IN THE SUPREME COURT OF INDIA
(INHERENT JURISDICTION)

REVIEW PETITION (CRIMINAL) NO. _____OF 2020
IN
SUO MOTU CONTEMPT PETITION (CRIMINAL) NO. 1 OF 2020

[ARISING OUT OF THE IMPUGNED FINAL JUDGMENT AND ORDER DATED 14.08.2020 PASSED BY THIS HON'BLE COURT IN IN RE PRASHANT BHUSHAN & ANR., SUO MOTU CONTEMPT PETITION (CRL) 1 OF 2020]

IN THE MATTER OF:

PRASHANT BHUSHAN

.... PETITIONER

Versus

In RE: ... RESPONDENT

AND IN THE MATTER OF:

IN RE: ... PETITIONER

Versus

1. PRASHANT BHUSHAN
S/o Shri Shanti Bhushan
B-16, SECTOR 14, NOIDA,
U.P.

2. TWITTER COMMUNICATIONS INDIA PVT LTD
C-20, G BLOCK,
NEAR MCA BANDRA KURLA COMPLEX,
BANDRA (E) ,MUMBAI,
MAHARASHTRA ... RESPONDENTS

REVIEW PETITION UNDER ARTICLE 137 OF THE CONSTITUTION OF INDIA READ WITH ORDER XLVII OF THE SUPREME COURT RULES, 2013

To

The Hon'ble Chief Justice of India
And His Companion Justice of the
Supreme Court of India

The Review Petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. That the petitioner has filed the present petition under Article 137 of the Constitution of India read with Order XLVII of the Supreme Court Rules, 2013 seeking review of its Impugned Judgment and Order dated 14.08.2020 in Su Moto Contempt Petition (Criminal) Nos. 1 of 2020,whereby it convicted the Review Petitioner of Criminal Contempt of this Hon'ble Court. That the petitioner herein has also filed W.P. (C) No. _____/2020 bearing provisional vide diary 19696 of 2020 filed on 12.09.2020, with the following prayers:

> "*a) Issue an appropriate writ, order or direction declaring that a person convicted for criminal contempt by this Hon'ble Court, including the petitioner herein, would have a right to an intra-court appeal to be heard by a larger and different bench.*
>
> *b) Issue an appropriate writ, order or direction framing rules and guidelines providing for intra-court appeal against conviction in original criminal contempt cases as referred in prayer (a.) above.*
>
> *c) Alternatively, issue an appropriate writ, order, or direction declaring that review petitions filed against orders of conviction by Supreme Court in original criminal contempt cases would be heard in open court by a different bench;*

d) Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case."

I. THE FACTS

1. By a Petition dated 02.07.20, one Mahek Maheshwari moved this Hon'ble Court to initiate contempt proceedings under Article 129 read with Section 15 of the Contempt of Courts Act, 1971 ("**1971 Act**") and Rule 3 of the Rules to Regulate Proceedings for Contempt pf the Supreme Court, 1975 ("**1975 Rules**") and to take *suo motu* against the Petitioner herein. The said complaint was directed against the following tweet by the Petitioner on a social media platform:

> *"CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!"*

2. By Order dated 22.07.20, this Hon'ble Court took up the petition dated 02.07.20 and *suo motu* enlarged the scope of the proceedings to include the following tweet of the Petitioner:

> "*When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs.*"

3. By the said order, this Hon'ble Court issued notice to the Petitioner as well as the Hon'ble Attorney General, who was eventually not heard in the proceedings pertaining to the

conviction of the Petitioner herein. True Copy of the Order dated 22.07.2020 passed by this Hon'ble Court in SMC No. 1 of 2020 is annexed herewith as **ANNEXURE P-1 (Pages 59 to 60).**

4. By a letter dated 26.07.2020 written to the Hon'ble Chief Justice of India, the Review Petitioner pointed out specific reasons and apprehensions and made a request that inter-alia this Suo Motu Contempt Petition should be listed before a bench of whom Hon'ble Mr. Justice Arun Mishra is not a party and that it should be heard when the court resumes regular physical hearings. It is important to note that the Review Petitioner did not raise this issue before the Court of Justice Arun Mishra himself as he had in some other proceedings indicated that filing an application for recusal is also an act of contempt. A True Copy of the Letter dated 26.07.2020 by the Review Petitioner to the Hon'ble Chie Justice of India is annexed herewith as **ANNEXURE P-2 (Pages 61 to 91).**

5. By a Letter dated 28.07.2020, the Petitioner wrote to the Secretary General of the Supreme Court, seeking a copy of the complaint against him as well as the administrative orders passed in the petition. These were not provided. A true Copy of the Letter dated 28.07.2020 is annexed herewith as **ANNEXURE P-3 (Pages 92 to 93).**

6. In Prashant Bhushan v Secretary General, Supreme Court of India Writ Petition (Civil) No. 792 of 2020 filed on 31.7.20, the Petitioner herein brought to the notice the numerous procedural defects in the complaint and the manner in which it came to be placed before this Hon'ble Court, and, further, in the Order dated 22.07.20 by which action for contempt against the Petitioner was initiated. The Petitioner prayed for the following reliefs:

"*a) Issue a Writ of Declaration or a Writ in the nature of Declaration or any other appropriate writ, order or direction holding and declaring that the Respondent has acted unconstitutionally and illegally in taking cognizance of petitions filed by Mehak Maheshwari and its clearing, putting before the Hon'ble Court on administrative side and then listing it before the Hon'ble Court on Judicial side on 22.07.2020;*

b) Recall the orders dated 22.07.2020 as well as Notice dated 24.07.2020 issued to the Petitioner herein in Suo Motu Contempt Petition (Crl) No. 1 of 2020 and order dated 24.07.2020 in Contempt Petition (Crl) No. 10 of 2009;

c) In the alternative, desist from hearing the Suo Motu Contempt Petition (Crl) No. 1 of 2020 and Contempt Petition (Crl) No. 10 of 2009 by video-conferencing and list the matters for physical hearing as and when this Hon'ble Court resumes physical hearings;"

A copy of Prashant Bhushan v Secretary General, Supreme Court of India Writ Petition (Civil) No. 791 of 2020 filed on 31.07.2020 is annexed herewith as **ANNEXURE P-4 (Pages 94 to 141).**

7. The Petitioner filed an Affidavit-in-Reply on 02.08.2020, which was in the nature of Preliminary Reply, with particulars containing the defence of truth and bona fide opinion. A copy of the Affidavit-in-Reply filed on 02.08.2020 is annexed herewith as **ANNEXURE P-5 (Pages 142 to 275).**

8. By way this Preliminary Reply read out in the of course of oral argument on 05.08.2020, the Petitioner offered an explanation for the tweets without prejudice to his right of having a copy of the complaint as under at Para 2 which was also read out by the Senior Counsel of the Review Petitioner in the hearing of 05.08.2020.

9. By Order dated 05.08.2020, this Hon'ble Court dismissed Prashant Bhushan v. Secretary General, Supreme Court of India W.P. (C) No. 792 of 2020 in limine and reserved judgment in Suo Motu Petition (Crl.) 1 of 2020 on the issue of the Petitioner's culpability for contempt. A copy of the Order dated 05.08.2020 passed by this Hon'ble Court in W.P. (C) No. 792 of 20202 is annexed herewith as **ANNEXURE P-6 (Pages 276 to 277).**

10. By an Interim Application dated 06.08.2020 preferred under Section 17(5) of the Contempt of Courts Act, 1971, the Petitioner herein moved this Hon'ble Court for the following reliefs:

> *"i) In case the Hon'ble Court is not satisfied by my preliminary reply and wishes to proceed further in the matter allow me to lead further evidence u/s 17(5) of the Contempt of Courts Act, 1971, after supplying copy of the complaint by Mr. Mehak Maheshwari to me in accordance with Paras 1 & 2 of Vijay Kurle, In re, (2019) 9 SCC 521 : 2019 SCC OnLine SC 1274 at page 521.*
>
> *ii. Direct that proceedings as regards the suo moto notice issued to me with respect to tweet of 27.06.2020 be placed before the Hon'ble Chief Justice of India for*

allocation of bench as per Para 39 of Vijay Kurle, In Re, 2020 SCC Online SC 407"

A copy of the Interim Application dated 06.08.2020 is annexed herewith as **ANNEXURE P-7 (Pages 278 to 286).**

11. By Judgment dated 14.08.20 in Suo Motu (Crl.) No. 1 of 2020, this Hon'ble Court convicted the Petitioner of criminal contempt for both tweets, without fully considering his defence of truth and bona fide opinion. In the Present Review Petition this Judgment is being impugned. By an order of the same day, the matter was directed to be listed on 20.08.2020 for hearing on sentence. A True copy of the Convicting Impugned Judgment dated 14.08.2020 passed by this Hon'ble Court in Suo Motu (Crl.) No. 1 of 2020 is annexed herewith as **ANNEXURE P-8 (Pages 287 to 394).**

12. By Order dated 20.08.2020 in Suo Motu (Crl.) No. 1 of 2020, this Hon'ble Court, after hearing some arguments from counsel for the Petitioner, recorded that:

"*We have given time to the contemnor to submit unconditional apology, if he so desires. Let it be filed by 24.08.2020.*"

A copy of the Order dated 20.08.2020 passed by this Hon'ble Court in SMC No. 1 of 2020 is annexed herewith as **ANNEXURE P-9 (Pages 395).**

13. By Supplementary Statement dated 24.08.2020, the Petitioner clarified that, during the course of the proceedings, the Court had requested him to reconsider his earlier statement rather than to make an unconditional apology, reaffirmed his general

faith in the Court and its capacity for institutional reform in response to constructive criticism and re-asserted his defence of truth and *bona fide* opinion. On the same date, Written Submissions dated 24.08.2020 pertaining to issues arising in sentencing were filed on behalf of the Petitioner. A copy of the Supplementary Statement dated 24.08.2020 is annexed herewith as **ANNEXURE P-10 (Pages 396 to 397)**. A copy of the Written Submissions dated 24.08.2020 are annexed herewith as **ANNEXURE P-11 (Pages 398 to 436).**

14. By Order dated 25.08.2020, this Hon'ble Court reserved judgment on sentencing after hearing arguments from Counsel for the Petitioner, and cursorily calling upon the Attorney General for India, who submitted that this case was not a fit one for the imposition of any punishment, but conceded some discomfort at the prospect of the statements contained in the Petitioner's Affidavit-in-Reply being put to trial in order to ascertain their veracity. A copy of the Order dated 25.08.2020 passed by this Hon'ble Court in SMC (Crl.) No. 1 of 2020 is annexed herewith as **ANNEXURE P-12 (Pages 437).**

15. By Judgment dated 31.08.2020 in Suo Motu Contempt Petition (Crl.) No. 1 of 2020, which, this Hon'ble Court imposed the following sentence:

> "*We, therefore, sentence the contemnor with a fine or Re.1/(Rupee one) to be deposited with the Registry of this Court by 15.09.2020, failing which he shall undergo a simple imprisonment for a period of three months and further be debarred from practising in this Court for a period of three years.*"

16. The Review Petitioner is filing a separate review petition seeking review of the Judgment on Sentence dated 31.08.2020.

17. The Petitioner submits that he is entitled to a review of the Judgment dated 14.08.2020 in Suo Motu Contempt Petition (Crl.) No. 1 of 2020 on the grounds are set out at length hereinbelow:

II. SCOPE OF COURT'S POWER IN THE PRESENT REVIEW PETITION

18. As per Order 47, Rule 1 r/w Rule 4 of the Supreme Court Rules, 2013, in a criminal proceeding, a review is maintainable on the ground of an "error apparent on the face of the record" which comprises of "mistake of law or fact". It is respectfully submitted that the judgment whose review is being sought suffers from multiple errors apparent on the face of the record of both law and of fact.

19. A Constitution Bench of five judges of this Hon'ble Court has held in **PN Eswara Iyer v Supreme Court of India (1980) 4 SCC 680 at paragraphs 34 and 35** that the scope of this Hon'ble Court's substantive power of review is "as wide for criminal as for civil proceedings".

20. Further, a bench of three judges in **Vikram Singh v. State of Punjab (2017) 8 SCC 518at paragraph 23** has held that the power of review in criminal proceedings is wider under Article 137 than under statute, in the following terms:

> "*…scope, ambit and parameters of review jurisdiction are well defined. Normally in a criminal proceeding, review applications cannot be entertained except on the ground of error apparent*

on the face of the record. Further, the power given to this Court under Article 137 is wider and in an appropriate case can be exercised to mitigate a manifest injustice."

21. Conviction and sentencing are separate and independent stages of the criminal process, and were correctly treated as such by this Hon'ble Court by first pronouncing judgment was in conviction proceedings, before a setting a separate hearing for sentencing. Thus, the Petitioner is entitled to bring separate petitions for the review of each judgement. Nothing in the constitutional or statutory law as it applies to this Hon'ble Court's power of review limits this right.

III. OPEN COURT HEARING

22. In view of the sui generis nature of the proceedings under Article 129 for criminal contempt which is not committed ex facie curiae, a hearing in open court ought to be granted both on the question of admitting the present petition as well as on its merits.

23. The said *sui generis* nature of *suo motu* proceedings for criminal contempt has been affirmed by this Hon'ble Court in **In re Vinay Chandra Mishra (1995) 2 SCC 584** at paragraph 26. It arises from the following features of the proceedings:

Firstly, contrary to fundamental precepts of the rule of law and natural justice in adversarial legal systems, this Hon'ble Court sits as judge, investigator and prosecutor in determining whether to put alleged contemnors to criminal penalties of imprisonment, fines and debarment from practice in the case of advocates. As a result, protections universally afforded to criminal defendants by severing adjudication from prosecution are not available here.

Secondly, this Hon'ble Court adopts a summary process, in which procedural protections available during trial and otherwise as part of the rights of accused persons under Articles 20 to 22 are dispensed with.

Thirdly, in criminal contempt cases involving scandalising the court, this Hon'ble Court is concerned with an offence with unspecified ingredients and unspecified boundaries. This Hon'ble Court recognises that the definition of the offence remains extraordinarily vague and discretionary even in the form codified under the Contempt of Courts Act 1971 (In re S Mulgaonkar (1978) 3 SCC 339 at paragraphs 23 to 25 (*Per* Krishna Iyer, J.)). By contrast, in ordinary criminal proceedings, an offence in which ingredients are clear and specific are treated as *sine qua non*.

Fourthly, acting under Article 129, this Hon'ble Court proceeds on a footing - otherwise unknown to legal systems operating under the rule of law - of very broad discretion in the matter of sentencing.

Fifthly, no appeal lies from this Hon'ble Court's failure exercise its power to punish for criminal contempt of itself in accordance with the requirements of the right to fair trial. As a result, in addition to removing procedural rights and protections during the course of trial, the Petitioner's right to remedy against a trial violative of due process rights is drastically curtailed. Thus, the ordinary rationale for narrow review jurisdiction is that an alternative and efficacious remedy is made available in the form of an appeal before the review jurisdiction in criminal cases can be availed of. As a

result, the ordinary rationale for a narrow review jurisdiction is decisively superseded by the need to assure fundamental rights under Article 21 and 32 are protected in cases involving personal liberty.

Sixthly, suo motu proceedings for contempt of a court of record are intimately connected with the maintenance of public confidence. In view of the fact that contempt proceedings, by definition, involve the court sitting as prosecutor and judge, public confidence and the appearance of open and impartial justice cannot be served except by the admission and open hearing of review petitions which impugn convictions and/or sentences in cases of contempt.

24. The grounds of the Review are as follows, which grounds have been divided under separate headings for the purpose of convenience:

I. THE CONTEMPT PROCEEDINGS SHOULD NOT HAVE BEEN HEARD BY A BENCH COMPRISING OF HON'BLE JUSTICE ARUN MISHRA

A. THAT vide a letter dated 26.07.2020 addressed to the Hon'ble Chief Justice of India, the Review Petitioner had sought the contempt proceedings pending against the Review Petitioner including the present Review Petition be heard by a bench of which Hon'ble Mr. Justice Arun Mishra was not a part. The reasons in the letter that are restated hereinafter clearly show that the matter should never been hear by Justice Arun Mishra.

B. THAT on several occasions Hon'ble Justice Arun Mishra has orally accused the Review Petitioner of committing contempt of court when he had merely mentioned that it may be inappropriate for a particular judge to hear a particular case in circumstances where conflict of interest was involved. On 16.12.2016, during the hearing of an application by the petitioner Common Cause, seeking investigation into the alleged payment of large sums of money to the Prime Minister and other politicians and officials in the cases of the Birla and Sahara group of Companies (Writ Petition (C) No. 505/2015), when the then Hon'ble Justice J. S. Kehar was to hear the Review Petitioner suggested that since his file for being appointed as the Chief Justice of India was pending before the Prime Minister (after the recommendation had been made for his appointment by the then Chief Justice) and that therefore he should adjourn the matter till after the 3rd of January 2017 (which would be the date of retirement of the then Chief Justice), since there would be a conflict of interest at that point of time in his hearing the said case. Justice Arun Mishra orally alleged that this very plea amounted to contempt of court.

C. THAT Justice Arun Mishra headed the bench which decided the application of Common Cause and rejected the application seeking a court monitored investigation into the alleged payment of large sums of money to politician and bureaucrats by the Birla and Sahara Group of Companies (as had been discovered in documents and computers recovered from these companies by the income tax and CBI). This petition was heard and disposed off by the bench headed by Hon'ble Justice Arun Mishra on 11.01.2017. In particular the

Sahara papers which were part of the records showed that 10 crores had allegedly been paid to the then Chief Minister Shivraj Singh Chauhan by the Sahara Group. While hearing this matter, Justice Arun Mishra did not disclose that he had recently in that December, celebrated the wedding of his nephew in his residences in Delhi and Gwalior, and that at the wedding he had invited many top politicians of the BJP. At the wedding reception at Gwalior he had invited the then Chief Minister Shivraj Singh Chauhan. The fact of his inviting a number of BJP politicians to the reception in Delhi was mentioned by Mr. Dushyant Dave in an article published online in The Wire. The fact that Shivraj Singh Chauhan attended the reception of Justice Arun Mishra's nephew was published in local newspapers. This fact was tweeted by me along with the photograph of Shivraj Singh Chauhan greeting the newly married couple at the residence of Justice Arun Mishra.

D. THAT thereafter, Ms. Kamini Jaiswal (Writ Petition (Crl) 176 of 2017) and the Campaign for Judicial Accountability and Reforms (CJAR) (Writ Petition (Crl.) 169/2017) had filed petitions, seeking court monitored investigation into a CBI FIR regarding alleged planning and preparation for procuring favourable orders in the case involving the Prasad Medical Trust, then pending before this Hon'ble Court. The CJAR petition though earlier ordered to be listed before a bench headed by Hon'ble Justice Sikri and Hon'ble Justice Ashok Bhushan, who directed the matter to be placed before the Chief Justice by their order dated 10.11.2017, suddenly came to be listed before a 7judge bench which was then reduced to a 5 judge bench, headed by the then Hon'ble Chief

Justice Dipak Misra. The bench included Hon'ble Justice Arun Mishra. The matter was suddenly posted for hearing by notice before the court on afternoon of the 10.11.2017. On that date, the Review Petitioner told the Hon'ble Chief Justice Dipak Misra that it would not be appropriate for him to hear this case, since the petition sought an investigation into alleged preparation and planning to pay bribes to procure a favourable order in a case which was being dealt with by him. There would thus be an obvious conflict of interest involved in his hearing the matter. On such plea, Hon'ble Justice Arun Mishra again observed that such a plea amounted to contempt of court.

That thereafter these cases came to be listed before a three judge bench comprising Justice R.K. Agarwal, Justice A.M. Khanwilkar and Justice Arun Mishra. In the hearing of the Kamini Jaiswal petition on the 13.11.2017 by this bench, in his oral submissions the Review Petitioner asked Justice A.M. Khanwilkar whether it would be appropriate for him to hear this case, since he was also part of the bench along with the Hon'ble Chief Justice Dipak Misra which had dealt with the medical college case where the CBI FIR alleged that planning and preparation had taken place to obtain favourable orders. Even this request has been termed by this judgement, to amount to contempt of court. The judgement states:

> *"Yet another disturbing feature which aggravates the situation is that prayer has been made, that one of us, Justice A. M. Khanwilkar, should recuse from the matter. This is nothing but another attempt of forum hunting which cannot be permitted. Rather this kind of prayer*

was held to be contemptuous, aggravating the contempt in the case of Dr. D C Saxena (supra).”

By the aforesaid judgment and judgement dated 01.12.2019 the Bench in which Hon’ble Mr. Justice Arun Mishra was a member, imposed a cost of 25 lacs on the Campaign for Judicial Accountability and Reforms, of which I am the Convenor.

E. THAT in contempt petition (Crl) 1/2019, The Attorney General for India vs. Shri Prashant Bhushan, the Advocate on record for the applicant, had, vide letter dated 21.02.2019 addressed to the Registrar (Judicial), Supreme Court, requested that the Contempt Petition be listed before another appropriate bench after taking orders of the Hon’ble Chief Justice of India. The applicant had filed an application for recall of the order dated 6.02.2019. The application had raised serious issues about the propriety of filing of a contempt petition in the garb of an I.A. in a pending matter and thereafter the same having been mentioned and listed as the Contempt petitions 1 and 2 of 2019, before the bench of Justice Arun Mishra and Justice Navin Sinha on 6.02.2019. The advocate on record had further requested that the application be brought to the notice of the Chief Justice of India, so that it is listed before the appropriate bench which has the roster of entertaining Contempt Petitions. Despite this application, the said matter was listed before the bench presided by Hon’ble Mr. Justice Arun Mishra.

F. THAT further, in the hearing that took place thereafter on the 7th of March 2019, the learned Attorney General submitted

before the court that he would like to withdraw his contempt pleas since the applicant had made a statement that his tweet was a genuine mistake. The Attorney General also reiterated that he did not want any punishment for the applicant in the case. Despite the Attorney General withdrawing his plea against the applicant, Justice Mishra insisted on hearing the matter and deciding it. When the Attorney General stated that he did not want to press for his pleas, Justice Mishra stated in court, "It is for us to decide and not you to decide. We will decide everything. We will consider all these aspects. We understand Mr. AG that you are very fair. We will consider everything." During the hearing, an application for the recusal of Justice Arun Mishra was also moved. Justice Arun Mishra asked the Review Petitioner to tender an unconditional apology for moving the recusal application. However, the Review Petitioner stated that he had moved the application in a bonafide manner and was not inclined to tender an unconditional apology. On this, Justice Arun Mishra without going into the merits of the application stated, *"We make it clear that there is no reason for recusal and we will deal with it."* The court also stated that the effect of filing the recusal application would be considered in the next hearing.The manner in which Justice Arun Mishra, insisted on hearing the contempt petition despite the Attorney Generals withdrawal of plea and his taking exception to the filing of the recusal application itself, raises serious apprehension of Justice Arun Mishra's bias against me.

G. THAT all the above facts raise a reasonable apprehension on part of the Review Petitioner about him getting a fair and impartial hearing in these contempt matters if it was heard by Justice Arun Mishra. Accordingly, the letter dated 26.07.2020 was addressed to the Hon'ble Chief Justice of India as raising these issues in a recusal application before Justice Arun Mishra himself would have further invited a similar response as the earlier recusal application, i.e. alleging that the recusal application itself is contempt. However, as no action was taken based on this letter and since Justice Arun Mishra heard and decided the Suo Motu Contempt Petition (Criminal) 1of 2020, this by itself is a ground for rehearing the entire contempt proceedings without Justice Arun Mishra as part of the new bench.

III. POWER OF SUPREME COURT UNDER ARTICLE 129 IS SUBJECT TO DUE PROCESS REQUIREMENTS THAT FLOW FROM THE CONSTITUTION. NO POWER IS COMPLETELY UNRESTRICTED OR UNREGULATED UNDER OUR CONSTITUTIONAL SCHEME.

H. That it is no doubt true that the Article 129 of the Constitution recognizes the inherent power of the Supreme Court to punish for contempt of itself. However, it is settled law that under our constitutional scheme no power is absolute and without any regulation. Thus, while judgments of this Hon'ble Court have noted that no statute can abrogate or stultify such power, simultaneously they have recognized that procedure can be regulated through statue, which is presently the Contempt of Courts Act, 1971 ("**1971 Act**") as also the Rules to Regulate Proceedings for Contempt of the

Supreme Court, 1975 ("**1975 Rules**") Regulation of the power under Article 129 through prescribing procedure, maximum punishment etc. does not amount to taking away or denuding the power but only keeping such power within the limits that flow *inter-alia* from due process requirements under Article 21 of the Constitution and from the principle of supremacy of the Constitution rather than supremacy of any entity that the Constitution establishes.That the finding in Para 18 of the Impugned Judgment that *"the power of this court to initiate contempt is not in any mannerlimited by the provisions of the Contempt of Courts Act, 1971"* is therefore an error of law apparent on the face of the record.

I. That in line with the above principle stated above, in **Pallav Sheth v. Custodian, (2001) 7 SCC 549 at page 566,** a three judge bench of this Hon'ble Court has held as follows:

> *"**30.** There can be no doubt that both this Court and High Courts are courts of record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute, can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215, there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a*

period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution.

31. *This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature, it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously.*

32. *.....There is no challenge to the validity of any of the provisions of the Contempt of Courts Act as being violative or in conflict with any provisions of the Constitution. Barring observations of this Court in Supreme Court Bar Assn. case [(1998) 4 SCC 409] where it did not express any opinion on the question whether maximum punishment fixed by the 1971 Act was binding on the Court, no doubt has been expressed about the validity of any provision of the 1971 Act. In exercise of its constitutional power, this Court has, on the other hand, applied the provisions of the Act while exercising jurisdiction under Article 129 or 215 of the Constitution.....A three-Judge Bench in Dr L.P. Misra case [(1998) 7 SCC 379] observed that the procedure provided by the Contempt of Courts Act, 1971 had to be followed even in exercise of the jurisdiction under Article*

215 of the Constitution. It would, therefore, follow that if Section 20 is so interpreted that it does not stultify the powers under Article 129 or Article 215 then, like other provisions of the Contempt of Courts Act relating to the extent of punishment which can be imposed, a reasonable period of limitation can also be provided.

The above finding of the three-judge bench was reached after examining the decision of this Hon'ble Court of five judges in **Supreme Court Bar Assn. case (1998) 4 SCC 409,** where this Hon'ble Court made some observations while discussing it a statute can prescribe the maximum punishment, but expressly left the question open to be decided in an appropriate case. In fact, even in **Supreme Court Bar Assn. case (1998) 4 SCC 409**this Hon'ble Court has held that no power of the Supreme Court is unlimited and even the power under Article 142 is only to ensure complete justice to the parties before it. The relevant portion reads as follows:

***"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-by 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." (Emphasis Supplied)

***"47.** The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes.... It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It*

cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties. (Emphasis in Original)

48. *The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" (see K. Veeraswami v. Union of India [(1991) 3 SCC 655: 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in*

conflict with what has been expressly provided for in a statute dealing expressly with the subject.

Further, any judgments on this issue prior to coming into force of the 1971 Act can obviously not hold the field subsequent to the introduction of the Act. Thus, relying on English or Indian decisions prior to the introduction of the 1971 Act to determine the manner in which the power of Criminal Contempt is to be exercised by this Hon'ble Court is erroneous.In light of the above position of law, the finding in Para 18 of theimpugned judgment that *"the power of this court to initiate contempt is not in any mannerlimited by the provisions of the Contempt of Courts Act, 1971"*is an error of law apparent on face of the record and the 1971 Act as also the 1975 Rules will apply to the extent they on their terms apply to the contempt proceedings before this Hon'ble Court.

J. THAT in particular, a proceeding of criminal contempt that too, a proceeding, which is initiated suo-motu must apply all the procedural safeguards of the 1971 Act and the 1975 Rules as the Court is both the party that is aggrieved and is also the judge acting in its own cause. The principles of due process of law will therefore apply with even greater force in such proceedings. That regulation of any power does not amount to abrogating that power or stultifying it. The observations of this Hon'ble Court that since the power is sourced in Article 129 and 142 it cannot be stultified or abrogated is in the context that the power cannot be taken away by Parliament and conferred on some other authority, or that it cannot be restricted in a way so as to make it ineffective. However, that does not mean that the power is unlimited or cannot be

subject to any regulationeither through binding statutory provisions or Rules that have been framed by this Hon'ble Court under Article 145 and the 1971 Act.

IV. PETITION NOT MAINTAINABLE IN ABSENCE OF CONSENT OF ATTORNEY GENERAL. IN ANY EVENT NOTHEARING THE ATTORNEY GENERAL FAILS FUNDAMENTAL DUE PROCESS REQUIREMENTS.

K. THAT in Para 18 of the Impugned Judgment, it has been held as follows:

> *"18...It has been held, that insofar as suomotu petitions are concerned, the Court can very well initiate the proceedings suo motu on the basis of information received by it. The only requirement is that the procedure as prescribed in the judgment of P N Duda (supra) has to be followed. In the present case, the same has undoubtedly been followed. It is also equally settled, that as far as the suo motu petitions are concerned, there is no requirement for taking consent of anybody, including the learned Attorney General because the Court is exercising its inherent power to issue notice for contempt. It is equally well settled that once the Court takes cognizance the matter is purely between the Court and the Contemnor..."*

It is respectfully submitted that each of the findings in the above quoted para are errors of law apparent on the face of the record.

The decision in ***P.N. Duda v. P. Shiv Shanker*, (1988) 3 SCC 167**was rendered by a bench of two judges. The judgment for the court was rendered by Justice Sabyasachi Mukharji. This opinion does not discuss any such procedure. Justice S Ranganathan delivered a separate opinion, which concurred with the opinion of the Justice Mukharji. However, in respect of the maintainability of the petition and the procedure in case of suo motu petition on information received, Justice Ranganathan opinion did not concur with that of Justice Mukharji but was in fact partly dissenting. Thus, the aspects on the maintainability of the petition without the permission of Attorney General, and in particular the procedure to be followed in such cases, there was no concurrence between both the judges and thus those observations in the judgment of Justice Ranganathan do not form part of ratio of the judgment. This is evident from the SCC Report of the judgment, where in Para 49 Justice Ranganathan concurs with Justice Mukharji on the aspect that there is no contempt made out on the facts of the case and then goes on to say as follows:

> ***"50.*** *The second aspect of the case on which arguments have been addressed before us relate to the procedure to be followed in such matters. As this aspect raises some important issues, I would like to state my views thereon* ***separately.****" (Emphasis Supplied)*

Thus, there was no majority view in *P N Duda's* (Supra) case in respect of the procedure to be followed. It is possibly for this reason that the 1975 Rules have not been amended to

include the procedure prescribed in Justice Ranganathan's separate opinion. Thus, it is an error apparent on the face of the record to state that suo motu contempt proceedings can be initiated by the Court on basis of information received and the only requirement is that procedure prescribed in *P N Duda's* case*(Supra)*has to be followed.

L. THAT in ***P N Duda's case (Supra)***, even as per the opinion of the Justice Ranganathan, if a petition is filed, giving information to the court, it must be in proper form for it be registered as a suo-motu petition under Rule 3(a) of the 1975 Rules. Importantly, in the facts of that case, he found the petition totally not maintainable either as suo motu petition or otherwise, in the following manner [Para 63(a) of SCC]:

> ***"63.*** *For purposes of convenience, I may sum up my conclusions. They are:*
>
> *(a) This petition, if treated as one filed under Section 15(1) read with Rule 3(a) is not in proper form and, if treated as one filed under Rules 3(b) and 3(c), is not maintainable as it is not filed by the Attorney-Genera1/Solicitor-General or by any person with his consent."*

In the present facts, the Review Petitioner does not know if the petition filed by Mr. Maheswari was in the proper form even as per the judgment of Justice Ranganathan as a copy of the petition which formed the entire basis of the Suo Motu petition has not been provided to the Review Petitioner. However, a perusal of the case record on the website of this case indicates that the petitioner Mr. Maheswari had along with his petition

filed an *"Application for Exemption from filing Prior Permission of Ld. Attorney General of India in Contempt Criminal"* which bears Reg/IA No. 61203/2020. Therefore, the Original Petitioner himself was aware of the requirement of permission of the Attorney General and crafted his petition accordingly. Therefore, entertaining such a petition as a suo motu petition is error apparent on the face of the record.

M. THAT in any event in so far as the Tweet No. 2 of 27th June, 2020 is concerned, as is evident from the judicial order issuing notice dated 22nd July, 2020, judicial notice of the same was taken directly on 22nd July, 2020 without following the procedure on the administrative side mandated by the judgment of Justice Ranganathan in P. N. Dudas case (Supra). Even assuming the impugned judgment is correct in respect of the procedure required to be followed as per P N Duda's case, there is a prohibition on taking suo motu notice directly on the judicial side and thus the entire proceedings in respect of the Tweet No. 2 is without authority of law and liable to be set aside. Thus, the entire proceedings in respect of the Tweet No. 2, including the impugned judgment is an error apparent on the face of the record.

N. THAT further, in any event, even in the absence of a permission of the Attorney General as required under the 1971 Act and the 1975 Rules, the proceedings having been initiated and notice having been issued to the Attorney General vide order dated 22.07.2020, the fact that this Hon'ble Court did not choose to hear the Learned Attorney General on the aspect whether the two tweets at all amounted to contempt is not in accordance with established procedure.Pursuant to the notice issued to him, the Ld. Attorney General was present in court

throughout the hearing on 5.08.2020 but was not called upon by the court to address any submissions. This is also evident from record of proceedings of 5.08.2020 that records the presence of Ld. Attorney General for India but records that "Heard the submissions of Learned Senior Counsel appearing in the matter"-a reference to Senior Counsel appearing on behalf of the Review Petitioner. It is thus evident from the proceedings that while the Attorney General was present, he was not heard. In almost all cases of criminal contempt of this Hon'ble Court, this Hon'ble Court has heard the submissions of the Attorney General. Recently, in ***C.S. Karnan, In re*, (2017) 7 SCC 1,** in para 23 it is noted as follows:

> ***23.*** *Having viewed the unsavoury allegations levelled by Justice Karnan over a span of time, it was prima facie felt that his conduct towards a large number of named Judges and the judiciary in general, had seriously blemished and tarnished the image of those concerned in particular, and the judiciary as a whole. It was accordingly decided to initiate suo motu proceedings, for contempt of court. A Bench comprising of the seven seniormost Judges of the Supreme Court was constituted to examine whether or not Shri Justice C.S. Karnan was guilty of having committed contempt.* ***On the administrative side, the entire material referred to above, was entrusted to the Attorney General for India. He was also requested to assist the Court, in the matter, on the judicial side.***

Even in P. N. Duda's Case (Supra) the court lamented the fact that that the Attorney General could not be heard as the

Attorney General because he had been made a party respondent by the Petitioner and therefore the Attorney General was represented through counsels. In fact, the role of the Attorney General is absolutely essential in a proceeding of Suo Motu Criminal Contempt as the Attorney General is the only independent mind that can throw light on if there is a any contempt at all, the court being the aggrieved party as also the adjudicator and the alleged contemnor being the defendant. Thus, the finding in Para 18 of the impugned judgment that *"It is equally well settled that once the Court takes cognizance the matter is purely between the Court and the Contemnor*" is an error of law apparent on the face of the record.

V. FUNDAMENTAL PRINCIPLES OF NATURAL JUSTICE INCLUDING MANDATORY REQUIREMENTS OF 1971 ACT AND THE 1975 RULES HAVE BEEN VIOLATED

P. THAT Rule 6(2) of the 1975 Rules requires that *"When action is instituted on petition, a copy of the petition along with the annexure and affidavits shall be served on the person charged"*. However, in complete and direct violation of this rule, a copy of the petition of Mr. Maheswari that was the basis for initiating the *Suo Motu* proceedings was not supplied to the Review Petitioner. It is respectfully submitted that this violation is fundamental and goes to the very root of the matter, as the Review Petitioner could not address before this Hon'ble Court whether the basis on which this Hon'ble Court formed its view was substantial or not.

Q. THAT the reply filed by the Review Petitioner on 2.08.2020 clearly states that it is a preliminary reply and that the Review Petitioner is handicapped as he does not have a copy of the

Petition of Mr. Maheswari. Further, on 6.08.2020, the Petitioner also filed an application specifically stating that if the Court was not inclined to drop the proceedings and was inclined to proceed further, then the Review Petitioner seeks to lead further material as evidence underSection 17(5) of the 1971 Act. This section reads as follows:

> *"(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the court may determine the matter of the charge either on the affidavits filed* ***or after taking such further evidence as may be necessary****, and pass such order as the justice of the case requires."*(Emphasis Supplied)

In the present case, it is respectfully submitted that further evidence was necessary, in particular to place before this court the comparative numbers of cases being heard and decided by this Hon'ble Court during normal pre-covid functioning and functioning during the lockdown mode. The non-consideration of this plea by this Hon'ble Court is a cause of serious prejudice to the Review Petitioner and is an error apparent on the face of the record.

R. THAT the Review Petitioner had filed a detailed reply placing therein the facts, which was the basis of the bonafide belief expressed in the two tweets. It is respectfully submitted that in para 2 the length of the reply and the length of reply with the annexures is noted but this Hon'ble Court has failed to consider or even note the contents of the reply, particularly in respect of the Tweet No. 2, in respect of which the Review Petitioner had averred detailed facts that formed the basis of his bonafide view expressed in Tweet No. 2. However, non-

reference and non-consideration of these facts is fatal to the finding of contempt in respect of the Tweet No. 2and is an error of law apparent on the face of the record.

S. THAT it is settled law that even in proceedings of criminal contempt the due process of law, including the procedure prescribed by law must be followed. In ***R.S. Sujatha v. State of Karnataka*, (2011) 5 SCC at page 695,** noting the law on the point, this Hon'ble Court has held as follows:

> ***"21...****Needless to say, the contempt proceedings being quasi-criminal in nature require* ***strict adherence to the procedure prescribed under the rules applicable in such proceedings.*** *In L.P. Misra (Dr.) v. State of U.P. [(1998) 7 SCC 379: AIR 1998 SC 337] this Court while dealing with the issue of observance of the statutory rules held as under: (SCC p. 382, para 12)*
>
> *"12. ... we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law.* ***It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law."***
>
> ***22.*** *In Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [(2008) 16 SCC 592], and Sahdeo [(2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] (SCC p. 773,*

para 22) ***this Court reiterated a similar view observing that in contempt proceedings the court must conclude the trial and complete the proceedings "in accordance with the procedure prescribed by law".***

25. *This Court in Sahdeo [(2010) 3 SCC 705: (2010) 2 SCC (Cri) 451] while dealing with a similar situation held as under: (SCC pp. 717-18, para 37)*

"37. ***Every statutory provision requires strict adherence, for the reason that the statute creates rights in favour of persons concerned. The impugned judgment suffered from non-observance of the principles of natural justice and not ensuring the compliance with statutory 1952 Rules****. Thus, the trial itself suffered from material procedural defect and stood vitiated.* ***The impugned judgment and order, so far as the conviction of the appellants in contempt proceedings are concerned, is liable to be set aside."***

(Emphasis Supplied)

It is therefore respectfully submitted that in proceedings of criminal contempt, if the procedure prescribed by law, be it as per the statute or the rules is violated as has been done in the present case, then the conviction is liable to be set aside and the same is an error of law apparent on the face of the record.

VI. THAT THE TWEETS IN QUESTION WERE PRIMA-FACIE NOT CRIMINAL CONTEMPT AS PER THE DECISION IN P. N. DUDA (SUPRA).

T. THAT in P. N. Duda's Case (Supra) this Hon'ble Court found that a speech that stated that *"Anti-social elements i.e. FERA violators, bride burners and a whole horde of reactionaries have found their haven in the Supreme Court"* and also that *"The Supreme Court composed of the element from the elite class had their unconcealed sympathy for the haves i.e. the Zamindars"* was not criminal contempt and read properly was a study of the attitude of the Supreme Court. In fact, this was the only issue on which there was complete agreement between both the judges which comprised the bench. It was argued at the bar by the Senior Counsel for the Review Petitioner that if these words have not been found to be contemptuous by the Supreme Court in Duda's case, then applying the same standard, the two tweets of the Review Petitioner were completely innocuous and could not amount to criminal contempt. However, in the impugned judgment, there is no discussion on this aspect on which detailed submissions were made and this refusal to consider the statements in the tweet in light of the standards set by this Hon'ble Court itself amounts to ignorance of binding law/differential application of law and is an error apparent on the face of the record.

It is also respectfully submitted that on the aspect of procedure where there was not even any agreement between both the Learned Judges who comprised the court, this Hon'ble Court in the impugned judgment relied upon the same. However, on the one aspect on which there was complete unanimity in that judgment, i.e. on the kind of statements that do not amount to contempt, this Hon'ble

Court has chosen to not deal with it, despite detailed arguments made at the bar.

VII. NON-CONSIDERATION OF TRUTH AS A DEFENCE

U. THAT in 2006, by an amendment in the Contempt of Courts Act, 1971 introduced by Act 6 of 2006, the defence of truth was introduced for the first time in Indian Law as a defence in respect of proceedings for contempt of court. Section 13(b) that reads as follows:

> *"13…Notwithstanding anything contained in any law for the time being in force,-*
>
> *(a)…*
>
> *(b) the court may permit, in any proceeding for contempt of court, **justification by truth as a valid defence**, if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide.:"*

It is submitted that this is a pathbreaking change in the Indian law of contempt and subsequent to this change, if an alleged contemnor seeks to rely on this defence, it is incumbent on the court to examine and deal with that defence. Further, the applicability of a large portion of pre-2006 case law will have to be applied keeping this fundamental change in law in mind.

V. In the impugned judgment, in so far as the Tweet No. 2 is concerned, which begins with the words "when historians in the future look back…" the court has completely ignored the truthful averments which were made in the reply justifying

each part of this tweet. However, in paras 66 to 77 of the impugned judgment, where the Court's analysis in this respect is to be found, this Hon'ble Court has straightaway determined this tweet to be not in good faith without even attempting to examine if the averments based on which the Review Petitioner claimed to form his view in this tweet were true. It is respectfully submitted that this is a completely erroneous approach. Under Section 13(b) truth and good faith are intrinsically connected. A view based on material which is fully true can obviously not be in bad faith and similarly a view based on complete falsehood is highly unlikely to be in good faith. Thus, as a matter of law, an enquiry into truthfulness of the facts based on which the belief is claimed to be in good faith must precede the analysis of whether the statements are in good faith. In para 71 this Hon'ble Court straightaway states that *"we are only concerned with the damage that is sought to be done to the institution of administration of justice"* and concludes that *"in our view, the said tweets undermines the dignity and authority of the institution of the Supreme Court of India and the CJI and directly affronts the majesty of law"*. In subsequent paras, the tweet is described as *"scurrilous, offensive, intimidatory and malicious"*. It is respectfully submitted that the use of such epitaphs for the tweet cannot be a replacement for examination of truthfulness of the materials based on which the tweet was made. In fact, by the approach followed by this court in the impugned judgment, any criticism of the Court can simply be described with these epitaphs and the person convicted of criminal contempt. The non-consideration of the truthfulness of the reply which formed the basis of the Tweet No. 2 is therefore an error of law apparent on the face of the record. Further, in the judgment

on conviction, it is nowhere stated that the Reply was not sought to be relied upon. An observation to that effect comes in the judgment on sentencing and that is being dealt with in the review being filed in respect of that judgment.

W. THAT in the impugned judgment, in so far as the Tweet No. 1 is concerned, an attempt is made to examine the truthfulness of the statement while determining if the second part of the first tweet is bonafide criticism made by the Review Petitioner on account of his anguish of non-functioning of the courts physically. In this respect in Para 64 the court finds that *"His contention that on account of non-physical functioning of the Supreme Court for the last more than three months, the fundamental rights of citizens, such as those in detention, those destitute and poor, and others facing serious and urgent greviances were not being addressed or taken up for redressal, as stated herein above, is false to his knowledge."*

The court has reached the above conclusion based on quoting some absolute figures in para 63 and 64 such as *"The total number of sittings that various branches had from 23.3.2020 till 4.08.2020 is 879. During this period, the court has heard 12748 matters, In the said period, this Court has dealt with 686 writ petitions filed under Article 32 of the Constitution of India"*.

The above approach in determining the truthfulness of the statement made by the Review Petitioner has two fundamental factual errors.

First, the Court has noted the figures from 23.3.2020 and 4.08.2020 and not until 27.06.2020 when the Tweet No. 1 was

made. Consideration of numbers post the tweet was made to determine if what was stated in tweet was truthful is in an obvious error of fact on the face of the record.

Second, the consideration of absolute numbers in the post Covid period without a reference to what those numbers were for the same months/period in the pre COVID era when the Courts were functioning physically is an approach that cannot determine the extent of denial of access to justice because of the restrictive functioning of the court. Indeed, even as the Review Petitioner is filing this review petition, this Hon'ble Courts is functioning with five to seven benches everyday, with judges sitting on alternate days and not every day. Prior to COVID, ten to fourteen benches would sit everyday five days a week. Further, the number of matters on the board of each court was also higher. Thus, undoubtedly, even today, the access to justice is restricted from what was before COVID when physical functioning was continuing. Thus, to quote absolute figures without comparison, to determine truthfulness of the second part of first tweet, is an error of fact apparent on the face of the record.

VIII. IMPUGNED JUDGMENT MAKES ANY AND ALL CRITICISM OF THE INSTITUTIONAL ROLE OF THE SUPREME COURT AN OFFENCE OFCRIMINAL CONTEMPT

X. The approach followed by this Hon'ble Court in the impugned judgment, has the effect of making the most innocuous critiques of the institutional role of the Supreme Court, including how it is administered an offence of criminal contempt. The role played by the highest Constitutional Court

of the country and the impact it has on the functioning of the democracy is something that is regularly commented upon by lawyers, authors, newspaper editorials, intellectuals, national and international media, etc. In fact, in the last few weeks and months when the court has heard and decided this matter of contempt, numerous pieces have been written by a whole host of individuals, commentators, newspapers editorials etc. that will be criminal contempt by the novel standard set by this Hon'ble Court in the impugned judgment.

Y. THAT In their famous book published in 2018 titled "How Democracies Die", Harvard University political scientists Steven Livitsky and Daniel Ziblatt explore how constitutional democracies have been and can be turned into*de facto* authoritarian regimes.They point out that in today's world, this is not done through an overnight forceful coup but through the slow and continuous weakening of institutions including courts and that inability of the courts to play their constitutionally mandated role is a main factor in the death of democracies worldwide. Thus, the type of comment in the second tweet for which the Review Petitioner has been found to be guilty of criminal contempt is part of academic debate and discussion worldwide. The impugned decision will have a very serious chilling effect on any discussion relating to this Hon'ble Court.

IX. THE STANDARD OF PROOF IN CRIMINAL CONTEMPT IS BEYOND REASONABLE DOUBT.

Z. THAT it is settled law that the standard of proof in a case of criminal contempt is the same as that in criminal law

generally, i.e. beyond reasonable doubt [**R.S. Sujatha v. State of Karnataka, (2011) 5 SCC 689; Brahma Prakash Sharma v. State of UP, 1953 SCR 1169: AIR 1954 SC 10**]. Thus, it has to be proved beyond reasonable doubt not just that the alleged statement was made by the alleged contemnor but those words/statement beyond reasonable doubt amount to criminal contempt. With this preface, the two tweets can by no stretch of imagination amount to criminal contempt beyond reasonable doubt as is explained hereinafter.

X. THAT THE REASONIONG EMPLOYED IN RESPECT OF TWEET NO. 1 SUFFERS FROM ERRORS APPARENT ON FACE OF THE RECORD

AA. THAT the finding in the Judgment under Review that Tweet No. 1 constitutes criminal contempt is unsustainable in law and merits being set aside in review. The Contempt of Court Act defines criminal contempt as one that "(*i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner*". The obvious *sequitur* is that there should be a finding based on evidence that such one of these circumstances has been met. At best, the Judgment under review records in para 64 as regards Tweet No. 1 that "*It has the tendency to shake the confidence of the public at large in the institution of judiciary and the institution of the CJI and undermining the dignity and authority of the administration of justice.*" It also records in para 62, "*The said tweet is capable*

of giving an impression to a layman, that the CJI is enjoying his ride on a motorbike worth Rs.50 lakh belonging to a BJP leader, at a time when he has kept the Supreme Court in lockdown mode denying citizens their fundamental right to access justice."

It is respectfully submitted that these findings are insufficient basis for conviction for criminal contempt because make no attempt to show which head of the definition of criminal contempt they fall under and this is an error of law apparent on the face of the record.

BB. THAT it is respectfully submitted that "tendency to shake the confidence" or "capability to give impression to a layman" are not tests that flow from the language or the logic of the definition of criminal contempt, as even case law makes clear. It is axiomatic that the ingredients of an offence are required to be met before conviction.

CC. THAT it is axiomatic that the contempt must be clear or writ large from the offending substance, which is admittedly not the case here where it is not "manifest, mischievous or substantial" to quote the test laid down in ***EMS Namboodripad* v. *T Narayanan*, (1970)2 SCC 325 at para 12**. Criticism, however unfair, does not *ipso facto* imply contempt, particularly when the allegation is that criticism is alluded to and not made directly. It is pertinent to note that even in *R.* v. *Almon*, (1765) Wilmot's Notes 243 which is widely regarded as the *locus classicus* of contempt law, Lord Wilmot sitting in the King's Bench was careful to observe in his opinion at p. 257 of his eponymous Notes on Judgments and Opinions, "*…it is not their own cause but the cause of the public; For I do not think that*

Courts of Justice are to take their complaints up of themselves; it must be left to His Majesty, who sustains the person of the public, to determine whether the Offence merits a public notice and animadversion." In India, Courts of record do have the power to initiate *suo moto* contempt but the same ought to be exercised in a very circumspect manner and in obvious cases of gross contempt because the courts are not ideally equipped for determining what scandalises or lowers its authority without the determination from the Attorney or Solicitor General.

DD. THAT the Impugned Judgment under review fails to apply the correct tests for determining whether or not the speech is actionable under contempt law. In para 61 of the Judgment under review, the Hon'ble Court states that it will examine the criticism of the system and that if the same is fair, made in good faith and in larger public interest and thus is entitled to protection under Article 19(1). With respect, this is an incorrect reading of the law. The Review Petitioner and every citizen of the country has the right to free speech limited only by reasonable restrictions imposed as under Article 19(2) of the Constitution. What a court dealing with criminal contempt has to first see if the speech falls under any of the heads of criminal contempt as defined in section 3 of the 1971 Act. Only if this head is satisfied, does the inquiry shift to whether the speech in question is hit by a reasonable restriction under Article 19(2).

EE. THAT the Judgment under review has failed to consider the tweet in context or deal with the explanation offered by the Review Petitioner. The Impugned Judgment operates on the assumption that the Review Petitioner implied (though admittedly this was not stated) that the Court was shut during

the relevant period but the tweet clearly states that the Hon'ble Court was in "lockdown mode". The Review Petitioner clearly states that "lockdown mode" is not synonymous with a complete shutdown, but merely implies that the Hon'ble Court was functioning at a fraction of its capacity during the period, a fact which is undisputable. Naturally, this further implies that many cases, particularly those not deemed extremely urgent, were adjourned, which had an impact on the right to access to justice though nothing in the tweet places any blame on the Hon'ble Chief Justice or the Court. In context, it is submitted, the tweet appears to be more in the nature of a lament than an accusation. At worst, it unfairly links two unconnected facts in a way that "may" strike the Hon'ble Court, and many other observers, as unfair. Even so, it is respectfully submitted that this does not tantamount to contempt. It has to be considered that twitter is a medium that does not allow for a large disquisition on anything since it limits the characters and space available. It is unfair to imbue the silences with malicious intent to the degree needed to make the tweet no. 1 actionable under contempt law.

FF. THAT the Impugned Judgment errs insofar as "the words do not support the innuendo". It cannot be said that the alleged contempt is beyond reasonable doubt as required under law. It is pertinent to consider the opinion of the Privy Council in ***Debi Prasad Sharma* v. *King Emperor*, AIR 1943 PC 202** where it was held per Lord Atkin:

> *When the comment in question in the present case is examined it is found that there is no criticism of any judicial act of the Chief Justice, or any imputation on him for anything done or*

omitted to be done by him in the administration of justice. It can hardly be said that there is any criticism of him in his administrative capacity, for, as far as their Lordships have been informed, the administrative control of the subordinate courts of the Province, whatever it is, is exercised, not by the Chief Justice, but by the court over which he presides. The appellants are not charged with saying anything in contempt of the subordinate courts or the administration of justice by them. In truth, the Chief Justice is alleged, untruly, as is now admitted, to have committed an ill-advised act in writing to his subordinate judges asking (as the news item says), enjoining (as the comment says) them to collect for the War Fund. If the facts were as alleged they admitted of criticism. No doubt it is galling for any judicial personage to be criticized publicly as having done something outside his judicial proceedings which was ill-advised or indiscreet. But judicial personages can afford not to be too sensitive. A simple denial in public of the alleged request would at once have allayed the trouble. If a judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation if he should feel impelled to use them. Their Lordships cannot accept the view taken by the court as stated above of the meaning of the comment: the words do not support the innuendo. In the opinion of their Lordships the proceedings in contempt were misconceived, and the appellants were not guilty of the contempt alleged.

This judgment has been re-affirmed by this Hon'ble Court on many occasions. The findings of the Privy Council apply *a fortiori* to tweet no. 1.

GG. THAT the Impugned Judgment does not consider the observations findings in**Baradakanta Mishra v. Registrar of Orissa, (1974) 1 SCC 374** where it washeld,

59. …The legal touchstone adopted by the High Court is that any statement which in some manner may shake the confidence of the community in a judge or in the judicial system, is straightway contempt, regardless of context or purpose…or absence of any clear and present danger of disaffection or its being a bona fide plea for orderly change in the judicature and its process. On the facts, we agree that the spirit of defiance, extenuated partly by a sense of despair, is writ large in the writings of the appellant but wish to warn ourselves that his reported past violations should not prejudice a judicial appraisal of his alleged present criminal contempt. And the benefit of doubt, if any, belongs to the contemnor in this jurisdiction.

XI.REASONIONG EMPLOYED IN RESPECT OF THE TWEET NO. 2SUFFERS FROM FUNDAMENTALERRORS APPARENT ON THE FACE OF THE RECORD.

HH. THAT as explained in grounds above, the definition of the different forms of criminal contempt is contained in Section 2 of the 1971 Act. The impugned judgment does not in any manner demonstrate how Tweet No. 2 either scandalises or tends to scandalise or lowers or tender to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

II. THAT instead, the impugned judgment concludes summarily that Tweet No. 2 scandalises the "entire institution of the Supreme Court." But in arriving at this conclusion the judgment does not rely on any of the tests laid down to determine what constitutes scandalising of the Court under Section 2(c) of the Contempt of Courts Act, 1971. It is submitted that the offence of scandalising the court is vague and undefined. It is for this reason that the Supreme Court in Baradakanta Mishra (Supra) speaking through Justice Krishna Iyer, held that *"…the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond all reasonable doubt."* But not only is Tweet No 2 far from a clear statement that scandalises the Court, the impugned judgment does not so much as hold that it is clear beyond "all reasonable doubt" that it constitutes contempt of court. The absence of such a finding constitutes an error apparent on the face of the impugned judgment.

JJ. THAT It is submitted that especially given that the term "scandalises", as used in Section 2(c) of the Contempt of Courts Act, 1971, is vague and undefined, the tests, as devised by the Supreme Court, ought to be rigorously applied. Justice Beg, in his separate opinion, ***in Re: S. Mulgaokar, (1978) 3 SCC 339***, held that it is only criticism that *"is based on obvious distortion or gross misstatement"* and that is made *"in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it"* that constitutes criminal contempt. The impugned judgment, however, does not so much as attempt to demonstrate how the statement contained in Tweet No. 2, in fact, constitutes an "obvious distortion" or "gross misstatement"—indeed that the opinion

expressed by the petitioner is one that is commonly held, in and of itself, shows that it is anything but an "obvious distortion" or "gross misstatement".

KK. THAT Justice Beg further went on to hold that although the question of *"whether an attack is malicious or ill intentioned, may be often difficult to determine, yet, the language in which it is made, the fairness, the factual accuracy, the logical soundness of it, the care taken in justly and properly analysing the materials before the maker of it, are important considerations."* What is more, in arriving at this conclusion, Justice Beg holds that the *"totality of facts and circumstances"* must be considered. The impugned judgment, however, not only fails to consider the above factors, despite the fact that it is but it also separates and divides Tweet No. 2 into different parts and eschews the first part from consideration altogether. It is submitted that to consider the opinion expressed by the petitioner on the Supreme Court's role in the destruction of democracy and on the role of the last four chief justices in the said destruction independent of the petitioner's opinion that democracy has been substantially destroyed in India during the last six years amounts to a failure to consider the *"totality of facts and circumstances"* as warranted by Justice Beg's opinion. And this failure to consider the totality of facts and circumstances is an error writ large on the face of the judgment.

LL. THAT the impugned judgment is also erroneous on the face of its record, for, while it cites Justice Krishna Iyer's separate opinion ***in Re: S. Mulgaokar, (1978) 3 SCC 339***, with approval, it doesn't, in fact, apply the principles expounded

there to Tweet No. 2. It is submitted that Justice Krishna Iyer in his opinion lays down six principles that are integral to determining what kinds of speech constitute criminal contempt. The impugned judgment doesn't show on a reading of these principles how Tweet No. 2 qualifies as an offence.

(i) That there must be a "a wise economy of use by the Court of this branch of its jurisdiction" and that the "Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process." The impugned judgment far from adhering to these words of caution summarily concludes that Tweet No. 2 constitutes criminal contempt. It doesn't demonstrate how the statements contained therein constitute either a gross and/or unfounded attack on the judges, and, more significantly, doesn't so much as attempt to show how the statement might obstruct or destroy the judicial process. Further, as indicated above, it does not at all go into the issue of truth, as is required post the 2006 amendment.

(ii) That "where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it, constitutionally speaking." The impugned judgment holds that Tweet No. 2 does not constitute "a fair criticism of the functioning of the judiciary, made *bona fide* in the public interest." But what that public interest might be, or how that public interest is breached the judgment doesn't demonstrate. In

failing to so demonstrate, the impugned judgment clearly suffers from errors apparent on its record.

(iii) That defamation of an individual judge is independent and separate from the offence of contempt. The impugned judgment doesn't so much as engage with the question of whether the comment on the last four CJIs, made in Tweet No. 2, conforms to the third principle expounded by Justice Krishna Iyer in Re: Mulgaokar. This failure is once again an error that is apparent on the face of the record.

(iv) That the fourth estate should be given "free play within responsible limits even when the focus of its critical attention is the court, including the highest Court." The impugned judgment in omitting to consider whether the petitioner was acting as a critical "intermediary between the State and the people" has erred on the face of its record.

(v) That the Court in exercise of the jurisdiction of contempt must not be "hypersensitive even where distortions and criticisms overstep the limits" and must "deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude." As submitted *supra*, the impugned judgment doesn't arrive at any finding on whether at all Tweet No. 2 amounts to a distortion. In any event, even assuming for the purposes of argument, without admitting so, that Tweet No. 2 distorted facts in some way, the impugned judgment is still erroneous on the face of its record, because it doesn't so

much as consider whether the expression of opinion calls for repudiation or not.

(vi) That in exercising the jurisdiction of contempt, the Court must consider the "totality of factors" and it is only "if the court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike, a blow on him who challenges the supremacy of the rule of law by fouling its source and stream." It is submitted that the impugned judgment is erroneous on its face because it does not consider the totality of facts. That it doesn't do so is manifest from the fact that it separates Tweet No. 2 into two parts and eschews from its consideration the opinion that democracy has been substantially destroyed in India during the last six years, even without a formal declaration of emergency. It is submitted that the other parts of the tweet cannot be treated as contumacious without reading it in the context of what is said in the first part of Tweet No. 2. This by itself shows that the totality of factors was not considered in the impugned judgment.

Furthermore, the impugned judgment concludes on a bare reading of Tweet No. 2 that it is scurrilous, offensive, and malicious. But it doesn't rely on any bright-line rule to show how the statements made in Tweet No. 2 are, in fact, scurrilous, offensive or malicious. In paragraph 68 of the impugned judgment, the Court holds that Tweet No. 2 tends to convey an impression that "the judges who have presided in the Supreme Court in the period of last six

years have particular role in the destruction of Indian democracy and the last four CJIs had a more particular role in it." This might well be the impression that the tweet in question seeks to convey, but the Court doesn't, in fact, show, or even attempt to show, how the holding of this opinion constitutes contempt of court. This is an error apparent on the face of the judgment.

MM. THAT the impugned judgment errs in holding that Tweet No. 2 was not made in good faith because its publication had the effect of reaching millions of people. It is submitted that to hold that the wide nature of a publication contributes to the offence of contempt is simply not supported by the bare reading of the Contempt of Courts Act, 1971. A statement which does not fall in definition of criminal contempt does not become one just because it is widely circulated and a statement which amounts to criminal contempt does not cease to be criminal contempt because of low circulation.To hold thus is a clear error on the face of the judgment's record.

NN. THAT the impugned judgment holds that Tweet No.2 in the "court's considered view" undermines the dignity and authority of the institution of the Supreme Court of India and the CJI and directly affronts the majesty of law and is therefore contumacious. It is submitted, however, that none of this is, in fact, a facet of any test to determine what constitutes criminal contempt, and in holding Tweet No. 2 as contumacious because it has undermined the dignity of the court or because it has affronted the majesty of law, the impugned judgment has clearly erred.

OO. THAT the impugned judgment has erred in concluding that the tweets are based on "distorted facts", because by its own admission it has pointedly refused to go into the legitimacy and the veracity of the statements made in Tweet No. 2. It is submitted that this inconsistency is writ large on the face of the record.

PP. THAT there is an error apparent on the face of the impugned judgment, which, while holding that fair criticism of a judge and the judiciary is protected by Article 19(1)(a) of the Constitution, doesn't consider whether Tweet No. 2 in fact amounts to fair criticism or not.

QQ. THAT the impugned judgment on the face of its record misreads Tweet No. 2 in concluding that the comment made therein alludes in any way to the judiciary's role during the Emergency era of the 1970s (*See:* paragraph 67 of the impugned judgment). It is submitted that as the first part of Tweet No. 2 makes clear the petitioner was merely invoking the potential opinion of "future historians" that democracy has been destroyed in India during the last six years even without a formal declaration of emergency. The second and third part of Tweet No. 2 questions the role of the Supreme Court, in particular that of the last four chief justices, in this destruction. Therefore, Tweet No. 2 doesn't on any reading draw a comparison between the Supreme Court of the last six years and the Supreme Court of the Emergency era of the 1970s, as recorded by the impugned judgment. It is submitted that this conclusion is an error apparent on the face of the record of the impugned judgment.

RR. The impugned judgment errs on the face of its record in altogether ignoring the universally accepted defence of fair comment.

XII. THAT THE IDENTITY OF PERSON MAKING THE STATEMENT OR THE EXTENT OF PUBLICATION IS IRRELEVANT IN DETERMINING IF THE STATEMENT AMOUNTS TO CRIMINAL CONTEMPT.

SS. THAT the impugned judgment errs in holding that Tweet No. 2 was not made in good faith because its publication had the effect of reaching millions of people. It is submitted that to hold that the wide nature of a publication contributes to the offence of contempt is simply not supported by the bare reading of the Contempt of Courts Act, 1971. A statement which does not fall in definition of criminal contempt does not become one just because it is widely circulated and a statement which amounts to criminal contempt does not cease to be criminal contempt because of low circulation.To hold thus is a clear error on the face of the judgment's record.

TT. THAT the identity of the person making the statement cannot have any impact on determining if the statement itself amounts to criminal contempt. A statement that clearly does not amount to criminal contempt cannot become criminal contempt because of the identity of the author. Similarly, a statement or act that is clearly criminal contempt cannot cease to be so because of the identity or position of the maker. In***C.S. Karnan, In re*, (2017) 7 SCC 1**another case of

Suo Motu Criminal Contempt, a seven judge bench of this Hon'ble Court held that *"But then, in the process of administration of justice, the* ***individual's identity, is clearly inconsequential****. This Court is tasked to evaluate the merits of controversies placed before it, based on the facts of the case. It is expected to record its conclusions, without fear or favour, affection or ill will."* The position of the person as an advocate, can have relevance, if at all, at the stage of punishment, for the kinds of punishment that can be imposed on him/her [**Mahipal Singh Rana v. State of UP, (2016) 8 SCC 335**]. Thus, this consideration that has been used to find him guilty of contempt is an error apparent on the face of the record.

UU. THAT for all the errors apparent on the face of the record, the impugned judgment is liable to be set aside.

25. The Petitioner have not filed any other Review Petition against the Judgment dated 14.08.2020 in Su Moto Contempt Petition (Criminal) Nos. 1 of 2020, before this Hon'ble Court or any other Court.

PRAYER

In light of the aforesaid facts and circumstances, this Hon'ble Court may:

a) Treat this review petition in light of prayers in W.P. (C) No. _____/2020 bearing Provisional vide diary No. 19696 of 2020 filed on 12.09.2020 by the petitioner herein;

b) Review the Impugned Final Judgment and Order dated 14.08.2012 passed by this Hon'ble Court in Suo Motu Petition (Criminal) No.1 of 2020 and thereafter rehear the matter;

c) Grant an oral hearing in the open court to the Review Petitioner as the facts and circumstances of the case sufficiently necessitate;

d) Pass any other order(s) or direction(s) as may be deemed fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IS DUTY BOUND SHALL EVER PRAY.

Filed By:

(KAMINI JAISWAL)
ADVOCATE FOR THE PETITIONER

New Delhi
Dated: 14.09.2020