INDIAN BAR ASSOCIATION

(THE ADVOCATES' ASSOCIATION OF INDIA)

Regional Office: Office No. 2 & 3, Kothari House, A. R. Allana Marg, Fort, Mumbai – 400 023

Tel: +91-22-49717796, Cell: +91-9594837837 Email:indianbarassociation.mah@gmail.com

ADV. ISHWARLAL S. AGARWAL [WORKING PRESIDENT, NATIONAL CO-ORDINATION COMMITTEE]

M.PHIL. (LAW), LL.M. (CRIMINAL LAW), LL.M (CONST.LAW), P.G.D. (INFO. & COMM. LAW), P.G.D. (CONS. LAW), LL.B.-G (C'LOGY), LL.B (I.P.R. LAW & LAW & MEDCN), M.Sc.(FORENSIC Sc.), M.Sc. (FORENSIC PSCHOLOGY), M.B.A (H.R) M.A. (M.C.J.), M.A. (PUB. ADMN.), M.A. (S'LOGY), M.A. (GANDHIAN THOUGHT), M.A. (P&H), M.L.I.Sc., B.A., B.L.I.S

27th July, 2020

What are the reasons for inclusion/exclusion of the name of the petitioner/informants in the recent suo motu contempt of court cases?

The Suo Motu contempt case registered by the Supreme Court against Adv. Prashant Bhushan does not state the name of the Petitioner who had earlier filed a Contempt Petition against Adv. Prashant Bhushan and based on which Suo Motu case was registered unlike the case of Re: Vijay Kurle and others wherein, names of the informants were mentioned in the order passed by Supreme Court for taking cognizance of the alleged contempt.

The answer to the titular question is in the guidelines of the Supreme Court in **P.N.Duda's case (1988) 3 SCC 167,** recently followed by the Three-Judge Bench on **22.07.2020** in Prashant Bhushan's case and not followed by the two Judge Bench on **27.03.2019** in Vijay Kurle's case.

1. The guidelines of the Supereme Court in **P. N. Duda (1988) 3 SCC 167 , Bal Thackray (2005) 1 SCC 254** and recently in **Chittij Sharma vs. Lok Pal Singh 2019 Cr. L. J 575,** mandates the registry to not to show the name of petitioner if the petition is not accompanied with the permission of the **Attorney General**.

2. The above rule is not mentioned in the Act or **''The Rules To Regulate Proceedings For Contempt of the Supreme Court, 1975''** framed by the Supreme Court, but is made mandatory by the directions given by the Supreme Court in **P.N.Duda's case (1988) 3 SCC 167,** said guidelines are held to be as valid and legal by the Full Bench in **Bal Thackrey's Case (2005) 1 SCC 254.**

3. The smaller Two-Judge Bench of Justice Deepak Gupta in it's order dated **27.04.2020** failed to consider the binding nature of above guidelines and

wrongly treated the same as not binding.

However, the Larger Three-Judge Bench in recent judgment dated **22.07.2020**, followed the above guidelines in **P.N.Duda's case (1988) 3 SCC 167,**. Which impliedly overrules the observations and findings of Two Judge Bench in order dated **27.04.2020** in Re: Vijay Kurle's case.

4. Even otherwise the findings of Two-Judge Bench in it's order dated **27.04.2020** in Re: Vijay Kurle's case, were per-incuriam as passed in ignorance of earlier binding precedents in **Kaikhosrou Kavasji Framji Vs. Union of India (2019) SCC On Line SC 394**.

The per incuriam observations in order dated **27.04.2020** are as under;

> ***"16.*** *Relying upon the aforesaid observations in the judgment delivered by Justice Ranganathan (in P.N.Duda's case) it is submitted that the petition could not have been placed for admission on the judicial side but should have been placed before the Chief Justice and not before any other Bench.* ***We are not at all in agreement with the submission. What Justice Ranganathan observed is an obiter and not the finding of the Bench and this is not the procedure prescribed under the Rules of this Court."***

5. The smaller Bench of Justice Deepak Gupta was not aware of the legal position that the Supreme Court has the power to issue directions under **Article 142** where none already exist **and such directions shall be binding till such time as new rules are enacted by the legislature on the subject.** Thus it has been held in **Vineet Narain v. Union of India, (1998) 1 SCC 226**, para 51, that

> *" Ample powers are conferred on the Court under Articles 32, 141, 142 and 144 to issue necessary directions to fill vacuum till either legislature steps in to cover the gap or the executive discharges its role."*

6. In a recent judgment in **Chhitij Kishore Sharma v. Lok Pal Singh 2019 Cri. L . J 575,** the Rule for taking cognizance is given to Registry as under;

*"**45**. In view of the above position, this petition which is before us cannot be treated as a contempt petition, as in the absence of a consent of the learned Advocate General, it is only in the nature of an "information". It is not a contempt petition, at least not yet. Consequently, we direct the Registry of this Court that it shall henceforth follow the following procedure in such matters:*

If any other person (i.e. any other person except the Advocate General of the State), moves a petition under Section 15 of the Act or under Article 215 of the Constitution of India, alleging a case of criminal contempt against any person, and if such a petition is not accompanied by the consent of the Advocate General then the Registry shall not list the case as a criminal contempt petition, as at this stage the petition is only in the nature of an "information". ***Such matters shall always be captioned as "in Re.....(the name of the alleged contemnor)", and be placed before the Hon'ble Chief Justice in chamber. The Chief Justice may either himself or in consultation with other Judges of the Court may take further steps in the case as deem to be necessary.***

46**. Hypothetically speaking therefore it is always open for a Court to proceed with the matter, even where the Advocate General has refused to grant his consent, since powers are given to the* ***Court to take a suo motu cognizance, but this can be done only after the due procedure is first followed - procedure as referred above. *"*

***41.** Therefore, though a petition moved by any other person, without the consent of the Advocate General, can still be treated as a contempt petition, depending upon the nature of the "information", and discretion of the Court, but till a suo motu cognizance is taken by the Court, the petition is merely in the nature of an "information".*

42. *As far back as in the year 1973, a Division Bench of Delhi High Court in the case of Anil Kumar Gupta v. K. Suba Rao and Ors. (Criminal Original Appeal No. 51 of 1973) : MANU/DE/0152/1973 : (1974) ILR, Delhi, 1 had in fact directed that such matters (matter as we have before us), should not be listed as a criminal contempt straightway but should be placed first before the Chief Justice on the administrative side. The directions given by the Division Bench are as follows:*

"(10) The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it."

43. *The above procedure was approved by the Hon'ble Apex Court in the Case of P.N. Duda v. P. Shiv Shanker reported in MANU/SC/0362/1988 : (1988) 3 SCC 167, and in Bal Thackrey (supra).*

44. *The whole object of prescribing a procedure in such matters, particularly in cases of criminal contempt is also to safeguard the valuable time of the Court from being wasted by frivolous contempt petitions.*[5] *Therefore, the requirement of obtaining consent in writing of the Advocate General for contempt proceeding by any person is necessary. A motion under Section 15 which is not in conformity with the requirement of that section is not maintainable."*[6] *In Bal Thackrey, therefore, it was held as follows:*

> *"23. In these matters, the question is not about compliance or non-compliance of the principles of natural justice by granting adequate opportunity to the appellant but is about compliance with the mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15 is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were under Section 15 of the Act. From the material on record, it is not possible to accept the contention of the respondents that the Court had taken suo motu action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose consent of the Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take suo motu action in rare cases. In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions under Section 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as suo motu petitions. In absence of compliance with mandatory requirement of Section 15, the petitions were not maintainable."*

7. The source of information for suo- motu cognizance by the Court is that, if the Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech, it can be said to have taken cognizance on its own motion. But if the Court is directly moved by a petition by a private person feeling aggrieved, not being the **Advocate-General**, then said information either being petition or any form such as letter in such a situation, the procedure laid down in **P.N.Duda's case (1988) 3 SCC 167,**is to be followed. If not followed then the cognizance and conviction stands vitiated. **[Biyani Dash (2005) 9 SCC 194, Antonio Sequeira Coutinho Pereira Vs. Prakash Fadte 2008 SCC OnLine Bom 911]**

8. It is well settled that, if manner of a particular act is prescribed under any

Statute, the act must be done in that manner or not at all. Therefore, when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. While interpreting Rule 11, it mandates that proceedings have to be done in a particular manner with regard to the direction in conducting the contempt proceedings. Therefore, it has to be done in accordance with the intention of the legislature. This Court relies upon the decision reported in ***AIR 1999 SC 1281 (Babu Verghese v. Bar Council of Kerala)*** wherein it is held as under:

> *" It is the basic principle of law long settled that if the manner of going a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The original of this rule is traceable to the decision in Taylor v. Tayor (1875) 1 Ch D 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor, 63 Ind App 372; AIR 1936 PC 253(2) who s tated as under:*
>
> *"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all".*

This rule has since been approved by this Court in *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*, 1954 SCR 1098 : AIR 1954 SC 322 and again in *Deep Chand* v. *State of Rajasthan*, (1962) 1 SCR 662 : AIR 1961 SC 1527. These cases were considered by a Three Judge Bench of this Court in *State of Uttar Pradesh* v. *Singhara Singh*, AIR 1964 SC 358 : (1964 1 SCWR 57 and the rule laid down in *Nazir Ahmad's case* (supra) was again upheld. The rule has since been applied to the exercise of jurisdiction by Courts and has also been recognized as a salutary principle of administrative law.

9. In **East India Commercial Co. Ltd. v. Collector of Customs, Calcutta, AIR 1962 SC 1893,** Subba Rao, J. speaking for the majority observed reads as under:

> ***"31.*** *……* ***It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just***

like in the case of Supreme Court, making the law declared by the High Court binding on subordinate Courts. *…… We, therefore, hold that the law declared by the highest Court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so,* ***the notice issued by the authority signifying the launching of proceedings, contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."***

(Emphasis supplied)"

10. In **Ashok Agarwal (2014) 3 SCC 602,** it is ruled that, all the grounds should be dealt in the judgment as under;

"19. In Dr. L.P. Misra v. State of U.P., AIR 1998 SC 3337; Three Cheers Entertainment Pvt. Ltd. & Ors. v. C.E.S.C. Ltd., AIR 2009 SC 735; and R.S. Sujatha v. State of Karnataka & Ors., (2011) 5 SCC 689, this Court held that the power under Article 215 of the Constitution can be exercised only in accordance with the procedure prescribed by law.

In **R.S. Sujhata (2011) 5 SCC 689,** Hon'ble Supreme Court had ruled that, any deviation from rules framed by the Court in contempt is fatal to the case and vitiates the Contempt Proceedings. It is ruled as under;

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

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

concerned, is liable to be set aside.”

11. Statutory rules create enforceable rights which cannot be taken away. **[Delhi Development Authority v. Joginder S. Monga, (2004) 2 SCC 297]**

In Ram Ganesh Tripathi v. State of U.P., AIR 1997 SC 1446, any order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law.

In Union of India v. Sri Somasundaram Vishwanath, AIR 1988 SC 2255, the Hon'ble Apex Court observed that if there is a conflict between the executive instruction and the Rules framed, the Rules will prevail. Similarly, if there is a conflict in the Rules made and the law, the law will prevail.

As is said, '**Dura lex sed lex**' which means "**the law is hard but it is the law.**" Even if the statutory provision causes hardship to some people, Court has to implement the same.

12. The law regarding Suo -Moto cognizance and the nature of the order is clarified in many cases. The sum and substance of the said judgment is as under;

i) The court taking suo-motu cognizance should mention in the order that the cognizance is suo-motu.

[Biyani Dash (2005) 9 SCC 194, Antonio Sequeira 2008 SCC OnLine Bom 911, Surendra Sharma 1999 SCC OnLine All 1483]

ii) No Judge/ Bench can take cognizance of any letter received by him. Such letter has to be placed before Chief Justice.**[Divine Retreat (2008) 3 SCC 542]**

iii) The Court should mention as to whether the cognizance is of criminal Contempt as per section **2(c)** of the Contempt of Courts Act,1971 or it is a Civil Contempt.**[Re: C.S. Karnan (2017) 7 SCC 1, Subramanian Swamy Vs. Arun Shourie (2014) 12 SCC 344]**

iv) The Registry be directed to not to show the name of Petitioner. **[Maheshwar Peri (2016) 14 SCC 251]**

v) In Suo-Motu cognizance the informant, de-facto complainant (i.e. Petitioner) will not be in picture. **[Chhitij Kishore Sharma Vs. Lok Pal Singh 2019 Cr.LJ. 575, Re: Prashant Bhushan 2020 SCC ON LINE SC , Biman Basu (2010) 8 SCC 673]**

vi) Court cannot reproduce the wordings of petitioner and rely on his personal beliefs and pleadings to take cognizance. The scandalous material published/circulated by the alleged contemnor alone should be the basis of suo-moto cognizance. **[Re: Prashant Bhushan 2020 SCC OnLine SC , Biman Basu (2010) 8 SCC 673]**

vii) The case should be clear and not explainable otherwise. The cognizance cannot be taken on presumption, assumption, surmises, and conjectures. No notice can be issues Cognizance of contempt with intention to get information from the alleged contemnor forcing him to file reply is highly illegal and violative of the Art. 20(3) of the constitution.

Ambivalence and prevarication are antithetical to contempt proceedings. It would be very hazardous to initiate contempt proceedings on some probabilities. Contempt proceedings cannot be used as a vehicle for a roving enquiry to ascertain whether there has, or has not, been involvement in contempt.

If two views are possible then contempt petition not maintainable. Only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be summoned. It will not be permissible to proceed further if there are only word against word. **[Vinod Surha Vs. State 2017 SCC OnLine Del 9037, Clough Engg Ltd Australa Vs. Oil Natural Gas Corporation Mumbai 2009 Cri. L. J. 2177, M.R. ParasharVs. Farooq Abdullah (1984) 2 SCC 343, S.A. Khan Vs. Ch. Bhajan Lal (1993) 3 SCC 151, Tamilnad**

Mercantile Bank Vs. S.C. Sekar (2009) 2 SCC 784, Re: S. Mulgaonkar AIR 1978 SC 727, R.S. Sherawat (2018) 10 SCC 574, National Fertilizer (2013) 9 SCC 600, R.S. Sujhata (2011) 5 SCC 689, Kawar Singh Saini (2012) 4 SCC 307]

viii) The court should ask Attorney General in Supreme Court & Advocate General for High Court to assist the Court.

ix) If any of the procedure is missing or not-complied then it is fatal to the prosecution. The conviction is vitiated. **[R.S.Sujhata (2011) 5 SCC 689, Nandlal Thakkar 2013 Cri. L.J. 3391, J. R. Parashar (2001) 6 SCC 735]**

x) The incompetent and defective motion at the time of cognizance cannot be made valid by subsequent rectification of the defect. **[State of Kerala Vs. M.S. Mani (2001) 8 SCC 82 , Bal Thackrey (2005) 1 SCC 254, State Vs. Mamta Mohanty (2011) 3 SCC 436]**

xi) If the main proceeding itself is not maintainable then the subsequent proceedings stands vitiated on the principle *sublato fundamento cadit opus,* meaning thereby that the foundation had been removed structure collapses. [Kawar Singh Saini (2012) 4 SCC 307]

xii) If a Judge/Bench is disqualified to hear a case tooks the cognizance and issue show cause notice without first placing the matter before Chief Justice on administrative side, the notice and cognizance is illegal and liable to be set aside. At the stage of cognizance of contempt the provisions of the Art. 129, 215 has no application. Only Chief Justice is the Master of Roster. **[Bal Thackrey (2005) 1 SCC 254, High Court Of Judicature At Allahabad V. Raj Kishore Yadav (1997) 3 SCC 11, Smt. Maya Dixit vs State, 2010 SCC OnLine All 1740, Prof. Y.C. Simhadri, 2001 SCC OnLine All 572, Campaign For Judicial Accountability And Reforms (2018) 1 SCC 196 (5 Judge- Bench)**

xiii) The meaning of action of suo-moto cognizance is action by Chief Justice Only or by a Bench nominated by the Chief Justice that too on administration side and not on judicial side. **[Nandlal Sharma vs. Chief Secretary 1984 WLN 161 (DB), Rehim vs M. V. Jayrajan 2010 SCC ONLINE Ker 3344 (FB) , Amicus Curiae Vs. Prashant Bhushan (2010) 7 SCC 592, Narendra Gowda 2012(6) KAR L J 502(DB)]**

xiv) The order issuing show cause notice should not decide the guilt. The proper notice should be 'why proceedings cannot be initiated' But the order deciding the guilt and issuing show cause 'why you should not be punished' is violative of principles of natural justice. **[Archit Goyal vs State Of Punjab (2005) 140 PLR 375, Subramaniam Swami's case (2014) 12 SCC 344].**

xv) The Alleged Contemnor is in the position of an accused in a criminal proceeding. **[Hari Dass Vs. State AIR 1964 SC 1773 [Full Bench]].**

xvi) The Alleged Contemnor entitled to have all protection available to an accused including right to silence under Art. 20(3) of the Constitution of India. He can demolish the prosecution case by cross-examining the witnesses and not examining himself. **[Clough Engg Ltd Australa Vs. Oil Natural Gas Corporation Mumbai 2009 Cri. L. J. 2177, R.S. Sherawat (2018) 10 SCC 574, High Court of Karnataka Vs. Jai Chaitanya dasa & Others 2015 (3) AKR 627 (D.B)].**

xvii) When the Alleged Contemnor was not a party to the proceeding then he entitled for a pre-cognizance notice before initiation of the contempt proceeding. **[Rajesh Singh's case (2007) 14 SCC 126].**

xviii) Contempt proceedings are criminal in nature and therefore there is no vicarious liability. There is no provision in the Contempt of Courts Act like section 34 or section 114 of the Penal Code, 1860 with the aid of

which respondents can be summoned for aiding or abetting other respondent in committing contempt. It is obligatory for cognizance that requisite material/allegations which would attract the provisions constituting vicarious liability should be there. The order either refusing to take cognizance or taking cognizance directing Registry to issue show cause notice must reflect the application of Judicial mind. Mere reproduction of allegations is not sufficient. Reasons should reflect in the order. Court taking cognizance of Contempt against several persons is bound to pass a reasoned order mentioning specific role of the person and documents/evidence relied against him. **[The Minister Vs. Deobora Bhatnagar 1990 SCC OnLine SC 53, , Shamkant Tukaram Naik Vs. Smt. Da yanabai Shamsan Dighodkar 1989 Mh.L.J.857, Shiv Kumar Jatia Vs State 2019 SCC OnLine SC 1090, Housing Development Finance Corporation Ltd. 2016 SCC OnLine Bom 15943, In Re : C.S. Karnan (2017) 7 SCC 1, H. Munireddy Vs. The Advocate General MANU/KA/9738/2019, Manohar Joshi's case (1991) 2 SCC 342, M.N. Ojha Vs. Alok Kumar Srivastava (2009) 9 SCC 682 , Birla Corporation Ltd. Vs. Aventz 2019 SCC OnLine SC 682, Bhagbhai Dhanabhai Barad 2019 SCC OnLine Guj 1535,]**

xix) As per section15(3) of the Contempt of Courts Act ,1971 , the court taking cognizance of contempt is bound to mention the specific charge in the order directing issuance of show cause notice. Said charge need to be reproduced in the notice in **FORM- I**. This procedure is mandatory even if the Alleged Contemnor is aware of the charge. **[Nandlal Thakkar 2013 Cri. L.J. 3391, J. R. Parashar (2001) 6 SCC 735 , Editor Blitz 1979 ILR 25 (Bom) (DB), Archit Goyal vs State Of Punjab (2005) 140 PLR 375, Ebrahim Mammojec Parekh Vs. Emperor ILR 4**

Rang 257 (AIR 1926 Rangoon 188), Sukhdev Singh Sodhi 1954 Sur 454 , Manohar Joshi's case (1991) 2 SCC 342].

xx) The order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under Article 21 of the Constitution can be ignored only with peril. **[Satish Shah (2019) 9 SCC 148, Satish Mehra Vs. State (2012) 13 SCC 614, Anil Kumar Dubey 2017 SCC Online Chh 95].**

xxi) The order issuing show cause notice must specifically mention the exact para which is found to be scandalous from the pleadings of the the alleged contemnor. A notice or Rule for contempt must set out precisely and in detail the deeds or words which are said to constitute contempt and that if such details of the charge are not given there is no case to answer.**[Mira Bose Vs. Santosh Kumar Bose 1972 SCC OnLine Cal 160Re: Ram Pratap Sharma Vs. In Re: Daya Nand (1977) 1 SCC 150, Ramesh Maharaj's case (1978) 2 WLR 902, Nagar Mahapalika 1966 SCC OnLine SC 1, Dr. D.C. Saxena Vs. Hon'ble The Chief Justice of India (1996) 5 SCC 216]**

xxii) The specific charge must be pointed out to the alleged contemnor. Mere annexing copy of order taking cognizance alongwith show-cause notice is not sufficient. The contemnor should not be left to search from the order as to what is the charge against them. Such notice will vitiate the proceeding. Any deviation from the prescribed rule is fatal to the proceeding. **[Nagar Mahapalika 1966**

SCC OnLine SC 1, Nandlal Thakkar 2013 Cri. L.J. 3391, Jayantilal Hiralal 1932 SCC OnLine Bom 121]

xxiii) The notice in **'FORM-I'** should be placed before the Court and after taking endorsement from the Judge the notice is to be dispatched**. [Mc Ilraith V. Grady [1968] 1 Q.B. 468].**

xxiv) The court taking the cognizance cannot exercise/import any personal knowledge in the order. Only material brought on record by way of law of pleadings should be taken in to consideration. The legal system is based on fundamental principle that *"a Judge only knows what is judicially known to him and not otherwise'.* It is prohibited for any Judge to import his personal knowledge, documents,information. *A Court can be approached in one way only, that is, by a judicial application in proper form.* Nothing happens private in the court. *Any instance of approach with reference to a pending case in any other manner is itself contempt on the part of informant.* If any document is taken on record without any refrence in the court record as to how that document reached the court is an offence against administration of justice. It would indeed be a travesty of all known principles of justice, if Judges and Magistrates are allowed to use their knowledge gained otherwise than by the means allowed to them by law. Court *cannot place reliance on personal knowledge of a Judge whose source has not been disclosed*. Extraneous consideration in the order vitiates the order on the doctorine of Fraud on Power and Legal Malice. The Judge using personal knowledge is disqualified to sign any order as he becomes the witness and informant. Such Judge need to be examined as a Judge. **[Ram Lakhan Sharma (2018) 7 SCC 670, Murat Lal1917 SCC OnLine Pat 1, Radhagobind Das 1953Cr.L.J1906, Kamlakar Bhavsar 2002 ALL MR (Cri.) 2640, Subramanyam**

Swami (2014) 12 SCC 344, Konda Sesha Reddy and others Vs. Muthyala China Pullaiah and another 1958 SCC OnLine AP 57Baboolal and Others Vs. Nathmal and Another AIR 1956 Raj 123 State of Kerala Vs. Aboobacker, 2006 (3) KLJ 165, Pradyuman Bist 2017 /MANU/SC, Woodward Vs. Waterbury 155 A. 825, Selvi J. Jayalalithaa Vs. State (2014) 2 SCC 401, Kalabharati Advertising Vs. Hemant Vimalnath Narichania (2010) 9 SCC 437, West Bengal State Electricity Board Vs. Dilip Kumar Ray AIR 2007 SC 976 Vijay Shekhar Vs. Union of India (2004) 4 SCC 666].

xxv) The Judge cannot hear a case related to himself and/or his family member(s) or where he is indirectly concerned. The Judge is automatically disqualified to hear a case where he is directly or indirectly connected. All the orders passed will stand vitiated. The **'Coram-Non-Judice'.** If despite request for recusal from Contempt proceedings he fail to recuse himself then the facet of rule of law is eroded. The Judge cannot sign any order including issuance of notice. Justice S.H. Kapadia did not signed the order issuing notice where allegations were against him. **[Supreme Court Advocate on Record Association (2016) 5 SCC 808 (5 – Judge Bench), Sukhdev Singh Sodhi's case 1954 SCR 454 ,P.K. Ghosh (1995) 6 SCC 744, Davinder Pal Singh Bhullar's case (2011) 14 SCC 770 , 'Restatement Of Judicial Values 1999' Deepak Kumar Prahladka Vs. Chief Justice Prabha Shanker Mishra (2004) 5 SCC 217 ,Re: C.S. Karnan (2017) 7 SCC 1,Amicus Curiae Vs. Adv. Prashant Bhushan (2010) 7 SCC 592, Chetak Construction AIR 1998 SC 1866].**

xxvi) Six Rules and judicial norms laid down by Justice Krishna Iyer, J.. for exercising contempt jurisdiction by a court In

Re: S. Mulgaokar should be followed before issuing show cause notice.

xxvii) When the matter already came up before higher authority and higher authority didn't took suo-motu cognizance of contempt, then it is a relevant consideration for dismissing the contempt proceeding as it will be against judicial propriety. **[Court on its own Motion Vs. DSP Jayant Kashmiri 2017 SCC OnLine Del 7387, Vishwanath vs E.S. Venkatramaih And Others 1990 Cri.LJ 2179].**

13. In **Shanthiniketan Housing Foundation, 2009(6)Kar L J 205,** it is ruled that,

" Conviction without trial would amount to deprivation of the personal liberty of a person within the meaning of Article 21 of the Constitution - Procedure established by law within the Article 21 is understood to mean the law prescribed by the legislature at any given point of time, Without prescribing the procedure no person can be deprived of his personal liberty, which means freedom from physical restraint of a person by incorporation. As the proviso to Section 27 did not provide any procedure before a sentence of imprisonment could be imposed it was struck down as unconstitutional. "

14. Nine Judge Bench in **Windsor Vs. Mcevigh 93 US 274 (1876)** had ruled that,

''A sentence of a court pronounced against a party without him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal. Such proceedings would not be entitled to be dignified with the name of a judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.' In common sense and common honesty, that the sentence of the tribunal which first punishes and then hears the party, castigatque, auditque. Such sentences 'as

mere mockeries, and as in no just sense judicial proceedings;' and are charecterized they 'ought to be deemed, both ex directo in rem and collaterally, to be mere arbitrary edicts or substantial frauds.' It is equally applicable and pertinent to proceedings in rem of a domestic court, when they are taken without any monition or public notice to the parties.

27.07.2020

Place – Mumbai

Adv. Ishwarlal S. Agarwal
Working President
National Co-ordination Committee