

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
REFERENCE NO. 4 OF 2014**

Smt. S.A. Sinha)
Metropolitan Magistrate,)
7th Court, Borivali, Mumbai) Applicant.

Vs.

Dr. Leo Rebello)
Flat No.552, Building No.28,)
Samtanagar, Kandivali (E),)
Mumbai-400101.)Respondent

Dr. F.R. Shakih, APP for the Applicant.
Mr. Leo Rebello, Respondent present in person.

**CORAM: V.M. KANADE &
REVATI MOHITE DERE, JJ.**

**RESERVED ON: 8th February, 2016
PRONOUNCED ON: 29th February, 2016**

JUDGMENT: (Per V.M. Kanade, J.)

1. This is a case where the respondent/contemnor who is an accused charged for offences punishable under sections 354, 337, 509, 323, 504 I.P.C. has persistently harassed, intimidated, threatened the learned Metropolitan Magistrate ("MM") before whom his case was pending trial and as a result the learned MM has made a reference under Section 15(2) of the Contempt of Courts Act, 1971 (hereinafter referred to as "the said Act").

2. Reference under section 15(2) of the Contempt of Courts Act, 1971 has been made by Smt.S.A.Sinha, Metropolitan Magistrate, 17th Court, Borivali, Mumbai vide letter bearing Confi.Outward No.32 of 2014 dated 14.10.2014 addressed to the Registrar (Judicial-I), High Court, Bombay.

3. It is stated in the said order that she was Metropolitan Magistrate, 17th Court, Borivali, Mumbai and she had taken charge of that Court on 06.06.2011. She has stated that two Criminal Cases; one bearing C.C. No.3869/PS/2008 (C.R. No.281/99) of Samtanagar Police Station filed against Dinesh Mathuria and others under Sections 143, 147, 149, 323, 504, 343, 427, 506 I.P.C. in which Dr. Leo Rebello was the complainant and the other bearing C.C. No.1574/PS/2008 (C.R. No.280/99) also registered at Samtanagar Police Station filed against Dr. Leo Rebello under sections 354, 337, 509, 323, 504 I.P.C in which Mrs. Ratna Vinay Malhotra was the complainant, were pending in her Court. Both these cases were kept in her court on the same day.

4. She has referred in the Reference as to what transpired on 21.12.2011 in her Court when the Contemnor appeared in her Court. She has stated that the Contemnor obstructed the judicial proceedings, insulted the judicial officer, did not maintain the court decorum, tried to pressurize the court and

also threatened the court that he had removed CMM. Thereafter on 02.01.2012, the Respondent/Contemnor issued a confidential letter to court by hand, which had objectionable contents. Then, again, on 22.08.2013, the Contemnor issued another letter to the Judicial Officer, which had objectionable contents. The letter contained the contents which were insulting and the contents of the letter, apart from being highly objectionable, clearly amounted to contempt of court within the meaning of Section 2(c)(i) to (iii) of the said Act. Thereafter, again, further letter dated 12.11.2013 was sent by the Contemnor by a speed post to the said Judicial Officer in which there was wild threat that several High Court and Supreme Court Judges knew him and he tried to pressurize the Court. Thereafter, it is stated in the Reference that when the matter was posted on her board on 20.02.2014, the Court gave directions to the accused to remain present for recording their pleas. Respondent/Contemnor was not present that time when the matter was called out. However, thereafter, Respondent/Contemnor barged into the Court in 10/15 minutes and started shouting loudly when other proceedings were going on and used threatening words to the court. She has then stated that, again, on 26.06.2014 when both the matters were kept for hearing, Respondent/Contemnor entered the Court and started shouting loudly and when the Court directed him to provide a copy of the application filed

by him to the other side, he used insulting and threatening words to the Court. He obstructed judicial proceedings and due to his behaviour in the court, the entire board of the Court collapsed and hearing of other matters could not take place. Reference was made of this incident in the Roznama and the statements of persons present on that day were recorded by the Magistrate. Thereafter, statements of PC - Sunil Pawar, Vanrai Police Station, Advocate Shri Malekar, Advocate Shri Dubey, Advocate Smt. Purnima Mehta, Advocate Shri K.U. Joshi, PC - Shevale, Samtanagar Police Station, PC - Patil, Samtanagar Police Station, PC - Surve, Kandivali Police Station and PC - Sonavale, Vanrai Police Station, learned APP Shri Mahakal and Interpreter Kum. Kadambari Yevale were recorded on 2011. Copies of Roznama and Statements are annexed to the Reference. Thereafter, she has stated that the Contemnor sent her personal post cards in which objectionable material was typed. These post cards were dated 17.07.2014, 19.07.2014, 19.07.2014. Then message dated 10.07.2014 was released on Face Book to all Indian Judges from lower Court to Supreme Court of India. Thereafter, postcard dated 20.08.2014, 04.07.2014 were sent to her in which, again, there was an objectionable material. Several other incidents which have taken place thereafter and letters were sent in which insinuation was also made against the Judicial Officer and against Shri S.S. Shinde who was the former CMM. It is

stated that the Respondent/Contemnor wanted to pressurize and threaten her, so that he could get an order of discharge from the criminal case which was filed against him. She has stated that the Contemnor has scandalized and lowered the authority of the Court and thereby committed criminal contempt of Court from time to time. Alongwith the Reference, 18 annextures are enclosed.

5. Before making a Reference under Section 15(2) of the Contempt of Courts Act, 1971, the learned Metropolitan Magistrate had issued show-cause notice to the Respondent/Contemnor and has sent copy of all the documents and enclosures which were relied upon by the learned Magistrate. This was served on the Contemnor on 25.09.2014 and the Respondent had also given a reply to the said show cause notice on 29.09.2014. Thereafter a Reference was made to this Court under Section 15(2).

6. The Reference was numbered and placed before the Division Bench of this Court (Coram: V.M. Kanade & Anuja Prabhudessai, JJ) on 17.11.2014, when the following order was passed:-

“Issue notice before admission
returnable after six weeks.”

The matter thereafter appeared before the Division Bench

(Coram: V.M. Kanade & Revati Mohite Dere, JJ.) on 05.01.2015 when the following order was passed:-

“Heard. Prima facie case is made out for grant of Rule.
Rule. Rule made returnable on 02.02.2015.”

On that day, Respondent/Contemnor was present. He had filed written objections on the maintainability of Criminal Contempt Reference. We, however, granted Rule since we felt that prima facie case was made out. The Contemnor made ruckus in the Court and said that he should be heard before the Rule is issued. When we declined to give him hearing on that day, he threatened the Court by saying “ I will show you”. Thereafter, he had sent number of threatening letters to this Court and has said inter alia that order granting Rule passed by us was an illegal order. He has repeated this in all the correspondence which has been sent by him thereafter which fact has been admitted by him during the course of hearing. Thereafter notice was served on him alongwith copy of the Reference and the Rule which was issued was also served on him on 27.1.2015 in which it was stated that copy of the Reference was served upon him, which can be seen from the office report. Thereafter on 22.06.2015, Respondent did not remain present, though he was served and, therefore, the matter was adjourned to 21.6.2015. This order was also served on him.

7. After Rule was issued by this Court on the Reference, he has served letter to this Bench asking us to recuse ourselves from hearing the Reference. He also filed transfer application before the Chief Justice. This application was however rejected by the Chief Justice.

8. During the course of hearing on 18.02.2016, Respondent/Contemnor has submitted that he does not wish to press this application for recusal. He however submits that this is without prejudice and further states that this Court should hear him and decide the matter in a just and fair manner.

9. It is now well settled in law that ordinarily the Court should not recuse itself merely because an application for recusal is filed by the litigant.

10. The Apex Court in the case of *Subrata Roy Sahara Vs. Union of India (UOI) and Ors.*¹ and more particularly, the paragraph No.10, has observed as under :-

“10. We have recorded the above narration, lest we are accused of not correctly depicting the submissions, as they were canvassed before us. In our understanding, the oath of our office,

1 AIR 2014 SC 3241

required us to go ahead with the hearing. And not to be overawed by such submissions. In our view, not hearing the matter, would constitute an act in breach of our oath of office, which mandates us to perform the duties of our office, to the best of our ability, without fear or favour, affection or ill will. This is certainly not the first time, when solicitation for solicitation for recusal has been sought by learned Counsel. Such a recorded peremptory prayer, was made by Mr. R.K. Anand, an eminent Senior Advocate, before the High Court of Delhi, seeking the recusal of Mr. Justice Manmohan Sarin from hearing his personal case. Mr. Justice Manmohan Sarin while declining the request made by Mr. R.K. Anand, observed as under:

“The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.”

The above determination of the High Court of Delhi was assailed before this court in *R.K. Anand v. Delhi High Court* (2009) 8 SCC 106 : (2009 AIR SCW 6876). The determination of the High Court whereby Mr. Justice Manmohan Sarin declined to withdraw from the hearing of the case came to be upheld, with the following observations:

“The above passage, in our view, correctly sums up what should be the Court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an 'inconvenient' judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice”

11. Similarly, the Apex Court in the case of *R.K. Anand Versus Registrar, Delhi High Court*¹ has made observations in paragraph Nos. 255 to 273 and has taken the same exception on the request made for recusal of the judge from hearing a case. The Apex Court in paragraph 255 of the said judgment, discussed the question of “Request” for Recusal. In paragraphs 264, 269, 270 the Apex Court has made observations, as under:-

“264. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the

¹ (2009) 8 SCC 106

increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.”

12. In the recent Judgment, in S.C.A.O.R.A. vs. U.O.I¹, the Apex Court also has held that the Courts should not recuse themselves from hearing the matter since they have taken an oath to decide the case without fear and favour. Today during the course of hearing, Dr.Rebello has made several statements. Firstly, it is stated that the order granting Rule on the Contempt Petition was passed by this Court and this Court had committed a mistake in passing the said order. He has forgiven this Court for passing this incorrect order. The Apex Court in the said case has observed in paras 13, 15, 16, 17 and 18 as under:-

“13. As a Judge presiding over the reconstituted Bench, I found myself in an awkward predicament. I had no personal

1 2015(11) SCALE 1

desire to participate in the hearing of these matters. I was a part of the Bench because of my nomination to it, by Hon'ble the Chief Justice of India. My recusal from the Bench at the asking of Mr. Fali S. Nariman, whom I hold in great esteem, did not need a second thought. It is not as if the prayer made by Mr. Mathews J. Nedumpara was inconsequential."

"15. On the basis of the submissions advanced by the learned Counsel, the Bench examined the prayer whether I should remain on the reconstituted Bench, despite my being a member of the 1+4 collegium. The Bench unanimously concluded that there was no conflict of interest, and no other justifiable reasons in law, for me to recuse from the hearing of these matters. On 22.4.2015, the Bench passed the following short order, which was pronounced by J. Chelameswar, J.:

"A preliminary objection whether Justice Jagdish Singh Khehar should preside over this Bench, by virtue of his being the fourth senior most Judge of this Court, also happens to be a member of the collegium was raised by the petitioners. Elaborate submissions were made by the learned Counsel for the petitioners and the respondents. After hearing all the learned counsel, we are of the unanimous opinion that we do not see any reason in law requiring Justice Jagdish Singh Khehar to recuse himself from hearing the matter. Reasons will

follow.”

“16. After the order was pronounced, I disclosed to my colleagues on the Bench, that I was still undecided whether I should remain on the Bench for I was toying with the idea of recusal, because a prayer to that effect, had been made in the face of the court. My colleagues on the Bench would have nothing of it. They were unequivocal in their protestation.”

“17. Despite the factual position noticed above, I wish to record, that it is not their persuasion or exhortation, which made me take a final call on the matter. The decision to remain a member of the reconstituted Bench was mine, and mine alone. The choice that I made, was not of the heart, but that of the head. The choice was made by posing two questions to myself. Firstly, whether a Judge hearing a matter should recuse, even though the prayer for recusal is found to be unjustified and unwarranted? Secondly, whether I would stand true to the oath of my office, if I recused from hearing the matters?” (Emphasis supplied)

“18.But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my

duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office, to uphold the Constitution and the laws. My decision to continue to be a part of the Bench, flows from the oath which I took, at the time of my elevation to this Court.”

13. We are of the view that the said observations clearly apply to the facts of the present case.

14. Be that as it may, the decision given by the Apex Court is binding on this Court and therefore even otherwise the question of recusing ourselves from hearing this case does not arise. We have no manner of doubt that this attempt is made by the Respondent/Contemnor to obstruct the work of administration of justice and to ensure that this matter is not heard by this Court. It is a case of forum hunting/Bench preference or browbeating the Court. We deprecate this practice of sending such letters, asking the Court to recuse itself. This practice is not only deprecable but is also despicable and needs to be curtailed.

15. Heard the party in person at length. At the end of the hearing we had asked him whether he wishes to have any legal assistance and whether this Court should provide an Advocate to him from the Legal Aid Committee. He submitted that he has appeared in person and he does not need any legal assistance. He has taken us through the

written submissions which he has tendered in Court, which is taken on record. He has also invited our attention to the written objections which he had filed with regard to the non-maintainability of the criminal contempt Reference No.4 of 2014. He submitted that he do not wish to tender any apology since he has not committed any contempt. He, however, submitted that infact the learned Metropolitan Magistrate who has made a reference under Section 15 of the Contempt of Courts Act is herself liable to be prosecuted under the Contempt of Courts Act so also the other Magistrates such as Chief Metropolitan Magistrate Mr.S.S.Shinde and few others who have been named in the written submissions should be tried under the Contempt of Courts Act.

16. Before the hearing of the Contempt Petition started he has tendered two copies of the book written by him to this Court and had submitted that these books have been given by him without seeking any favour from this Court. The same are however returned.

17. Thereafter the Reference was kept for final hearing on 08.02.2016 and we heard the Respondent who appeared in person at great length for more than three hours. During the course of hearing, we asked him whether he wanted legal assistance. However, he refused the offer made by this

Court and said that he would like to argue himself. We also asked him whether he would like to tender apology for his conduct. He, however, emphatically submitted that he had not committed contempt and, therefore, question of giving apology did not arise. He then read the written submissions which he had filed and thereafter he also read again the initial objection which he had filed on non-maintainability of the Criminal Contempt Reference, which runs into about seven pages. He also stated that he forgives this Court for granting Rule in his case. He warned the Court that we should be just and fair.

18. We thereafter asked Dr. Shaikh, the learned APP to take us through the Order of Reference and the annexures thereto. While Dr. Shaikh was assisting this Court, Respondent/Contemnor made discouraging remarks against Dr. Shaikh.

19. The gist of the Reference is that the Contemnor behaved rudely, improperly and arrogantly and has committed contempt in the face of the Court by abusing, insulting, intimidating, threatening the learned Metropolitan Magistrate. The learned Magistrate has given instances of dates and events when this has happened. Secondly, she has stated that the Contemnor has written letters to her personally and sent it by post at her residence before, during and after the show cause notice was issued by her and after

the Reference was made by her to the High Court. She has enclosed copies of these letters and the letters which were sent after the Reference was dispatched. Thirdly, she has reproduced part of the contents of the letters.

20. We have perused the said letters. The letters disclose persistent and malicious attack made by the Accused whose case is pending before the learned Magistrate and which are sent with an intention to browbeating and intimidating the judge and, further, it is clearly an attempt to force the learned Metropolitan Magistrate to discharge the Accused from the criminal case. These letters have been published on his Website. He has not disputed having sent these letters to the learned Magistrate. The language used in the letters is *per se* contemptuous and scandalous. These letters indicate the level to which the Accused can stoop down to harass the judge and prevent her from discharging her duties. If no action is taken against such an accused, it will be impossible for subordinate courts to function and to discharge their duties in accordance with law. This is a clear case of obstruction by an accused in the administration of criminal justice by the trial court. The Respondent/Contemnor has gone to the extent of sending draft orders which the learned Magistrate was supposed to pass and she was threatened that if she did not do so, she would be removed/transferred

since he knew the judges of the High Court and Supreme Court.

21. It will be necessary to briefly reproduce the contents of the letters which were sent by the Respondent/Contemnor to the learned Metropolitan Magistrate and also the instances which had taken place in her Court from time to time. The first incident took place on 21/12/2011. On that date, an application for discharge filed by the Accused/Respondent was kept for hearing. When he entered the Court Room, he started shouting loudly and was addressing the Court by sitting in the chair. The Court asked him to address the Court properly by standing up. However, he refused to get up from the chair. He insulted the Magistrate. He further said "The practice of standing and arguing before the Court was prevalent in the British time and not now. He said that he would not address the Court by standing up. He then said to the learned Magistrate that "You do your duty. Let me do my duty." Then he threatened the Court by making the following statement.

"I have removed C.M.M. because he made complaint against me. I am telling this for your own information."

The Magistrate has said that because of this behaviour and his constant shouting, the entire Board of that day collapsed

and work of the Court was seriously affected. The Accused/Respondent did not maintain decorum of the Court and used insulting language in Court and, therefore, order on Exhibit-1 was passed on the same day recording his behaviour and the statements of persons who were present before the Court were recorded viz. Adv. Harideep Singh, Adv. Swapnil Malekar, Adv. Kishor Joshi, PC Avinash Mhashilkar, PC Balu Shevale, PC Vilas Devendra Dnyanmote, Interpreter of the Court Mrs. Elizabeth Gonsalves and typist of the Court Shri Amit Chandrakant Agashe.

22. Immediately after the said date, the Respondent/Contemnor addressed a letter to the learned Metropolitan Magistrate on 02/01/2012 mentioning therein the objectionable contents which read as under:-

“I consider you to be a good M.M. But you can become better if you were to listen more, guide poor accused or under trials who are many a time falsely implicated by the corrupt police, improve speed, smile and make full use of law for justice.”

The said letter dated 2.1.2012 contains similar such patronizing attitude and on that pretext insulting the judge by giving unwarranted advise of efficiency in disposal of cases.

23. Another letter was sent by the Respondent/Contemnor to the learned Metropolitan Magistrate on 22.8.2013. One of the paragraphs extracted from the said letter is reproduced below:-

“Except for her bloated ego, she is good MM, at least she is not corrupt. But her English is substandard and she has big ego problem. This is your reputation in Borivali Bar.”

24. Thereafter, again, the Respondent/Contemnor sent letter dated 12.11.2013 to the learned Magistrate by Speed Post and two paras from the said letter are reproduced hereinbelow:-

“Your reputation is that you are an honest Lady Magistrate. This case will help you to set precedents and create judicial history. Based on this you may be promoted to the Sessions Court and before retirement you may even become a High Court Judge if you remain honest, healthy and in harmony with your conscience. We want more women judges in male dominated judicial domain.”

“Please note my degrees below. I have given lectures to several advocates, policemen, judges, human rights activists and litigants. Several High Court and Supreme

Court Judges have shared platforms with me. As I said my name is now for appointment as the next Sheriff of Mumbai."

The next incident took place on 20.2.2014 when the case of the Contemnor/Accused was on board when the matter was called out because the Respondent was not present. The Court, therefore, gave date and started taking other matters. The Accused/Contemnor entered the Court Room and started shouting loudly and threatened the learned Magistrate that he would file complaint against her. The learned Magistrate therefore passed an order noting the conduct of the Accused/Contemnor.

25. Thereafter, the incident took place on 26.6.2014. On that date also, when the matter was called out, Respondent entered the Court and started shouting loudly. The Court asked him to give copy of the application to other side. The Accused/Contemnor then again threatened the Court that he had sent six judges and three C.M.M. home and that he was going to send her home by filing a complaint in the High Court. He told her to be ready to go home.

26. After the said incident, the Accused/Contemnor sent to the learned Magistrate three postcards dated 17.7.2014, 19.7.2014 and 19.7.2014. Then he sent E-mail to

Bombay High Court, Supreme Court of India and also released on Face Book Message dated 10.7.2014 to all Indian Judges from Lower Courts to the Supreme Court of India. Then he sent two other postcards dated 20.8.2014 and 4.7.2014 to the learned Magistrate.

27. The next incident took place on 21.8.2014 when the application filed by the Accused/Contemnor under section 209 of Cr.P.C. was kept for hearing. Again on that day, he threatened the Magistrate that he knew Justice Bhangale and Justice M.L. Tahaliyani of the Bombay High Court. The learned Magistrate has recorded the statements of persons present in the Court on 21.8.2014.

28. Thereafter on 21.8.2014 itself the application of the Accused/Contemnor was heard and it was adjourned to 17.9.2014. The Respondent/Contemnor sent a letter dated 9.9.2014 by speed post. Alongwith the said letter, he has sent a draft order in the name of the learned Magistrate indicating what order was to be passed by the learned Magistrate. The letter mentions as under:-

“1)“Dear Mrs S.A. Sinha: With this covering letter, I send you the following articles with my best compliments for your progress. They should help you to become a better Judge, if you read and apply your mind to them. In fact, we

wish to see you as the Judge in the Bombay High Court, before your retirement, as very few women judges are there in the courts.

2) Draft Order in C.C. No.3869/PS/2008 written strictly as per the Law of the land, record of the case, jurisprudence, to help you and save Court's time. This will also help you not to depend on seniors/corrupt.

3) Draft order to Stop Proceedings u/s. 258 Cr.P.C in bogus Cross Case of Ratna Malhotra. This will make you popular."

In the said letter dated 9.9.2014, the Respondent/Contemnor has stated as under:-

"Once these cases are disposed off, you will be free to visit/consult me on Drafting, Effective Written and Spoken English, Effective Disposal of Cases, Yoga and Detox for good Health etc. for I am a Trainer's Tainer."

29. The learned Metropolitan Magistrate then issued a show cause notice to the Respondent/Contemnor for criminal contempt committed by him along with all enclosures and called his explanation within 15 days. The said show cause notice is also annexed to the Reference. After service of notice, he gave detailed reply on 29.9.2014, again making further allegations against the learned Magistrate.

30. The Respondent/Contemnor then issued a show cause notice dated 10.10.2014 and served it on the learned Magistrate. In the said notice following most objectionable allegations appeared:-

“You S.S. Shinde got your colleague S.A. Sinha, who was earlier with you in Nagpur as JMFC, to Mumbai, and posted her as MM Court to cover up and continue with your nefarious activities. In this regard you had a closed door meeting with Mrs. S.A. Sinha on 1st August, 2011, and apprised her of your revengeful plan, with which she has been conniving even since, being obliged to you for bringing her to Mumbai. We know how these transfers to Mumbai are organized.”

Several other unstatable allegations have been made against the learned Magistrate in the said show cause notice dated 10.10.2014 sent by the Respondent/Contemnor.

31. In our view, this is a clear case where the Respondent/Contemnor has not only committed contempt in the face of the court but has also written scandalizing letters personally to the Judicial Officer and has attempted to threaten her and has made wild allegations against the Judicial Officer who had made the Reference and against other Judicial Officers. He has shown the temerity of issuing

contempt notice against the Judicial Officer. During the pendency of Reference/Contempt Petition, he has written several letters to all Benches which heard this matter, again making similar allegations and giving similar threats. He has also addressed several letters to the Hon'ble Chief Justice of this Court and to the Prothonotary & Senior Master, asking them to transfer his case from this Court. In his application for recusal, he has stated that this Court is biased and he is not likely to get justice since we have issued Rule. However, the Hon'ble Chief Justice has refused to accede to his request and has not transferred his case from this Court. He also wrote several letters to the Division Bench, asking us to recuse ourselves from hearing this case. We, however, passed a detailed order dismissing his application asking us to recuse ourselves from hearing his case.

32. During the pendency of this case, Respondent has shown the audacity of issuing contempt notice against us for entertaining the Criminal Reference. However, in spite of this provocation, we did not take any action against the Respondent and we have ignored the letters which have been written by him though it amounted to clear case of contempt of Court, as no litigant has a right to write such type of letters to the Court before whom his case is pending. It has to be noted that the Respondent/Contemnor has behaved almost in identical manner before the CMM Shri S.S.

Shinde who had also made Reference, which came up before Division Bench of this Court (Coram: V.M. Kanade & M.L. Tahaliyani, JJ).. However, the Bench was pleased to reject the Reference on technical ground that the procedure contemplated under the Rules was not followed by the learned CMM. The Respondent/Contemnor has relied on the said order and submitted that on the same ground, the present Reference should be dismissed.

33. It must be noted that though one of the Members of this Bench (V.M. Kanade, J.) was presiding over the said Division Bench, which dismissed the Reference, yet, in the subsequent correspondence, he made false allegations against V.M. Kanade, J. that he had entertained the said Reference. Be that as it may, we are not concerned with the allegations made by the Respondent against this Bench in the correspondence addressed to us and to the Hon'ble Chief Justice and to the Prothonotary & Senior Master and also the material which has appeared against us on the Website and on Face Book. We have just narrated this to show the conduct of the Respondent.

34. Various instances which are narrated by the learned Metropolitan Magistrate in her Reference and also the letters which the Respondent/Contemnor has sent to her are *per se* contemptuous and fall within the definition of section 2(c)(i) to (iii) of the Contempt of Courts Act, 1971.

35. In our view, the Contemnor has committed criminal contempt of the subordinate court by (a) scandalizing the Court, (b) lowering the authority of the Court and (c) interfering with due course of judicial proceedings and obstructing the administration of justice.

36. From the various incidences mentioned by the learned Metropolitan Magistrate in the Order of Reference, it is apparent that the Respondent/Contemnor has used every trick in the book to intimidate, threaten and to dissuade the learned Metropolitan Magistrate in performing her duty of trying two criminal cases which were pending in her Court. One complaint was filed against the Respondent by one Mrs. Ratna Vinay Malhotra for the offence punishable under Sections 354, 337, 509, 323, 504 of the I.P.C. The Respondent/Contemnor wanted the learned Magistrate to discharge him from the said criminal complaint. Respondent/Contemnor has used similar tactics against this Court. He has sent several letters to both the members of this Bench which have a similar threatening and intimidating tone. He has gone to the extent of issuing show cause notice of contempt against both the Members of this Bench. He has sent letters, asking us to recuse ourselves from hearing this case. We, however, do not propose at this stage to issue any contempt notice against the Respondent for his deviant

behaviour. We have only considered the Reference which has been filed before us by the learned Metropolitan Magistrate.

37. The law on what is criminal contempt is quite well settled. Section (2)(c)(i) to (iii) defines what amounts to “criminal contempt”. It reads thus-

“2. Definitions.- In this Act, unless the context otherwise requires,-

(a).....

(b).....

(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the

administration of justice in any other manner;"

38. The purpose for the introduction of Contempt of Courts Act was for securing a feeling of confidence of the people in general and for the proper administration of justice in the country. The procedure in contempt cases is summary in nature. In *State vs. Padma Kant Malviya and another*¹ the Apex Court has traced history of law of contempt in India. In *State vs. Rajeshwari Prasad*², it has been observed that the object of the law of contempt is to ensure proper administration of justice by the Court.

39. The Apex Court in *Re : Vinay Chandra Mishra*³ has observed in para 13 as under:-

"13..... The rule of law is the foundation of the 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 Court, the judiciary has a special and additional duty to perform, viz., to oversee that all individual and

1 1954 CRI.LJ.1141

2 AIR 1966 Allahabad 588

3 AIR 1995 SC 2348

institutions including the executive and the legislature act within the framework of not only the law 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 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 exercise 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.”

40. The Apex Court in *Brahma Prakash Sharma and others vs. The State of Uttar Pradesh*¹ has observed in para 8 as under:-

“(8) It admits of no dispute that summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts. It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened.”

41. The Apex Court in *State vs. Rajeshwari Prasad*² has observed in paras 7 and 8 as under:-

“(7) The law on this branch of contempt of Court is to be found in two decisions of

1 AIR 1954 SC 10

2 AIR 1966 Allahabad 588

the Supreme Court. The first of them is Ashwani Kumar Ghose vs. Arabinda Bose, AIR 1953 SC 75 and the other is State of Madhya Pradesh vs. Revashankar, AIR 1959 SC 102. In the former case the Supreme Court, held that,

“Where a newspaper article while criticising a Supreme Court decision not merely preached the Courts of law the sermon of divine detachment from extraneous considerations such as politics and policies but also proceeded to attribute improper motive to the Judges, it was held that the article not only transgressed the limits of fair and bona fide criticism but had a clear tendency to affect the dignity and prestige of the Court and therefore amounted to gross contempt of Court.”

“If an impression is created in the minds of the public that the Judges in the Highest Court in the land act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined.”
while in the latter it held that:

“There are innumerable ways by which attempts could be made to hinder or obstruct the due administration of justice in Courts and one type of such interference is

found in cases where there is an act which amounts to “scandalising the Court itself”; this scandalising might manifest itself in various ways but in substance it is an attack on individual Judges or the Court as a whole with or without reference to particular case, causing unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for the reason that it tends to create distrust in the popular mind and impair the confidence of the people in the Courts which are of prime importance to the litigants in the protection of their rights and liberties.”

“(8) Thus a criticism which attributes 'improper motives' to a Judge in the conduct of his judicial work not only transgresses the limits of fair and bona fide criticism but has a clear tendency to affect the dignity and prestige of the Court and consequently amounts to gross contempt of Court. This is precisely what the opposite party has done by publishing the passages marked Annexure 'A' and 'C'.

42. The Apex Court has therefore clearly drawn a distinction between the defamation of a Judge and scandalizing or lowering the image of the Institution. It is held that defamation is a private injury and scandalizing the Court is a public injury since the confidence in the Institution

is lowered in the eyes of the public at large. We are therefore of the view that ratio of these judgments are squarely applicable to the facts of this case and therefore we have no hesitation in coming to the conclusion that the Respondent/Contemnor has committed criminal contempt of the subordinate Court within the meaning of section 2(c)(i) to (iii) of the said Act.

43. At the same, time it has to be borne in mind that the power to punish a person for having committed criminal contempt has to be used cautiously and sparingly. A proper balance has to be struck between freedom of speech and right of the judicial officers to administer justice without any obstruction from the litigants or anyone else for that matter. Litigants, at the same time, cannot be allowed to take law into their own hands and start browbeating and insulting the Court before whom his matter is pending for adjudication. Litigants therefore cannot scandalize the Court by writing letters to him/her at his/her residential or office address. Litigants cannot file applications for adjournment or for any other purpose and send it to the Court's residence or office. Litigants cannot threaten or induce the Court through correspondence. If this is permitted, all litigants will start writing letters to the Court and this would seriously hamper fair and transparent administration of justice. In the present case, the Respondent/Contemnor has done this with impunity

and has stated that he is not afraid and has tried to justify his conduct.

44. In our view, the conduct of the Respondent does not amount to fair criticism of a judicial act nor does it amount to any statement made by him in good faith.

45. We are satisfied that the learned Metropolitan Magistrate has followed the procedure which is prescribed before making the Reference under Section 15(2). She has issued a show cause notice to the Respondent to which he has filed a reply, again making scandalous allegations in his reply. Thereafter, she has held an inquiry, recorded the statements of witnesses who were present in the Court. The Respondent/Contemnor has admitted that he had sent all the letters which are annexed to the show cause notice before the Order of Reference was passed and, thereafter, she has sent the Reference to this Court under section 15(2) giving concise statement of facts and has specified the contempt which is committed by the Contemnor.

46. The Respondent has submitted that the procedure of making the Reference has not been followed by the learned Metropolitan Magistrate. He has relied on Rule 1039 sub-rule (b) of the High Court (Original Side) Rules which is identical to Rule 12 of the High Court Appellate Side Rules.

The said Rule of the High Court Appellate Side Rules reads as under:-

“12. (a) Reference under section 15(2) of the Act may be made by subordinate Courts either suo motu or on an Application received by it.

(b) Before making a reference the subordinate Court shall hold a preliminary enquiry by issuing a Show Cause Notice accompanied by copies of relevant documents, if any, to the contemnor and after hearing him the subordinate Court shall write a concise reasoned Order of Reference indicating the nature of the Contempt and the person/persons alleged to have committed it.”

47. There is no substance in the said submission. Though this is a Contempt Reference which has been filed on the Appellate Side of this Court, it must be noted that High Court Appellate Side Rules are identical to the High Court (Original Side) Rules. Chapter XXXIV of the High Court Appellate Side Rules prescribes the procedure to regulate proceedings for contempt under the relevant rule viz Rule 12(b).

48. In our view there has been substantial compliance by the learned Metropolitan Magistrate of the procedure before making the Reference to this Court. It is not in dispute that the show cause notice accompanied by the copies of relevant documents was served on the Respondent. Thereafter a concise Order of Reference was made by the learned

Magistrate. The Respondent has admitted having sent those letters which are annexed to the show cause notice. The Respondent/Contemnor in his reply to the show-cause notice sent to the learned MM has, in fact, committed aggravated contempt regarding the incidents in Court. Initially, he denied that the said incidents had happened but then thereafter justifies his behaviour in Court by saying that he was not shouting but has a loud voice. Thus he does not deny that the incident had taken place but gives his justification for the said behaviour regarding the statements. Secondly regarding the letters which he sent, he does not deny that he had sent the letters recorded by the Magistrate. He states that the statements were recorded subsequently.

49. The learned MM practically tolerated the antics and histrionics of the Respondent who was an accused before her in criminal complaint where, inter alia, charges of molestation were made by the complainant. The first incident took place in November, 2011 and thereafter the other incidents took place. In between these incidents the Respondent/Contemnor was sending insulting, intimidating letters to her, yet she did not initiate contempt proceedings against her. She displayed her equanimity towards the accused throughout and, finally, in 2014, she made a reference under Section 15(2) of the said Act to this Court. The letters written by him are replete with contemptuous

remarks and the tone is intimidatory. They show that he has scant regards towards the judiciary in general and the learned Magistrate and the Metropolitan Court in particular. Under these circumstances the question of giving him personal hearing by her does not arise.

50. We have no manner of doubt that the Contemnor shall continue with his tirade of denigrating the learned MM and this Court which is evident from his past and present conduct. He has shown no sign of remorse and possibility of remorse is not only remote but is impossible.

51. Reliance was placed by the Respondent/Contemnor on the order passed by the Division Bench of this Court in which, one of us (V.M. Kanade, J.) was a member. In this case, Reference was made by the Chief Metropolitan Magistrate against the Respondent under Section 15(2). Identical allegations were made by the Respondent where same modus operandi of terrorizing, intimidating, defaming, scandalizing the Court was resorted. However, in the said case, we noticed that though the show cause notice was issued, it was not accompanied with annexures which were annexed to the Order of Reference. Secondly, we noticed that no preliminary inquiry was held and under these circumstances we came to the conclusion that the Reference made by the CMM Shri S.S. Shinde was not maintainable. In

our view, observations of this Court will not apply to the facts of the present case since all the annextures were annexed to the show cause notice and the preliminary inquiry was held. There is no substance in the contention of the Respondent that no hearing was given. In any case, this Court can take suo moto cognizance of the contempt of the subordinate court. We have, therefore, taken cognizance on the material which was brought to our notice by the learned Metropolitan Magistrate. Lastly, this is a case where (a) contempt is committed in the face of the Court, (b) constant intimidation through letters, (c) futile to give personal hearing when facts are not disputed but justified and (d) High Court as a Court of Record can take suo moto cognizance.

52. The Respondent/Contemnor has not shown any sign of remorse or repentance in his behaviour in and outside the Court. He has refused to tender unconditional apology to the Metropolitan Magistrate or to this Court.

53. Under these circumstances, in our view, this is a fit case where Respondent/Contemnor should be punished for having committed the contempt of the subordinate Court within the meaning of section 2(c) of the Contempt of Court Act, 1971. We therefore hold the Respondent/Contemnor guilty of committing contempt of the subordinate Court and

sentence him to undergo simple imprisonment for a term of three months and also direct him to pay fine of Rs 1000/- and in default of payment of fine to suffer further simple imprisonment for one month.

54. Taking into consideration the conduct of the Respondent in and outside the Court, we are also of the view that he is not a fit person who should be permitted to appear in this Court in person. This Court has framed Rules for regulating the procedure of permitting the parties in person to appear in this Court. These Rules were framed because of unruly behaviour of the parties in person when they appear in Court. It was noticed that in several cases, these parties in person did not maintain decorum of the Court, committed contempt on the face of the Court, sent denigrating letters directly to the Court, made allegations on the social website and therefore Full Court framed these Rules which were approved by the State Government. Rule 5 of the said Rules reads as under:-

“5. If the party-in-person fails to abide by his Undertaking as above, Contempt Proceedings may be initiated against him and/or appropriate costs shall be imposed on him and/or the concerned party will not be allowed to appear in any case as party in person for such period as the Court may think fit.”

We are therefore of the view that this is a fit case where

under Rule 5 of the said Rules, the Respondent/Contemnor should be and is prevented from appearing in person in this Court for a period of two years. We would also like to issue a note of caution to the Respondent/Contemnor that if he continues to behave in a similar manner, as he has done in the past, we will be constrained to pass further appropriate orders.

55. Rule is made absolute in the aforesaid terms.

56. Reference is accordingly disposed of.

bdpps

(REVATI MOHITE DERE, J.)

(V. M. KANADE, J.)