

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

Before:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Lapita Banerji**

**C.R.C. No. 20 of 2022 in C.A.N. No. 3 of 2022
with
F.M.A. No. 623 of 2022.**

**Zaniak Innovation India Limited & Anr.
Vs.
The State of West Bengal & Ors.**

(Assigned)

For Mr. Sayantan Basu : Mr. Soumya Mazumder, Adv.
Mr. Manoj Malhotra, Adv.

For the Appellants : Mr. Sayantan Basu, Adv.
Mr. Tanmoy Roy, Adv.
Ms. Tonoya Ghose, Adv.

For the State : Mr. Amal Kumar Sen, Adv.
Mr. Lal Mohan Basu, Adv.

For the Alleged Contemnor : Mr. Kanishk Sinha,

Hearing concluded on : 08.12.2022

Judgment on : 15.12.2022

Lapita Banerji, J.:- By an order dated September 29, 2022 this Court directed a *suo moto* Rule of contempt to be issued against the respondent no. 4,

Kanishk Sinha, appearing in person.

2. The reasons for issuing the *suo moto* Rule of contempt are briefly as follows. When the court was *in seisin* of the appeal being FMA 623 of 2022 along with its connected applications, the respondent No.4 filed an application being CAN 3 of 2022 against Mr. Sayantan Basu, the learned counsel representing the appellants.

3. At Paragraph 3 of CAN 3 of 2022, the respondent no. 4/ the contemnor alleged that the learned advocate representing the appellants was asking the parties to give him briefs and money as he was the junior to one of the members of this Bench in *seisin* of the matter and would be able to obtain favorable orders.

4. Therefore, the contemnor prayed for releasing of the appeal on assignment, being FMA 623 of 2022 from the Bench *in seisin*.

5. Furthermore, the contemnor also wrote a letter vide electronic mail to the Commissioner of Police, Kolkata alleging that Mr. Sayantan Basu spoke to another fellow advocate regarding hurting and/or killing the contemnor and/or his family members by hiring criminals.

6. When the aforesaid CAN 3 of 2022 was placed before this Court on August 3, 2022 along with the electronic mail which was brought on record before this Court by way of filing of an affidavit this Court directed:-

Accordingly, the Bar Council of West Bengal represented through its Chairman is directed to investigate the complaint being CAN 3 of 2022 along with the respective affidavits filed

by the parties and file a Report before this Court on the next date.

The Learned Government Pleader is directed also to take notice of the Gmail addressed to the Commissioner of Police and brought on record as part of an additional affidavit affirmed on behalf of the Appellants dated 13th of July, 2022 and also file a Report on the next date.

Both the Appellants and the Private Respondent No. 4 shall hand over copies of their respective affidavits to the Bar Council of West Bengal and to the Government Pleader both in electronic form and in person, positively in the course of this week.

Let proof of service, as directed above, be produced on the next date.

Let the matter appear under the same heading “Application (Assigned) (Heard-in-Part)” on the 7th of September, 2022.

7. The matter came up for consideration next on September 29, 2022, when the Report of the Bar Council of West Bengal as well as the Report of the Deputy Commissioner of Police, Central Division, Kolkata were filed in Court and retained with the records. The relevant portion of the Order dated September 29, 2022 is reproduced herein below:

The Report of the Bar Council of West Bengal, concludes as follows:

“On a perusal of the aforesaid rules it is amply clear that this rules are mainly restraining the concerned advocate from showing any disrespect towards the Court, towards the opposite party and the opposite Counsel. But nowhere this rules restrained any advocate from making any communication towards his client which amounts to a privilege communication. He has also referred the name of Mr. Supriyo Mukherjee who is not his client. Moreover, in this particular matter

the complainant Shri Gunjan Sinha is the party in person and no compliant has been made that Ld. Advocates appearing on the other side has done anything in violation of the aforesaid rules.

The complaint made in paragraph 3 also in respect of giving money to the junior advocate against whom the allegation was that he was the junior of Justice Talukdar when he was the member of the profession. The said allegation could not be substantiated.

In view of the aforesaid it is the finding of the Committee that the complainant made in paragraph 3 of CAN No. 3 of 2022 in FMAT 623/2022 has not substance and it is beyond the scope of said FMAT 623/2022.”

The Report of the Deputy Commissioner of Police, Central Division, Kolkata concludes as follows:

“Petitioner stated that he does not want to proceed legally over this issue and requested to consider the application as information. He requested for police assistance, in case, required in future. He was assured and provided mobile numbers of OC Hare Street, Inspector Shri Sumit Das Gupta and Sub-Inspector Nirupam Dutta for any urgent assistance.

In course of enquiry also contacted with the opposite party, viz., Advocate Sayanta Basu who denied all allegations made by the petitioner and stated that the petitioner is intentionally bothering him to hamper his reputation.

However, during enquiry the allegation of the petitioner could not be substantiated and no direct offensive interaction could be established between both the parties.

This is for your kind perusal and necessary order.”

8. The contemnor was represented by learned advocate, Mr. Barnamoy Basak, on September 29, 2022. The learned advocate submitted that a Transfer Petition (Civil) was pending before the Hon'ble Supreme Court. During the course of submissions, it transpired that the said Transfer Petition bearing Diary No. 24682 of 2022, was lying Defective since August 12, 2022 and till date there was no information regarding removal of the defects. The Information Slip regarding the Diary Number was retained with the records.

9. This Court found that both the complaints made by the contemnor were unfounded as reflected from the Reports filed by the Commissioner of Police and the Bar Council. When the Court was *in seisin* of the merits of the appeal on assignment, the judicial proceedings were obstructed by the unfounded/unmeritorious complaints filed by the Respondent No.4/contemnor before the Bar Council of West Bengal and the Commissioner of Police, Kolkata.

10. Hence, this Court was constrained to issue a Rule against the contemnor to show cause why he should not be proceeded against for committing contempt of court.

11. When the matter came up next for consideration on November 10, 2022, the contemnor did not appear in person before this Court inspite of Service of the Rule. His learned Counsel, Mr. Barnamoy Basak, who was representing the contemnor on the previous date, even though present in court made no attempt to represent him.

12. The contempt Rule was served upon the contemnor by hand as would appear from the report of the Registry but he made no attempt to answer the Rule. The contemnor sought to appear by virtual mode without:

a) Being permitted by High Court rules authorising appearance by virtual mode which permit litigants above 65 years of age and those with special difficulties such as suffering from temporary illness etc. and, b) In spite of the presence of his Learned Advocate.

13. Therefore, this Court directed on November 10, 2022 as follows:-

“Having regard to the conspectus of facts as stated above read with the gravity attached to answering a Show Cause in a contempt proceeding, this Court accordingly directs the Commissioner of Police, Kolkata to cause the production of the Alleged Contemnor tomorrow, i.e. 11th of November, 2022 at 2-00 p.m. before this Court and, in the event, the Alleged Contemnor is not present, let a Non-Bailable Warrant be issued against the Alleged Contemnor.”

14. When the matter came up for hearing on November 11, 2022, Mr. Barnamoy Basak, learned advocate representing the contemnor, handed over a no objection on a *Vakalatnama* of the contemnor and submitted that he was no longer representing him.

15. A Report was handed over to the Court by the learned Additional Government Pleader on behalf of the Anti-Rowdy Section, Detective Department, Kolkata Police. The proceedings in that regard were recorded by the Order dated November 11, 2022 as follows:

It is submitted from the Report that although attempts were made to trace out the Respondent No.4/the Alleged Contemnor at his addresses as recorded in this proceeding, the Respondent No.4/the Alleged Contemnor remained untraceable. It is further submitted that the mobile phone of the Respondent No.4/the Alleged Contemnor remained switched off throughout till last traced at 12:45 p.m. today.

However, the police refers to an e-mail purportedly received from the Respondent No. 4/the Alleged Contemnor stating that he is required to be present before the Hon'ble Supreme Court in respect of Writ Petition (Criminal) No. 340 of 2022. The date of the said Writ Petition before the Hon'ble Apex Court is claimed to be fixed on the 14th of November, 2022. The claim of the Respondent No.4/the Alleged Contemnor as made through the purported e-mail is to be taken by this court at this stage at face value alone, inasmuch as the physical location of the Respondent No.4/the Alleged Contemnor could not be traced out from his mobile.

Furthermore, this court takes judicial notice of the fact that the police received no assistance regarding the whereabouts of the Respondent No.4/the Alleged Contemnor when visiting the addresses of the Respondent No.4/the Alleged Contemnor as recorded herein above:

This Court must therefore take judicial notice of the fact that the Respondent No.4/the Alleged Contemnor is yet to show cause in the Contempt Proceeding despite being given back-to-back opportunities to do so.

In the light of the discussion above, this Court reiterates the terms of its previous Order dated 10th of November, 2022 and directs the Commissioner of Police to cause the production of the Respondent No.4/the Alleged Contemnor on the next returnable date which is fixed on the 1st of December, 2022 at 2 P.M.

16. When the matter came up for further consideration on December 1, 2022, Mr. Ram Dulal Manna, the next learned counsel representing the contemnor, handed over a copy of the order passed by the Hon'ble Supreme Court on November 14, 2022 in Special Leave to Appeal (c) No. 18622/2022. The said solemn order reads as follows:

“Application seeking permission to appear and argue-in-person is allowed. Exemption applications are allowed. We have heard petitioner-in-person, learned Senior counsel appearing for Respondent Nos. 31 and 32 and gone through the material placed on record. The petitioner-in-person states, at the outset, that he will tender unconditional apology before the High Court and shall withdraw the CAN No. 3/ 22 in FMA No. 623/2022. He will also undertake to assist the Bench headed by Hon'ble Mr. Justice Subrata Talukdar to hear the part-heard matter so that the case can be decided on merits. The petitioner-in-person shall also give an undertaking before the High Court that in future also, he shall not file any such application or conduct himself in a manner which might invite contempt proceedings. On doing so and in light of the above undertaking and assurance given by the petitioner-in-person, we request the High Court to take a lenient view in the matter and drop the contempt proceedings. The petitioner-in-person shall do the needful within a period of one week from today and till such time, the contempt proceedings may be kept in abeyance. The Special Leave Petition is disposed of. Pending applications, if any, shall also disposed of.”

17. The purported undertaking given by the contemnor in terms of the Hon'ble Supreme Court's order is now quoted below for the benefit of this

discussion:-

“Affidavit-in-Apology cum Undertaking on behalf of the Respondent No. 4 namely Gunjan Sinha @ Kanishk Sinha I, Gunjan Sinha @ Kanishk Sinha, son of Shri Bimal Bihari Sinha, aged about 42 years by faith ; - Hindu, by occupation : Advocate & Scientist, resident of 122, Bidhanpally, Police Station – Bansdroni, Kolkata – 700 084, do hereby solemnly affirm and say as follows:- 1. That, I am the respondent no. 4 in the F.M.A. No. 623 of 2022 and Plaintiff in the connected Title Suit being T.S. No. 27 of 2018 pending before the Learned Additional District 3 Judge, South 24 – Parganas, 13th Court at Alipore. 2. That, in compliance of the order dated 14-11-2022 passed in Petition (s) for special leave to appeal (civil) no. 18622 of 2022 by the Hon’ble Supreme Court, the respondent no. 4 filing the instant affidavit in apology cum undertaking before the Hon’ble High Court within 1 week from the date of the order. Website copy of the record of proceedings dated 14-11-2022 passed in Petition(s) for special leave to appeal (civil) no. 18622 of 2022 by the Hon’ble Supreme Court of India is annexed herewith and marked as Annexure – A. 3. That, the respondent no. 4 submits that, in view of the mediation of Hon’ble Supreme Court of India in the matter better sense prevails, the respondent no. 4 tenders unconditional apology and hereby withdraws the application being IA CAN No. 3 & 4 of 2022 without prejudice to any other rights and contentions the respondent no. 4 and further undertakes to not to file any such application in connection with F.M.A. 623 of 2022 in future and will assist this Hon’ble Court. 4. In view of above the respondent no. 4 prays for withdrawal of the application being IA CAN No. 3 & 4 of 2022 and as

such prays for dropping the contempt proceedings being C.R.C. No. 20 of 2022 in CAN No. 3 with F.M.A. No. 623 of 2022. 5. That, the statements made in paragraph nos. 1 to 4 are true to my knowledge and rest are my humble submission before this Hon'ble Court."

18. Upon reading the purported undertaking filed by the contemnor this Court was of the following view as recorded by order dated December 1, 2022:-

The Hon'ble Apex Court directed that the unconditional apology and the undertaking not to file such application or conduct himself in a manner which might invite contempt proceedings are required to be read strictly in the context of the pending contempt proceedings being CRC 20 of 2022.

This Court is also acutely conscious of the fact that the parent appeal, being FMA 623 of 2022, is to be decided on its own merits, as also solemnly directed by the Hon'ble Apex Court.

Furthermore, at Paragraph 3 of the purported undertaking the alleged contemnor has, inter alia, stated that in view of the mediation of Hon'ble Supreme Court of India in the matter better sense prevails.

In the considered view of this Court the language used at Paragraph 3 (supra) is not in compliance with the direction of the Hon'ble Apex Court and, the solemn order of the Hon'ble Apex Court cannot be described as a mediation. The alleged contemnor cannot also describe the solemn order of the Hon'ble Supreme Court as an outcome of a mediation exercise so that better sense prevails.

In view of this Court the alleged contemnor is duty bound to act in strict compliance of the order of the Hon'ble Apex Court, and only upon such compliance this Court, as per direction of the Hon'ble Apex Court may drop the contempt proceedings.

Accordingly, the alleged contemnor is directed to

*clarify the purported undertaking on the next date. In view of the **Rule** issued and served, the alleged contemnor is directed to also appear personally on the next date fixed.*

19. When the matter came up for hearing on December 6, 2022 it was brought to the notice of this Court that two letters have been written by the contemnor addressed to the learned Registrar and the appearing learned advocates as also to the Hon'ble Chief Justice of the Calcutta High Court on December 5, 2022.

20. The relevant portions of the letter addressed to the learned Registrar dated December 5, 2022 are set forth below:-

"The instant letter may kindly be treated as a contempt notice for addressee no. 2 Mr. Sayantan Basu for deliberate and willful violation of the solemn order dated: 14-11-2022 passed in the Petition for Special Leave to Appeal (C) Nos. 18622 of 2022 by the Hon'ble Supreme Court of India under Article 215 read with Section 2(a) of the Contempt of Courts Act, 1971.

Due to deprecating the appearance through him the Learned Lawyer who was third in line tendered resignation from the case.

Now again I apprehend that, if I again appoint a new lawyer of this case the Hon'ble Court will again deprecate him also.

It further appears from order (s) of the Hon'ble High Court that, Mr. Sayantan Basu who is representing the appellants himself by presenting in the court is appointing lawyers for himself then why the undersigned is deprived and his appointed lawyers are deprecate again and again.

6. That, it is pertinent to mention that, the instant proceedings are suo moto an the same is between the

Hon'ble Court and the undersigned only. But it is highly questionable that;

“... “..Learned Counsel for the other appearing parties point out that the purported undertaking, particularly at Paragraph 3 thereof, is not in conformity with the solemn Order of the Hon'ble Apex Court date 14th November, 2022.”

It is pertinent to mention herein that, I have not served any copies of the affidavit o apology cum undertaking to any of the parties except the copy of the receiving dated: 18-11-2022 to the Commissioner of Police, Kolkata to notify compliance by my email dated: 21-11-2022. Since the contempt is between the Hon'ble Court and the undersigned.

(Annexure – B)

I hereby call upon you good self to inform how the said counsel came to know about the affidavit o apology cum undertaking and its paragraph no:3 submitted exclusively before the Learned Registrar General of Hon'ble Calcutta High Court on its administrative side?”

The Hon'ble High Court deliberately and willfully used the word / term “may” which is not there in the Hon'ble Supreme Court order dated: 14-11-2022.”

14. That, in whole I can proudly state that, The Hon'ble Supreme Court of India passed an excellent order by binding all the parties i.e., Hon'ble High Court and the undersigned in sou moto contempt proceedings, appellants and the respondents in FMA No: 623 of 2022 from unnecessary wastage of valuable judicial time by accepting the submission to the effect. He will also undertake to assist the Bench headed by Hon'ble Mr. Justice Subrata Talukdar to hear the part- heard matter so that the case can be decided on merits.”

21. From the letter addressed to the Hon'ble The Chief Justice the relevant paragraphs thereof read as follows:-

5. That Mr. Sayantan Basu is the Chamber Junior of Hon'ble Mr. Justice Subrata Talukdar due to which the Hon'ble Court is complying with the Hon'ble Supreme Court order to hear the matter on merits when the undersigned is ready or willing assist the said Bench as per undertaking made before the Hon'ble Supreme Court.

15. That, in whole I can proudly state that, The Hon'ble Supreme Court of India passed an excellent order by binding all the parties i.e., Hon'ble High Court and the undersigned in suo moto contempt proceedings, appellants and the respondents in FMA No: 623 of 2022 **from unnecessary wastage of valuable judicial time by accepting the submission of the effect.** He will also undertake to assist the Bench headed by Hon'ble Mr. Justice Subrata Talukdar to hear the part – heard matter so that the case can be decided on merits.

17. **That it is highly questionable that how in total violation of Hon'ble Supreme Court order when there is no exception in the Hon'ble Supreme Court order dated: 14-11-2022 wherein no liberty has been given to the Hon'ble High Court to further direct personal appearance of the undersigned and to seek clarification on the Hon'ble Supreme Court imposed condition when the same was exclusively requested to be dropped on filing of the affidavit of apology cum undertaking within a week from the order which was duly filed within 1 week of the date of order and the same was already complied with and time was expired also.** So as per terms of the Hon'ble Supreme Court order the Hon'ble High Court is required to hear the appeal on merits when the undersigned is ready to assist the Hon'ble Justice Subrata Talukdar the said Bench is not ready to hear the matter on merits instead directing personal appearance in already abeyance contempt rule.

22. After issuing the said letters the contemnor filed a clarificatory affidavit dated December 6, 2022, to the purported undertaking pursuant to the orders passed on December 1, 2022 by this Court. In the said clarificatory affidavit the contemnor stated that he voluntarily withdraws both the statements regarding: a) mediation and b) without prejudice to the rights and contentions mentioned in the purported affidavit. He further prayed for dropping of the contempt proceedings. When asked by this Court whether after giving an undertaking before the Hon'ble Supreme Court, the contemnor would not file any application in the nature of **CAN 3 of 2022** or conduct himself in a manner which might invite contempt proceeding and whether the conduct or the action of the contemnor was in consonance with the undertaking, the contemnor submitted that he was justified in writing the letters since the contents thereof were not in violation of Sections 3 and 5 of the Contempt of Courts Act.

23. The contemnor further submitted that he was willing to withdraw the letters dated 5th of December 2022 and therefore, without wasting unnecessary judicial time in hearing the contempt proceedings, the same should be dropped and the appeal should be heard on merits.

24. The contemnor contended that since he was not aware of the fact that the Court, upon handing over of the undertaking to the learned Counsel appearing on behalf of the appellants invited his opinion, he had written to the Registry on December 5, 2022 asking for an explanation as to how his

undertaking was unauthorisedly handed over to the appellants. It is therefore quite apparent from the conduct of the Contemnor that he sought an explanation from the Registry without first ascertaining the facts from his learned advocate who represented him on December 1, 2022. The contemnor was represented by Sk. Mohinuddin, learned advocate, on December 1, 2022. The said advocate was also present in Court on December 6, 2022 without making any submission. Apparently, he too had given his no objection in the matter.

25. The matter came up for further hearing on December 8, 2022 when all the parties made detailed submissions. Interestingly, all the erstwhile advocates who previously represented the contemnor were present in court on that date.

26. Mr. Majumdar, learned Counsel appearing on behalf of Advocate Sayantan Basu submitted that the action and/the conduct of the contemnor was in clear violation of the undertaking given before the Hon'ble Apex Court.

27. Mr. Sen, Additional Government Pleader, also submitted that the undertaking given by the contemnor before this Court and the clarificatory affidavit filed on December 6, 2022 is not in consonance with the order passed by the Hon'ble Supreme Court on November 14, 2022.

28. The contemnor submitted that since the letters dated December 5, 2022 were not in the nature of applications, there was no violation of the undertaking given before the Hon'ble Supreme Court. He submitted that this

Court had no jurisdiction to continue with the contempt proceedings since an undertaking was already given by him. In the event, a fresh contempt proceedings was desired to be drawn up *suo moto*, then this Court would have to seek clarification through the appropriate mode. Prior to that the contempt proceedings being **CRC 20 of 2022** could not be continued.

29. Having heard the submissions of the parties and the materials placed on record, this Court is of the view that the contents of the letters dated December 5, 2022 are in clear violation of the undertaking given by the contemnor before the Hon'ble Supreme Court of India. After submitting a purported apology/undertaking the contemnor sought to bring fresh allegations against this Court and also against the learned Advocates of this Court.

30. The contemnor sought to justify his action by filing an undertaking before this Court on November 18, 2022, which was later clarified on December 6, 2022 pursuant to the order dated December 1, 2022. The clarificatory affidavit was not a voluntary action on the part of the contemnor. It is a well-settled proposition of law that there cannot be both justification and an apology, the two being incompatible in law. An apology is not a weapon to absolve the contemnor from his guilt. The contemnor by his purported undertaking/apology dated November 18, 2022 and subsequent letters dated December 5, 2022 had sought not only to provide justification but also sought to make fresh allegations against the Court in the garb of an apology. The conduct/action of the contemnor has interfered with the administration of

justice and has lowered the majesty and dignity of the Hon'ble Court. No remorse/contriteness has been expressed by the contemnor.

31. On December 8, 2022, the contemnor sought to withdraw the letters dated December 5, 2022 orally. The said letters contain allegations against Mr. Sayantan Bose, the Registry and this Court. Since it was the desire of this Court to invite submissions from the learned advocate appearing on behalf Mr. Sayantan Basu, this Court directed its Officers to hand over a copy of the purported undertaking to Mr. Malhotra, the learned advocate representing Mr. Sayantan Bose, learned counsel.

32. After the sequence of events in Court were brought to the notice of the contemnor during the hearing by this Court itself, the contemnor expressed the desire to withdraw the said letters. The contemnor argued that since he prayed for withdrawal of the letters and also gave the clarificatory affidavit, nothing further remained to be adjudicated in the contempt application. Therefore, this Court should drop the contempt proceedings instead of unnecessarily wasting judicial time and proceed to hear the appeal on merits. Such contentions cannot be accepted since the contemnor, being the architect of **CAN 3 of 2022**, is not in a position to advise this Court as to how precious judicial time is to be utilized. The request for withdrawal was neither voluntary nor contrite. The request for withdrawal was on the basis of the clarification made by this Court that, the Registry did not, on its own motion, hand over the purported undertaking to the learned counsel appearing on behalf of the appellants.

33. It is also not lost upon this Court that despite being represented on December 1, 2022 by Sk. Moinuddin, learned advocate, the contemnor sought to argue that the court proceedings were not narrated by his learned advocate to him. Without ascertaining what transpired in Court, the contemnor took upon himself the responsibility of writing the letters dated December 5, 2022 to the Hon'ble The Chief Justice as well as the Registry. The said argument is too strenuous and hence found unacceptable by this Court.

34. The oral submission for withdrawal was neither voluntary nor evidenced by any real remorse. This Court, being a court of records, is not persuaded to accept the withdrawal of the letters dated December 5, 2022, in the light of the discussion made hereinabove.

35. The contention that no reliance can be placed on the said letters since they are not by way of applications before this Court, is also not tenable. The contemnor gave an undertaking before the Hon'ble Apex Court that he would not file any application in the nature of **CAN 3 of 2022** or conduct himself in a manner that might invite contempt proceedings. The contemnor has conducted himself in a manner which, in the considered view of this Court, clearly invites contempt proceedings. The order of The Hon'ble Supreme Court has to be followed in its true letter and spirit.

36. For the reasons aforesaid, this Court holds the contemnor, Mr. Kanisk Sinha to be in contempt of Court. With due deference to the solemn order of the Hon'ble Supreme Court, in the view of this Court the undertaking/apology

is not an apology at all and therefore, the contempt proceedings cannot be dropped against the contemnor.

37. This Court relies on the recent Order dated November 11, 2022 of the Hon'ble Apex Court in Special Leave to *Appeal (C) No.19043/2022 (Mohan Chandra P. versus The State of Karnataka & Ors.)*, for holding that the actions/conduct/statements of the contemnor are derogatory and highly contemptuous in nature. The Hon'ble Apex Court passed the Order dated November 14, 2022 on the faith that a particular course of action will be followed by the contemnor. The contemnor has failed to follow the said course and acted in breach of the undertaking which tantamounts to misconduct inviting contempt proceedings.

38. In the light of the discussion above, this Court directs the Contemnor to deposit a sum of Rs.2 lakhs within a week from this date with the Learned Registrar General, Appellate Side, High Court at Calcutta, which will be invested in a long term fixed deposit for 3 years of any nationalized bank. In the event, the contemnor conducts himself respectfully and in a way so as not to invite contempt proceedings in future, the said sum will be refunded to him along with interest accrued thereon, on expiry of the stipulated period.

39. In the event, he conducts himself in a manner that further contempt proceedings are invited, the said sum will be forfeited immediately and paid to the State Legal Services Authority by the Learned Registrar General.

40. In default of payment of the aforesaid sum as within the period as directed above, the Commissioner of Police, Kolkata shall forthwith cause to be

issued a warrant of arrest against the contemnor and take him into custody to undergo simple imprisonment for a period of two months.

41. **Registry** is directed to take steps and also communicate this order to the Commissioner of Police, Kolkata.

42. **CRC 20 of 2022** and **CAN 3 of 2022** stand accordingly **disposed of**.

43. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

44. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lapita Banerji, J.)

Subrata Talukdar, J.:- I have had the privilege of reading the detailed judgement of my colleague on the Bench, Lapita Banerjee, J. I agree with Her Lordship's view and take this opportunity to add a few lines.

While deciding the Contempt Application, Her Lordship has been pleased to notice the conduct of the contemnor and correctly so. It would be profitable to quote a few instances relating to such conduct of the contemnor.

The instances are as follows:-

First, upon receiving notice of the Rule issued by this Court calling upon the contemnor to explain his conduct, the contemnor instead of answering the Rule applied for transfer of the contempt proceeding from this Court.

Second, pursuant to the solemn directions passed by the Hon'ble Apex Court on 14th November, 2022 disposing of the transfer petition of the contemnor, the contemnor filed a purported justification on affidavit in the garb of an undertaking before the Registry of this Court, details whereof have been discussed hereinabove in the judgement of Her Lordship.

Third, it is noticeable that even after the Hon'ble Apex Court directed the contemnor to submit an unconditional apology before this Court, the contemnor chose to be represented through learned advocates on the assumption that the order dated 14th November, 2022 exonerated him in entirety from purging himself of the contempt, cognizance whereof has been taken by this Court.

Fourth, as also clearly discussed by Her Lordship in her judgement (*supra*), the purported undertaking is neither unequivocal nor unconditional. The contemnor has chosen to ringfence the purported undertaking with observations touching upon the presumed prejudice apprehended by him.

Accordingly, the contemnor has been unable to demonstrate real contriteness before this Court. It is not lost upon this Court that the contemnor is not a new litigant. The contemnor, although appearing in person, is a regular

litigant not only before the Hon'ble Court but also before the Learned Subordinate Courts. It must be therefore presumed that the contemnor is not unaware of the consequences arising out of a Rule issued in a pending contempt proceeding. Furthermore, from earlier proceedings before the Hon'ble Court conducted by the contemnor in person, details whereof have been brought to the notice of this Court, it transpires that the contemnor has not conducted himself with responsibility and respect towards other Hon'ble Benches of the Court and its learned advocates.

It would be useful at this juncture to identify the law laid down in this regard. Reference may be had to the judgement reported in *AIR 1955 Calcutta 182, In Re : Suretennessa Bibi vs. Chintaharan Das* at Paragraph 4, which reads as follows:-

“4. We have, therefore, no doubt in our mind that the opposite party Chintaharan Das is guilty of a deliberate breach of the personal undertaking given by him to this Court in his affidavit dated 30-11-1953. It is settled law that breach of an undertaking given to a Court by a person in a pending proceeding on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt. In the case before us on the faith of the undertaking given by the petitioner the appeal filed by him was disposed of in terms of the petition of compromise under the provisions of O. 23, R. 3, Civil P.C.”

In AIR 1955 S.C. 19, *In Re: M.Y. Shareef and Another vs. Hon'ble Judges of the Nagpur High Court and Others.*, the Hon'ble Supreme Court held at Paragraph 10 as follows:-

“10. *The proposition is well settled and self-evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. The appellants having tendered an unqualified apology, no exception can be taken to the decision of the High Court that the application for transfer did constitute contempt because the judges were scandalized with a view to diverting the due course of justice, and that in signing this application the two advocates were guilty of contempt. That decision therefore stands.”*

Furthermore in 1991) 3 SCC 600, *In Re: M.B. Sanghi, Advocate vs. High Court of Punjab and Haryana and Others*, it was held at Paragraphs 12 and 13, as follows:-

“12. *Shri Mahabir Singh has urged that the appellant is a fairly senior Advocate and has been practising for more than 20 years and since he had tendered unqualified apology before the High Court the same ought to have been accepted. With regard to apology in proceedings for contempt of court, it is well-settled that an apology is not a weapon of de- fence to purge the guilty of their offence; nor is it in- tended to operate as a universal panacea, but it is intended to be evidence of*

real contriteness. (See: *M.Y. Shareef & Anr. v. The Hon'ble Judges of the High Court of Nagpur*). In the instant case, I find that in his affidavit in reply to the notice issued by the High Court which is annexed at Annexure II, the appellant first denied having used the words as mentioned by Shri S.R. Sharma in his report sent to the District & Sessions Judge, Narnaul or having shown disrespect in any manner whatsoever to Shri S.R. Sharma, the Presiding Officer of the court of Sub-Judge, Narnaul on September 24, 1985. In para 3 of the said affidavit, the appellant has stated as under:

"That if this Hon'ble Court comes to the conclusion that the deponent has committed contempt, the deponent tenders an unqualified apology to this Hon'ble Court and begs for forgiveness. The deponent is a senior and respected member of the Narnaul Bar besides that being law abiding citizen has greatest respect and regards for the judiciary and all the Presiding Officers."

13. *This would show that the apology that was tendered by the appellant before the High Court was to be taken into consideration in the event of the High Court finding the appellant guilty of having committed contempt of court. Moreover in the present case, it has been found that this was not the first occasion in which proceedings for contempt of court had been initiated against the appellant and on an earlier occasion also proceedings for contempt of court had been initiated against the appellant in pursuance of a report of Shri K.K. Chopra, the then Chief Judicial Magistrate, Narnaul and in those proceedings the rule issued against the appellant was discharged on his tendering unqualified*

apology before the High Court. In those proceedings also the appellant is said to have made disparaging remarks against the Judge. Keeping in view the said circumstance, the High Court has found that the appellant was addicted to using contemptuous language and making scurrilous attacks on judges. Having regard to the fact that incidents of insubordination and use of improper language towards the judges are on the increase, the High Court was of the view that the appellant could not be allowed to get away by simply feeling sorry by way of apology as the easiest way. I am unable to say that the High Court was not justified in taking this view. Taking into consideration the facts and circumstances of the case and the fact that the appellant, a fairly senior advocate, is prone to use disparaging and contemptuous remarks against judges, I am of the opinion that this is not a case in which the apology tendered by the appellant may be accepted.”

In 2008) 14 SCC 561, *In Re: Patel Rajnikant Dhulabhai and Another vs. Patel Chandrakant Dhulabhai and Others.*, at Paragraph 77, the Hon’ble Apex Court held as follows:-

“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.”

Apropos the facts of this case and the law laid down, this Court is of the view that the contemnor deserves to be punished and agrees with Her Lordship that the punishment imposed is just and proper.

Let the appeal being **FMA 623 of 2022** be listed under the heading **“Application (Assigned)(Heard-in-Part)”** on the **19th of January, 2023 at 2.00 pm.**

All parties to act on server copy of this Order as downloaded from the official website of this Hon’ble Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Subrata Talukdar, J.)