**Court No. - 18**

**Case :-** APPLICATION U/S 482 No. - 16310 of 2020
**Applicant :- Hasae @ Hasana Wae And 11 Others**
**Opposite Party :-** State of U.P. and Another
**Counsel for Applicant :-** Adeel Ahmad Khan
**Counsel for Opposite Party :-** G.A**.**

**with**

**Case :-** APPLICATION U/S 482 No. - 14919 of 2020
**Applicant :- Daha Dasai And 12 Others**
**Opposite Party :-** State of U.P. and Another
**Counsel for Applicant :-** Zaid Arshad,Adeel Ahmad Khan,Arshad Hamid,Sameer Jain
**Counsel for Opposite Party :-** G.A.

**Hon'ble Ajay Bhanot,J.**

1. These Applications U/S 482 Cr.P.C. have been connected and are being decided by a common judgement.

2. The application registered as Application under Section 482 Cr.P.C. No. 16310 of 2020 (Hasae @ Hasana Wae and Others Vs. State of U.P. and another) is directed against the chargesheet dated 07.06.2020 filed by the investigating agency in Case Crime No. 198 of 2020 under Sections 188, 269, 270, 271 I.P.C. and Section 3 of the Epidemic Diseases Act,1897, and Section 14B Foreigners Act, Police Station Sadar Bazar, District Shahjahanpur and the proceedings before the trial court taken out in pursuance

thereof.

3. The application registered as Application U/S 482 Cr.P.C. No. 14919 of 2020 (Daha Dasai and Others Vs. State of U.P and another) is directed against the chargesheet dated 10.05.2020 filed by the investigating agency in Case Crime No. 138 of 2020 under Sections 188, 269, 270 I.P.C. and Section 3 of the Epidemic Diseases Act, 1897 and Section 14B of the Foreigners Act, 1946 Police Station Pilkhuwa, District Hapur, against the applicants and the proceedings before the trial court initiated in pursuance thereof.

4. The matter had acquired certain urgency since most of the applicants are foreigners. There is also a request of the Supreme Court to expedite the hearing of the matter. The matters were connected and placed before me after nomination for the first time on 08.06.2021. Certain impediments were created in the hearing of the matter which are evident from the perusal of the ordersheet. Lack of assistance and accountability from the State side was delaying the hearing.

5. Learned counsels for the applicants contended with credibility that the capacity of the judicial process to show that justice will be seen to be done will be impaired in case

such conduct goes unnoticed and unaccounted for.

6. When no answer whatsoever was forthcoming from the State side, the Court was compelled to direct the personal appearance of the Principal Secretary/Legal Remembrancer, Department of Law, Government of U.P., Lucknow to explain the stand of the State.

7. The order of summoning was resisted by State counsels, albeit in respectful undertones. Reference to the latest holding of the Supreme Court in point was alluded to. The question being relevant is being decided on its merits.

8. The Allahabad High Court has a history of more than 130 years which predates most constitutional courts in the country. Rectitude of conduct of the judges, adherence to ethical norms by lawyers, and professional achievements which set standards of excellence form the quintessence of its storied reputation and animates the Court even today. The Allahabad High Court has thus earned the abiding trust of the people of the State by dispensing fair and impartial justice and by the probity of conduct of the Bar and the Bench alike.

9. The Bar of this Court was in the frontline of the freedom struggle and the Court has been at the vanguard of

protection of rights and liberties of citizens in times of maximum peril.

10. The paradox of the Allahabad High Court is that the unconditional trust of the citizens is its most precious asset but also poses the most pressing challenge. The people of the State of U.P. approach this Court with full confidence and no constraint. The result of the people of the State approaching the Court in huge numbers is the largest docket size in the country. The workload on Judges in the Allahabad High Court is the highest in the country.

11. Unremitting the toil of judges and unsurpassed industry of lawyers has allowed the Court to keep the faith and confidence of the people in its ability to deliver justice.

12. The distant vision of the founding fathers was reflected in the creation of the comity of constitutional courts which included the High Courts of the States and the Supreme Court of India. The High Courts and the Supreme Court have been vested with analogous powers by the Constitution of India. Constitutional autonomy of the High Courts is paired with the attribute of finality to the holdings of the Supreme Court as the highest appellate court in the country. These features are integral to the scheme of judicial federalism in the Constitution of India.

13. The High Courts possess supervisory powers over the District Courts under Article 227 of the Constitution of India. However it is noteworthy that no such powers of superintendence over the High Courts are vested in the Supreme Court by the Constitution of India. The reasons are not far to seek.

14. Considering the unique circumstances of our country, most citizens are not likely to go beyond the High Court in search of justice.

15. An overwhelming majority of the citizens make the Allahabad High Court the final temple in their pursuit of justice. Primarily it is the quality of justice and trust in the institution which persuades the majority of our citizens to accept the finality of the judgements of the Allahabad High Court. High Court is the litigative terminus for other reasons as well, including litigation fatigue, financial burden and desire for closure. The Allahabad High Court is final because of the citizens' choice as the court of last resort.

16. Absent powers equivalent and analogous to that of the Supreme Court or sans the constitutional autonomy, the High Courts will not be able to effectively and faithfully discharge these constitutional functions and will be unable to retain the confidence of the people in their capacity to do

justice.

17. Judicial federalism unequivocally contemplates full and equal autonomy to all constitutional courts; with the unconditional understanding that the Supreme Court is the final court of appeal in the country. To effectuate the latter part, there are other provisions in the Constitution like Article 142 and Article 144. The foremost constitutional aim of dispensing fair and impartial justice to all citizens and evolution of just laws in a country as vast and variegated as India cannot be achieved without a credible structure and effectively functioning system of judicial federalism.

18. Judicial federalism is distinct, in the sense, that unlike federations of States and legislatures, subjects are not divided into separate lists. Judicial federalism envisages congruent areas of responsibility of the High Courts and the Supreme Court.

19. The balance in judicial federalism is delicate. The concept of judicial federalism has to be shepherded with care in judicial pronouncements and restraint in conduct for it to thrive. Judicial federalism shall prosper or perish depending upon mutual respect between constitutional courts, and the quality of the constitutional dialogues between them.

20. Constitutional autonomy of the High Courts and comity of the constitutional courts are concepts on which there is substantial consensus of judicial authorities. However, at times the agreement of authorities in point is disturbed. Words like “superior” (as understood in Indian English) which occasionally enter the lexicon do not manifest ambiguity in the constitutional scheme. These constitutional debates mostly reflect the dilemma of a hierarchical society with an egalitarian constitution.

21. Dilution of constitutional autonomy of the High Courts would threaten the concept of judicial federalism envisaged in the Constitution and affirmed by judicial precedents. The consequences of High Courts denuded of their constitutional autonomy would be a decline in the quality of justice to the people of the country and weakening in the implementation of law. A failure to realise the preambled aim of securing justice to all its citizens would stare us in the face, and loss of faith of the common citizen in the judiciary will surely follow.

22. The constitutional autonomy of the High Courts may be diminished by various factors. Construing appellate jurisdiction as conferring supervisory powers may compromise the constitutional autonomy of the High

Courts.

23. Acknowledging the powers of both constitutional courts namely the High Courts and the Supreme Court to issue writs, but also noticing that powers of High Courts under Article 226 of the Constitution of India are wider, the Supreme Court in **Naresh Shridhar Mirajkar and others Vs State of Maharashtra and another**[1] :

> *"53. It is well-settled that the powers of this Court to issue writs of certiorari under Art. 32(2) as well as the powers of the High Courts to issue similar writs under Art. 226 are very wide. In fact, the powers of the High Courts under Art. 226 are, in a sense, wider than those of this Court, because the exercise of the powers of this Court to issue writs of certiorari are limited to the purposes set out in Art. 32(1) "*

24. Writs issued in exercise of inherent powers of the High Court were not open to challenge by writ proceedings before the Supreme Court according to **Naresh Shridhar Mirajkar (supra)** wherein it was held:

> *"59. If a judicial order like the one with which we are concerned in the present proceedings made by the High Court binds strangers, the strangers may challenge the order by taking appropriate proceedings in appeal under Art 136. It would, however, not be open to them to invoke the jurisdiction of this Court under Art. 32 and contend that a writ of certiorari should be issued in respect of it. The impugned order is passed in exercise of the inherent jurisdiction of the Court and its validity is not open to be challenged by writ proceedings."*

25. **Naresh Shridhar Mirajkar (supra)** stating the attributes of a superior court of record, including the

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1 **AIR 1967 SC 1**

entitlement to determine for itself questions about its own jurisdiction by holding:

> *" 60. There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record and under Art. 215, shall have all powers of such a Court of Record including the power to punish contempt of itself. One distinguishing characteristic of such superior courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in Special Reference No. 1 of 1964 (1965) 1 S.C.R. 413. In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument, this Court observed that in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from Halsbury's Laws of England where it is observed that*
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> > *"prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court." (Halsbury's Laws of England, Vol. 9, p. 349).*
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> > *If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court. "*

26. Exploring various facets of the relationship of the Supreme Court with the High Courts, the Supreme Court in **Tirupati Balaji Developers (P) Ltd. and others Vs State**

**of Bihar and others**[2] stated:

> *"8. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts both are courts of record. The High Court is not a court 'subordinate' to the Supreme Court. In a way the canvass of judicial powers vesting in the High Court is wider Inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose while the original jurisdiction of Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential election or inter-state disputes which the Constitution does not envisage being heard and determined by High Courts. The High Court exercises power of superintendence under Article 227 of the Constitution over all subordinate courts and tribunals; the Supreme Court has not been conferred with any power of superintendence. If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother. There are a few provisions which give an edge, and assign a superior place in the hierarchy, to Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal. It is the final interpreter of the law. Under Article 139-A, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141 the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Under Article 144 all authorities, civil and judicial, in the territory of India -- and that would include High Court as well -- shall act in aid of the Supreme Court.*
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> *9. In a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. The very fact that the Constitution confers an appellate power on the Supreme Court over the High Courts, certain consequences naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to re-hear the matter and comply*

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2 **2004 (5) SCC 1**

> *with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of latter to carry out such directions or show disrespect to or to question the propriety of such directions would -- it is obvious -- be destructive of the hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both. ”*

27. **Tirupati Balaji Developers (supra)** explained the word “superior court” in the following terms:

> *“24. The Supreme Court, exercising its appellate jurisdiction, is called upon to issue directions which is not only its privilege as appellate forum but often a necessity for meeting the demands of justice and effective exercise of appellate power. Yet, it cautiously abstains from issuing any 'directions' as such and rather uses the alternative and polite expressions like -- "we request the High Court", "the High Court is expected to", "we trust and hope that the High Court will/shall", spelled out by courtesy and the respect and regards which the Supreme Court has -- and must have -- for High Courts. The practice has developed and gained ground as tradition. Barring may be an instance or two, which too must have been avoidable, there has been no occasion either for any disrespect having been shown by the Supreme Court to the High Court or vice versa or for this Court having been called upon to take cognizance of any instance of disrespect shown to it by any High Court.”*

> *“29. While quoting the several authorities and references as hereinabove we should not be misunderstood as calling 'the Supreme Court a superior Court and the High Court an inferior court'; all that we wish to say is that jurisdictionally, and in the hierarchical system, so far as the exercise of appellate jurisdiction is concerned, undoubtedly the Supreme Court is a superior forum and the High Court an inferior forum in the sense that the latter is subjected to jurisdiction, called 'appellate jurisdiction', of the former.”*

28. Further the importance of collegiality and the relationship between the collegiality and independence as spelt out by Harry T. Edwards, Chief Judge, US Court of Appeals for the DC Circuit was invoked to support the

narrative in **Tirupati Balaji Developers (supra):**

> “25. Harry T. Edwards, Chief Justice, U.S. Court of Appeals for the D.C. Circuit emphasises self-restraint as helping build up the Courts constitutional legitimacy overtime inasmuch as judicial self-restraint helps both to generate and to preserve judicial independence. In the context of dealing of judges by judges, he uses the term 'collegiality' and then he mentions the relationship between collegiality and independence by saving-
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> > " ... an aspect of judicial practice that has seemed increasingly important to me over the last decade: the practice of collegiality. By collegiality I mean an attitude among judges that says, we may disagree on some substantive issues, but we all have a common interest and goal in getting the law right. We are, in a word, one another's colleagues. An attitude of collegiality means, in practice, that we respect one another's views, listen to one another, and, where possible, aim to identity areas of agreement... Collegiality does mean, however, that, even when I disagree with another judge, I recognize that we are part of a common endeavor, and that each of us is, almost always, acting in good faith according to his or her own view of what the law requires... Because I see myself as engaged in a common endeavor with my judicial colleagues, it follows that I have the interest of the judiciary as a whole at heart. .. When there is little or no judicial collegiality, there is less incentive for judges to exercise self-restraint. ... collegiality is important not only for working together effectively, but also at a deeper structural level. An attitude of judicial collegiality helps reinforce judges' incentives to behalf in a principled and responsible fashion. I think that any discussion of judicial independence, either at the level of institutions or individuals, should take this practice of collegiality into account". (See - Judicial Norms: A Judge's Perspectives - Washington University School of Law).”

29. The doctrine of precedents is another feature which predates the Constitution. Under Article 141 of the Constitution of India the law declared by the Supreme Court is binding on all courts. Binding nature of the law laid down by the Supreme Court would exist even if Article 141 was not incorporated in the Constitution. Article 141 of the

Constitution of India is a constitutional acknowledgment of the preexisting tradition of binding nature of judicial precedents. What constitutes a binding precedent in a judgment has long been settled by ancient but constant authorities of high standing. Cases in point hold that a judgement is a precedent for what it decides.

30. The binding force of the judgement depends upon the facts which were in issue and the point which was decided. (Ref: ***Royal Medical Trust Vs. Union of India***[3] ). It is in light of said authorities that the doctrine of binding precedents has to be applied. Deviation from said authorities would not be in conformity with Article 141 of the Constitution of India and inconsistent with the concept of constitutional autonomy of the High Courts.

31. A constitutional dialogue happens in the comity of constitutional Courts by rendering of judgments and use of judicial precedents. The tone and terms of this dialogue, have to be marked by civility, leavened with mutual respect, and powered by honest convictions. This is predicated with the certain understanding that the final word in the controversy rests with Supreme Court. The dialogue between the constitutional courts is one of reason and purpose, and not of power and authority.

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3 **(2017) 16 SCC 605**

32. The High Courts are best placed to understand and respond to the local problems of the State and the special needs of its people. Upholding the law and dispensing justice on a day to day basis in this setting provides an acute insight to the High Court judges and imparts great value to their judgements. Legal practices evolved by the High Courts from the experience gained by proximity to ground realities of the State and which have eminently served the cause of justice should not be readily reversed.

33. Participation in the judicial process is restricted. Consequences of judicial verdicts can be widespread. Judicial federalism by enlarging participation in legal debates and deepening sensitivity in judicial approach enables constitutional courts to effectively address myriad facets of justice in a diverse society. A culture which accords equal respect to the judgements of the High Courts will foster rich legal debate across the comity of constitutional courts, give enduring foundations to the holdings of the Supreme Court, and strengthen judicial fedaralism. When all High Courts have a share in creating common constitutional values, it will add a judicial content to the unity of India. Unity of judicial values contributes to the inherent oneness of India.

34. The judgement of the Supreme Court in **Santhini Vs. Vijaya Venketesh**[4] is one instance where the decisions of the High Courts were given full weight in the dissenting view rendered by Hon'ble Dr. D. Y. Chandrachud, J. After a comprehensive survey of the judgements of the various High Courts in the country allowing use of video conferencing in the judicial process, Hon'ble Dr. D. Y. Chandrachud, J. (speaking for himself) held as under:

> "**100.** These are words of wisdom and perspicacity across the spectrum. Voices from within the judiciary in a federal structure should merit close listening by the Supreme Court."

This statement of law mirrors the vision of the Constitution makers and also shines some light on the path to the future.

35. The dissentient view in **Santhini (supra)** concludes by finding:

"**115**. There is, in my view, no basis either in the Family Courts Act, 1984 or in law to exclude recourse to videoconferencing at any stage of the proceedings. Whether videoconferencing should be permitted must be determined as part of the rational exercise of judgment by the Family Court."

Prescience of the minority view in **Santhini (supra)** which had the advantage of the judgements of the High Courts is being borne out during Covid-19 pandemic.

36. The Supreme Court has consistently emphasized the

4 **(2018) 1 SCC 1**

importance of tempered and civil language in the judgments rendered by all courts and has set its face against employing strong or disparaging language in judicial speech. Civility in judicial speech is the precursor to judicial wisdom.

37. Untempered language often gives the impression that it is not the lis which is being judged but the author of the judgment who is on trial. Consequences of derogatory and unrestrained language in the process of courts transcend the facts of the case. The damage is of a lasting nature. It sullies the name of the judge who is in no position to defend himself. It also brings the entire institution into disrepute which takes the blow silently. The overall environment of independent judicial decision making too is adversely affected.

38. A greater cause of concern is the consequent reluctance of judges to exercise lawfully vested constitutional or inherent powers in the service of justice. The latter hesitancy is attended by the subtle danger of losing justice in procedures. This would imperceptibly but in a certain manner weaken the constitutional autonomy of the High Courts, and mark a shift away from the constitutional vision of comity of constitutional courts. The result will be High Courts which are a pale shadow of a luminous constitutional

vision and an ecosystem which will occasion failure of justice.

39. The narrative will be fortified by authorities in point.

40. The issue regarding use of temperate language in judicial pronouncements even in the face of strongly divergent judicial opinion arose early in the evolution of constitutional law in **Ishwari Prasad Vs. Mohd. Isa**[5]**.** The Supreme Court in **Ishwari Prasad (supra)** discussed various aspects of judicial decision making process and emphasized the use of temperate language in judicial pronouncements :

> "27…. Judicial experience shows that in adjudicating upon the rival claims brought before the courts it is now always easy to decide where the truth lies. Evidence is adduced by the respective parties in support of their conflicting contentions and circumstances are similarly pressed into service. In such a case, it is , no doubt, the duty of the Judge to consider the evidence objectively and dispassionately, examine it in the light of probabilities and decide which way the truth lies. The impression formed determine of conclusion which he reaches. But it would be unsafe to overlook the fact that all judicial minds may not react in the same way to the said evidence and it is not unusual that evidence which appears to be respectable and trustworthy to one Judge may not appear to be respectable and trustworthy to another Judge. That explains why in some court on its appreciation of oral evidence. The knowledge that another factor and leads to the use of temperate language and recording judicial conclusions. Judicial approach in such cases [would] always be based on the consciousness that one may make a mistake; that is why the use of unduly strong words in expressing conclusions or the adoption of unduly strong intemperate, or extravagant criticism, against the contrary view, which are often founded on a sense of infallibility should always be avoided."

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5 **AIR 1963 SC 1728**

41. A similar controversy regarding the unconditional necessity of employing civil phraseology even while expressing deep disagreement arose before the Constitutional Bench in **Alok Kumar Roy Vs. Dr. S. N. Sarma And Anr**[6]. In this case the learned Chief Justice of a High Court while disagreeing with the order passed by an Hon'ble Judge of the High Court observed that the order was passed "in unholy haste and hurry". Certain other adverse observations were also made in that case.

42. The Supreme Court in **Alok Kumar Roy (supra)** held against employing such language or making such remarks in a judgment against a colleague and observed:

> " 8… It is necessary to emphasise that judicial decorum has to be maintained at all times and even where criticism is justified it must be in language of utmost restraint, **keeping always in view that the person making the comment is also fallible**…. Even when there is justification for criticism, the language should be dignified and restrained." (emphasis supplied)

43. Reiterating the use of language of utmost restraint and the impact of scathing remarks against judicial officers in **K.P. Tiwari Vs. State of M.P.**[7] Supreme Court set forth:

> "4….A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts is purely a result

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6 **AIR 1968 SC 453**
7 **1994 Supp (1) SCC 540**

> of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks - more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive. It is possible that a particular judicial officer may be consistently passing orders creating a suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such cases, the proper course for the higher court to adopt is to make note of his conduct in the confidential record of his work and to use it on proper occasions. The judges in the higher courts have also a duty to ensure judicial discipline and respect for the judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticised intemperately and castigated publicly. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary than when the judges of the higher courts publicly express lack of faith in the subordinate judges for one reason or the other. It must be remembered that the officers against whom such strictures are publicly passed, stand condemned for ever in the eyes of their subordinates and of the members of the public. No better device can be found to destroy the judiciary from within. The judges must, therefore, exercise self-restraint. There are ways and ways of expressing disapproval of the orders of the subordinate courts but attributing motives to them is certainly not one of them. That is the surest way to take the judiciary downhill.

44. In **Brij Kishore Thakur Vs. Union of India**[8] the Supreme Court held that disparaging language against judges will damage the administration of justice and impair the confidence of people in the judicial system. Restraint in judicial language and humility in judicial functioning was advocated in **A.M. Mathur Vs. Pramod Kumar Gupta**[9]. Departure from norms of sobriety, moderation and reserve

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8 (**1997) 4 SCC 65**
9 **(1990) 2 SCC 533**

was not countenanced by the Supreme Court in **'K' A Judicial Officer In re case**[10] and State of **U.P. Vs. Mohd. Naim**[11].

45. Degrading remarks were made against the dignity of an Hon'ble Judge of the Patna High Court in a judgement of the Supreme Court. The Hon'ble High Court Judge was compelled to approach the Supreme Court for expunction of said remarks, to redeem his honour and to restore the prestige of his institution in **State of Bihar Vs. Neelmani Sahu**[12]. The Supreme Court expunged the remarks by holding:

> "1… When this Court uses an expression against the judgment of High Court it must be in keeping with the dignity of the person concerned."

46. Position of law discussed in the preceding paragraphs was reiterated in **Amar Pal Singh Vs. State of U.P.**[13] and in **S.N. Dhingra Vs. State (NCT of Delhi)**[14]. The regularity of authorities shows constancy of the problem.

47. The damage to the cause of justice by use of intemperate

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10 **(2001) 3 SCC 54**
11 **AIR 1964 SC 703**

12 **(1999) 9 SCC 211**

13 **2012 (6) SCC 491**

14 **(2014) 13 SCC 768**

language in the judicial process is yet to be fully assessed but the impact can be felt.

48. Inherent powers are conferred under Section 482 Cr.P.C. upon the High Court. The wide ambit of power vested in the High Courts by virtue of Article 226 of the Constitution of India. The inherent powers are the cornerstones of the constitutional autonomy granted to the High Courts and comprise the basic structure of the Constitution.

49. The understanding of particularized circumstances of the society and the facts of the case is essential to dispense justice in a State like Uttar Pradesh. The richness of the State of U.P. is reflected in the diversity of its heritage. The disparities in the society are manifested in the challenges faced by the State and the complex issues arising before the High Court.

50. Apathy of the bureaucracy and at times of citizens, poverty, inequalities, prejudices, environmental degradation and above all the need to give hope for justice are some of the local circumstances which make the process of law and administration of justice vibrant and evolutionary concepts in the State of U.P. In this diverse setting the High Court often have to evolve procedures and apply novel approaches by invoking plenary or inherent powers to serve the ends of

justice. Special facts and circumstances may cause deviation from the routine procedure and a nuanced application of law to dispense justice.

51. At times an interdisciplinary engagement has to be made by the High Courts. In such situations for the High Courts to adhere to a fail safe approach in all matters or to adopt rote responses in unique facts of a case may lead to miscarriage of justice. Procedure should always remain the handmaiden of justice. Adherence to procedure imparts credibility to the process of law. Subservience to procedure may occasion failure of justice. Establishing the primacy of the courts while the litigation is still on foot is an important aspect in the process of administering justice and implementing the law. The process cannot be confined to mere exchange of affidavits or defined in terms of rigid procedures alone.

52. Among the plenary powers or inherent powers to which resort is had by the High Courts in the service of justice are those vested under Article 226 of the Constitution of India or under Section 482 Cr.P.C. Summoning of officers or other parties to the court are at times required in the facts and circumstances of a case. The power of summoning officials or other parties is exercised from time to time in the Allahabad High Court solely for the high purpose for

which it is vested namely in the interests of justice.

53. In an individual case or even cases there may be an error of judgement or two views regarding an order to summon an official. The appellate court can always take a view on the facts of a case. Errors in judgements are the perils of confiding the divine function of dispensing justice in mortal hands.

54. The orders of the High Courts requiring personal presence of officers have been considered in various judicial authorities. The locus classicus in point is the judgment of the Supreme Court in **State of U.P. and others Vs Jasvir Singh and others**[15]**.** Acknowledging the breadth of the powers of the High Court under Article 226 of the Constitution of India, the well settled norms and procedures for exercise of such power were thus stated in **Jasveer Singh (supra)**:

> *"14. It is a matter of concern that there is a growing trend among a few Judges of the High Court to routinely and frequently require the presence, in court, of senior officers of the government and local and other authorities, including officers of the level of Secretaries, for perceived non-compliance with its suggestions or to seek insignificant clarifications. The power of the High Court under Article 226 is no doubt very wide. It can issue to any person or authority or government, directions, orders, writs for enforcement of fundamental rights or for any other purpose. The High Court has the power to summon or require the personal presence of any officer, to assist the court to render justice or arrive at a proper decision. But there are well settled norms and*

15 **2011 (4) SCC 288**

*procedures for exercise of such power.*

*15. This Court has repeatedly noticed that the real power of courts is not in passing decrees and orders, nor in punishing offenders and contemnors, nor in summoning the presence of senior officers, but in the trust, faith and confidence of the common man in the judiciary. Such trust and confidence should not be frittered away by unnecessary and unwarranted show or exercise of power. Greater the power, greater should be the responsibility in exercising such power.*

*16. The normal procedure in writ petitions is to hear the parties through their counsel who are instructed in the matter, and decide them by examining the pleadings/affidavit/evidence/ documents/material. Where the court seeks any information about the compliance with any of its directions, it is furnished by affidavits or reports supported by relevant documents. Requiring the presence of the senior officers of the government in court should be as a last resort, in rare and exceptional cases, where such presence is absolutely necessary, as for example, where it is necessary to seek assistance in explaining complex policy or technical issues, which the counsel is not able to explain properly. The court may also require personal attendance of the officers, where it finds that any officer is deliberately or with ulterior motives withholding any specific information required by the court which he is legally bound to provide or has misrepresented or suppressed the correct position.*

*17. Where the State has a definite policy or taken a specific stand and that has been clearly explained by way of affidavit, the court should not attempt to impose a contrary view by way of suggestions or proposals for settlement. A court can of course express its views and issue directions through its reasoned orders, subject to limitations in regard to interference in matters of policy. But it should not, and in fact, it cannot attempt to impose its views by asking an unwilling party to settle on the terms suggested by it. At all events the courts should avoid directing the senior officers to be present in court to settle the grievances of individual litigants for whom the court may have sympathy. The court should realize that the state has its own priorities, policies and compulsions which may result in a particular stand. Merely because the court does not like such a stand, it cannot summon or call the senior officers time and again to court or issue threatening show cause notices. The senior officers of the government are in-charge of the administration of the State, have their own busy schedules. The court should desist from calling them for all and sundry matters, as that would amount to abuse of judicial power. Courts should guard against such transgressions in the exercise of power. Our above observations do*

> *not of course apply to summoning of contemnors in contempt jurisdiction."*

55. More importantly in **Jasvir Singh (supra)** it was emphasized that the observations made thereunder did not limit the exercise of the extraordinary jurisdiction of the High Courts under Article 226 of the Constitution of India:

> *"18. We have made the above observations rather reluctantly. Our observations should not be construed as restricting or limiting the exercise of the extraordinary jurisdiction of High Courts under Article 226 of the Constitution of India. The observations are intended to be guidance for self-regulation and self-restriction by courts. It became necessary as we have noticed that the learned Presiding Judge of the Bench has been frequently making such orders directing senior officers of the Government to be present and settle claims. It is a coincidence that another case where a similar procedure was adopted by the learned Presiding Judge of the bench, came up before us today Lake Development Authority, Nainital v. Heena Khan (CA No. 10087-10090 of 2010 decided on 26.11.2010). We have no doubt that the learned Judge bona fide believes that by requiring the presence of senior officers, he could expedite matters and render effective justice. But it is not sufficient that the object of the Judge is noble or bonafide. The process of achieving the object should be just and proper, without exceeding the well recognised norms of judicial propriety. "*

56. Similarly in **State of Gujarat Vs Turabali Gulamhussain Hirani and another**[16] , the power of the High Court to summon officials remained unquestioned but it was stated that the power should be exercised in rare and exceptional circumstances and not in a routine manner:

> *"7. There is no doubt that the High Court has power to summon these officials, but in our opinion that should be done in very rare and exceptional cases when there are compelling circumstances to do so. Such summoning orders should not be passed lightly or as a routine or*

16 **2007 (14) SCC 94**

*at the drop of a hat.*

*8. Judges should have modesty and humility. They should realize that summoning a senior official, except in some very rare and exceptional situation, and that too for compelling reasons, is counter productive and may also involve heavy expenses and valuable time of the official concerned.*

*9. The judiciary must have respect for the executive and the legislature. Judges should realize that officials like the Chief Secretary, Secretary to the government, Commissioners, District Magistrates, senior police officials etc. are extremely busy persons who are often working from morning till night. No doubt, the ministers lay down the policy, but the actual implementation of the policy and day to day running of the government has to be done by the bureaucrats, and hence the bureaucrats are often working round the clock. If they are summoned by the Court they will, of course, appear before the Court, but then a lot of public money and time may be unnecessarily wasted. Sometimes High Court Judges summon high officials in far off places like Director, CBI or Home Secretary to the Government of India not realizing that it entails heavy expenditure like arranging of a BSF aircraft, coupled with public money and valuable time which would have been otherwise spent on public welfare."*

57. In a more recent judgment in **State of U.P. and others Vs Dr. Manoj Kumar Sharma[17], Civil Appeal no. 2320 of 2021**, the Supreme Court deprecated in strong terms the practice in certain High Courts of summoning officials to pressurize them and reiterated the need to exercise this power with restraint by holding:

*"17. A practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.*

*18. The public officers of the Executive are also performing their duties as the third limbs of the governance. The actions or decisions by the*

17 **Civil appeal No. 2320 of 2021**

> *officers are not to benefit them, but as a custodian of public funds and in the interest of administration, some decisions are bound to be taken. It is always open to the High Court to set aside the decision which does not meet the test of judicial review but summoning of officers frequently is not appreciable at all. The same is liable to be condemned in the strongest words.*
>
> *20. Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the Court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important tasks entrusted to him gets delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The Court proceedings also take time, as there is no mechanism of fixed time hearing in Courts as of now. The Courts have the power of pen which is more effective than the presence of an officer in Court. If any particular issue arises for consideration before the Court and the Advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond."*

58. The position of law which can be distilled from the immediately preceding narrative is this.

59. The power to summon an official or any other person is inherent in the constitutional courts. The powers have been vested in constitutional courts to empower them to achieve the foremost constitutional goal of securing justice to the citizens. The power is too sacrosanct to be blighted by any oblique motives or extraneous considerations. The power has to be used sparingly and regulated by self-discipline. Comprehensive guidelines containing the manner of exercise of inherent powers is an elusive goal.

Constitutional courts have not attempted to confine the exercise of such inherent powers in a fixed formula to be applied irrespective of the facts of the case. Judicial authorities give illustrative examples of use of such power but do not provide an exhaustive scheme. Inherent powers cannot be ringed fenced by narrow definitions. Narrow definitions will militate against the very purpose of vesting inherent powers in constitutional courts, denude their constitutional autonomy, and will impede the quest for justice.

60. In summation, inherent powers for summoning of officials or any other person should be exercised as an exceptional measure to achieve the high end of securing justice. It is in the nature of things that this will always depend on the facts and circumstances of the case and the better judgement of the Court.

61. In this case for reason as stated earlier the personal presence of the officer was necessitated to retain the faith of the litigants in judicial process, to remove the impediments in the hearing, and for the State to account for its actions and omissions.

62. Shri Pramod Kumar Srivastava, Legal Remembrancer, Department of Law, Government of U.P., Lucknow, was

present in Court on 02.08.2021. Shri M. C. Chaturvedi, learned Additional Advocate General for the State requested that the proceedings may be conducted in camera because some confidential facts and documents had to be placed before the Court.

63. In the proceedings held in camera, Shri Pramod Kumar Srivastava, Legal Remembrancer, Department of Law, Government of U.P., Lucknow, stated that the State Government is cognizant of the concerns of the Court and is committed to the principle of accountability. Relevant processes have been initiated. The Court was also assured that no impediment will be caused in the hearing and that the Court shall be assisted with full honesty in the matters.

64. Certain confidential documents were produced which depict governmental processes and also attest to the sincerity of the statement made on behalf of the State before this Court. Once the government is seized of the matter, the Court does not deem it appropriate to say anything which may fetter the lawful discretion of the State. Statements made by high officials on behalf of the Government in Court have highest sanctity and full weight have to be given to the same.

65. With these observations the matter relating to the

personal presence of the Legal Remembrancer in person is finally disposed of.

66. On merits in Application U/S 482 Cr.P.C No. 16310 of 2020 (Hasae @ Hasana Wae and 11 others Vs. State of U.P. and another) it is submitted by Shri M. C. Chaturvedi, learned Additional Advocate General, Shri A.K. Sand, Additional Government Advocate for the State that the trial has almost concluded and the statement of the accused under Section 313 Cr.P.C. was made before the trial court on 03.08.2021. Thereafter the matter is liable to be posted for final hearing on 06.08.2021.

67. Learned counsels for the applicants do not dispute the contention on behalf of the State that since the trial has concluded and all evidences have been tendered, the cause of instituting this Application U/S 482 Cr.P.C. does not survive.

68. Similarly on merits in Application U/S 482 Cr.P.C No. 14919 of 2020 (Daha Desai and 12 others vs. State of U.P. and another) it is submitted by Shri M. C. Chaturvedi, learned Additional Advocate General, Shri A.K. Sand, Additional Government Advocate for the State that the trial has almost concluded and the statement of the accused under Section 313 Cr.P.C. was made before the trial court

on 03.08.2021. Thereafter the matter is liable to be posted for final hearing on 10.08.2021.

69. Learned counsels for the applicants do not dispute the contention on behalf of the State that since the trial has concluded and all evidences have been tendered, the cause of instituting this Application U/S 482 Cr.P.C. does not survive.

70. The applicants can take up various objections on facts, law and evidence before the learned trial court.

71. In wake of the preceding discussion, these Applications Under Section 482 Cr.P.C. are being disposed of with the direction to the learned trial court to decide the trial proceedings expeditiously.

72. The Applications U/S 482 Cr.P.C. are disposed of finally.

**Order Date :- 05.8.2021**
Nadeem/Dhananjai Sharma