**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2020**

**In R/CRIMINAL MISC.APPLICATION NO. 8120 of 2020**

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AMIT MANIBHAI PANCHAL

Versus

SUO MOTU

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Appearance:

MR Mihir Thakore LR. SR ADV. with Ld.Adv.Mr.RUCHIR A PATEL for the Applicant

Mr.Mihir Joshi and Mr.Arvind Datar,Learned Sr.Advocates with Ld. Adv.Ms Kruti Shah for the Opponent(s) No.2

Mr. Shalin Mehta, Learned Sr.Advocate with Ms.Nisha Thakore ,Ld.Adv.

as Amicus curies

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**

and

**HONOURABLE MR. JUSTICE N.V.ANJARIA**

**Date : 19/08/2020**

**IA ORDER**



**(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

**1.** The applicant by way of present application seeks to intervene in the Criminal Miscellaneous Application (for contempt) No. 8120 of 2020 or in the alternative seeks permission of this Court to bring to the notice of the Court certain contemptuous utterances at the instance of opponent

no.2 so as to enable this Court to take notice while deciding the said contempt application.

**2.** It is averred that the applicant seeks to play the role of an informant to enable the Court to decide the contempt application by taking into consideration the information supplied by the applicant. The applicant is a member of the legal profession enrolled in the Bar Council of Gujarat at Ahmedabad in the year 1983. He is also a member of Gujarat High Court Advocates' Association (GHAA).

**3.** The applicant has preferred Writ Petition (PIL) No. 83 of 2020 and had originally prayed the following reliefs there:

> *"(A) Be pleased to issue directions for framing of appropriate Rules under the Gujarat High Court Rules, with regard to proper conduct and discipline by members of the legal profession and with regard to any Resolution that may be passed by the Respondent No. 3, in the conduct of matters considering the judgments of the Honourable Supreme Court of India in the case of (1) Ex-Capt. Harish Uppal vs. Union of India reported in (2003) 2 SCC 45; (2) Krishnakant Tamrakar vs. The State of Madhya Pradesh reported in (2018) 17 SCC 27; (3) Mahipal Singh Rana vs. State of U.P., reported in (2016) 8 SCC 335; (4) District Bar Association, Dehradun vs. Ishwarya Shandilya and Ors., reported in 2020 SCC Online SC 244; annexed at Annexure F Collectively, which are binding under Article 414 of the Constitution of India;*

*(B) Declare the actions of the Respondent No. 3 of issuing Google Form at Annexure A, WhatsApp Message at Annexure D and the subsequent voting procedure undertaken thereafter as indicated in the Letter at Annexure E as illegal and contrary to judicial discipline and having been undertaken contrary to the Constitution of Respondent No. 3 Association at Annexure I in absence of calling of a General Body Meeting and the Meeting of the Managing Committee of the Respondent No.3;*

*(C) Pending the admission, hearing and final disposal of this Writ Petition, Your Lordships may be pleased to restrain the Respondent No.3, its office bearers, members etc., from passing any resolution and/or taking any action in respect of whether the Honourable High Court of Gujarat can function normally or through Virtual hearing and which subject matter is pending decision before the Honourable Chief Justice and the Honourable Judges of the Honourable High Court of Gujarat at Ahmedabad and for the purpose of which the Questionnaire at Annexure – C has been issued on 26.05.2020 by the Honourable The Chief Justice;*

*(D) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case."*

**4.** The applicant herein applied for the amendment in the Writ Petition (PIL) No. 83 of 2020 and proposed to add paragraph nos. 4.14 to 4.22 which has been allowed by the Court (Coram: - Hon'ble The Chief Justice Mr. Vikram Nath and Hon'ble Justice Mr. J.B.Pardiwala) vide order dated

16.06.2020. For the ready reference, the paragraph nos. 4.14 to 4.22 are reproduced hereunder: -

> *"4.14. It is submitted that besides the events narrated above, Shri Yatinbhai N. Oza, President of Respondent No.3 Association has also written to the Honourable Chief Justice of India n his personal capacity, making scandalous allegations against judges of the Honourable High Court. Annexed hereto and marked as ANNEXURE – K is a copy of the letter dated 21.03.2020 sent by Shri Yatinbhai N. Oza to the Honourable Chief Justice of India.*
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> *4.15. It is further submitted that the conduct of the Respondent No.3 is prima facie contemptuous and done in a manner so as to browbeat the Judges of this Honourable Court and bring the entire institution into disrepute. A Division Bench of this Honourable Court has already taken cognizance of Respondent No.3's contemptuous actions vide order dated 09/06/2020 in R/Criminal Misc. Application No. 8120 of 2020. Annexed hereto and marked as ANNEXURE – L is a Copy of the said order.*
>
> *4.16. The Petitioner submits that the Honourable Supreme Court has on multiple occasions reiterated the need to have rules framed under Section 34 of the Advocates Act in order to regulate conduct of advocates and to preserve the purity of the judicial process. The Petitioner places reliance on a Judgment of a bench of three Judges of the Honourable Supreme Court in R.K. Anand v. Delhi High Court, (2009) 8 SCC 106 wherein the Honourable Court has observed:*

*"238... ... ... ... Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an "inconvenient" court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately these examples are not from imagination. These things are happening more frequently than we care to acknowledge.*

*239. We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time."*

*4.17. Stressing on the importance of the formulation of rules under Section 34, the Honourable Court went on to hold:*

*"242. Ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the*

*absence of the rules the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceeding is held guilty of criminal contempt before dealing with the question of punishment.*

*243. In order to avoid any such controversies in future all the High Courts that have so far not framed rules under Section 34 of the Advocates Act are directed to frame the rules without any further delay. It is earnestly hoped that all the High Courts shall frame the rules within four months from today. The High Courts may also consider framing rules for having Advocates-on-Record on the pattern of the Supreme Court of India."*

*4.18. It is clear from a bare perusal of the above, that there has been a duty enjoined upon this Honourable High Court to formulate rules "laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto." To the best of the Petitioner's knowledge, such rules have been formulated by the Honourable Bombay High Court, the Honourable Punjab and Haryana High court, the Honourable Patna High Court, the Honourable Madras High Court, the Honourable Orissa High Court, the Honourable Calcutta High Court, the Honourable Jammu and Kashmir High Court and the Honourable Madras High Court.*

*4.19. The Petitioner submits that a writ of mandamus can be issued when there is a power, coupled with a duty on an administrative authority to act in a particular manner and it fails to do so. The Petitioner submits that there is both a power, and a duty upon this Honourable Court acting on its administrative side to frame rules.*

*4.20. It is submitted that the power to formulate rules has been conferred to this Honourable Court under Section 34 of the Advocates Act. The duty to formulate the rules has been conferred in light of various pronouncements of the Honourable Supreme Court, including the Judgment in RK Anand (supra) wherein the Court had directed High Courts to frame rules within four months.*

*4.21. The Petitioner further submits since necessary rules have not been framed, a Writ Petition seeking the issuance of a writ of mandamus to the Court on its administrative side is maintainable. Reliance in this regard is placed on Judgment of the Honourable Supreme Court in Riju Prasad Sarma v. State of Assam, (2015) 9 SCC 461, wherein the Court has held:*

*"68. Hence, in accordance with such judgments holding that the judgments of the High Court and the Supreme Court cannot be subjected to writ jurisdiction and for want of requisite governmental control, judiciary cannot be a State under Article 12, we also hold that while acting on the judicial side the courts are not included in the definition of the State. Only when they deal with their employees or act in other matters purely in administrative capacity, the courts may fall within the definition of the State for attracting writ jurisdiction against their administrative actions only."*

*4.22. The Petitioner places further reliance on a Judgment of the Honourable Bombay High Court in National Federation of the Blind Maharashtra v. High Court of Judicature of Bombay, 2018 SCC OnLine Bom 931 : (2018) 5 Mah LJ 903, wherein the Court has held:*

*"22. The afore-stated authorities/observations of the Apex Court clearly indicate that on the judicial side, the Courts are not included in the definition of "State", but while dealing with the employees or taking decisions in administrative capacity, the Courts would fall within the definition of "State" under Article 12. Writ jurisdiction gets attracted in respect of the administrative decisions and actions only."*

*Having held thus, the Honourable Court proceeded to pass directions to the Court on its administrative side. In light of the above, the Petitioner reiterates that there is both a duty and a power on this Honourable Court acting on its administrative side to frame rules under Section 34 of the Advocates Act. The same is necessary in order to ensure that Advocates and Bar Associations do not attempt to browbeat this Honourable Court or otherwise bring*

*the justice delivery mechanism into disrepute. However, since necessary rules have not been framed, this writ seeking a judicial direction for the formulation of such rules is maintainable. ”*

**5.** The opponent no.2 herein is the respondent no.3 in the said PIL in his capacity as the President of GHAA. It is averred that pending the said PIL, the applicant learnt from various colleagues at Bar and also in print media that opponent no.2, in an interview as the President of GHAA raised accusing fingers against the Court, High Court Administration and the Registry by irresponsible, sensational and intemperate delivery of words and this Court has suo motu initiated the contempt application vide its order dated 09.06.2020. The Court restrained opponent no.2 from making any scandalous remarks or holding official meeting and passing any resolution or circulating any material or communicating directly or indirectly either himself or through others in relation to the subject matter of contempt. The said order of 09.06.2020 has been extended time and again.

**6.** The opponent no. 2 preferred Special Leave Petition (Criminal) No. 002740 of 2020 before the Apex Court,

however, the said petition came to be withdrawn on 16.06.2020.

**7.** A copy of the letter dated 21.03.2020 addressed by the opponent no.2 on his letterhead in his individual capacity to the Hon'ble the Chief Justice of India is also brought on record. It is further averred by the applicant that the opponent no.2 circulated messages in the month of June, 2020 and two such messages of the WhatsApp group called High Court Advocates are annexed at Annexure-D1 in the application. Although, there was no requirement for publicizing his telephonic calls to the Hon'ble Chief Justice of India or to the Hon'ble Judges of the Collegium of the Apex Court, he resorted to the said modus operandi and utterance of the opponent no.2, according to the applicant is the contempt of this Court as the Court has already initiated suo motu contempt proceeding against the opponent no.2.

**8.** By way of the present application preferred by the applicant, he seeks to intervene with the say that the Opponent no.2 has maligned this Court and there was no requirement nor any reason for circulating letter in the month of June, 2020.

This appears to have been done with a *mala fide* intent and to give a bad name to the judge concerned and to disrepute the High Court. He is trying to browbeat the judges and belittle the institution.

8.1. The applicant, therefore, has sought the prayers which are as follows: -

> *"(A) Permit the Applicant to intervene in the captioned Criminal Miscellaneous Application (For Contempt) No. 8120 of 2020;*
>
> *OR, in the alternative*
>
> *(B) Treat the present Application as information/ notice of contempt utterance committed by the Opponent No.2, and consider the same while deciding the present Contempt Application;*
>
> *(C) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case."*

**9.** A copy of this application has been given to the learned counsel for the opponent no.2 and also to the Amicus Curie, learned senior advocate Mr. Shalin Mehta appearing in Criminal Misc. Application No. 8120 of 2020 and the same is seriously resisted for and on behalf of the Opponent no. 2. This Court extensively heard learned senior advocate Mr. Mihir Thakore appearing for the applicant, learned senior

advocate Mr. Shalin Mehta as an Amicus Curie and learned senior Advocates Mr. Arvind Datar and Mr. Mihir Joshi for the opponent no.2 on the aspect of entertainment of this application of the third party and connected issues.

**Oral submissions**

**10.** Learned senior advocate Mr. Mihir Thakore has strenuously argued before this Court along the line of application and has urged that the applicant is before this Court seeking to play the role of an informer, since the utterances made by opponent no.2 have come to his knowledge and this Court while invoking jurisdiction of contempt under Article 215 of the Constitution of India and under the provisions of Contempt of Courts Act, 1971, is entitled to take into consideration the material which may come from any corner, here is the applicant, according to learned counsel, who in his capacity as a vigilant member of Bar and who is interested in a strong system has approached this Court to assist the Court as to how the opponent no.2 has resorted to circulating the contemptuous material. He, at the outset submitted that the applicant has no intent to be joined as a party as an

intervener if the court does not require his presence to assist the cause. His alternative prayer of his information to be taken by the Court is what is requested of.

10.1. Learned Counsel Mr.Thakore for the applicant has fairly submitted that addressing a letter to Honorable the Chief Justice of India *per-se* may not amount to contempt, however, the intent of the said letter which was circulated in the WhatsApp group of Advocates with an intent of wide circulation before two days of issuance of notice of Contempt upon the opponent no.2, makes it a contemptuous utterances. He chose not to read the contents aloud and requested the Court to peruse the same to urge that circulation of the same would surely amount to contempt. He reiteratively insisted that he does not have any intent to join as a party and when the issue of acceptance of unconditional apology is going on, he needs to bring it to the Court's knowledge this additional material which the Court might have missed out.

10.2. Learned Counsel has taken us through the constitutional provisions and the Contempt of Courts Act,1971 at length.

**11.** Following are the decisions which are sought to be relied upon for and on behalf of the applicant for the purpose of substantiating the submissions: -

(i) C.K. Daphtary v. O.P. Gupta [(1971) 1 SCC 626]

(ii) S.K. Sarkar v. Vinay Chandra Misra [(1981) 1 SCC 436]

(iii) P.N. Duda v. V.P. Shiv Shankar & Others [(1988) 3 SCC 167]

(iv) Pritam Pal v. High Court of M.P. [1993 Supp (1) SCC 529]

(v) Om Prakash Jaiswal v. D.K. Mittal [(2000) 3 SCC 171]

(vi) Vijay Kurle, [In re 2020 SCC OnLine SC 407]

(vii) In Re: Prashant Bhushan & Anr. [Suo Motu Contempt Petition (CRL.) No. 1 of 2020].

11.1. On the basis of the decision of **Pritam Pal vs. High Court of M.P. [1993 Supp (1) SCC 529]**, it is urged that the nature and scope of contempt powers of the Apex Court and

this Court are inherent powers to deal with their own contempt and powers are not restricted by any ordinary legislation including Contempt of Courts Act and Code of Criminal Procedure. He urged that the Apex Court as well as this Court being the Court of Record under Articles 129 and 215 of the Constitution respectively have inherent powers under which it can deal with the contempt. Therefore, the constitutionally vested right cannot be abridged by any legislation including the Contempt of Courts Act. He further urged that only caution that needs to be observed in exercising these powers which are of summary nature that the same should be used sparingly, and the procedure should be followed should be fair and the contemner should be made aware of the charges against him by affording him reasonable opportunity to defend himself. He also submitted that contempt jurisdiction of the Apex Court and of this Court is regulated by Entry No. 77 of List I (Constitution and organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court)...Entry No. 14 of List III (Contempt of Court, but not including contempt of the Supreme Court) of the 7th Schedule in exercise of which the

Parliament has enacted the Act of 1971. Both the Courts are given constitutional foundation by declaring them to be Court of Record under Articles 129 and 215 of the Constitution, therefore, no legislation can take away the inherent powers of this Court much less in the matters of procedural aspects. Section 22, therefore, makes it very clear that provisions of the Contempt of Courts Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. Learned Counsel urged further that prior to Contempt of Courts Act, 1971, the High Court adopted its own procedure which was required to be fair and affording a reasonable opportunity for the contemner to defend himself, however, the procedure has been prescribed by Section 15 of the Act in exercise of power conferred by the Entry no.14 of List lll of the 7 th Schedule.



11.2. Relying on the decision of **Om Prakash Jaiswal vs. D.K. Mittal [(2000) 3 SCC 171]**, it is urged that a private party or litigant also can invite the attention of the Court about the alleged commission of contempt, but, cannot as a right compel or demand initiation of proceedings. Such a

party cannot be called a complainant or an aggrieved party. He urged that the basis and justification of the powers of Contempt of Court is since to preserve the independence of judiciary essential for a civilized society, the power is exercised only when there is a clear case made out. He admitted that the applicant is aware that he does not have any right to appeal. He does not enjoy the right of complainant or aggrieved party but in a matter, which is between the Court and alleged condemner, he is an informer or relator. It is thereafter for the Court to decide whether to act on such information or not to act, the private party or litigant moving the Court continue to render the assistance during the course of proceedings.



11.3. In a decision of **Vijay Kurle and Others, Suo Motu Contempt Petition (Criminal) No. 02 of 2019 [2020 SCC OnLine SC 407],** learned counsel has taken us through various decisions of the Apex Court and the scheme of the Constitution under the Contempt of Courts Act. He insisted that in this judgment also the Court has made it very clear that the person at the best can inform the Court of the

contempt committed. It is on the strength of the material, the Court can decide to issue the notice.

11.4. He also further urged relying on various decisions to urge as to what actions would amount to the contempt of court. He has urged that it is for the Court to look into the material where the contemner attempts to demoralize the judges or damage the confidence in judicial system. He also has further submitted that if this material is taken on record, the Court at the best needs to give opportunity to the other side and the procedure needs to be fair and just. Material can come from any source, it is for the Court to decide what use can be made of the same. The Petitioner is the relator or informer and not interested in either harming or helping the contemner, but, to assist the court.

**12.** Learned senior advocate Mr. Shalin Mehta as an Amicus Curie has urged that it is a trite law that a party has no right to participate in the suo motu contempt petition which is between the Court and the contemner but, if it approaches the Court and bring to the notice of the Court certain material, the Court while proceeding with the criminal

contempt can always take into consideration such material. He urged that the contempt is basically the matter between the Court and the contemner and no third party can come forward to claim any right of even participation. The Court on the basis of the information itself can take suo motu note of the contempt. The applicant has no right to participate but only to inform the court of material.He urged relying on the decision of **Vijay Kurley,In** re(Supra) that any person Can inform the court of contempt committed since it is a matter essentially and basically between the court and the can inform the court of contempt committed since it is a matter essentially and basically between the court and the contemner. He as a contemner. He as a good Samaritan the party can approach this court and on the basis of information, the court can Suo Motu initiate the proceedings.

12.1 He also relied on the decision rendered in case of **C.K.Daphtary and Others vs. O.P.Gupta and Others [(1971) 1 SCC 626]**, on the aspect of locus. Noticing the fact that it is a judgment prior to the Contempt of Courts Act, 1971, it is urged that Apex Court and this Court have inherent powers being the Court of Record. In the matter of

C.K.Daphtary (supra), the arguments before the Apex Court that the petitioner has no locus standi and the court itself can issue a suo motu notice and advocates of the Court including the President of Supreme Court Bar Association are entitled to bring to the notice of the court any contempt of the court. The arguments before the Apex Court was that the proceedings should be initiated only if the Attorney General in its discretion considers it necessary. The Court held that it is not a law as the Attorney General in England has quite different position than that of the Attorney General in India or the Attorney General of the State. According to the learned counsel, the Apex Court held that there is nothing in the law which would prevent the Court from entertaining the petition at the instance of any party. The Bar which is concerned in the maintenance of the dignity of the Court and proper administration, can always approach this Court. By its very nature the criminal contempt undermines the authority of the court and hence, Bar members would be interested in preserving the might of the Institution.

12.2. He sought to rely on the following authorities as well in support of his arguments: -

(i) L.D. Jaikwal vs. State of U.P. [(1984) 3 SCC 405]

(ii) M.B. Sanghi, Advocate vs. High Court of Punjab and Haryana [(1991) 2 SCC 600

(iii) Patel Rajnikant Dhulabhai vs. Patel Chandrakant Dhulabhai [(2008) 14 SCC 561]

(iv) Hira Lal Dixit vs. State of U.P. [(1995) 1 SCC 677]

(v) Hiren Bose, In re [1967 SCC OnLine Cal 84].

12.3. He also sought to rely on the decision of **S.K.Sarkar vs. Vinay Chandra Mishra [(1981) 1 SCC 436]**. According to him, Section 15 of the Contempt of Court Act does not specify the base or source of information on which the High Court can act in his own motion. The High Court, from the perusal of the record or subordinate court or reading in the newspaper or hearing the public speech, without there being any reference from the subordinate court or Advocate General can take cognizance on its motion, but if the High Court is directly moved by a petition by a private party being aggrieved and not with the consent of the Learned Advocate General, the High Court has a discretion to entertain the

petition on the basis of information supplied to it and if the petitioner is a responsible member of the legal field, it may act suo Motu.. He has urged that the whole object of prescribing this procedural modus of taking cognizance in Section 15 is to safeguard the valuable time of the High Court and Supreme Court from being wasted by frivolous complaints of contempt of court. So long as the court is satisfied with the material is not frivolous and the contempt alleged is not merely technical or trivial, it can commence any proceedings suo motu.

12.4. He urged therefore that the High Court would not be acting improperly if it takes suo motu cognizance of the material which is being presented by the relator or informer. If any responsible person has attempted to bring any information which is valid and useful, it may not wait for the consent of Advocate General. He further argued that It is a well settled law that when the judge is attacked in his personal capacity, his remedy is a libel but if the judge is attacked while discharging the duty, it is a scurrilous attack on the institution and the courts have not been kind to such attack. He emphasized that the material presented is quite

serious for the same is circulated and independently, it is a material of contempt.

**13.** Learned senior advocate Mr. Arvind Datar appearing with Learned Senior Advocate Mr. Mihir Joshi for the opponent no.2 has lamented the fact that unfortunate timing having been chosen by the informant in approaching this Court. He read the order passed by the Apex Court in Writ Petition (Civil) No. 734 of 2020 delivered on 06.08.2020. According to him, the Apex Court deemed it appropriate to request this Court to first apply its mind to the issue of unconditional apology, since the petitioner apologized on number of occasions before the Apex Court as well as this Court, the matter is now scheduled before the Apex Court on 26.08.2020 and it had intended to bring a quietus to the entire issue. Instead of facilitating such process, it is an attempt of mud racking and malign the opponent no. 2 further and further delay the process. He urged that this being Suo Motu proceedings of criminal contempt, intervener would have no business to be a party as it is a well settled law. And again, this is not a new material which is being brought before the Court for the first time. The applicant is

already before the first Court in Writ Petition (PIL) No. 83 of 2020 where, by way of an amendment way back in the month of June, 2020, he has already placed this material. The Court has permitted him the amendment and yet, it has not taken cognizance of the same for the purpose of suo motu contempt. There is not a word as to why the delay has been caused in approaching this court. It is a separate writ petition where even the consent of learned Advocate General has also not been sought which is a requirement of the law and therefore also, this Court should not permit anything indirectly what cannot be done directly, and when grave allegations are made, Advocate General's consent is a must. He urged that it is a deliberate attempt on the part of the applicant to approach after the Apex Court directed to consider the unconditional apology and frustrate the very motion of opponent no.2. There is no explanation as to why he sat quietly all these months and chose to approach this Court belatedly unless it is motivated. Even this application is not bona fide and it muddies the water, the Court should not entertain the same. Moreover, there are enough agonies

given to the opponent no.2 and hence, there is a need for urgently put an end to the entire issue of criminal contempt.

13.1. Learned counsel also urged that there are two different compartments, the additional information which comes on record and the earlier material on the strength of which the Court had taken suo motu contempt. This application is not bona fide and with an oblique motive, the applicant has approached this Court. The informant does concede that this Court has powers suo motu to take note of the material. Now, the question is that should the Court exercise such powers when already the Writ Petition (PIL) No. 82 of 2020 is pending. The third party may not be entered as an intervener. On alternative prayer also, the learned Senior Advocate strenuously took us through various case laws to urge that this court should not permit even the additional materials which is neither new nor relevant and it existed before this court issued notice of criminal contempt. There is nothing to indicate, according to Learned Counsel, that when the material is already lying with one court whether the same can be brought before another court to insist on the initiation of proceedings of contempt. The court concerned could have

taken note of the same, however,it has not chosen to do that so far.

13.2. Learned senior advocate Mr. Arvind Datar relied on the following authorities to substantiate his version: -

(i) Supreme Court Bar Council Association vs. Union of India [1998 4 SCC 409]

(ii) Baradakanta Mishra vs. Mr. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court [(1975) 3 SCC 535]

(iii) Advocate General of Tamil Nadu vs. R.M.Krishna Raju [1981 Cri LJ 250]

(iv) Amar Bahadursingh vs. VPD Wasnik [1994 CRLJ 1359]

(v) Karuna Gupra vs. Balvindar Kumar [Cont. Case (C) No. 712/2014]

(vi) Gurbax Singh Bains vs. Sh. Sarvesh Kaushal and Others [COCP No. 1946/2015]

(vii) Interlocutory Application D. No. 71864 and 71920 of 2020 in Suo Motu Contempt (Cri.) No. 01 of 2020

(viii) M Y Shareef vs. Hon'ble Judges of the Nagpur High Court [AIR 1995 SC 19]

(ix) S Venkataraman vs. P V Singri [ILR 1997 KAR 619]

(x) Suo Moto vs. S.B.Vakil [2006 3 GLH 154]

(xi) Murti Devi vs. Dev Raj Soni [1983 SCC Online Del 74].

**14.** In rejoinder, learned senior advocate Mr. Mihir Thakore has stated that the material which is placed before this Court is closely connected with the first contempt and is not an unconnected material. According to him, that material surely can be taken note of and the only safeguard that needs to be exercised is that the Court needs to avail a reasonable opportunity to the contemnor to meet with the same.

**Discussion on Law**

**15.** Having thus heard both the sides and also having extensively considered pleadings and authorities cited by both the sides, the three aspects are required to be considered by this court,

1) Whether at the present stage of criminal contempt proceedings, any intervener can be permitted to step in, as the court is already seized of the matter of Criminal contempt, and

2) Whether the material sought to be placed before this court in this application can be permitted to be brought on the record presented before another court in PIL proceedings by any person in the ongoing contempt proceedings, and

3) Whether the material which is sought to be placed before this court is completely unconnected to the subject matter of contempt proceedings and therefore, deserves no indulgence?

**16.** Before this court proceeds to advert to the facts in the instant case, the law on the subject sought to be canvassed by both the sides shall be important to be discussed and reproduced here in after.

**17.** The law which is emphatically pronounced and settled is that this court under Article 215 of the Constitution of India has powers of initiating the proceedings of contempt and such powers are to be exercised very sparingly to upkeep the majesty of the court and to continue to sustain the faith of citizens of this Country in this August institution. It is also trite law that the criminal contempt is a matter between the Court and the contemner and the third party has an extremely limited role even when its act is well intended to

assist the laudable cause. No one has any statutory right to claim to be an intervener or to participate as the complainant in the proceedings of contempt which is between the court and the contemner. It is exclusively the court's discretion to take into account even the material which comes from a reliable source termed to be the material to initiate action of contempt whether to initiate the action on the basis of such material or not, even if it is found to be prima facie the material of contempt. No one can compel the court to initiate any action of contempt.

**18.** In the decision of the Apex Court rendered in case of **Baradakanta Mishra vs. Mr. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court [(1975) 3 SCC 535]**, the Apex Court held that there is no right to appeal of the third party where the Court refused to take action or initiate the proceedings as the Court cannot be compelled to take action for the contempt. The appellant before the Apex Court was the member of Judicial Service of Odisa who was under suspension and subject to disciplinary inquiry by the High Court. The appellant made an appeal to the Governor through the High Court, in which, he made several

statements constituting criminal contempt of High Court. Meanwhile his disciplinary proceedings were entrusted to a learned Single Judge, who on a proper inquiry held the appellant guilty of the various charges. In Full Court meeting, the High Court concurred with the findings and after hearing the appellant, reduced him in rank. He also raised issue that some of the issues are arose in the disciplinary inquiry were the same those arose in the proceedings for contempt which was pending against him and the decision of those issues by the High Court on the administrative side in the course of the disciplinary inquiry amounted to prejudging those issues in the proceeding for contempt which was a judicial proceeding and the Chief Justice and other Judges of the High Court who decided the disciplinary inquiry were, therefore, guilty of the criminal contempt of their own High Court. He therefore moved the Full Bench for initiating the proceedings for contempt against the Chief Justice and other Judges in their personal capacity. It was heard by Full Bench of three Judges and the bench held that there was no contempt of court committed by the Chief Justice and other Judges and in any event, by reason of Section 15 sub-section (1), the appellant

was not entitled to move the High Court as the consent of the Advocate General was not taken. The appellant's appeal before the Apex Court under Section 19(1) of the Contempt of Courts Act, where the State raised preliminary objection of the maintainability of the appeal on the ground that High Court has not initiated the appeal and refused to take action, no appeal as of right would lie under Section 19(1). The Apex Court held that so far as the criminal contempt is concerned, it is a matter entirely between the Court and the alleged contemner. No one has a statutory or common law right to say that he is entitled as a matter of course to an order for committal because the alleged contemner is guilty of contempt. Apt would be to reproduce paragraph 5 of the said judgment: -

> *A"**5.** Now, while considering this question, we must bear in mind the true nature of the contempt jurisdiction exercised by the High Court and the law in regard to right of appeal which obtained immediately prior to the enactment of the Contempt of Courts Act, 1971. It has always been regarded as well-settled law that as far as criminal contempt is concerned, it is a matter entirely between the Court and the alleged contemner. No one has a statutory or common law right to say that he is entitled as a matter of course to an order for committal because the alleged contemner is guilty of contempt. All that he can do is to move the Court and draw its attention to the contempt alleged to*

*have been committed and it will then be for the Court, if it so thinks fit, to take action to vindicate its authority and commit the alleged contemner for contempt. It is for the Court in the exercise of its discretion to decide whether or not to initiate a proceeding for contempt. Even if the Court is prima facie satisfied that a contempt has been committed, the Court may yet choose to ignore it and decline to take action. There is no right in any one to compel the Court to initiate a proceeding for contempt even where a prima facie case appears to have been made out. The same position obtains even after a proceeding for contempt is initiated by the Court on a motion made to it for the purpose. The Court may in the exercise of its discretion accept an unconditional apology from the alleged contemner and drop the proceeding for contempt, or, even after the alleged contemner is found guilty, the Court may, having regard to the circumstances, decline to punish him. So far as the contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged contemner. An outside party comes in only by way of drawing the attention of the Court to the contempt which has been committed: he does not become a part to the proceeding for contempt which may be initiated by the Court. It was for this reason that a Division Bench of the Bombay High Court held in Narendrabhai Sarabhai Hatheesing v. Chinubhai Manibhai Seth ILR 60 Bom 894 that an order made by the High Court refusing to commit a man for breach of an undertaking given to the Court is not a judgment within the meaning of clause 15 of the letters patent as it does not affect the merits of any question between the parties to the suit. Beaumont, C.J, pointed out: The undertaking is given to the Court; if it is broken, and that fact is brought to the Court's notice, the Court may take such action as it thinks fit. If it comes to the conclusion that the order has been deliberately broken, it will probably commit the defaulter to jail, but the Court is free to adopt such course as it thinks fit.*

*Rangnekar, J., also spoke in the same strain when he said:*

*"Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted, and if the Court thinks that it was so, then the Court in its discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question between the parties, so that any order made on such an application by which the Court in its discretion refuses to take any action against the party alleged to be in the wrong can be said to raise any question between the parties."*

*It is, therefore, clear that under the law as it stood prior to the enactment of the Contempt of Courts Act, 1971 no appeal lay at the instance of a party moving the High Court for taking action for contempt, if the High Court in the exercise of its discretion refused to take action on the motion of such party. Even if the High Court took action and initiated a proceeding for contempt and in such proceeding, the alleged contemner, being found guilty, was punished for contempt, the order being one made by the High Court in the exercise of its criminal jurisdiction, was not appealable under clause 15 of the letters patent, and therefore, no appeal lay against it from a Single Judge to a Division Bench and equally, there was no appeal as of right from a Division Bench to this Court. The result was that in cases of criminal contempt, even a person punished*

*for contempt had no right of appeal and he could impugn the order committing him for contempt only if the High Court granted the appropriate certificate under Article 134 in fit cases or on the refusal of the High Court to do so, this Court intervened by granting special leave under Article 136."*

**19.** In case of **Advocate General of Tamil Nadu vs. R.M.Krishna Raju [1981 Cri LJ 250]**, the Madras High Court was approached by the Bar Association with a prayer that Bar Association be impleaded as a party – respondent pro forma or permitted to make representations on the points involved in the proceedings of contempt pending before the Court, as interventionist and sought the permission to assist the Court. In other words, the prayer of association was being impleaded as a third party – respondent. When the question of maintainability was argued, it was stated that the High Court got inherent powers to allow the intervention or impleader petitions, that it is open for the High Court to formulate its own procedure in the matter of disposal of contempt application and that in the interest of justice, opportunity must be afforded to the association to intervene or to make representation on the merits of the contempt application. The Court held that there is no provision in the Contempt of

Courts Act, 1971, or rules framed therein for the third parties to seek intervention or implead themselves in the contempt proceedings and it also appeared to the Court that the matter was res integra. The Court while refusing such intervention held that "inevitable concomitant of the unrestricted entry of third party in contempt proceedings would be that they may overstep their limits and canvass the Court to adopt a harsh and severe attitude towards the contemner even in those cases where the Court is inclined to treat the matter lightly and discharge the contemner from the contempt notice, or prevail upon the contemner by applying pressure on him not to express regret and tender apology even in those cases where a contemner wants to exhibits locus paenitentiae and seek the pardon of Court."

**20.** The Bombay High Court, in case of **Amar Bahadursingh vs. VPD Wasnik [**1994 **CRLJ 1359]**, initiated contempt proceedings for violating the order passed by the learned Civil Judge restricting the contemner from causing impediments in giving effect to the order. Paragraph 11 of the said judgment is reproduced as under: -

> *"**11.** The law on the contempt of Court is founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice and to maintain honour and dignity and prevent insults to the Courts/Judges - the members of the Temple of Justice. It should be emphasized that the proceedings in contempt by very nature are not nor can be permitted to be initiated nor our jurisdiction involved to settle or satisfy the sense of private injury. From this follows that once this court is seized of the matter with regard to contempt and the rule is issued, it must be made clear for all purposes that desire of the private party to continue or not to continue such proceedings is insignificant and is totally irrelevant. Thus, the process once began cannot be recalled by private arrangements and settlement. After initiation, the matter is between the Court and the contemner. Purpose of proceeding in contempt is mainly to uphold the dignity of the Court and instil confidence in the mind of the people about the sanctity of orders by the Courts of Justice. Accepting the private settlement between the parties after the contempt notice is issued to the parties and thereby to drop the contempt proceeding, the provisions of the Contempt of Courts Act, 1971 would be nugatory and the object would stand defeated and frustrated if the private negotiations of such settlements and eventual withdrawals of the petitions are permitted. There exists clearly high principle of public policy behind the initiation of such proceedings involving public interest in the matters of administration of justice."*

**21.** The Delhi High Court in case of **Karuna Gupra vs. Balvindar Kumar [Cont. Case (C) No. 712/2014]**, was considering the impleadment of the applicant in the contempt proceedings which was for the wilful disobedience of the order of the Court

held that, there cannot be any application for being impleaded as a party notwithstanding the fact that one of the applicants is already impleaded in the writ petition. The Court also held that the contempt petition would be filed only against such parties to whom the direction is given and there is an allegation of wilful disobedience. It was a civil contempt the Court was considering, where the issue was in relation to the unauthorized construction and the direction of demolition of such unauthorized construction.

**22.** Before the Punjab and Haryana High Court in the case of **Gurbax Singh Bains vs. Sh. Sarvesh Kaushal and Others [COCP No. 1946/2015],** where the contempt proceeding was pending and one application was moved under Order 1 Rule 8(A) read with Section 151 of the Civil Procedure Code seeking to take part in the proceedings as intervener. The Court did not allow any intervener relying on the decision of Madras High Court rendered in case of Advocate General of Tamil Nadu (supra) and also the decision of Amar Bahadursingh (supra).

**23.** In yet another decision of **Supreme Court of India Inherent Jurisdiction in Interlocutory Application D. No. 71864 and 71920 of 2020 in Suo Motu Contempt (Cri.) No. 01 of 2020**, Mr. Amarjeet Singh Bedi, Learned advocate on behalf of the Bar Association of India sought permission to intervene in the matter, where he submitted that it did not seek to represent the interest of the particular individual but seeks to intervene and represent on behalf of the Bar and against the initiation of suo motu contempt proceedings against a lawyer per se for general comments issued in a public domain in a polite and temperate language. The invocation of suo motu contempt jurisdiction against the members of legal profession, according to him, sent a chilling effect of curtailing freedom of speech that is protected under Article 19 of the Constitution of India. The applicant, in the matter, submitted that it would act as an unreasonable fetter on the members of the legal profession in performance of their duty to represent vigorously and fearlessly the causes and the clients before courts of law. The Apex Court reiterated the principle of not permitting the third party by relying on the

decision of its own, rendered in SMCrl. Contempt No. 01 of 2017 in re. C.S.Karnan.

**24.** In case of **In Re Justice C.S.Karnan, [(2017) 2 SCC 756],** the Court held that there is no scope of impleadment of third party without due consent and authorisation. The contempt proceeding is strictly between the Court and alleged contemner and accordingly, the Court had rejected the prayer of impleadment.

**25.** Thus, the common thread which runs through all the case laws is that the initiation of contempt is between the Court and contemner, the contempt of court is not a litigation of an adversarial nature and a party who brings to the notice of the court the contemptuous conduct, is only an informant or relator and not the litigant. It is between the court and contemner and the third party would have no locus.



**26.** Apt would be to refer to the decision in case of **Pritam Pal** (supra) "*power of summarily punishing for contempt.*"

> ***41***. *The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being Courts of Record under*

*Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See D.N. Taneja v. Bhajan Lal, [1988] 3 SCC 26) and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself."*

**27.** Apt would be to refer to the decision of **Om Prakash Jaiswal** (supra).

*"**17.** The jurisdiction to punish for contempt is summary but the consequences are serious. That is why the jurisdiction to initiate proceedings in contempt as also the jurisdiction to punish for contempt in spite of a case of contempt having been made out are both discretionary with the Court. Contempt generally and criminal contempt certainly is a matter between the Court and the alleged Contemnor. No one can compel or demand as of right initiation of proceedings for contempt. Certain principles have emerged. A jurisdiction in contempt shall be exercised only on a clear case having been made out. Mere technical contempt may not be taken note of. It is not personal glorification of a Judge in his office but an anxiety to maintain the efficacy of justice administration system effectively which dictates the conscience of a Judge to move or not to move in contempt jurisdiction. Often an apology is accepted and the felony condoned if*

*the Judge feels convinced of the genuineness of the apology and the prestige of the Court having been restored. Source of initiation of contempt proceedings may be suo motu, on a Reference being made by the Advocate General or any other person with the consent in writing of the Advocate General or on Reference made by a Subordinate Court in case of criminal contempt. A private party or a litigant may also invite the attention of the Court to such facts as may persuade the Court in initiating proceedings for contempt. However, such person filing an application or petition before the Court does not become a complainant or petitioner in the proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the Court. It is thereafter for the Court to act on such information or not to act though the private party or litigant moving the Court may at the discretion of the Court continue to render its assistance during the course of proceedings. That is why it has been held that an informant does not have a right of filing an appeal under Section 19 of the Act against an order refusing to initiate the contempt proceedings or disposing the application or petition filed for initiating such proceedings. He cannot be called an aggrieved party.*"

**28.** Apt would be to refer to the decision of **Supreme Court Bar Council Association vs. Union of India [1998 4 SCC 409].**

*"**41**. When this Court is seized of a matter of contempt of court by an advocate, there is no "case, cause or matter" before the Supreme Court regarding his "professional misconduct" even though, in a given a case, the contempt committed by an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the licence to practice law but no issue relating to his suspension from practice is the subject matter of the case. The powers of this Court, under Article 129 read*

*with Article 142 of the Constitution, being supplementary powers have "to be used in exercise of its jurisdiction" in the case under consideration by this Court. Moreover, a case of contempt of court is not stricto senso a cause or a matter between the parties inter se. It is a matter between the court and the contemner. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct of the contemner to the notice of the court, whether a private person or the subordinate court, is only an informant and does not have the status of a litigant in the contempt of Court case.*

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

***43**. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and*

*cannot be expanded to include the power to determine whether an advocate is also guilty of "Professional misconduct" in a summary manner, giving a go bye to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act 1961 by suspending his licence to practice in a summary manner, while dealing with a case of contempt of court."*

**29.** This Court is conscious that the Contempt of Court is a special jurisdiction which is to be exercised sparingly with caution. It is only when the majesty and dignity of the courts is adversely affected, this jurisdiction needs to be springs into action. There is no lis nor any adjudication between the parties and it is not to be used to upkeep the dignity of the Judges in their individual capacities but, when the entire administration of the justice is targeted, it becomes imperative for the Court to intervene. Any act which has a tendency of shaking the confidence of the public, cannot be permitted and therefore, this Court can exercise by invoking its inherent powers under Article 215 of the Constitution of India. While so saying the court also cannot be oblivious of the need of healthy criticism to have a check and balance in

the system and the right to freedom of speech and to profess the profession which are zealously guarded by the Constitution of India and all these aspects are going to be regarded while proceeding with the Suo Motu contempt proceedings.

**30.** On adverting to the facts on hands, on having perused the entire material on record so also the communication addressed to the Hon'ble the Chief Justice of India by the opponent no.2 in his personal capacity as a senior advocate as well as the WhatsApp messages sent in the WhatsApp group called High Court Advocates, this Court needs to note that this is an application by one of the members of the Bar who is interested in bringing the material on the record and has sought permission to intervene in the suo motu contempt initiated by this Court being Criminal Misc. Application No. 8120 of 2020 or to take the information on record or issue the notice of contempt to the opponent no.2 and consider the same, while deciding the contempt application. It is urged before us that this court is the guardian of maintaining the majesty of this court and any scurrilous attack on the judge

or his judgement or his conduct which tends to undermine the confidence of the public in judiciary, the court needs to act initiating contempt.

**31.** However, on more than one occasions, learned senior advocate Mr. Mihir Thakore has conceded that the applicant is not interested to intervene in the contempt proceedings and he would be satisfied if the material that he has submitted before the Court is taken into consideration. Even otherwise from the plethora of decisions, this court is of the firm opinion that the intervener cannot be permitted as the proceedings initiated by this court of criminal contempt against the Opponent no.2 is strictly between the Court and the contemner. The law being amply clear, that the suo motu contempt being between the Court and contemner, we surely would not permit third party to intervene as an intervener and therefore, that request is rejected outrightly. The first question shall need to be answered in negation therefore.

**32.** The second and third questions need to be then addressed as to whether he should be permitted to place before the Court, the material which is forming part of the another PIL which

is pending. Being conscious of the fact that the petitioner has already moved Writ Petition (PIL) No. 83 of 2020 and by way of amendment, he is before the first Court which permitted him the amendment on 16.06.2020,and it is also true that he, at no stage, has stated before this court as to why he has approached this Court belatedly when he already was before the Court in PIL and was aware of the contempt proceedings which has been initiated by the Court. From his material which he has placed before the first Court, it can also take cognizance of the matter and the matter is still pending for adjudication where the applicant requests the framing of the rules for the conduct of the advocates. He also has sought other prayers which concern conducting of the court by virtual hearing. Although, none of these circumstances would come in the way of this court in taking this material on record. Any material which is authentic and is derived from any source which is not questionable, the court can make use of it without permitting anyone to implead itself as an intervener.

**33.** None of the decisions nor the powers of this Court under Article 215 nor the provisions of the Contempt of Courts Act

preclude the Court from getting the material from any source which is legitimate. Assuming that this material was already there before another Court, that itself also cannot be a ground not to permit that material to come on the record. It is not to be forgotten that while initiating the suo moto contempt, this Court had already taken note of press conference called by the Opponent no.2 and his allegations and utterances. This court is in the midst of considering the aspect of genuineness of apology tendered before it in the proceeding of criminal contempt and at that stage when the material circulated which questions the conduct of one of the sitting judges and also alleges against the Court concerned if is brought before the court, it matters not whether the same is not of a very recent origin and two months old. The fact remains that before this court at no stage this material has been placed nor was it available on any such platform from where this court could have had access to the same. It being a material which is related, it is required to be taken on record. This has come at the time when the applicant has shown his remorse and tendered unconditional apology. Whether the same would have a bearing on the subject and

whether the Court should regard this material at the time when he has already tendered his apology before the Apex Court and before this Court also, will be a separate matter to be considered for which availing an opportunity to him is a must.

**34.** Thus, the submissions cannot be countenanced that because this material has been presented belatedly or because it is lying with another court in other proceeding, should not be permitted as the other court did not choose to act upon the said material which it could have. To reiterate, this court was not aware of this material since the same was circulated on the previous day in the group of High Court advocates therefore, to the notice of this court for the first time, the material is being brought at the time when the hearing of contempt proceedings on the aspect of apology is going on, any material which otherwise the Court finds, can help it to decide the matter pending before it, can surely be taken into consideration.

**35.** It would be relevant to regard that in the press conference convened on 5th June 2020, the Opponent no.2 made certain

specific utterances in the nature of allegations and remarks in respect of the functioning of High Court alleging corrupt practices. This court issued Suo Motu notice to the alleged contemner on the 9th June 2020. The said order highlights the kind and nature of allegations leveled and the gist thereof at para 6. In response to sue Motu proceedings, the Opponent has filed his reply stating inter alia that his allegations and utterances in the press conference were directed against the functioning of the registry of the High Court and not against the Judges. It was claimed that they were in the nature of emotional outburst.

**36.** Prima facie noticing the material produced in the present application, it is revealed from the circulation of material that Opponent No.2 has written a letter dated 21st March 2020 to Honourable the Chief Justice of India making serious allegations against one of the sitting judges of the High Court and had that stopped there, it is the right of the parties to approach the highest seat of this country ventilating the grievances in the nature of working and functioning. However, after the said press conference, the Opponent no.2

has even circulated the said letter dated 21st March 2020 together with the related materials in the WhatsApp group called High Court advocates' group on the 8th June 2020.

**37.** Looking to the kind of allegations and utterances in the press conference which are the subject matter of Suo Motu contempt proceedings initiated by this Court, and the nature of the defence sought to be raised by the Opponent no.2, this act and conduct of circulating the aforementioned letter sent by him to the Honourable the Chief justice of India in the WhatsApp group of the High Court advocates and his tall claims therein, cannot be viewed in segregation. The said circulation was an act, successive to the press conference which Prima facie bears proximity in terms of time and connection with the subject matter of contempt proceedings. The nature of utterances and conduct on the part of the Opponent no.2 seem to be in conjunction, on our prima facie reading of the material. What needs to be done of this material and whether in wake of the consideration of request of acceptance of his apology tendered to this court, particularly in wake of the directions of the Apex court, any use can be made at all at this stage of Suo Motu proceedings,

are the questions which may not preclude this Court from taking it on record as its worth and usability are not the subject matter of this application and can be regarded at the time of hearing the Suo Motu proceeding.

**38.** For the purpose of dealing with the submissions of the Learned Counsels of the Opponents no.2 of the material being completely disconnected to the subject matter of the contempt proceedings initiated against the Opponent No.2, we have chosen to consider this material at prima facie juncture, received from the member of the Bar, the genuineness of which is not questioned . We also are of the opinion that the same can be regarded by the court in the pending proceedings of Contempt being the connected materials and for that even absence of consent of the Learned Advocate General would not deter the court from taking it on record as the law on that subject is made amply clear in various authorities sought to be relied on by both the sides. We answer questions no.2 and 3 accordingly in affirmation.

**39.** In the above view and the circumstances of the matter, we deem it appropriate to take notice of the said materials

circulated on the WhatsApp group of the High Court advocates' as disclosed by the applicant and take the same on the record of the Suo Motu contempt proceedings while disallowing the applicant himself to be a party intervener for the reasons stated herein above.

**40.** We are conscious of the fact that the Apex Court has already in its order dated 6th August 2020 has directed this court to consider the issue of apology of the present opponent and while the Court was in the midst of hearing of this matter on the aspect of acceptance of apology, this application by an intervener was preferred . Since the material is already taken on record so as not to delay the process any further and to afford the effective opportunity to the applicant of explaining this material the time as may be requested by the learned senior Counsels representing the Opponent no.2, is to be granted in the ongoing hearing of contempt proceedings. On the aspect of jurisprudence of unconditional apology in the criminal contempt matter, the proceedings shall continue today.

**(SONIA GOKANI, J)**

**(N.V.ANJARIA, J)**

MISHRA AMIT V./Bhoomi