IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 9027 of 2020

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SUO MOTU

Versus

VIJAY ARVINDBHAI SHAH & 1 other(s)

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Appearance:

MR SHALIN MEHTA, LR. SR. ADV as an AMICUS CURIE

MS NISHA M THAKORE, LAW OFFICER BRANCH(420) for the Applicant(s) No. 1

SUO MOTU(25) for the Applicant(s) No. 1

MR MIHIR THAKOR, LR. SR ADV with MR CP CHAMPANERI(5920) for the Respondent(s) No. 1

MR VAIBHAV N SHETH(5337) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**

and

HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 31/08/2020

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This is a suo motu contempt proceedings initiated under Article 215 of the Constitution of India read with Section 15 of the Contempt of Courts Act, 1971 where this Court issued notice under Section 17 of the Contempt of Courts

Act to the Respondents/ alleged contemner Mr. Vijay A. Shah and Mr. Alpesh R. Patel, as per the Contempt of Courts Rules(Gujarat High Court Rules), 1984.

2. A notice came to be issued by learned Single Judge (Coram: - Ms. Bela M. Trivedi, J.) on 26.06.2020. Since every case of criminal contempt under Section 15 is required to be heard and determined by the bench of not less than two judges which is as per Section 18 of the said Act, the matter was placed before the Hon'ble the Chief Justice and the same has been placed before this Court by way of a roster.

3. The brief facts which would require reference here are that the contemner – respondent no.1 filed an anticipatory bail under Section 438 of the Code of Criminal Procedure before this court in respect of the First Information Report being 11215021200321 dated 01.05.2020 registered with Petlad Town Police Station for the offences punishable under Sections 143, 145, 332, 504, 186, 147, 153, 269 of the Indian Penal Code and Section 13(1) of the Gujarat Epidemic Disease-19 Regulations, 2020 and Section 3 of the Epidemic Diseases Act, 1897. Learned Single Judge issued

notice on 15.06.2020 and made it returnable on 22.06.2020.

3.1. At about 8:55 am on 22.06.2020, a phone call was received by the Hon'ble Judge on her official mobile phone from the mobile number 9924327466 and the caller introduced himself as Mr. Niranjan Patel, MLA, Petlad. When inquired as to why he made a phone call, he said there was one criminal case listed before the Court on that day and the learned Judge immediately stopped him from talking further and clearly told him that he should not have called a Presiding Judge in the manner it was done and disconnected the phone.

3.2. The person concerned thrice called thereafter and when learned Judge did not answer the calls, at 9:00 am, four messages were sent in English script with the Criminal Case No. 8266 of 2020 of respondent no.1 (alleged contemner no.1) which was scheduled on that day i.e. on 22.06.2020, thereafter, the Registrar (I.T.) of the High Court of Gujarat was asked to inquire into the matter as to in whose name the said mobile number was registered and it was intimated that from True Caller, it

was noticed that the number belongs to one Mr.Taufik Faiz Xerox having Vodafone number.

3.3. Since the respondent no.1. was represented by learned advocate Mr. Ashish Dagli, the Court asked him to take instructions as to who Mr. Niranjan Patel was and how he was connected with the applicant and it was replied to the Court by learned senior advocate Mr. Nirupam Nanavati appearing with Mr. Ashish Dagli that the applicant had no connection with Mr. Niranjan Patel, however, Mr. Niranjan Patel was interested to see that the petitioner is arrested and therefore, he had approached Deputy Superintendent of Police for the arrest of the applicant.

3.4. The Court thereafter directed the Registrar (I.T.) to take assistance of the Registrar Vigilance and inquired about the call made from 9924327466 registered with Vodafone. It eventually led to probing into the matter and the Registrar (SCMS and ICT) submitted a report of call data record (CDR) in respect of Mobile Number 9924327466 for 22.06.2020 from 12 noon to 20:13 hours. This number had been ported to Jio Mobile Service from

18.05.2018 as per the record of Reliance Jio Infocom Limited and it transpired that the call in question was made from the said number to the number of learned Judge and the call duration was of 45 seconds. The four SMSs also were also sent to the number of learned Judge. The subscriber's name mentioned in the CDR is Tofikbhai Vhora son of Salimbhai Vhora having address of Bagdad Nagar near Sarvariya Masjid, Anand.

3.5. The Court was of the opinion that it was an act meant to prejudice or interfere with the due course of judicial proceeding, or an act which interfered or tended to interfere with the administration of justice which would amount to criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1974. However, to ascertain as to who in fact was in the custody of the mobile phone number at those hours and who had called and sent the messages, the Superintendent of Police, Anand was directed to record the statement of Mr. Niranjan Patel, MLA, Petlad and Mr. Tosif Vohra.

3.6. The statement of MLA Mr. Niranjan Patel indicated that he was elected as an MLA of Petlad Constituency

for the congress party and he has no family relations with the respondent no.1. With regard to the call in question, he stated that he never had made any such call nor would he ever think to make any such call on behalf of anyone. His name is dragged maliciously.

3.7. When the statement of Mr. Tosif Vhora was recorded, he stated that on 22.06.2020 while he was in the shop, one person wearing sleeveless t-shirt and pant with black mask came to his shop and asked for the PCO to make a call, where he denied of having PCO. As per the report, he said that the person had requested Mr. Tosif Vhora two to three times to allow him to make a call from his mobile phone at Delhi because he had some urgent work. Mr. Tosif Vhora, therefore permitted that person to make a call and he remained in his shop for about 10 minutes and thereafter,he returned the phone stating that the other side was not picking up the call and Toifbhai also refused to take any charges. He bought mouth refresher of worth of Rs. 30 from his shop and then left. From the CCTV footage of Dr. Mahendra Shah's Hospital, the footage of this person in the shop

was noticed. Accordingly, the Superintendent of Police, Anand could trace this person who is respondent no.2 (alleged contemner no.2). He introduced himself as Alpesh R. Patel, residing at Village Jitodia near Anand. He is a Mechanical Engineer and working as Surveyor and also carrying out agricultural activity.

3.8. While answering to the probe whether the call in question was made by him, he agreed that the said call was made at the instance of Mr. Vijay Shah –respondent /contemner no.1 and his wife. His friend Nimesh Natvarbhai Pate had asked him to call his another friend Mr. Rajesh Solanki and he then asked him to contact Mr. Vijaybhai Shah – respondent no.1.

3.9. On 16.06.2020, a meeting was organized amongst these persons where Mr. Alpesh Patel was requested by Mr. Vijay Shah to make a call to the learned Single Judge before whom his matter for anticipatory bail has been listed for hearing. The respondent no.1 had given only the mobile number of the Learned single Judge to the Respondent no. 2. It was conveyed to him that if a call is made and the messages is sent in the name of Mr.

Niranjan Patel, MLA, Petlad who was on the opposite side, respondent no.1 would be granted anticipatory bail by the Court. He confessed that he should not have made such a call. He further stated that he was also ensured that he will be duly compensated for the said act. He also has agreed to have gone to the shop of Mr. Tosif Vhora and his having made a call from the shop.

3.10. In such a background, the notice of contempt has been issued.

4. The affidavit on behalf of the respondent – contemner no.1 Mr. Vijay Shah has been filed stating that he tenders an unconditional apology to the Court. He further states that he holds the dignity of the Court in the highest esteem and believes that any act which lowers the dignity of the Court cannot be countenanced. He also believes that no act can be done which in any manner lowers the dignity of the Court or interfere or tend to interfere with the due course of any judicial proceeding or obstructs the administration of justice in any manner. He tendered the absolute and unconditional apology for the act of his which may have

interfered with the administration of justice or obstruct the same.

4.1. According to him, he has studied up to first year Bachelor of Arts and he had left the study in the year 1988 since he failed in the first year examination. His father died in the year 2006. His son is aged 16 years and studying in standard 10th and daughter is aged 22 years studying in the Bangalore in the 5th semester of NIFT. He renders his services in various trusts registered as public trust with Assistant Charity Commissioner, Anand. During the pandemic of COVID-19 also, huge task has been performed. During the said lockdown, the said trust distributed various items for the needy and poor and lakhs of rupees came to be spent.

4.2. According to him, two FIRs have been registered against him for one common incident for the offences mentioned herein above and another was under Section 188 of the Indian Penal Code.

4.3. He has lamented the fact that from the contact of the police authorities and his interaction with Deputy Superintendent of Police, it appeared that only with a view to frame him, the investigation was carried out. He apprehended arrest and though he filed application for anticipatory bail and since he was also facing hostility from the police machinery, especially the Deputy Superintendent of Police, he thought of getting some help.

4.3.1. He met Mr. Rajesh Solanki in the market who is the close family friend and he recommended the name of respondent no.2 Mr. Alpesh Patel who happen to be his acquaintance through his friend Mr. Nimesh Patel and he further stated that opponent no.2 – Mr. Alpesh Patel had good connections with the police department and even in the past years, he helped several people in finding support from the police. Thinking that he also may need help of someone like that who is well versed with the functioning of the police de-

partment, he contacted respondent no.2 because his perception was that he was harshly treated by the police authority, therefore, he needed the help of Mr. Alpesh Patel in reducing such hostility. It was Mr. Rajesh Solanki who arranged the meeting with Mr. Alpesh Patel who had conveyed to him that since other co-accused have been released by the police, he will try to put these facts and persuade the concerned police authority to adopt a lenient view. He was asked to send the details of his court matter and accordingly, the details of anticipatory bail had been sent to him.

4.4. He emphasized that he never requested Mr. Alpesh Patel to approach the Hon'ble Judge. He also is unaware as to how Mr. Alpesh Patel procured the number of Presiding Officer. It was on his own volition that he committed the act and the act of contacting the Hon'ble Judge is ex-facie contemptuous.

4.5. These details have been furnished for the purpose of putting on record the highest regard he has for the judicial institution, however, the dignity of institution since has suffered, he apologized and prayed with remorse to discharge him.

5. The respondent no.2 has filed its affidavit-in-reply for tendering unconditional apology also and seeking pardon for having involved himself directly or indirectly in an act amounting criminal contempt of court. According to him, initially when he was permitted to address learned Single Judge after everything was disclosed and he was directed to file an affidavit in pursuance of the order dated 25.06.2020, he filed a detailed affidavit about how the entire incident happened and tendered his unconditional apology orally and when he also realised his mistake that he should not have made such a phone call to the Hon'ble Judge, he stated with regret and full of remorse that he realised his serious misconduct and blunder that he has committed and he also tried to interfere with the administration of justice. He with folded hand urged this Court to accept his unconditional apology and pardon him by

showing mercy. He urged that such a conduct or action will not be repeated for all the time to come and being merciful his sincere apology be accepted. He holds the Court in profound respect and urged to discharge him from the contempt proceedings.

6. This Court has heard learned senior advocate Mr. Mihir Thakore appearing with learned advocate Mr. Champaneri for the Respondent/alleged respondent no.1, learned advocate Mr. Vaibhav Sheth appearing for the Respondent/ alleged respondent no.2 and learned senior advocate Mr. Shalin Mehta appearing as an Amicus Curie, on the aspect of unconditional and unqualified apology.

7. Learned senior advocate Mr. Mihir Thakore extensively and emphatically made his submissions on the apology tendered by the respondent no.1 as also on the jurisprudence of apology. According to the learned Counsel, it is the discretion of the court whether to accept apology or not, however, if unconditional and unqualified apology is tendered and once the same is found to be bonafide, it can be accepted without in any manner compromising with the

dignity of the institution. It is further urged that the scheme of the Contempt of Courts Act provides that even qualified and conditional apology is tendered,the court can accept such apology, if it is convinced about genuine remorse and contrition on the part of the alleged contemner. Learned senior counsel also further submitted that the parameters as to what amounts to be bona fide apology have not been defined but following criterion, according to him, could broadly be regarded :

(i) Whether the conduct is so contemptuous that it cannot be condoned;

(ii) Whether such contempt is for the first time or not;

(iii) Whether the apology tendered is immediate or delayed apology;

(iv) Whether it is a conditional apology or unconditional apology.

8. It is his submissions that in the instant case respondent no.1 has not put forth his defence and touched the merit of the matter for a limited purpose of explaining what respondent no.2 had alleged against him. It is stated that he

approached the respondent no.2 to help him in the criminal proceedings pending before the court, however, here also he realizes his mistake and genuinely is remorse full and urges the court to pardon him. he never had asked respondent No. 2 to contact the honourable judge nor has he provided the mobile number of the presiding judge. He fairly submitted that interfering with the course of justice ex facie would amount to contempt,however, the respondent No.1 has no role to play at all in contacting the Honourable Judge,although this defence is only with a view to explain the falsehood that has emerged in the affidavit of the respondent No.2. He reiteratively pleaded that the apology is genuine, unconditional and tendered at the first given opportunity and therefore, this being the first such incident on the part of the petitioner who is a common man and was fear stricken, the court may pardon him by accepting his apology.

8.1. Following are the decisions which are sought to be relied upon by learned senior advocate Mr. Mihir Thakore in support of his submissions.

(i) Hira Lal Dixit vs. State of UP [(1955) I SCR 677]

(ii) Hiren Bose, In re. [1967 SCC Online Cal 84]

(iii) Debabrata Bandyopadhyay vs. State of W. B. [(1969) I SCR 304]

(iv) Dinabandhu Sahu vs. State of Orissa [(1972) 4 SCC 761]

(v) Arun Kshetrapal vs. Registrar [(1976) 3 SCC 690]

(vi) Ram Pratap Sharma, Re. [(1977) 1 SCC 150]

(vii) Advocate General, State of Bihar vs. M.P. Khair Industries [(1980) 3 SCC 311]

(viii) L.D. Jaikwal vs. State of U.P. [(1984) 3 SCC 405]

(ix) MB Sanghi, Advocate vs. High Court of Punjab and Haryana.. [(1991) 3 SCC 600]

(x) Court of its own Motion vs. B.D. Kaushik [1991 SCC OnLine Del 691]

(xi) T.M.A. Pai Foundation vs. State of Karnataka [(1995) 4 SCC 1]

(xii) Ishwar Naida vs. Municipal Corporation of Greater Bombay [1997 SCC OnLine Bom 12]

(xiii) Chandigarh Newsline (Indian Express Group), Re, [(1998) 6 SCC 378]

(xiv) Radha Mohan Lal vs. Rajasthan High Court [(2003) 3 SCC 427]

(xv) D.S. Poonia vs. Yumnam Dimbajit Singh [(2003) 3 SCC 513]

(xvi) Anil Panjwani, In re [(2003) 7 SCC 375]

(xvii) Kapol Co-operative Bank Ltd., Mumbai vs. State of Maharashtra [2004 SCC OnLine Bom 695]

(xviii) Patel Rajnikant Dhulabhai vs. Patel Chandrakant Dhulabhai [(2008) 14 SCC 561]

9. On the strength of series of decisions as mentioned hereinabove, learned senior advocate Mr. Mihir Thakore has urged that it is of course the discretion of the Court whether to accept the apology or not and broad criterion which emerge on as to when apology is to be accepted shall need to be kept in view while considering such plea of acceptance. The respondent no.1 has tendered unconditional apology. He has not offered anything for the defence. The alleged contempt is for the first time and it is full of contrition. He urged this Court that all these can also weigh with the Court, but eventually, the court needs to regard whether such gesture deserves consideration to discharge

the alleged contemner. He further has submitted that the respondent no.1 has clarified some of the aspects while tendering unconditional apology in the affidavit and such clarification also may not preclude the court to accept the same. He further has urged that if the apology is accepted, the whole matter comes to an end otherwise, the charges need to be framed.

10. Learned advocate Mr. Vaibhav Sheth appearing for the respondent no.1 has urged that he is not desirous to explain anything and has tendered unconditional apology. He needed to tender the affidavit at the behest of the Court in Gujarati language but he did not mean to actually explain anything and he is full of remorse and realised in a hard way that what he attempted to do was unwarranted wholly. He urged this Court to consider his apology as bona fide as he had no personal interest in the entire incident. His case was also not before this Court. It was out of his nature of benevolence that he has committed a blunder. He repeatedly urged the court to adopt magnanimous approach and condone the act which is the first of its kind and also because ,apology is at the first given opportunity.

He also urged that no explanation which he has given in his first affidavit, made in vernacular language, was because the court had asked him to explain all the details and otherwise he had not meant to explain anything. Moreover, he insisted that it was the respondent No.1 who had provided the number of the honourable judge and had specifically asked him to camouflage himself as Mr Niranjan Patel MLA while communicating with the Learned Judge in his pending application of anticipatory bail.

11. Learned senior advocate Mr. Shalin Mehta acting as an Amicus Curie has taken this Court through the case laws and urged that there is a little case law so far as what amounts to bona fide. He urged that the unconditional and unqualified apology the Court may accept, provided the court is satisfied with its genuineness. Both the respondents have given unconditional apology at the first opportunity. They both have done the alleged contempt for the first time and they both attempted to explain and their versions on oath are diametrically opposite and if the Court deems it appropriate to probe into this, it may not accept the same. He urged that while considering as to what

amounts to bona fide apology, the Court needs to look at the language of remorse, the point of time when such apology is tendered, the past incident and past conduct of the person also shall need to be regarded. There are no specified criterion under the statute to examine whether it is bona fide or not, but the case laws provide guidance to beacon the path. The court is not bound to accept the apology. And, the court needs to arrive at the conclusion whether it is bonafide or not, provided accepting the apology would not amount to compromising with the dignity of the court. Learned Amicus Curie urged that in the instant case these two affidavits are irreconcilable and therefore, one of them is not bonafide. Where the conduct is such which can be ignored without compromising the dignity of the court. Two decisions are heavily relied upon being Bal Kishan Giri vs. State of Uttar Pradesh [(2014) 7 SCC 280] and Vishram Singh Raghubanshi vs. State of Uttar Pradesh [(2011) 7 SCC 776] to urge that the conduct for which the apology is tendered shall need to be regarded as well while accepting or not accepting apology.

12. From the detailed submissions made by both the sides and also from the case laws which have been relied upon, what is quite clearly emerging is that the apology, as may be tendered by the parties, the alleged contemners, shall need to be regarded by the Court, where it is also to regard as to whether the apology tendered is at the first point of time without attempting to justify the actions and creating the defence or is it being used as an escape route. The Court also needs to regard as to whether the contempt is full of contrition and whether the same is in a case which has been committed the first time. The law is also clear that it is not necessary for the Court to accept such apology, even if found to be unconditional and unqualified when the parameter of genuineness is not found satisfying.

13. What is also required to be considered is that there may not be an actual interference with the course of administration of justice but it is enough if the offending publication or act is likely or tends in any way to interfere with the administration of law. The act if is so derogatory to the very dignity of the justice delivery system so as to undermine the confidence of the people, the court would not

choose to overlook such serious dimension. This jurisdiction of Contempt is required to be exercised sparingly for maintaining the authority of law and thereby affording the protection to the public interest so as to keep the stream of justice pure, and the Court will not hesitate from exercising these powers where the larger interest demand as is being said why deter when duty demands.

13.1. Even an apology which is conditional but inspiring confidence, being full of contrition and remorse and which is also meant to be sincere, demonstrating clearly that the person concerned has out of repentance and remorse tendered the same and is not a design or manner to overreach the process, can also be accepted.

14. It is necessary to make a mention that as per Article 215 of the Constitution of India, the High Court is a 'Court of Record' and the powers of this Court includes the powers to punish for contempt . The jurisdiction under Article 215 of the Constitution of India is an inherent jurisdiction to enable the Courts to administer the justice in accordance with law, in a regular orderly and effective manner to uphold the majesty of this Institution and for preventing

interference in the course of administration of justice. This being a special jurisdiction needs to be exercised sparingly.

15. Relevant would be to refer to Section 12 of the Contempt of Courts Act, 1971: -

> ***"12. Punishment for contempt of court.—***
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> *(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: —(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 accused 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 accused makes it bona fide.*
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> *(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."

16. Section 12 of the Contempt of Court provides for the punishment of contempt. Proviso to this section states that the accused may be discharged or the punishment awarded may be remitted on the apology being made to the satisfaction of the Court. Explanation to this says that the apology shall not be rejected merely on the ground that it is qualified or conditional, if the accused makes it bona fide. Therefore, what is requirement of the provision is that the apology which is either qualified or conditional made by the alleged contemner shall also be not discarded if the same in the opinion of the court is made bona fide. It is the discretion of the Court whether to accept the same or not and that discretion is required to be exercised judiciously and the accused can be discharged. For preventing interference in the course of justice and to upkeep the authority of law, sparingly, of course, such power contemplated under the constitution warrant its use.

17. The case laws on the subject when are regarded, in case of **Hira Lal Dixit vs. State of UP [(1955) I SCR 677],** the aspect of genuineness of apology tendered after publishing the leaflet while the hearing of appeals before the

court was going on, is dealt with extensively by the Apex court which was prior to the present statute was enacted. Relevant paragraphs of the same are reproduced as under: -

> *"3. All the respondents have been duly served. They have filed affidavits and have appeared before us by their respective advocates. The respondent, Sri Krishna Dutt Paliwal, the writer of the foreword, who was present in Court, made the following statement to the Court through his advocate, Sri Mohan Lal Saksena :-*
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> *"When I wrote the foreword I did not go through the whole manuscript. I was only told that it dealt with the working of the Transport Control. Now that my attention has been drawn to the passage objected to I am sorry that I wrote a foreword to the pamphlet and I offer my apology to the Court. I never knew that the pamphlet was intended for circulation and I was not a party to its circulation."*
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> *One, Devendra Sharma, the General Manager of the Sainik Press, Agra, where the offending leaflet was printed, filed an affidavit on behalf of the respondent Press stating that at the time when the leaflet had been given to the Press for being printed he did not notice the paragraph in question, that his attention was drawn to it only after the service of the present Rule, that he was sorry that it had been printed in the Press and that he never had the slightest intention of committing any contempt of this Court. In his affidavit as well as through his advocate, Sri S. Sukla, the respondent Press represented by Devendra Sharma who was present in Court tendered an unqualified apology to the Court. In view of the*

statements made in Court by the advocates of these two respondents this Court accepts their apology and discharges the rule as against them and nothing further need be said about them.

5. Learned counsel for the respondent, Hira Lal Dixit, maintained that the passage in question was perfectly innocuous and only expressed a laudatory sentiment towards the Court and that such flattery could not possibly have the slightest effect on the minds of the Judges of this August tribunal. We do not think flattery was the sole or even the main object with which this passage was written or with which it was published at the time when the hearing of the appeals was in progress. It no doubt begins with a declaration of public faith in this Court but this is immediately followed by other words connected with the earlier words by the significant conjunction "but." The words that follow are to the effect that sources that are in the know say that the Government acts with partiality in the matter of appointment of those Judges as Ambassadors, Governors, High Commissioners, etc., who give judgments against the Government. The plain meaning of these words is that the Judges who decide against the Government do not get these high appointments. The necessary implication of these words is that the Judges who decide in favour of the Government are rewarded by the Government with these appointments. The attitude of the Government is thus depicted surely with a purpose and that purpose cannot but be to raise in the minds of the reader a feeling that the Government, by holding out high hopes of future employment, encourages the Judges to give decisions in its favour. This insinuation is made manifest by the words that follow, namely, "this has so far not made any difference in the firmness and justice of the Hon'ble Judges." The linking up of

these words with the proceeding words by the conjunction "but" brings into relief the real significance and true meaning of the earlier words. The passage read as a whole clearly amounts to this : "Government disfavours Judges who give decisions against it but favours those Judges with high appointments who decide in its favour : that although this is calculated to tempt Judges to give judgments in favour of the Government it has so far not made any difference in the firmness and justice of the Judges." The words "so far" are significant. What, we ask, was the purpose of writing this passage and what was the object of the distribution of the leaflet in the Court premises at a time when the Court was in the midst of hearing the appeals ? Surely, there was hidden in the offending passage a warning that although the Judges have "so far" remained firm and resisted the temptation of deciding cases in favour of Government in expectation of getting high appointments, nevertheless, if they decide in favour of the Government on this occasion knowledgeable people will know that they had succumbed to the temptation and had given judgment in favour of the Government in expectation of future reward in the shape of high appointments of the kind mentioned in the passage. The object of writing this paragraph and particularly of publishing it at the time it was actually done was quite clearly to affect the minds of the Judges and to deflect them from the strict performance of their duties. The offending passage and the time and place of its publication certainly tended to hinder or obstruct the due administration of justice and is a contempt of Court.

7. It is well established, as was said by this Court in Brahma Prakash Sharma and Others v. The State of Uttar Pradesh (supra), that it is not necessary that there should in fact be an actual interference with the course of administration of justice but

that it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. Such insinuations as are implicit in the passage in question are derogatory to the dignity of the Court and are calculated to undermine the confidence of the people in the integrity of the Judges. Whether the passage is read as fulsome flattery of the Judges of this Court or is read as containing the insinuations mentioned above or the rest of the leaflet which contains an attack on a party to the pending proceedings is taken separately it is equally contemptuous of the Court in that the object of writing it and the time and place of its publication were, or were calculated, to deflect the Court from performing its strict duty, either by flattery or by a veiled threat or warning or by creating prejudice in its mind against the State. We are, therefore, clearly of opinion and we hold that the respondent, Hira Lal Dixit, by writing the leaflet and in particular the passage in question and by publishing it at the time and place he did has committed a gross contempt of this Court and the qualified apology contained in his affidavit and repeated by him through his counsel cannot be taken as sufficient amends for his misconduct.

8. It should no doubt be constantly borne in mind that the summary jurisdiction exercised by superior Courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the Court and thereby affording protection to public interest in the purity of the administration of justice. This is certainly an extra-ordinary power which must be sparingly exercised but where the public interest demands it, the Court will not shrink from exercising

it and imposing punishment even by way of imprisonment, in cases where a mere fine may not be adequate."

This judgement makes it abundantly clear that when public interest demands exercise of such powers,in appropriate cases, the court should never shrink from exercising the same. Apology tendered if is not amounting to amend the misconduct or has also tendency of damaging the largest cause of public interest, the same need not be accepted.

18. Reliance is placed in case of **Dinabandhu Sahu vs. State of Orissa [(1972) 4 SCC 761]** where the Apex court permitted apology in writing to be tendered and also accepted the same,having found the utterances in the given circumstances explainable and by also further holding that personal considerations or likes or dislikes of the presiding judge may not influence his discharge of duty.Profitably,the apt findings and observations deserve are reproduction as under: -

"2. After this explanation was given the Appellants say that they had stated before the learned Chief Justice and A. Misra, J. who were hearing the petition that they would not have filed the representation petition had they known all the circumstances which were explained by the learned Chief Justice and prayed through Mr. Chari appearing on behalf of the opposite party that they may be forgiven. This fact emerges also from the judgment of the learned

Chief Justice who in paragraph 57 said that Mr. Chari appearing on behalf of all the opposite parties asked for forgiveness of the Court as he put it publicly in open Court. The other learned Judge A. Misra, J, also stated that this was so and that it was given particularly in view of the strained relations which existed between the rival political parties and which led to some misunderstanding of the whole situation, but he pointed out that except for this the Respondents at no stage have chosen to express any regret or tender apology. The learned Chief Justice also stated that there was nothing in writing either by way of an apology nor has regret been tendered in the Court. Mr. Chari before us pointed out, with some justification that if all that the Court wanted was a written apology by the Appellants there would have been no hesitation in their giving it as the very cause for their apprehension had been removed, by the explanation given by the learned Chief Justice to remove any misunderstanding in the public mind, which misunderstanding no longer existed after that explanation. Though the case was fully argued, even before us the learned Advocate on behalf of his clients made the following statement expressing their apology:

My client had already expressed that the misunderstandings which caused them to file the petition the subject matter of the contempt proceedings had been removed by the explanation given by the learned Chief Justice and stated that if they had known this, they would never have written it. In view of this they had also asked for the forgiveness of the Court out of its generosity. I have, therefore, no hesitation at all in offering unconditional apology on their behalf for having written the petition. On behalf my clients, I again repeat that and tender an unqualified apology for presenting the petition.

The learned Advocate for the State of Orissa Mr. Chatterjee frankly conceded that having regard to this apology which has again been reiterated the proceedings may be dropped. We think that this is a correct and proper attitude to adopt in respect of these proceedings. Whatever may have been the justification for the High Court to initiate the proceedings in respect of a matter, which in the state of the atmosphere then prevailing was likely to create a suspicion, whether justifiable or imaginary, in the public mind and particularly in the mind of the litigants, by the circumstance that a person who is a Respondent in a case where a judgment was reserved was given prominence and referred to in terms of praise or eulogy, that situation had changed after the learned Chief Justice had given an explanation for the reasons why Dr. Mahtab was given a seat among the few selected persons at the Buffet lunch and other matters incidental thereto. The apology tendered was not merely an apology but was something more than an apology because what was asked of the Court out of its generosity was forgiveness; that this was sincerely meant is amply demonstrated by its being repeated again before us We think that the contempt if any has been certainly purged in the manner in which the apology was given and the matter should have been set at rest there. It is no part of the judicial function to be vindictive or allow any personal or other considerations to enter in the discharge of its functions and since both the learned Chief Justice and Misra, J. would have been prepared to accept that apology if it was given by the Appellants themselves and in writing and since Mr. Chari said that the Appellants would have been prepared to give such an apology in writing, if that was the only thing that was required and even now are ready and willing to do so we feel that the apology tendered on their behalf by their Senior Advocate can well be accepted and the

proceedings closed. We accordingly allow the appeals, set aside the convictions and direct the repayment of the fine, if any, and close the proceedings."

19. The Apex court in case of **Arun Kshetrapal vs. Registrar [(1976) 3 SCC 690]** was examining in detail the facts where the appellant sent a copy of wireless message addressed to the Advocate General of the State as also to the registrar for information only. He took all steps to produce the detenue before the receipt of clarification or advice by the state government for production before the High Court. The appellant sent wireless message to the Advocate General only to apprise him of the notification sent by the state government. He requested the advocate general to request the court not to insist on the production of detenue having regard to the public order and his request was found by the Apex court to be in consistence with the direction of the state comment. In this background sending of telegraphic message in his communication with the Advocate General according to the court in wake of his apology as well as production of detenue were held to be genuine conduct. The relevant paragraphs of the same are reproduced as under: -

> *"19. The appellant tendered apology with grace and not as a coward. The appellant produced the detenu. The appellant at no stage interfered with any order of the High Court. The appellant never showed any disobedience. On the contrary the appellant acted in obedience to the order of the High Court.*
>
> *20. The High Court accepted the apology for the limited purpose of remitting the punishment. The order of the High Court cannot be sustaining in view of the tender of apology by the appellant as well as the production of the detenu. The appeal is accepted. The judgment and order of the High Court are set aside."*

20. In yet another case of **Ram Pratap Sharma, Re. [(1977) 1 SCC 150]** serious grievances were made against the then Chief Justice of the Court of Punjab and Haryana for his leaning towards the Marxist communist ideology by publication of materials by the members of the Bar Association and when apology was tendered, The court held that holding them guilty under the contempt is a must before acceptance of apology. Relevant findings and observations of the court are reproduced as under: -

> *"4. Five members of the Bar Association at Charkhi Dadri sent a letter addressed to the President with copies to the Chief Justice of Punjab and Haryana High Court, the Chief Minister of Haryana, the Chief Justice of India and the Prime Minister. In that letter they said that Justice D.S. Tewatia visited the Bar*

and inspected the court at Charkhi Dadri on 17 February, 1975. Thereafter they stated as follows : "While talking with the members of the Bar, he pointed out that the library of this Bar seems to be very poor. Then Shri Virender Kumar Single, a member of the Bar requested the honourable Judge to help the Bar either by supplying books or by allocating the grant by the High Court so that the needy Bar may be able to purchase necessary books for the library. Then the Honourable Judge turned down the request and replied that it is never possible in the present system of Government of India. If you want this kind of help then you should prepare yourself for the communist Government in India by creating such atmosphere in the country. At another stage also during the. course of his discussion with the members of the Bar over the matter of Rajasthan Law students demands in which they demanded a grant of Rs. 5000/- from the Government for the library of each fresh law graduate and Rs. 200/- per month for a period of two years the initial stage of their legal practice he strongly emphasised the need for the communist system of Society and Government in India to fulfil these demands. The learned Judge also met Smt. Chandrawati separately and discussed with her the political affairs of the State. He also expressed his desire to see Comrade Dharam Singh a member of the Marxist Communist Party at his residence before Smt. Chandrawati. During his stay in the rest house he also discussed the teachers agitation and individual position of various political leaders in the State. He also enquired all about Shri Sohan Lal a leader of the teacher's movement in the State". The letter concluded by saying that the Hon'ble Judge during his entire stay in his tour deliberately showed the bent of his mind towards communism while exchanging view on various matters.

8. The Full Bench of the High Court consisting of Justice Surjit Singh Sandhawalia, Justice Prem Chand Jain and Justice Bhupinder Singh Dhillon extracted portions from the affidavit of the appellants to which references has been made. The Full Bench thereafter referred to paragraph 9 of the affidavit where the deponents said that "if in view of this Hon'ble Court the action of the deponent in addressing the letter in question constituted for any reason contempt of court, no one would be more sorry than the deponent himself. Therefore, the deponent tender his apology to this Hon'ble Court for the same and prays for its acceptance". After the recital of paragraph 9 the judgement of the Full Bench said as follows: "In view of the averments made in the affidavit filed in rely and in particular in paragraph 9 thereof we accept the apology tendered on behalf of the respondents and discharge the rule issued against them".

9. In our view the judgment is utterly unsound and unsustainable. The elementary basis of acceptance of apology is that there is to be a finding of committal of contempt. The deponents stated that if the Court is of the view that the letter of the deponents constitute for any reason contempt of court, the deponents tender apology. It. is a conditional apology. The condition is that If there is contempt the deponents tender apology. In the absence of any finding by the High Court that the appellants committed any contempt of court there was never any occasion for acceptance of apology."

21. The decision in case of **L.D. Jaikwal vs. State of U.P.** **[(1984) 3 SCC 405]** deserves specific mention where the Apex court frowned upon the attitude of "slap and say

sorry" and of 'paper' apology of the contemner. The relevant paragraphs of the same are reproduced as under: -

> *"3. There is no known provision for making such an application after a matter is disposed of by a Judge. Nor was any legal purpose to be served by making such an application.*
>
> *Obviously application was made to terrorize and harass the Judge for imposing a sentence which perhaps be considered to be on the high side whether or not it was really so was for the higher Court to decide.*
>
> *As pointed out earlier, it was however not permissible to adopt a course of intimidation in order to frighten the Judge. His malicious purpose in making the application is established by another tell-tale circumstance by forwarding copy of this application, without any occasion or need for it, to several authorities and dignitaries.*
>
> *1. Administrative Judge, Allahabad for favour of requisitioning case file S.T. No. 2 from Dehradun and scanning through the fasts.*
>
> *2. Chief Secretary, Uttar Pradesh Government Lucknow.*
>
> *3. Director, Vigilance Commission, U.P., Lucknow.*
>
> *4. Prime Minister, Secretariat, Delhi.*
>
> *5. State Counsel, Shri Pooran Singh, Court of Shri V.K. Agarwal, Dehradun.*
>
> *6. Shri D. Vira, I.C.S., Chairman, Indian Police Commission, Delhi.*

7. President, Bar Association, Dehradun

8. The Hon'ble Chief Justice of Bharat.

5. Before the High Court the appellant sought to justify his conduct on the ground of the treatment alleged to have been meted out to him by the learned Judge. No remorse was felt. No sorrow was expressed. No apology was offered. Only when the appellant approached this Court he expressed his sorrow before this Court saying that he had lost his mental balance. Upon finding that this Court was reluctant to hear him even on the question of sentence, as he had not even tendered his apology to the learned Judge who was scandalized, he prayed for three weeks' time to give him an opportunity to do so. His request was granted. He appeared before the learned Judge and tendered a written apology wherein he stated that he was doing so "as directed by the Hon'ble Supreme Court." This circumstance in a way shows that it was a 'paper' apology and the expression of sorrow came from his pen, not from his heart. For, it is one thing to "say" sorry-it is another to "feel" sorry. It is in this context that we have been obliged to make the opening remarks at the commencement of this judgment."

22. In case **T.M.A. Pai Foundation vs. State of Karnataka [(1995) 4 SCC 1]** the Apex court rejected unconditional apology tendered and punished the contemner by holding thus :-

"9. On a consideration of all the relevant facts and circumstances, we find no room for a bona fide error on the part of the officers concerned, viz., Sri Arvind Choudhari, Under Secretary, Capt. Shaikh, Deputy

Secretary, Medical Education Department, Smt. Joyce Sankaran, Secretary to the Medical Education Department and Sri Mane and Sri More, Secretary and Principal Secretary respectively of Law Department. The Government, which means the Medical Education Department in this case, had issued orders on June 2, 1994 correctly stating that the quota for N.R.Is. in the medical and dental colleges is ten per cent. But when the Association of Private Medical Colleges made a representation on June 6, 1994, things started moving. The very officers who had issued orders only four days ago (June 2, 1994) fixing N.R.I. quota at ten per cent on the basis of the orders of this Court dated May 13, 1994, now read that very order - in particular, the paragraph quoted hereinabove - as providing for fifteen per cent. They write to Law Department for their opinion as to the correctness of their revised reading of this Court's orders and it is promptly affirmed by the Law Department. In the course of three days, the earlier decision was revised on an exfacie faulty - and we are inclined to say, deliberately distorted - interpretation of the orders of this Court and a corrigendum issued as desired by the Association of Private Medical Colleges. We are particularly pained by the role played by Sri Mane and Sri More in this matter. They are judicial officers of long standing. They have decades of judicial experience behind them. It is difficult to believe that they could make any mistake in understanding the orders of this court which are worded in simple and unambiguous language. The least they could have done was to advise the Government to move this Court for a clarification. It is clear that these two officers of the Law Department lent themselves as willing tools for achieving the illegitimate design of the Association of Private Colleges actively abetted by the Medical Education Department. If the said two judicial officers of such long standing cannot properly understand the short and clear order made by this Court on May 13, 1994, it is difficult to believe how they had been understanding the judgments of this Court and of the

High Courts while performing their judicial duties all these years. We are, therefore, inclined to reject their explanations as also the explanations offered by Sri Arvind Choudhari, Capt. Shaikh and Smt. Joyce Sankaran. So far as Smt. Joyce Sankaran is concerned, we were told by Sri Andhyarujina that a copy of the representation of the Association was filed before her and that she had sent it down to Sri Arvind Choudhari. She has herself admitted that whatever Sri Choudhari and Capt. Sheikh did was done with her knowledge and consent. Interestingly, Smt. Joyce Sankaran has also offered an explanation for the unusual speed with which the representation of the Association was processed. She has stated:"(A)s the printing of admission forms was in progress and the admission had to be started, the matter was considered urgent and on 8th June, 1994, Sri P.S. Mane..... was requested to give his opinion on this issue early." This reason for urgency is not mentioned in the letter dated 7/8th June, 1994 nor has it been mentioned earlier by any other officer. The letter addressed to Law Department merely stated at the end: "Law and Judiciary Department is requested to give its opinion on this issue at the earliest"' - an expression that did not convey the extraordinary urgency which was indeed exhibited in processing it. Be that as it may, we are of the opinion that Smt. Jayce Sankaran, being the Head of the Department and a senior and experienced officer, ought to have scotched the exercise at the very inception. Instead of doing that she, on her own statement, was party to the revised - and in our opinion, distorted - reading and understanding of this Court's order and also responsible for issuing the corrigendum. It cannot be forgotten that it was herself and the Deputy and Under Secretaries of her Department that entertained the "impression" that the N.R.I. quota has been continued at fifteen per cent (as against their earlier presumption that it was ten per cent) and asked for the opinion of the Law Department.

10. All the five officers, viz., Sri Arvind Choudhari, Capt. Shaikh, Smt. Joyce Sankaran, Sri P.S. Mane and Sri B.G. More, have no doubt tendered unqualified apology to this Court but in the facts and circumstances stated above, it would be a travesty of justice to accept the same. They are senior and experienced officers and must be presumed to know that under the constitutional scheme obtaining in this country, orders of this Court have to be obeyed implicitly and that orders of the Apex Court - for that matter, any Court - should not be trifled with. We have found hereinabove that they have acted deliberately to subvert the orders of this Court, evidently at the instance of the Association of Private Medical Colleges. It is equally necessary to erase an impression which appears to be gaining ground that the `mantra' of unconditional apology is a complete answer to violations and infractions of the orders of this Court.

11. Accordingly, we reject the `unconditional apology' tendered by the five officers, hold them guilty of contempt of court and do hereby censure their conduct. A copy of this Order shall form part of the Annual Confidential Reports/record of service of each of the said officers."

23. Reliance is placed in case of **Chandigarh Newsline (Indian Express Group), Re, [(1998) 6 SCC 378]** the relevant paragraphs of the same are reproduced as under: -

"3. It is submitted by Mr. Jaitely, that the apology was published before the service of contempt notice on both the contemnors and that the apology had been published on realising the mistake. Mr. Jaitely, learned senior counsel further submits that both the respondents are truly repentant and have bonafide tendered their unconditional apologies for

the mistake committed by them and that both of them assure that they shall be more careful in future. It is submitted that they had no intention to prejudice the proceedings pending in this Court. Both the contemnors have placed themselves at the mercy of the Court submitting that their lapse, though grave, was unintentional and they sincerely regret for their mistake.

4. After hearing the learned Solicitor General and Mr. Arun Jaitley and perusing the record as also the unconditional apology submitted by both the respondents, and taking note of the apology published in the Chandigarh News line dated 4th May, 1998 voluntarily, we are satisfied that the respondents are now truly repentant and that their apologies are sincere and bonafide. Under the circumstances, while warning them to be careful in future we do not now consider it necessary to proceed any further with the contempt proceedings. We, accordingly, drop those proceeding. The rule issued against the respondents is accordingly discharged."

24. The Apex court was examining the very aspect of acceptance of unconditional apology in case of **Radha Mohan Lal vs. Rajasthan High Court [(2003) 3 SCC 427]** Where the apology was tendered after the court punished the person however, it was found to be full of contrition and genuine. The relevant paragraphs of the same are reproduced as under: -

"6. Having regard to the aforesaid facts, it appears that although the apology has been tendered

after the appellant had been found guilty of contempt of court and after the High Court had inflicted the imprisonment on him but still the apology seems to be sincere and not to ward of the punishment. We accept the contention of Mr. Dhankar that the apology here is evidence of real contrite as also of his consciousness of wrong done by him. In the case of M.Y. Shareef & Anr. v. The Hon'ble Judges of High Court of Nagpur & Ors. [(1955) 1 SCR 757], a Constitution Bench of this Court accepted the apology that was tendered before this Court for the first time.

8. The case of appellant Sualal Yadav is, however, different. He has persisted with the same approach before this Court as he had before the High Court. Unfortunately, he labours under an erroneous impression that it is not only his duty but a constitutional obligation to say and submit before the Court whatever he is instructed by his client. He submits that everyone has liberty to have faith or not on a particular judge. A grievance was also sought to be made by him that only Radha Mohan Lal was picked up and not others similarly placed and likewise contempt proceedings were initiated against him and not other advocates. The submissions are wholly untenable. We have already noticed that Radha Mohan Lal, realizing his mistake, tendered unconditional and unqualified apology even before the matter was heard before this Court. He has also tendered apology in open court before the learned judge of the High Court. The application was only signed by Radha Mohan Lal and this appellant and, therefore, there is no substance in the grievance why proceedings were not initiated against others. Even otherwise, such a contention is entirely misplaced. It is unfortunate that despite having spent so many years in legal profession, the appellant persists with his erroneous impressions

about the duties of the members of the Bar to say whatever they are asked by their clients to say without any liability despite the settled position to the contrary.

10. The liberty of free expression as was sought to be contended by Mr. Sualal Yadav cannot be equated or confused with a licence to make unfounded and irresponsible allegations against the judiciary. The imputation that was made was clearly contemptuous. The effect is lowering of the dignity and authority of the Court and an affront to the majesty of justice.

12. An advocate is not merely an agent or servant of his client. He is an officer of the Court. He owes a duty towards the Court. There can be nothing more serious than an act of an advocate if it tends to impede, obstruct or prevent the administration of law or it destroys the confidence of the people in such administration. In M.B. Sanghi, Advocate v. High Court of Punjab & Haryana & Ors. [(1991) 3 SCC 600] while deciding a criminal appeal filed by an advocate against an order of the High Court, this Court said :

"The tendency of maligning the reputation of judicial officers by disgruntled el ements who fail to secure the desired order is ever on the increase and it is hi gh time it is nipped in 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 behaviour, use of disrespectful language and at times blatant con-

demnatory 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. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strong-willed judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence.""

25. The decision rendered in case of **Bal Kishan Giri vs. State of Uttar Pradesh [(2014) 7 SCC 280]** also considered when can apology be considered by holding that "...apology cannot be a defence, justification or calculated

strategy to avoid punishment for act which tantamount to contempt of court, and is not to be accepted as a matter of course. However, apology can be accepted where conduct for which apology given is such that it can be ignored without compromising dignity of court, or evidences real contrition, and is sincere. Apology cannot be accepted where it is hollow, there is no remorse, no regret, no repentance, or if it is only a device to escape rigour of law that is it is merely paper apology." On facts, it had been held that the High Court was justified in not accepting apology which was not bonafide." It also held that casting of bald, oblique unsubstantiated aspersions not only causes agony and anguish to judges concerned but also shakes confidence of public in judiciary." The relevant paragraph of the same is reproduced as under: -

> *"16. This Court has clearly laid down that an apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language does not absolve the contemnor on any count whatsoever. 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. (Vide: Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr., AIR 1974 SC*

710; The Bar Council of Maharashtra v. M.V. Dabholkar etc., AIR 1976 SC 242; Asharam M. Jain v. A.T. Gupta & Ors., AIR 1983 SC 1151; Mohd. Zahir Khan v. Vijai Singh & Ors., AIR 1992 SC 642; In Re: Sanjiv Datta, (1995) 3 SCC 619; Patel Rajnikant Dhulabhai & Ors. v. Patel Chandrakant Dhulabhai & Ors., AIR 2008 SC 3016; and Vishram Singh Raghubanshi v. State of U.P., AIR 2011 SC 2275)."

26. The decision rendered in case of **Vishram Singh Raghubanshi vs. State of Uttar Pradesh [(2011) 7 SCC 776]** also reiterated that not necessarily, apology even if unconditional and unqualified needs acceptance. Apart from being bonafide, if the conduct if is serious which has caused damage to the dignity of the institution, the same need not be accepted. Relevant paragraphs of the same are profitably noted as under: -

"22. In L.D. Jaikwal v. State of U.P., AIR 1984 SC 1374, the court noted that it cannot subscribe to the 'slap-say sorry- and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper poorer.

(See also: T.N. Godavarman Thirumulpad v. Ashok Khot & Anr., AIR 2006 SC 2007) So an apology should not be paper apology and expression of sorrow should come from the heart and not from the pen; for it is one thing to 'say' sorry-it is another to 'feel' sorry.

23. An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the "contrition which is the essence of the purging

of a contempt". However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the Court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (Vide : Mulkh Raj v. The State of Punjab, AIR 1972 SC 1197; The Secretary, Hailakandi Bar Association v.State of Assam & Anr., AIR 1996 SC 1925; C. Elumalai and Ors.

v. A.G.L. Irudayaraj and Anr., AIR 2009 SC 2214; and Ranveer Yadav v. State of Bihar, (2010) 11 SCC 493).

24. In Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr., AIR 1969 SC 189, this Court while dealing with a similar issue observed as under:

".....Of course, an apology must be offered and that too clearly and at the earliest opportunity. A person who offers a belated apology runs the risk that it may not be accepted for such an apology hardly shows the contrition which is the essence of the purging of a contempt. However, a man may have the courage of his convictions and may stake his on proving that he is not in contempt and may take the risk. In the present case the appellants ran the gauntlet of such risk and may be said to have fairly succeeded."

25. This Court has clearly laid down that apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language does not absolve the contemnor on any count whatsoever. 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. (Vide: Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr., AIR 1974 SC 710; The Bar Council of Maharashtra v. M.V. Dabholkar etc., AIR

1976 SC 242; Asharam M. Jain v. A.T. Gupta & Ors., AIR 1983 SC 1151; Mohd. Zahir Khan v. Vijai Singh & Ors., AIR 1992 SC 642; In Re: Sanjiv Datta, (1995) 3 SCC 619; and Patel Rajnikant Dhulabhai & Ors. v. Patel Chandrakant Dhulabhai & Ors., AIR 2008 SC 3016).

26. In the instant case, the appellant has tendered the apology on 24.5.1999 after receiving the show cause notice from the High Court as to why the proceedings for criminal contempt be not initiated against him. It may be necessary to make the reference to the said apology, the relevant part of which reads as under:

"That from the above facts, it is evident that the deponent has not shown any dis-regard nor abused the Presiding Officer, learned Magistrate and so far as allegations against him regarding surrender of Om Prakash is the name of Ram Kishan are concerned, the deponent has no knowledge regarding fraud committed by Asharfi Lal in connivance with others and deponent cannot be blamed for any fraudulent act.

That notwithstanding mentioned in this affidavit, the deponent tenders unconditional apology to Mr. S.C. Jain, IInd Addl. Chief Judicial Magistrate, Etawah if for any conduct of the deponent the feelings of Mr. S.C. Jain are hurt. The deponent shall do everything and protect the dignity of judiciary. (Emphasis added)"

27. In this legal background, on adverting to the facts in the instant case, when the conduct of both the alleged respondent no.1 and 2 are considered, it can be noticed that they both have tendered the apology which they insisted to be unconditional and unqualified and at the first given opportunity. So far as alleged respondent no.1 is concerned, so as to explain the role of respondent no.2, he has given

explanation and defended himself. Whereas respondent no.2 had been asked to explain by learned Single Judge before it issued notice of contempt, and in that affidavit-in-reply filed on the directions of the Court, he has attempted to explain as to why there was an attempt on his part to contact the learned Judge of this Court in the pending criminal proceedings. Respondent no.2 has sought the pardon for having involved himself directly or indirectly in the act attempting to criminal contempt. In his affidavit filed pursuant to the order dated 25.06.2020, he said that he realized the mistake and he ought not to have made phone call to the Hon'ble Judge and he said that he is full of regret and remorse and also realises the serious misconduct and blunder. He knew that it amounts to interfere with the administration of justice. He urged that the Court be merciful and accept his sincere apology. So far as respondent no.1 is concerned, he emphasized that through his friend, he had met respondent no.2 who had good connection with the police department and even in the past, he has helped several people in finding support from the police. So, it was through one Mr. Rajesh Solanki that

meeting was arranged and he was conveyed that other co-accused have been released and he would try to put these facts and persuade the police authority to adopt a lenient view. He said that he was unaware as to from where he procured the number of learned Judge. It was on his own volition that he did so. Whereas according to alleged contemner no.2, he had been given those details by respondent no.1 and he had been also ensured that after once the work is done, he would be aptly rewarded. It is quite apparent from diametrically opposite stands taken by both of them that either of them has not stated the correct facts and one of them is presenting blatant lies. This even at the stage when both the respondent seek apologies, one of them has chosen not to approach the court with clean hands and that also is one very valid aspect not to treat this apology as bona fide.

27.1. This being an extremely gross case where there is a direct attempt to contact the Presiding Judge of this court with a clear design to obtain order in favour of the respondent no.1 by camouflage and all possible efforts have been made to interfere with the administration of

justice, even if the apology is termed as an qualified and unconditional, accepting the same would amount to compromising with the dignity of the institution. Learned Judge of this Court when was seized with anticipatory bail matter of the Respondent no.1 being Criminal Misc. Application No. 8266 of 2020 in relation to the First Information Report being No. 11215021200321 dated 01.05.2020 registered with Petlad Town Police Station, by a clear design to get a favourable order, both colluded and also attempted to rope in the name of the sitting MLA.

28. Not only it appears clearly from the affidavit where the attempt is made to defend the action of the alleged respondent no.1 but prima facie, it appears that with an intent to get the order in his favour, he had hired alleged contemner no.2 who in his opinion was having all resources and was having more contact and he made arrangement in his meeting to get the number of the Hon'ble Judge. This is a case where the court since directed probe into the matter by directing the Investigating Agency, it has

come to the knowledge as to how the entire modus operandi had been performed. It is only when revealed by the Court and when caught by the Investigating Agency that both the respondents have chosen to tender their apologies in the contempt proceedings. It is a very serious case and, in a time, where many litigants harbour a notion to win over and maneuver anything and everything by adopting even extra-legal means and whose only goal is the end result which they desire, regardless of the means adopted, the Court is of the clear opinion that acceptance of apology would vindicate such notion that one can get away with any outrageous conduct by merely tendering apology. It is not a case where innocently there is a reference or request for seeking pardon. It is also not a case where either of the respondents was not aware that with what object they were pursuing desired goal. It appears largely a design to procure liberty by an ill design and unpalatable means of contacting the sitting Judge of this court right on the day when matter is scheduled to get order by hook or crook and the means adopted, as can be noticed, prima facie are such which would shake the edifice, if permitted to go scot

free. This is an institution which is revered by the citizens for its impartiality and higher standard of dispensation of justice which are also its hallmarks and therefore, any such attack would warrant its zealous safeguard .

29. The alleged contemnors first committed their acts which has a tendency to interfere with course of administration. Those can be said to be the acts and actions contemptuous in nature. It was only subsequently when this Court issued Suo Motu notice that they responded, finding no escape route, with tendering of apology. Thus, their apologies inspire no confidence.

30. Even if the apology is unconditional or unqualified, in the offence which is first of its nature and the apology tendered is, at the first given opportunity after issuance of notice on the returnable date, the glaring facts of the instant case would not permit this Court to accept the apology and discharge the notice as requested by the learned counsels appearing for the parties as the court cannot overlook the vital and fundamental aspect that such acceptance can

mean this court compromising the dignity of the institution and interference with the administration of justice.

31. The court is not persuaded, in the totality of facts and circumstances, to accept such apology so tendered. Resultantly, this request of acceptance of apology is not acceded to. The matter shall proceed further. None of the findings or observations shall in any manner prejudice the right of either side while proceeding with the trial as they are made solely for the purpose of examining the request of apology.

(SONIA GOKANI, J)

(N.V.ANJARIA, J)

MISHRA AMIT V./Bhoomi

FURTHER ORDER

1. Request is made at this stage by the Learned senior counsel to grant reasonable time to put on record the defence

and also continue the apology on record to be accepted at an appropriate time.

2. Acceding to the request, matter to appear on board on 21.09.2020.

(SONIA GOKANI, J)

(N.V.ANJARIA, J)

MISHRA AMIT V./Bhoomi