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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 11.12.2012

Judgment delivered on: 04.01.2013

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CONT.CAS(C) 330/2012

MS. X & ANR

..... Petitioners

versus

SK SRIVASTAVA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioners: Mr Jayant K. Mehta & Mr Sukant Vikram, Advocates.

For the Respondents: Mr S.K. Gupta & Mr Vishnu Sharma, Adv. for Respondent no. 1.
Ms Maneesha Dhir & Ms Mithu Jain, Advocates for Respondent no.2.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. Since this is a case in which the petitioners have sought to invoke the contempt jurisdiction of this court under Article 215 of the Constitution of India read with the relevant provisions of the Contempt of Court Act, 1971 (in short the said Act), based on repeated and consistent acts of gross misdemeanor by the respondent, to which I would be making a reference hereinafter; I have thought it fit to obliterate the name of the petitioners, so as to avoid any unintended ignominy to the petitioners. Therefore, petitioner no. 1 would be referred to as Ms X, while petitioner no. 2 would be referred to as Ms. Y; though collectively they will be referred to as petitioners.

2. The present petition is filed seeking initiation of contempt proceedings against the respondent on account of his deliberate and willful violation of the order passed by a Single Judge of this court dated 29.09.2011 in Contempt Petition no. 360/2011. As a matter of fact, when the present contempt petition came up for hearing before me for the first time, on 31.07.2012, after noting the scurrilous nature of language used in a communication dated 02.04.2012, the respondent was injuncted from addressing any further communication to any third party in which there is a reference of like nature to petitioners, as in the letter dated 02.04.2012.

3. Subsequent events have revealed that the aforesaid order passed by me, has had no affect on the respondent. In order to fully appreciate the unrepentant and unremorseful conduct of the respondent, despite repeated orders passed by various judges of this Court, the following chronology of events have to be noted.

4. The respondent, apparently, seems to be aggrieved and perhaps holds the petitioners responsible for having him suspended from the service for a period of three years between the period 2007 to 2010 and nixing his chance of getting promoted to the post of Commissioner of Income tax. It is in this context that he has sent communications to the superior officers of the petitioners, time and again which are both uncivil and in poor taste, to say the least.

4.1 The first such public tirade by the respondent against the petitioners was launched in a petition filed by him before the Central Administrative Tribunal (in short the Tribunal), to assail the order of suspension dated 22.10.2009, issued by Director, AD-VI, CBDT. His petition before the Tribunal was numbered as OA No. 3661/2009. Apparently, the petition was allowed and the suspension order was quashed. In the said petition the

petitioners were arrayed as respondent nos. 11 and 12. In the said petition the respondent had made scurrilous remarks against the petitioners while accusing them of having caused a loss of Rs. 100 of crores to the exchequer by assisting a particular assessee.

5. The petitioners, being under the impression that the CBDT would engage a lawyer to defend the proceedings initiated by the respondent in the Tribunal, qua them as well, did not file their affidavits-in-reply. The Tribunal, having regard to the fact that the averments made in the petition and the allegations of personal malafides had gone untraversed, in view of the fact that there was no affidavit-in-reply filed by the petitioners in those proceedings, took them as having been admitted by the petitioners herein. These findings of the Tribunal, were subject matter of two orders dated 09.04.2010 and 31.05.2010.

6. The petitioners being aggrieved, filed a writ petition in this court, which was, numbered as WP(C) 6650/2010. A Division Bench of this court by order dated 07.10.2010, with the consent of the counsel for the respondent, directed that portions of the pleadings, which impugned the character of the petitioners, be expunged.

7. In the interregnum, it appears, the petitioners had filed complaints with the Income Tax Department, alleging sexual harassment by the respondent. Since, perceptibly, no action was taken on their complaint, the petitioners moved this court by way of a writ petition. The said writ petition was numbered as: WP(C) 1373/2011. In this petition the respondent herein, was impleaded as respondent no. 5. By an order dated 01.03.2011, this court issued the following direction qua the respondent:

"....4. In the meanwhile, the Respondent no. 5 is restrained from writing any letter similar to the one

annexed as Annexure P-13 to the paper book. Respondent nos. 2 to 4 are directed to take appropriate action to ensure that such communications are not distributed within the organization..."

8. It may be important, at this stage, to refer to the document marked as Annexure P-13. This document is a letter dated 27.01.2011, which is addressed to the Commissioner of Income Tax with copies to Chairman, CBDT of the Income Tax Department. As a matter of fact, on the same date, three separate communications to the same officer, i.e., CIT(Vigilance) CBDT were sent by the respondent, in which, amongst other allegations, there were also statements made qua the petitioners. The relevant extracts of the statement made by the respondent read as follows:

"5. It is brought on record that to wreak havoc upon me and to intimidate others into silence lest the illicit sexual intimacies between Sri B.K. Jha and Ms Y and Sri S.S. Rana and Ms X in organized prostitution wherein Sri B.K. Jha and Ms Y is practicing the illegal trade of prostitution is objected to and punished as per law, Sri B.K. Jha and his accomplices have fraudulently and incorrectly fabricated fake, forged, false and counterfeit records to allege that criminal cases are pending against me and hence promotion should be denied to me. To cover up such fraud and forgeries, Directorate of Income Tax (HRD) and Sri B.K. Jha, DIT (HRD) and Sri S.S. Rana DGIT(HRD) are willfully not handing over these records and are tampering with and manipulating those records. ...

....5. It is matter of record that having failed in their illegal activities to harass me, Sri P.K. Misra and his accomplices that includes Ms X (IRS 99005) and Ms Y (IRS 99010) and who have admitted to have illicit extra-marital sexual intimacies amongst them travelling together and staying in five Star Hotels and Guest Houses as man and wife, through Sri Shankar Das (IPA 1994 AGMUT, originally from DANIPS) filed two FIRs against me alleging that through my official reports submitted to my superiors in course of official work, I have enraged the

modesty of those two women, i.e., Ms X and Ms Y vide FIR no. 153 of 2009, P.S. Barakhamba Road, on 30.9.2009 and FIR No. 514 of 2009 P.S. R.K. Puram on 28.10.2009. Both the FIRs were malafidely filed with express intention of stalling the promotion of undersigned and is being used precisely for the same.

6. Both these women, i.e., Ms X and Ms Y apart from being in extra-marital sexual intimacies with Sri P.K. Misra and a large number of other male colleagues are also involved in organized prostitution and are prostitutes in terms of clause (f) of Section 2 of the Immoral Traffic Prevention Act, 1956. Besides, they nurse animus against me for having inspected their work while working as Addl. DIT(IT) and detected and reported theft and embezzlement of public money and public revenue in excess of Rs 10,000 crores like case of M/s NDTV Ltd. where Ms X embezzled Rs. 1,46,82,836/- by passing an illegal order u/s 143(1)(a) in A.Y. 2004-05 after initiation of proceedings u/s 143(2) on 28.3.2005 and issuing illegal refund from public exchequer and in lieu thereof accepting bribe and illegal gratification like all expenses paid free pleasure trip to Europe for self and family involving an estimated expenditure of about Rs. 1,00,00,000/- in April, 2005 whereof she left the country on 12.04.2005 by British Airways Flight No. 142 and returned back by British Airways flight no. 143 on 20.04.2005. Ms X has actively connived and conspired with M/s NDTV Ltd. in laundering the black money of M/s NDTV Ltd. worth more than Rs. 2000 crores through M/s NDTV Plc., UK and M/s NDTV BV, Netherlands and five of its subsidiaries. Likewise, Ms Y because of her illicit sexual intimacies with some rogue touts operating in Income Tax Department has caused theft of more than Rs. 100 crores by passing illegal orders u/s 154 making substantive additions u/s 154 on serious Audit objections to get those additions knocked down in appeal.....

.....3. Ms Y, JDIT (HRD), garishly painted and gaudily attired befitting a prostitute of her caliber, is visiting various places including premises of Ld. CAT, Principle (sic Principal) Bench, Delhi acting in most

suggestive and provocative manner offering immoral gratification if person upon whom she is working agreed to conspire with her against me. Log record of operational vehicle assigned to Ms Y would reveal her nocturnal trips to various places and people to canvass support against me through illicit and extra-marital sexual favours....” (emphasis supplied)

9. It is pertinent to note that, on 20.04.2011 the court continued the operation of its interim order dated 01.03.2011, and that despite the order, on 06.05.2011, the respondent wrote yet another letter, which contained similar scurrilous statements qua the petitioners.

9.1 Consequently, the petitioners were constrained to file a contempt petition, which was numbered as contempt case no. 360/2011. It appears that a reply was filed by the respondent in the first instance, which he sought to withdraw; though an objection was raised by the petitioners that the reply itself was contumacious. The court, however, granted the respondent herein an opportunity to file an additional reply.

9.2 By way of the additional reply, the respondent (who was impleaded as respondent no. 1 in the contempt petition), evidently tendered an unqualified apology, stating therein that, the letter dated 06.05.2011 has been written in the state of emotional turmoil. The Court, at that stage, as reflected in its order dated 29.09.2011, came to the conclusion that the respondent was, perhaps remorseful and therefore, went on to accept the apology, with the caveat that: "he shall neither in the present nor in the future write any letter or other form of communication in terms of the order of this Court dated 01.03.2011....".

10. One would have thought that, the respondent, had been chastened, and would, desist from issuing communications, which impugned the character of the petitioners. This, however, proved to be a forlorn hope, as within less

than six months of the order of this Court, vide communication dated 02.04.2012, the respondent repeated his unacceptable conduct in gross violation of the orders of this Court. This is demonstrable from the following extract from the communication dated 02.04.2012 addressed by the respondent, once again, to Sh. K.C. Jain, CIT:

“....4. Likewise, Ms X in lieu of illicit extra-marital sex which she had with Sri P.K. Mishra and his customers in Bangalore in Suite No. 10 of Income Tax Guest House, Infantry Road, Bangalore during 16th November, 2005 to 10th November, 2005 got the vigilance cases against herein the matter of her having received bribe from M/s NDTV Ltd. hushed up....

...6. In 2009 Ms X by providing illicit extra-marital sex to Sri SSN Murthy got her posted in Delhi after her promotions as JCIT when CBDT has asserted before Hon’ble Delhi High court that transfer out of station on promotion is rule in CBDT, however because of illicit extra-marital sex which Ms X had with Sri SN Murthy, she was retained in Delhi even after her promotion to the rank of JCIT.

7. By offering her body to ingratiate the debauched male lust and freely having illicit extra-marital sex with her benefactors being a full blown serving prostitute involved in the prostitution racket of Sri P.K. Mishra alongwith Ms R. (exact particulars are obliterated) and Ms Y; Ms X, JCIT Range-21 has been subverting the rule of law and due process of law with impunity and has so far got away with the consequences of her illegal acts because of liberally provided illicit extra-marital sex on demand to her male benefactors....” (emphasis supplied)

10.1 The aforementioned letter was followed by a letter dated 10/16.4.2012. This communication was also sent to the same gentleman, i.e., Sh. K.C. Jain, CIT. The relevant portions are extracted hereinbelow:

“....8.1 Ms X alongwith Ms Y and others has stolen the “Secret & Confidential” Govt. records and documents from

the offices of ACIT, circle 40 (1) and other senior officers of the I.T. Deptt. and placed those records in public domain to enable Sri P.K. Mishra, her pimp and business partner in prostitution racket of I.T. Deptt taking advantage of which, Sri P.K. Mishra has filed series of writ petitions against I.T. Deptt. (CWP No. 6011 of 2011, CWP no. 7977 of 2011 etc.) to stall inquiry into verifiable instances of tax evasion, receipt of bribe and illegal gratification and serial prostitution, etc. over concealment of income of Rs 20,00,00,000/- in A.Y. 2004-05 and Rs. 10,00,00,000/- for A.Y. 2005-06. Copy of affidavit filed by Ms X before Hon'ble Delhi High Court in CWP no. 1373/2011 is enclosed for necessary perusal. In addition, records of CCIT, Delhi XIII are relied upon wherein an inquiry has been ordered as to how Ms X got to get "Secret & Confidential" Govt. Records....

....8.4 Ms X during year 2011-12 by providing illicit extra-marital sex to Sri V.K. Sahgal, CIT, Delhi XVI got reference of 'Y' category TEP to DIT (inv.) in her case and that of her spouse to DIT (inv.) stalled as she was not sure of being able to stop investigation against her by providing sex on demand to officers of investigation wing of deptt.

8.5 Ms X, during year 2011-12 by providing illicit extra-marital sex has stolen the returns of Income and forms No. 16 in the case of Sri Abhisar Sharma, her spouse to cover up her having received bribe and illegal gratification from M/s NDTV Ltd. for facilitating theft of lawful taxes in excess of Rs. 1,200,00,00,000/- by M/s NDTV Ltd. The CIT, Delhi XVI has officially informed that those Returns are missing.

8.6 Ms X during year 2011-12 has conspired and connived with her pimps to cover up having received bribe and illegal gratification from M/s NDTV Ltd. by fraudulently claiming that not having done scrutiny assessment of M/s NDTV Ltd. she cannot be said to have official dealings with that company even though being A.O. of that assessee and having passed order u/s 143(1) and issued Refunds.....

....8.9 Ms X during year 2011-12 continued to be involved in "SEX & PROSTITUTION" racket of Sri P.K. Mishra, providing sex on demand and for consideration, to

clients and customers procured by Sri P.K. Mishra, Sri S.S. Rana, Sri B.K. Jha, Sri Timmy Khanna, etc.....

....12. By offering her body to ingratiate the debauched male lust and freely having illicit extra-marital sex with her benefactors being a full blown serving serial prostitute involved in prostitution racket of Sri P.K. Misra with Ms.R. and Ms Y, Ms X, JCIT Ragne-21 has been subverting the rule of law and due process of law with impunity and has so far got away with consequences of her illegal acts because of liberally provided illicit extra-marital sex on demand to her male benefactors....

....14. having entered into illicit extra-marital sexual relations with Sri P.K. Mishra, Sri R. Prasad, Sri R.R. Singh, Sri Prakash Chandra, Sri A.K. handa, Sri N.C. Johsi and providing illicit extra-marital sex on demand to those officers to escape vigilance inquiries in the matter having received bribe and illegal gratification from M/s NDTV Ltd. and facilitated theft of public revenue and embezzlement of govt. money by M/s NDTV Ltd. (specific instance being admitted and self-declared sex Mrs X had with Sri P.K. Mishra and his customers apart from providing group sex, unnatural sex, oral sex and sexual orgies in Suite No. 10 of Income Tax Guest House on Infantry Road, Bangalore during November 16th 2005 to November 21st 2005 and wherefrom about 20 used and several packets of unused male contraceptives and strips of female birth control pills were found and removed), Ms X alongwith Ms Y joined the prostitution racket of Sri P.K. Mishra as serial prostitute, serving clients and customers of Sri P.K. Mishra and pimps like Sri B.K. Jha, Sri S.S. Rana, Sri Timmy Khanna etc.

15. Thus, being serial prostitutes providing sex on demand to clients and customers for consideration, Ms X and Ms Y were hired by M/s NDTV Ltd. through pimp Sri P.K. Mishra to fake sexual harassment, molestation, sexual assault and rape by me both at their residences in NOIDA and offices in Delhi with the intent to stall the inquiries and the investigations into illegal and unlawful activities of M/s NDTV Ltd. being evasion of tax of about Rs

1,200,00,00,000/-, laundering of illegal black money through the illegal hawala and fictitious jamakharch entries being bribe received by the public servants in 2 G Scam and embezzlement of govt. money of Rs. 1,46,82,836/- by getting the petitioner placed under suspension and for that agenda, Ms X and Ms Y, serial prostitutes providing sex on demand, escorted their pimps and customers on 2.6.2006 to CVC and on 6.6.2006 to CBDT and faked sexual harassment, sexual assault, molestation and rape by me based upon which, Sri P.K. Mishra proposed on 14.6.2006 to dismiss me under Article 311(2) of Constitution read with rule 19(2) of CCS (CCA) Rules, 1965 without inquiry and pending that to place me under suspension.....

.....17. In January, 2007, when Ms Indira Bhargava, Chairman, CBDT did not agree to proposals of Sri P.K. Mishra to place me under suspension on the charges of alleged sexual harassment, sexual assault, molestation and rape of Ms X and Y, Ms X for had illicit sex with Sri R. Prasad and Sri R.R. Singh, Members of the CBDT and then along with Ms R (exact particulars are obliterated) and Ms Y, other prostitutes from prostitution racket of Sri P.K. Mishra went around alleging sexual harassment, sexual assault and rape by me and forced them on Ms Indira Bhargava, Chairman, CBDT, where Ms R. (exact particulars are obliterated) Ms X and Ms Y, serial prostitutes selling their bodies to debauched clients for sex on demand, enacted their sob drama and displayed their undergarments by smearing tomato ketchup and blow-drying that as proof of my bestiality and because of such drama by those serial prostitutes from the ranks of IRS, I was placed under suspension and inquires into illegal and unlawful activities of M/s NDTV Ltd. came to an end.....”

11. Continued disobedience of the orders of this court was brought to my notice, on 31.07.2012, when I had injuncted the respondent from issuing any communication to a third party which had reference to the petitioners, of the nature, as found in the letter dated 02.04.2012, addressed by the respondent to Sh. K.C. Jain, CIT.

12. Against the aforementioned order dated 31.07.2012, an appeal was preferred by the respondent, which I was informed by the counsel for the respondent, at the hearing held on 18.10.2012, was withdrawn, on 17.09.2012, with liberty to approach the concerned court. At the hearing held on 18.10.2012, I was also informed by the counsel for the petitioners that, a communication had been addressed on 01.08.2012, to the Central Bureau of Investigation, ACB, Bhubaneswar, Orissa, wherein similar statements had been made. These statements made by respondent in his communication of 01.08.2012 are extracted hereinbelow for the sake of convenience:

“...ix) Sri P.K. Misra, in lieu of bribe and sexual favours provided by Ms Y (as admitted by her that she escorted Sri P.K. Mishra to various places for providing illicit sexual favours to him under incorrect names and introduced her as Ms Y or Ms Y Nele, being the fifth wife of Sri P.K. Mishra), hushed up illegal losses caused by Ms Y to placate Sri Timmy Khanna, her alleged husband and her pimp in her prostitution in excess of Rs.1,00,00,00,000/- which she deliberately caused to enable Sri Timmy Khanna to procure bribe, etc. Petitioner refers to specific cases where in lieu of huge bribe and illegal gratification obtained by Sri Timmy Khanna, Ms Y caused illegal losses to public exchequer and got the matter hushed up by providing illegal sexual favours to Sri P.K. Mishra and others and by joining the prostitution racket of Sri P.K. Mishra as a prostitute, as under-

- a) Ms Prayag Hospital & Research Centre Pvt. Ltd., A.Y. 2000-01, revenue effect Rs. 1,32,72,500/-.
- b) M/s United Hotels Ltd., A.Y. 2000-01, revenue effect- Rs. 68,33,947/-.....”

13. Since the aforesaid communication provided fresh cause to petitioners, under the Contempt of Court Act, a notice was issued to the respondent. Both the respondent and his counsel were present in court.

Time was sought to file a reply. The matter was adjourned for further proceedings to 22.11.2012.

13.1 At the hearing held on 22.11.2012, counsel appearing for the respondent, unhesitatingly stated, that the respondent was in violation of the orders issued by this court as he continued to issue defamatory material qua the petitioners. Leave was however sought to file an affidavit to explain his conduct. The matter was adjourned for further proceedings to 29.11.2012.

13.2 On the said date, i.e., on 29.11.2012, an affidavit was filed; albeit in court, by the counsel for the respondent. The counsel for the petitioner chose not to file a rejoinder, as according to him, the reply of the respondent by itself did not reflect penitence or remorse.

13.3 I was also informed that the disciplinary authority had not accepted the conclusions of the complaints' committee which went into the allegations of the sexual harassment, and had consequently directed reconstitution of a new committee to investigate the complaints made by the petitioners. It may be relevant to note that the complaints' committee had come to the conclusion that no case for sexual harassment had been made out, which was a conclusion that the disciplinary authority has not accepted, and consequently, proceeded to issue the aforesaid direction.

13.4 On the said date the matter was heard-in-part, and was adjourned to 11.12.2012. Consequently, on 11.12.2012, after arguments in the matter were completed, judgment was reserved in the matter.

14. It may also be important to note that, the respondent had, in the meanwhile, filed a writ petition bearing no. 6802/2012, wherein inter alia-prayers had been made to transfer/remove the petitioners from the office of respondent no. 1 and 2, i.e., the Union of India, through Secretary,

Department of Revenue and Chief Commissioner Income Tax, Cadre Controlling Authority, respectively. This writ petition was moved before me, on 22.11.2012 when, the counsel for the respondent herein, i.e., the writ petitioner, chose to withdraw the said writ petition. The counsel for the petitioners herein, who were impleaded as respondent nos. 5 & 6 in the said writ petition, took stand that while the petitioners herein had no difficulty in the court allowing the respondent to withdraw his writ petition, the said writ petition should be tagged alongwith the present contempt petition, as they would want to place reliance on the averments made in the said writ petition, to demonstrate the aggravation of the injury caused to them by the continued distasteful conduct of the respondent. Accordingly, while dismissing the writ petition as withdrawn, a direction was issued to the registry to tag writ petition 6802/2012, with the present contempt petition.

15. I may only note that in the writ petition, the respondent, once again, made averments to the effect that the petitioners were "women of dubious repute and character" involved in illegal and unlawful activities, which were, offences, inter alia, under the Immoral Traffic Act. The petitioners were referred to as "serial prostitutes". These are averments made in paragraph 18 and 50 of the said writ petition. There are also references of similar kind, in paragraph 54 of the petition.

16. I may also note that prior to the hearing held, on 29.11.2012, an additional affidavit had been filed by the petitioners, on 20.11.2012. Alongwith the said affidavit they appended a letter dated 22.10.2012, in which, identical statements have been made in a communication addressed to the Finance Minister, Government of India; though this time, the author of the communication, is apparently, the wife of respondent, i.e., Mrs Soni Srivastava.

17. In the reply filed by the respondent, while offering his apology and seeking mercy of the court, an attempt is made to attribute his repeated violation of the orders of this court to the alleged unwarranted allegations made by the petitioners regarding the integrity and moral character of the respondent which resulted, firstly; in his suspension from service between 2007 to 2010, and thereafter, denial of promotion to the post of the Commissioner of Income Tax, on account of pendency of disciplinary proceedings. The respondent has averred that this conduct of the petitioners caused trauma and suffering and, therefore, resulted in issuance of a series of communications, to which, I have already made a reference above. The respondent seems to attribute his repeated reference to the alleged infamous character of the petitioners, to the cut and paste methodology, he adopted qua each of his communications to third parties. While conceding that he has violated the orders of the court, he seeks mercy of the court on the basis of circumstances detailed out in the affidavit.

18. I have considered the matter at some length. The learned counsel for parties made their submissions on behalf of their respective clients.

18.1 Mr Jayant Mehta, who appeared for the petitioners, made a reference to the series of communications of the respondent, to which I have already made a reference above, to show the continued violation of the orders issued by this court from to time, by the respondent. It is Mr Mehta's submission that the respondent was unrepentant and was using his last affidavit, which purports to be mercy plea, only as a ruse to somehow avoid the rigour of law. Mr Mehta submitted that there is neither remorse nor a genuine repentance shown by the respondent and, therefore, the court ought not to accept his apology. In support of his submissions, Mr Mehta relied upon the following judgments of the Supreme Court: ***Patel Rajnikant Dhulabhai &***

Anr. vs Patel Chandrakant Dhulabhai & Ors. (2008) 14 SCC 561 and *Supreme Court Bar Association vs Union of India & Anr. (1998) 4 SCC 409*.

18.2. On the other hand, counsel for the respondent referred to their affidavit dated 27.11.2012 to show the circumstances in which the respondent had made a reference to the petitioners in his communication to various officers of the Income Tax Department. The counsel pleaded for mercy and acceptance of apology by the court. They also made reference to the two FIRs filed against the respondent as also to the judgment of the Division Bench dated 13.07.2012 passed in writ petition no. 4022/2012, whereby the petitioner no. 1's action to lay challenge to initiation of proceedings under Section 148 of the Income Tax Act, had failed. The said order was cited to show that, based on the respondent's complaint against petitioner no. 1, the assessment order qua petitioner no. 1 for the assessment year 2005-06 had been re-opened.

19. Having given some thought to the matter before me, I have no doubt in my mind that the respondent is guilty of contempt. As a matter of fact, this fact, as noticed above by me, is unhesitatingly accepted by the respondent's counsel at the hearing held on 22.11.2012. The facts emerging in this case establish quite clearly the guilt of the respondent and the repeated violation by the respondent of the orders of this court, including those passed by me in these very proceedings.

19.1. This is precisely the reason why I have extracted the relevant statements made by the respondent from time to time. A bare perusal of the extracts would show that the respondent has refused to relent in his tirade against the petitioners.

19.2 The first such statement was made by the respondent in his petition filed with the Tribunal which came to be expunged pursuant to the orders of the Division Bench dated 07.10.2010, passed in WP(C) 6650/2012. The respondent, however, within less than three months, issued three separate communications dated 27.01.2011 repeating therein, his distasteful diatribe against the petitioners. A Single Judge of this court by an order dated 01.03.2011 restrained the respondent from issuing similar communications. Though the said interim order was continued on 20.04.2011 till the next date of hearing, the respondent on 06.05.2011, once again issued an offending communication. This gave rise to a contempt petition bearing no. 360/2011. By an order dated 29.09.2011, the contempt petition was disposed of and the notice of contempt was discharged, based on an affidavit of the respondent, tendering unqualified apology. Notably in this affidavit his deviant conduct was sought to be explained by referring to the emotional turmoil he had experienced on being issued a suspension order. The court, while disposing of the contempt petition, specifically restrained the respondent from issuing any communication in future, of the nature, to which a reference had been made in the court's order dated 01.03.2011. Within less than six months, the respondent made similar offending statements in two communications dated 02.04.2012 and 10/16.04.2012. This resulted in the institution of the present contempt petition.

20. While notice in the present contempt petition was issued on 25.05.2012, on the returnable date i.e. 31.07.2012, I had once again enjoined the respondent from addressing a communication to any third party, which contained remarks qua the petitioners of the nature found in communication dated 02.04.2012. No sooner was this order dated 31.07.2012 passed, the respondent chose to violate the said order by issuing

a communication dated 01.08.2012 to the CBI, in which, similar offending statements were made against the petitioners. As indicated by me above, the respondent thereafter got his wife Mrs Soni Srivastava to address a letter to the Finance Minister, in which, offending statements identical to the ones made by the respondent in his earlier communications were made qua the petitioners. As a matter of fact, the respondent filed a writ petition bearing no. 6802/2012, which was moved couple of days before his wife shot of the aforementioned communication to the Finance Minister. The said writ petition, which was adjourned to 21.11.2012, was withdrawn by the respondent's counsel, on the instructions of the respondent.

21. Having regard to the aforementioned facts, I have no doubt that not only is the respondent guilty of willfully violating the order of the court dated 29.09.2011, but also the order of the court passed in the present contempt petition dated 31.07.2012, which is why on 18.10.2012 I had issued a notice of contempt to the respondent. The fact that even thereafter the respondent filed a petition, in which offending statements were made against the petitioner, only goes to show that the respondent is unrepentant. To perhaps get around the strict letter of the law the respondent had his wife Mrs Soni Srivastav address a communication to the Finance Minister, which as noticed by me above, contains the same set of offending remarks against the petitioners. This approach of the respondent clearly reveals, the skewed mind-set, of the respondent.

22. The observations of the Supreme Court in *Patel Rajnikant Dhulabhai and Another Vs. Patel Chandrakant Dhulabhai and Others*, (2008) 14 SCC 561, that apology cannot be made as a weapon of defence is aptly captured in the following observations of the judgment:-

“ 74. In *Hiren Bose, Re*, AIR 1969 Cal 1 : 72 Cal WN 82, the High Court of Calcutta stated;

“13.....It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a Court of justice But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be”.

75. It is well-settled that an apology is neither a weapon of defence to purge the guilty of their offence, nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness [Vide *M.Y.Shareaf v. Hon'ble Judges of the High Court of Nagpur*; (1955) 1 SCR 757 : *M.B. Sanghi v. High Court of Punjab & Haryana*, (1991) 3 SCR 312].

76. In *T.N. Godavarman Thirumulpad v. Ashok Khot & Anr.*, 2006 (5) SCC 1, a three Judge Bench of this Court had an occasion to consider the question in the light of an ‘apology’ as a weapon of defence by the contemnor with a prayer to drop the proceedings. The Court took note of the following observations of this Court in *L.D. Jaikwal v. State of U.P.*, (1984) 3 SCC 405 (Ashok Khot case SCC p. 17 para 32):

"32....We are sorry to say we cannot subscribe to the 'slap-say sorry and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not

from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry”.

The Court, therefore, rejected the prayer and stated;

“31. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward”.

Similar view was taken in other cases also by this Court.

77. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a “tactful move” when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice.”

23. Apart from anything else, at each of the dates the respondent has been present in court. While his counsel pleaded for mercy, I have not seen, in the demeanour of the respondent, any penitence or remorse. Therefore, the only conclusion that I can come to, is that, the respondent is guilty of willfully and consciously violating the orders of the court dated 01.03.2011, 29.09.2011, as also order dated 31.07.2012.

24. In these circumstances, I direct that the respondent be committed to civil prison to undergo simple imprisonment for a period of fifteen (15) days. It is ordered accordingly. In addition, a fine of Rs.2000 is also imposed on the respondent. However, the sentence imposed will be kept in

abeyance for a period of two weeks to enable the respondent to prefer an appeal, if he so desires.

25. With the aforesaid directions in place, the contempt petition is disposed of.

RAJIV SHAKDHER, J

JANUARY 04, 2013
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