

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 8120 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MR. JUSTICE N.V.ANJARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SUO MOTU
Versus
YATIN NARENDRA OZA

Appearance:
MR SHALIN MEHTA, AMICUS CURIE
MS NISHA M THAKORE(3293) for High Court
MR ARVIND DATAR, SR. ADVOCATE WITH MR MIHIR JOSHI, SR.
ADVOCATE WITH MS. KRUTI M SHAH(2428) for the Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI
And
HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 26/08/2020

ORAL JUDGMENT

A press conference inviting the media persons was convened on 05th June, 2020, wherein the respondent made certain specific utterances and

statements showing the institution of the High Court of Gujarat in very low esteem and terming it as a gambling den. The respondent who called the press conference is the President of the Gujarat High Court Advocates' Association, was a designated senior advocate of the Bar.

2. This Court having *prima facie* found that the publication of the statements and utterances in the press conference and the representation made by the respondent were scurrilous and amounted to scandalizing or tending to scandalize, and to lower the authority of the High Court was constrained to issue a *suo motu* notice on 09th June, 2020 taking cognizance by way of the said act, utterances, statements and representations, under the Article 215 of the Constitution and under the Contempt of Courts Act, 1971.

2.1 In paragraph No.6 of the aforementioned order dated 09th June, 2020, kind of allegations in their gist leveled by the respondent were mentioned, reproducing them hereunder.

"6. Plain reading of details of press conference (as also available as nearest English translation at Annexure A herewith) held by Shri Yatin Oza indicate that he levelled following allegations broadly.

(1) corrupt practices being adopted by the registry of the High Court of Gujarat,

(2) undue favour is shown to high-profile industrialist and smugglers and traitors,

(3) The High Court functioning is for influential and rich people and their advocates,

(4) The billionaires walk away with order from the High Court in two days whereas the poor and non VIPs need to suffer,

(5) if the litigants want to file any matter in the High Court person has to be either Mr Khambhata or the builder or the company. This also was circulated in Gujarati daily Sandesh titled as 'Gujarat HighCourt has become a gambling den - Yatin Oza''

2.2 It was preceded by our observations in paragraph No.5 reading as under.

"5. We noticed the live press conference telecast on www.facebook.com by the President of the GHCAA by calling the journalists of various Print and electronic Media ostensibly to espouse the causes of Junior advocates and those litigants having no or less means, and made serious allegations of corruption against the registry and also categorically alleged Forum shopping in no uncertain terms without any valid, significant or true basis. He thus, with frivolous grounds and unverified facts targeted the Registry of the High Court which is working day and night against all odds, risking their lives and lives of their family members in present crisis and is also attempting to adopt to the new system of filing through emails in absence of availability of module of e filing and adjusting to remote hearing of cases. He has thereby questioned the very credibility of High Court Administration and raised fingers at some of the Honourable Judges indirectly with scandalous remarks of a few Advocates being successful in getting their matters circulated in three courts and also getting contemplated orders. The President in his "complete consciousness and with total responsibility" as declared by him in his interview called this August Institution a 'Gambling den' and an Institute which caters only to the litigants with means and money power, smugglers and those who are traitors. He also, for spreading sensationalism declared by his scandalous utterances that those who are not belonging to the Big industrial houses or

construction Industry or having innumerable means, the High Court would kick them away. These scurrilous remarks appear to have been made without any substantive basis and without any intent to know the truth as also without approaching the Honourable the Chief Justice for any inquiry as the Head of the Institution."

2.3 This Court registered the matter as *suo motu* contempt proceedings under Article 215 of the Constitution read with Section 15 of the Contempt of Courts Act, 1971. The subject matter of contempt, to be stated precisely, was the press conference and the utterances, statements representations which was made available in public domain <https://www.facebook.com/104701114611373/videos/573508096929988/> by the respondent in presence of journalists of different print & electronics media. The said facebook clip is made part of the record while issuing the *suo motu* contempt notice which would manifest the utterances, statements and representations by the respondent, the cognizance of which was taken by the Court as constituting "criminal contempt".

2.4 In order dated 09th June, 2020 notice under Section 17 of the Contempt of Courts Act came to be issued to the respondent which was accompanied by the order and the entire material on record, that is C.D. containing copy of the video of the live press briefing, the news item published in the vernacular daily regarding the press conference, making it returnable on 16th June, 2020. The restraint order against the respondent was also passed. The said paragraph No.17 is reproduced below.

"17. In the aforesaid premises, it deems it appropriate to issue following directions:

(1) The office shall register the matter as Suo motu Contempt Proceedings under Article 215 of the Constitution of India read with Section 15 of the Contempt of Courts Act, 1971 for the purpose of record.

(2) Let there be a notice issued under Section 17 of the Contempt of Courts Act, 1971 to Shri Yatin Narendra Oza on address available with the Registry or on finding his present address from the Bar Association so also on his email ID and through text message on his registered mobile phone Number. This notice shall be drawn in accordance with The Contempt of Courts (Gujarat High Court) Rules, 1984. The notice shall be accompanied by this order and other materials on record i.e. the CD containing the copy of video of his live press briefing as available in public domain at <https://www.facebook.com/104701114611373/videos/573508096929988/> with its nearest English translation (as annexed at Annexure I herewith) and the aforesaid news item published in Sandesh daily, to be made returnable on 16/6/2020. In the meantime and till the returnable date, Shri Oza is restrained from making of any scandalous remarks or holding official meeting and passing any resolution or circulating any material or communicating directly or indirectly either himself or through others in relation to the subject matter of contempt.

(3) The case of criminal contempt under Section 15 of the said Act is statutorily permitted to be heard and decided by the Bench of not less than two Judges as provided under Section 18 of the said Act. This Bench since does not have a regular roster to determine such matters under the Contempt of Courts Act, 1971, the office shall place this matter before the Chief Justice for necessary consideration.

(4) We also deem it appropriate to place before the Chief Justice for consideration at the hands of the full Court whether to divest the stature of respondent under contempt, of designation of a senior Counsel under the circumstances.

(5) A copy of this order shall be sent to the Chairman, Bar Council of Gujarat as also to the Chairman, Bar Council of India for necessary consideration.

(6) A CD shall be prepared by the Registry from the link given above with hash-value of the content and the same will be kept in a sealed envelope.

(7) The Court Master shall intimate this order to the Registrar Judicial for necessary action at his end."

3. Noticing the events thereafter for the purpose of completion of facts, the respondent filed Special Leave Petition before the Hon'ble Supreme Court of India on 11th June, 2020, in which the aforementioned order dated 09th June, 2020 taking *suo motu* cognizance of the criminal contempt and issuing interim restraint directions came to be challenged. The respondent however ultimately withdrew his challenge to culminate into following order passed by the Hon'ble the Supreme Court of India.

"Learned senior counsel appearing for the petitioner seeks permission to withdraw this petition.

Permission sought for is granted.

The special leave petition is dismissed as withdrawn."

3.1 In the meantime, the Full Court placed the matter before it for consideration on 10th June, 2020. Therein the Full Court unanimously resolved that having regard to the materials before the Full Court (Chamber) that proceedings for cancellation/withdrawal of conferment of designation of senior advocate to Shri Yatin Narendrabhai Oza,

senior advocate, be initiated forthwith. The process so initiated by the Full Court ended up with the decision of the Full Court dated 18th July, 2020. In the present proceedings of the *suo motu* contempt, the respondent filed affidavit-in-reply dated 10th July, 2020.

3.2 The respondent challenged the decision of the Full Court dated 18th July, 2020 whereby the Full Court taking view that the President of the Advocates' Association and the senior advocate was guilty of the conduct which has disentitled him to continue to be worthy of the designation of the senior advocate, the Full Court had reviewed its earlier decision dated 25th September, 1999 designating him as senior advocate and recalled the said decision. A Writ Petition (Civil) No.734 of 2020 challenging the aforesaid decision of the Full Court was filed. In the said writ petition, the Hon'ble Supreme Court of India passed order on 06th August, 2020. In that order, the Hon'ble Supreme Court *inter alia* observed thus, "*the contempt proceedings are still pending and in view of his unconditional apology both before the full court, the contempt proceedings and before us, we consider it appropriate that the contempt court itself first applies its mind to the issue.*" The Supreme Court also observed that petitioner will make representation to the Full Court. The proceedings of the present *suo motu* contempt stood adjourned in the meantime to the acceptance of request made on behalf of the respondent on that behalf.

3.3 Thus, in light of order dated 06th August, 2020 in the aforesaid Writ Petition (Civil) No.734 of 2020, the Supreme Court having recorded the submissions made before it and further having mentioned on the aspect of tendering of unconditional apology by the respondent, required the contempt court to first apply its mind to the issue. The matter was anxiously considered by us in that light and context.

3.4 After affidavit dated 10th July, 2020, the respondent-respondent filed his additional affidavit dated 11th August, 2020 reiterating that he had no intention whatsoever of scandalizing or lowering the authority of the High Court, and further requested to accept the unqualified apology he was tendering.

3.5 It may be stated that in course of the present proceedings, a member of the Bar Association and practicing advocate, filed Criminal Miscellaneous Application No.1 of 2020 seeking intervention in the present proceedings and in the alternative, praying to treat his application as information/notice of contempt utterance committed by respondent No.2 in respect of the material he produced along with the application. The material he produced was a letter dated 21st March, 2020 addressed by the respondent to Honourable the Chief Justice of India making serious allegations against one of the sitting Judges of this Court and further circulating the said letter on 07th June, 2020, two days after holding of press

conference, amongst the members of the Advocates' Association making tall claims. By our order dated 19th August, 2020, we did not permit the said applicant to become an intervener, however finding that the materials produced by the applicant were required to be examined for its likely conjunction with the subject matter of contempt, more particularly, in light of the defence raised by the respondent with regard to his utterance and statements in the press conference being subject matter of alleged criminal contempt in the present proceedings are taken on record.

4. We heard learned senior counsels Mr.Arvind Datar and Mr.Mihir Joshi assisted by learned advocate Ms.Kruti Shah for the respondent, whereas learned senior advocate Mr.Shalin Mehta assisted the Court as amicus curie. Learned advocate Ms.Nisha Thakore filed her appearance on behalf of the High Court. Learned advocate Mr.R.J. Oza with the respondent-respondent Shri Yatin N. Oza, also joined the proceedings through video conference. Since the Hon'ble Supreme Court of India in its order dated 06th August, 2020 has required this Court to apply its mind on the aspect of issuing unconditional apology, the learned counsels were extensively heard by the Court to examine the issue of apology. Learned senior advocate Mr.Datar prefaced to submit that each contempt is unique in itself, to proceed to submit and urge that the respondent has tendered unconditional apology himself and through his advocates which deserves to be accepted in light of

the order of the Hon'ble Supreme Court of India which has intended closure of the proceedings. On the aspect of apology, learned senior counsel extensively referred to the decision of Hon'ble Supreme Court in **MY Shareef v. Honourable Judges of the Nagpur High Court [AIR 1955 SC 19]**.

4.1 He also pressed into service these decisions: **Tarun Bharat Singh v. Union of India [(1995) 1 SCC 150]**, **Ramchandra Mahapatra v. State of Orissa [AIR 1983 SC 506]**, **Bal Thackeray, Editor Samna In Re [(1998) 8 SCC 660]**, **Chandan Mitra & Another In Re. [(1998) 8 SCC 554]**, **Sanjoy Narayanan, Editor-in-Chief v. High Court of Allahabad [(2011) 13 SCC 155]**, **Dinabandhu Sahu v. State of Orissa [AIR 1972 SC 180]**, **O.P. Sharma v. High Court of Punjab & Haryana [(2011) 6 SCC 86]** and **K. Ramdas Shenoy v. Chief Officer, Town Municipal Council, Udipi [AIR 1976 SC 994]**.

4.2 Learned senior advocate and amicus curie submitted that in legal pathology, the criminal contempt has four steps. According to his submissions, first step is commission of criminal contempt about which the Court has to arrive at a finding about its prima facie commission to take cognizance thereof. The next stage is apology, if any, of the alleged contemnor to judge whether it is bona fide. He submitted that timing of the apology, language of the apology and the genuineness are the factors which would determine the acceptability thereof or otherwise. It is the third stage to judge the bona fide of the apology. The fourth is the guilt

of the contemnor which will again followed by the decision on the punishment or remission thereof.

4.3 Learned amicus curie relied on the following decisions to buttress his submissions - (i) **Vishram Singh Raghubanshi v. State of U.P. [(2011) 7 SCC 776]**, (ii) **Bal Kishan Giri v. State of U.P. [(2014) 7 SCC 280]**, (iii) **Mahipal Singh Rana v. State of Uttar Pradesh [(2017) 7 SCC 1]** and (iv) decision of the Apex Court in **Reepak Kansal v. Secretary-General, Supreme Court of India** decided on 06th July, 2020.

5. Having thus heard both the sides and also on careful consideration of materials, it would be apt to refer to section 12 of the contempt of Court act at this stage; Section 12 of the Contempt of Courts Act which deals with the punishment for contempt of courts is relevant to be noticed while considering the issue whether the apology by a contemnor could be accepted or rejected. Section 12 reads as under.

"12. Punishment for contempt of court.-(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the respondent may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.- An apology shall not be rejected merely on the ground that it is qualified or conditional if the respondent makes it bona fide.

(2) Notwithstanding anything contained in any

other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.--For the purposes of sub-sections (4) and (5),

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

5.1 Thus, while mentioning about the punishment which could be inflicted for commission of contempt, the Proviso says that the respondent may be discharged or the punishment awarded may be remitted on an apology being made to the satisfaction of the Court. The explanation appended says that an apology shall not be rejected merely on the ground that it is qualified or conditional if the respondent makes it *bona fide*. The plain reading of the Section and the aspect of acceptance or rejection of the apology mentioned therein shows that it is the element of *bona fide* in the apology, which has to reign.

5.2 In other words, proviso to this Section clearly provides for the discharge or the remission of punishment awarded on the apology being made to the satisfaction of the court. Explanation to this section as mentioned above quite unequivocally states that that an apology shall not be rejected merely on the ground that it is qualified or conditional if the respondent makes it *bona fide*.

6. The question that arises is whether the act provides for any guidance as to what amounts to *bona fide* apology. There appears to be no guidance or parameters under Section 12 or under the act in this regard although the evolved standards are by judicial pronouncements which are submitted by the Amicus

curiae.

7. The aspects arising may be broadly enlisted as under.

(i) whether the apology is tendered at the first available opportunity or at the earliest point of time?

(ii) the language of apology, whether it is conditional or unqualified/ unconditional and whether is it filled with remorse/ contrition?

(iii) is apology bona fide or tendered to escape the route of punishment?

(iv) is the act of contempt done for the first time or is that a repeat performance?

8. If one looks at affidavit in reply on behalf of the respondent, it is stated on the 10th July, 2020 in the first paragraph on oath that he holds this court in the highest regard and it was not his intention to scandalize or lower the authority of the court in any manner. He has not cast the slightest aspersions or made any insinuation against any judge of this court in his statements. He also expressed that he absolutely has no complaints with the judges who have never favoured anybody. His grievance was against the functioning of the registry to which he honestly believed that criticism of functioning of registry may not amount to contempt of court however, he realised that mode and manner of voicing

grievances was unwarranted and he also stated that he ought not to have alleged corrupt practice in the registry. The very use of terminology of gambling den he attempted to explain that this was with respect to the fate of the matters in the registry where some matters are and some are not listed. For this and for all his emotional utterances, according to him, which may amount to the slightest contempt of this court, he tendered his unqualified apology.

8.1 At paragraph No.14 it is sought to be explained that because of pandemic and closure of physical courts, he received as the President of the bar incessant calls from the lawyers members expressing their dismal conditions and because of that, he was passing through sleepless nights and was terribly disturbed within. The anguish in his utterances, use of justified language needs to be viewed in this background and may kindly be taken in its stride. He was not in any manner concerned with any matter in respect of which the grievance has been made. There are number of instances where the courts have turned a forgiving eye to criticism of itself and this may be done in the instant case also as his regrets are sincere and if his actions constituted the slightest contempt of this court, he unconditionally apologises for the same. He also added that his respect for the court is self evident from his address on the occasion of 60 the year of establishment on the 1st May 2020.

8.2 Mr.Oza also apologised before this court at

the time of submissions of his Learned Counsels and reiterated what he stated on oath. We also note that the Learned senior Advocate Mr.Datar also while making his submissions ensured on behalf of himself and Learned senior Advocate Mr.Mihir Joshi that Mr.Oza shall not repeat any such act ever in the future and they being his counsels with responsibilities make such a statement at bar.It is their emphasis that right from the beginning unqualified apology has been tendered by Mr Oza even when the matter went to the full Court. He suffered enough and also learnt lessons very heavily therefore, the court needs to take into account the order of the Apex court which was aware of his past incident and yet chose to relegate him to this court. His additional affidavit filed on 11th August, 2020 also reiterates his words of regrets.

9. Profitable would be at this stage to consider the jurisprudence of apology tendered by the alleged contemnor at the initial stage of proceedings or after once the court holds him guilty. We, at the outset, need to specifically observe that it is not sine qua non to hold a person guilty before the apology is accepted as the provision of the contempt of courts Act itself permits both eventualities as mentioned above in section 12 of the said Act, to discharge an alleged contemnor, if apology is tendered before further proceeding with the matter or for remission of punishment at the end of full fledged trial/proceedings. This exercise is essentially to find out whether the apology tendered

termed as unqualified and unconditional as well as prompt requiring acceptance by holding the same as bona fide and consequently, give quietus to the issue of Contempt or proceed further in this matter.

9.1 In **MY Shareef (supra)** the contempt proceedings arose against one Dr.Kathalay who is doctor in law and author of legal works, upon his making of application for transfer of his case from a court. In the facts of that case, the Supreme Court accepted the apology while issuing strong warning to the respondent as well as the counsels appearing. In the said decision, the Apex court had directed the contemnors/ advocates to apologise before the High court which held them guilty, when they expressed unqualified apology before the Apex Court. The High court did not find such apology unqualified and sincere and did not purge them of contempt. The court held that apology and explanation are both incompatible and apology is not the weapon of guilty to purge the contempt and yet when it found that the matter was not so patent as would on the face of it amount to contempt, accepted the apology tendered.

9.1.1 Apt would be to reproduce relevant findings and observations of the Apex court:

"7. On the 12th May, 1954, when the appeal was heard by this Court, we recorded the following order:-

"The appellants have tendered an unqualified apology to this court and to the High Court, and they are prepared to purge the contempt for which they have been convicted. In our opinion, the apology is a sincere expression of their regret for what happened in court at the time the transfer application was

made and for the allegations made therein. We therefore adjourn this appeal for two months and direct that the apology tendered here be tendered to the Division Bench before which the contempt is said to have been committed. We are sending it to the High Court with the full confidence that the learned Judges will consider the apology in the spirit in which it has been tendered and they will pass appropriate orders and send an intimation to this court as to what orders they pass."

When the case went back to the High Court, it again took an unfortunate turn. The learned Judges posed the question that they had to consider in this form "The question is whether remission of the punishment awarded is called for in view of the statement now filed by the contemnors," and it was answered thus:

"We are constrained to observe that the spirit in which the apology was tendered here is not much different from that originally shown. The idea of the contemnors is that because they have filed the apology as directed, they have a right to expect the acceptance of it by the court. How else can the absence of any prayer or what the contemnors desire be explained? We record that there was hardly anything apologetic the way the apology was tendered.....

We neither gave the extreme penalty which we might well have given, nor did we give the maximum of the lesser penalty. But for the manner of justification and the contumacy, there might not have been a sentence of fine at all."

Having approached the matter thus, the learned Judges referred to a large number of cases for the admitted proposition of law that a "sincere apology does not entitle a contemnor as of right to a remission of the sentence." It was further thought that acceptance of apology would lead to an invidious distinction being made in the case of two advocates and Zikar. In the result the apology was not accepted and the report concluded with the following observations :-

"If in the circumstances of this case the apology were to be accepted, we would be encouraging the notion that it is the contemnors's right to get his apology accepted when he chooses and in whatever manner he tenders even in a case where he has

aggravated the original offence. We will be unsettling established principles, and setting a bad precedent. Above all, we would be dealing a blow to the authority of the court, the consequence of which cannot be viewed with equanimity."

xxx xxx xxx

10. The proposition is well settled and self-evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. The appellants having tendered an unqualified apology, no exception can be taken to the decision of the High Court that the application for transfer did constitute contempt because the judges were scandalized with a view to diverting the due course of justice, and that in signing this application the two advocates were guilty of contempt. That decision therefore stands.

11. The fact however remains, as found by the High Court, that there was at the time these events happened considerable misconception amongst a section of the Nagpur Bar about advocates' responsibilities in matters of signing transfer applications containing allegations of this character. It cannot be denied that a section of the Bar is under an erroneous impression that when a counsel is acting in the interests of his client, or in accordance with his instructions he is discharging his legitimate duty to his client even when he signs an application or a pleading which contains matter scandalizing the Court. They think that when there is conflict between their obligations to the Court and their duty to the client, the latter prevails. This misconception has to be rooted out by a clear and emphatic pronouncement, and we think it should be widely made known that counsel who sign applications or pleadings containing matter scandalizing the Court without reasonably satisfying themselves about the prima facie existence of adequate grounds there for, with a view to prevent or delay the course of justice, are themselves guilty of contempt of Court, and that it is no duty of a counsel to his client to take any interest-in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in

such applications. Once the fact is recognized as was done by the High Court here, that the members of the Bar have not fully realized the implications of their signing such applications and are firmly under the belief that their conduct in doing so is in accordance with professional ethics, it has to be held that the act of the two appellants in this case was done under a mistaken view of their rights and duties, and in such cases even a qualified apology may well be considered by a Court. In border line cases where a question of principle about the rights of counsel and their duties has to be settled, an alternative plea of apology merits consideration; for it is possible for a judge who hears the case to hold that there is no contempt in which case a defence of unqualified apology is meaningless, because that would amount to the admission of the commission of an offence. In this case the learned judges themselves had to wade through a large volume of English and Indian case-law before they could hold that the act of the appellants constituted contempt and thus it could not be said that the matter was so patent that on the face of it their act amounted to contempt. Moreover, it appears from the proceedings that the counsel were genuinely under the belief that their professional duties demanded that, when their client was under a bonafide belief that the Court was prejudiced against him and decided to apply for transfer, the were bound to take his brief and sign the application. We cannot help observing that the admitted reference by the judges to the Supreme Court in their remarks during the course of the hearing was unfortunate and seems to indicate an unnecessary and indecorous sensitiveness which may well have been misunderstood by the party and the advocates. The counsel seem to have genuinely believed that they were right in what they did, though as a matter of fact if they had studied the law more deeply, they would not have done so. In these circumstances it cannot be said that what they did was wailful and their conduct in getting the law settled in this matter by raising the defence that they did was contumacious. The authorities relied upon by the High Court have no application to cases of this character. How else is the validity of a defence of this kind to be settled, except by an argument that the counsel was entitled in the interests of his client to advise a transfer and give grounds for that transfer which were bona fide believed by the client. Every form of defence in a

contempt case cannot be regarded as an act of contumacy. It depends on the circumstances of each case and on the general impression about a particular rule of ethics amongst the members of the profession. The learned Judges, as already said, have themselves said that such an impression was prevalent since long time amongst a section of the Bar in Nagpur. It was thus necessary to have that question settled and any effort on the part of these two learned counsel to have that point settled cannot be regarded as contumacy or a circumstance which aggravates the contempt. We think that the expression of regret in the alternative in this case should not have been ignored but should have been given due consideration. It was made in the earliest written statement submitted by the counsel and cited above. Once however the High Court found that they were guilty of contempt, they would have been well advised to tender an unqualified apology to that Court forthwith. But perhaps they were still under the delusion that they were right and the Court was in error, and that by coming to this Court they might be able to have the question of principle settled as they contended. As soon as we indicated to the learned counsel that they were in error, they and their counsel immediately tendered an unqualified apology which, as already indicated, was repeated again in absolute terms at the second hearing. We have not been able to appreciate why the learned Judges of the High Court should have doubted the genuineness of this apology. It certainly was not the object and could not be the object of the learned Judges of the High Court to humiliate senior counsel and to expect something more from them than what they had already done in this Court. While unhesitatingly deprecating very strongly the conduct of the appellants in scandalising the Court by becoming parties to an unnecessary and untenable transfer application, we still feel that in the matter of measure of punishment the High Court should have after an unqualified apology was tendered taken a different view. We have no doubt that whatever the learned Judges of the High Court did in this case, they did in the firm belief that the dignity of the Court had to be maintained and the members of the Bar, howsoever big or learned, cannot be allowed to scandalize the judges or to divert the course of justice by attempting to take a case out from one Bench to another Bench of the Court when they find that the Bench is expressing opinions seemingly adverse to their clients. We have

firm hope that this kind of conduct will not be repeated by counsel in any High Court in this country, and no more test cases of this kind would have to be fought out. In the peculiar circumstances of this case and in view of the circumstance that the learned Judges themselves were of the opinion that there would not have been a sentence of fine at all if there was no plea of justification and there was no contumacy, we are of the opinion that the unqualified apology was sufficient to purge the contempt committed by the two appellants as we have reached the conclusion contrary to that arrived at by the High Court that the plea of justification in this case did not amount to contumacy. It has also to be kept in view that condemnation for contempt by a High Court of senior members of the Bar is itself a heavy punishment to them, as it affects them in their professional career and is a great blot on them. There has been nothing said in the lengthy judgment of the High Court that these counsel in their long career at the Bar have ever been disrespectful or discourteous to the Court in the past. This one act of indiscretion on their part in signing the application should not have been viewed in the very stringent manner in which the High Court viewed it in the first instance and viewed it again after we had sent the case back to it. It is not the practice of this Court in special leave cases and in exercise of our over-riding powers to interfere with a matter which rests in the discretion of the High Court except in very exceptional cases. After a careful consideration of the situation that arises in this case we have reached the decision that the dignity of the High Court would be sufficiently upheld if the unqualified apology tendered in this Court in the first instance and reiterated in absolute terms by Dr. Tek Chand again at the next hearing is accepted and that apology is regarded as sufficient to purge the contempt. The matter has become very stale and the ends of justice do not call for maintaining the punishment of fine on two senior counsel for acting wrongly under an erroneous impression of their rights and privileges."

9.2 In **Tarun Bharat Singh (supra)**, the Apex court accepted unconditional apology on the strength of robust facts in the matter which deserve reproduction,

"11. It is a matter of extreme regret and serious concern that an educated person, like Dr Dublish should have behaved in the above manner with an advocate of this Court who was appearing for the petitioner-organisation in Writ Petition No. 509 of 1991. The conduct of Dr Dublish was certainly offensive. We would have taken serious note of the same but for the circumstance that he has tendered an unconditional apology for his behaviour which he attributes to his agitated state of mind caused by, what according to him, was a totally unjustified, abrupt and unceremonious termination of the services of himself and his wife besides some other employees by the petitioner-organisation on that day. He says that he and other similarly placed employees were protesting against the same at the office premises of the petitioner-organisation. It so happened that Dr Dhavan's visit coincided with the said event. It also appears that some persons at that spot were the men of mine-owners who were demonstrating against the petitioner-organisation fighting the cause of environment and both these groups got mixed up. The petitioner-organisation, no doubt, says that they did not terminate the services of Dr Dublish but that he himself voluntarily resigned the job. While we do not wish to enter into the question whether it was a case of termination or resignation, what appears relevant is that Dr Dublish thought that he has been unjustly treated and on which account, he was highly agitated on that day and resorted to said agitational methods soon upon knowing about the loss of his job. In that agitated state of mind, Dr Dublish behaved offensively towards Dr Dhavan as well, which behaviour is without a doubt condemnable and for which he regrets now. There is yet another circumstance, viz., Dr Dublish has since left that area and is now employed at Jaipur. He has stated that he is in no manner connected with the petitioner-organisation, much less with the mine- owners or with the dispute concerning mining in Sariska Tiger Reserve area.

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13. So far as Shri Ratan Katyani is concerned, he has unconditionally tendered an unqualified apology. Having regard to the fact that he too is a member of the legal profession and a social activist in that area, we accept his unconditional apology. We are sure that Shri Katyani would be careful in future and would give no occasion for any such complaint. Interlocutory Application No. 13 of 1993 is ordered accordingly. No costs.

9.3 In **Dinabandhu Sahu (supra)** it is emphasized

that this court needs to be convinced about the sincerity of the apology asked for by the contemnor. In this case, a representation petition was preferred before the Chief Justice and his companion Judges praying that Their Lordships may consider if it amounts to contempt of High Court and to take whatever steps the law of the land calls for. It was in respect of the flag hoisting function held in the High Court of Orissa on the Republic Day January, 26. At the function the Governor of Orissa, The Chief Justice, the President of Advocates' Association and Advocates of the High Court and Mr. Dinabandhu Sahu, who was the ex-Minister and ex-Advocate General of Orissa were present. At that function the Chief Justice made a speech with a particular reference to the Governor, the Chief Justice also referred to the former Chief Minister of Orissa and said that he played an effective part in having separate High Court for Orissa. Some of the parts of the speeches gave rise to certain misunderstanding in the public mind and particularly among the rival political factions in the Orissa State. The Commission of Inquiry had been appointed by the Government of Orissa, which was headed by Mr. Justice H.R. Khanna of Delhi High Court (as His Lordship then was) to inquire into the conduct of 15 persons or others, who were Ministers between 1961 to 1966. According to this, the representative petition that statement scandalizes the Orissa High Court and its Hon'ble Judges undermining its dignity in the estimation of public and impeaching its impartiality in

dispensation of justice.

9.3.1 In this background, the apology tendered was being considered. Before the Apex Court also the matter was fully argued and the learned advocate on behalf of his clients made the statement. The Court examined whether the apology tendered was the apology or something more than the apology. The Court held that the contempt, if any, would be approached in the manner in which the apology was given and the matter should have been set at rest. It is no part of the judicial function to be vindictive or allow any person or consideration to enter into the discharge of its function.

9.4 **Bal Thackeray (supra)**, **Chandan Mitra (supra)** and **Sanjoy Narayanan (supra)** are the decisions cited for the proposition that the apology tendered is with undertaking, it should normally be accepted.

9.5 In **O.P Sharma (supra)**, it was a case where derogatory and abusive language was used by advocate against a Judicial Magistrate on his failure to obtain desired order. There was a *suo motu* action against him and he was sentenced by the High Court. He tendered unconditional apology on affidavit, where the Court held that acceptance of apology from a contemnor should only be a matter of exception and not a rule. The Apex Court has emphasized as to what is the role and status of lawyers at the beginning of sovereign and democratic India. The Court held that they are considered as intellectual among the elite

and the social activists amongst down-trodden. The role of lawyers in the framing of the Constitution also was specially mentioned. The Court also held that lawyers are the officers of the Court in the administration of justice and Bench as well as the Bar has to avoid unwarranted situation or trivial issues that hamper the cause of justice and are in no once interest.

9.5.1 The court also emphasised that a lawyer cannot be a mere mouth piece of his client and cannot associate himself with a client in maligning a judicial officer, merely because his client failed to secure any desired order from a particular officer. The Court also went to an extent of saying that a deliberate attempt to scandalize the Court which would shake the conscience of the litigating public in the system would cause a very serious damage to the name of the judiciary.

"8. Section I of Chapter-II, Part VI titled "Standards of Professional Conduct and Etiquette" of the Bar Council of India Rules specifies the duties of an advocate towards the Court which reads as under:

"Section I - Duty to the Court

1. An advocate shall, during the presentation of his case and while otherwise acting before a court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

2. An advocate shall maintain towards the courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

"17. The role and status of lawyers at the beginning of Sovereign and Democratic India is accounted as extremely vital in deciding that the Nation's administration was to be governed by the Rule of Law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the Court in the administration of justice.

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20) In R.D. Saxena vs. Balram Prasad Sharma, (2000) 7 SCC 264, this Court held as under:

"In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country....."

28. In M.B. & Sanghi, Advocate vs. High Court of Punjab & Haryana, (1991) 3 SCC 600, this Court took notice of the growing tendency amongst some of the Advocates of adopting a defiant attitude and casting aspersions having failed to persuade the Court to grant an order in the terms they expect.

Holding the Advocates guilty of contempt, this Court observed as under:

"The tendency of maligning the reputation of Judicial Officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped fat the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system the damage caused is not only to the reputation of the concerned Judge but also to the fair name of the judiciary,

Veiled threats, abrasive behavior, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned Judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding Judicial Officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system."

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30. In the case of [R.K. Garg Advocate v. State of Himachal Pradesh](#), (1981) 3 SCC 166, where a lawyer hurled a shoe on the judicial officer which hit him on the shoulder, this Court opined that there is no doubt that the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive.

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32. A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client in maligning the reputation of judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalize the Court which would shake the confidence of the litigating public in the system and would cause a very serious damage to the name of the judiciary.

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34. Similar affidavits have been filed by other appellants reiterating what they had stated before the High Court and the Magistrate concerned tendering unconditional apology for the incident which took place in the Court at Faridabad. They also assured

this Court that they would maintain good behaviour in future. Though sub-Section 1 of Section 12 of the Act enables the court to award simple imprisonment for a term which may extend to six months, proviso empowers the court that respondent may be discharged or punishment awarded may be remitted on apology being made to the satisfaction of the court. In fact, Explanation to this Section makes it clear that an apology shall not be rejected merely on the ground that it is qualified or conditional if the respondent makes it bona fide.

35. Considering the plea made by Mr. Ram Jethmalani, learned senior counsel and President of the Supreme Court Bar Association, in tendering unconditional apology, recorded even at the initial stage before the High Court and before the Magistrate, Faridabad before whom the unwanted incident had occurred and the present affidavits filed before us once again expressing unconditional apology and regret with an undertaking that they would maintain good behaviour in future and in view of the language used in 'proviso' and 'explanation' appended to [Section 12\(1\)](#) of the Act, we accept the affidavits filed by all the Appellants.

36. Shri Satish Kumar, owner, publisher, printer and Editor of 'Majdur Morcha' newspaper has also filed affidavit before this Court similar to one by the other appellants. Considering the fact that the newspaper has merely published what had happened in the Court, we are of the view that it would be just and fair to apply the same relief to him also. We reiterate that acceptance of an apology from a contemnor should only be a matter of exception and not that of a rule.

37.A Court, be that of a Magistrate or the Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself the responsibility of dispensing justice is ought to be maintained. All the functionaries, be it advocates, judges and the rest of the staff ought to act in accordance with morals and ethics.

38. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that

the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system.

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40. As a rule, an Advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and actions rather than being adamant on an unwarranted and uncalled for issue."

42. In the light of the above discussion and reasons which we have noted in the earlier paras and as an exception to the general rule, we accept the unconditional apology tendered in the form of affidavits in terms of proviso to [Section 12\(1\)](#) of the Act and discharge all the appellants."

9.5.2 This judgment makes it abundantly clear that the advocate has a huge responsibility towards the society. He is also expected to work with utmost sincerity and respect. He should be discreet and his conduct should be conforming to the requirement of the law by which he plays a vital role in the preservation of the society and justice system. He is also under an obligation to uphold the rule of law and ensure that public justice system is enabled to function at his full potential. Any violation of the principle of professional ethics by an advocate is unfortunate and unexpected. Ignoring even a minor violation militates against the fundamental foundation of the public justice system. He should be dignified in his dealing to the Court, to his fellow lawyers and to the litigants. Thus, what is expected of him is integrity in abundance and unflinching credibility. He also has a duty to enlighten and encourage juniors in profession. Legal profession for

him should have an element of service, where he faithfully abides by the standards of professional conduct and etiquettes prescribed by the Bar Council of India in its Chapter II part 4. The Apex Court however, eventually accepted the apology considering the language used in the proviso and explanation appended to section 12(1). The publisher, printer, editor of the newspaper, who had published this event tendered an apology by stating that he merely published what had happened in the Court.

9.6 In **L.D. Jaikwal v. State Of U.P [(1984) 3 SCC 405]**, the Court was more than emphatic that merely because the appellant tendered his apology, he should not go unpunished, otherwise all the persons would intimidate a Judge by make grossest imputation against him, scandalize him and later tender formal empty apology, which costs him practically nothing. If such an apology has to be accepted as a rule, and not as exception, it would amount to issuing licence to scandalize the Courts and commit a contempt of Court with impunity. Even the judges will not feel free to decide the matters on account of fear of being scandalized and persecuted by an advocate, who does not mind making reckless allegations if the Judge goes against his wishes. If such a situation were to be countenanced and cow down the Judges which may have a tendency to make them fall in line of their wishes by threats of character assassination and persecution and such kind of advocates would be preferred by the litigants, over those advocates who are mindful of professional ethics and believe in

maintaining the decorum of Courts. The Apex Court also went to express that the very function of the Court is bound to displease one side since he needs to decide the matters against one or the other party and if the fact that he renders decision which is resented by a litigant or his lawyer to expose him to such a risk, would sound a death-knell of the institution. Thus, the Court held that it cannot adopt an attitude of unmerited leniency at the cost of principles and at the expense of the Judges, who have been scandalized. The Court further held that it is not very difficult to show magnanimity when someone else is victim rather than oneself and it is more difficult to resist the temptation to do so rather than to adhere to the nail studded pat of duty.

9.6.1 The Court also held in the above decision that freedom of expression is vital to the maintenance of free society and it is also essential to the rule of law and liberty of citizens. Advocates or the party appearing in person, therefore, is given liberty of expression, but, they equally owe countervailing duty to maintain dignity, decorum and order in the Court proceedings or judicial processes. Any adverse opinion about the judiciary should only be expressed in a dignified manner and respectful language. The liberty of free expression is not to be confused with license to make unfounded allegations against any institution much less the judiciary.

9.6.2 Relevant findings and observations are

reproduced for profitable use of the same;

"6. We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a 'licence' to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the of his conscience on account of the fear of being scandalized and prosecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts.

7. We have yet to come across a Judge who can take a decision which does not displease one side or the other. By the very nature of his work he has to decide matters against one or other of the parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. A line has therefore to be drawn somewhere, some day, by someone. That is why the Court is impelled to act (rather than merely sermonize), much as the Court dislikes imposing punishment whilst exercising the contempt jurisdiction, which no doubt has to be exercised very sparingly and with circumspection. We do not think that we can adopt an attitude of unmerited leniency at the cost of principle and at the expense of the Judge who has been scandalized. We are fully aware that it is not very difficult to show magnanimity when someone else is the victim rather than when oneself is the victim. To

pursue a populist line of showing indulgence is not very difficult -- in fact it is more difficult to resist the temptation to do so rather than to adhere to the nail-studded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. We, therefore, cannot take a lenient or indulgent view of this matter. We dread the day when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disgrace on him with impunity, if any of his orders, or the decision rendered by him, displeases any of the advocates, appearing in the matter."

9.7 Mere apology may be no answer to an act, utterance or publication of contempt which is grave in nature so as to scandalize the majesty, dignity and authority of the Court. The school of thought of "Give slap, say sorry and forget" was not endorsed to by the Supreme Court in **L.D. Jaikwal (supra)**. In **T.N. Godavaram v. Ashok [AIR 2006 SC 2007]** the Apex Court underlined that the apology should not be a paper apology and that the expression of sorrow has to come from the heart and not from the pen. It is one thing to say sorry, it is another to feel sorry, stated the Supreme Court. In **Bal Kishan Giri (supra)** the Supreme Court observed that apology tendered need not to be accepted as a matter of course. It stated that if the words "*are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted*". In our view, it is from the totality of facts and circumstances and the aspects highlighted herein, that Court would be able to come to a conclusion whether the apology tendered lacks penitence or not and whether it is a paper or real

apology.

10. The common theme that arises in these judgments tendered for and on behalf of the contemnor about the sincerity of the apology asked by the contemnor at the time of hearing, can be accepted provided it is found to be bona fide. The words bona fide shall need to be regarded in its literal meaning as also in spirit.

10.1 There are certain broad aspects which emerge from various case laws discussed above, on this aspect of apology and they also deserve mention at this stage. The case laws on the subject expect magnanimity of the court as well as not to be extra sensitive in its approach. This court also needs to be alive to the aspect as to whether the contemnor realised the mistake since he ensures not to repeat such acts and whether such realization is genuine and not a mere empty formality.

11. Learned senior advocate Mr.Datar prefaced to submit that each contempt is unique and urged that the respondent has tendered unconditional apology himself and through his advocates which deserves to be accepted in light of the order of the Hon'ble Supreme Court of India which has intended closure of the proceedings. On the aspect of apology, learned senior counsel extensively referred to the decision of Hon'ble Court in **MY Shareef (supra)** and also urged that had the Apex court not convinced of genuineness of the conduct and unqualified nature of apology, it

would not have directed Mr.Oza to have approached this court, for it to apply its mind to the issue.

12. At this stage, it would not be out of place to make a mention of the fact that in the affidavit in reply as well as in the submissions made before this court also it has been emphasised that the respondent holds the Judges of this court in the highest esteem and his outburst was meant against the registry alone and not the judges, for which also he admitted that cautious approach could have been adopted. This is explained possibly to shield oneself from the plethora of decisions on scurrilous attack on judiciary. This court must not be oblivious of the holistic view of entire episode and the registry also cannot be permitted to be used as a pretext to attack on the administration of justice as it is the knowledge of even a commoner that dispensation of justice is not the function of registry but of the judges exclusively and when serious announcements are made of doors of justice being closed for all others except only rich and resourceful litigants, irreparable and irreversible damage is prima facie caused. It is to be reminded that the registry carries on the function as an effective part and administrative arm of the justice delivery system.

13. As far as the material which were taken on record pursuant to our order dated 19th August, 2020 in Criminal Miscellaneous Application No.1 of 2020 the contents whereof which make a bare reading are concerned, we have chosen not to advert to the same

nor we have found it necessary to express any opinion in respect of the conjunction or relation thereof with the subject matter of contempt. When we have held as above in respect of unconditional apology tendered by the respondent, the said materials have not gone into our consideration. The same has remained on record without being utilization thereof as such in our present decision.

14. We are neither satisfied with the genuineness of apology tendered before this court nor convinced of its bona fide nature of such apology and therefore, choose not to accept the same, and to discharge the respondent at this stage of proceedings. We agree with the submissions of the learned Senior Counsel Mr. Datar that every matter of Criminal contempt is unique in its facts and circumstances and no two can be equated for any purpose and the law on the subject requires applicability to the facts of every case. While so holding we are neither losing sight of the magnanimity expected of the court initiating the proceedings of contempt being an initiator and also an adjudicator before whom contemnor tenders apology. Nor are we acting with unwarranted sensitivity. Nor are we guided by feelings of conceit or positional supremacy, unacceptable in any person trusted by the Constitution with such vital powers of contempt.

14.1 We would remind ourselves at this juncture the wisdom and guidance of the Apex court as held in **Debabrata Bandyopadhyay v. state of West Bengal**

[(1969) 1 SCR page 304], where it found approach of the High court unacceptable by these words "A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious Conduct not explainable otherwise, arises, that the contemnor must be punished. It must be realised that our system of courts often results in delay of one kind or another. The remedy for it is reform and punishment departmentally. Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged."

15. While regarding the broad parameters which are enlisted above and also considering deeply entire case laws on the subject, it would be apt to regard the chronology of events that have taken place only for the purpose of examining the issue of 'unqualified and unconditional' apology and whether acceptance of the same is desirable for the same has emerged from remorse and contrition.

16. The press conference on the 5th June 2020 was organised at the personal place and premises of the President of the Bar Association at the time when

all restrictions due to Pandemic were already prevalent, for ventilating the cause of junior members of Bar, without first approaching the Honourable Chief Justice of the State who also has entire administration of the state in his hands. Purportedly for redressal of cause concerning functionality of the courts and the difficulties noticed in the working of the court through the video conferencing, the invitation had been extended to all concerned journalists, connected with print and electronic media, and this meeting was organised which was also live streamed on Facebook for everyone to watch and thus the fullest publicity was desired. This according to the respondent was a very turbulent and disturbing phase which resulted in his emotional outbursts.

16.1 We cannot help but make a mention here that the entire proceeding was telecast live which we have made a part of our notice of contempt for the same to be viewed for its intensity, virulence and the intent declaring this august institution to have lost its trust of all concerned with no possibility of the litigants without any means and connection to get justice in their cause. we are dismayed at the manner in which the entire meeting was conducted which also gives a glimpse of impunity with which the possibility of notice of contempt and contempt action were also referred to before the media persons, it can be prima facie noticed that this entire sequence of events is bereft of any emotional outburst and contrarily, appears prima facie to be more guided by

a definite and purposive object of attacking the Institute. Not only the present strength of the Bar and Bench and the members of Registry but all those who have in the past 60 years have given their toil and blood to this institution to bring it to the present level, ought to have been regarded.

17. At this stage it may be reminded that the Apex court in the recent judgment in similar such attack on Registry of the Apex court in case of **Reepak Kansal v. Secretary General, Supreme Court of India**, being **Writ Petition No.541 of 2013** decided on 06th July, 2020, has held and observed thus;

"18. We see, in general, it has become a widespread practice to blame the Registry for no good reasons. To err is human, as many petitions are filed with defects, and defects are not cured for years together. A large number of such cases were listed in the recent past before the Court for removal of defects which were pending for years. In such situation, when the pandemic is going on, baseless and reckless allegations are made against the Registry of this Court, which is part and parcel of the judicial system. We take judicial notice of the fact that such evil is also spreading in the various High Courts, and Registry is blamed unnecessarily for no good reasons....."

17.1 The Apex Court noted elsewhere in the judgment,

"76. Soul searching is absolutely necessary and the blame game and maligning must stop forthwith. Confidence and reverence and positive thinking is the only way. It is pious hope that the Bar Council would improve upon the function of its disciplinary committees so as to make the system more accountable, publish performance audit on the disciplinary side of various bar councils. The same should be made public. The Bar Council of India under its supervisory control can implement good ideas as always done by it and would not lag behind in cleaning process so badly required. It is to make the profession more noble and it is absolutely necessary to remove the black sheeps from

the profession to preserve the rich ideals of Bar and on which it struggled for the values of freedom. It is basically not for the Court to control the Bar. It is the statutory duty of Bar to make it more noble and also to protect the Judges and the legal system, not to destroy the Bar itself by inaction and the system which is important pillar of democracy." (emphasis supplied)

18. One cannot be oblivious that this institution for its credibility, trustworthiness and its independence, continues to rule in the hearts of common man to be its last resort against every kind of arbitrariness and violation of fundamental and human rights and to term it as a gambling den, as the Senior Advocate and the President of the Bar with authority, facts and figures and in the meeting of Press with 'all requisite responsibilities' could not be said prima facie to be the result of emotional upsurge or a momentary phase.

18.1 We are not here to remind in this order the onus of the member of the Bar and also the additional responsibilities of theirs as the Apex court has already in the decision of **O.P. Sharma (supra)** and other such decisions has emphatically reminded that, quoting even the act and the rules of the Bar Council of India and holding that even a minor violation militates against the fundamental of the public justice system. Any attempt to scandalise the court and browbeat the judges and thereby undermining the authority of the institution in our opinion cannot be taken lightly. As held in **L.D. Jaikwal (supra)**, it is not the law that apology even if termed to be unconditional, once tendered to this court, shall need to be accepted even if the court is not

satisfied of its having been made bona fide.

19. Soon after the notice of contempt was issued by this court on 09th June, 2020, the respondent approached the Apex court seeking the quashment of notice and although it is right of every litigant to approach the highest court of the country against any action of the court below, this aspect is to be examined when the timings of tendering the apology assumes importance. Before this court of course in the reply as mentioned hereinabove at para 1 in para 14, it is sounded that the applicant is remorseful and tenders unconditional apology, the fact remains that after the Apex court chose not to entertain his petition, he approached this court and that too, after proceedings against him have been initiated independently by the full court in connection with conferring of the title of senior Counsel.

20. It is not to be overlooked that the present is not the solitary instance. Although we have at the time of issuance of notice not regarded any of these past incidents except the reported decision of the Apex court of the year 2016. That should not preclude us from considering repeated incidents of contempt and apology for the purpose of regarding this request of accepting apology. In the year 2006 *suo motu* contempt proceedings against the respondent was initiated in Criminal Miscellaneous Application No.7594 of 2006, which resulted into tendering of apology by the respondent and order dated 12th October, 2006 was recorded by the Court, which is

extracted below for the relevant part.

"It was submitted by Shri Mihir Thakore Senior Advocate for the contemner that the contemner had not only tendered his apology on the first returnable date to this court, but also got his apology published in the newspapers, as desired by another Bench and that on his own he has also now tendered his sincere unconditional apology to the Hon'ble Judge, against whom reckless and baseless allegations were made, who has also accepted his unconditional apology, therefore, this court may also accept his apology and drop the proceedings.

It is true that the contemner had tendered his apology on the first returnable date of issuance of notice in this petition. It is also true that as desired by another Bench he had also got published his apology in those newspapers in which derogatory statements were published. It is also true that when the matter was kept for pronouncement of the order he expressed his willingness to go to the Hon'ble Judge and tendered his apology to the learned Judge. It is also true that the learned Judge has also accepted his apology by his brief order. However, in the instant case, there was not only attack on the individual Judge of this court, but also on this Institution as a whole. Therefore, it was not necessary for this court to accept the apology and drop the proceedings against the contemner. In present scenario, last hope is on the Judiciary. No one should make any attempt to cause any damage to this glorious institution. It is rather the duty of the Bar to protect the Judiciary from any outside attack. Instead, in this case, an attempt was made by the contemner to tarnish its image. Contemner - Shri Yatin Oza is having almost 25 years practice at the Bar. He is designated as 'Senior Advocate' since 1999 and also remained leader of the Bar for last 7 terms i.e. since June, 1999 to June, 2006. It was rather expected from him to behave in the matter with full sobriety and responsibility. However, this being first lapse, no strict view is taken in the matter in view of his unconditional apology tendered with his assurance and his Senior Advocate Shri Thakore that he would not repeat such act in future."

20.1 Again, in **Nitinkumar Brahmhatt v. State of Gujarat [2006 (3) GLR 2615]**, the proceedings had arisen before the same respondent. The remarks by the High Court however were expunged by the Apex Court in **Civil Appeal No.4252 of 2006** as per order dated 25th September, 2006, as the appellant expressed his contrition and apologies before the Supreme Court and the appeal was accordingly disposed of.

20.2 There was still another contempt proceedings which went upto the Supreme Court being **Criminal Appeal No.841 of 2016**. The Supreme Court's decision in **Yatin Narendra Oza v. Khemchand Rajaram Koshti [(2016) 15 SCC 236]**, from which we had quoted in our order dated 09th June, 2020 thus, "... we expect the appellant to constantly remind himself that the standing and dignity of the court matters to the nation and also to the collective.". While accepting the unconditional apology, the Apex Court closed the proceedings stating, "*the regret, the apology and repentance shall see the appellant in a different incarnation.*".

21. The repeated acts and conduct of contempt would definitely be one of the guiding factors for the Court to hold that apology tendered is not bona fide and lacks sincerity and therefore, an unacceptable proposition. Every time scurrilous remarks against the Judges and the institution are made and when he realises that there is no escape route, the weapon of unconditional apology comes to his rescue. This was permitted in the past upkeeping

a rich tradition of *Kshama Virsya Bhushanam* (forgiveness is the jewel of the heroes) showing magnanimity every time he acted, even hoping, trusting and believing in the wise words that every saint has a past and every sinner a future, not only it has emboldened the person to go on attacking the institute with more fervency, if still permitted, this institution would be inviting for itself more and many such unsubstantiated, unsustainable and baseless attacks from various quarters. A clear and loud message is a must to be sent that we are open to every healthy criticism respecting the fundamental right of freedom of expression and at the same time, we are obligated not to permit any attempt to tarnish the image of the Institution and to despise and damage the prestige of the same and to demean the respect it enjoys by one and all.

21.1 What speaks louder than the words is the action. Words which have no backing of either intent or deed or action are hollow and lifeless. Words which are in fact lived with sincerity and commitment ingrained, only have capacity to create an impact or otherwise, they are words without soul and heart which wholly lack authenticity. Entire gamut of facts when dispassionately and objectively viewed, we are unable to accept these words as true words of remorse and contrition and therefore, request to accept apology even if termed as unqualified, cannot be acceded to. We are also alive to the genuineness of requests of both the learned senior counsels, whose towering support to the respondent also may not

persuade us to act otherwise.

22. We clarify that the expressions in this order or the findings recorded hereinabove seeming to be touching the merit of the respondent's alleged contemptuous acts and utterances or his defence in that regard are only in the context of and in relation to the consideration of question on the aspect of apology. They are the *prima facie* expressions and findings in consideration of the said specific aspect and they shall not at all prejudice the respondent in course of the further consideration of the matter.

23. In light of all the foregoing reasons and discussion, we are constrained not to accept the apology tendered by the respondent.

सत्यमेव जयते (SONIA GOKANI, J)

THE HIGH COURT OF GUJARAT (N.V.ANJARIA, J)
MISHRA AMIT V./Anup

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