



INDIAN BAR ASSOCIATION

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धर्मो रक्षति रक्षितः

20th March, 2017

NOTICE

IN THE SPECIAL MEETING CALLED TODAY, IT IS RESOLVED AS UNDER :

Resolutions for consideration :

- 1) To request Hon'ble Chief Justice of India and Hon'ble President of India to forthwith withdraw all the works assigned to Hon'ble Smt. Justice ManjulaChellur, Chief Justice Bombay High Court and Hon'ble Shri. Justice G. S. Kulkarni as her incapacity and poor level of understanding has been proved from the orders passed by her.

- 2) To send representation to Hon'ble Chief Justice of India to take suo-motu cognizance of contempt of court against Hon'ble Smt. Justice ManjulaChellur for her willful disregard and defiance of the law laid down by Hon'ble Supreme Court.

31/23/03/17
CHAMBER NO. 51 (C.J.) OFFICE
HIGH COURT, BOMBAY

Resolution - I (Unanimously resolved with following discussion based on the law declared by Hon'ble Supreme Court)

At the outset, we express our sincere thanks to Hon'ble Supreme Court Collegium for not elevating rather rejecting the elevation of Smt. Justice ManjulaChelluras a Supreme Court Judge.

All the Noble members of our BAR ASSOCIATION hereby request Hon'ble Chief Justice of India and Hon'ble President of India to forthwith withdraw the Judicial as well as administrative work from Hon'ble Smt. Justice ManjulaChellur of Bombay High Court for following reasons :

As has been ruled by Hon'ble Supreme Court that the Advocates are Members of the noble profession. They are the responsible officers of the court. Their status as an officer of justice does not mean that they are subordinate to the judge. It only means that he is an integral part of the machinery for the administrative of justice.

The advocates share with judge the function that all the controversies shall be settled in accordance with the law. They are partners in the common enterprise of the administration of justice. The defence in their role is one of the division of the labour only, otherwise they are two branches of the same profession and neither is superior or inferior to other. Nothing is more calculated promote the smooth and satisfactory administration of justice than complete confidence and sympathy between bench and the bar. If the judge has lost confidence of the bar, he will soon lose the confidence of the public. (Vide 2015 (2) KCCR 1809 - High Court of Karnataka Vs. Jai ChaitanyaDasaa).

Above are the observations of the Division bench of Hon'ble Karnataka High Court, where High Court discharged the contempt notice and dropped the contempt of courts case against three Advocates.

The important factor of the above said judgment is that in the abovesaid judgments, it was proved that the understanding of law of Hon'ble Smt. Justice ManjulaChellur(then judge of Karnataka High Court) was very poor and she does not know the basic provision of the Contempt of Courts Act.

In abovesaid case in suo-motu contempt notice, the issue was regarding the procedure to be followed under section 14 of the contempt of Courts Act. In that

case Smt. Justice ManjulaChellur's opinion was that even if the procedure under sub section (1) Of the section 14 is not followed, the other procedure under section 14(2) be considered to proceed further with the contempt notice. This view was rejected by Hon'ble Division Bench relying on the law laid down by Supreme Court in Leila Davids' case AIR 2010 SC 862, where it is ruled that if any contempt happens to be on the face of court then the case under section 14 of the act is required to be dealt with, at the time of the incident itself and after realizing that the person on bail the further summary procedure under section 14(2), (3), 4 etc. has to be followed.

Even after 7 years of the said law cleared by Hon'ble Supreme Court & High Court, Smt. Justice ManjulaChellur is not able to understand the law nor she is intending to follow the law and the procedure which is ruled by Hon'ble Supreme Court and the rules framed by Hon'ble Bombay High Court.

- 3) The classic example of Smt. Justice Manjula Chellur's conduct is the order passed by herself on 15th March, 2017 in Writ Petition No. 2334 of 2013.

- 4) The illegality of the order is capulized as under:
- 5) That the order dated 15th March, 2017 in Writ Petition No. 2334 of 2013 is about the gross misconduct of Mr. Mathew Nedumpara, Advocate on the face of the court and therefore, notice is issued under Article 215 of the Constitution of India and section 14 of the Contempts of Courts Act.
- 6) The Judge proceeding under section 14 of the Contempt of Courts Act must know the basic principles as to when it is used.

In fact [Vide: 2013 CRI. L. J. 3391], Section 14 of the Act empowers the High Court to take immediate and emergent action when the contempt is on the face of the Court. Contempt proceedings under Sec. 14(1) can be initiated only when (a) the contempt is clear, (b) the contempt affects a trial in progress or about to start, (c) it is urgent and imperative to act immediately in order to prevent justice being obstructed and undermined and to preserve the integrity of the trial, and (d) no other procedure can be resorted to, to meet the ends of justice[Vide: 2013 CRI. L. J. 3391]

- 7) That the procedure laid down under section 14 of the act also cast duty on the Judge about when it should be used

That the procedure laid down under section 14 of the act is that if the contempt is on the face of the court, then such person who is committing contempt, is liable to be detained forthwith and be released on bail and then the matter be heard by following the procedure prescribed under section 14(2), (3), (z) of the Act.

- 8) And if this procedure is not followed then the court can proceed under section 15 of the Act but proceeding should not be under 14 of the Act.

- 9) In **2015(2) KCCR 1809, (supra)**, it is ruled as under;

- 10) A) CONTEMPT OF COURTS ACT, 1971 - SECTION 14 READ WITH ARTICLE 215 OF THE CONSTITUTION OF INDIA - Suo motu contempt against Advocates and parties for scandalous draft - Application filed by a party to the proceedings requesting a Judge to recuse himself from hearing the case on the ground that he is biased, whether constitute contempt -HELD, if the Contempt is on the face of the Court then the

procedure under section 14 of the contempt of courts act should be followed – as per law declared by Supreme Court in the case of Leila David v. State of Maharashtra & Ors reported in AIR 2010 SC 862, the case of contempt in the face of the Court under this section is required to be dealt with at the time of the incident itself - In the instance case, the contempt alleged is the words used in the affidavit filed in support of the application - If the Judges on entertaining the said application felt as such, A. 1 should have been detained in custody and pending determination of the charges, he could have been released him on bail as provided in Sub-section (4) of Section 14 of the Act. Thereafter inform him in writing, of the contempt with which he is charged and afford him an opportunity to make his defence to the charge. Then they should have taken such evidence as may be necessary or as may be offered by A.1. After hearing the matter, they could have decided whether the charge is proved or not and accordingly punished A. 1 or discharge him. Admittedly, the Court did not follow this procedure - It is under these circumstances, the contempt proceedings now which is initiated cannot be construed as the proceedings under Section 14 of the Act.

11) Moreover, in the case between Bal Thackrey Vs. Harish Pimpalkhute and Ors. (2005) 1 SCC 254, it is ruled as under;

10. Dealing with the nature and character of the power of the courts to deal with contempt in the case of **Pritam Pal v. High Court of Madhya Pradesh, Jabalpur Through Registrar**, [(1993) Supp (1) SCC 529], Hon'ble High Court'ble Supreme Court Court observed :

11. The nature and power of the Court in contempt jurisdiction is a relevant factor for determining the correctness of observations made in Duda's case (supra). Dealing with the requirement to follow the procedure prescribed by law while exercising powers under Article 215 of the Constitution to punish for contempt, it was held by this Court in Dr. L.P. Misra v. State of U. P. [(1998) 7 SCC 379] that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. The

exercise of jurisdiction under Article 215 of the Constitution is also governed by laws and the rules subject to the limitation that if such laws/rules stultify or abrogate the constitutional power then such laws/rules would not be valid. In L. P. Misra's case (supra) it was observed that the procedure prescribed by the Rules has to be followed even in exercise of jurisdiction under Article 215 of the Constitution. To the same effect are the observation in Pallav Sheth's case (supra).

21. ...High Court observed that being Court of Record it can evolve its own procedure, which means that the procedure should provide just and fair opportunity to the contemner to defend effectively and that the contemner has not expressed any prejudice or canvassed any grievance that he could not understand the charge involved in the proceeding which he had been called upon to defend.

22. In these matters, the question is not about compliance or non-compliance of the principles of natural justice by granting adequate opportunity to the appellant but is about

compliance of the mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15 is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were under Section 15 of the Act.In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable.

- 12) The procedure is properly followed by Jharkhand High Court on its own motion Vs. K.K Jha'Kamal; 2007 (2) BILR 2545.

where it is observed as under

" Since this action amounts to Criminal Contempt, I direct the Registry to place this matter also before Hon'ble the Chief Justices for consideration by an appropriate larger Bench. Proceedings against Mr. Jha will be placed as a separate contempt proceedings. I feel that personal appearance of Mr. Jha is necessary before the Bench. He is directed to furnish bail bond to the tune of Rs. 20,000/- (Rupees Twenty

Thousand) before the Jt. Registrar (Judicial) of this Court with an undertaking to appear before the appropriate Bench when the matter to listed. The Register will communicate to Mr. Jha the date of listing of the matter before the appropriate larger Bench after obtaining instructions from Hon'ble the Chief Justice."

- 13) Which makes it clear that the procedure followed by Smt. Justice Manjula Chellur is unknown to the section 14 of the Act.
- 14) Hence, it is clear that Smt. Justice Manjula Chellur is not having proper knowledge of the law rather to say she willfully disobeyed the law and procedure laid down by Hon'ble Supreme Court . Therefore she herself is guilty of committing contempt of the Supreme Court .
- 15) Therefore the notice issued by Smt. Justice Manjula Chellur to Adv. Nedumpara is illegal null and void and vitiated as being violative of fundamental rights guaranteed under Article 21 of the constitution of India.

hence, it is clear that Smt. Justice ManjulaChellur does not know having basic knowledge and her interpretation of law is counter-productive and non-conducive to the administration of Justice.

16) The other illegality committed by Smt. Justice ManjulaChellur is punishable u/s. 218,201,219, r/w. 120 (B) & 34 of Indian Penal Code.

17) **Charge # : Not following the procedure approved and by Hon'ble Supreme Court in R. K. Anand's case 2009 AIR SCW 6876& by Division Bench of Gujarat High Court in Jagat J. Patel Vs. State , MANU/GJ/0361/2017**

That in the present case of sting operation Mr. Ashiq Merchant made complaint on 09.03.2017 to Smt. Justice Manjula Chellur along with a copy of CD thesaid sting operation, then the proper course which was required to adopted was to see the CD and the averments in the complaint and either to call complainant forthwith for producing more evidence or if she is satisfied then take suo-motu action of Contempt at lease against Mr. Aspi Chinoy, Sr. Advocate and Adv. Vishal Kanade, M/s.

Federal and Rashmikant for their conspiracy to not to allow the court to record the deposition of the Talathi.

Such, procedure is adopted by Hon'ble Delhi High Court in **R. K. Anand's case 2009 Cr. L. J. 677** and upheld by Full Bench of Hon'ble Supreme Court in 2009 AIR SCW 6876.

(A) Contempt of Courts Act (70 of 1971), S.2(C)- Criminal contempt - Suborning witness in criminal trial by defence lawyer - Sting operation against defence lawyer by T.V. Channel - Defence lawyer cannot plead any alleged wrong doing by T.V. Channel as defence against charge of criminal contempt - Suborning a witness in a criminal trial is an act striking at the root of the judicial proceeding and it surely deserves the treatment meted out to the appellant. (Para 52)

(C) Contempt of Courts Act (70 of 1971), S.2(c)- Criminal contempt - Suborning witness in criminal trial - Sting operation against defence lawyer by T.V. Channel - Authenticity and integrity of sting recordings never disputed or doubted by contemnor - Thus, its formal proof not required - Copies of all sting recordings along with their transcripts given to contemnor - He was made aware of charge against him - Conviction of contemnor for contempt of

Court on basis of said sting recordings - Proper and valid. (Para 95)

(F) Contempt of Courts Act (70 of 1971), S.2- Procedure - Sting operations carried by T.V. Channel against Special Public Prosecutor and defence lawyer in pending criminal trial - Initiation of contempt proceedings on that basis - High Court only asking for copies of original sting recordings and allowing original microchips and magnetic tapes to be retained in custody of T.V. Channel - Once copies of recordings obtained there was no possibility of any tampering with microchips from that stage - Moreover, High Court might have felt that studio/laboratory of T.V. Channel would be better place for handling and conservation of such electronic articles than High Court Registry - Thus, there was no lapse on part of High Court and leaving microchips in safe custody of T.V. Channel, have no bearing on final decision of case. (Para 133)

In Anirudha Bahal's case 2010 (119) DRJ 104, it is ruled as under ,

CaseNote: Duty of a citizen under Article 51A(h) is to develop a spirit of inquiry and reforms - Constitution of India mandates citizens to act as agent provocateurs to bring out and expose and uproot the corruption - Sting operation by citizen - the sting operation was conducted by them to expose corruption - Police made them accused - The intention of the petitioners was made clear to the prosecution by airing of the tapes on T.V channel that they want to expose corruption - Quashing the charge-sheet and order of taking cognizance and issuing summons against whistle Blower high Court observed that- it is a fundamental right of citizens of this country to have a clean incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption wherever he finds it, whenever he finds it and to expose it if possible with proof so that even if the State machinery does not act and does not take action against the corrupt people when time comes people are able to take action

It is argued by learned Counsel for the State that the petitioners in this case in order to become witnesses should have reported the matter to CBI rather conducting their own operation. I need not emphasize that in cases of complaints against the persons, in powers how CBI and police acts. The fate of whistle blowers is being seen by the people of this country. They are either being harassed or being killed or roped in criminal cases. I have no doubt in my mind that if the information would have been given by the petitioners to the police or CBI, the respective MPs would have been given information by the police, before hand and would have been cautioned about the entire operation.

Chanakaya in his famous work 'Arthshastra' advised and suggested that honesty of even judges should be periodically tested by the agent provocateurs. I consider that the duties prescribed by the Constitution of India for the citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot the corruption

Moreover, in the similar case of sting operation of Judges, Hon'ble Gujarat High Court registered FIR against the two corrupt Judges and by recent order dated 14th March, 2017 in **MANU/GJ/0361/2017**, Gujarat High Court transferred investigation to Anti-corruption Bureau with direction to investigate the malafides of the vigilance cell of the High Court in previous investigation against Judges.

But no such procedure is adopted by Smt. Justice Manjula Chellur on the other hand she herself heading the bench of Contempt against the Complainant and witnesses and therefore, she herself is accused and liable for prosecution u/s. 201, 218, 511, 120(B) of Indian Penal Code.

Hon'ble High Court in 2001 Cr. L.J. 800, in the case against a High Court Judge explained the definition of conspiracy and said that no direct proof is required. It is observed that "

A] Conspiracy – I.P.C. Sec. 120 (B) – Apex court made it clear that an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal omission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed.

B] The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of city Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a questionnaire through the registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner in view of the facts of the case.

18) That the very conduct of Smt. Justice Manjula Chellur in not following the proper procedure and passing orders against the procedure without any valid and legally admissible evidence makes it clear that she is acting with corrupt motive (Vide AIR 2016 SC 3356).

Hon'ble Supreme Court in **R.R. Parekh** case AIR 2016 SC 3356 ruled as under :

A judge passing a order against provisions of law in order to help accused is said to have been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.

A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated

criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the fact that the Appellant imposed a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct.

19) Therefore, it is clear that Smt. Justice ManjulaChellur herself is involved in the conspiracy to save real culprits and therefore, she is disqualified from hearing the case related with it (Vide (2011) 14 SCC 754).

20) Hence, she is disqualified and also incompetent to hear the case.

21) While commenting upon such inefficient judges Hon'ble Supreme Court in AIR 2001 SUPREME COURT 1975 ruled as under;

Contempt of Courts Act (70 of 1971), S.2 -
Misinterpretation of order of Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. while passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court- Supreme Court issued severe reprimand -
Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake -It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave

this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court. (Paras 15 16)

In AIR 1996 SC 2299 it has been ruled as under

VIOLETION OF GUIDELINES LAID DOWN BY SUPREME COURT BY JUDGE OF SUBORDINATE COURTS - THEY ARE GUILTY OF CONTEMPT.

Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial

Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

Held, The contemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge

of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field.

22) In a recent case Hon'ble Supreme Court rejected the petition of the Judge against whom enquiry was ordered due to her lack of knowledge as she not following the law declared by Hon'ble Supreme Court and High Court.

23) In 2011 (2) ILR (Raj) 530 High court considered the level of **understanding of a Judge** and said order is upheld by Hon'ble Supreme Court in recent judgment in the case between **Prabha Sharma Vs. Sunil Goyal & Ors., Civil Appeal Nos. 632-633 of 2017 @ Special Leave Petition (C) Nos. 25552-25553 of 2011**, where it is ruled that

3. Having gone through the impugned Judgment, we find that the Court, in the impugned Judgment, has mainly stated the legal position, making it clear that the judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India.

4. We do not find any observation in the impugned Judgment which reflects on the integrity of the appellant. Therefore, it is

not necessary to expunge any of the observations in the impugned Judgment.

5. The learned counsel for the appellant submits that based on this Judgment, disciplinary proceedings have been initiated against the appellant by the High Court. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision, however, uninfluenced by any of the observations made in the Judgment.

In 2011 (2) ILR (Raj) 530, it has been observed as under,

POOR LEVEL OF UNDERSTANIG OF JUDGE - first appellate court without considering the ratio laid down in the above referred judgments, made distinction in a cursory manner, which is not proper for a Judicial Officer - The wrong interpretation or distinction of a judgment of Hon'ble Supreme Court and this Court by subordinate court amounts to disobedience of the order of Hon'ble Supreme Court and this Court, therefore, the impugned order passed by first appellate court is

contemptuous. It also shows that legal knowledge or appreciation of judgment of Hon'ble Apex Court, of the first appellate court is very poor. The distinction made by first appellate court that Hon'ble Apex court has passed the order in S.L.P. is also not proper. The Apex Court, under Article 136 of the Constitution of India may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. Learned first appellate court has also committed an illegality in making a distinction for not following the judgments of this Court on the ground that the orders have been passed in second appeal whereas it was dealing first appeal.

In (2011) 6 SCC 86, IT IS RULED BY Hon'ble Supreme Court that The Lawyers are the officers of the Court in the administration of justice. Section I of Chapter-II, Part VI titled "Standards of Professional Conduct and Etiquette" of the Bar Council of India Rules specifies the duties of an advocate towards the Court which reads as under:

Section I - Duty to the Court

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

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

a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand

from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country....

Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech. Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice. It plays its part in helping to secure the protection or other fundamental human rights, freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. Any adverse

opinion about the judiciary should only be expressed in a detached manner and respectful language. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary

A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can fairly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order.

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

We hope and trust that the entire legal fraternity would set an example for other professionals by adhering to all the above-mentioned principles.

24) Therefore, we being the responsible officer of the Court under our duty under Bar Council of India Rules to make complaint against Judges (vide(2011) 6 SCC 86), do hereby resolve that Hon'ble Chief Justice of India be requested to forthwith withdraw the administrative and judicial work from Smt. Justice Manjulla Chellur.

25) Smt. Justice Manjula Chellur will not have defense of using discretion in issuing notice to Mr. Mathew Nedumpara, Advocate.

The Law in this regard is clear that the Judge is not having any arbitrary, vague and fanciful discretion. Discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful, but legal and regular

Hon'ble Supreme Court in the case of Sundarjas Kanyalal Bhathija and others -Vs- The Collector, Thane, Maharashtra AIR 1990 SUPREME COURT 261 held that,

**Constitution of India, Art.141- PRECEDENTS -
Judges are bound by precedents and procedure - They
could use their discretion only when there is no
declared principle to be found, no rule and no authority**

- where a single judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure - it is the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute- One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. (Paras 17, 20)

The Judge who exercise discretion are expected to bear in mind that

1) “Discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful, but legal and regular”

[Tingley -Vs- Dalby, 14 NW 146]

2) “An appeal to a Judge]s discretion is an appeal to his judicial conscience. The discretion must be exercised, not in opposition to, but in accordance with established principles of law.”

Gudianti Narsimha -Vs- Public Prosecutor,

High Court 1978 Cri. L.J. 502.

26) After going through the level of understanding of Smt. Justice Manjula Chellur, we are worried about the various poor litigant, whose case, she has decided. The very thought of the poor litigant who happened to

have fallen in the lap of Justice Chellur for decision of their cases is spine-chilling.

A High Court judge is a demi-god for poor unwitting litigant. There is hardly any remedy against High Court order for a Court common citizen.

In this scenario, Hon'ble Smt. Justice Manjula Chellur should not be allowed to continue even for a moment.

RESOLVED THAT THE SPECIAL GENERAL BODY OF IBA, ENDORSES AND SUPPORTS THE DECISION OF THE MANAGING COMMITTEE.

Mumbai

March 23, 2017



(Adv. Dicyesh H. Joshi)