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

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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SUO MOTU
Versus
YATIN NARENDRA OZA

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Appearance:
MR SHALIN MEHTA, SR.ADV.,AMICUS CURIAE with MS NISHA M THAKORE(3293) for the Applicant(s) No. 1
MR ARVIND DATAR,SR.ADV.,MR MIHIR JOSHI, SR.ADV. with MS. KRUTI M SHAH(2428) for the Respondent(s) No. 1

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

Date : 06/10/2020

CAV JUDGMENT

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

"'Rule of law' is the basic rule of governance of any civilized policy. The scheme of the Constitution of India is based upon the concept of rule of law. Everyone, whether individually or collectively, is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be. For achieving the establishment of rule of law, the constitution has assigned the special task to the judiciary in the country. It is only through the courts that the rule of law unfolds its contents and establishes its concept. For the Judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. The only weapon of protecting itself from the onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be."

***(**observations of the Apex Court in **Vinay Chandra Mishra, In re, [(1995) 2 SCC 584)]**.*

A. Factual Background

2 This Court had noticed from the contents of the live press conference telecast on the Facebook by the President of Gujarat High Court Advocates' Association (GHAA) based on reckless and unpalatable utterances of the present respondent. Therefore, exercising the powers

under Article 215 of the Constitution of India and the provisions of the Contempt of Court Act,1971 this Court initiated the action against the respondent contemnor on 09.06.2020 taking cognizance of criminal contempt on having found *prima facie* that respondent, as the Bar President, by his scandalous expression and indiscriminate as well as baseless utterances, attempted to cause serious damage to the prestige of majesty of the Court and of independent judiciary and thereby has also attempted to lower the image of entire administration and also created demoralizing effect amongst the administrative wing**,** seeking to tarnish the image and lower the esteem of the institution of the High Court as a whole. And, thus, holding the respondent responsible *prima facie* for committing the criminal contempt under section 2 (c) of the Contempt of Courts Act, this Court took cognizance of such criminal contempt under section 15 of the Contempt of Court Act,1971 on 09.06.2020.

2.1 Apt would be to reproduce the paragraphs, which shall be vital for further consideration of the matter.

"3. This suo motu contempt proceeding has been initiated by the

Court in wake of extremely unfortunate and absolutely unpalatable event that took place in the midst of Pandemic of COVID- 19 where accusing fingers have been raised against the High court , High Court Administration and the Registry by irresponsible, sensational and intemperate delivery in an interview by the President of the GUJRAT HighCourt Advocates' Association ,the Senior Advocate Shri Yatin Oza in his capacity of the office bearer of GHCAA.

4. COVID 19 pandemic has taken the entire world in its grip and the state of Gujarat is not an exception. It in fact is one of the worst affected states and particularly the city of Ahmedabad has the highest mortality rate in the state. The government of India declared lock down from 25th March 2020 and continued the same up to 31 May 2020. Relaxation has come with certain precautions. It is a matter of common knowledge that in a normal day of functioning of the High Court of Gujarat approximately 7000 to 8000 people are found on the campus and therefore the physical functioning of the High court needed to be halted in this extraordinary situation and for the betterment of all the stakeholders, conducting of the matters through the video conferencing was decided by way of an administrative decision . Like every change in the system, this change was not finding favour at some quarters and while the genuine grievances were being examined on administrative side by the High Court, the president of the bar Association behaved in the most reckless manner. He leveled false and contemptuous allegations of corruption, malpractices against the administration of the High Court.

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.

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'

7. From 24/3/2020 till 8/6/2020, in fact, the total numbers of matters filed before the High court including the civil Applications are 5039 and 3147 have been registered and 8182 are listed and 4057 are disposed of, where majority of them are of those who are having extremely meagre means. Without caring for the truth, riding on the wave of populism, he appears to have crossed all limits by condemning recklessly the Institution. Being fully aware that his actions and above referred utterances are scandalous and capable of initiating proceedings of Contempt, he gave an open challenge to the authority of this Court in the very interview which is even worse than the very action.

8. We specifically emphasise that present is not the time where the Bench-and the Bar could afford to divert their energy in any kind of bickering and, in fact, both are duty bound to work together and discharge their respective obligations in a positive atmosphere. It is also the time for both of them to work for teeming millions who require protective umbrella from this Court as the guardian of rule of law. Such crisis comes in hundred years and all the segments who are integral part of this Justice delivery system must not forget that the people of this country have given them so much of responsibility not for no reasons. Instead of setting an example and moving forward towards the setting up of a better system of e Court which is the order of the day and the need of future, all possible attempts are made to doubt every step of the administration which is attempting to strike a balance of protecting the life in present times without closure of functioning of courts. In times of such crisis and the need

to have a coordinated functioning of the Courts, such demeaning utterances would indeed result in more aggravating and retrograding effects."

2.2 The Court also kept the fresh English translation of the press conference held by the contemnor on 05.06.2020 as part of the said order, the reference of which will also be made in this order whenever found necessary.

2.3 Following are the directions issued by this Court, while issuing notice to the respondent contemnor

"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/57350809 6929988/ 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."

2.4 This notice was made returnable on 16.06.2020 when learned advocate Ms. Kruti Shah appeared as an advocate on record for the respondent. She had conveyed to the Court that the petition moved before the Apex Court by the respondent contemnor being SLP(Criminal) No.2740 of 2020 challenging the order dated 09.06.2020 was dismissed as withdrawn by an order dated 16.06.2020 with a view to proceed before this Court in this contempt petition. The order dated 16.06.2020, passed by the Apex Court is reproduced as under

> "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.

Pending application stand disposed of."

2.5 Mr. Shalin Mehta, learned Senior Advocate, as also standing counsel of the High Court of Gujarat was appointed as an amicus curiae whereas learned advocate Ms. Nisha Thakore, as an empaneled advocate of the High Court of Gujarat, assisted the cause.

2.6 Further time, since, was required for filing the reply, the same also had been made available up to 14.07.2020, keeping in mind Rule 16 of the Gujarat Contempt of Courts Rules, 1985.

B. Respondent's affidavit-in-reply dated 10.07.2020

3. In his affidavit-in-reply, the respondent has stated that he holds the High Court in the highest regard and it was not his intention to scandalize or lower the authority of the Court in any manner. He further states that he had not caused the slightest aspersions nor made any insinuation against any judge of this Court in his statement. He, at more than one places, had stated and

expressed that he absolutely had no complaint with the Hon'ble judges and they had never favoured anyone. The grievance that he raised were voiced against the functioning of the Registry and though he honestly believed that criticism of the functioning of the Registry may not amount to contempt of the Court, he realized that mode and manner of voicing the grievances was unwarranted. He also stated further that he wished that he was more circumspect and ought not to have alleged corrupt practices in the Registry and ought not to have also used terminology of "Gambling Den", which was with respect to the fate of the matters in the Registry where some matters were either listed or not listed and these were emotional utterances and even if that amounted to the slightest contempt of the Court, he sincerely tenders his unconditional apology. He further states that he seeks indulgence of this Court without attempting any justification to narrate the circumstances leading to his statement and submitted that the same be considered for accepting his apology. According to him, in view of the grave situation prevailing all over the world

and also in the State of Gujarat, functioning of the Court had stopped from 24.03.2020 and extremely urgent matters both on civil and criminal sides were permitted by video conferencing before the limited number of Courts. Anticipating serious financial difficulties for some lawyers, a request for financial assistance was accepted by the Bar Association, which was in the pipeline and on 26.03.2020, a Committee of Advocates was appointed to collect the funds and assist the advocates in need of such funds.

3.1 Number of representations from young lawyers were received by him and the Committee members that pending bail and detention matters were needed to be listed which would secure necessary relief to the litigating parties and would also enable the advocates to continue their earnings. This was also conveyed to the Court which issued the circular dated 10.03.2020 in this regard and additionally, Single Judge Benches and Division Benches were constituted from 15.04.2020 for hearing the pending bail applications, temporary

bail applications both of undertrial prisoners and also pending appeals, anticipatory bail applications and preventive detention matters, in addition to several fresh matters being filed. All advocates who were desirous of getting the specific matters circulated in any of these categories were requested to send by e-mail to the High Court, the office of the Public Prosecutor & Government Pleader and Assistant Solicitor General as the case may be, on the e-mail address notified in the circular dated 22.03.2020.

3.2 It is further stated that urgent representation had been received from the advocates that despite the said circular of the High Court, they were unable to prepare for the hearing of the matter, since the police were blocking the access to the office on account of the lock down imposed by the State and, therefore, a representation was made to the Police Commissioner on 15.04.2020 permitting the advocates from the residence to go to their office. It is further urged that many representations

continued to be received from advocates making grievances about non-circulation of their matters by the Registry, which was conveyed to the Hon'ble the Chief Justice with a request to give necessary instructions to the Registry, which was regarded by communication dated 15.04.2020. This communication is addressed to the Bar members by the respondent stating therein that many advocates ventilated their grievances about the non-circulation of matters on the ground of non-removal of office objections. Under the new system, they found it difficult to remove office objections and the respondent made oral representations to the Hon'ble the Chief Justice with a request not to halt the circulation of the matters on the ground of non-removal of office objections, if the advocate undertakes to remove the same in a month's time. This was promptly accepted and the Hon'ble the Chief Justice intimated the President that necessary instructions have been issued to the Registry. He also expressed his deep sense of

gratitude to the Hon'ble the Chief Justice in this communication addressed to GHAA officials.

3.3 Due to the pandemic situation, the circular also came to be issued on 18.04.2020 withdrawing the practice of hearing of pending matters on urgent notes and directing that only fresh filing of urgent nature was to be permitted. The Court though was sympathetic to several hardships faced by the junior advocates, it expressed its helplessness in view of the prevailing situation. This circular issued on 18.04.2020 by the Registrar General of the High Court of Gujarat reflects the order of the Hon'ble the Chief Justice, which states that the guidelines issued by the Ministry of Home Affairs on the lockdown strictly prohibits movement of public, except for exclusions provided therein. Moreover, as per the submissions of the Registry (Judicial) dated 18.04.2020, a large number of staff residing in the localities of Ahmedabad City or its outskirts, have been declared as hot spots and such areas were completely quarantined and in

some of the localities, curfew also had been imposed. The communication received from the Government Pleader also gave similar reasons. It was, therefore, ordered that third stage of Covid-19 could not be ignored, which was the community spread stage. The number of positive Covid-19 cases in Ahmedabad City were on rise, every day more than 100 cases were added and new areas were being declared as hot spots and were quarantined.

3.4 In this background, this order states that the city of Ahmedabad since is badly affected of Covid-19 although the request of President expressing the concern about the junior advocates facing several hardships cannot be doubted, the larger perspective and interest of the public at large in the current situation the city of Ahmedabad is undergoing, cannot be overlooked and when the entire nation is facing a lockdown till 03.05.2020 and for the reasons given therein, the request for pending matters to be circulated through urgent

notes was withdrawn. Even the fresh filing through soft copy, according to the circular, may be jeopardized in the event the situation further worsens and the exigencies demanded stoppage of work and complete closure of the institution. It says that the periodically, on regular intervals, the situation would be reviewed and appropriate orders would be issued. It was clarified that only fresh matters of extreme urgent nature would be listed as specified in the order dated 22.03.2020 and the earlier order of 10.04.2020 stands modified.

3.5 According to the respondent, this situation had made it even more difficult for a large number of young advocates to sustain themselves and their families and he received number of calls and messages from the advocates about the difficulties faced by each of them. He, therefore, addressed a letter dated 24.04.2020 to the Hon'ble the Chief Justice to make a request for special concessions for junior advocates, who may not be well-

equipped to conduct the matters through video conferencing. He also represented that summer vacation be cancelled and work of the Court be kindly continued, which was accepted by the Court and the circular dated 30.04.2020 was issued. Although the very circular was immediately revised by circular dated 01.05.2020, since limited number of staff member of the Registry could not cope up with the many fold increase in filing and it was directed that only extremely urgent matters would be notified. These communications at Annexure-F, G, E and H also are heavily relied upon.

3.6 It was urged that his request was for limited period of 03 days in a week to allow listing of pending appeals and detention matters by constituting 05 Benches of the learned single judges, on the ground that from 18.03.2020 the functioning of the High Court is in quarantine. He also requested that looking to the pendency, and as full-fledged and physical functioning is not possible, hearing of

the matter must continue through video conferencing uninterruptedly and continuously. He further requested that advocates, who do not have infrastructure to conduct the matters through the video conferencing may be accommodated with a rider that if they appear in one matter through video conferencing, then the request for accommodations may not be acceded to. It is further his say that the Supreme Court recently issued circular, a copy of which must be with the High Court, where the matters are categorized and all those matters are being conducted by the Apex Court. If the first request of proceeding with the appeals and detention matters is not acceded to, those matters which the Supreme Court had found to be urgent and hearing of which is not postponed because of the pandemic, may be heard.

3.7 Thus, there was an insistence on the part of the respondent to consider those categories of matters deemed urgent by the Apex Court, to be treated as urgent by the High Court for the purpose of

notification. He also had relied on the Delhi High Court circular, which accommodated the junior members of the Bar by constituting two Benches for physical hearing so that large number of juniors could be accommodated and further urged that it may not be made mandatory to attend hearing physically and only those advocates, who are desirous to be heard in person can opt for the same. This also makes a mention of cancellation of summer vacation, as several High Courts already have done that and others were also considering the same. The Apex Court notification which provided for normal Court work on lifting the lockdown had been pressed into service for consideration and it is further urged that the Bombay High Court pattern be adhered to, however, the work hours may not be extended beyond five and quarter hours. If possible, the High Court can function from early morning to noon.

3.8 Considering such a request from the respondent, a notification came to be issued by this Court vide Number C/2101/ 2020 that bearing in mind the prevalent crisis of corona virus pandemic summer vacation starting from 11.05.2020 to 07.06.2020 has been cancelled and the present dispensation of dealing with the fresh matters was directed to be continued. Another circular dated 01.05.2020 issued by the order of the Hon'ble the Chief Justice indicates that the minimum number of staff members of the Registry since are available, any urgent matter may increase the burden many fold. Therefore, the matters, which are genuinely urgent in nature, since suffer on account of circular dated 30.04.2020, which had given rise to the flow of the applications and petitions, it was directed that the urgent note needed to be filed by the advocate at the first instance and the same would be examined by either the Chief Justice himself or any other Judge nominated for the said purpose and if urgency is *prima facie* found to be genuine, such

matter would be listed. This was to be submitted in the soft copy for the matter to be notified.

3.9 It is further stated that large number of advocates complained about the new procedure and the respondent addressed a letter to the Chief Justice on 02.05.2020 narrating difficulties faced by various advocates in getting their names filed and listed. The Registry also alleged to have blundered and complicated the issues on many occasions. He also further mentioned that there was no fault with the Registry or the departments, who extended helping hands and courtesy, but, complaints were received from number of advocates about not getting the mattes listed. Since the tone of the letter was not appropriate, he withdraw the same on 26.05.2020.

3.10 Letter of 02.05.2020 (Annexure-I), if is looked at, there the request is made to withdraw the circulation dated 01.05.2020. According to the respondent contemnor, he found no logic nor any reason to restrict work and only to hear urgent

matters and that too, after the procedure to be followed for getting matters listed. He further requested to start the function of the Court full-fledged or through video conferencing and all the matters whether new or pending, were requested to be taken up for hearing. He also said that "Registry has also goofed up on many occasions". He also gave examples of past instances and all those judgements, which had considered the procedure as the slave of justice. He also gave his personal examples as to how the detention matters cannot be delayed and urged that detenue are in jail for more than 04 months and "most insensitivity is exhibited to the detention matters". He also expressed in strong words the concern over the pending bail matters. He, therefore, requested that High Court should function in full-fledged manner or through video conferencing and also the judges should take up the matters as assigned to them as per the roster. He further says that "cutting down the course or restricting its

function only to extremely urgent matters does not reflect well to the reputation of the High Court to a man of prudence." Accordingly, he made a request for withdrawal of the circulation on 01.05.2020.

3.11 On 26.05.2020, the respondent communicated to the Chief Justice seeking unconditional withdrawal of his letter dated 02.05.2020 by saying that the same was written in a heat of moment and that it was not properly worded. He further has stated that he took up the matter on account of the grievance of the sidelining and non-circulation of the matters with the Registrar (Judicial), who was cooperative and helpful, although, he was unable to handle so many phone calls and, therefore, on legal advice, the respondent provided forum for advocates after some deliberations and incorporated suggestions from various quarters and created Google form, to be filled in by the advocates for redressal of the grievances. There are about 250 grievance forms received, summary statement of the grievance forms has been

chronologically and in a concized manner produced before this Court, at Annexure-N and some copies of complaints received are produced at Annexure-N, which shall be discussed at an appropriate stage.

3.12 It is further the say of the respondent that on 18.05.2020 based on the representation received from the advocates, the Hon'ble the Chief Justice was requested to increase the work of the Court and list of pending matters, notification of helpline number to resolve the grievance and complaints of the advocates. All attempts were made to coordinate with the Registry, which was keen to get the procedure streamlined and the same was recorded in the communication dated 22.05.2020. By then, the complaints were received from the advocates that there was a preferential treatment given to the matters of some of the advocates and, therefore, there was a meeting held with the Hon'ble the Chief Justice and two other senior judges where difficulties faced by members of the

Bar, particularly, the difficulties in circulation was discussed in detail and it was assured that the issue would be looked into. In the final communication to some of the members of GHCAA, it was conveyed that a detailed meeting was held between the Honourable the Chief Justice and the two senior judges with Vice-President and the Secretary for about two hours and all the difficulties faced by the members of the Bar including all the circulations have been discussed. It was also conveyed that the Hon'ble the Chief Justice is going to look into the issue by the next day.

3.13 It is further the say that as there were number of complaints, which continued on 28.05.2020, a letter was addressed to the Registrar General narrating the issues in detail faced by the advocates and inaction on the part of the Registry in taking prompt steps to redress the grievance of the advocates and also requesting for dedicated helpline number for advocates for directly getting

in touch with the officers, as time and again, it was conveyed to the Registrar that phone calls of the officers remain unanswered. On analyzing issues which had arisen due to the procedure adopted for virtual filing and workings, it was believed by some of the office bearers that physical functioning of the Courts would redress most of the complaints and make this system transparent and they were working towards building broad consensus towards the issue. He also requested the Court to start physical functioning with all safeguards so that there could be no cause of complaint regarding filing and listing of the matters by the advocates.

3.14 On account of continuous barrage of complaints by the advocates and its inability to resolve the same dispute, following up with the Registry, resulting into a serious financial crisis for a large number of advocates, he was extremely upset and tendered his resignation on 02.06.2020, which was not accepted by the Committee. He continued to

receive large number of calls requesting their frustration and despair because of the non-listing of the matters and he was also informed that some of the lawyers had taken up part time jobs to sustain themselves and their families during this period and others had applied to avail financial benefits under the scheme of GHCAA against their vehicle.

3.15 It is further stated that a day before the Members' conference, nearly 40 advocates went to his office in the morning complaining against the ineffectiveness of the GHCAA in resolving extremely serious issues of the Bar. He was given large number of reports of various matters highlighting the difficulties and waste of time in getting matters filed and in listing the matters without apparent reason. This has been also tendered at Annexure-V. The situation became highly surcharged and emotional and letter dated 05.06.2020 to the Hon'ble the Chief Justice came to be drafted and the conference was held in this

background. It is attempted to justify that because of "incessant calls from the lawyers and members expressing their dismal conditions, I was then passing through sleepless nights and I was terribly disturbed within. Anguish in my utterances, use of unjustified language here and there needs to be viewed in this background and may kindly be taken in stride. I may add that I was not concerned in any manner with any matter in respect of which grievances have been made". The respondent accordingly expressed his sincere regards and reiterated that if any action of his constitutes the slightest contempt of the Court, he unconditionally apologizes for the same and his respect for the Court is self-evident from his address on 01.05.2020 on the occasion of 60th year of the Court. He, accordingly, made a request to discharge the notice of contempt and drop the same. It is also needed to be noted that the respondent while unconditionally apologizing,

referred in the last paragraphs three Annexures, which he attached being Annexures-W, X and Y.

3.16 Worthwhile it would be to refer to Annexure-W, which is the reporting from Scroll Staff dated 07.05.2020 quoting His Lordship Hon'ble Mr. Justice Deepak Gupta, Former Judge, the Supreme Court of India with the title "India's Legal System favours the rich and the powerful" says the retiring Supreme Court Judge. It says that if somebody, who is rich and powerful, is behind bars, then time and again, he will approach the higher Courts during the pendency of the trial till some day, he obtains the order that his trial should be expedited." This, he said, happens at the cost of poor litigants whose trial gets further delayed because he cannot approach the higher Courts.

3.17 Annexure-Y is the press note of the Bar Council of India dated 20.05.2020, which had received complaints of pick and choose by fixation of urgent matters in some High Courts, however, frequent

disturbance in the wi-fi and other technical problems, are noted as common phenomenon. It says that the if effective hearing in the process cannot be expedited, the public and advocates are in the dark as to what is really going on in various Courts of the country. Some of the biggest Bar Associations and several advocates of the Supreme Court, according to this note, are taking undue advantage of the lockdown and the legal profession is gradually being attempted to be highjacked by a few lawyers and selected law firms, who have high level connections and the entire system is likely to go out of hands of the common advocates and, therefore, it had attempted to approach the Hon'ble the Chief justice of India and the Chief Justice of the High Courts with a request to take note of the real difficulties.

3.18 Reliance is placed on the communication of Mr. Manan Kumar Mishra, a Senior Advocate of the Supreme Court and the Chairman of Bar Council of India stating that during the period of lockdown

lakhs of advocates are facing serious problems of livelihood and some of the High Court have taken notice of that fact and issued certain directions, but the Union of India and the State Government have not come to the rescue of the advocates and that the grievance is made that if the lock down continues for a longer duration, some safe, adequate and secured measures shall need to be found out for the working of the Courts of the country.

3.19 Yet another reliance is of PTI communication dated 15.07.2020 that the Supreme Court expressed unhappiness over the unruly behaviour of some of the lawyers and also shoddy manner of working of the Registry officials in listing the urgent matters. This is, of course when His Lordship Mr. Justice Ranjan Gogoi was the Chief Justice of India. The mention is also made of the PTI news of 25.07.2019 as the then Chief Justice of India was irked over the non-listing of urgent cases for urgent matters with the Registry since despite the

Court's order, the matters were not listed and that had invited the wrath of the Chief Justice of India.

3.20 Furthermore, the topic, which is sought to be relied on is the Bar and Bench news, which says that CBI and Delhi Police officials would watch over the Supreme Court Registry. This was the news of 08.07.2019 that in light of the recent incidents that brought the integrity of Supreme Court Registry under the scanner, officials of CBI and Delhi police would be deputed to the Supreme Court to have a close watch, as per the report of the Times of India. It was the then Chief Justice of India Mr. Justice Ranjan Gogoi, who thought of engaging the police officials in the Registry and other officials like Additional Registrars, Deputy Registrars and the Branch Officers and Senior Court Assistants to keep a close eye over the communication between the lawyers and Registry officials. He also relied on the article of Judiciary and Legal Profession Yesterday, Today and

Tomorrow. This shall find place in discussion at an appropriate stage.

C. Full Court on recall of designation of Senior Advocate

4. In the meantime, pursuant to the directions issued by this Court in the notice on 09.06.2020, the Registry placed before the Chief Justice for consideration at the hands of Full Court the issue whether the respondent needed to be divested of the stature of the Senior Advocate under the circumstance narrated in the contempt notice. The Full Court chose to initiate actions against the present respondent on 11.06.2020 itself and the same culminated in divesting him of his designation of Senior Counsel conferred upon him, by an elaborate order 18/07/2020. The operative part of the same is reproduced at this stage:

> " Having regard to the grave misconduct on the part of Mr. Oza in calling the press Conference on 05.06.2020 and publicly branding the High Court as a "Gambling Den", apart from making other reckless and baseless allegations against the High Court, the Full Court is of the unanimous opinion that Mr. Oza is guilty of the conduct which has disentitled him to continue to be worthy of the designation of the Senior Advocate, and that this is a fit case to review its earlier decision of designating Mr. Yatin Narendrabhai Oza as a Senior Advocate and to recall the said designation under Rule 26 of the 2018 Rules. Thus, the Full Court unanimously reviews and recalls its decision dated

25.10.1999 to designate Mr. Yatin Narendrabhai Oza, Advocate as a Senior Advocate.
It is resolved accordingly"

4.1 On 22.07.2020 learned Senior Advocate Mr. Mihir Joshi requested for a time of three weeks on the ground that the order of Full Court was served upon Mr. Oza on 21.07.2020 and he was required to take further action in that regard. Accordingly, the matter was posted on 05.08.2020. The request for grant of one weeks' time was also acceded to and the matter was kept on 13.08.2020.

D. Writ Petition (Civil) 734/2020 before the Apex Court

5. In the meantime, the petitioner moved the Apex Court against the order of the Full Bench divesting him of the stature of Senior Counsel by way of a Writ Petition (Civil) No.734 of 2020 and the Apex Court on 06.08.2020 passed the order directing this Court to apply its mind to the issue of unconditional apology, since the respondent had conveyed that he had apologized unconditionally and further apologized unconditionally in contempt proceedings, prayed for bringing closure of this proceedings.

5.1 The order of the Apex Court in its entirety would be relevant to be reproduced at this stage:

"Application for permission to file additional documents/facts/annexures is allowed.
We have heard at length Dr. Abhishek Manu Singhvi, Mr. Arvind Datar, Mr. Shekhar Naphade and Mr. Mihir Joshi, learned Senior counsels. Mr. Pravin H. Parekh, learned senior counsel also represents the petitioner. In fact, Mr. Dushyant Dave, learned President of the Supreme Court Bar Association who was actually in the next matter also addressed us.

We also considered appropriate to hear out the petitioner who is present in Court.

The common theme which goes through all these submissions is that the petitioner has been a leader of the Bar and has made considerable contribution but at times has exceeded his brief in expressing his sentiments in a language which is best avoided. This appears to be another incident of the same nature as in the past.

The counsels and the petitioner state that there was an unqualified apology even before the Full Court and before the Court seized of the contempt matter. We may note that the petitioner himself has been quite apologetic before us and states that he should not have used the words he used and those words were used in the heat of the situation where everybody is troubled by the prevailing problem of Covid and the grievances of the younger members of the Bar. The counsels and he both submit that his statements were uncalled for which he deeply regrets. The petitioner goes as far as to use an adjective against himself for using such intemperate language and assures not to ever in future repeat such conduct. We did put to him that the grievances may exist but can always be conveyed in a better language. Systems can be improved but imputations should not unnecessarily be made.

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 minds to the issue. The petitioner has no hesitation in saying that he has apologized unconditionally and will apologise unconditionally in the contempt proceedings and pray for bringing to closure those proceedings.

He submits that he will also make a representation to the Full Court stating that he deprivation of is gown for the existing period already is sufficient punishment for him and he stood chastened and that the Full Court may reconsider the aspect of the restoration of the senior's gown rather than depriving him for all times to come.

We have put to the petitioner that as a leader of the Bar and as a senior member, a far greater responsibility is expected of him to not only be more restrained but also to guide the younger lawyers in these difficult times.

We consider it appropriate to defer consideration of the present matter by two weeks and we hope, in the meantime, a finality would be given to the two aspects we have stated aforesaid.

List on 26th August, 2020.

At the request of the learned Advocate-on-Record for the petitioner, page B is to be replaced on account of some typographical error.

The request is acceded to."

E. Review by the full court -23/08/2020

6. Once again the matter went to the Full court on 23.08.2020, the Full Court reconsidered its decision in wake of his apology. Relevant paragraphs are needed to be reproduced:-

"15. The Hon'ble Supreme Court while observing that Mr. Oza may make a representation to the Full Court stating that deprivation of his gown for the existing period already is sufficient punishment for him and he stands chastened has also expressed hope that the High

Court may give finality to the same. However, with a very heavy heart and with utmost reverence to the expression of hope, the unpardonable conduct of Mr. Oza does not persuade us to accept his apology at this point of time. The observations made by the Full Court in its decision dated 18th July 2020 bears eloquent testimony to the fact that in the past also Mr. Oza had tendered such apologies. However, he has continued to indulge in acts unbecoming of a Senior Advocate by bringing disrepute and shame to the High Court as an Institution of Judiciary. All these aspects have been threadbare gone into in our decision dated 18th July 2020. In such circumstances, it would not be in the overall interest of the Institution to accept the apology and condone the act of Mr. Oza unbecoming of a Senior Advocate.

16.Why does Mr. Oza always expect the High Court to show magnanimity and pardon him for his misconducts? Why cannot Mr. Oza exercise restraint and behave in a manner befitting a designated Senior Counsel? A very well articulated and conscious attack mounted on the Institution and that too for no good cause or reason, should not be overlooked, pardoned or ignored. If such an attack is not dealt with firmly, it will affect the honour and prestige of the highest Court of the State. Such malicious, scurrilous and calculated attack on the very foundation of the Institution of the Judiciary cannot be wished away with apologies.

17. To accept any apology for a conduct of this kind and to condone it would tantamount to a failure on the part of the High Court as an Institution of Judiciary to uphold the majesty of the law, the dignity of the Institution and to maintain the confidence of the people in the Judiciary. The Full Court is of the view that to accept the apology of Mr. Oza would be a failure on the part of the High Court to perform one of its essential duties solemnly entrusted to it by the Constitution and the people. The apology at such a belated stage even if it is assumed to be sincere and bonafide has to be rejected as the same has paled into insignificance in view of the irreparable damage caused to the prestige and honour of the Institution.

18. For all the reasons recorded above, the Full Court unanimously declines to accept the apology and accordingly the representation of Mr. Oza dated 10th

August 2020 stands rejected.
It is resolved accordingly."

F. Additional Affidavit dt.11.08.2020

7. reproduced:-Pursuant to the said order passed by the Apex Court in the aforementioned writ petition, the additional affidavit came to be filed by learned advocate Mr.Oza on 11.08.2020 tendering apology with an emphasis that his was not the intention to scandalize or lower the authority of the Court. He already had tendered his unconditional apology before the Court in the subject proceedings and pursuant to the directions issued by the Apex Court, he once again tendered the same with an urge to discharge him of the notice of contempt issued in the instant proceedings. He further stated that he should not and ought not to have made utterance like "gambling den", which he unreservedly withdrew. For all his unjustified utterances, which may amount to slightest contempt, he tendered his unqualified apology.

7.1 The respondent also referred to the affidavit dated 10.07.2020, particularly its paragraph Nos. 1,2

and 14 to urge that he expressed genuine remorse from the bottom of his heart for unjustified utterance during the press conference.

> "9. I state that I am expressing genuine remorse from the bottom of my heart for my unjustified utterances during the press conference. I have utmost respect for the august institution. I state that my father, Shri Narendrabhai R. Oza was a distinguished and a highly reputed counsel of this Hon'ble Court right from the time when it was established in 1960. From his Chambers, more than 10 lawyers have been elevated as Honourable Judges of this Court of which some were also elevated to the Hon'ble Supreme Court of India. Others have been designated as Senior Advocates and are stalwarts in their ow right. I myself have encouraged and supported young persons including my own daughter to take up this profession due to my faith and respect for the Courts. I state that I have been so innately connected to this institution that I can never intentionally bring any disrepute to this Hon'ble Court and I humbly apologize for all my utterances.
> 10. I submit that at the relevant time, I had been under deep mental and emotional stress for a number of reasons and was prescribed medication and rest. My conduct at that time was really an aberration and I deeply regret all my utterances.
> 11. In view of what is stated hereinabove, I most respectfully submit that the subject notice of contempt issued against me be discharged, dropped or withdrawn."

G. Intervener's application

8. In the meantime, another application came to be filed being Criminal Miscellaneous Application No.1 of 2020

by learned advocate Mr. Amit Panchal as Intervenor seeking permission of this Court to bring to the notice certain contemptuous utterances at the instances of the respondent for the Court to take notice of the same in the present contempt application. This was resisted by the respondent contemnor and after extensive hearing of both the sides, this Court on 19.08.2020, took notice of the material circulated on the WhatsApp group of the High Court advocates as disclosed by the applicant and took the same on record in the present proceedings, while disallowing the applicant as party intervenor by passing a detailed reasoned order. This was pending consideration of the issue of apology of the respondent and while in the midst of hearing of the matter, on the aspect of acceptance of apology that the said application of intervenor was decided. He relied on the letter circulated in the month of June, 2020, which, according to the intervenor, was with a *mala fide* intent and to give bad name to the concerned Judge and bring disrepute to the High Court. Attempt was also made to browbeat the judges and also belittle the institution. It

is incidental to make a mention that intervenor has moved a writ petition WPPIL No.83 of 2020 and the said PIL is pending and it was found that the material submitted by the intervenor having come from a legitimate source and the material being related, it was submitted to be taken on record. He has sought framing of rules under section 34 of the Advocates' Act to regulate the conduct of the advocates and to preserve the purity of judicial process.

8.1 It further says that in absence of statutory rules providing for Courts, an advocate facing the charge of contempt would normally think of only the punishment specified under section 12 of the Contempt of Courts Act. However, his endeavour was to bring to the notice of the Court that at the end of the proceedings, he might end up being debarred from appearing before the Court. This was in relation to the copy of letter dated 21.03.2020 addressed by the respondent in his individual capacity to the Hon'ble the Chief Justice of India and he circulated the messages and two

such message of the Whatsapp group of the High Court Advocates have been highlighted to urge that it was nothing but an attack on judiciary. However, as mentioned hereinabove, without permitting the party/ intervenor, material was taken on record.

H. Unconditional Apology - Hearing and order

9. After the application of intervenor was not entertained, this Court heard the respondent and amicus curiae extensively on the aspect of unconditional apology and chose not to accept the same by its detailed order dated 26.08.2020. Thereafter, at the time of challenging the order of the Full Court divesting the respondent of his gown, the challenge is made before the Apex Court where the challenge also was made to the order dated 26.08.2020 and the Apex Court noted the fact that on rejecting apology, the matter has been listed for further consideration and hence the matter before the Apex Court was scheduled on the 17th September, 2020 with the following order of 09.09.2020.

> "We have noticed that the Gujarat High Court has rejected the request for restoration of the gown of the senior counsel and in the contempt proceedings, the apology has been rejected and thereafter it has been listed for further consideration. The matter is stated to be listed on 17th September, 2020.
> 2 On hearing learned counsels for the parties, we are of the view it would be appropriate that both aspects are taken together after the orders are pronounced in the contempt petition. List on 29th September, 2020, at the end of the Board. We give liberty to the learned counsel for the petitioner to serve a copy of the appeal, in case the petitioner is aggrieved by the orders in the contempt petition and of sentence, if any, on the learned counsel for the High Court and if the same is served well in advance, response to the same can be filed by the High Court."

I. Second Additional Affidavit dt. 16.09.2020

10. Yet another additional affidavit filed is to elucidate the incidents relied upon by this Court on 26.08.2020. It is stated on oath that the Court relied on the decision of the Apex Court in the case of ***Yatin Narendra Oza vs. Khemchand Rajaram Koshti and others***, **2016(15) SCC 236** two other orders dated 30.08.2006 and 12.10.2006 also came to be relied upon in the very order of 26.08.2020. It is urged that past incidents that have not been mentioned in the contempt notice are not to be relied on or considered by the Court. It is urged that there are only three incidents cited against him in his 38 years long career. Almost 21 years as a Senior Advocate and 17 terms as the Bar President. These are explained in Annexure A,B and C. In Annexures A and

B, it is urged that Senior Advocate Mr. S.B.Vakil had suffered severe heart attack in the Court itself in the year 2005 and while he had to consume medicine at 1:00 p.m. and while arguing the matter before Hon'ble Mr. Justice R.S. Garg, he had kept his mobile on silent mode, but the alarm burst and, therefore, the contempt notice was issued against Mr. Vakil. Sentiments of the Bar ran very high and as the President of the Bar on 20.02.2006 the Extra Ordinary General Meeting was convened where media persons also were present. It was resolved that the Bar would intervene in the *suo motu* contempt proceedings issued against the Senior Advocate Mr. Vakil. It was stated that the respondent after persuading the media not to utter and publish that news, which had been spoken in the meeting prepared a press note in a language excluding the majority of the versions spoken by the members of the Bar and genuinely tried to save the reputation of the institution. But, in retrospection, he feels that he should not have done that and he should have allowed the media to publish whatever they had heard and understood.

Then the respondent ought not to have undergone the agony now and then. For a press note, *suo motu* cognizance was taken by Hon'ble Mr. Justice R.S. Garg under the Contempt of Courts Act. The Court issued the notice. It was placed for consideration before the appropriate Bench as per the roster. The Division Bench dropped the contempt proceedings against Shri S.B.Vakil. However, it had issued notice on 21.07.2006 against the petitioner and the Bench accepted the apology on 12.10.2006 of the respondent. Certain observations were made against the respondent while accepting the apology. Therefore, SLP (Criminal) No.1114 of 2007 was preferred to expunge the observations made.

10.1 While earlier matter was pending, another matter was of ***Nitinkumar M. Brahmbhatt vs. State of Gujarat, [*2006(3) GLR 2615]**, which was placed before the Division Bench, where Hon'ble Mr. Justice Garg was a Senior Judge. Permission was sought for withdrawal of the petition, which had become infructuous because the term of the

councilors, against whom removal of injunction was granted, had ended. The Court insisted on the respondent's presence and insisted for hearing the matter on merits, which according to the respondent, was unnecessary and in this, certain undesirable observations were made against the respondent. These observations were expunged by the Supreme Court in Civil Appeal No.4252 of 2006. It was a trivial issue, according to the respondent, where no Court would ordinarily take note of such aspect and the order of expungement of the judgement stands independent of his apology. He further has urged that he expressed his regret and remorse in the case of ***Yatin Narendra Oza vs. Khemchand Rajaram Koshti and others***, **2016(15) SCC 236**.

10.2 The respondent then has submitted that he has a stellar record in terms of standing up for the cause of Bar and the interest of the institutions sometimes ever at the cost of personal gain. He has, in his affidavit, eulogized his actions by

stating that he has espoused the cause of the young members both inside and outside the Court rooms and for young members, who have reposed trust and faith in the petitioner. He always stood up for younger members of the Bar, when they faced the ire of the Bench and invariably tried to persuade the Court of stiffening down its stand. On various occasions, when the mistakes were committed by young members of the Bar and were viewed seriously, he appeared for them and when such members approached the Supreme Court, Senior Advocates *pro bono* appeared at the request of the respondent. This is only with a view to maintain amicable relations between the Bar and the Bench.

10.3 It was also stated that even when the junior colleagues were not allotted the chamber in the High Court and there were no existing vacancies in the Chamber, the request was made to the then Chief Justice Mr. R. Subhash Reddy, as His Lordship then was) and Hon'ble Mr. Justice

M.R.Shah, (as His Lordship then was) and there was construction of 140 new chambers and therefore, 450 young advocates have been allotted the Chambers. He also had requested the Chief Justice for providing parking sheds in the compound and for making movement of the advocates easier within the building, a walkaway bridge between separate wings of the High Court was requested. Serious issues of electricity charges of the Bar room, advocates canteen, ladies' room and advocates law library have been addressed by the respondent.

10.4 According to the respondent, there are enumerable such instances, which stood resolved and in less than 07 days from the lock down, he created corpus seeking contribution from the members of the Bar to extend the benefit to the needy advocates and their supportive staff. Huge corpus is collected for the said purpose. Complete secrecy is made for disbursement. He also groomed 30 to 35 lawyers in his chamber, who have

independently established their practice. He also represents underprivileged and marginalized class in the large number of cases *pro bono*. He also has taken keen interest in elevation of advocates as judges. He also had met the then Prime Minister late Shri Rajiv Gandhi for the said purpose.

10.5 It is further the say of the respondent that scurrilous attack was made by some of the members of the Parliament against one of the sitting Judge of the Court against some observations in one of the judgments. The respondent stood for the Bar very aggressively and met several MPs, who were signatory to the impeachment operation. He conveyed not to proceed further.

10.6 It is stated that when the senior member of the Bench was overlooked for elevation in August, 2011, he met the then Hon'ble the Chief Justice of India late Mr. Justice S.H. Kapadia to persuade him on this issue. He also forwarded a proposal for elevation of certain advocates and met the Union

Home Minister for the said purpose. In this background, it is urged that he selflessly devoted and served for the betterment of the institution and, therefore, his actions and utterances may not be considered in isolation, but in the said background.

J. Hearing on merit

11. Pursuant to the order of this Court, as merit hearing was inevitable in wake of non acceptance of the request of apology, clarity on charges, cognizance of which was already taken, was found necessary. Accordingly, this Court on 17.09.2020 raised specific queries and passed the following order :-

> "1. Today when the matter came up for hearing, it was conveyed to the Respondent in presence of and through his learned Senior Advocates that this court has taken cognizance at the stage of issuance of notice on 09.06.2020 and specific queries were raised by this Court to the learned senior counsels representing the respondent i) as to whether there is any need felt subjectively by the Respondent for further clarification of the charges levelled against him so as to crystalize the same and to avoid any kind of dispute in that respect, ii) if the answer is in negation, whether the respondent wishes to adduce any oral or documentary evidence, other than what is already brought on record and, iii) if that reply is also not in affirmation, whether the

Respondent would like to proceed to argue on merits.

2. After consultation with the Respondent, it has been submitted by Learned senior advocates that both the questions (i and ii) are being answered in negation as they have clearly understood the charges leveled and no evidence needs to be adduced except the material already tendered by the Respondent. However, it is urged that there is no criminal contempt made out and therefore, on merits, the submissions shall need to be made. Request is further made to take into account the affidavit-in-reply and additional affidavits filed before this Court.

3. The matter is fixed, therefore, for hearing on merits learned Counsels tomorrow i.e. on 18.09.2020 at 2:30 pm, as per the request made."

11.1 It has been denied specifically and in no uncertain terms, on instructions by the Learned Senior Advocates for adducement of evidence, oral as well as documentary and there was no ambiguity and in fact a complete clarity in respect of charges in the mind of the respondent. Both the sides as mentioned below, have extensively made submissions and following are the reasonings on each vital aspect which arises in the instant matter for consideration of this Court.

K. Oral Submissions of learned Counsels

12. Learned senior advocate Mr. Arvind Datar supplemented by learned senior advocate Mr.Mihir Joshi made elaborate and fervent submissions urging this Court that the charge under Section 2(c)(i) is about scandalizing the Court. Section 2(c)(ii) and Section 2(c)(iii) of the Contempt of Court Act would have no applicability, which provide for interfering with the due course of judicial proceedings and interfere and obstructing the administration of justice. The word 'Court', according to the Learned senior advocate is not defined anywhere in the Act to include Administrative wing. According to his submission the word 'Çourt' in the section refers to judges only. Making remarks about the judges individually or collectively alone may amount to scandalizing the Court, but, not when anything is uttered in respect of Registry.

12.1 Learned Senior Advocate has sought to rely on the judgment of ***Arundhati Roy, in Re [(2002) 3 SCC 343].*** Functioning of the Registry being entirely

different, any statement made against the registry needs to be excluded, even if the Court is to accept any of these remarks correct and true. According to him, the contempt happens only if the allegations and utterances are about the judge in the judicial capacity is discharging the function.

12.2 He has also sought to rely on the decision of ***Subramanian Swamy v Arun Shourie,*** **[(2014) 12 SCC 344],** where the bench of five Hon'ble judges has held that commission of inquiry is not a court where in fact the then sitting Judge of the Supreme Court, was appointed as Chairman, Commission of Inquiry under the Commissions of Inquiry Act, 1952 to probe into alleged acts of omissions and commissions by Shri Ramakrishna Hegde, the former Chief Minister of Karnataka and the Apex Court held that commission is not the 'court' and therefore, publication made by the alleged contemnor was not held to have been covered under the definition of criminal contempt.

12.3 Learned senior advocate has admitted that nobody ought to have used the words 'Gambling Den' for the Court and it was not at all warranted nor acceptable to have said such words but they do

not in the slightest manner can be said to be any imputation against the judges. The respondent was not casting any aspersion against the judges but the registry when he made those utterance which, of course, ought not to have been used. He further emphasized and urged to view those utterances in relation to various complaints received of the matters not being proceeded and even when processed, it was being done as per the whims and fancy of the Registry. There is no mention made by amicus curie nor by anyone that all those allegations made were false. The contempt court in the findings shall need to hold that the foundation on which these attacks are made, is not sustainable.

12.4 Learned Senior Advocate further emphasized on Annexure-M to his affidavit which contains several WhatsApp messages addressed to the President speak of the complaints against the registry with the dates and names and these are the genuine complaints and are not said to have been denied.

Judicial notice can be taken of the same. If one looks at Annexure-M, according to learned senior advocate Mr. Datar, those messages are nerve racking. He also gave example of Chennai Bar where senior advocate collected 1.30 crores as the total number of Bar Members were 13,000 and for the month of April and May, they had given Rs.5,000/- each junior member as they were unable to pay the rent of the premise where they stayed. They did not even have the amount for the fuel of motorbike. According to him, on 02.06.2020, the respondent had resigned out of frustration. He further urged that in the Supreme Court, the charges levelled against the Supreme Court Registry including of the malpractice, the police officers of the CBI needed to be appointed. He also referred to report of Sanyal Committee which says that criminal courts are divided into three parameters. He therefore has urged that respondent has not done anything reckless.

12.5 It was pointed out by learned Senior Advocate that working of the registry had become acute in July, 2020. He further urged that Section 2(c)(i) is not proved as the utterances were never in the context of the judiciary. It was submitted that the Court has to turn the eye to the ground reality and has to find out the truth, and that the Court cannot overlook the need of public duty. He further urged that the actual foundation on the basis of which the respondent made utterances were the extraordinary circumstances where vast majority of lawyers had been suffering. He urged that respondent has also not repeated any act of contempt and has taken this Court through earlier instances where the proceedings were initiated against the respondent. He urged that no chain is formulated and that it is wrong to say that he has repeatedly entered into such incident. According to learned senior advocate, divesting a senior counsel of his gown would amount to professional death of the person, which is more than a required

punishment and no punishment is to be affected further. He reiteratively urged that no case of contempt is made out. There is nothing in his action to denigrate judiciary. According to him, apology still stands, whatever is needed to be said by way of defence, it is said.

12.6 Relying upon Sections 13, 13(a) and 13(b) of the Contempt of Court Act, he has urged that according to him, there has to be a substantial interference with cause of justice, as is required under Section 13(a) of the Contempt of Court Act, nothing of these exists in case of the present applicant. He has relied on the communication addressed by the Bar Council of India to the Hon'ble the Chief Justice of Supreme Court Mr. Deepak Misra. According to him, there is neither contempt under Section 2(c) nor an act of repetition. Thus, according to him, once the apology is tendered, second punishment is not warranted. He further has urged that complaints after complaints were given where no heed was

paid. He has further argued that Section 2(c) would not apply and the notice be discharged.

12.7 It is further his say that while tendering an apology and filing the affidavit, he also has pointed out from the material placed on record that none other than former senior Judge of Supreme Court of India his Lordship Justice Mr. Deepak Gupta has spoken complaining of conduct of the registry. Likewise, his Lordship the then Chief Justice of India, Mr. Ranjan Gogoi also has expressed his displeasure for the conduct of the registry and the Supreme Court needed to appoint the CBI officials for getting eye on the registry. It was proposed that different cadres of officers in the form of police officials should be created so that the nexus of the registry with all the advocates can be checked and examined. He thus has urged that utterances of Mr. Oza has got foundational base not only in the State of Gujarat but also in other States where there are serious question marks against the registry. He also further has urged that there is no

contempt under Section 2(c) of the Contempt of Court Act. It is explained in its last affidavit-in-reply filed on 16.09.2020 where he has explained as to why in earlier cases there is no contempt.

12.8 It is urged before us, as mentioned hereinabove that section 2(c)(i) refers to scandalous act or the acts which tend to scandalise or lower or tend to lower the authority of any Court which would not apply in the instant case at all. The charge under section 2(c)(i) cannot be held to have been proved as the Court is not defined anywhere. Making remarks about the judges individually or collectively would amount to scandalising the Court and not when the administrative wing is being spoken of. Any statement made against the Registry is to be excluded, even if the arguments on the Court is not acceptable. It is the functioning of the Registry, which is being criticised which is entirely different than the court itself.

12.9 Even when a reference of "gambling den", was made, which ought not to have, there is not the

slightest insinuation against the judges. It does not cause any aspersions against the judges and as the very object of the exercise of powers is to prevent the damage to the prestige of the Court, there is nothing to indicate that this conference has caused any disrespect to the Court. Moreover, the Whatsapp message received by the President and number of complaints made were genuine. Judicial notice can be taken of that fact. Attempt is also made to justify by saying that the police officers were needed to be appointed to prevent malpractices in the Supreme Court Registry. It was submitted that if the anguish made by Mr. Oza is required to be looked into from the very fact that it is against the Registry and the court would mean the judges of the Court.

L. Amicus Curiae's submission

13. Learned senior advocate Mr. Shalin Mehta as an amicus curiae was requested by the court to address the Court for the purpose of assisting the cause. He has elaborately divided his arguments in eight different

parts. He, at the outset, made it very clear that in his role as an amicus curie, he is conscious that what all he needs to do is to act as a friend of the Court. He is also conscious that this is a suo motu contempt petition where there are no opponent parties and therefore, all his submissions would be bearing in mind his role as an amicus curie. He divided them in certain topics as follows:

(i) Registry is not separate from Court

13.1 He emphasized that Section 2(c)(i) speaks of criminal contempt, it is wrong to submit that registry is not included in the definition of court. The judicial wing and administrative wing are not separate. According to him, the court cannot be without the registry. The judges and registry are inseparable. He has discussed the very decisions which are relied upon by learned senior advocate Mr. Datar to urge that in case of ***Arundhati Roy*** (**supra**) paragraph 21 speaks of this. So far as ***Arun Shourie's*** (**supra**) case is concerned, it did not cover this aspect of registry. He has discussed

paragraphs 10.1 and 10.2 of this case where it is stated that whether truth can be pleaded as defence in contempt proceedings. According to him, this cannot have any precedential value so far as this issue whether registry gets covered in the definition of court is concerned. He has relied on the decision of ***In Re: Mohit Chaudhary*, (2016) 16 SCC 78.** He has urged that it is incorrect to say that there is not the slightest insinuation against the judges and it is only meant against the registry. He urged that this Court in its order dated 26.08.2020 (at paragraphs 12 and 22) prima facie recorded this aspect. Of course, paragraph 22 states that it will not prejudice the right of the respondent while arguing the matter on merit.

(ii) Whether utterances shake the confidence of the people

13.2 According to the learned amicus curiae, seven major statements have been made on the part of Mr. Oza. In press interview, basically he wanted to convey that the High Court is functioning for rich people. He relied on the English translation note of

press meeting to point out these statements, which have a tendency of shaking public confidence.

13.2.1 The system belongs to people like Mr. Khambhata who come to the Court and get justice.

13.2.2 As some judges are liberal, one can manage with the registry.

13.2.3 No case is progressed during outbreak except of influential people like Mr. Khambhata or Sun Pharma.

13.2.4 Billionaires walk away with the orders in two days.

13.2.5 This is a Gambling Den. If poor people gamble for five rupees at home, the police can arrest them.

13.2.6 He dared the High Court by saying that he is not provoked by anyone and he would want High Court to initiate the contempt against him.

13.3 He urged this Court that it simply cannot be said that it is only meant for the High Court registry. He also drew the attention of this Court to the order of notice issued by this Court on 09.06.2020

to urge that there are five statements (at paragraph 6) which capsulize five broad allegations.

13.4 He also further urged that learned senior advocate Mr. Datar has not said anything about the letter taken on record after intervener was denied to be joined as a party and this entire material shall need to be viewed cumulatively and not separately. He urged that when India has only 1% or at the best 5% billionaires, to say that the Courts are meant only for billionaires, would surely shake the public confidence by saying that 95% of the people are not entitled to justice because of their economic condition.

(iii) All allegations borne out to be incorrect

13.5 It is the say of amicus curiae that emphasis on the part of learned senior advocate Mr. Datar that allegations made are correct has no legs to stand. He also relied on the grievance form to urge that there are many who made serious grievances and

thus, the factual foundation is already there. According to learned senior advocate there is a report from the committee of three senior judges which undertook the journey of fact finding and the report came to be submitted on 10.06.2020. It found that none of the allegations has got any valid base. According to him, report of committee needs to be taken on record as in the contempt proceedings the strict rule of evidence does not apply. The material is to be read over and taken on record. About the report of committee on 10.06.2020, the applicant is well aware of. He has been sent a copy in his capacity as a President of Bar Association. Learned amicus curiae urged that when one argues truth, it is imperative on the part of the contemnor to prove that his allegations are correct. He also further argued that even if the Court does not regard this report of the three Judges' Committee and look at the grievance made by the advocate (from page 52 to 79 of the present petition), except the utterances of Ms. Mittal Patel

which can be said to be the strongest, rest of them are uttered with restraint. Whereas the foundation, for the truth to be the defence, noting is turned out from the record. Like in the case of ***Re: Prashant Bhushan vs. Another,*** [***2020 SSC OnLine 698***], the respondent could have stood by his own foundation which he did not do and therefore, it can be said that the foundation is lacking for the truth to be a defence.

(iv) Each contempt is unique and needs to be viewed separately

13.6 According to learned senior advocate each contempt since is unique and to be viewed separately, as rightly urged by Learned Senior Advocate Mr.Datar, those remarks which are sought to be relied upon by the contemnor at Annexures W,X,Y are neither intemperate nor scurrilous. The fair criticism argument is discussed in case of Prashant Bhushan (supra) (at paragraph 59 and 60). He, therefore, has urged that cumulatively all utterances are capable of attracting the provisions of Contempt of Court Act. He also has urged that the foundation of those five matters which are made the basis is turned out to be without valid base from the record. The respondent – contemnor could have stood by his own foundation as was done by Mr. Prashant Bhushan which he has not done.

(v) Repeated incidents

13.7 The amicus curiae urged this Court to look into the three incidents of contempt against the present respondent. According to Learned Counsel, in order dated 26.08.2020 there are two to three incidents have been narrated. It is wrong to say that there had been no contempt in the year 2006 ,moreover, he cannot wriggle out of the clutches of law.

(vi) Glorious Past cannot form basis for discharge

13.8 According to learned senior advocate Mr. Mehta, in the last affidavit filed by the respondent, he has attempted to point out the glorious past. Everyone is aware of his glorious past, however, if his submissions are accepted, the glorious past of the advocate would give them a licence to commit any kind of contempt. He further urged that the submissions of learned senior advocate Mr. Datar if would be accepted, it would become a *carte blanche* for everyone who has a glorious past and even the brazen act on his part need to be dropped

with these kinds of submissions. Even single conduct may be very serious as it would depend on the gravity of the criminal contempt. In criminal contempt these arguments cannot work.

13.9 It is further argued that nowhere in the three affidavits the truth is invoked as a defence. He has not explained anywhere that what he says to be his foundation has validity. He also has taken this Court through the provisions of the Contempt of Court Act to urge that cumulative reading of the law and the facts lead to the state where truth is not invoked which can be permitted to be invoked in public interest and therefore, the only course open is sentencing the person in accordance with law.

13.10 The amicus curiae has also taken this Court through the judgments which are sought to be relied upon to urge that those judgments are of no use and nowhere the Supreme Court and other Courts have said as to what constitutes the contempt as each contempt proceeding is unique

and viewed separately. Here is also a case which when viewed holistically, it surely falls under the definition of criminal contempt and the utterances made are capable of shaking the confidence of common public.

M. Stand in the rejoinder

13.11 In rejoinder, learned senior advocate Mr. Datar urged that even if apology has been given, there is no bar in arguing on merits. He has relied on the decision in Sevak Ram Prabhudas vs. H.S.Patel [(1999) SCC Online Guj 474]. He further urged that three Judges' Committee Report is not to be relied upon because it has never been put before the contemnor in the present proceedings. He is also not made the part of this fact-finding mission. The fairness and fair play so also the principles of natural justice would not warrant this report to be accepted. Even if the committee has examined those five cases, the inquiry of 300 people has not been made. Those complaints had been received by the respondent in his capacity as a President. He further urged that

CBI Officer has been appointed to stop the malpractice in the registry of Supreme Court. As the Supreme Court directed for the respondent, he had earlier also tendered apology and further tender the same. He further urged that it is at the best the case of strong reprimand. He further urged that for Section 13(a) and 13(b) to be invoked, it has to cross threshold of Section 12 of the Act. The Court needs to decide whether such utterances substantially interfered with the functioning of the Court. There is surely not a case of egregious contempt and earlier cases are not contempt at all. He also distinguishes the case of ***Mohit Chaudhary*** (**supra**) particularly pointed out at paragraphs 14 and 29 to urge that there are two more cases which are same. The case is completely distinguishable.He fervently argued that the role of amicus curiae is to be a friend of the Court. He is an impartial adviser of the Court. He has relied on the decisions viz ***Minister of Health & Care vs. Treatment Action Campaign***, [**2002 SCC Online**

ZACC 15], ***He Majesty Queen vs. Criminal Lawyers Association***, [**2013 SCC Online Can SC 39]** and ***In Re Surya Suo Motu Contempt petition No.791*** of **2020** of the Apex court reported in ***H.P.Singh vs. Thakore Prasad Tiwari***, [**2013 AIR 1953 SC 436]** emphasizing on the aspect that amicus curiae cannot accede his role nor can his arguments be like a party or opponent.

N. Reasons

Criminal contempt under Section 2(c) of the Act, what it means and whether made out?

14. At the outset, section 2(c) of the Contempt of Courts Act would need reproduction, which defines criminal contempt:-

> " (c)criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which
> (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
> (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

(d) High Court means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory."

14.1 This provision says that any publication by words spoken or written or signs or by visible representation of any matter or the doing of any other act, which scandalises or lowers or tends to lower authority of any Court or if it breaches or interferes or tends to interfere with the due course of judicial proceedings or it interferes or tends to interfere with or tends to obstruct the administration of justice in any manner, it would amount to criminal contempt.

14.2 Clauses (i), (ii) and (iii) in Section 2(c) defining criminal contempt have their own realms, with reference to which the criminal contempt can be said to have been committed. Clause (i) speaks of scandalising of lowering the authority of the Court. Clause (ii) is about the prejudice caused in the judicial proceedings. In clause (iii) what is referred to is the interference or obstruction in the administration of

justice. In order to comprehend the concept of 'court' in definition of criminal contempt which may be committed within the meaning of this Section, all the three clauses have to be considered conjointly. The law of contempt whether civil or criminal contempt, is meant to protect the judiciary itself and the very system thereby. Contempt committed is always of the court, and not the judges individually. Individuals have their remedies in libel. The Court cannot exist or function without its other limb namely the administrative.

14.3 The Registry and the officers working in the Registry are to be indispensably viewed as the part of the court within the meaning of the word "court" used in Section 2(c)(i). Clause (ii) mentions about the prejudicial effect on the judicial proceedings. Judicial proceedings for the purpose of this Section embraces all the activities and functions leading to delivery of justice. Section 2(c)(iii) says about interference in the administration of justice. The administration of justice has the twin component, the Court on the judicial side and the Court on the administrative side.

14.4 When anyone by his utterances or acts scandalizes or lowers the authority of the Court or acts prejudicial to interfere with the judicial proceedings or interferes or obstructs the administration of justice, one does so to the "court" being the institution of the Court as a whole. The truncated meaning sought to be assigned to the word and the concept of the "court" in Section 2(c)(i) self-defeats to the very purpose of criminal contempt conceived and envisaged in law.

14.5 The Parliament has used the word scandalising the court and the definition does not refer to either the administrative wing or the judicial wing. It does not refer to the judges, not does it refer to the Registry, however, to say that the court does not include the Registry as rightly urged by learned amicus curiae would amount to strain reading of the provision. The Legislature has not used the words "Judges" or the "Judiciary", while framing the law. Reference in the case of Arundati Roy and paragraph 21 of the decision as to whether scandalising the court would mean scandalising the judges, shall need to be looked at by referring

to the decision of the Apex Court in the case of ***D.C. Saxena vs the Surpeme Court of India***, **1996(5) SCC 216**. ***D.C. Saxena*** (supra) was referred to and relied on in ***Arundhati Roy*** (supra), which was pressed into service by learned Senior Advocate Mr.Datar.

14.6 Relevant findings and observations from ***D.C.Saxena*** (supra) are reproduced hereinafter:

> "[37] Scandalising the Judges or courts tends to bring the authority and administration of law into disrespect and disregard and tantamounts to contempt. All acts which bring the court into disrepute or disrespect or which offend its dignity or its majesty or challenge its authority, constitute contempt committee in respect of single Judge or single court or in certain circumstances committed in respect of the whole of the judiciary or judicial system. Therein the criticism by the Chief Minister who described judiciary as an instrument of oppression and the Judges as guided and dominated by class hatred, class interest and class prejudices etc. was held to be an attack upon Judges calculated to give rise to a sense of disrespect and distrust of all judicial decisions. It was held that such criticism of authority of the law and law courts constituted contempt of the court and the Chief Minister was found guilty thereof.
>
> [38] The contempt of court evolved in common law jurisprudence was codified in the form of the Act. Section 2(c) defines "criminal contempt" which has been extracted earlier. In A.M. Bhattacharjee's case (1995 AIR SCW 3768)

(supra) relied on by the petitioner himself, a Bench of two Judges considered the said definition and held that scandalising the court would mean any act done or writing published which is calculated to bring the court or Judges into contempt or to lower its authority or to interfere with the due course of justice or the legal process of the court. In para 30, it was stated that scandalising the court is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice. Contempt of court is to keep the blaze of glory around the judiciary and to deter people from attempting to render justice contemptible in the eyes of the public. A libel upon a court is a reflection upon the sovereign people themselves. The contemnor conveys to the people that the administration of justice is weak or in corrupt hands. The fountain of justice is tainted. Secondly, the judgments that stream out of that foul fountain is impure and contaminated. In Halsbury's Laws of England (4th Edn.) Vol. 9 para 27 at page 21 on the topic "Scandalising the Court" it is stated that scurrilous abuse of a Judge or court, or attack on the personal character of a Judge, are punishable contempts. The punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual Judges of the court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of a Judge or a court. On the other hand, criticism of a Judge's conduct or of the conduct of a court, even if strongly worded, is not a contempt provided that the criticism is fair, temperate and

made in good faith, and is not directed to the personal character of a Judge or to the impartiality of a Judge or court.

[39] Thereafter, it is of necessity to regulate the judicial process free from fouling the fountain of justice to ward off the people from undermining the confidence of the public in the purity of fountain of justice and due administration. Justice thereby remains pure, untained and unimpeded. The punishment for contempt, therefore, is not for the purpose of protecting or vindicating either the dignity of the court as a whole or an individual Judge of the court from attack on his personal reputation but it was intended to protect the public who are subject to the jurisdiction of the court and to prevent undue interference with the administration of justice. If the authority of the court remains undermined or impeded the fountain of justice gets sullied creating distrust and disbelief in the mind of the litigant public or the right thinking public at large for the benefit of the people. Independence of the judiciary for due course of administration of justice must be protected and remain unimpaired. Scandalising the court, therefore is a convenient expression of scurrilous attack on the majesty of justice calculated to undermine its authority and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes in their mind to obey them. If the people's allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice calling for urgent action. Action for contempt is not for the protection of the Judge as private individual but because they are the channels by which justice is administered to the people without fear or favour. As per the Third Schedule to the Constitution oath or affirmation is taken by the Judge that he will duly and faithfully perform the duties of the office to the best of his ability,

knowledge and judgment without fear or favour, affection or ill-will and will so uphold the Constitution and the laws. In accordance therewith Judges must always remain impartial and should be known by all people to be impartial. Should they be imputed with improper motives, bias, corruption or partiality, people will lose faith in them. The Judge requires a degree of detachment and objectivity which cannot be obtained, if Judges constantly are required to look over their shoulders for fear of harassment and abuse and irresponsible demands for prosecution or resignation. The whole administration of justice would suffer due to its rippling effect. It is for this reason that scandalising the Judges was considered by the Parliament to be contempt of a court punishable with imprisonment or fine.

[40] Scandalising the court, therefore, would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge in connection with office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the court or judges into contempt, a serious impediment to justice and an inroad on majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or majesty of justice. It would, therefore, be scandalising the Judge as a Judge, in other words, imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a Judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to majesty of justice. When the contemnor challenges the authority of the Court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or

> generation or production of tendency bringing the Judge or judiciary into contempt. Section 2(c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs or by visible representation or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise or lower or tends to lower the authority of any court or prejudices, or interferes or tends to interfere with the due course of any judicial proceeding; or interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner is a criminal contempt. Therefore, a tendency to scandalise the Court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty or justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the Judge or court the contempt or tends to lower the authority of the court would also be contempt of the court."

14.7 And thus, the proposition that the word 'court' in section 2(c)(i) is to be comprehended in wholesome manner derives support from what was observed by the supreme court in ***D.C.Saxena*** (**supra**).

14.8 Reference when made of the institution, the Court simply cannot exist be without the Registry, as both are inclusive. Registry is an integral part of the judicial system. SAs indicated by us in our

order dated 26.08.2020, it is so easy to blame the Registry and which is an inseparable and integral part of the judicial system, as that also ensures a protective shield while attacking judges. The system shall have to be looked at as a whole and there could not be any interpretation of such a nature, which would say that the Registry is not a part of the Court. Any such parochial meaning would render the very powers otiose by allowing anyone and everyone to permit an integral part of judiciary to be criticized and attacked to achieve even their personal scores against the individuals.

14.9 Neither on the literal interpretation, nor from the standpoint of the spirit intended by the legislature for constituting the criminal contempt, nor in view of judicial reasoning of the Apex Court on the aspect, it is possible to say that the "court" mentioned in the Section is a concept limited to the Bench or the judges.

14.10 It is thus not possible to countenance the submission on behalf of the senior advocates that in Section 2(c)(i) of the Act, the word "court"

confines its meaning as the judges.As discussed above while there is nothing to cull out such suggestion that the 'Court' is equivalent to only judges, in not defining the word "court", the legislature has in fact acted with wisdom. The word "court" is used to mean the entire institution of the Court.

14.11 The decision of the Apex Court in the case of ***Arun Shourie*** (**supra**) was in relation to whether the Commission appointed under 1952 Act can be said to be Court or not and whether the sitting Judge of the Apex Court was appointed by the Central Government. The Apex Court was not concerned with the question whether the Court would mean the Registry. The ratio of any judgement shall need to be regarded in reference to the context and for the answer given to the issue raised before the Court.

15. We are in agreement with learned amicus curiae that the decision in the case of ***Mohit Chaudhary*** (**supra**) is an answer to this controversy. In that case, there was a

virulent attack on judiciary and it was alleged that the Registry colluded with the other side advocate. The Court found that there is an attempt of Bench hunting and it was a commercial decision on the part of the contemnor with an oblique motive and the whole purpose and aim of the contemnor was of scandalising the Court and judges. It emphatically referred that the Registry is an integral part of the Court and held unfailingly and indubitably that any attack on the Registry would mean an attack on the Court.

> "4.We may note that the contemnor is an advocate-on-record practicing in that capacity since the year. 2009- not aa novice in the field. He has been representing prestigious institutions, State Government and Authorities and is obviously quite familiar with the practices of this Court. He cannot be said to be a oblivious to the fact that no bench is constituted by the Registry, but by the Chief Justice of this Court. Thus, in an indirect manner, an imputation was impliedly made even against the Chief Justice though in the garb of a virulent attack on the Registry.
>
> 21. The contempt jurisdiction is not only to protect the reputation of the concerned Judge so that he can administer Justice fearlessly and fairly, but also to protect "the fair name of the judiciary". The protection in a manner of speaking, extends even to the Registry in the performance of its task and false and unfair allegations which seek to impede the working of the Registry and thus the administration of Justice, made with oblique motives cannot be tolerated. In such a situation in order to uphold the honor and dignity of the institution, the Court has to

perform the painful duties which we are faced with in the present proceedings. Not to do so in the words of P.B.Sawant, J. in Sanjiv Dutta, Dy. Secy., Ministry of Information & Broadcasting, In re,3 would – "The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the Courts the unpleasant duty. We say no more."

15.1 It will not be out of place to refer to paragraphs 22. These are *prima facie* expression and findings. However, it is for the respondent to assail *prima facie* findings at paragraph No.22.

> "22. Now turning to the "Standards of Professional Conduct and Etiquette" of the Bar Council of India Rules contained in Section I of Chapter II, Part VI, the duties of an advocate towards the Court have been specified. We extract the 4thduty set out as under:
>
> "An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the advocate himself ought not to do. An advocate (1995) 3 SCC 619 shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court."

16. In ***Reepak Kansal vs. Secretary-General, Supreme Court of and others [2020 SCC Online SC 558]***, being Writ Petition No.541 of 2020, the petitioner was an advocate practicing before the Apex Court who filed writ petition under Article 32 of the Constitution of India against various officers of the Registry and the Union of India with the prayers in the nature of mandamus directing the respondent not to give preference to the cases filed by influential lawyers, law firms as also prayers for equal treatment to other ordinary lawyers. It was urged that Registry favours the law firms and advocates for the reasons best know to them. There were serious allegations made against the Registry and giving various instances, this was during the lock down that the different instances were given. The Court took judicial notice of the fact that large number of petitions were filed and still there were insistence made to list them and mention was made that they should be listed urgently. There was unnecessary pressure put upon the Assistant dealing with the matters and due to mistakes and carelessness in the petitions, the Court

states that they could not have been listed incidentally. The Court showed its annoyance for blaming the Registry for no good reasons.

16.1 It was observed thus:

> "17. We take judicial notice of the fact that a large number of petitions are filed which are defective; still, the insistence is made to list them and mention is made that they should be listed urgently. It happens in a large number of matters, and unnecessary pressure is put upon the Assistants dealing with the cases. We find due to mistakes/ carelessness when petitions with defects are filed, it should not be expected that they should be listed instantly. To err is human and there can be an error on the part of the Dealing Assistants too. This is too much to expect perfection from them, particularly when they are working to their maximum capacity even during the pandemic. The cases are being listed. It could not be said that there was an inordinate delay in listing the matters in view of the defects. The Court functioned during the lockdown, the cases were scanned and listed by the Registry. The staff of this Court is working despite danger to their life and safety caused due to pandemic, and several of the Dealing Staff, as well as Officers, have suffered due to Covid19. During such a hard time, it was not expected of the petitioner who is an officer of this Court to file such a petition to demoralize the Registry of this Court instead of recognizing the task undertaken by them even during pandemic and lockdown period.
>
> 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. It is to be remembered by worthy lawyers that they are the part of the judicial system; they are officers of the Court and are a class apart in the society. Regarding exemplary behavior from members of noble profession in R. Muthukrishnan v. The Registrar General of the High Court of Judicature at Madras, Writ Petition (C) No.612 of 2016 the Court observed concerning the expectation from gentlemen lawyers, thus:

"23. The role of Lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a Lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice delivered to his cause.

24. The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of legal profession requires an Advocate to remember that he is not over attached to any case as Advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognizing his rights. A

litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A Lawyer should not expect any favour from the Judge and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the Court, his duty is not to waste the Courts' time.

25. It is said by Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An Advocate conduct is supposed to be exemplary. In case an Advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off. xxx

40. The Bar Council has the power to discipline lawyers and maintain nobility of profession and that power imposes great responsibility. The Court has the power of contempt and that lethal power too accompanies with greater responsibility. Contempt is a weapon like Brahmasatra to be used sparingly to remain effective. At the same time, a Judge has to guard the dignity of the Court and take action in contempt and in case of necessity to impose appropriate exemplary punishment too. A lawyer is supposed to be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the Court. He is a privileged member of the community and a

gentleman. He has to mainsail with honesty and sail with the oar of hard word, then his boat is bound to reach to the bank. He has to be honest, courageous, eloquent, industrious, witty and judgmental.

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)

19. In Kamini Jaiswal v. Union of India & Anr. (2018) 1 SCC 156, it was observed:

"24..... In Charan Lal Sahu v. Union of India1, this Court has observed that in a petition filed under Article 32 in the form of PIL attempt of mudslinging against the advocates, Supreme Court and also against the other constitutional institutions indulged in by an advocate in a careless manner, meaningless and as contradictory pleadings, clumsy allegations, contempt was ordered to be drawn. The Registry was directed not to entertain any PIL petition of the petitioner in future."
25. In R.K. Anand v. Delhi High Court2 this Court observed that there could be ways in which conduct and action of malefactor was professional misconduct. The purity of the court proceedings has to be maintained. The Court does not only have the

> right but also an obligation to protect itself and can bar the malefactor from appearing before the Court for an appropriate period of time. There is a duty cast upon an advocate to protect the dignity of this Court not to scandalize the very institution as observed in the said decision."
>
> 20. We expect members of the noble fraternity to respect themselves first. They are an intellectual class of the society. What may be proper for others may still be improper for them, the expectations from them is to be 1 (1988) 3 SCC 255 2 (2009) 8 SCC 106 exemplary to the entire society, then only the dignity of noble profession and judicial system can be protected. The Registry is nothing but an arm of this Court and an extension of its dignity. Bar is equally respected and responsible part of the integral system, Registry is part and parcel of the system, and the system has to work in tandem and mutual reverence. We also expect from the Registry to work efficiently and effectively. At the same time, it is expected of the lawyers also to remove the defects effectively and not to unnecessarily cast aspersions on the system."

17. As held by the Apex Court in ***Sanjoy Narayan, Editor-in-Chief, Hindustan Times and others, vs. High Court of Allahabad***, [**(2011) 13 SCC 155]** freedom of speech is enshrined in Article 19 of the Constitution of India as considering in the interest of sovereignty, integrity of India, security of the Sate, public order, decency and morality and also the Contempt of Courts act and defamation. The power must be carefully exercised. This also say that dignity of the Courts, people's faith in administration of justice, must not be

terminated on the basis of unverified reporting. One must be careful to verify the facts and do some research on the subject being reported before publication is brought about. This, of course, was in relation to the print and electronic media, which is known as the fourth pillar of democracy that the Court was observing.

18. The same would hold truer in the case of an individual, more particularly, in case of the respondent contemnor, who is a lawyer and has to know all the laws better. The facts, in every case, might be different, however, what is vital to know is the ratio. What can be culled out from the decision of the Apex Court clearly is that in the definition of the 'Court', Registry is included, and even otherwise the 'Court' can never be conceived sans administrative wing of the Court. Both the judicial wing and the Registry are inseparable.

19. Adverting to the facts, reference at this stage is needed of the *suo motu* notice of contempt issued by this Court wherein it is observed that the Bar President "***by his scandalous expression as well as baseless utterances has attempted to cause serious damage***

to the prestige and majesty of the High Court and thereby of independent judiciary as also attempt to lower the image of entire administration and also create demoralizing effect amongst the administrative wing. This Court, therefore, in exercise of powers conferred under Article 215 of the Constitution of India prima facie finds him responsible for committing the criminal contempt of this Court within the meaning of section 2(c) of the Contempt of Courts Act and took cognizance of such criminal contempt against him under section 15 of the Act".

19.1 This Court has also referred to the broad wild allegations, the respondent made against the Court. Relevant paragraphs are reproduced 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.

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 San desh titled as 'Gujarat HighCourt has become a gambling den - Yatin Oza'"

19.2 Some of the statements from the press interview, which amount to scandalizing the Court can be reiterated once again in a capsulized form:

(a) The High Court is functioning for rich and influential people.

(b) I will mention that all the aforesaid Hon'ble Judges concerned are genuine and there is nothing wrong in them. But as they are liberal, something is being managed with the Registry and the matters are listed in their Courts.

(c) Matters of the advocates, who protest are being diverted to the rest of the three Hon'ble Judges.

(d) No case has progressed during the outbreak, except of influential people like Mr. Khambhata (Kasturi Constructions), Sun Pharma or the aforesaid builder.

(e) The billionaires walk away with the order in two days. Not a single billionaire has to stand in queue. On the other hand, the poor and the non-VIP have been suffering.

(f) Only four to five matters are listed. "one particular matter was listed, whereas other matters in respect of the same incident, were not listed. The reason is the Registry put up 20 matters before one Judge, who denied the same stating that there is no urgency in the civil matters. The Registry also put up other 20 matters before other Judge, who ordered on the basis of urgency showed by advocates to list all the matters on the Board. Is this gambling den or High Court? The High Court is absolute gambling den today, wherein only builders can gamble. If poor people gamble for Rs.05/- at home, the police would arrest them. This is the situation of the High Court.

(g) He then dared the High Court that the High Court can file contempt petition against him. Whatever action the High Court wants to take against him, it can take. The High Court will have to answer in respect of the 05 matters to the people of Gujarat. He also alleged that Letters Patent Appeal of Government of India and Government of Gujrat is

listed in one day, whereas the Government of India detained persons in COFEPOSA for the offences of smuggling, economic offence and office against nation etc. need to wait indefinitely.

20. If all the statements are looked at in their entirety even without analyzing them and without even any context, then also it is quite apparent and clear to someone, who is not even an analyzer or an expert that these utterances cannot and simply did not mean only for the Registry. When it comes to attacking the very dispensation of justice, it is always meant for judiciary and the judges only and exclusively and surely not the Registry. When one wants to shield oneself with a design that in future, scurrilous attack on the judges would amount to contempt, and therefore, attempts to put up the Registry in front, otherwise, it is as clear as a broad day light that every statement, which has been made referred to hereinabove, is meant to be an attack against the judges.

20.1 The dispensation of justice is essentially and exclusively the task assigned to the judges and not

the Registry. Liberal and strict judges, again, is the perception merely and is also largely a subjective interpretation of the litigants on the basis of the input given by their counsel who day in and day out appear before the court. To an individual judge, It is a matter which matters and not the subjective individual perception. This labeling of strict and liberal judges is also possibly for the purpose of justifying the getting or non-getting of the order and is an angle presented by the advocate representing the litigants to the public at large. Every person would know merit and demerits of his case and the matters are being decided in accordance with law and then, it is matter of interpretation.

20.2 What has been alleged is against the High Court that it is functioning for the rich and the influential. Any matter filed before the High Court does not get stopped at the Registry, which is only a facilitating arm of the judiciary. Matters are being permitted to be filed, examined, considered,

scrutinized, processed and placed before the Court. However, the issuance of notices inviting pleadings and evidence and adjudication of the matter after availing apt opportunities to the parties is the essential and predominant function of the judges and, therefore, if it is being attacked and alleged that only Khambhata (Kasturi construction) or the builders has access to the justice, which forms not even 1% to 5% of the total population of the country.

20.3 It was thus a clear and loud message being sent to the public at large from the Chair of the President, Gujarat High court Advocates' Association that the common man, who otherwise reposes its faith in this system has misplaced its faith as a system is not conducive and does not entertain a man with less resources or with no means for their matters to be adjudicated. The reference about the matters, which have been permitted to be posted on Board by one particular Judge did not permit the matters to be posted for hearing, whereas, the other Judge

on the ground of it being civil matter in severe pandemic due to Covid-19 virus and also reference of the builders' matters being entertained, whose matter are being taken up on Board on two days' time, it is indeed an unequivocal attack and allegation addressed to judges.

20.4 In the above view, we hold and reiterate that whatever utterances were made and the words spoken by the respondent in the press conference, even going by demurer, that as per the say of the respondent it was against Registry only, could be well said to be amounting scandalising and lowering the authority of the Court in its necessary facet and integral part of the administration-the Registry.

20.5 It is now only when the contempt notice is issued that the respondent is said to be tendering tendering unconditional apology, it is sought to be explained that what had been meant was the Registry and not the judges. An attempt is also made by producing the annexures with the

affidavit of 10.07.2020, particularly Annexure-W, which are proof of instances quoted to say that India's Legal System favours the rich and the powerful.

20.6 He has quoted completely out of context interview of His Lordship Hon'ble Mr. Justice Deepak Gupta dated 07.05.2020 where it is said that somebody, who is rich and powerful and if is behind bar, then time and again, he would approach the higher Courts during the pendency of the trial till some day, he obtains the order. what all His Lordship meant is that the trial should be expedited rather than being at the mercy of the defense as a rich and powerful person if intends to delay his trial, he can approach the higher Courts, again and again and can frustrate the prosecution. His Lordship conveyed that the Bench and the Bar both have responsibilities towards the litigants to ensure that their cases are not put on the back burner and the Court must protect the poor and unprivileged because they are hit the hardest in the times of

crisis. This, on the contrary, speaks of those behind the bars and rich and the powerful approaching the higher Courts because of their ample resources till they actual get the orders and they also can derail the prosecution, because of their capacity to go right up to the Apex court repeatedly. It does not in the slightest possible manner justify the action and utterances on the part of the respondent, who said that the High Court is meant for only billionaires, rich and influential people.

20.7 The President of the Bar Council of India in his press release on 20.05.2020 when said that he received complaints of pick and choose in fixation of urgent matters in some of the High courts and the frequent disturbance in conducting the matters through the video conferencing etc, it is not clear which High court he meant and this is merely one line, which may not justify the say of the respondent nor would it endorse that the truth can be pleaded as the defence, since there is no

truth in whatsoever is being stated. A communication dated 28.04.2020 addressed to the Hon'ble the Chief Justice of India by the Senior Advocate and Chairman of Bar Council of India saying that during the period of lock down, lakhs of advocates are facing serious problems of livelihood and some of the High Courts took notice of that fact and issued certain directions. He made a grievance that Union of India or the State Government has not come to the rescue but the Bar Council of India, State bar Councils and various Bar Associations are trying their part of duty with limited resources. Its disbursement of the money is from the Advocates' Welfare Fund and the fund of the Bar Council of India. It is during the lockdown that the concern was shown that if the lock down continues for a longer duration, some safe, adequate and secured measures will be necessary so as to get the relief in the form of legal justice for the citizens. These are the grievances legitimately expressed before the

authorities in the permissible manner. Its tone and tenor are simply incomparable with what is noticed in the interview of the respondent.

21. It is matter of knowledge of each individual that in the present pandemic it is not only legal fraternity, which was facing the financial difficulties, every individual faced the difficulty, except those who were in the Government employment. Even, those in the employment of private companies and firms and individuals also faced severe problems of deduction of salaries etc. People from every walk of life faced similar situation when the world had come to a standstill, the economy was bound to be affected. We have empathy towards the class of lawyers, who are junior and also have very little practice as compared to the established lawyers.

22. Respondent's language was highly intemperate. His approach was affront and recourse taken was the least expected of the President of the High Court Bar Association. He surely would be aware that the judiciary on its administrative side alone can help in resolving all

these issues as the crisis continued to deepen and when there were no shores at sight.

23. We have already opined on the aspect of unconditional apology, in our order dated 26.08.2020, we on merits hold that indubitably all these utterances are against the court and the court essentially and predominantly, judicial as well as administrative wings. Those attacks against the Registry also eventually stopped at clearly pointing the fingers at the 'court' and at its the manner and method of dispensation of justice. This Court has to hold that these words spoken and the utterances published were scurrilous attack on the court and they were scandalous. They lowered the authority of the court. This also could be said to be meant to interfere with the administration of justice, or indeed tending to interfere with the course of justice.

Truth whether the valid defence

24. It is again essential to make a mention, at this stage, that justification of truth as a valid defence, there has to be a foundation.

24.1 On 28.09.2020, during the course of final hearing, the Court passed the order. The relevant paragraphs needed to be reproduced:-

> "1. We have noticed that during the course of final hearing, the learned Sr. Advocate, Mr. Datar, while arguing as to what amounts to criminal contempt and attempting to plead truth as defense, has submitted that so far as the utterances in the Press Conference are concerned, neither the amicus curiae nor anyone made a mention that they are false or untrue. 2. Learned Sr. Advocate, Mr. Shalin Mehta, acting as amicus curiae, therefore, in his submissions has relied on the report of the Committee of the three Hon'ble Judges, Dated: 10.06.2020, prepared in response to the communication addressed to Honourable the Chief Justice,by the Respondent in his capacity as the President of the Bar Association on Downloaded on : Wed Oct 07 23:10:06 IST 2020 R/CR.MA/8120/2020 ORDER Page 2 of 3 05.06.2020. 3. Both the sides have argued strenuously on the aspect of the said report where the amicus curiae has requested this Court to look into the said report which is already sent to the Respondent whereas, the Respondent's side has urged not to consider the same. Noticing that the said report is not forming the part of the record even for the purpose of this Court to deal with the submissions of both the Learned senior Advocates, today, it is conveyed to the learned Senior Advocates of its absence and proposal to bring on record for apt adjudication."

24.2 Pursuant to our order, the report of the Committee of the Hon'ble three judges was placed on record on 30.09.2020 along with the affidavit of the

Registrar General, High Court of Gujarat. It was conveyed by learned Senior Advocate Mr. Datar through learned Senior Advocate Mr. Rashesh Oza that *"We did not attempt truth as defence. We have not invoked Section 13 (b) of the Contempt of Courts Act. We have merely stated that our allegations and grievances were not made in the air and were not baseless. This would not mean that the truth as a defence has been invoked."* In our order dated 30.09.2020, we recorded the above.

24.3 We notice that although it is urged before us that respondent contemnor has not invoked section 13(b) of the Act and merely stated that allegations and grievances were not baseless, all possible attempts have been made by bringing on record various documents including grievances forms and other materials, which we have discussed at length. In fact in the submissions of learned Senior Advocate Mr. Datar, he was categorical that the amicus curiae has not dislodged what has been treated in the press conference to mention that

they are false or untrue details. That was the point when there was requirement for calling for the report of the three Judges' Committee by this Court. According to this Court, it is an afterthought to say that no attempt is made to plead the truth as defence. In fact, after having pleaded the same and on realizing the entire edifice is crumbled in wake of the report of the Committee, the stand has been changed.

24.4 This Court while issuing the notice, at paragraph Nos. 5, 6, 7, 8 and 11 has given *prima facie* opinion, respondent needed to dispel these findings by standing on its foundation that what all he uttered in relation to five (05) cases hold ground and that foundation remains intact. He for that purpose ought to have filed merit response, which is missing. These are two unconditional apologies and according to the respondent, truth is not invoked as defence. Once apology is tendered, he has not stood his grounds, for proving that the

institute caters to money power, smugglers and traitors.

24.5 For the five matters for which much uproar was created by the respondent, the allegation does not stand good. It is not borne out from the record that anything alleged in that respect was true. Even the status report of these five matters goes to falsify the same.

25. As a result, it is to be concluded that the respondent does not succeed in showing any semblance of truth in support o the allegations. The grievance made and the allegations raised are without substance. As indicated while discussing the grievance forms and other material that without referring to the Committee's report also, the allegations made and the uproar caused before electronic and print media has absolutely no basis.

26. At this stage, it is also vital to make a mention, at this stage, that none of the allegations are borne out to be correct. Reliance is placed on the grievance forms of the advocates and it is further urged that the report of three

senior judges Committee constituted by the Hon'ble the Chief Justice had, on the basis of fact finding reported on 10.06.2020 itself, and held that there is no basis for all the allegations made as the Court had issued the notice on 09.06.2020, prior to the report of the Committee of three judges reaching the Hon'ble the Chief Justice. This report did not form part of the contempt notice. However, the report has been sent to the President, GHCAA, the present respondent on 10.06.2020 itself by a letter addressed to him. It is to be noted that after addressing the Press Conference, letter was sent to the Hon'ble the Chief Justice of the State, where the grievance, specific as well as general, were made, and therefore, Committee of three judges was constituted to get those grievances verified physically and submit its report.

26.1 The report was submitted on 10.06.2020. The Committee, after examining every grievance raised in the letter, found none of them to have any substance. A copy of the report of the Committee was enclosed with the said communication. The

report also has been placed on the High Court's website as submitted by amicus curiae, who also has urged that strict rules of evidence are not to be applied and this report of the Committee needs to be read over and taken on record. He also further urged that in the matter, which has been challenged before the Apex court, the petitioner himself has annexed this report. Therefore, he is well aware that the very edifice had gone. Much has been argued by learned Senior Advocate Mr. Datar, who urged this Court that the said report may not be taken into consideration, since the same was not forming part of the record of this case.

27. The report was in the public domain and the applicant himself has used it by making it a part of his own petition preferred before the Apex Court and that can be also seen from the record of the Apex Court. To urge this Court not to regard the same and to further maintain that all allegations made in the Press Conference have the validity and basis of truth, despite

this report, cannot be sustained, even for a minute. Assuming that he was not invited by the Committee or he had no opportunity to contend anything in this respect before the Committee, the Committee's report is based on inquiry undertaken on the basis of documentary evidence, trail of e-mails and electronic evidence, which could be derived from the system.

27.1 We are not in agreement with learned Senior Advocate that because there is no reference in the show cause notice, the report cannot be regarded in these proceedings. There could not have been reference of this report as the same was not sent to Hon'ble the Chief Justice till 09.06.2020 nor was it in public domain The same could be regarded by this Court, as an additional material being in public domain. It has been sent to the respondent on the next day by formal communication by the Hon'ble the Chief Justice himself and the report has been enclosed with the said communication.

27.2 Therefore, even without intervention, the allegations of the delay could be well examined by

the Committee and non-availing of the opportunity of participation also may not question the validity of the Court, which is based on impartial inquiry undertaken by the three senior most judges of this Court. After the report, the respondent could have still independently established before this Court that what had been stated in the report of the Committee was incorrect or without any validity or foundation and what he alleged against the judicial and administrative wing still is the truth as its foundation. When the respondent argues truth and pleads truth as its defence it is imperative on his part to prove that these allegations are correct.

27.3 In our order dated 17.09.2020, we once again availed an opportunity to the respondent by specifically asking the respondent whether he chooses to adduce any oral or documentary evidence, other than what has been brought on the record and when he answered in negation, the Court has decided to proceed to argue on merits. He, at that stage, also had an opportunity of

having come to know way back on 10.06.2020, the report of the Committee. Assuming that it was not forming part of the record, his very edifice and foundation that he knew by way of the report of the committee had crumbled. This is the very report, as we mentioned, which is forming part of his compilation in his challenge before the Apex Court and, therefore, the ground of technicality or strict rules of evidence was like a ploy and could not be countenanced. It will not be possible for this Court to accept that the foundation on which he claims the truth to be the defence, still holds the ground.

27.4 Even while disregarding the report of the Committee, the Court needs to look at the grievances of advocates, which are forming part of his affidavit from page 38 to 81 (Annexures: L & M). Each grievance, if is read, is in a request form. The advocate has expressed difficulty in either the matter not being listed or the copy of the order not found and urgent matters are not listed for

instance on the part of the Registry for non-removal of objections.

27.5 Amongst the grievance voicing member advocates, Ms. Mittal Patel, learned advocate has made the strongest utterances as correctly drawn our attention to this aspect, too has no connection with anywhere. She said that this was a High Court having work load of the entire State and they are getting salaries and facilities also and even after getting of this, they are doing this kind of disgusting work of department and if they do not want to work they should resign immediately so that more enthusiastic people can get chance to have good career. She had grievance with regard to non-circulation of anticipatory bail matter. Many of them also had shown their understanding and also expressed that there was a new system, which is taking shape. However, non- circulation of Court matters speedily is bothering them personally because of the plight of the litigants. Independent of the report of the

Committee, there is nothing to suggest that any of these grievances indicate only the rich and the billionaires getting justice or any of these lawyers making the grievance, which is nerve wrecking or heart-breaking.

27.6 In ***Prashant Bhushan*** (**supra**), the alleged contemnor had chosen to stand on his own foundation and did not apologize. It was stated by the Apex Court,

> "59. As submitted by Shri Dave, relying on the observation made by Krishna Iyer, J, in the case of Baradakanta Mishra (supra), if a constructive criticism is made in order to enable systemic correction in the system, the Court would not invoke the contempt jurisdiction. However, as observed by the same learned judge in Re: S. Mulgaokar, the Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the judges and where the attack is calculated to obstruct or destroy the judicial process. Justice Krishna Iyer further observed, that after evaluating the totality of factors, if the Court considers the attack on the Judge or Judges to be scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him, who challenges the supremacy of the rule of law by fouling its source and stream.
>
> 60. In the light of these guiding principles, let

> us analyze the tweets, admittedly, made by the alleged contemnor No.1 which have given rise to this proceeding."

28. This is one of the worst times the humanity is witnessing where the pandemic due to COVID-19 virus has gripped not only the entire state and the country but practically, the whole world. Its nerve racking impact, social and economical, is witnessed, restricted not only on one particular community, race, area, society, country, region, religion, business or profession but on the whole human race. The facts and figures which emerge from official sources are unfailing capable to shake every sensitive and sensible human being of what the humanity is passing through where the chief priority and concern of one and all is to safeguard the human lives. Even for the institute also while attempting to fulfill its obligations of serving the Constitutional ethos, it cannot overlook pressing need of ensuring safety of all those employees who serve on administrative and judicial wings as employees.

28.1 It would not be out of place to mention that Information and Communication Technology (ICT)

existed in the state since long and it can not be gainsaid that its advanced stage also was enjoyed in the profession, however, the process of digitalisation is underway in the High Court and e-filing module is introduced recently in the State. In absence of such technological advancement to permit e filing, an alternative, of filing by email, was introduced to meet with the challenge of total absence of physical filing all of a sudden.

28.2 In this backdrop, the correspondence of the respondent with the Chief Justice of the State and various circulars/office orders and periodical changes as per the contingencies and circumstances would need to be viewed. To insist on opening the court physically and to blame the registry of corruption, malpractices and maneuvering without the semblance of base, shall need to be regarded accordingly. Even if there were grievances and complaints of learned advocates and assuming those were felt by the President to be actually genuine, (the gist of which is reflected

at Annexure-M), no one has whispered of corrupt practice much less serious malpractices or blaming the system to be meant for rich and resourceful only.

28.3 The original utterances, allegations, insinuations and the spoken words in that regard in the press conference in question were in Gujarati language. Each language has its own fervour and conveying intensity about the meaning and intent of the spoken words. The real text, tenure and intended tenacity of the words used and employed by the respondent could be well gathered from the original script which is part of the record. What is summarised in paragraph No.6 of order dated 09th June, 2020 taking cognizance by the Court is the translated version. Though it does show nearly precise meaning and import of what was spoken by the respondent in the press conference, when one listens to the actual utterances and the words spoken by the respondent in vernacular, one would feel that the translated version may have

the tendency of taking away the teeth of the gravity and originality of the words spoken and the utterances made. As Shri Ravindranath Tagore said for translation that it can be equated with the clipped wings of a bird. In any case, whether taken the original utterances or the translated version, they do have the effect of scandalising and lowering the authority of the Court.

28.4 Those serious and unpalatable utterances are the product of respondent's own brainchild. Had this been the result of genuine concern for the junior advocates, the same could never have been in complete disregard to the ground realities that existed in those initial months of lockdown or for that matter, as on the date. And more than that, the leader would crave for the genuine and legal solution and not a purported consolation. Instead of sending his letter of the 05.06.2020 to the Honourable the Chief Justice of the High Court, seeking solution and guidance, the respondent chose to first approach the electronic and print

media with the nature of allegations which may not need reiterations here for having penned down more than once in this judgement. All allegations having been found baseless and unsustainable, even without pleading truth as the defence, the entire edifice vanishes.

29. From the facts narrated and discussion supplied herein, it is inescapable that the statements and utterances by the respondent-contemnor had a definite tendency of shaking confidence of the public. They were scurrilous and intemperate. In the facts of the case, aspect of argument sought to be raised about fair criticism would hardly be acceptable.

30. In the aforementioned background, three aspects are needed specific mention. Firstly, as mentioned in our order dated 26.08.2020, this is the fourth incident, according to the respondent, in his additional affidavit, it is urged that the first two incidents, were not the incident of contempt. We notice that while explaining the details, the chronology, which we have in our earlier order made a mention. He also made a mention as to he

wonders as to why he ought not to have saved judiciary or saved image of the institution, if he needed to face the proceedings. It is quite surprising to notice this expression, however, without dilating that issue even if we consider that the incident of the year 2006 was not a contempt there is specific and explicit mention in the order of 09.06.2016 that the Apex Court accepted his unconditional apology with the hope that ways would be mended. It can be stated that there was no contempt in the year 2016. It also his say that one of the strong grounds for this Court to hold what it held in the order dated 26.08.2020, while not accepting his apology. We did notice, at the same time, various instances quoted of the past good conduct and actions.

31. Every advocate is basically expected to serve the society while earning his livelihood with dignity. It is the best opportunity to him existentially that he would serve the society and redress the grievance and ameliorate the pain and plight of many in the course of their professional journey. He also has right of freedom of speech and needs to stand as he is one of the

champions of democratic values as could be seen from the history of our nation of the leaders, who have revered as freedom fighters were lawyers, who had placed the country before the self and gave it the freedom by not even bothering about their own immediate family. The more one gets higher in the ladder, the more one is expected to serve the society after having earned the wealth, respect dignity, stature and status from the society.

32. Therefore, one is not required to eulogize oneself. However, for bringing forth the individual details for the Court to know of the good work undertaken in the individual capacity as well as in the capacity of a President, the Court has taken note of this aspect. At the same time, no one has become so big than the institution itself that in the name of taking up the cause of advocates, he or she can go to any extent of tarnishing the image of the institution by his expression and utterances. No brazen act can be permitted nor can his good deeds can prove to be a licence to attack the Court. What needs to be seen by the Court is that even

if someone attempts to attack the Court, the gravity shall have to be examined. Even the number of times it may have happened is even not important. A solitary incident can become very serious.

33. Yet another aspect that requires to be considered is that, according to learned Senior Advocate Mr. Datar, the Full Court has already stripped the respondent of his gown, which is a death knell of any Senor Advocate and, therefore, no further punishment other than what the Full court has already done should be made. It is noted that pursuant to the directions issued by this Court in its first order of 09.06.2020, at paragraphs 17 one of the directions was to place this notice before the Hon'ble the Chief Justice for consideration at the hands of the Full Court, whether to divest the stature of the respondent under the Contempt of Courts Act of the designation of the Senior Advocate under the circumstances narrated in the order. The matter was placed before the Hon'ble the Chief Justice and he then placed it for consideration of the Full Court as it

required under section 16(1) of the Rules framed by the High Court.

33.1 The guidelines have been issued by the Apex Court in the case of ***Indira Jaysingh vs the Supreme Court of India***, **2017 (9) SCC 766**. The Supreme Court while laying down the guidelines stated at paragraph No.73 that the Court would have power to recall its own order of conferring the stature of Senior Advocate. While exercising those powers, the Full Court has chosen to recall the order of conferring the stature of a Senior Advocate. This is under challenge before the Apex Court.

33.2 The proceedings before the Full Court as the present proceedings are separate and distinct in their very nature and kind. So far as the present proceedings are concerned, the same are under Article 215 of the Constitution of India and the provisions of the Contempt of Courts Act under section 2(c), the punishment prescribed under the law are of awarding of imprisonment as also of imposing fine to the extent of Rs.2000/-. There are

no other punishments prescribed, of course, reference also is needed to be made, at this stage of the decision of the Apex Court reported in the case of **Mahipal Singh Rana vs. State of U.P., *2016(8) SCC 335,*** which provided stoppage of practice by debarring him from appearing in any court for a particular period. It also provides that automatic consequence of conviction can be read under section 24A of the Advocates Act.

33.3 In the above consideration and the view since both the proceedings, namely the decision by the Full Court and the present *suo motu* proceedings being operative in their own respective fields as distinct in themselves, we do not find any merit in the submission about relevance of the Full Court proceedings or the decision of the Full Court against the respondent, so as to link them for any purpose with the present proceedings.

34. For the entire set of facts and circumstances delineated above, having regard to the aspects emerging therefrom and in view of the entire discussion and reasons

supplied hereinabove, we have no hesitation in holding that respondent is guilty of contempt of court and that he has committed criminal contempt of the court within the meaning of Section 2(c)(i) of the Contempt of Courts Act, 1971 by and for his acts and utterances narrated and highlighted in the foregoing paragraphs.

Section 13 of the Contempt of Court Act

35. Another angle which requires reference to consider justification by truth as a valid defence is section 13 of the Contempt of Courts Act, which provides thus:-

> "13. Contempts not punishable in certain cases.—Notwithstanding anything contained in any law for the time being in force,—
> (a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;
> (b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide."

36. It is clear that no Court shall impose the sentence under this Act for contempt unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice.

36.1 Section 13(b) provides that the Court may permit in any proceedings for contempt of Court justification by truth as the valid defence, if found satisfied that it is in the public interest and the request for invoking the said defence is bona fide. This Court in its notice dated 09.06.2020 has prima facie noticed at various paragraphs utterances of the contemnor scurrilous and scandalous. There would be requirement for dispelling that notion and as held hereinabove, the Court can permit the justification by truth as a valid defence if it is in the public interest and the request for invoking such defence is found bona fide. Not only the Court notices that the edifice of justification by truth as a valid defence is completely shaky and substance less, this surely was also not in the public interest. A detailed discussion above also shows how oscillating stand is taken so far as justification by truth as defence is concerned.

36.2 There are two affidavits, which are said to be tendering unconditional apology and the last one of dated 16.09.2020 provides justification in absence of any oral defence or any other noticeable defence. It can be said that truth is sought to be attempted to be invoked as such, there is no defence.

37. While this Court has held as above that the respondent-contemnor has committed criminal contempt of court under 2(c)(i) of the Act, it is further needed to be observed and needed to be held that the contempt committed is grave and of egregious nature which substantially interferes and/or it tends to substantially interfere in course of justice and in due course of justice**.** Such utterances are shocking and undoubtedly potent to shake the confidence of public in the institution of judiciary and to leave far reaching effect on the minds of people.

38. Not being oblivious of the obligations expected by the Constitution of this country from us, we have consciously exercised these powers for upkeeping the

dignity of the institution by ensuring that no one attempts to weaken edifice of this majestic institution, which has performed its role as a guardian of rule of law in all bright and dark hours. Every citizen and individual matters to the Constitution and yet when it comes to pitting an individual against the system, which requires to be guarded, there should not be the slightest hesitation in exercising the duties as what has all the time to be borne in mind is "why deter where duty demands".

39. This Court being the Court of record, it enjoys the power to punish for the contempt which is a part of its inherent jurisdiction for administering justice effectively and in an orderly manner and to prevent unsubstantiated, biased and reckless so also the scurrilous allegations, which have the tendency of scandalizing the Court and interfering in the administration of justice, shall need to be dealt with, with heavy hands. We are also at pains to perform this onerous task. It is never a happy co-incidence to perform such obligation and yet the duty is not to be

scaled in doing what a particular nature of work by labelizing the same as good or bad. It is first and the foremost to perform the same ensuring the respect and confidence of the people of this country, which has reposed its faith in the judicial system by ensuring that no individual undermines the same in any mode or manner.

40. We would not mind to remind once again that the advocates are also a part of this system and there can never be such actions on their part which either diminish the confidence or have a tendency to shake the faith of the people. In the present time, when the world is moving ahead and all possible attempts are made to introduce and imbibe Information and Communication Technology (ICT) as an integral part of the judicial dispensation system, what better chance than the present one for the legal fraternity also to come forth and strengthen the system which is the way forward. Even healthy criticism in any such endeavours also is welcome but, instead of that, what is being found here is that without having the slightest regard for hundreds

of employees of the Court working tirelessly day and night to ensure that the dispensation of justice does not stop, without bothering for their personal lives and the lives of their beloved at home in the Pandemic, what all they get in return is the acidic criticism of serious nature of corruption, biased and partition attitude and that too, without any valid and justifiable base. Even if the system was yet not ready fully to cope up with this sudden transition of hearing through video conferencing and acceptance of filing through E mode, the same would need unflinching support of both bar and bench, however, in complete disregard to this essential duty, more so, as the leader of the State bar association, every attempt is made to shake the foundation by creating doubt, disturbance, disaffection and disrespect in the very working of the Court, by fissiparous tendencies as detailed above which warrant dealing with the firm hands.

41. The role of the lawyers as pointed out in the case of R.K. Garg vs. State of Himachal Pradesh, [1981(3) SCC 166] would need a reminder.We remind the duties of

the senior counsel by drawing from the decision of the Apex Court rendered in the case of E.S. Reddy vs. State of A.P. [1987(3) SCC 258].

> "14. We need to regard the decision of the Apex Court rendered in case of E. S. Reddi versus Government of AP reported in (1987)3 SCC 258 highlighting the qualities, role and responsibilities of a Senior Counselin these words, "By virtue of the pre-eminence which 'Senior Counsel' enjoys in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. Senior counsel more or less occupies a position akin to a Queen's Counsel in England next after the Attorney General and the Solicitor General."
> 15.In Morris vs. Crown Office (1970)1 All ER 1079, Lord Denning wrote on power of contempt that "of all the places where law and order must be maintained, it is here in these courts. The courts of justice must not be deflected or interfered with. Those who strike at it, strike at the very foundations of our society". …. "to maintain law and order, the Judges have and must have, power at once to deal with those who offend against it."

42. On the strength of the discussion made hereinabove, we conclude that the indiscriminate and baseless utterances made by the Bar President has caused serious damage to the majesty of the Court and this was a clear attempt to lower the image of independent judiciary by attacking both the administrative wing and the judicial wing and thus, the act squarely and essentially gets covered within the meaning of section 2(c)(i) of the Contempt of Courts Act. The criminal contempt committed by the respondent is one which is

bound to attract appropriate punishment under the Act as it tends to interfere with the due course of justice as discussed above.

43. At this juncture, we cannot but make a mention of submissions made by learned Senior Advocate Mr.Datar that the amicus curiae has acceded his role as amicus and has argued as if he was opposing the respondent. Though the elaborate submission was made by learned Senior Advocate by citing decisions, which were befittingly answered by amicus curiae with equal convincing erudition, we deem it proper not to discuss the submissions of either side on those count, however at the same time do observe that the amicus curiae acted and argued his brief true to his position as friend of the court, without taking side, whose submissions lended much help to the Court in the present adjudicatory process. We record our deep appreciation for amicus curiae.

O. Order of Conviction

[A] In view of the discussion above, this Court in exercise of powers conferred upon it under Article 215 of the

Constitution of India and section 15 of the Contempt of Courts Act, 1971, holds the Respondent contemnor guilty of committing criminal contempt of this Court within the meaning of section 2(c)(i) of the Contempt of Courts Act, 1971.

[B] The matter is posted for hearing the respondent cont-emnor on punishment under section 12 of the Contempt of Courts Act, 1971 on 07.10.2020.

(MS. SONIA GOKANI, J.)

(N.V.ANJARIA, J.)

P Order on Sentencing (07.10.2020)

On the aspect of punishment, we have extensively heard learned Senior Advocates Mr. Datar and learned Senior Advocate Mr. Mihir Joshi so also the amicus curiae.

44. According to learned Senior Advocate Mr. Datar, there should be no sentence to be imposed under the Contempt of Courts Act and, at the best, the Court may find order of reprimand to be sufficient. According to him, repeatedly, the unconditional apologies had been tendered by the contemnor and the decision of the Full Court of divesting him of his position of the Senior Advocate should be construed as the most draconian punishment, which arises from the very event, in relation to which this Court has initiated the contempt notice against the contemnor. It is an extreme punishment, which should be construed sufficient and no further punishment would be necessary.

45. Learned senior Advocate has also argued further that unless the contempt is of egregious nature, there is no compulsion for the Court to punish a person. He has also relied on the decision ***In Re: Mohit Chaudhary,*** **(2016) 16 SCC 78** to urge that worst kind of contempt on the part of the advocate on record and yet the Apex Court directed him not to practice for one month, whereas here, for all time to come, the Full Court has

divested him of his gown. It is further his submission that section 12 of the Contempt of Courts Act provides that even after the sentence, the apology if is tendered, the Court can still consider, if it is found satisfactory and the punishment also in such eventuality can go, whereas here what is being urged is, not to punish on the basis of apology at the stage when the Court has not as yet punished a person but only has held him guilty. He reiteratively urged that the foundation, since has remained the same for the Full Court to initiate the action against the Contemnor and for this Court to have initiated a contempt jurisdiction, even without invoking Article 20 of the Constitution of India, it is urged that no further punishment should be visited. He further urged that the Court, at the time of punishing a person, shall have to regard that the contempt is of such a nature that it substantially interferes or tends to interfere with the due course of justice. The background in which the utterances were made also will have to be regarded by the Court and he implored the Court that once again, the Contemnor is ready to apologize and on

his behalf both the Senior Advocates have urged that no further punishment be imposed.

46. Learned Senior Advocate Mr. Mihir Joshi has supplemented the submissions of learned Senior Advocate Mr. Datar and has urged not to punish the contemnor further. According to him, Full Court's decision has robbed him of his gown vide order dated 21.07.2020 and even if the same is reversed by the Apex Court, the consequential effect is not difficult to understand.

47. According to him, the adjudicatory ambit of Full Court and that of his Court is overlapping and it has been urged from the beginning that it has been the stand of the contemnor that source of the genesis being the same, what has been suffered by the contemnor is sufficient and no further punishment should be awarded. He also further has submitted that some of the factors, which are needed to be considered by the Court are, 1) his general backgrounds 2) His three generations having contributed and having reposed their faith in this system, 3)He was one of the youngest

lawyers to have been designated as a Senior Advocate by the Full court and 4) 17 times, he has been elected as the President of the Bar. According to him, these submissions are not to permit him any kind of reckless behaviour or conduct, which may not be befitting the stature of a Senior Advocate, but to emphasis that it is not the conduct of someone, who is a fly-by-night lawyer or who has no regard for this institution.

48. He also further urged that the Court needs to look at the another aspect that there was no Bench hunting nor any personal benefit to be derived by the contemnor by making such utterances. He further urged that from the beginning, it has been the say of the respondent contemnor that nothing has been stated against any of the judges in principle. It is only for non listing of the matters that the Registry has come under the scanner. It is further urged that the situation being unsettling and the circumstances under which he has spoken these words, shall need to be regarded by the Court. He has been repository of the grievances of the Bar and the distress and dismay faced by many lawyers on account

of non-listing of the matters had been the very upsetting moments for him. Anguish in his mind though should not have voiced in the manner which has been stated particularly, the words "gambling den" or the "corruption in the registry" for which at more than one occasions in his affidavit-in-reply, which is in the form of written apology, he has expressed his remorse. He also has withdrawn those words. Emphasis is also made of his first affidavit-in-reply, particularly, of paragraph No.2, where he has urged that the contemnor has realized that the mode and manner in which he had expressed these words ought not to have been stated.

49. He further has emphasized that in his affidavit, he urged that the use of such words was unjustifiable and they speak emphatically about his remorse, the Court needs to show magnanimity not to punish and even if in its order dated 26.08.2020, it has not accepted the apology, these withdrawals of the words should weigh with the Court. According to him, the background in which they have been uttered and later on urged to be

withdrawn also are potent reasons to accept his plea not to punish. It is further urged by learned Senior Advocates that what all he has sought is forgiveness. He has not stated that his utterances were justified. The Court shall need to regard his conduct, post the proceedings and also note that he is not one of those cantankerous or recalcitrant lawyer, who with his behaviour, is desirous of harming the institute. According to him, section 13(a) which has been argued earlier also specifies that even if there is a contempt, only if it is of such a nature where it substantially interferes or tends to interfere with the due course of justice, the need for punishment is found necessary by the Legislature.

50. Again, according to learned Senior Advocate, these are merely aberrations and these aberrations do not define him as a lawyer nor can the same bracket him as a history sheeter and with his emphasis on these objectionable words ought not have been uttered and on his having shown the utmost respect, the Court may not punish him.

51. We invited learned Senior Advocate Mr. Mehta, as amicus curiae to assist the Court and he, at the outset, has stated that what punishment needs to be awarded is the function of the Court. He agreed with the submissions of learned Senior Advocate Mr. Datar and Mr. Mihir Joshi to say that all the factors like legacy, pedigree, standing at the Bar as counsel and 17 terms of Presidentship etc. shall need to be regarded. The Court also may consider that on account of pandemic, situation worsen at the same time the Court shall need to be look at overall and holistic picture rather than looking at the truncated versions or the mere words of "gambling den" and "the corruption in the Registry". He further urged that section 12 provides the punishment of six months of imprisonment and Rs.2000/- fine, which is the maximum punishment provided. Censure, warning or admonishing, though are not expressly provided, they being less than what has been prescribed under the statute, can be said to have been included. However, he emphasized reiteratively that it is entirely the discretion of the Court and amicus curiae would

have no say on to what could be the punishment and what should be the approach in that connection. So far as proviso to section 12 of the Contempt of Courts Act is concerned, it is urged that he has a serious doubt whether there could be multiple apologies possible. Since, the Court, after detailed adjudicatory process, has not accepted the apology of the contemnor for not having been found the same to be genuine.

52. He in principle agreed that after the punishment, the apology can be sought, but in the factual background of this case, according to him, this may not be permissible. There is no further apology that has come before this Court nor are there any new circumstances for the Court to consider that aspect.

53. So far as the approach of the Full Court is concerned, according to him, it was under Rule 26 of the Senior Advocates Rules of the High Court of Gujarat and it is like east is east and west is west and the twine cannot meet. He reiterated the decision of the Apex Court in the case of ***Indira Jaysingh vs the Supreme Court of India***, [**2017 (9) SCC 766]** to urge that the Full Court,

since has authority the adorn the person with a gown, it also has an authority to decide to take it back. These two proceedings being distinct, there may not be any attempt to converge when it comes to deciding the aspect of punishment.

54. So far as section 13(a) of the Contempt of Courts Act is concerned, according to amicus curiae, he agreed that there could be no punishment unless the Court is satisfied that the contempt has either interfered or tends substantially to interfere with the due course of justice. While considering these provisions, according to learned amicus curiae, all utterances shall have to be viewed by the Court holistically.

55. In rejoinder, it is urged by learned Senior Advocate Mr. Joshi that going by the version of learned amicus curiae, if there is no scope for two apologies as the proviso to section 12 provides, the person, who would contest the matter and tenders his apology at the end of the trial and punishment, the Court, if finds the same to be to its satisfaction, the statute allows such apology to be accepted and in that case why not in case of the

person, who has, from the beginning, apologized not once but more than once. He surely cannot be in a worst position than the person, who contests and after once he realizes that he has been punished, he tenders the apology. He, therefore, has urged that the contemnor cannot be in a disadvantageous position merely because from the beginning, he chose to apologize to this Court as also to the Apex Court.

56. Having thus heard at length the learned Senior Advocates for the respondent contemnor and learned amicus curiae on our invitation, at the outset, we need to clarify once again and hold that the proceedings before the Full Court, as we had indicated in our earlier order also, are completely distinct and totally separate. Even if it is from the very source, as argued before us, the proceedings initiated by this Court are under the Contempt of Courts Act, which by no means can be mixed with the proceedings initiated under Rule 26 of the High Court of Gujarat- Designation of Senior Advocates Rules, 2018. Therefore, the first and emphatic submission on the part of learned Senior

advocate that the decision of divesting the contemnor of his designation of senior advocate on the part of Full court should be construed as sufficient punishment for the proceedings, having been initiated from the very source, does not at all weigh with this Court.

57. Coming, therefore, now to the vital submission of Section 13 of the Contempt of Courts Act, no Court as per the said provision is to impose the sentence under this Act for a contempt of Court, unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice, in our body part of the judgement, while considering the submissions of the learned Senior Advocate Mr.Datar on this very provision of section 13(a) and 13(b), we have extensively dealt with this aspect and have held that the contempt is of egregious nature and it substantially interferes or has tendency of interfering with the due course of justice, and therefore, requirement of this provision under section 13(a) is met with necessitating the imposition of punishment.

58. So far as the submissions on the part of learned Senior Advocate to regard the aspects while punishing that the allegations not being against the judges, but against the Registry and no personal benefit was to be derived from this conference as also of the background of prevalence of pandemic due to Covid-19 virus are concerned, we have already dealt with these submissions in the body part. suffice to note here that we are aware and conscious that the circumstances and the background in which these utterances were made, were unprecedented, but at the same time, as we have earlier also indicated in our notice that if there was a real urge and genuine intent for redressal of the grievances, somebody like the respondent, could not have been oblivious of taking recourse to the remedies bringing succor and availing lawful solutions, more particularly, of approaching the highest Chair of the administration, the Chief Justice of the State, with whom he was engaged in addressing official correspondence every now and then, particularly bearing in mind his standing at the Bar, his experience and his leadership of all these

years. These aspects, therefore, would be difficult to be accepted as mitigating circumstances.

59. Section 12 of the Contempt of Courts Act, which has been much pressed into service and, more particularly, the proviso to this section, as rightly urged before us, speaks of the proviso which provides that the accused may be discharged or the punishment awarded may be remitted, on apology being made to the satisfaction of the Court. After this court took cognizance, the request was made for discharging him on the basis of the apology and the same has not weighed with the Court for the detailed reasons, which have been already given and which would not require to be reiterated here.

60. Yet another stage where apology is contemplated is on the punishment being awarded, the same can be remitted to the satisfaction of the Court. That stage has not come as yet as punishment is not awarded and assuming that such is the stage and at that juncture, such a request has come, the court cannot overlook its own order of 26/08/2020 to once again entertain such a plea. Ordinarily, what would happen is that the

person when approaches this Court for discharge, at that stage, he can chose to plead to discharge him of all the charges levelled against him, which in the instant case, as mentioned, hereinabove, has not happened. However, when, on account of the directions issued by the Apex Court, he tendered his apology, before the Court proceeded on merits and, at that stage, the Court chose not to accept it for not having found the apology genuine and *bona fide*. His past conduct reported in the show cause notice dt.09/06/2020 also played a contributory role. Therefore, to urge at the stage that the very ground of apology be considered by the Court for not awarding punishment also can not find favour with the Court. With no new material also, such a request cannot be countenanced.

61. We engaged ourselves in serious deliberations over this sensitive and yet, very vital issue of punishment to a Senior Member of the Bar, who played a long innings as an advocate, a Senior Advocate and also a leader of the Bar in this profession. For a considerable length of time, this noble profession has given him unfailingly not only

the opportunity to rise in every respect, personally as well as professionally, but also availed the chance to serve the society and yet, we have to hold with heavy heart that he engaged himself in cutting the very tree which sustained him.

62. It is an arduous journey for the Bench as well and we are dismayed to convey that serious, irreparable and incalculable damage is attempted by his intemperate language, unheeding utterances and unchecked and unsustainable allegations made against this august institution. People shall come and go but, the institute shall stand, tall and supreme and upkeeping its majesty is the continual duty of one and all, more of those who are nourished and endured directly by it. The contemnor having enjoyed the privileged position of Senior Advocate and the President of the Bar for so many years, obligations of such person are manifold. In this Pandemic where the World is gripped in panic and fear of saving the human lives, the least one could contribute is intolerable negativity and unpalatable aspersions in endeavors to cope up with the crisis.

Although the apology tendered has not been accepted for the detailed reasons given in our order dt.26.08.2020 what has weighed with this Court in softening its stand so far as punishment is concerned, are today's submissions made by both the learned Senior Advocates on behalf of the contemnor.

63. Resultantly, such act being an attempt to denigrate the reputation and stature of the institution needs to meet with the corresponding punishment. Object of punishment is neither a retribution nor the same to be disproportionately shocking, but of bringing home the realization of wrong doing as also deterring the others, who may follow the suit. It is also a step towards invoking corrective essence with unending inherent faith in the good of every being. It is thus, all the three, deterrence, incapacitation and rehabilitation. Accordingly, bearing in mind the chronology, consequence of events, his background, his standing at the Bar, the background in which the incident has happened, past events, conduct post notice as also his reiterative apology even now as well,

64. We deem it appropriate to punish the contemnor so as to sentence him till rising of the court and further to impose fine of Rs.2000/- (Rupees Two thousand Only) and in default, to undergo the simple imprisonment for two month under Section 12 of the Contempt of Courts Act.

65. At this stage, a request is made by the learned Senior Advocate Mr. Mihir Joshi to suspend the judgement and order of conviction and sentence to enable the respondent to approach the Apex Court by way of an appeal under section 19 of the Contempt of Courts Act, 1971 before the Apex Court. Being conscious of the pending petition before the Apex Court of the respondent contemnor and the last order passed therein by the Apex Court so also bearing in mind the provisions of the Appeal under the Contempt of Courts Act, where appeal being right of the respondent under the provisions of the Act, execution of the punishment awarded is suspended exercising the powers conferred upon this Court under sub-section(2) of section 19 of

the Contempt of Court Act till the period of preferring of the appeal before the Apex Court i.e. 60 days.

66. Present suo motu proceedings initiated pursuant to the notice dated 09.06.2020 stands disposed of accordingly.

(MS. SONIA GOKANI, J.)

(N.V.ANJARIA, J.)

MISHRA AMIT V/sudhir

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