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CASE NO. BEFORE HON'BLE PRESIDENT OF INDIA:- PRSEC/E/2019/11166

To,

Date 10/06/2019

HON'BLE CHIEF JUSTICE

Delhi High Court, New Delhi

WITH COPY TO;

HON'BLE PRESIDENT OF INDIA

Rashtrapati Bhavan, New Delhi

Sub: Taking Action under Contempt of Courts Act as per Re:M.P.Diwedi AIR 1996 AC 2299, against concerned Magistrate of Patiyala House Court, Delhi involved in violation of fundamental rights of accused.

Ref:- Affidavit dated 18th April, 2019 of victim lady Smt. Alka Rani

Hon'ble Madam,

1. This case shows a lamentable conduct by concerned Police Officer and Magistrate.

2. The Victim was illegally arrested and handcuffed and detained illegally. When she was produced before the Magistrate then the Magistrate was bound to release her on bail forthwith and to take action against the errant police Officer in view various guidelines issued by Hon'ble Supreme Court and High Court which mandates that:

i) every accused is presumed to be innocent unless proved guilty. Bail is rule and jail is exception. **[Sanjay Chandra's case (2012) 1 SCC (Cri) 26, Nikesh Shah's case (2018) 11 SCC 1]**

ii) The investigation even in murder case can be done by issuing notice and arrest should be avoided. But the Magistrate failed to perform his duty and he sent victim lady to police custody. **[Siddharam Satlingappa Mhetre's case AIR 2011 SC 312, Joginder Kumar's case (1994) 4 SCC 260, Ravindra Narayan Joglekar's case 2008 ALL MR (Cri.) 2432.]**

iii) The case laws of Anticipatory Bail are squarely applicable while rejecting the police custody of the accused and releasing the accused on bail.

iv) Magistrate cannot grant Police Custody mechanically and with applying judicial mind. **[1996 Cri.L.J. 863, Harsh Sawhney Vs Union Territory AIR 1978 SC 1016]**

v) Police machinery cannot be used for recovery of money by alleging cheating.

vi) Even in heinous offences accused should not be handcuffed except with the written permission by concerned Judges. **[Re:M.P.Diwedi AIR 1996 AC 2299, Ravikant Patil Vs.DGP 1991-Cri.L.J.-0-2344]**

vii) Police are bound to investigate the version of the accused. Unless investigation vitiated. **[Babubhai's case 2011 (1) SCC (Cri) 336, Jugal Kishore's case 1990 CRI. L. J. 2257, Harvinder Singh case's MANU/DE/0283/ 2015]**

3. Hon'ble Supreme Court in **Re:M.P.Diwedi AIR 1996 AC 2299** had ruled as under;

"A)VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS - THEY ARE GUILTY OF CONTEMPT.

Held, Contemner No.1, M.P. Dwivedi, was Superintendent of Police of District Jhabwa at the relevant time. notice was being issued to him for the reason that, being over all in charge of the police administration in the district, he was responsible to ensure strict compliance with the directions given by this Court .

Contemner No.2, Dharmendra Choudhary, was posted as SDO (Police) at Aliraipur at the relevant time. Contemners Nos. 1 and 2, even though not directly involved in the said incidents since they were not present, must be held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge, they condoned the illegality by not taking stern action against persons found responsible for this illegality. We, therefore, record our disapproval of the conduct of all the five contemners Nos. 1 to 5 in this regard and direct that a note regarding the disapproval of their conduct by this Court be placed in the personal file of all of them.

Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a

serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

Held, The contemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this Court - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field."

4. That the other illegalities and other injustice to victim woman are as under:

- (i) The lady was handcuffed which is an offence under section 220 [Sumit Gupta case] Contempt of Supreme Court as per **In Re: M.P.Dwivedi AIR 1996 SC 2299** Concerned Senior Police Officer & Commissioner of Police both are guilty.
- (ii) The Complainant alleging that he had given bribe of Rs. 50,000/- to lady for job in the Supreme Court then the said Complainant Mr. Naveen Kumar S/o Stabeer Singh is accused of offence under section 12 of P. C. Act for giving bribe. **[Amit Jogi Vs. State 2006 SCC OnLine Chh 122]**. In the said case it is ruled that when bribe amount was not given through the Police then the person giving bribe is accused. But no F.I.R. was registered against Complainant. This was done for the extraneous considerations.
- (iii) Police did not register case against bribe giver under section 12 of P.C. Act without any reason but, on the contrary Investigation Officer is making and application to cancel the bail of the victim lady. This itself proves that they are acting unfairly and at the behest of some other person.
- (iv) The offence against the lady were under section 420, 506 of Indian Penal Code and are covered under **Arnesh Kumar Vs State AIR 2014 SC 2756** and police should have investigated the case without arresting the women. Also as per law ruled in **Joginder Kumar vs. State of U.P. & Ors. (1994) 4 SCC 260 (Full Bench)** also in view of law laid down by Justice Sharad Bobade in the case of **Antonio S. Meruyan Vs. State 2008 ALL MR (Cri.) 2432., Dinkarrao R. Pole -Vs- State of Maharashtra 2004 (1) Crimes 1 (Bom) (DB)** Where it is ruled that investigation can be done by issuing notice in case under section 420,468, etc. of Indian Penal Code even if the charges are non-bailable. Same law is reiterated in **Siddharam Satlingappa Mhetre Vs State AIR 2011 SC 312**
- (v) Guidelines of Hon'ble Supreme Court in **D.K.Basu Vs State of West Bengal 1997 Cri. L. J. 743** case are violated.

(vi) When the lady was asked to sit in the Jeep, from Togla Karan Dist. Nawalgarh of Rajasthan on 08.03.2019 that is the starting point of arrest. As per law at that place the Panchanama has to be made. **Ashok Hussain Allah Detha Alias Siddique and Ors. Vs. Asst. Collector of Customs & Anr. 1990 Cri.L.J.2201**, where it is ruled as under;

(A) Constitution of India, Art.22(2) - Criminal P.C. (2 of 1974), S.57 - - Meaning of - Commencement of arrest - It starts with the arrester taking a person into his custody by action or words restraining him from moving anywhere beyond the arrester's control, and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrate's Judicial Act - It stands to reason therefore, that what label the investigating officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest. The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers.

(B) Constitution of India, Art.22(2) - Criminal P.C. (2 of 1974), S.57 - DETENTION - Detention for interrogation - It is not authorised by law - There is no authority in the Investigating Officers to detain a person for the purpose of interrogation or helping them in the enquiry.

- **Practice of procuring statement by coercive methods deprecated.**

. This manipulation and abuse of the legislative sanction for the use of statements of the accused requires to be censured in the strongest terms.

(vii) At the time of restricting the movement of victim lady at Rajasthan the concerned police officer was duty bound to give a copy of F.I.R. and intimation of charge and reason in writing to the victim women in view to the section 50 of the Criminal Procedure Code.

**[Selvanathan alias RaghavanVs. State by
Inspector of Police 1988 MAD LW(CRL.)503]**

If this was not done, the Judge before whom the victim lady was produced could not grant police custody.

**In Selvanathan alias RaghavanVs. State by
Inspector of Police 1988 MAD LW(CRL.)503**

where it is ruled as under;

A) Every person subjected to arrest is entitled to a copy of FIR free of cost at the time of arrest - No doubt, it is true that if a duty is cast on the arresting officer to comply with certain statutory formalities, there is a corresponding duty cast on the Magistrate who is called upon to pass remand orders to satisfy himself whether the statutory formalities have been strictly complied with or not. In case the Magistrate is not satisfied that the requirements of Sec.50 of the Code have not been complied with, he can limit the remand in the first instance to such period as would be necessary, thereby affording an opportunity to the police officer to communicate in writing the full particulars of the offence for which the accused is arrested or the other grounds of such arrest .

B) The Magistrates shall not grant remands to the police custody unless they are satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other Police Officer to the effect that the accused may be liable to give further information, that a request for remand to police custody shall be accompanied by an affidavit by setting out briefly the prior history of the investigation and the

likelihood of further clues which the police expect to derive by having the accused in custody, sworn by the investigating or other police officer, not below the rank of a Sub Inspector of Police and that the Magistrate after perusing the affidavit and satisfying himself about the request of the police officer, shall entrust the accused to police custody and at the end of the police custody, the Magistrate shall question the accused whether he had in any way been interfered with during the period of custody.

The cherished legal right vested in the accused under Art.22(1) of the Constitution and Sec.50(1) of the Code to obtain full particulars of the offence or the grounds for his arrest, is based on well settled principles of law, as enunciated in a number of judicial pronouncements which we have already referred to. In this connection, it would be useful to bear in mind Arts.3 and 29 of the Universal Declaration of Human Rights, 1948 and Art.9(2) of the International Covenant of Civil and Political Rights, published by the United Nations (New York 1978) at page 24, reading: 'Any one who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him.' Further, if the first information report is laid by the accused himself, he is entitled to get a copy of the information free of cost as per Sec.154(2) of the Code, since the expression 'informant' appearing in Sec.154(2) does not exclude the accused giving information about the crime. When it is so, we are unable to understand as to what would be the legal impediment to furnish a copy to the accused, who as per Sec.50(1) has to be informed of the full particulars, of the

offence for which he is arrested or other grounds for such arrest.

Though in the heading of Sec.50 of the Code, the word 'informed' is used, in the body of the section, the expression 'communicate' is found. In legal parlance, there is a lot of difference between the expression 'inform' and 'communicate'. As Patanjali Sastri, J., pointed out in his separate judgment in Income-tax Commissioner v. Ahmedbhai Umarbhai and Company, A.I.R. 1950 S.C. 134, 'marginal notes in an Indian Statute, as in an Act of Parliament cannot be referred to for the purpose of construing the statute. Nor can the title of a Chapter be legitimately used to restrict the plain terms of an enactment.' See also Balraj Kunwar v. Jagatpal Singh, 26 All. 393: 31 I.A. 132 (P.C.). Hence, in the light of the above decisions, we have to approach Sec.50(1) only with reference to the specific word used in that section, and not with reference to the word used in the heading of the section. This section requires the arresting person to communicate to the arrestee the full particulars of the offence for which he is arrested or the other grounds for such arrest. Though, the section does not mean that any technical or precise language need be used, it demands that all the particulars of the offence for which the accused is arrested should be communicated to him. If it is to be construed that the communication could be oral also, then it would lead to a dispute, when the accused denies that full particulars of the grounds have not been communicated to him. Even if any communication of the offence is orally made to the accused, the Court may not be in a position to come to a definite conclusion as to what kind of communication was made, whether communication of the mere particulars of the offences was made or whether mere section of

the offence was told to the arrestee. Therefore, in order to avoid any controversy or dispute, it will always be desirable to give the particulars of the grounds in writing. We may point out at this juncture that the Supreme Court in Lallubhai Jagibhai v. Union of India, A.I.R. 1981 S.C. 728, while interpreting the word 'communicate', observed that if the 'grounds' are only verbally explained to the arrestee and nothing in writing is left with him, then the purpose of Sec.50 of the Code is not served and strictly complied with.

As repeatedly pointed out by the authoritative judicial pronouncements of the Supreme Court and the various High Courts, it is unconstitutional illegal, unjust and unfair not to let the arrestee know the accusation him or the full particulars of the offence or the grounds on the basis of which the arrest has been effected. To expect an arrestee to a blind and unquestioned obedience in ignorance of the particulars of the offence or the accusation made against him is only the law of the tyrants. After the advent of the Constitution of India, in our view, it should not be allowed to flourish or exist on our soil. Every person subjected to arrest is entitled to know why he is deprived of his freedom. It is only with this underlying principle, Sec.50 is now introduced in the Code. We are of the firm view that it would be desirable that the particulars enumerated by us above be communicated to the arrestee in writing and free of cost, which would be in strict compliance of Art.22(1) of the Constitution of India and Sec.50 of the Code.

(viii) As the charges under section 420,506 of Indian Penal Code were covered under section 437(1) of Criminal Procedure Code. Therefore the Magistrate before whom the lady was produced on 10.03.2019 was duty bound to release her on bail as per law laid down by

Full Bench in **Chandraswami ...Versus..Central Bureau of Investigation AIR 1997 SC 2575,** where it is ruled as under;

"Criminal P.C. S. 437 – Bail – Grant of - If the case is not covered by cls (i) and (ii) of S. 437(1) of Cr. P.C. i.e. the offences are not punishable in alternative with death and the accused is not previously convicted for seven years imprisonment or two times for 3 years or more - Held- the accused is entitled to get bail – Therefore ordinarily a person suspected to having committed an offence u.s. 420, 120(B) of I.P.C. would be entitled to bail.

5. Hon'ble Delhi High Court in **Monika Singh Vs.State MANU/DE/3185/2012** had ruled as under ;

Criminal - Anticipatory bail - Section 437 of Criminal Procedure Code, 1973 (Cr. P. C.) - Sections 419/420/465/467/468/471/120B of Indian Penal Code, 1860 (I.P.C.) – Cheating of Rs. 14.25 Lakhs.

...Emphasis which is sought to be placed on the custodial interrogation by both the parties, in my opinion, is totally misconceived. At the back of this, is essentially, a sense of vendetta, which seems to have been adopted by the complainants only to ensure that the petitioner be sent behind the bars. No doubt, credentials of the petitioner also do not seem to be very clean in as much as she is facing trial in a case under Section 138 of the Negotiable Instruments Act or she was an accused in another FIR of cheating which ultimately ended in a compromise. But as she is a women and in terms of proviso to Section 437 Cr. P.C., she is not alleged to have committed an offence which carries a punishment of life imprisonment. I intend to give her the benefit of doubt, at this stage, when the cases are still at the investigating stage.

Sessions Judge rejected Petitioners Application for grant of anticipatory bail against FIR registered for offences punishable under provisions of I.P.C. - Hence, this Petition - Whether, Petitioner was entitled for Anticipatory bail -Held, Petitioner was a women and in terms of proviso to Section 437 of Cr.P.C., she was not alleged to have committed an offence which carried a punishment of life imprisonment - Therefore benefit of doubt, at this stage, when cases were still at investigating stage would be given - Moreover it was not found that Petitioner would flee from processes of law or tamper with evidence as same were not in her possession - Therefore denying said anticipatory bail on specious ground that Petitioner was not cooperating in investigation would only be inappropriate - Hence Petitioner was entitled for anticipatory bail - Petition disposed of. Ratio Decidendi "Accused shall be entitled for anticipatory bail if no serious offence is committed by him."

6. Remand execution:- State must show that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. *Madhu Limaye v. State of Bihar.* AIR 1969 SC 1014: 1969 Cri. L.J. 1440 : (1969) 1 SCC 292: (19669) 1 SCWR 470.

7. Application for Police custody should be by officer not below the rank of Police Sub inspector **(2010 Supreme Court Devender kumar .Vs. State of Haryana)**

(2010 Supreme Court Devender kumar .Vs. State of Haryana)

Section 167(1) Cr.P.C. which provide that an application for police remand can be made only by an officer not below the rank of Sub-Inspector - The reason given by the High and directing the arrest of the Appellants on the ground that disclosures have been made by the Appellants and that their police custody was necessary for recovery of the same, is, in our view, not sufficient for the purpose of cancellation of bail- Order passed by the learned Magistrate restored and order passed by the High Court set aside.

8. The case laws of anticipatory bail are squarely applicable to the

case for rejection of request by Police for custodial interrogation.

But the Ld. Magistrate first illegally granted Police Custody on 10.03.19 & Judicial Custody on 11.03.2019.

Considerations for Regular Bail u.s. 439, 437 of Cr.P.C. and Anticipatory Bail under section 438 of Cr.P.C. are substantially same – Therefore the case laws of any bail are applicable to each other [**2012 Cri.L.J. 2101, 1989 Cri.L.J. 252 (Bom)**]

9. The Magistrate cannot grant Police custody mechanically.

Merely because investigation agency would like to interrogate the accused bail cannot be refused. It cannot be said that granting of bail would hamper the investigation of the case **1996 Cri.L.J. 863**

In the case of **Harsh Sawhney –Vs- Union Territory AIR 1978 SC 1016** (3 – Judge Bench) Hon'ble Supreme Court held that for search and recovery accused need not be in custody. It is further held that the investigation can be completed by directing accused to appear for interrogation whenever reasonably required.

10. REJECTION OF PCR : - The case laws of anticipatory bail are applicable to reject PCR. [See **Siddharam Mehetre –Vs- State of Maharashtra 2011 (1) SCC (Cri) 514, AIR 1978 SC 1016, 2001 ALL MR (CRI.) 1892, 2008 ALL MR (CRI.) 2432, 2004 (1) CRIMES 1 (BOM), 2012 ALL MR (CRI.) 68 ETC.**]

The case laws of Anticipatory bail application are applicable for rejecting the prayer of Police for PCR i. e. custodial interrogation.

11. Criminal Manual Chapter I (4) & (5) Remand staes as under :-

11.1.It is observed that Magistrates allows remand of the accused to custody under Section 167 of the Code of Criminal procedure. 1973. Or allow remand under Section 309 of the Code of Criminal Procedure. 1973. Without satisfying themselves that there are reasonable grounds for such remand. The law requires that Magistrates should not allow remand in such cases without being satisfied that there are really good grounds for it Magistrates should not, therefore, allow remand applications as a matter of course, but only after being satisfied that further time is really

necessary for the purpose of investigation. In this connection, the attention of all the Courts is invited to the rulings reported in A.I.R 1975 SC 1465 Natabar Parida V. State of Orissa, and 78 B.L.R. 411 State of Maharashtra v. Tukaram Shiva Patil.

11.2. In this connection attention of the Magistrates is drawn to the provisions of Section 167 (1) of the Code of Criminal Procedure, 1973 which makes it obligatory on the police to send copies of entries in the diary relating to the case when forwarding the accused for the purposes of remand. Magistrates should invariably insist upon copies of such entries and material should be carefully examined by the Magistrates in order to satisfy themselves that there are good grounds for remand.

11.3. While it is not intended to fetter the discretion of the Magistrates in matters of remand, the following general principles are stated for their guidance:-

- i) A remand to police custody of an accused person should not ordinarily be granted unless there is reason to believe that material and valuable information would thereby be obtained, which cannot be obtained except by his remand to police custody.
- ii) Where a remand is required merely for the purpose of verifying a statement made by the accused, the Magistrate should ordinarily remand the accused person to Magisterial custody.
- iii) If the Magistrate thinks that it is not necessary for purposes of investigation to remand the accused to police custody, he should place the accused person in Magisterial custody : and in case he has no jurisdiction to try the offence charged, he should issue orders for forwarding the accused person to a Magistrate having jurisdiction.
- iv) If the Magistrate thinks that the police not only require more time for their investigation but that for some good reason they require the accused person to be present with them in that investigation the Magistrate may remand him to police custody, but while doing so, he must record the reasons for his order.

12. Discretion :- The next question commonly faced by the

advocates and citizens is regarding unjustified use of discretion by Magistrate/Judge while refusing or granting the bail.

The Law in this regard is clear that the Judge is not having any uncontrolled discretion.

Hon'ble Supreme Court in the case of **Sundarjas Kanyalal Bhathija and others -Vs- The Collector, Thane, Maharashtra AIR 1990 SUPREME COURT 261** held that,

Constitution of India, Art.141- PRECEDENTS - Judges are bound by precedents and procedure - They could use their discretion only when there is no declared principle to be found, no rule and no authority - where a single judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure - it is the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute- One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. (Paras 17, 20)

The Judge/Magistrate who exercise discretion are expected to bear in mind that :

As per Judgement of Hon'ble Supreme Court in the case of **Sanjay Chandra –Vs- C.B.I. 2012 (1) SCC (Cri) 26** held that,

1) DISCRETION : Cri. P.C. Sec. 437 and 439 – Bail – The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in arbitrary manner – (para 37)

Any order devoid of reasons would suffer from non-application of mind. In the case of **Gudikatil Narasimhulu V. Public Prosecutor, (1978) 1 SCC 240**, V.R. Krishna Iyer, J., sitting as Chamber Judge, Enunciated the principles of bail thus:

“3. What, then, is “judicial discretion” in this bail context ? In the elegant words of Benjamin Cardozo : “The Judge, even when he is free, is still not wholly free. He is not to innovate at Pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to “the primordial necessity of order in the social life”. Wide enough in all conscience is the field of discretion that remain.

Sanjay Chandra –Vs- C.B.I. 2012 (1) SCC (Cri) 26

2) “Discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful, but legal and regular”

[Tingley –Vs- Dalby, 14 NW 146]

3) “An appeal to a Judge]s discretion is an

appeal to his judicial conscience. The discretion must be exercised, not in opposition to, but in accordance with established principles of law.”

Gudianti Narsimha -Vs- Public Prosecutor, High Court 1978 Cri. L.J. 502.

13. BAIL DURING REMAND/PCR:-

As per law laid down by Hon'ble Bombay High Court in the case of **Krushna Guruswami Naidu v. The State of Maharashtra 2011 CRI. L. J. 2065** Bail Application is maintainable even if filed during period of police remand granted by Magistrate - Sessions Court cannot reject application for bail on that ground - Bail application should be entertained and considered on merits even if there is order of police remand.

14. UNLAWFUL ARREST, DETENTION AND CUSTODY OF VICTIM HUSBAND:-

Hon'ble High Court in the case of **Jeet Ram ...Versus... State of Himachal Pradesh 2003-ALLMR(CRI)(JOUR)-0-59 , 2003-Cri.L.J.-0-736, held that ;**

(A) Bail – Murder Case – I.P.C. 302 – Mere gravity of offence and severity of punishment is no ground for rejection of bail - The nature of evidence, part played by the accused and the likely hood of the accused absconding has to be taken in to account – the allegations against accused are that they hold the deceased and other accused pelted stones – It does not mean that accused have common intention of murder - Accused entitled to get bail.

Hon'ble Supreme Court in the case of **2010(1) SCC(CRI.)884 Ravindra Saxena .Vs.. State** held that The defence put forward by accused cannot be ignored. This is the position settled in catena of decisions capulizwd as undef ;

14.1. 2010 (1) SCC (Cri) 884

The defence put forward by accused cannot be ignored.

14.2. 2008 (4) B.Cr. C. 716 (SC) Shamiullah – Vs-Supt. Narcotic

Art. 21-Bail – When two views are possible in respect of commission of crime, justifying or not justifying the grant of bail then the view which leans in favour of accused must be favoured.

14.3. 2002 ALL MR (Cri) 573

Bail – Two Set of evidences inconsistent with each other – one incriminating the accused while other indicating his absence at relevant time on the spot – Accused deserves to be granted bail.

14.4. 2009 ALL MR (Cri)433

Bail - Conflicting version of the accused and prosecution – case made out for bail.

15. In **2010 Cri.L.J. 1435** (SC) it is ruled that Court has inherent power to grant interim bail to a person pending final disposal of the bail application. It should be decided on same day if petitioner surrender before Court. (Cr.P.C. Sec. 437)

The case Laws are not for the purpose of reference of the Lower Courts but they are the established principles of law binding on lower judiciary and even on the police officers.

Even Obiter Dicta of the Supreme Court are binding on all courts in absence of direct pronouncement of the judgement by Supreme Court on that particular subject **(Jinraj Paper Udyog –Vs- Dinesh Associates 2008 ALL MR (Cri) 89)**

Therefore the observation of Hon'ble Supreme court in **Siddharam Mhetre's case 2011 SCC (Cri) 514** are binding on all. If any lower court fails to follow the same then such Magistrates are liable to be punished under contempt of Courts's act.

Hon'ble Bombay High Court in the case of **Farooq –Vs- State (2012 ALL MR (Cri) 271)**. Held that,

"Arrest of accused – Non compliance of direction by High Court and Apex Court – Non granting bail to accused – The Session Judge was

shown with the order passed by the Supreme Court and Bombay High Court but the Sessions Judge did not follow the guidelines without justifiable reasons or recording any reason in writing - Held, if any Sessions Judge is found not to follow the directions besides taking administrative action against such learned Sessions Judge, he shall be liable for contempt of this Court.

16. In **Rabindra Nath Singh -Vs- Pappu Yadav case (2010 (3) SCC (Cri) 165** Hon'ble Supreme Court held that the High Court committed contempt of Court in not following the guidelines of Supreme Court in the concerned bail matter.

[Same is the view taken by Hon'ble Bombay High Court in the case of **State of Maharashtra through S. S. Nirkhee, District & Sessions Judge, Wardha -Vs- R.A. Khan, chief Judicials Magistrate, Gadchiroli , contemnor. 1993 Cri. L.J. 816 (Bom) (DB)**]

In the case of **SPENCER & COMPANY LTD -Vs- VISHWADARSHAN DISTRIBUTORS PVT. LTD (1995) 1 SCC 259** it is held that the Supreme Court's order even if is only in the form of a request instead of explicit command or direction it is a judicial order and is binding and enforceable throughout the territory of India – In case of flouting of the order by High Court, it is open to Supreme Court to initiate Contempt proceedings against the erring Judges of High Court.

17. If the subordinate courts, Tribunals and authorities within the territory of particular High Court refuse to carry out the directions given to them by the High Court the result will be chaos in the administration of justice and the very democracy founded on rule of law crumbles. **[1996 Cri. L.J. 564]**
Even the judgement of other High Courts of India are also binding on all Sub-ordinate Courts in Maharashtra in absence of direct pronouncement of judgement by Bombay High Court on that subject.

In recent judgement in the case of **Maharashtra Govt. through G.B. Gore Vs. Rajaram Digamber Padamwar & Anr. 2011 (4) AIR (Bom) R. 238** Hon'ble Bombay High Court directed action against sessions Judge for not obeying judgement of Kerala High Court.

Hon'ble Bombay High Court in the case of **M/s. Shri Srinivasa Cut Pieces Cloth Shop, Rajahmundri, (A.P.) & Anr.Vs. State of Maharashtra & Anr.2004 ALL MR (Cri) 1802** ruled that the court of Co-ordinate jurisdiction should have consistent opinion on same set of facts and point of law. If this procedure is not followed then instead of achieving harmony it may lead to judicial anarchy as different person approaching different Judge may get different orders in like matters.

Therefore even a order passed Sessions Judge in granting bail can be used as precedent before another Sessions Judge.

18. Full Bench of Hon'ble Madras High Court in the case of **Selvanathan alias Raghavan Vs. State by Inspector of Police, 1988 MAD LW(CRL.)503** Every person subjected to arrest is entitled to a copy of FIR free of cost at the time of arrest. In case the Magistrate is not satisfied that the requirements have not been complied with, he can limit the remand in the first instance. A request for remand to police custody shall be accompanied by an affidavit by setting out briefly the prior history of the investigation and the likelihood of further clues which the police expect to derive by having the accused in custody, sworn by the investigating or other police officer, not below the rank of a Sub Inspector of Police .

The Magistrates shall not grant remands to the police custody unless they are satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other Police Officer to the effect that the accused may be liable to give further information, that a request for remand to police custody shall be accompanied by an affidavit by setting out briefly the prior history of the investigation and the likelihood of further clues which the police expect to derive by having the accused in custody, sworn by the investigating or other police officer, not below the rank of a Sub Inspector of Police and that the Magistrate after perusing the affidavit and satisfying himself about the request of the police officer, shall entrust the accused to police custody and at the end of the police custody, the Magistrate shall question the accused whether he had in any way been interfered with during the period of custody.

19. Hon'ble Supreme Court in **Sanjay Chandra Vs C.B.I. (2012) 1 SCC 40** case it is ruled as under;

25..... In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.

29. In the case of *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240, V.R. Krishna Iyer, J., sitting as Chamber Judge, enunciated the principles of bail thus:

"3. What, then, is "judicial discretion" in this bail context? In the elegant words of Benjamin Cardozo: "The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains."

Even so it is useful to notice the tart terms of Lord Camden that:

"the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable...."

20. But Ld. Magistrate failed to perform his duty and therefore Magistrate is liable for action under section 16 of Contempt of Court's Act, 1971.

21. The Concerned Magistrate & Police Officers are also liable for action under section 220 of Indian Penal Code.

22. Dinkarrao R. Pole -Vs- State of Maharashtra 2004 (1) Crimes 1 (Bom) (DB) where it is ruled as under;

"A]Wrongful arrest & detention in police custody
– IPC Ss. 420 & 471 Cr.P.C. S.41-Police Officer is not expected to act in a mechanical manner and in all cases to arrest accused as soon as report of cognizable offence is lodged – Existence of power to arrest is another thing & justification for exercise of it is another thing there must be some reasonable justification in opinion of officer effecting arrest that it was necessary and justified – Except in heinous offences arrest should be avoided – If Police Officer issue notice to a person to attend the Police Station and not leave the station without permission would do – offence u.s. 420, 471, 468 of IPC are not heinous offences – Arrest illegal.

B]Compensation- Petitioner was arrested by respondent Police Officer in case registered U/s 420, 468, 471. If IPC – Offences are not heinous offences - Arrest found malafide and mischievous & not protected by element of good faith – Infringement of fundamental right of a citizen cannot stop by giving a mere declaration – Compensatory relief is to be provided under – Cost of Rs. 25,000/- imposed on Police Officer who arrested the petitioner. "

23. Hon'ble Justice Shard Bobde in **Antonio S. Mervyn -Vs-State 2008 ALL MR (CRI) 2432** had ruled as under;

I.P.C. section 186, 353, 356, 379 – Constitution of India, - Arts 226, 21 – Cri. P.C., (1973), S. 46 – Arrest – Power of Police to arrest the accused – Held, the investigation has to be made without touching the offender – The question of touching the offender would arise only while submitting a charge-sheet – Compensation of Rs. 25,000/- granted to accused – State directed to take action against police officer

responsible for violation of fundamental rights of accused.

24. In **Walmik s/o Deorao Bobde Vs. State 2001 ALLMR (Cri.)1731**, it is ruled that;

In our opinion a reckless arrest of a citizen and detention even under a warrant of arrest by a competent Court without first satisfying itself of such necessity and fulfilment of the requirement of law is actionable as it violates not only his fundamental rights but such action deserves to be condemned being taken in utter disregard to human rights of an individual citizen.

Compensation granted

25. As per Article 14 of the Indian Constitution the victim lady entitled for same protection as that of other accused where bail is granted by Hon'ble Supreme Court & Hon'ble High Court.

26. The Magistrate and all Judges are bound to apply correct law even if it is not pleaded by any party. Judge cannot take a defence that he don't know the law.

In the case of **Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. 2018 (3) SCC 85**, where it is ruled as under;

"JUDICIAL ADVENTURISM BY HIGH COURT – PASSING ORDER BY IGNORING LAW SETTLED BY COURT.

It is duty of the court to apply the correct law even if not raised by the party. If any order against settled law is to be passed then it can be done only by a reasoned order. Containing a discussion after noticing the relevant law settled.

16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law.

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr.* MANU/SC/0639/1997 : 1997 (6) SCC 450, observing:

32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

27. Hence it is clear that the Magistrate either due to ignorance of law or due to extraneous consideration have acted in utter disregards and defiance of law and violated Fundamental Human Rights of the victim lady.

In any case the concerned Judge is liable for action.

In **R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1**, Hon’ble Supreme Court had upheld the order of dismissal of a Judge. It is ruled as under;

A Judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.

A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer

has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the fact that the Appellant imposed a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct.

28. Hon'ble Supreme Court in Superintendent of Central Excise Vs. Somabhai Ranchhodhbhai Patel AIR 2001 SC 1975, ruled as under;

"(A) Contempt of Courts Act (70 of 1971), S.2 - Misinterpretation of judgment of Hon'ble Supreme

Court. The level of judicial officer's understanding can have serious impact on other litigants-

Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand - Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court. "

29. Hon'ble Supreme Court in the case of **Prabha Sharma Vs. Sunil Goyal (2017) 11 SCC 77** where it is ruled as under;

Article 141 of the Constitution of India - disciplinary proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We make it

clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.

BRIEF HISTORY(From:(MANU/ RH/1195 /2011)

High Court initiated disciplinary proceedings against Appellant who is working as Additional District Judge, Jaipur City for not following the Judgments of the High Court and Supreme Court. Appellant filed SLP before Supreme Court - Supreme Court dismissed the petition.

Held, the judgment, has mainly stated the legal position, making it clear that the judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We do not find any observation in the impugned judgment which reflects on the integrity of the Appellant. Therefore, it is not necessary to expunge any of the observations in the impugned Judgment and to finalise the same expeditiously.

Based on this Judgment, disciplinary proceedings have been initiated against the Appellant by the High Court. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision and to finalise the same expeditiously.

30. In Umesh Chandra Vs State of Uttar Pradesh & Ors. 2006 (5) AWC 4519 ALL it is ruled as under;

If Judge is passing illegal order either due to negligence or extraneous consideration giving undue advantage to the party then that Judge is liable for action in spite of the fact that an order can be corrected in appellate/revisional jurisdiction - The acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officer, in

such cases imposition of penalty of dismissal from service is well justified

The order was passed giving undue advantage to the main accused - grave negligence is also a misconduct and warrant initiation of disciplinary proceedings - in spite of the fact that an order can be corrected in appellate/revisional jurisdiction but if the order smacks of any corrupt motive or reflects on the integrity of the judicial officer, enquiry can be held .

The Inquiry Judge has held that even if the petitioner was competent to grant bail, he passed the order giving undue advantage of discharge to the main accused and did not keep in mind the gravity of the charge. This finding requires to be considered in view of the settled proposition of law that grave negligence is also a misconduct and warrant initiation of disciplinary proceedings .

The petitioner, an officer of the Judicial Services of this State, has challenged the order of the High Court on the administrative side dated 11.02.2005 (Annex.11) whereby the petitioner has been deprived of three increments by withholding the same with cumulative effect.

The petitioner, while working as Additional Chief Metropolitan Magistrate, Kanpur, granted bail on 29.06.1993 to an accused named Atul Mehrotra in Crime Case No. 3240 of 1992 under Section 420, 467, 468, I.P.C. Not only this, an application was moved by the said accused under Section 239, Cr.P.C. for discharge which was also allowed within 10 days vide order dated 06.08.1993. The said order of discharge was however reversed in a revision filed by the State According to the prosecution case, the accused was liable to be punished for imprisonment with life on such charges being proved, and as such, the officer concerned committed a gross error of jurisdiction by extending the benefit of bail to the accused on the same day when he surrendered before the Court. Further, this was not a case where the accused ought to have been discharged and the order passed by the officer was, therefore, an act of undue haste.

The then Chief Manager, Punjab National Bank, Birhana

Road Branch, Kanpur Nagar made a complaint on the administrative side on 11.11.1995 to the then Hon'ble Chief Justice of this Court. The matter was entrusted to the Vigilance Department to enquire and report. After almost four and half years, the vigilance inquiry report was submitted on 14.03.2002 and on the basis of the same the petitioner was suspended on 30th April, 2002 and it was resolved to initiate disciplinary proceedings against the petitioner. A charge sheet was issued to the petitioner on 6th September, 2002 to which he submitted a reply on 22.10.2002. The enquiry was entrusted to Hon'ble Justice Pradeep Kant, who conducted the enquiry and submitted a detailed report dated 06.02.2002 (Annex-8). A show cause notice was issued to the petitioner along with a copy of the enquiry report to which the petitioner submitted his reply on 19.05.2004 (Annex.10). The enquiry report was accepted by the Administrative Committee and the Full Court ultimately resolved to reinstate the petitioner but imposed the punishment of withholding of three annual grade increments with cumulative effect which order is under challenge in the present writ petition.

B) JUDICIAL OFFICERS - has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the

people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside

In Government of Tamil Nadu Vs. K.N. Ramamurthy, AIR 1997 SC 3571, the Hon'ble Supreme Court held that exercise of judicial or quasi judicial power negligently having adverse affect on the party or the State certainly amounts to misconduct.

In M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, AIR 1998 SC 1064, the Hon'ble Supreme Court ruled that any action of an employee which is detrimental to the prestige of the institution or employment, would amount to misconduct.

In High Court of Judicature at Bombay Vs. Udaysingh & Ors., A.I.R. 1997 SC 2286 the Hon'ble Apex Court while dealing with a case of judicial officer held as under:-

"Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that imposition of penalty of dismissal from service is well justified."

This Court in Ram Chandra Shukla Vs. State of U.P. & Ors., (2002) 1 ALR 138 held that the case of judicial officers has to be examined in the light of a different standard that of other administrative officers. There is much requirement of

credibility of the conduct and integrity of judicial officers.

In High Court of Judicature at Bombay V. Shirish Kumar Rangrao Patil & Anr., AIR 1997 SC 2631, the Supreme Court observed as under:-

"The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124 (6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection.

When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforesaid decisions.-----"

In Government of Andhra Pradesh Vs. P. Posetty, (2000) 2 SCC 220, the Hon'ble Supreme Court held that sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/Government servant.

In All India Judges' Association Vs. Union of India & Ors., AIR 1992 SC 165, the Hon'ble Supreme Court observed that Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restraint, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully.

In Tarak Singh & Anr. Vs. Jyoti Basu & Ors., (2005) 1 SCC 201, the Hon'ble Supreme Court observed as under:-

"Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped

by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside."

31. Full Bench in **K.K.Dhanwan's case (1993) 2SCC 56** where it is ruled as under ;

"If any Judge acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. And he can be proceeded for passing unlawful order apart from the fact that the order is appealable. Action for violation of Conduct Rules is must for proper administration.

"28. Certainly, therefore, the officer who exercises judicial or quasi - judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii)if there is prima facie material to show recklessness or misconduct in the discharge of his

duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

"17. In this context reference may be made to the following observations of Lopes, L.J. in *Pearce v. Foster*.

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

(emphasis supplied)"

32. In Re: Justice C.S. Karnan's case (2017) 7 SCC 1 Hon'ble Supreme Court had ruled as under;

A) High Court Judge disobeying Supreme Court direction and abusing process of court sentenced to six months imprisonment.

B) Even if petition is filed by a common man alleging contempt committed by a High Court Judge then Supreme Court is bound to examine these allegation.

33. COMPENSATION TO THE VICTIMS:-

33.1. Hon'ble Supreme Court in Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh & Ors. (2012) 8 SCC 1 had ruled as under;

"Article 21 of the Constitution - **RIGHT TO LIFE**

includes the right to live with human dignity and all that goes along with it – If reputation is injured by unjustified acts of Public servants then Writ Court can grant compensation- Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant - law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope - When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, [Article 21](#) of the Constitution springs up to action as a protector- The action of the State, must be "right, just and fair". Using any form of torture would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to [Article 21](#) - **Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied- the authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion.** In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope.

B] The High Court, despite no factual dispute, has required him to submit a representation to the State Government for adequate relief pertaining to grant of compensation after expiry of 19 years with a further stipulation that if he is

aggrieved by it, he can take recourse to requisite proceedings available to him under law. We are pained to say that this is not only asking a man to prefer an appeal from Caesar to Caesar's wife but it also compels him like a cursed Sisyphus to carry the stone to the top of the mountain wherefrom the stone rolls down and he is obliged to repeatedly perform that futile exercise."

33.2. In **S. Nambi Narayanan Vs. Siby Mathews & Ors. (2018) 10 SCC 804** it is ruled as under;

"40. If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the Appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the Appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the Appellant. In *Sube Singh v. State of Haryana and Ors.* MANU/SC/0821/2006 : (2006) 3 SCC 178, the three-Judge Bench, after referring to the earlier decisions, has opined:

38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right Under Article 21, by a public servant. The

quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation Under Section 357 of the Code of Criminal Procedure.

44. Mr. Giri, learned senior Counsel for the Appellant and the Appellant who also appeared in person on certain occasions have submitted that the grant of compensation is not the solution in a case of the present nature. It is urged by them that **the authorities who have been responsible to cause such kind of harrowing effect on the mind of the Appellant should face the legal consequences. It is suggested that a Committee should be constituted to take appropriate steps against the erring officials. Though the suggestion has been strenuously opposed, yet we really remain unimpressed by the said oppugnation. We think that the obtaining factual scenario calls for constitution of a Committee to find out ways and means to take appropriate steps against the erring officials. For the said purpose, we constitute a Committee which shall be headed by Justice D.K. Jain, a former Judge of this Court. The Central Government and the State Government are directed to nominate one officer each so that apposite action can be taken.** The Committee shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its business including the secretarial staff by the

Central Government.”

33.3. In **Walmik s/o Deorao Bobde Vs. State 2001 ALL MR (Cri.) 1731**, it is ruled that;

In our opinion a reckless arrest of a citizen and detention even under a warrant of arrest by a competent Court without first satisfying itself of such necessity and fulfilment of the requirement of law is actionable as it violates not only his fundamental rights but such action deserves to be condemned being taken in utter disregard to human rights of an individual citizen.

Compensation granted

"11. We have ascertained the status of the petitioner so as to work out his entitlement for compensation. We are informed that the petitioner works as Production Manager in a reputed firm M/s. Haldiram Bhujwala, and draws salary of more than Rs.7000/- p.m. He has, wife, two marriageable daughters and a son in his family. After giving our anxious thought to the matter we award a sum of Rs.10,000/- to the petitioner as compensation. The State is directed to pay the amount of Rs.10,000/- to the petitioner within a period of four weeks, or deposit the same in this Court. We are also granting cost to the petitioner quantified to Rs.5000/-. It will be open for the State to recover the amount so awarded from the monetary benefits/pension, the delinquent clerk/his family is entitled to receive or will be receiving on his death. Rule made absolute in the aforesaid terms. Certified copy expedited.

12. Additional Registrar, to circulate the copy of this order to all the District & Sessions Judges, for being circulated to Judicial Officers working within their jurisdiction."

33.4. In **Sailajanand Pande Vs. Suresh Chandra Gupta 1968 SCC OnLine Pat 49** it is ruled as under;

A] Action against Judicial Officer causing illegal arrest

– Magistrate acting illegally and without jurisdiction in the matter of arrest is not protected – Magistrate has no absolute protection regard to his act of illegal arrest.

B] **First class Magistrate issued letter to appear and directed to show cause against prosecution on the petition filed by another person** – When petitioner appeared he was detained to custody – The bail bond furnished by the petitioner were rejected by the Magistrate deliberately – Petitioner claimed that due to such illegal, unauthorized and malafide conduct of the Magistrate in arresting him, he has lowered in the estimation of the public and claimed for the damage – The action of the Magistrate by putting the petitioner under arrest for realising the certificate dues by adopting questionable and unlawful method is highly deplorable – It was unbecoming of a Magistrate – It is relevant to investigate to find out the motive, the propriety and the legality of the action of the Magistrate in arresting the petitioner – It is not a judicial act although exercised during the Judicial proceedings – The Magistrate exercised its power with the ulterior object of coercing the petitioner.

C] **At page 178 of the 14th Edition of Salmond on Torts it is said -**

"The wrong of false imprisonment consists in the act of arresting or imprisoning any person without lawful justification, or otherwise preventing him without lawful justification from exercising his right of leaving the place in which he is."

In my opinion, defendant No. 1 has committed the wrong of false imprisonment in this case.

D] **But - "Wherever protection of the exercise of judicial powers applies, it is so absolute that no allegation that the acts or words complained of were done or spoken mala fide, maliciously, corruptly, or without reasonable or probable cause suffices to found an action."** Further it has been pointed out under the title "**Liability of Magistrates**" at page 160 of Volume 25 of

Halsbury's Laws of England, 3rd Edition, that -

"Protection is afforded by common law and by statute to justices in respect of acts done in the execution of their duty as such; but this protection does not extend to cases where they have acted either maliciously and without reasonable and probable cause, or without or in excess of their jurisdiction, and in such cases they are liable to an action for damages at the suit of the party "aggrieved,"

A similar passage occurs at page 768 of Volume 38 of the Halsbury's Laws of England, 3rd Edition -

A Magistrate or other person acting in a judicial capacity is not liable for acts done within his jurisdiction, but he is liable to an action for false imprisonment if he unlawfully commits a person to prison in a matter in which he has no jurisdiction, provided that he has knowledge, or the means of knowledge of the facts which show that he has no jurisdiction."

34. In Arvinder Singh Bagga Vs. State Of Uttar Pradesh(1994) 6 SCC 565 had ruled As under;

A] Police Torture – Torture is not merely physical, there may be mental torture and psychological torture calculated to create fright and submission to the demands or commands - When the threat proceeds from a police officer the mental torture caused by it is even more grave.

B] Physical and mental torture by Police – Supreme Court observed

that – We are really pained to note that such things should happen in a country which is still governed by the rule of law – State directed to launch criminal prosecution against all the Police officers involved in this sordid affairs – The state shall pay a compensation of Rs. 10,000/- to Nidhi, Rs. 10,000/- to Charanjit Singh and Rs, 5,000/- to each of the other persons who were illegally detained and humiliated by police – It will be open for state to recover the amount from guilty Police Officer.

35. Hon'ble Supreme Court In The Case Of Joginder Kumar Vs.State-AIR 1994 SC 1349 had ruled as under;

[A] Police – Arrest – Guidelines by Supreme Court – It shall be the duty of the Magistrate before whom the arrested person is produced to satisfy himself that the guidelines regarding arrest are complied by the Police.

[B] Right of arrestee to consult privately with lawyer are fundamental rights.

[C] No arrest can be made in routing manner immediately after the registration of crime – Except in heinous offences arrest must be avoided – If a Police Officer issues notice to attend the station house and not to leave the area without permission can be made, because it is lawful for the police officer to do so – The existence of the power to arrest is one thing but the justification for arrest is another thing. – The Police officer must be able to justify the arrest - Arrest and detention in police lock up of a person can cause incalculable harm to the reputation and self esteem of a person-D.G.P. of all states shall issue necessary instructions requiring due observance of guidelines issued by Supreme Court.

36. You are therefore requested to take strict and immediate action as mentioner in above said case laws. After calling enquire report from C.B.I,

Thanking You

Sincerely

Adv. Vijay S .Kurle

STATE PRESIDENT

MAHARASHTRA & GOA

(INDIAN BAR ASSOCIATION)