INDIAN BAR ASSOCIATION

THE ADVOCATES' ASSOCIATION OF INDIA

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President Secreteriat Grevience Registration No. : PRSEC/E/2018/10792

To,

1. **Hon'ble President of India**
   President's Secretariat, Rashtrapati Bhavan,
   New Delhi – 110 004

Applicant:- Indian Bar association

Through Adv. Vijay Kurle ,

Maharashtra State President,

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SUBJECT: i) Direction to C.B.I. for taking action against Justice S. J. Kathawala under sec.166, 167, 199, 200, 201, 218, 219, 466,467,471,474 r/w 120(B) & 34 of I.P.C. for doing forgery of court Records and misuse of power to save accused and for acting contrary to law and law laid by Hon'ble Supreme Court with ulterior motive

to help the advocates like Aspi Chinoy and others who belongs to his community and thereby discriminating other deserving advocates and litigants.

OR

Granting sanction to applicant to launch prosecution against Justice S. J. Kathawala in view of sec. 197of Cr. P.C, and Judicial officer Protection Act or any law applicable thereto.

ii) Direction to appropriate authority such as Solicitor General of India and others to initiate appropriate proceeding under contempt of courts Acts against Justice S. J. Kathawala, as prosecution of offender is obligation of the State/Govt.

iii) Direction to appropriate authority to place the matter before Hon'ble Chief Justice of India in view of "In House Procedure" with a request to give direction to Chief Justice of Hon'ble Bombay High Court not to assign any work to the Justice S. J. Kathawala as charges are ex facie proved against him .

iv) Removal of Justice S. J. Kathawala for his proved incapacity to understand and follow the law, misbehavior and criminal offences

committed by him and contempt of Hon'ble Supreme Court by them.

v) **Direction to Justice** S. J. Kathawala **to Resign from his Post as per Point No. 7(i) of In House Procedure and also in view of the mandatory Guidelines of Hon. Supreme Court in the Veerswami's Case (1991) 3 SCC 655(Constitution Bench), as the Misconduct, Criminal offences and Incapacity of Justice** S. J. Kathawala **is proved ex facie.**

vi) Recovering of all the amount/ payments, salary taken by the incompetent Judge S. J. Kathawala.

Hon'ble Sir,

1. The applicant is an association of Advocates working in the various states of Maharashtra.

2. **In the case of** Mrs.Nirmal Yadav Vs. C.B.I. **2011(4) RCR(CRIMINAL) 809, it is ruled that;**

" It has been observed by Hon'ble Supreme Court "Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual. "

3. **In AIR 1992 SUPREME COURT 604 , it has been ruled that ;**

1. The king is under no man, but under God and the law"-was the reply of the Chief Justice of England, Sir Edward Coke when James-I once declared "Then I am to be under the law. It is treason to affirm it"-so wrote Henry Bracton who was a Judge of the King's Bench.

2. The words of Bracton in his treatise in Latin "good Rex non debetesse sub homine, sed sub DeoetLegu" (That the king should not be under man, but under God and the law) were quoted time and time again when the Stuart Kings claimed to rule by divine right. We would like to quote and requite those words of Sir Edward Coke even at the threshold.

3. In our democratic polity under the Constitution based on the concept of 'Rule of Law' which we have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system, THE LAW IS SUPREME.

4. Everyone whether individually or collectively is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be.

<u>THE SAME PRINCIPLE IS APPLICABLE TO JUDGES ALSO. THE JUDGES CANNOT BE THE LAW UNTO THEMSELVES EXPECTING OTHERS TO OBEY THE LAW.</u>

4. In *"Madhav Hayawadanrao Hoskot vs. State of Maharashtra; (1978) 3 SCC 544"*, Justice Shri V.R. Krishna Iyer reproduced the well-known words of Mr. Justice William J. Brennan, Jr. and held as under:

> **"16. Nothing rankles** *(cause annoyance)***more in the human heart than a brooding sense** *(fear / anxiety)* **of injustice.**
> **…Democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."**
>
> **The social service which the Judges render to the community is the removal of a sense / fear of injustice from the hearts of people, which unfortunately is not being done, and the people (victims & dejected litigants) have been left abandoned to suffer and bear their existing painful conditions, and absolutely on the mercy of GOD.**

In **Raghbir Singh vs State of Haryana AIR 1980 SC 1087**, the Supreme Court has observed as under:

> "We conclude with the disconcerting note sounded by Abraham Lincoln: "**<u>If you once forfeit the confidence</u>**

of your fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time."

5. In "***State of Rajasthan vs. Prakash Chand & Ors.; (19918) 1 SCC 1***", it was held that –

It must be remembered that it is the duty of every member of the legal fraternity to ensure that the image of the judiciary is not tarnished and its respectability eroded. … Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. … It needs no emphasis to say that all actions of a Judge must be judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to the independence of the judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we "suffer from self-inflicted mortal wounds". We must remember that the constitution does not give unlimited powers to any one including the Judge of all levels. The societal perception of Judges as being detached and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure that this perception does not receive a setback consciously or unconsciously. Authenticity of the judicial process rests on public confidence

and public confidence rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices.

6. "Justice", we do not tire of saying, must not only be done", but, 'must be seen to be done" and yet at times some Courts suffer from temporary amnesia and forget these words of wisdom. In the result, a Court occasionally adopts a procedure which does not meet the high standards set for itself by the judiciary. The present matter falls in that unfortunate category of cases". These are the observations of Hon'ble Supreme Court against a Judge who adopted the unfair procedure and Passed a wrong order consciously. (**Nirankar Nath Wahi and Others, Vs. Fifth Addl. District Judge, Moradabad and others, AIR 1984 SC 1268).**

7. Of late there was an instance wherein Justice Shri. S. J. Kathawala of the Hon'ble Bombay High Court in his order dated 5th March 2018 , passed in Notice of Motion .(L) No. 706 of 2017 in the case of Commercial Suit No. 614 / 2017 has passed harsh strictures against an Advocate without following the law laid down by the Hon'ble Supreme Court and Hon'ble Bombay High Court . Justice Shri. S. J. Kathawala in his order had made following adverse remarks;

" Certain Advocates sadly seem to have forgotten the code of eithcs that enjoins upon all Advocates, that they are Officers of the Court first and Advocates of their clients only thereafter. It is anguishing to note that such Advocates facilitate the unethical misadventures of their clients, often encouraging their clients' dishonest

practices, causing grave stress to the Judiciary, and unfortunately bringing the entire judicial system to disrepute. It has become a vicious and despicable cycle wherein dishonest litigants with malafide intentions seek out unethical Advocates, who for hefty fee and the lure of attracting similar new and unscrupulous clients, conveniently choose to disregard and/or forget all ethics and the code of conduct enjoined upon this august profession. It is with a heavy heart, that Courts at times note that clients have no hesitation in replacing good and honest Advocates, with unscrupulous ones, who go to any dishonest lengths, merely to secure favourable orders for their clients.

….

However, Defendant No.1 breached one of the undertaking given by him and being fully aware of the consequences thereof, he craftily and quickly changed his Advocates (who had already been previously changed) and briefed Counsel Mr. Mathew Nedumparra, who in turn advised him to file this Notice of Motion. In this Notice of Motion, he has stated that all the previous orders passed by this Court are null and void for reasons which are utterly false and dishonest to the knowledge of his client Shri Vilas Chandrakant Gaokar.

Therefore, such unethical and unacceptable behaviour needs to be met with the iron hand of the Court. The Courts must tackle all such unethical conduct fearlessly

by taking stern action against litigants, and if need be their unethical Advocates as well. A failure to do so, will result in seriously jeopardising the Judiciary and will erode the Rule of Law, which is absolutely integral to the justice system in the country. The Courts must act swiftly and firmly, without getting intimidated by false and frivolous charges, and utterly baseless, malicious and dishonest allegations that are levelled against the Judges.

8. In light of above incident, we would like to bring attention of Hon'ble President Of India on following case laws regarding settled position of law in respect of alleged misconduct of advocates and the procedure expected to be followed by the Courts regarding this.

9. That, Hon'ble Supreme court and Hon'ble Bombay High Court have time and again settled the law that when in any case the court is of the opinion that the conduct of an Advocate is not at par with the high standards of the Bar, then normally the Court should avoid passing any adverse remarks/strictures against him and to see that if the judgment can be passed without such remarks or strictures.

   Secondarily, if the court is of the opinion that, the conduct of the advocate/party is such that there is a need to pass adverse remarks, then the court is bound to issue notice to the concerned advocate and after hearing him only the Judge may take decision to pass strictures/remarks against the advocate(*audi alterim partem*). And if the matter is concerned with the allegation against the Judge then the same Judge cannot hear the case. **("nemo debet esse judex in causa sua " means No one can be Judge in his own case**)

10. Hon'ble Bombay High Court in the case of **Inder Fakirchand Jain Vs. State of Maharashtra 2007 ALL MR (Cri) 3012** had ruled as under:

> ***Criminal P.C. (1973), S. 482 – Expunging of adverse remarks – Judge seeming to be prejudiced against lawyer as well as complainant and made adverse remarks against them – Held, <u>a Judge is expected to maintain equanimity and not get swayed by the prejudices – Those remarks directed to be expunged – Judge directed to refrain from making such uncalled for and unwarranted remarks against any person and particularly without hearing him.</u>***

Moreover, Hon'ble Supreme Court's 5-Judge Bench in the case of **Sarwan Singh Vs. Union of India AIR 1995 SC 1729** had ruled as under:

> ***Constitution of India, Art.226, Art.14- Powers of Court - The finding of the High Court observing conduct of the party as machination - the conclusions were drawn without giving parties, against whom inferences were drawn any opportunity to explain the same - It is violative of basic rule of natural justice and cannot be upheld - The Court should have been extra cautious since it was casting serious aspersions against the appellants - This suspicion of the High Court unfortunately coloured its vision resulting in it viewing each and every action leading to his act with suspicion. These, in brief, are a few aspects of the case which we have highlighted to demonstrate how the High Court fell into an error and misdirected itself causing miscarriage of justice. We must undo***

this injustice by allowing this appeal and setting aside the impugned judgment and order of the High Court.

The same law is reiterated in the recent cases in **(2014) 5 SCC 417, AIR 2012 SC 1995, AIR 2007 SC 777, AIR 1972 SC 1140, etc.**

But Justice S. J. Kathawalla acted in utter disregard and defiance of the Hon'ble Supreme Court and therefore he is guilty of contempt of Court.

11. Hon'ble Supreme Court's 5-Judge Constitution Bench in **the case of Supreme Court Bar Association Vs. Union of India & Anr., (1998)4SCC409, had ruled that**

> **" An elaborate and detailed procedure, almost akin to that of a regular trial of a case by a court, has been prescribed to deal with a complaint of professional misconduct against an advocate before he can be punished by the Bar Council by revoking or suspending his licence or even for reprimanding him.**
>
> **This Court, therefore, in exercise of its jurisdiction under Article 129,142 cannot take over the jurisdiction of the disciplinary committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of 'professional misconduct' is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder, even though, the contempt committed by an advocate may also amount to an abuse of the**

privilege granted to an advocate by virtue of the licence to practice law. Court cannot give finding about an Advocate being guilty of "Professional misconduct" in a summary manner, giving a go bye to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act 1961 by suspending his licence to practice in a summary manner, while dealing with a case of contempt of court. Such a punishment cannot even be imposed by taking recourse to the appellate powers under Section 38 of the Act while dealing with a case of contempt of court and not an appeal relating to professional misconduct, . In A.R. Antulay v. R.S. Nayak and Anr., 1988 CriLJ 1661 , a seven Judge Bench of this Court ruled that ,however wide and plenary the language of the Article 141, the directions given by the Court should not be inconsistent with, repugnant, or in violation of the specific provisions of any statute.

In contempt proceeding Court cannot exercises jurisdiction under Article 129, 142 of the Constitution in disregard of the relevant statutory provisions and cannot *make an order inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any Constitutional provision-* Court of record can not go beyond the scope of the contempt of Courts Act, 1971*.*

No new type of punishment can be created or assumed - this Court cannot exercises jurisdiction under Article 142 of the Constitution in disregard of the relevant statutory

provisions and cannot *make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any Constitutional provision-* 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. - This Court, therefore, in exercise of its jurisdiction under Article 129,142 cannot take over the jurisdiction of the disciplinary committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of 'professional misconduct' is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder, even though, the contempt committed by an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the licence to practice law.

12. The abovesaid judgment is once again followed by Full bench of Supreme Court in the case of Nidhi Keim Vs. State of M.P. **(2017) 4 SCC 1 where it is ruled that;**

Article 142, 141 of the Constitution - Supreme Court cannot disregard statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances. the hypothesis-that the Supreme Court can do justice as it perceives, even when contrary to statute (and, declared pronouncement of

law), should never as a rule, be entertained by any Court/Judge, however high or noble.

We are bound, by the declaration of the Constitution Bench , in Supreme Court Bar Association v. Union of India (1998) 4 SCC 409. It is, not possible for us to ignore the decision of a Constitution Bench of this Court- In terms of the above judgment, with which we express our unequivocal concurrence, it is not possible to accept, that the words "complete justice" used in Article 142 of the Constitution, would include the power, to disregard even statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances. - In our considered view, the hypothesis-that the Supreme Court can do justice as it perceives, even when contrary to statute (and, declared pronouncement of law), should never as a rule, be entertained by any Court/Judge, however high or noble. Can it be overlooked, that legislation is enacted, only with the object of societal good, and only in support of societal causes? Legislation, always flows from reason and logic. Debates and deliberations in Parliament, leading to a valid legislation, represent the will of the majority. That will and determination, must be equally "trusted", as much as the "trust" which is reposed in a Court. Any legislation, which does not satisfy the above parameters, would per se be arbitrary, and would be open to being declared as constitutionally invalid. In

such a situation, the legislation itself would be struck down.

The argument advanced by Mr. Nariman, that this Court can pass order against statute is indeed heartening and reassuring. But if such preposition is accepted then, Mr. Nariman, and a number of other outstanding legal practitioners like him, undeniably have the brilliance to mould the best of minds. And thereby, to persuade a Court, to accept their sense of reasoning, so as to override statutory law and/or a declared pronouncement of law. It is this, which every Court, should consciously keep out of its reach. At the cost of repetition, we would reiterate, that such a situation, as is contemplated by Mr. Nariman, does not seem to be possible.

But Justice Kathawala acted against the abovesaid judgments and therefore he is guilty of Contempt of Supreme Court and also under sec. 219 of IPC. Hon'ble Supreme Court in the case of R. R. PAREKH Vs HIGH COURT OF GUJARAT **AIR 2016 SC 3356 , had 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. "

Case Note:

A. Whether a judicial decision i.e. judgment rendered by a Judicial Officer at the conclusion of the trial, can form the subject of a disciplinary inquiry? Yes.

B. The issue of whether a judicial officer has been actuated by an oblique motive or corrupt practice has to be determined upon a careful appraisal of the material on the record. Direct evidence of corruption may not always be forthcoming in every case involving a misconduct of this nature. A wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal

principle. 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. (Para 15)

13. **IPC 219 reads as under ;**

219. **Public servant in judicial proceeding corruptly making report, etc., contrary to law.—Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.**

14. **Section 167 in The Indian Penal Code**

167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as 1[such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

15. Recently, Hon'ble Supreme Court's 7-Judge Bench in **Justice Karnan's case AIR 2017 SC 3197** punished the High Court Judge

with 6 months imprisonment for acting against the law and for it is ruled as under:

> “***We see no reason to doubt the authority/jurisdiction of this Court to initiate the contempt proceedings. Hypothetically speaking, if somebody were to move this Court alleging that the activity of Justice Karnan tantamounts to contempt of court and therefore appropriate action be taken against him, this Court is bound to examine the questions. It may have accepted or rejected the motion. But the authority or jurisdiction of this Court to examine such a petition, if made cannot be in any doubt.***
>
> ***There are many kinds of contempts. The chief forms of contempt are tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court .***
>
> *The actions of Shri Justice C.S. Karnan constituted the grossest and gravest actions of contempt of Court. He has also committed contempt, in the face of the Court. He is therefore liable to be punished, for his unsavoury actions and behavior. We are satisfied that he should be punished for his above actions, with imprisonment for six months. "*

Hence, the Justice S. J. Kathawala is prima facie accused of contempt of Supreme Court and liable to be prosecuted and punished.

16. That Hon’ble Supreme Court had also ruled that the High Court judge is bound to follow the judgment of co ordinate benches of High Court. (vide: **AIR 1990 SC 291, AIR 2005 SC 752**)

But Justice Kathawala disregarded the binding precedent of judgment passed by Hon’ble Justice C. L. Pangarka in the case of **Inder Mohan’s case 2007 ALL MR (Cri) 3012** (supra) where it is ruled that no stricture be passed against a lawyer without hearing him, which amounts to judicial impropriety.

17. Hon’ble Supreme Court in Medical Council’s case **2017/SC/MANU/1485** has ruled as under:

> ***The judicial propriety requires judicial discipline. Judge cannot think in terms of "what pleases the Prince has the force of law". Frankly speaking, the law does not allow so, for law has to be observed by requisite respect for law.***
>
> ***A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.***
>
> ***A 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 inspiration from consecrated principles***
>
> *10. In this context, we may note the eloquent statement of Benjamin Cardozo who said:*

The judge is not a knight errant, roaming at will in pursuit of his own ideal of beauty and goodness.

11. In this regard, the profound statement of Felix Frankfurter[1] is apposite to reproduce:

For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians-those impersonal convictions that make a society a civilized community, and not the victims of personal rule.

The learned Judge has further stated[2]:

What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude toward law, the habits of the mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it. The attitudes and qualities which I am groping to characterize are ingredients of what compendiously might be called dominating humility.

*13. In this context, we may refer with profit the authority in **Om Prakash Chautala v. Kanwar Bhan** MANU/SC/0075/2014 : (2014) 5 SCC 417 wherein it has been stated:*

***19.** It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision-making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make*

one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum.

And again:

20. A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics.

14. In ***Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and Anr.*** *MANU/SC/0639/1997 : (1997) 6 SCC 450, the three-Judge Bench observed:*

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.*

15. The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of

understanding and attitude of judging. ***A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin.***

Moreover, in a recent judgment Hon'ble Supreme Court in the case of **State Bank of Travancore Vs. Mathew K. C. MANU/SC/0054/2018** has ruled that, " **It is the duty of the High Court to apply the correct law even if not raised by the party**." But the Justice S.J. Kathawala has failed to apply the correct law.

18. Hon'ble Supreme Court while punishing a Judge under Contempt in **Re: M. P. Dwivedi AIR 1996 SC 2299** had ruled that; the Judge cannot take a defense that he doesn't know the Supreme Court judgment.

Even otherwise there is mandatory provision in Order VI Rule 2 that the party need not plead the law. Judge is expected to know the law. (**MANU/DE/2657/2010**)

19. Needless to mention that in **Medical Council of India case MANU/SC/1485/2017** Hon'ble Supreme Court condemned the Allahabad High Court Judge, Justice Shri Narayan Shukla and as per para 7(ii) of In-House procedure directed Chief Justice of High Court to take away all judicial work assigned to him and also

recommended initiation of Justice Shukla's removal. (Live Law news dated 30th January 2018). The same action is needed against Justice S. J. Kathawala.

20. Hon'ble Supreme Court in the case of **Somabhai Patel AIR 2001 SC 1975** had ruled that, the level of judicial officers understanding can have serious impact on their litigants. It is ruled as under:

> *(A) Contempt of Courts Act (70 of 1971), S.2 – The level of judicial officer's understanding can have serious impact on other litigants- 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.*
>
> *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. (Paras 15 16)

It is observed in **Smt. Prabha Sharma Vs. Sunil Goyal 2017 (2) SCALE 19** 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.

21. In **R. R. Parekh AIR 2016 SC 3356** had ruled that, the gross breach of the governing principles of law or procedure by a Judge is sufficient to hold that the Judge has been actuated with oblique motive or corrupt practice. It is ruled as under:

A judge passing a order against provisions of law in order to help accused is said to have 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.

So the undue haste shown by Justice S.J. Kathwala in passing stricture against a lawyer without issuing notice to the lawyer as mandated by Supreme Court makes it clear that Justice S.J.Kathawala has been actuated by an oblique motive and corrupt practice as ruled in R.R. Parekh's case (supra).

22. Needless to mention here that if any Judge is found to have actuated with malice or corrupt motives, then the said Judge is liable to be punished under Sec. 219 of IPC.

Even otherwise, as per the oath taken as a High Court Judge, Justice Kathawala is bound to act without favor or fear or malice or ill will. He has to act judiciously.

Every Judge is bound by the oath taken by him/her that he or she shall uphold the sovereignty & integrity of India and shall truly and faithfully perform the duties of their offices without fear or favor, affection or ill-will and shall uphold the constitution.

However, Justice Kathawala had breached his oath taken as a Judge by granting favor to some parties/advocates possibly for extraneous consideration and has acted with malice and ill-will with the advocates who tried to expose the corruption and illegalities. He has therefore forfeited his right to continue as a High Court Judge.

23. Hon'ble Supreme Court in **Indirect tax Practitioners Association Vs. R. K. Jain (2010) 8 SCC 851** has observed that it is the duty of

every citizen to expose the corruption in judiciary. It is ruled that public criticism is essential to the working of its institutions. The Judges should act with poise and peace and inner harmony.

> ***" Judges have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to defend and uphold the Constitution and the laws without fear and favour. This the judges must do in the light given to them to determine what is right. And again as has been said in the famous speech of Abraham Lincoln in 1965: "With malice towards none, with charity for all, we must strive to do the right, in the light given to us to determine that right."***
>
> ***CONTEMPT OF COURTS ACT- TRUTH should not be allowed to be silenced by using power of Contempt used by unscrupulous petitioners - Exposing corruption in Judiciary is Duty of every citizen as per Art. 51 - A (h) of Constitution of India - Let Truth and Falsehood grapple - whoever knew Truth put to the worse, in a free and open encounter - Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious; those are the shifts and defences that error makes against her power.***
>
> ***A person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution and there is no reason to silence such person by invoking Contempt***

jurisdiction Articles 129 or 215 of the Constitution or the provisions of the Act.

- The association by filing a Contempt petition commited illegality - the petition is dismissed. For filing a frivolous contempt petition, the petitioner is saddled with cost of Rs.2,00,000/-, of which Rs.1,00,000/- shall be deposited with the Supreme Court Legal Services Committee and Rs.1,00,000/- shall be paid to the respondent- In administration of justice and judges are open to public criticism and public scrutiny - power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution- intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded - Voltaire expressed a democrat's faith when he told, an adversary in arguments : "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members..

Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do

<u>injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple;</u>

<u>whoever knew Truth put to the worse, in a free and open encounter?... Who knows not that Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious; those are the shifts and defences that error makes against her power ...."</u>

A whistleblower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually this person would be from that same organization.

It has been well said that if judges decay, the contempt power will not save them and so the other side of the coin is that judges, like Caesar's wife, must be above suspicion- fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. In fact such fair and reasonable criticism must be encouraged because after all no one, much less judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts. Truth's taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens.

The statement of a scandalous fact that is material to the issue is not a scandalous pleading

15. In the land of Gautam Buddha, Mahavir and Mahatma Gandhi, the freedom of speech and expression and freedom to speak one's mind have always been respected. After independence, the Courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalize or lower the authority of the Court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons. Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the Court would use this power. The judgments of this Court in Re S. Mulgaokar (1978) 3 SCC 339 and P.N. Duda v. P. Shiv Shanker(1988) 3 SCC 167 are outstanding examples of this attitude and approach. In the first case, a three-Judge Bench

considered the question of contempt by newspaper article published in Indian Express dated 13.12.1977 criticising the Judges of this Court. The article noted that the High Courts had strongly reacted to the proposal of introducing a code of judicial ethics and propriety. In its issue dated December 21, 1977 an article entitled "behaving like a Judge" was published which inter alia stated that the Supreme Court of India was "packed" by Mrs Indira Gandhi "with pliant and submissive judges except for a few". It was further stated that the suggestion that a code of ethics should be formulated by judges themselves was "so utterly inimical to the independence of the judiciary, violative of the constitutional safeguards in that respect and offensive to the self-respect of the judges as to make one wonder how it was conceived in the first place". A notice had been issued to the Editor-in-Chief of the newspaper to show cause why proceedings for contempt under Article 129 of the Constitution should not be initiated against him in respect of the above two news items. After examining the submissions made at the Bar, the Court dropped the contempt proceedings. Beg, C.J., expressed his views in the following words:

"Some people perhaps believe that attempts to hold trials of everything and everybody by publications in newspapers must include those directed against the highest Court of Justice in this country and its pronouncements. If this is done in a reasonable

manner, which pre-supposes accuracy of information about a matter on which any criticism is offered, and arguments are directed fairly against any reasoning adopted, I would, speaking for myself, be the last person to consider it objectionable even if some criticism offered is erroneous.

Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded. Voltaire expressed a democrat's faith when he told, an adversary in arguments : "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members. "Although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19(l)(a) of the Constitution, yet, it is well-recognised that the Press provides the principal vehicle of expression of their views to citizens. It has been said:

"Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so subtle. But, like other liberties, this also must be limited."

24. That, it is duty of every advocate to make complaint against a Judge against whom the advocate is having sufficient proofs.

    Hon'ble Supreme Court in the case of **O. P. Sharma Vs. High Court of Punjab & Haryana (2011) 6 SCC 86** has ruled that, as per section-I of Chapter-II, part VI title "standards of professional conduct and etiquette" of **the Bar Council India rules specifies the duties of an advocate that 'he shall not be servile and whenever there is proper ground for serious complaint against Judicial officer, it shall be his right and duty to submit his grievance to proper authorities'.**

25. Also Hon'ble Supreme Court in **R.K. Jain's case (2010) SCC 681**, clarified that it is obligatory/fundamental duty of everyone to expose the irregularity and illegality in the Judicial side of the institution. Needless to mention here that the observed decision in R.K. Jain's case is approved by Constitution Bench of Hon'ble Supreme Court in **Arun Shourie's case AIR 2014 SC 3020**.

26. In Anirudha Bahal's case **2010 (119) DRJ 104 it is ruled that :**

Duty of a citizen under Article 51A(h) is to develop a spirit of inquiry and reforms - Constitution of India mandates citizens to act as agent provocateurs to bring out and expose and uproot the corruption -

Sting operation by citizen - the sting operation was conducted by them to expose corruption - Police made them accused - The intention of the petitioners was made clear to the prosecution by airing of the tapes on T.V channel that they want to expose corruption - Quashing the charge-sheet and order of taking cognizance and issuing summons against whistle Blower high Court observed that- it is a fundamental right of citizens of this country to have a clean incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption wherever he finds it, whenever he finds it and to expose it if possible with proof so that even if the State machinery does not act and does not take action against the corrupt people when time comes people are able to take action

It is argued by learned Counsel for the State that the petitioners in this case in order to become witnesses should have reported the matter to CBI rather conducting their own operation. I need not emphasize that in cases of complaints against the persons, in powers how CBI and police acts. The fate of whistle blowers is being seen by the people of this country. They are either being harassed or being killed or roped in criminal cases. I have no doubt in my mind that if the information would have been given by the petitioners to the police or CBI, the respective MPs would have been given

information by the police, before hand and would have been cautioned about the entire operation.

Chanakaya in his famous work 'Arthshastra' advised and suggested that honesty of even judges should be periodically tested by the agent provocateurs. I consider that the duties prescribed by the Constitution of India for the citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot the corruption

I consider that one of the noble ideals of our national struggle for freedom was to have an independent and corruption free India. The other duties assigned to the citizen by the Constitution is to uphold and protect the sovereignty, unity and integrity of India and I consider that sovereignty, unity and integrity of this country cannot be protected and safeguarded if the corruption is not removed from this country. - I consider that a country cannot be defended only by taking a gun and going to border at the time of war. The country is to be defended day in and day out by being vigil and alert to the needs and requirements of the country and to bring forth the corruption at higher level. The duty under Article 51A(h) is to develop a spirit of inquiry and reforms. The duty of a citizen under Article 51A(j) is to strive towards excellence in all spheres so that the national constantly rises to higher level of endeavour and achievements I consider that it is built-in duties that every citizen

must strive for a corruption free society and must expose the corruption whenever it comes to his or her knowledge and try to remove corruption at all levels more so at higher levels of management of the State.

9. I consider that it is a fundamental right of citizens of this country to have a clean incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption wherever he finds it, whenever he finds it and to expose it if possible with proof so that even if the State machinery does not act and does not take action against the corrupt people when time comes people are able to take action either by rejecting them as their representatives or by compelling the State by public awareness to take action against them.

The rule of corroboration is not a rule of law. It is only a rule of prudence and the sole purpose of this rule is to see that innocent persons are not unnecessarily made victim. The rule cannot be allowed to be a shield for corrupt.

It requires great courage to report a matter to the Anti Corruption Branch in order to get a bribe taker caught red handed. In our judicial system complainant sometime faces more harassment than accused by repeatedly calling to police stations and then to court and when he stands in the witness box

all kinds of allegations are made against him and the most unfortunate is that he is termed as an accomplice or an interested witness not worthy of trust. I fail to understand why a witness should not be interested in seeing that the criminal should be punished and the crime of corruption must be curbed. If the witness is interested in seeing that there should be corruption free society, why Court should disbelieve and discourage him.

11. ***It is argued by learned Counsel for the State that the petitioners in this case in order to become witnesses should have reported the matter to CBI rather conducting their own operation. I need not emphasize that in cases of complaints against the persons, in powers how CBI and police acts. The fate of whistle blowers is being seen by the people of this country. They are either being harassed or being killed or roped in criminal cases. I have no doubt in my mind that if the information would have been given by the petitioners to the police or CBI, the respective MPs would have been given information by the police, before hand and would have been cautioned about the entire operation.***

I consider that in order to expose corruption at higher level and to show to what extent the State managers are corrupt, acting as agent provocateurs does not amount to committing a crime. The intention of the person involved is to be seen and the intention in this case is clear from the fact that the petitioners after conducting this operation did

not ask police to register a case against the MPs involved but gave information to people at large as to what was happening. The police did not seem to be interested in registration of an FIR even on coming to know of the corruption. If the police really had been interested, the police would have registered FIR on the very next day of airing of the tapes on TV channels. The police seem to have acted again as 'his master's voice' of the persons in power, when it registered an FIR only against the middlemen and the petitioners and one or two other persons sparing large number of MPs whose names were figured out in the tapes.

13. The corruption in this country has now taken deep roots. Chanakaya in his famous work 'Arthshastra' advised and suggested that honesty of even judges should be periodically tested by the agent provocateurs. I consider that the duties prescribed by the Constitution of India for the citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot the corruption.

27. Every citizen, every Lawyer must keep in mind the famous saying of Martin Luther King, “Injustice anywhere is threat to justice everywhere.”

28. One point needs a special mention here that this is not the first case wherein Justice Kathawala has acted against the law and has committed offences against administration of justice. There are

many instances where he has shown his high handedness by considering himself above the law, rather he has assumed that he himself is the law.

Justice Krishna Iyer had once said ‘You cannot be law unto yourself expecting others to obey the law.’

No one is above law, neither we nor Judges.

Thus we have framed Charge #1 against Justice S.J. Kathawala of breaching the oath taken at the time of assuming his office to function without fear and favour and acting with malice and ill-will with the advocates whohave tried to expose his corruption and illegalities.

OTHER OFFENCES COMMITTED BY JUSTICE KATHAWALA ARE SUMMARISED AS UNDER;

29. CHARGE #2

Violation of Article 14 of the Constitution by favouring advocates/litigants belonging to a particular community

25.1 It is settled law that whenever any direction is given by the superior Court, then in appeal or writ, then the Judge has to obey, respect that order even if it is in the form of a request.

Division Bench of Hon’ble Bombay High Court in the case of Rajkumar Nandkishor Jha Vs. Shree Vastukalp Builders in Commercial Appeal No. 132 of 2017 in Notice of Motion (L) No. 305 of 2017 in Commercial Suit (L) No. 304 of 2017 had given specific direction to expedite the hearing of the Notice of Motion and to dispose it off. The said direction were given by Coram: Justice Shri. S.C. Dharmadhikari & Justice Shri.

Prakash D. Naik on 21st September, 2017. But despite those directions, Justice Kathawala did not dispose the said Notice of Motion. Even the prayer made by counsel was rejected because counsel does not belong to the group.

The same was done in the case of one Mr. Surendra Mishra.

In Notice of Motion No. 51 of 2013 between Khandelwal Engg Ltd. Vs. Mahadev Vitthal Koli Samrajya Developers & Ors. the division bench of Hon'ble Bombay High Court (Coram: V.M. Kanade & Revati Mohite Dere JJ) on 17 th December 2014 inNotice of Motion (L) No. 2772 of 2014 Appeal (L)No. 746of 2014 specifically passed the order that the hearing of the Notice of Motion is expedited but since the said Notice of Motion is not disposed off since the last 4 years and Justice Kathawala is deliberately delaying the matter.

This is done only because the counsel for the parties does not belong to the selective advocates group, to which Justice Kathawala has a soft corner and especially for the advocates belonging to the Parsi Community. On the other hand, Justice Kathawala is sitting till midnight, 3:30 a.m. to dispose off the cases which belong to his close advocates and **this discrimination is a breach of the oath taken as a High Court Judge and also is a violation of Article 14 of Constitution of India.**

25.2 The conduct of Justice Shri. S.J. Kathawala in not following the superior Courts request to expeditiously dispose off the case and after inordinate delay of 4 years giving long dates is gross contempt.

Hon'ble Supreme Court in the case of Spencer Ltd. **(1995) 1 SCC 259** had ruled as under

> **Constitution of India, Art.141- Request for early hearing - High Court refusing early hearing on the ground of pendency of other cases - order of Supreme Court even if in the form of request is expected to be obeyed and followed by the Judges of the High Court - Language of request oftenly employed by Supreme Court is to be read by the High Court as an obligation, in carrying out constitutional mandate - If such request are flouted then Supreme Court will punish erring Judges of the High Court for contempt after initiating contempt proceeding. Conceivably our action has parameters ranging between total apathy and punishment for contempt after initiating contempt proceeding.**
>
> **Order of High Court refusing early hearing is of a negative or reverse action.**
> **courtesy is the blend of our order - Outwardly it is neither commanding in nature nor explicitly in terms of a direction. Such is not the sheen and tone of our order, meant as it was, for a high constitutional institution, being**

the High Court. It comes from another high constitutional institution (this Court) hierarchically superior in the corrective ladder. When one superior speaks to another it is always in language sweet, soft and melodious; more suggestive than directive. Judicial language is always chaste.

7. **Traditions and norms in this regard, well-established and followed in this country since time immemorial, are best reflected in the 'Song Celestial', the Bhagavad Gita**. **It would for the purpose be apposite to turn to the 18th Chapter of the Bhagavad Gita, containing the concluding portion of the dialogue between Lord Krishna, the Best of Beings, (Purushotamma) and Arjuna, the Best of Humans, (Narotamma), both superiors in themselves.**

Verse 73 containing the answering words of Arjuna is :

O infallible one, my illusion is now gone, I have regained my memory by Your mercy, and I am now firm and free from doubt and am prepared to act according to Your instructions.

(Emphasis ours)

8. For Arjuna, the freedom given to act as he wished to, was an illusion; acting in conformity with the instructions of Krishna a bounden duty. This message has perceptibly percolated down as part of Indian Culture, philosophy and behavioral setting the tenor in the Constitution for inter action between the high constitutional authorities and institutions. One needs only to be aware of this thought with which the Constitution is soaked.

While we certainly respect the independence of the High Court and recognise that it is a co-equal institution, we cannot but say, at the same time, that the constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of this Court which are binding on all courts within the territory of India. The request made in this case was contained in a judicial order. It does no credit to either institution that it has not been heeded to.

The afore-narrated words, we think, presently, are enough to assert the singular constitutional role of this Court, and correspondingly of the assisting role of all authorities, civil or judicial, in the territory of India, towards it, who are mandated by the Constitution to act in aid of this Court. That the

High Court is one such judicial authority covered under Art. 144 of the Constitution is beyond question. The order dated 14-1-1994 of this Court was indeed a judicial order and otherwise enforceable throughout the territory of India under Art. 142 of the Constitution. The High Court was bound to come in aid of this Court when it required the High Court to have its order worked out. The language of request oftenly employed by this Court in such situations is to be read by the High Court as an obligation, in carrying out the constitutional mandate, maintaining the writ of this Court running large throughout the country.

In the case of NDMC Vs. M/s Prominent Hotels Ltd. (2015) 222 DLT 706 , where it is ruled that **FAILURE TO FOLLOW HIGHER COURT'S DECISION AND PASSING ORDER BY IGNORING LAW DECLARED BY HIGHER CORTS MAKES THE JUDGE LIABLE FOR ACTION UNDER CONTEMPT: -**

In **Re: M.P. Dwivedi & Ors., (1996) 4 SCC 152, the Supreme Court initiated suomoto contempt proceedings against seven persons including the Judicial Magistrate, who disregarded the law laid down by the Supreme Court - Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. Inaction or even dormant behavior**

by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Even a lackadaisical attitude, which itself may not be deliberate or willful, have not been held to be a sufficient ground of defence in a contempt proceeding.

If the Judge does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts - The consequence of the Judge not following the well settled law amounts to contempt of Court. If a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State - and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding - If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, anything done by any authority, it must be held to be a willful disregard of the law laid down by the High Court and would amount to civil contempt as defined insection 2(b) of the Contempt of Courts Act, 1971 - **in the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice - Failure to follow Higher Court's decision and ignorance of law makes the Judge liable for action under Contempt: every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself.**

30. CHARGE #3 : MISUSE OF POWER TO HELP ACCUSED IN A PROPERTY CASE WORTH RS. 5000 CRORES

26.1 That there was a news on You-tube Channel – Right Mirror that one Mr. Gopal had carried out a sting operation on the corrupt practices of Justice S. J. Kathawala in his Court during the course of legal proceedings and while pronouncing the judgments.

The said sting operation video is 38 minutes footage of the Court proceedings on 31st August, 2016 of Court room no. 20, wherein one public servant (Talathi) who deposed in front of the Justice S. J. Kathawala stating that the document (Mutation Entry No. 3005) and affidavit given by plaintiff by name Mr. Maneesh Bawa, is not correct. The Talathi deposed that there was an objection of one Late Shri Maharaj Singh in the original record.

But shockingly, this deposition of the said Talathi was not taken on record by Shri. Justice S. J. Kathawala. This fact is captured in the video recording which is produced in the Compact Disk submitted as an exhibit to the Complaint forwarded to Hon'ble Chief Justice of Bombay High Court on 09/02/2017.

26.2 The order dated 08.02.2017 in Notice of Motion No. 2448 of 2016 in Suit No. 471 of 2016 passed by Shri. S.J. Justice Kathawala does not contain any explanation about this unnatural conduct on his part of not taking cognizance of deposition of a prime witness and subsequently excluding any mention of the same in the final order. On the contrary, Shri. Justice S.J. Kathawala passed an order against the material on record and by considering the irrelevant and inadmissible evidences. Evidence of the witness who was the hub of the decisions, was wholly disregarded, indictments were framed on "probable possibility", theories were invented to read meanings into documents and the manifest, straightforward explanation by

public servant was ignored. The conclusions were drawn by ignoring the deposition - It was further mentioned in one of the interviews on the you tube channel 'Right Mirror' that - It is the longest possible list of *suppresso veri suggesto falsi* on the part of said Judge, Justice S.J. Kathawala.

26.3 It is worthwhile to mention here that, it has been mentioned in an interview by an aggrieved party (affected by the incident narrated above regarding non recording of statement of Talathi) on the you tube channel 'Right Mirror' about the Complaint lodged by him before the Hon'ble President of India, Chief Justice of India, Chief Justice Bombay High Court and the C.B.I. It is also evident that the copy of the said Complaint is given to Shri. Justice S.J. Kathawala. The Complaint was accompanied with the CD containing the said sting operation. (*A copy of the said Complaint is Annexed herewith as* ***Annexure – 'AR - 1'***)

26.4 The aforementioned order is defective and illegal since Justice S. J. Kathawala has blatantly and willfully refused to record the deposition of Public Servant - Talathi , who was hub of the issue of deciding the issue of authenticity of one of the two different Mutation Entries of same number produced by two parties to the suit and whose deposition, if recorded, would have compelled Justice S. J Kathawala to pass an order in favor of the Applicant. This was done by Shri. Justice S.J. Kathawala to help Adv. Aspi Chinoy [A senior advocate from the Parsi community] and also to help the accused Plaintiffs in a case of property worth Rs. 5000 Crores.

Section 218 of The Indian Penal Code reads as under;

218. Public servant framing incorrect record or writing with intent to save person from punishment or property

from forfeiture.*—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

AIR 1921 Bom 115

"IPC 218- The gist of the section is stifling of truth and the perversion of the course of justice in case where an offence has been committed, to screen any particular person. It is sufficient that he knows it to be likely that justice will not be executed and someone will escape from punishment."

26.5 The dishonestly and malicious intention of Shri. S.J. Kathawala is Writ at large as can be seen from the fact that he suppressed the submission of Talathi against the Plaintiff. This can be seen from the video recording of the Court proceedings dated 31st August, 2016.

Even otherwise Shri. S.J. Katahwalaignored, twisted material facts of the record and passed the order by ignoring written notes of

arguments and various case laws filed by the Counsel for the applicant.

This act is termed as Fraud on power by Hon'ble Supreme Court in **Vijay Shekhar's Case 2004 (3) Crimes 33 SC ,** where it is ruled as under**;**

> **"FRAUD ON POWER** - Passing order by ignoring material on record and considering irrelevant materials.By acting arbitrarily and irrationally on a perverse understanding or misreading of the materials but also misdirecting himself on the vital issues before him so as to render the impugned order to be one in utter disregard of law and the precedents. Although the impugned order purports to determine the claims of parties, a careful scrutiny of the same discloses total non-application of mind to the actual, relevant and vital aspects and issues in their proper perspective**."**

Justice Shri. S.J. Kathawala misused his power in breach of law, by taking into account, some extraneous matters and by ignoring relevant matters. that render the impugned act or order ultra vires. it is a case of fraud on powers. The power is exercised for an improper motive, to satisfy a private and personal grudge and for wreaking vengeance of a party. This is the misuse of power in bad faith as is exercised maliciously and its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. The order is made for a purpose other than that which finds place in the order, and proved to be committed in bad faith also from corrupt

motives, would certainly be held to be inoperative as covered under Fraud on Power .

31. CHARGE #4:- Misuse of Power and passing order against Hon'ble Supreme Court's law to support a litigant belonging to his Parsi Community.

27.1 That, as per law laid down by Hon'ble Supreme Court in various judgements and reiterated in recent judgement in the case of **Madan Mohan Vs. State 2018 ALL MR (Cri) 1368**, it is trite law that the High Court cannot issue any direction to the subordinate Court to either allow the bail application or reject it as it would amount to usurping the powers of the subordinate courts and would amount to interfering in the discretionary powers of the subordinate court.

But Justice S.J. Kathawala acted in utter disregard and defiance of the law laid down by Hon'ble Supreme Court and in his order dated 30th April, 2018 in Arbitration Petition No. 452 of 2018 **in the case of Meher K. Patel Vs. Urvaksh Naval Hoyvoy & Ors., and** had given direction to the Additional Chief Metropolitan Magistrate, 64th Court to consider his order (passed in civil case) for passing order on bail application.

Needless to mention that, Justice Kathawala is not having any assignment of Criminal Jurisdiction and furthermore, he had no jurisdiction or authority to direct the subordinate court to consider his observation in bail order and further directing the accused to remain present before High Court on next date, thereby directing subordinate court to release the accused on bail.

27.2 For the same person who belongs to his community, Justice S.J. Kathawalla, had in the vacation and with undue haste quashed the criminal proceeding based on consent terms. The Ld. Judge should tell the citizens that what was urgency to hear the petition in the vacation. This was done only because only for a week there was a charge to Justice Kathawalla to sit in a Division Bench with Hon’ble Justice A.S. Gadkari.

A copy of the said order dated 23rd May 2018 in Criminal Writ Petition No. 2285/2018 is Annexed at AR-2.

Needless to mention here that the same Division Bench headed by Justice S.J. Kathawalla had refused to take bail application during vacation where fundamental rights of the citizens/woman were at stake. The false excuse given by Justice S.J. Kathawalla that there is no urgency on the other hand in the cases where there is no urgency the matters were heard and petition was finally disposed off in two days without any urgency, as can be seen from the order dated 21st May 2018 and 23rd May 2018. This is clearly done to help the person who belongs to PArsi Community and also that the said person was represented by Senior Counsel Mr. Satish Maneshinde.

Thus, it is crystal clear that whenever any of the party is from Parsi community or represented by selected lawyers then Justice Kathawala acts against the law and misuses his power thereby causing great damage to the temple of justice i.e., High Court and this is causing colossal damage to the general advocates who are pleading their cases based on law and settled legal position. Such discriminatory acts on the part of judges are certainly bringing disrepute to the judiciary and thereby eroding the confidence of general public in justice delivery system.

32. Needless to mention here that a written complaint to the Hon'ble President of India and Hon'ble Chief Justice of India for initiating Criminal prosecution against Justice S.J. Kathawalla, was given in the Year 2017.

But even after 1 Year there has been no action taken against Justice S.J. Kathawala till date. Therefore, now it is the duty of all advocates and the Bar Associations to raise this issue before the Hon'ble President of India with prayer to grant sanction to prosecute Justice S.J. Kathawala and C.B.I. to investigate the charges against him.

33. There are other serious charges against Justice Kathwala but since last 7 to 8 Years his assignment from origional side is being continuosly given to him. We can see that all the assignments even of the seniormost Judges are being changed but Justice Kathawala was not even Transferred out of Mumbai. This shows the power and pressure of the group who are able to manage the sitting list. This is against the law and rules laid down by Hon'ble Supreme Court and also requires investigation by CBI.

34. CHARGE #5: Allowing Senior Counsels to mention the matter for early hearing despite directions given by the Hon'ble Chief Justice of India and followed by all other Judges of Hon'ble Bombay High Court.

That Hon'ble Chief Justice of India had given specific direction that the mentioning for early hearing should be done by juniors. The rationale was that;

> ***The unwritten rule of 'mentioning pratice' was that seniors should abstain as per the long tradition of the Bar. In fact, during the time of Chief Justice Venkatachaliah and Chief Justice Ahamadi, the***

'mentioning practice' by senior advocates had virtually stopped. The idea was to promote junior advocates and also to keep designated seniors engaged in real contested matters.

The abovesaid ***unwritten rule*** are being followed by almost all Hon'ble Judges of Bombay High Court. But Justice Kathwala is allowing the Senior Counsels specially belonging to Parsi Community specially Dinyar Madan, Aspi Chinoy, Darius Khambata etc. to mention the matter and doing them the favour by going out of the way.

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35. **CHARGE #6: NO RESPECT FOR RULE OF LAW:**

Justice S.J. Kathawalla has no respect for rule of law and in the open Court he said that "I will not follow Civil Procedure Court." For this unlawful conduct, Adv. Ahmed Abdi, Chairman Bombay Lawyers' Association has filed Affidavit before the Division Bench of Hon'ble High Court.

During our interaction with other members of the Bar with whom we discussed this grave issue of high handedness of Justice S. J. Kathwala and unjust and unfair practices adopted by him while dispensing his duty as a judge, several members opened up and acknowledged that they had also been at the receiving end of such unjust and unfair treatment from certain judges across the courts where they generally practice.

36. **CHARGE #6: NO RESPECT FOR LAW LAID DOWN BY SUPREME COURT:**

That Adv. Nilesh Ojha , National President of IBA had exposed the illegality and corrupt practices of justice kathawala in his

interview given to right mirror Channel. Then in the writ petition filed by Mr. Mathew Nedumpara, Advocate Subhash Jha and Adv. Nilesh Ojha, Adv. Vijay Kurle Adv. Partho Sarkar etc. are representing the caseagainst Justice Kathawala claiming compensation to be paid by Justice Kathawala.

Under these circumstances it was mandatory for Justice Kathawala to recuse himself from the cases in which the above advocates are appearing.

Similar is the case of some advocates who are appearing in many cases to protect Justice Kathawala. They are Adv Aspi Chinoy , Adv Milind Sathe, Adv. Janak Dwarkadas, Adv Daurius Khambata, Adv. Sharan Jagtiani, Adv. Mukul Tally of Mohammadbhai and Company etc.

It was also mandatory for Justice Kathawala to recuse himself from the cases in which the above advocates are appearing.

The law in this regard is settled by Hon'ble High Court Supreme Court. But Justice Kathawala is not following the law of Supreme Court.

In view of principles of natural justice as explained by Supreme Court of India in **Davinder Pal Singh Bhullar's case (2011) 14 SCC770,** which ruled as under;

> **"Constitution of India, Article 226 - BIAS-allegations made against a Judge of having bias** - High Court Judge in order to settle personal score passed illegal order against public servant acted against him - Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. **However, once such an**

> **apprehension exists, the trial/judgment/order etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial "coram non-judice".** -Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as "sua causa. Whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one – No one should be Judge of his own case. This principle is required to be followed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. The failure to adhere to this principle creates an apprehension of bias on the part of Judge.

Section 479 of Cr P.C reads as under

> **Sec.479.** Case in which Judge or Magistrate is personally interested. : - **No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.**

In **Suresh R. Palande Vs The Government of Maharsahtra, 2016(2) Mh.L.J. 918** it is ruled as under.

JUDICIAL BIAS AND DISQUALIFICATION OF A JUDGE TO TRY THE CASE – Held, It is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias- No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially - a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias - if a man acts as a judge in his own cause or is himself interested in its outcome then the judgment is vitiated- A judgment which is the result of bias or want of impartiality is a nullity and the trial ' coram non judice'.

Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in courts of law are open to the public – a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially. The broad principle evolved by this Court is that a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias - Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome.

It is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably

apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

"The principle", says Halsbury, "nemo debet esse judex in causa propria sua precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein"

The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, 'Am I biased?'; but to look at the mind of the party before him - A judgment which is the result of bias or want of impartiality is a nullity and the trial ' coram non judice '

As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, 'Am I biased?'; but to look at the mind of the party before him."

It is well settled that every member of a Tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As Viscount Cave, L.C. Has observed in Frome United Breweries Co. v. Bath Justices[(1926) AC 586, 590] "This rule has been asserted, not only in the case of Courts of Justice

and other judicial Tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as Judges of the rights of others."

Disqualification of Judge in trying case takes away jurisdiction:-

i) **If the Judge had any interest in the decision of the case he is disqualified from trying it, however small the interest may be. One important subject at all to events is to clear away everything which might engender suspicion and distrust of the tribunal and to promote feelings of confidence in the administration of justice, which is so essential to social order and security.**

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ii) **Disqualification takes away jurisdiction**-A Judge who in consequence of a personal disqualification is forbidden by law to try a particular case though he may be authorized generally.

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But Justice Kathawala is acting against the abovesaid law of supreme Court and High Court.

37. **CHARGE 9# Conspiracy of keeping selected matters of his close associated advocates and parties with him by illegally mentioning about the case being part heard even if sitting list/ assignments are changed. And not hearing the other matters where common man's interest are involed even if specific directions are given by Divivsion Bench. Gross abuse of process**

of Court and grossest violation of Hon'ble Supreme Court's Directions.

That it is the rule of Hon'ble Bombay High Court that whenever any assignment is changed the Judge ceases to hold the charge of the case even if it is part heard. The only option available to the parties is to apply to the Chief Justice and if the Hon'ble Chief Justice passes the order then only the Judge can hear the case. Reference can be taken from the Judgment of Hon'ble Bombay High Court in the case of **Vyomesh J. Trivedi vs. State MANU/MH/1528/2013.**

Five Judge Constitution Bench of Hon'ble Supreme Court in the case of (2018) 1 SCC 196 had ruled that the Judge/Bench cannot allocate the matter to itself. Because only Chef Justice is the master of the roaster.

In State of U.P. v Neeraj Chaubey, (2010) 10 SCC 320 it has ruled that if the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the court would collapse and judicial work of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction of a particular case. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the court.

In Bombay High Court at the bottom of sitting list in NOTE rule about part heard matter is mentioned which is as under;

> "Part heard matters cease to be part heard with change of assignment unless where a proposal for continuation of the matter is sent by the concerned Bench at the request of the parties and the same is approved by the Hon'ble High Court"

But Justice S.J.Kathawala, without there being written request from parties try to keep the matter with him , by treating it part heard and by

stating that it is done with the consent of the parties. Due to his pressure and the poor litigants and their advocates who either not knowing the nexus between Justice Kathawala and the selected Dalal/Agent advocates OR there being no cost -effective and urgent remedy , choose to keep silent and then Justice S.J.Kathawala passes the orders in favour of his agents , by practicing fraud upon the court. This ex-facie shows his malafide and ulterior motives.

The malafides of Justice Kathawala can be ex-facie proved from very fact that , in the cases concerned with his associates/agents he tooks arguments very fast and either treat it as Part heard or decide it within 2 or three months time. As done in the case represented by Justice Kathawala in Anil Agrawal's case NMCD (L) 706 where strictures are passed against Advocate Mathew Nedumpara. On the other hand in other cases where his close associates/advocates are involved and they wants to prolong the matter then Justice Kathawala either keep that matter at the last number on the board and ensure that the matter should not reach or delay by any means, as done in Surendra Mishra's case. In Notice of Motion No. 51 of 2013 between Khandelwal Engg Ltd. Vs. Mahadev Vitthal Koli Samrajya Developers & Ors. the division bench of Hon'ble Bombay High Court (Coram: V.M. Kanade & Revati Mohite Dere JJ) on 17 th December 2014 inNotice of Motion (L) No. 2772 of 2014 Appeal (L)No. 746of 2014 specifically passed the order that the hearing of the Notice of Motion is expedited but since the said Notice of Motion is not disposed off since the last 4 years and Justice Kathawala is deliberately delaying the matter. The other reason is the opposite party who wanted to delay the matter is Adv Dinyar Madan (Parsi) and Adv. Praveen Samdani the close associates of Justice Kathawala. The same advocate Praveen Samdani use to give interview in favor of Justice Kathawala in a sponsored news in Times of India Justice Kathawala is sitting till midnight, 3:30 a.m. to dispose off the cases(his cases).

This is done only because the counsel for the parties does not belong to the selective advocates group, to which Justice Kathawala has a soft corner and especially for the advocates belonging to the Parsi Community. On the other hand, Justice Kathawala is sitting till midnight, 3:30 a.m. to dispose off the cases which belong to his close advocates and **this discrimination is a breach of the oath taken as a High Court Judge and also is a violation of Article 14 of Constitution of India.**

This needs to be investigated by CBI. The audits of the cases handled by Justice Kathawala where Adv. Milind Sathe , Adv. Aspi Chinoy, Janak Dwarkadas, Mukul Tally, M/s Mohammadbhai & Co. , M/s Federal and Rashmikant, Adv. Daurius Khambata, Sharan Jagtiani etc , needs to be done at the hands of retired Judge like Justice Markandey Katju. (Keeping Justice D. Y. Chandrachud out of this case as his son is working under Adv. Daurius Khambata)

Also the CBI needs to be directed to check phone records CDR and keep surveillance on communication between Justice Kathawala and the abovesaid advocates.

In NMCD (L) 706 where strictures are passed against Advocate Mathew Nedumpara, Justice Kathawala mentioned about the case being treated as part heard. But no written request from the parties was there.

Hon'ble Supreme Court in the case of **Pandurang and others vs State (1986) 4 SCC 436** had ruled that if any matter is heard by a court which had no competence to hear the matter then the judgment passed becomes nullity, being a matter of total lack of jurisdiction. The right of any party cannot be taken away except by amending the rules of High Court. So long as the rules are in operation it would be arbitrary and discriminatory to deny him his right regardless of whether it is done by a reason of negligence or otherwise. Deliberately it cannot be done. Even if

the decision is right on merit, it is by a forum which is lacking in competence. Even a right decision by a wrong forum is no decision. It is non existent in the eyes of law. And hence a nullity.

It is further observed by the Hon'ble Supreme Court that,

> "We wish to add that the registry of the High Court was expected to have realized the position and ought not to have created such a situation which resulted in waste of Court time, once for hearing the appeal and next time, to consider the effect of the rules. No court can afford this luxury with the mountain of arrears every court carrying these days"

> This proves the malafides of Justice Kathawala. In a similar case where the Judge played mischief with the sitting list and assigned matters to himself was prosecuted by Hon'ble High Court under section **120-B, 193, 466, 468 and 471 of Indian Penal Code, 1860 .**

In the case between **K. Ram Reddy** Vs. **State of A.P., 1998(1)ALT(Cri)486 = MANU/AP/0393/1998, it is ruled as under ;**

> **The 1-Addl. Sessions Judge who was in charge of the District and Sessions Court and a party to the conspiracy, made over the bail application to the II-Addl. Sessions Court- all the accused and Sri P. Thirupathi Reddy, the then II-Addl. Sessions Judge entered into a criminal conspiracy to do all sorts of illegal acts in order to get their bail application made over to the II-Addl. Sessions Court with a view to get favourable orders- The Modus Operandi is - the Advocate files a bail application falsely mentioning that the offence alleged against the accused is one under Section 307 I.P.C. After it was made over to any of the**

Additional District Courts, the figures '307' are altered to 302 in the bail application/s wherever the figures '307' occur.

The concerned Advocates, Clerks of the Addl. District Courts, Additional Public Prosecutors joined hands in this racket and the role of the two Addl. District Judges cannot be ruled out in this murky affair.

- The then II-Addl. Sessions Judge and A3 (appellant in Crl. Appeal No. 385/97) helped the other accused by willfully and intentionally ignoring the false Cr.M.P.No. 1626/96, which has no connection either with A4 and A5 or the Crime in which they are involved. The II-Addl. Sessions Judge, who is a party to the conspiracy, allowed the petition for amendment on 13-8-1996 and granted bail to A4 and A5. The II-Addl. Sessions Judge is being proceeded with departmentally and is now under suspension. Sections 195, 197, 340, 341 and 343 of Criminal Procedure Code, 1973- Sections 120-B, 193, 466, 468 and 471 of Indian Penal Code, 1860 – Accused A1 and A2 who are advocates, are legally bound to state the truth, but they intentionally gave false information in a judicial proceeding viz., bail application, knowing fully well that their statements are false and they thereby fabricated false evidence in a judicial proceeding.

The action taken by the Sessions Court under Section 340(1) of the Code in making the orders in question was suo motu and not on applications made to it in that behalf. How the Sessions Court moved itself in

that regard for making these orders is stated that On verification of the bail petitions, Court Registers and the Police Case Diaries Etc., he found some of the bail applications which were made over to the Additional Sessions Courts, were tampered with.
The District and Sessions Judge held a preliminary enquiry into the tampering of the bail applications and recorded the statements of the concerned staff."

It is also stated that provisions of Section 197 of the Code were not attracted because entering into a criminal conspiracy to tamper the records of a judicial proceeding with a view to secure the release of an accused on bail was no part of official duty and as such no sanction to prosecute the Additional Public Prosecutor was necessary. Thereafter, the facts relating to the case are mentioned and it is stated that the District and Sessions Judge came to the conclusion that there were sufficient, valid and justifiable grounds that offences punishable under Sections 120B, 193, 466, 468, and 471 IPC referred to in Clause (b) of subsection (1) of Section 195 of the Code appeared to have been committed by the accused mentioned in relation to the proceedings and in respect of the documents produced and given in evidence in a proceeding in the Court" and that "he is satisfied that it is expedient in the interests of justice to launch Prosecution against the above individuals". It is then ordered that a complaint be filed before the Chief Judicial Magistrate, Karimnagar under Section 340(1)(b) of the Code against the accused for the offences mentioned. Pursuant to that order,

complaint was filed under Section 340(1)(b) of the Code, and it was taken on file as C.C.No. 1/1997. The other C.Cs. were also based on complaints filed on similar orders of the learned District and Sessions Judge at Karimnagar.

Some of the Advocates have resorted to certain types of malpractices to get their bail applications made over to any of the Additional District Courts of their choice.

15. The Modus Operandi is - the Advocate files a bail application falsely mentioning that the offence alleged against the accused is one under Section 307 I.P.C. After it was made over to any of the Additional District Courts, the figures '307' are altered to 302 in the bail application/s wherever the figures '307' occur.

The concerned Advocates, Clerks of the Addl. District Courts, Additional Public Prosecutors joined hands in this racket and the role of the two Addl. District Judges cannot be ruled out in this murky affair.

What is apparent from this report dated 30-10-1996 is that certain devious methods were being adopted in the Sessions Court at Karimnagar by certain advocates with the connivance of the staff of the I and II Additional Sessions Courts and the Additional Public Prosecutors attached to those courts, and that the two Additional Sessions Judges at the relevant time were also parties aware of those devious methods employed mostly in matters relating to bails -

These devious methods polluted the streams of justice and necessitated urgent correctives and action in the interests of administration of Justice.

<u>SAME ACTION IS NEEDED AGAINST JUSTICE KATHAWALA</u>

38. **<u>CHARGE NO. 8 #</u>**

AS PER LAW LAID DOWN BY 5-JUDGE BENCH OF HON'BLE SUPREME COURT IN THE CASE OF **<u>K. VEERSWAMI VS. UNION OF INDIA 1991 (3) SCC 655</u>** IT IS OBLIGATORY ON THE PART OF SHRI. **<u>JUSTICE KATHAWALA</u>** TO RESIGN FROM HIS POST BUT HE IS STILL WORKING.

As seen from the above documentary proofsand sting operation, it is clear that **<u>Justice Kathawala</u>** acted against the oath and thereby ceased his right to continue as a Judge of Hon'ble High Court.

As per law laid down by 5-Judge Bench of Hon'ble Supreme Court in the case of **<u>K. Veerswami Vs. Union of India 1991 (3) SCC 655</u>** it is obligatory on the part of Shri. **<u>Justice Kathawala</u>** to resign from his post but he is still working. It is surprising to mention here that even after lapse of 16 months from lodging of the complaint with detail proofs **<u>Justice Kathawala</u>** is still working as High Court Judge.

It has been laid down by Hon'ble Supreme Court in K. Veerswami's case (Supra) that,

(53) …… ***The judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of***

the public is not shaken. The Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not have the judicial independence and may not command confidence of the public. He must voluntarily withdraw from the judicial work and administration.

(54) …….. The emphasis on this point should not appear superfluous. Prof. Jackson says "Misbehavior by a Judge, whether it takes place on the bench or off the bench, undermines public confidence in the administration of justice, and also damages public respect for the law of the land; if nothing is seen to be done about it, the damage goes unrepaired. This a must be so when the judge commits a serious criminal offence and remains in office". (Jackson's Machinery of Justice by J.R. Spencer, 8th Edn. pp. 369-70.

(55) The proved "misbehaviour" which is the basis for removal of a Judge under clause (4) of Article 124 of the Constitution may also in certain cases involve an offence of criminal misconduct under Section 5(1) of the Act. But that is no ground for withholding criminal prosecution till the Judge is removed by Parliament as suggested by counsel for the appellant. One is the power of Parliament and the other is the jurisdiction of a criminal court. Both are mutually exclusive. Even a government servant who is answerable for his misconduct which may also constitute an offence

under the Indian Penal Code or under S. 5 of the Act is liable to be prosecuted in addition to a departmental enquiry. If prosecuted in a criminal court he may be punished by way of imprisonment or fine or with both but in departmental enquiry, the highest penalty that could be imposed on him is dismissal. The competent authority may either allow the prosecution to go on in a court of law or subject him to a departmental enquiry or subject him to both concurrently or consecutively. It is not objectionable to initiate criminal proceedings against public servant before exhausting the disciplinary proceedings, and a fortiori, the prosecution of a Judge for criminal misconduct before his removal by Parliament for proved misbehaviour is unobjectionable.

"……..But we know of no law providing protection for Judges from criminal prosecution. Article 361(2) confers immunity from criminal prosecution only to the President and Governors of States and to no others. Even that immunity has been limited during their term of office. ***The Judges are liable to be dealt with just the same way as any other person in respect of criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required.***

(61) For the reasons which we have endeavored to outline and subject to the directions issued, we hold that for the purpose of clause (c)

of S. 6(1 of the Act the President of India is the authority competent to give previous sanction for the prosecution of a Judge of the Supreme court and of the High court.

(79) Before parting with the case, we may say a word more. This case has given us much concern. We gave our fullest consideration to the questions raised. We have examined and re-examined the questions before reaching the conclusion. We consider that the society's demand for honesty in a judge is exacting and absolute. ***The standards of judicial behaviour, both, on and off the bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal.*** *From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour.* ***A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.***

(80) A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. "A legislator or an administrator may be found guilty of corruption without apparently

endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion" to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

Let us take a case where there is a positive finding recorded in such a proceeding that the Judge was habitually accepting bribe, and on that ground he is removed from his office. On the argument of Mr Sibal, the matter will have to be closed with his removal and he will escape the criminal liability and even the ill-gotten money would not be confiscated. Let us consider another situation where an abettor is found guilty under S. 165-A of the Indian Penal Code and is convicted. The main culprit, the Judge, shall escape on the argument of the appellant. In a civilized society the law cannot be assumed to be leading to such disturbing results.

39. In *Raghbir Singh vs State of Haryana*, the Supreme Court has observed as under:

"We conclude with the disconcerting note sounded by Abraham Lincoln: *"If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time.*"

Following is what sc observed in Jaylalitha case and applies to Judges too

It is not a mockery that politicians, who never tire of making laws and rules for others, are not governed by any such rules in the important matter of corruption. They continue to occupy high public offices where scope for corruption is definitely higher than any other category of public servants, without being governed by any such rules, while almost all other public servants are governed by such rules framed by the same very politicians in the same very matter.

40. We at IBA are fervently working towards bringing more transparency in the justice delivery system. and it is our humble request that appropriate and strict action is necessary against Justice Kathawala in order to build the confidence of a common man in the Justice delivery system.

41. Indian Bar Association believes in the spirit of collaboration and hence endeavours to reach out to all other Bar Associations, and harness the united and combined power for a noble cause; always reminding itself that more the power, much more is the responsibility.

42. There are umpteen instances that prove that the Bar Associations have played a crucial role in protecting the poor citizens from becoming victims of misuse of power by police & Judges.

Below are some of the cases which clearly bring out the power of bar associations:

5.1 Additional High Court Judge was prosecuted and demoted to Sessions Court Judge due to representation by Bar Association [Raman Lal Vs. State 2001 Cr LJ 800]

The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of city Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a questionnaire through the registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner in view of the facts of the case.

5.2 Justice Nirmal Yadav was charge sheeted due to strong protest by Bar Association [Mrs. Nirmal Yadav Vs. CBI 2011 (4) RCR (Cri) 809]

5.3 Chief Justice of Bombay High Court resigned because of resolution and protest by Bar Association and Bar Council of Maharashtra and Goa [BCMG] (1995) 5 SCC 457 .

5.4 Superintendent Of Police sentenced to imprisonment for three months **on the letter given by Bar Association (**AIR 1996 SC 1925 , 1996-SCC-9-74**)**

In the case of **Secretary H. Bar Association** vs. **S. P. – AIR 1996 SC 1925**, Hon'ble Supreme Court accepted the representation sent by the Bar Association as Writ petition and directed C. B.I. to investigate. Thereafter the Concerned S.P. was sentenced to jail for 3 months, by the Supreme Court.

43. Prosecution of Police Officer (S.P.) for filling false affidavit/enquiry report before Court – A undertrial prisoner was brutally beaten by police who died up – Bar Association sent letter to Supreme Court – Which was treated a Writ – Court called report from S.P. – S.P. A.K. Sinha Kashyap filed a false report to save guilty police officer – Court not satisfied with reply of S.P. called report from C.B.I. – C.B.I. pointed out the disdendful role played by S.P. said to be against all tenants of law morality – The report and affidavit submitted by S.P. found to be false / fabricated – Supreme Court issued a Show Cause notice to S.P. – In reply to the notice S.P. again try to mislead to court and try to justified his illegal acts – S.P. is guilty of Contempt of Court sentenced to imprisonment for three months.

5.5 **CBI directed to take up the investigation on the petition filed by the Bar association: Punjab & Haryana High Court Bar Association v. State of Punjab & Ors. [MANU/SC/0220/1994 : (1994) 1 SCC 616]."**

Supreme Court, upon consideration of some glaring facts, wherein an advocate was allegedly abducted and murdered with his wife and child, set aside the order passed by the High Court dismissing the

PIL and directed for handing over investigation to independent agency even after submission of chargesheet.

44.

45. Request : It is humble request that;

i) Direction to C.B.I. for taking action against Justice S. J. Kathawala under sec.166, 218, 219 r/w 120(B) & 34 of I.P.C. for acting contrary to law , and law laid by by Hon'ble Supreme Court may kindly be given.

OR

i) Applicant be granted sanction/permission to launch prosecution against the Justice Kathawala in view of sec.197of Cr. P.C, and Judicial officer Protection act etc. and any law applicable thereto.

ii) Direction to appropriate authority such as Solicitor General of India and others be given to initiate appropriate proceeding under Contempt of courts Acts against Justice S. J. Kathawala and direction for registering a Case under sec.409 etc of I.P.C.

against Justice S. J. Kathawala for misappropriation of public funds for settling their personal scores, as prosecution of offender is obligation of the State /Govt.

iii) Direction to appropriate authority to place the matter before Hon'ble Chief Justice of India in view of "In House Procedure" with a request to give direction **Direction to Justice** S. J. Kathawala **to Resign from his Post as per Point No. 7(i) of In House Procedure and also in view of the mandatory Guidelines of Hon. Supreme Court in the Veerswami's Case (1991) 3 SCC 655(Constitution Bench), as the Misconduct, Criminal offences and Incapacity of Justice** S. J. Kathawala **is proved ex facie.**

iv) Or direction to Chief Justice of Hon'ble Bombay High Court to not to assign any work to the above said judges Justice S. J. Kathawala, as gross fraud on power is ex facie proved.

v) Removal of Justice S. J. Kathawala for his proved incapacity to understand and follow the law, misbehavior and criminal offences committed by him and contempt of Hon'ble Supreme Court by him.

vi) Recovering of all the amount/ payments, salary taken by the incompetent judge.

Adv. Vijay Kurle

Maharashtra State President

Indian Bar Association