

Sharayu

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**SUO-MOTU CONTEMPT PETITION NO. 1 OF 2016
WITH
SUO-MOTU CONTEMPT PETITION NO. 4 OF 2016**

High Court on its own Motion **...Petitioner**

Versus

Piloo Parvez Mehta & Ors. **...Contemnors**

IN

WRIT PETITION NO. 4931 OF 2015

Silloo Danjishaw Mistri **...Petitioner**

Versus

The State of Maharashtra & Ors. **...Contemnors**

Mr. P.K. Dhakephalkar, Senior Advocate, a/w Mr. Sanjay Jain,
i/b Mr. G.B. Lal, for the Petitioner in WP/4931/2015 & for
Contemnor No. 5 in SMCP/1/2016.

Mr. Abhijit Y. Patil, for the Respondent No. 3 in SMCP/1/2016.

Mr. Ashwin Thool, a/w Ms. Pooja Badekar, i/b Mr. Reshma
Jayant Muthe, for the Respondent No.4 in SMCP/1/2016.

Mr. Aamir M. Shaikh, for the Respondent No. 2 in
SMCP/1/2016.

Mr. A.V. Anturkar, Senior Advocate, a/w Ms. Kalyani Tulankar,
i/b Mr. Kunal Rane, for the Respondent in SMCP/4/2016.

**CORAM : ABHAY S. OKA & AND
RIYAZ I. CHAGLA, JJ.**

DATE : 6 September 2017

ORDER :

1. Today we are dealing with the notice of criminal contempt issued to Shri. G.B. Lal, Advocate, who is the Respondent No. 5 in Suo-Motu Contempt Petition No. 1 of 2016 as well as Shri. Shailesh Kisan Thakur, again a member of the Bar, who is the Contemnor in Suo-Motu Contempt Petition No. 4 of 2016.

2. With a view to appreciate the submissions made across the bar, it will be necessary to make a brief reference to the facts of the case. Criminal Writ Petition No. 4931 of 2015 was purportedly filed by one Silloo Dhanjishaw Mistri seeking a *writ of mandamus* directing the police to register a First

Information Report. When the said Criminal Writ Petition came up before a Division Bench on 6 January 2016, Shri. Jehangir D. Mistri, the learned Senior Counsel practicing in this Court appeared and pointed out that though the Criminal Writ Petition is filed in the name of his mother, in fact, the Petition is not filed by his mother. After noting the said submission, the Division Bench called upon the Shri. G.B. Lal, who was the Advocate on record for the Petitioner in the said Writ Petition, his Clerk and the Petitioner to personally remain present in the Court. Thereafter, the matter was listed before the Division Bench on next date i.e. 7 January 2016. On that date, the Division Bench allowed the intervention of Mrs. Silloo Dhanjishaw Mistri, the mother of Shri. Jehangir Dhanjishaw Mistri, Senior Advocate. There are further orders passed from time to time by the Division Bench. By the order dated 3 March 2016, the Division Bench directed that a show cause notice should be issued to the Respondents in Suo-Motu Contempt Petition No. 1 of 2016.

3. As far as the Respondent No. 1 in Suo-Motu

Contempt Petition No. 1 of 2016 is concerned, by a judgment and order dated 12 August 2016, this Court held that the 1st Respondent/Contemnor i.e. Mrs. Pilloo Parvez Mehta, who impersonated herself as 'Silloo', while filing Criminal Writ Petition No. 4931 of 2015, is guilty of committing criminal contempt. By the said order, a show cause notice was ordered to be issued to the Respondent in Suo-Motu Contempt Petition No. 4 of 2016 Shri. Shailesh Thakur. The 1st Contemnor Mrs. Pilloo was sentenced to undergo simple imprisonment for a term of one month for committing criminal contempt. She was ordered to pay fine of Rs. 2,000/-.

4. On 27 September 2016, the Division Bench of this Court ordered that a notice be issued to the Contemnor in Suo-Motu Contempt Petition No. 4 of 2016. *Prima facie* findings were recorded against the said Contemnor Shri. Shailesh Thakur. Paragraphs 4 to 7 of the said order are relevant, which read thus :-

“4. The learned Counsel appearing for Shri. Thakur on instructions of Shri. Thakur states that Shri. Thakur is appearing in the said proceedings before Tahsildar for Shri. Gilbert Mendonca (4th Contemnor) as his Advocate. He received a copy of the said Affidavit dated 10th December 2015 on the very day. Hence, from the contents of the said Affidavit, it is obvious that at least as on 10th December 2015 Shri. Thakur was made aware that the 1st Contemnor who was representing that she was Silloo Mistri was not real Silloo. The 1st Contemnor is also a party to the proceedings before the Tahasildar. At least he was aware that there was a serious controversy regarding the identity of the person claiming to be Silloo before the Tahasildar. Going by stand taken by the Affidavit dated 10th December 2015, there was obvious conflict between the person claiming to be real Silloo who filed the said Affidavit and Gilbert Mendonca who was represented by Shri. Thakur.

5. *In fact in the said Affidavit dated 10th December 2015, the real Silloo made it very clear that though on 2nd November 2015 one Shri. Naresh Patil, Advocate purported to file Vakalatnama on her behalf, she had never appointed said Advocate and in fact, she had appointed Shri. Shailesh Mahimtura, Shri, Amit Mehta, and Shri. Navin Bhatia to appear on her behalf before the Tahsildar in the said proceedings. She has also stated that the signature appearing on the Vakalatnama of Shri. Naresh Patil, Advocate is not her signature. On 20th November 2015, Shri. Navin Bhatia, Advocate appeared for her before the Tahasildar and filed a purshis in writing stating that said Silloo was approximately 90 years old and therefore, she should be granted a reasonable time to file a Reply.*
6. *As Shri. Thakur was fully aware of the contents of the Affidavit dated 10th December 2015 on the very day, prima facie it is very impossible to accept that*

when Shri. Thakur signed the Criminal Writ Petition No. 4931 of 2015 on 15th December 2015 by recording that he has interpreted and explained the contents to Silloo (the 1st Contemnor), he was not aware that the person who signed the Writ Petition as Silloo was not the real Silloo. Therefore, prima facie, we are of the view that the conduct of Shri. Shailesh Thakur is such that it interferes or tends to interfere in due course of judicial proceedings and intends to obstruct the administration of justice.

- 7. Accordingly, prima facie case is made out against Shri. Thakur of commission of criminal contempt within the meaning of clause (c) of Section 2 of the Contempt of Courts Act, 1971. We accordingly, direct the Registry to issue a notice of contempt in accordance with Rule 9(1) of the Contempt of Court (Bombay High Court) Rules 1994 to Shri. Shailesh Thakur at the address which is already appearing*

on record. The notice is made returnable on 18th October 2016. Contempt Petition to appear high on board on that day.”

5. In paragraph 11, it was observed that Shri. Shailesh Thakur is put to notice that he has indulged in professional misconduct and therefore, this is a fit case to make a reference to the Bar Council of Maharashtra and Goa.

6. As stated earlier, notice to the Contemnor No. 5- Shri. G.B. Lal in Suo-Motu Contempt Petition No. 1 of 2016 was issued, as he filed Criminal Writ Petition No. 4931 of 2015 as an Advocate representing the Petitioner therein who is the 1st Contemnor in Suo-Motu Contempt Petition No. 1 of 2016, who impersonated herself as 'Silloo' while filing the said Criminal Writ Petition.

7. Today we have heard the learned Senior Counsel appearing for the Respondent No. 5 in Suo-Motu Contempt

Petition No. 1 of 2016 and the learned Senior Counsel appearing for the Contemnor (Shri. Thakur) in Suo-Motu Contempt Petition No. 4 of 2016.

8. Shri. G.B. Lal, the 5th Contemnor in Suo-Motu Contempt Petition No. 1 of 2016 has filed an Affidavit in Reply dated 4 August 2016. He has set out in the Affidavit that he was enrolled as an Advocate on 5 April 2014. He has stated that he enrolled himself as an Advocate after he superannuated as a Senior Superintendent working in the Administrative Department, IIT, Mumbai. He has set out his family background. He stated that he started practicing mainly in the Courts at Thane and Kalyan and he also started practice in this Court. He stated that he had an acquaintance with Shri. Shailesh Thakur (Contemnor in Suo-Motu Contempt Petition No. 4 of 2016). He stated that on the request made by Shri. Shailesh Thakur to file Vakalatnama in the Criminal Writ Petition, he filed Vakalatnama in the said Writ Petition and in fact, Writ Petition was filed showing his name as the Advocate for the Petitioner. In

paragraph 9, he has stated that he has not signed the Writ Petition and he has not identified the Petitioner in the said Criminal Writ Petition. He has stated that he has never met the 1st Contemnor as well as Shri. Ashok Hire, who is also one of the Contemnors in Suo-Motu Contempt Petition No. 1 of 2016. He stated that on 7 January 2016, he appeared before the Division Bench of this Court as directed by the Division Bench. He has relied upon the order made by Division Bench on that day. He has also disclosed that in the First Information Report registered at the instance of the 1st Contemnor, it is alleged by the 1st Contemnor that on 15 December 2015 she met him in this Court, when he informed her to affirm the Petition. He has stated that in fact, on 15 December 2015 and 6 January 2016 he was not present in this Court and in fact, on both the dates, he had not come to Mumbai at all. He called upon the Investigating Officer by a letter dated 31 March 2016 to verify the said facts from the CCTV footage of the CCTV cameras installed in this Court as well as from his cellphone details. There are two Affidavits in Reply filed by Shri. Shailesh Thakur, the

Contemnor in Suo-Motu Contempt Petition No. 4 of 2016. The first Affidavit is filed before the contempt notice was issued and the second Affidavit is filed on 24 March 2017 by way of answer to the contempt notice.

9. In the second Affidavit, Shri. Thakur has stated that when the proceedings was placed before the Tahasildar on 11 December 2015, he was not present and therefore, on that day, a copy of the Affidavit dated 10 December 2015 filed by real 'Silloo' was not supplied to him. However, in further part of the Affidavit, he was accepted that before he signed the Criminal Writ Petition, he was aware of the said Affidavit. He has also accepted that he has signed the Memorandum of Criminal Writ Petition on behalf of Shri. G.B. Lal another Contemnor and that he has interpreted and explained the contents of the said Petition to the 1st Respondent/Contemnor, who filed the said Writ Petition impersonating herself as 'Silloo'. In fact, in paragraph 19, he has stated that when he filed the Writ Petition, the 1st Contemnor had informed him that there is yet another

lady, who was claiming herself to be as real 'Silloo'. He has accepted that the Writ Petition was drafted by him and that he has signed the Memorandum of Petition as aforesaid after explaining the contents thereof to the 1st Contemnor. In paragraph 19, he has stated that when the Writ Petition was filed, he was aware that there is one more lady who was claiming to be the Petitioner. He has stated that in the background of that controversy, he checked and verified Aadhar Card, PAN Card and Election Card produced by the 1st Contemnor on which her name was shown as 'Silloo'.

10. The submission of the learned Senior Counsel appearing for Shri. Shailesh Thakur is that the said Contemnor has come clean before the Court and has accepted that it was he who drafted the Petition. He submitted that as he was aware that there was somebody else who was claiming to be as 'real Silloo', he took precaution of verifying Aadhar Card, PAN Card and Election Card produced by the 1st Contemnor showing her as 'Silloo'. But, unfortunately it transpired that those documents were fabricated. The submission is that Shri. Shailesh Thakur

acted on the basis of these three documents and satisfied himself about the identity of the Petitioner. He would, therefore, submit that no case is made out to initiate action against Shri. Shailesh Thakur by holding him guilty of committing criminal contempt.

11. As far as Shri. G.B. Lal is concerned, the learned Senior Counsel appearing for the Shri. G.B. Lal submitted that as Shri. Shailesh Thakur has taken the entire responsibility in his Affidavit, absolutely no case is made out against Shri. G.B. Lal of committing the criminal contempt.

12. We have given careful consideration to the submissions. We have perused the original Memorandum of the Criminal Writ Petition. Shri. Shailesh Thakur has accepted that he signed the said Writ Petition on behalf of Shri. G.B. Lal, Advocate, who has filed Vakalatnama of the Petitioner. He also accepted that he interpreted and explained contents of the Petition to the Writ Petitioner and he has made a remark to that effect in writing on the Petition. He accepted that he has signed

the Petition as an Advocate for the Petitioner. It appears from the Memorandum of Petition that at the time of affirmation, the Petitioner was identified by one Dinesh R. Sonawane, an Advocate's clerk. What is more important is that the Assistant Registrar, who gave oath to the Petitioner, has put an endorsement that he had seen the original PAN Card produced by the declarant bearing No. AFBPN 7559L and he returned the PAN Card to the declarant. Thus, as on 15 December 2015, the 1st Respondent-Contemnor, who filed the said Petition, produced Aadhar Card showing her name as 'Silloo Mistri', who was shown as the Petitioner in the Petition. Therefore, there is no reason to dispute the correctness of the statement made by Shri. Shailesh Thakur that on 15 December 2015, he took precaution of verifying Aadhar Card, PAN Card and Election Card of the person who was claiming to be the Writ Petitioner. Shri. Shailesh Thakur has also accepted that at that time, he was aware of the factual aspect that someone else was also claiming to be 'Silloo Mistri', which is evident from the averments incorporated by Shri. Shailesh Thakur in the Criminal Writ

Petition.

13. Therefore, suffice it to say that this is not a case that where it can be said that Shri. Shailesh Thakur is guilty of committing criminal contempt. However, we are not making any final adjudication on the question, whether the conduct of Shri. Shailesh Thakur amounts of infamous conduct inviting disciplinary proceedings to be initiated by Bar Council of Maharashtra and Goa.

14. Once, we accept the case made out by Shri. Shailesh Thakur, the explanation given by Shri. G.B. Lal is required to be accepted. Shri. G.B. Lal has stated that only on the request made by Shri. Shailesh Thakur that he has signed Vakalatnama. Shri. Shailesh Thakur has accepted that the Memorandum of Writ Petition was signed by him and not by Shri. G.B. Lal. In the circumstances, no case is made out of committing criminal contempt as against Shri. G.B. Lal, Advocate.

15. Accordingly, notice issued to Shri. Shailesh Thakur in Suo-Motu Contempt Petition No. 4 of 2016 is hereby discharged and the said Petition is disposed of.

16. Notice issued to Shri. G.B. Lal, Contemnor No.5 in Suo-Motu Contempt Petition No. 1 of 2016 is hereby discharged.

17. We, however, make it clear that the conclusions recorded by us are for limited purposes of considering whether the concerned Contemnors are guilty of committing the criminal contempt. The observations shall not be construed as any findings, which would bind the Investigating Agency or any other authorities before whom proceedings are pending.

18. For hearing the other Contemnors in Suo-Motu Contempt Petition No. 1 of 2016, the Petition shall be listed high on board on 27 September 2017.

19. The said Contemnor shall remain personally present on that day.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]