U.P.**, reported at 1998 (7) SCC 379, the Supreme Court of India had set aside the order

passed by a Division Bench of Allahabad High Court on the ground of non-compliance with the procedure prescribed under Allahabad High Court Rules. In the case of **Dr. L.P. Misra** (supra) certain advocates had manhandled one of the Judges of the Division Bench of Allahabad High Court and used abusive language against the other. The judges retired to the Chamber of one of them and the advocates entered the Chamber and repeated abusive language and extended threats. After sometime the Court re-assembled and in exercise of its power under Article 215 of the Constitution of India passed an order holding the advocates guilty of contempt of court both for interfering with the administration of justice as well as scandalising the Court and forthwith sentenced them with imprisonment for one month and fine of Rs.5,000/-. This order was assailed before the Supreme Court of India principally on the ground that the Court while passing the order did not follow the procedure prescribed by law. It was urged before the Supreme Court of India that the Court had failed to give a reasonable opportunity to the lawyers of being heard. The Court, it was argued, could not have passed the impugned order on the same day after it re-assembled without issuing a show cause notice or giving an opportunity to the appellants to explain the alleged contemptuous conduct. While remanding the matter back, the Supreme Court held as under:-

“12. After hearing learned counsel for the parties and after going through the materials placed on record, we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be

exercised in accordance with the procedure prescribed by law. It is in these circumstances the impugned order cannot be sustained."

15. In the case of **Daroga Singh & Others Vs. B.K. Pandey**, reported at (2004) 5 Supreme Court Cases 26, the Supreme Court has held that criminal contempt is an offence *sui generis* and hence procedure adopted under common law or statute has always been summary and High Court can adopt its own procedure since need is for an expeditious disposal. The Court has also held that the procedure must be fair and contemnor should be aware about the charges against him and he should be given a fair and reasonable opportunity to meet them. It would be useful to reproduce paras 31 to 37:-

"31. It has repeatedly been held by this Court [Vinay Chandra Mishra, In re] that the procedure prescribed either under the Code of Criminal Procedure or under the Evidence Act is not attracted to the proceedings initiated under Section 15 of the Contempt of Courts Act. The High Court can deal with such matters summarily and adopt its own procedure. The only caution that has to be observed by the Court in exercising this inherent power of summary procedure is that the procedure followed must be fair and the contemnors are made aware of the charges levelled against them and given a fair and reasonable opportunity. Having regard to the fact that contempt proceedings are to be decided expeditiously in a summary manner the convictions have been recorded without extending the opportunity to the contemnors to cross-examine those who had deposed against them on affidavits. Though the procedure adopted in this case was summary but adequate safeguards were taken to protect the contemnors' interest. The contemnors were issued notices apprising them of the specific allegations made against them. They were given an opportunity to counter the allegations by filing their counter-affidavits and additional counter/supplementary affidavits as per their request. They were also given opportunity to file affidavits of any other persons which they did. They were given opportunities to produce any other material in their defence which they did not do. Most of the contemnors had taken the plea that at the relevant time they were on duty in their respective police stations though in the same town. They also attached copies of station diaries and duty chart in support of their alibi. The High Court did not accept the plea of alibi as all these

papers had been prepared by the contemnors themselves and none of the superior officers had supported such a plea. The evidence produced by the respondents was rejected in the face of the reports made by the Additional District and Sessions Judge, Director General of Police coupled with affidavits of Mr Barai, the Additional District and Sessions Judge, two court officials and affidavits of some of the lawyers who had witnessed the occurrence.

32. The contempt proceedings have to be decided in a summary manner. The judge has to remain in full control of the hearing of the case and immediate action is required to be taken to make it effective and deterrent. Immediate steps are required to be taken to restore order as early and quickly as possible. Dragging the proceedings unnecessarily would impede the speed and efficiency with which justice has to be administered. This Court while considering all these aspects held in Vinay Chandra Mishra, In re⁷ (the alleged contemner) that the criminal contempt no doubt amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law in the country has always been summary. It was observed that the need was for taking speedy action and to put the judge in full control of the hearing. It was emphasised that immediate steps were required to be taken to restore order in the court proceedings as quickly as possible. To quote from the above-referred-to case: (SCC pp. 609-10, para 26)

“However, the fact that the process is summary does not mean that the procedural requirement viz. that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of natural justice viz. nemo judex in sua causa since the prosecution is not aimed at protecting the judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the court for a time and indirectly impedes the speed and efficiency

with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the court is commended and not faulted."

33. In the present case the High Court had decided to proceed with the contempt proceedings in a summary manner. Due opportunity was afforded to all the contemnors and after verifying and cross-checking the material available before it, coming from different reliable sources the High Court convicted only nine persons out of twenty-six persons arrayed as contemnors before it. The High Court took due care to ascertain the identity of the contemnors by cross-checking with the affidavits filed by the different persons. It is also based on the independent reports submitted by the Director General of Police and Superintendent of Police. We do not find any fault in the procedure adopted by the High Court in conducting the proceedings in the present case. For the survival of the rule of law the orders of the courts have to be obeyed and continue to be obeyed unless overturned, modified or stayed by the appellate or revisional courts. The court does not have any agency of its own to enforce its orders. The executive authority of the State has to come to the aid of the party seeking implementation of the court orders. The might of the State must stand behind the court orders for the survival of the rule of the court in the country. Incidents which undermine the dignity of the courts should be condemned and dealt with swiftly. When a judge is attacked and assaulted in his courtroom and chambers by persons on whose shoulders lay the obligation of maintaining law and order and protecting the citizen against any unlawful act, it needs to be condemned in the severest of terms. If the judiciary has to perform its duties and functions in a fair and free manner, the dignity and the authority of the courts has to be respected and maintained at all stages and by all concerned failing which the very constitutional scheme and public faith in the judiciary runs the risk of being lost.

34. It was urged with some vehemence that principles of natural justice were not observed inasmuch as opportunity to cross-examine the witnesses who had deposed on affidavits is concerned, it may be stated that no such opportunity was asked for in the High Court at trial stage. It was for them to ask for such an opportunity to cross-examine the parties who had deposed against them on affidavit. Since the contemnors did not avail of the opportunity at the trial stage, the plea of non-observance of principles of natural justice is not tenable. The appellants were made aware of the procedure which was adopted by the High Court. They were given full opportunity to put forth their

point of view. Each of them filed detailed affidavits along with evidence in support thereof. They had attached their duty charts showing that they could not have been present at the place of occurrence as they were on duty somewhere else. The High Court has considered and discussed the entire evidence present on the record before recording the conviction. The contention that the affidavits of independent witnesses were not considered cannot be accepted. Only those were convicted against whom corroboration of the fact of their presence and participation in the incident was confirmed from more than one source.

35. Plea that reasonable and adequate opportunity was not afforded to the appellants is equally untenable. We find from the record that all the materials (affidavits, show-cause notice, etc.) which were brought on record were properly served on the learned advocates appearing for the contemnors. The reports submitted by the Vth Additional Sessions Judge, District Judge, affidavit of Shri Barai and his staff, namely, R. Das and B. Sharma and the other affidavits of the advocates who had seen the occurrence and the reports submitted by the Director General of Police and the Superintendent of Police were given to the learned advocates who were appearing for the contemnors in the High Court. Statements of A. Natarajan, the then SP, Harihar Choudhary, the then Deputy Superintendent of Police, Ranjit Pandey, the then Sergeant Major and Shashi Lata Singh, the then SI were recorded by the High Court in the presence of all the lawyers. The Registry of the High Court was directed to keep their statements in a sealed cover. The contemnors were permitted to file affidavits and produce any other material in support of the same. They were also permitted to file affidavits of any other person supporting their version. They were all taken on record. After affording due opportunity of hearing to the counsel appearing for the contemnors, the High Court recorded the order of conviction. Thus the appellants were given the evidence which had come on the record. They were given an opportunity to controvert the allegations made against them and produce evidence in support thereof. Counsel appearing for the contemnors were satisfied with the opportunity provided to them by the High Court. Plea that reasonable opportunity was not afforded to the contemnors was not raised before the High Court. We are of the opinion that due reasonable and adequate opportunity was afforded to the appellants to defend themselves and put forth their point of view.

36. The High Court has taken into consideration the entire evidence and material available on the record including the evidence produced by the contemnors. It was not necessary for the High Court to discuss each and every affidavit individually. Out of 26 persons named only 9 have been convicted by the High Court. Since the procedure adopted was summary the High Court has taken care not to

convict a person unless direct evidence and/or circumstances with sufficient corroborative material doubtless fastening guilt on the contemnors who have been punished was available. The High Court found only those contemnors guilty against whom the element of doubt was completely eliminated. Affidavit evidence if based on hearsay has been excluded. Contemnors against whom there was single identification were also given the benefit of doubt. The version put forth by the appellants was not accepted as it fell short of proof. The High Court has considered the entire evidence on the record while recording a finding of guilt against the appellants. Thus the plea that the High Court did not take into consideration the affidavits of independent witnesses is not tenable.

37. Learned counsel for the appellants tried to point out that the appellants were not present at the scene of incident as the appellants were on duty elsewhere. He made reference to their duty charts which had been placed on record. We find that the presence of S/Shri K.D. Choudhary, Ranjit Pandey, Ms Shashi Lata Singh, K.B. Singh, Gurubachan Singh, Daroga Singh, Prem Kumar Singh, Rajib Ranjan Bhagat and C.D. Jha, the appellants herein, has been confirmed by several persons. The plea of alibi taken by the appellants has been negatived by the High Court as the duty charts had been prepared by these officers themselves. None of the superior officers supported their versions. Presence of most of the appellants had been confirmed by the Vth Additional Sessions Judge, Shri Barai, the other two court officials, advocates, the reports of the Director General of Police and the Superintendent of Police. None of these has any interest in falsely implicating any of the appellants."

16. In the case of **Daroga Singh & Others (Supra)** the Supreme Court has recognized the fact that the contempt proceedings have to be decided in a summary manner and immediate action is required to be taken to make the proceedings effective and deterrent. It has also been recognized that dragging the proceedings unnecessary would impede the speed and efficiency with which justice has to be administered. The Court has also recognized the fact that summary procedure would not mean that the Court should not follow the procedural requirements such as opportunity of meeting the charge and other principles of natural

justice. The contemnor should be given a full opportunity to defend himself.

17. It is evident from the express words of the Section that Rules may be framed by the Supreme Court of India or the High Court for matters relating to procedure. We find force in the submission of learned counsel for the respondent-applicant that no person can be deprived of his life or liberty except in accordance with the procedure established by law. Thus, it would not be necessary for us to refer to the judgments relied upon by learned counsel for the respondent-applicant in support of this submission. The questions which arise before this Court are (i) whether in the absence of rules framed by this Court, any prejudice has been caused to the rights of the applicant/ contemnor? (ii) whether this Court had followed the principles of natural justice and a fair opportunity was granted to the applicant/ contemnor to defend himself; and (iii) whether proper opportunity was granted to the applicant/ contemnor to meet the charge against him.
18. In dealing with a criminal contempt the liberty of a person may be in jeopardy. Thus, it is imperative for courts to strictly comply with all the procedural requirements of the Act as well as rules, if any, framed under Section 23, however, we find no force in the submission of learned counsel for the petitioner that in the absence of rules framed by Delhi High Court the judgment rendered would be a nullity.
19. Applying the aforesaid principles laid down by the Supreme Court of India to the facts of the present case, we find that there was no failure of natural justice in deciding the contempt petition. Being

conscious of the fact that the contempt of court is of a criminal nature the principles of justice and fair play are to be followed. The alleged contemnor must know of the facts which have been alleged against him, a show cause notice should be issued and opportunity to file a reply and thereafter a hearing is a must.

20. In this case show cause notice was issued to the respondent on 30.04.2007. On the next date of hearing i.e. 17.07.2007, the respondent-contemnor was represented through counsel, who submitted that he has filed a counter affidavit. Thereafter the petitioner filed his rejoinder. Matter was adjourned to 12.09.2007, 11.10.2007, 15.11.2007 and after hearing arguments the matter was finally reserved on 19.02.2008. After the judgment was delivered and respondent was found guilty of criminal contempt on 10.04.2008, matter was adjourned to 25.04.2008 for hearing on the aspect of quantum of punishment. It may be noticed that in the counter affidavit, no objection was taken that in the absence of rules framed this Court is not competent to hear the matter, it is only after the final order which was passed that the present application was filed and it has been argued before us that in the absence of rules the proceedings initiated and the judgment passed is a nullity.

21. Purpose of framing of rules is to formulate a procedure, however, the rules cannot be inconsistent with the provisions of the Act. We find that the petitioner was issued a show cause notice, copy of the petition was received by him, thus, he was aware of the charge against him. Time was granted to file counter affidavit and arguments were heard on his behalf. We, thus, find that this Court

had granted fair and reasonable opportunity to the respondent to defend himself. This Court has followed the principles of natural justice and fair play. Learned counsel for the applicant/contemnor in any case has not been able to show the prejudice caused to the respondent in the absence of rules framed in this Court.

22. As far as the submissions made by counsel for applicant that the letter dated 5.5.2006 subject matter of the contempt petition is a forged document is concerned, we may recall that this submission of the applicant has been dealt with by this Court in paragraphs 17, 23, 25, 29 & 30 of the judgment dated 10.4.2008. We find no reason to recall our judgment dated 10.4.2008 on the submissions made by the counsel for the applicant, which has already been dealt with.

23. Thus, we find no merit in this application and the same is accordingly dismissed.

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24. We have on more than one occasions called upon learned counsel for the respondent to address this Court on the aspect of quantum of punishment, however, learned counsel did not address any arguments on the ground that the order itself is a nullity, and thus, refused to address this Court.

25. It has been repeatedly held that rule of law is the foundation of a democratic society and the judiciary is the guardian of Rule of Law. The need of justification for vesting extraordinary powers in the Court to punish for contempt has been discussed in detail by

the Supreme Court of India in the case of **IN RE: VINAY CHANDRA MISHRA**, reported at (1995) 2 SCC 584. Para 39 of the judgement is reproduced below:-

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

26. During the course of hearing of this matter a letter was received by one of us [Hon'ble Mr. Justice B.N. Chaturvedi] at the residential

address. When the matter came up for hearing before this Court on 11.7.2008, we confronted the applicant/contemnor with copies of these letters sent, and thereafter passed the following order:-

"% 11.7.2008

*Present: Mr. Vijay Aggarwal with Mr. Rajesh Mukhija,
Advs. for the petitioner.
Mr. Tripurari Ray, Mr. C.L. Sahu, Mr.
Aashutosh Dubey, Mr. Ravi Shankar Kumar,
Mr. R.S. Massey Verma,
Mr. Nitish Massey, Ms. Seema Sharma,
Mr. Amit Kumar and Mr. Yogesh Kumar,
Advs. for the respondent.*

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Copies of three letters addressed by the contemnor to the Hon'ble President of India, Hon'ble the Chief Justice of India and President of Supreme Court Bar Association were received by post by one of us (B.N. Chaturvedi, J.) at residence. On being confronted if the copies of these letters were so sent by post, the contemnor though admits that the letters, copies of which have been shown to him today in the Court, are written by him, he denies having sent the same to one of us (B.N. Chaturvedi, J.). Let the copies of these letters be kept on record.

At request by learned counsel for the contemnor, adjourned to 25th July, 2008, at 2.00 p.m.

B.N. CHATURVEDI, J.

G.S.SISTANI, J.

*July 11, 2008
'bg'"*

27. The letter addressed to the Chief Justice of India is reproduced below:-

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**TOP SECRET
MOST URGENT / SPEED POST**

*To
Hon'ble Justice K.G. Balakrishnan,
Chief Justice of India,*

*Supreme Court,
New Delhi.*

Your Honour,

Kindly refer to my earlier letter along with enclosure of letter to her Excellency Shrimati Pratibha Patil, President of India about corruption in Delhi High Court.

I am a heart patient and have already had a Bypass Surgery. I plan to go to the USA for my medical check-up.

It will not be improper to inform you that there are judges in Delhi High Court who are fully controlled by notorious criminals, Builders & Land Mafia. I have become a victim of one such and am being harassed by judges of Delhi High Court.

I shall be grateful if your honour direct Registrar General to hear me so that I can inform him the names of judges & the order passed by them.

Since judicial commission has yet to come, in the interest of justice I would request your honour to direct Central Bureau of Investigation to investigate the matter.

Thanking you,

Yours sincerely,

”

28. Along with the letter addressed to Chief Justice of India, letter addressed to the President of India as well as Union Home Minister, are also annexed with the present petition.
29. While passing the judgment dated 10.4.2008 we had made certain observations in para 34, which are reproduced below. Writing the aforesaid letter is yet another example of the compulsive and defiant attitude of the respondent/contemnor, however, we do not wish to comment any further with regard to the aforesaid letter.
30. In the case of L.D. Jaikwal vs. State of U.P. AIR 1984 SC 1374, the Court punished an Advocate scandalizing Special Judge before whom he appeared in corruption case and awarded a sentence. Again in the case of Pritam Pal vs. High Court of M.P., Jabalpur,

through Registrar AIR 1992 SC 904 (917) where libellous allegations were made against sitting Judges, the contemnor was punished with two months' imprisonment, as in these cases it was found that scandalizing or making libellous allegations against the Court or the Judges interferes with the administration of justice particularly when such allegations were motivated and were intended to show disrespect to the administration of justice and attempt was to clearly diminish the authority of process of 'Justice Delivery System'.

31. Again in the case of Ajay Kumar Pandey JT 1998 (6) SC 571, the Supreme Court in the case where a litigant and his lawyer had made reckless imputation against the impartiality of the Judges deciding the cases held as under:-

“Thus, it is now settled that abuses, attribution of motives, vituperative terrorism and scurrilous and indecent attacks on the impartiality of the judges in the pleadings, applications or other documents filed in the Court or otherwise published which have the tendency to scandalize and undermine the dignity of the court and the majesty of law amounts to criminal contempt of court.

32. In the case of **Courts on Its Motion Vs. Gulshan Bajwa** 2006 (3) JCC 2015, wherein it was observed that:

“Lawyer's profession gives dual status to its members where the advocates hold the status of 'Officer of the Court' there they also have the right to represent their clients with complete professional freedom and to the best of their ability. Conferment of such dual status necessarily imposes upon them, obligations of higher magnitude. They play a vital role in the dispensation of justice as they are an important link between the Bench and the public at large. This noble profession has long-standing traditions of service to masses not for money or gains alone but as their contribution to growth of a socialist welfare state. The profession is not only *pro bono publico* but is also aimed at *pro bono et malo*.

These objects can only be achieved if the legal fraternity discharges its obligations of adherence to its high standards and with due respect for the institution to which they belong. Making scandalous allegations against the system of which they are a part and against the dignity of the Court is not only contemptuous but *ex facie* would be unprofessional. The conduct of the contemnor in the present case impinges upon the dignity of judicial dispensation system as well as on the values of advocacy. It is unfortunate but it is a reality with serious repercussions, where the contemnor has not only harmed and undermined the dignity of law but has lowered the majesty of the Court even in the eye of public. In fact, the deeds of Mr. Gulshan Bajwa, Advocate, which are apparently acts of criminal contempt of grave nature, has revived in our mind the observations of the Supreme Court in the case of M.B.Sanghi, Advocate and Ors. vs. The High Court of Punjab and Haryana and Ors. 1991 (3) J.T. (S.C.) 318 where the Supreme Court, referred to the growing tendency of maligning the reputation of judicial officers by disgruntled element who fail to secure desired order while observing that it was high time that such tendency is nipped in the bud, said "such causes raise larger issues touching the independence of not only the concerned Judge, but the entire institution..... It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature, but also from those who are an integral part of the system.

The welfare of people is the supreme law. This enunciates adequately the idea of law. This could only be achieved when justice is administered lawfully, judiciously, without fear and without being hampered and throttled and this cannot be effective unless respect for it is fostered and maintained, said the Supreme Court in the case of Pritam Pal (*supra*). In this case also the Court was concerned with an Advocate practicing in the High Court who having failed to wrench decision in his favour scandalized the court by making libellous allegations against the Judge.

The acts of the contemnor in the present case are certainly one which not only hampered and throttled the administration of justice but also brought the Justice Delivery System into disrepute and disregard. Every indulgence given, every act of magnanimity shown by the Court was taken as a weakness of the judicial system by the contemnor and he committed repeated contemptuous acts of greater gravity with impunity. Condoning such repeated contemptuous

acts would amount to rewarding the persons with contemptuous behaviour, particularly when they are an integral part of the system, which obviously would have a devastating effect on the faith of the public in the institution of judiciary."

33. In the case of **Supreme Court Bar Association Vs. U.O.I.** 1998 (4) SCC 409, a Full Bench of the Supreme Court has laid down factors to be considered while awarding punishment for contempt. Paras 36 and 42 reads as under:-

"36. In deciding whether a contempt is serious enough to merit imprisonment, the court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate.

42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."

34. For the reasons stated in detail in our judgment dated 10.4.2008, the action of the contemnor is serious, we find that the contemnor has interfered with the administration of justice. In plethora of judgments, the Supreme Court has held that in case attempts are made to impair the justice delivery system and to interfere with the administration of justice and lowering the dignity of the Courts, generous approach is likely to be misunderstood as the weakness of the Courts. The case in hand falls under the category to be dealt sternly, so as to strengthen the confidence of public in justice delivery system. We find, in order to maintain rule of law and to ensure that the continued public confidence in the Administration of Justice which is sought to be eroded, this case to be a fit and appropriate one in the facts and circumstances, to impose a punishment.
35. Though painfully but unhesitantly, we hold Mr.P.C. Srivastava, Advocate, being guilty of charges of criminal contempt in C.C.P.(CRL.)NO.6/2007. We award him punishment of Simple Imprisonment for a period of one month with fine of Rs.2000/- and in default of payment of fine to undergo Simple Imprisonment for a further period of ten days.

**G.S.SISTANI
(JUDGE)**

**B.N.CHATURVEDI
(JUDGE)**

September 14, 2009
'msr/ssn'