



# INDIAN BAR ASSOCIATION

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Date : 04.04.2017

## **ALL YOU WANTED TO KNOW ABOUT THE CONTEMPT OF COURT PETITION WHICH IS CURRENTLY BEING HEARD BY A LARGER BENCH OF FIVE JUDGES OF THE BOMBAY HIGH COURT**

A historic hearing has come up before the Bombay High Court wherein a larger bench of five judges is constituted to hear one Contempt of Court Petition filed by two bar associations against sixteen respondents.

The media has been covering this case since the first hearing on 17<sup>th</sup> February 2017 and subsequent hearings on 22<sup>nd</sup> February 2017 and 24<sup>th</sup> March 2017. However, it is observed that most of the reporting by media is vitiated, incomplete and one sided, either due to ignorance of the ingredients of the case, inability to comprehend the legal technicalities or to suit the purpose of the parties sponsoring the publishing of such news.

Indian Bar Association (IBA), in its endeavor to provide answers to questions which would have come up in the minds of vigilant readers and general public, has compiled the following FAQs and answers to these FAQs, which are based on the facts which could be easily corroborated with the material on record and from the published orders of the Bombay High Court in this regard.

### **i. What is the subject matter of this contempt petition?**

Uploading of following videos on a You Tube channel 'Right Mirror':

1. A sting operation video which contains a 38 minute recording of a court proceeding of Justice S. J Kathawala and,
2. Several videos which include interviews of certain persons expressing their views on corruption in judiciary and particularly about three sitting judges of the Bombay High Court viz. Justice Shri. S. J. Kathawala, Justice Shri. V. M. Kanade and Justice Shri. A. K. Menon and one former Chief Justice of Bombay High Court Shri. Mohit Shah.

**ii. What was the need to perform the sting operation?**

There is a court matter currently going on in the Bombay High Court involving a real estate property worth Rs. 5,000 crores in which there are two parties claiming to be the rightful owner of the said property. One being Mr. Ashiq Ali Merchant and other party being Mr. Maneesh Bawa together with Mr. Sumeet Bawa and few others. Both the parties tried to substantiate their claim on ownership of this land by producing Mutation Entries which were in their possession. Needless to say, each of these parties had a different version of Mutation Entries. Now with two different versions of mutation entries, it became necessary to decide whose mutation entry was authentic.

For this purpose, Mr. Ashiq Merchant prayed to Court to summon the government servant Talathi who was the best witness to testify upon the authenticity of disputed document.

The said Talathi appeared before the Court on 31<sup>st</sup> August 2016 and testified that the document in possession of Mr. Ashiq Merchant was true and authentic.

The court proceedings of 31<sup>st</sup> August 2016 were witnessed by many people including several social activists of O.J.H.A NGO (Organisation of Jurists for Humanity Awareness) who were following this case from its inception and were in discussion with Mr. Ashiq Merchant (Chairman - O.J.H.A NGO) regarding the progress on this case.

The accused Mr. Maneesh Bawa is represented by Adv. Vishal Kanade, son of Justice V. M. Kanade who is accused of detaining a poor person Mr. Gopal Shetye for five years by passing a wrong order. Therefore, Mr. Gopal Shetye prosecuted Justice V. M. Kanade by filing a case and claimed compensation of Rs. 500 crore from Justice v. M. Kanade. To collect evidence of corruption against Justice Kanade, Mr. Gopal Shetye recorded a 38 minute video of the court proceedings when Talathi appeared and deposed before J. Kathawala.

The Hon'ble Court (J. Kathawala) however refused to take on record the deposition of this government servant Talathi. Counsel for Mr. Ashiq Merchant, Adv. Ghanshyam Upadhay and Adv. Nilesh Ojha objected to this and tendered his submission on court record stating that the Talathi had in fact appeared and testified before the Court and that his statement has not been taken on record by J. Kathawala.

It need not be emphasized any further that the Talathi who was at hub of all the witnesses in this case and his statement regarding authenticity of mutation entry possessed by Mr. Ashiq Merchant, clearly revealed the falsity of the document which the other party – Mr. Maneesh Bawa possessed. There are no prizes for guessing who the rightful owner was.

The judgment in this case was reserved and was finally pronounced on 7<sup>th</sup> February 2017. To the shock of everyone, the order was devoid of any mention to the statement of Talathi or the written submission filed by Adv. Nilesh Ojha and the order further declared that the document possessed by Bawas was genuine.

The link to access this impugned order dated 8<sup>th</sup> February 2017 is given below:

[http://www.bvbja.com/file/pdf/20170208\\_JSJKathawalaOrder.pdf](http://www.bvbja.com/file/pdf/20170208_JSJKathawalaOrder.pdf)

Since the prevailing rules and laws do not permit live recording of the court proceedings (both audio and visual recording), performing a sting operation in cases where one anticipates that the things will not proceed in a fair manner is the tool which can effectively strengthen the case of a whistleblower who wishes to expose the wrong, unjust and unethical procedures.

**iii. What had triggered the recording and uploading of other videos which are alleged to have scandalized the judiciary and which along with the sting operation video are the subject matter of the said Contempt Petition?**

The aforementioned unjust and illegal order passed by Justice S. J. Kathawala on 8<sup>th</sup> February 2017 in Notice of Motion 2448 of 2016 lies at the origin of sequence of events which followed the passing of this order.

Mr. Ashiq Merchant who was the immediate party affected adversely by this impugned order decided to be the whistleblower and expose the abominable and corrupt practices of Justice S. J. Kathawala. He was supported by other social workers, activists, advocates and businessmen in his drive to expose the corruption in judiciary.

Mr. Ashiq Merchant while being interviewed by media in this matter, narrated the whole account of how Justice Kathawala had resorted to corrupt practices and crossed

the boundaries of Jurisprudence within which he was expected to function and dispense his duties.

There were series of interviews conducted by channel Right Mirror wherein the channel's anchor Mr. Rishi Pandit sought to garner views of Mr. Ashiq Merchant, Adv. Nilesh Ojha, Ad. Vijay Kurle, Mr. Shiv Narayan Sharma (Social Activist), Mr. Gopal Shetye (Social worker), Mr. Taher Parker (Businessman), Mr. Rashid Khan (Social Activist) regarding corruption in judiciary , particularly around the order passed by Justice Kathawala.

The above mentioned videos were broadcasted on You tube Channel Right Mirror and were viewed by several people who have access to the social media.

iv. **Why did the aggrieved party (Mr. Ashiq Merchant) not take the legal recourse?**

The aggrieved party Mr. Ashiq Ali Merchant has already filed an appeal (No. 96 of 2017) in the Bombay High Court against the impugned order.

v. **Who has filed this Contempt Petition and against whom?**

The two bar associations: Advocates' Association of Western India (AAWI) and Bombay Bar Association (BBA) are the joint petitioners in the said Contempt Petition.

They have made sixteen respondents to this Contempt Petition whose names are sequentially as follows:

1. Advocate Mr. Nilesh C. Ojha
2. M/s India Bureau
3. Mr. Rishi Pandit (Anchor who has interviewed people regarding corruption in judiciary)
4. Mr. Gopal Shetye (person who has performed the sting operation)
5. M/s Right Mirror
6. Advocate Mr. Vijay Kurlle
7. Mr. Shiv Narayan Sharma
8. Mr. Tahir Sattar Parkar
9. Mr. Rashid Khan
10. Mr. Ashiq Merchant (who is aggrieved party pursuant to the impugned order passed by Justice Kathawala)
11. You tube LLC
12. Alphabet Inc
13. Google Inc
14. Google India Pvt Ltd
15. The State of Maharashtra
16. Union of India

**vi. What is the Criminal Application No. 01 of 2017 filed by Adv. Nilesh Ojha against BBA and AAWI?**

Respondent No. 1 Adv. Nilesh Ojha has filed an application under section 340 of Cr.P.C. for taking action

under section 191, 193, 199, 200, 465, 466, 471, 474 read with section 120 (B), 34 of Indian Penal Code against Adv. Nitin Thakkar – Vice President of Bombay Bar Association and Adv. Viresh Purwant – Secretary of AAWI, for filing false affidavits in the Court. It is also prayed to conduct C.B.I investigation.

The glaring falsity of BBA and AAWI is explained below:

<b>Sr. No.</b>	<b>Version of BBA and AAWI</b>	<b>Reality</b>
1	Adv. Nilesh Ojha is the Owner of You tube channel which broadcasted the alleged offending videos. <b>(No proof is given by BBA and AAWI)</b>	Adv. Nilesh Ojha is not the owner of You tube channel
2	Adv. Nilesh Ojha prosecuted Justice V. M. Kanade because the latter did not give a date for hearing the former in Gopal Shetye's case. <b>(No proof is given by BBA and AAWI)</b>	Adv. Nilesh Ojha was not the lawyer of Gopal Shetye when the matter was listed before Justice V. M. Kanade.
3	Adv. Nilesh Ojha files cases against the judges if the order goes against	Adv. Nilesh Ojha has provided details showing list of all such

	<p>him.  <b>(No proof is given by BBA and AAWI)</b></p>	<p>cases when the order was against him and he did not file any complaint against the judge who passed the order.</p>
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You can access the Criminal Application No. 01 of 2017 by clicking on the following link:

[http://www.bvbjia.com/file/pdf/20170222\\_340againstAAWIBBA.pdf](http://www.bvbjia.com/file/pdf/20170222_340againstAAWIBBA.pdf)

vii. **What makes the present Contempt of Court Petition historical?**

The Petitioners have tried to make out their case by stating that the Respondent 1 to 10 have caused or facilitated to cause (in case of Respondent 2 and 5) contempt of Courts and lower the authority of judiciary by their comments directed at sitting High Court judges which are scandalous and contemptuous.

Even before the notice was issued to any of the Respondents by the Court, Respondent 1 Adv. Nilesh Ojha had raised preliminary objections to the said Contempt Petition.

Respondent No. 1 has strongly defended his right to prosecute the erring judges and has not minced his words while communicating the same. The Division Bench therefore, held that the issues which may arise in

the said Contempt Petition would be of great deal of importance for the institution of judiciary and that these issues directly concern the independence of judiciary. The Division Bench felt it appropriate to place this Petition before a larger bench of three or more judges.

Accordingly, a Five Judge Bench comprising of Justice Mrs. Manjula Chellur (Chief Justice – Bombay High Court), Justice Abhay Oak, Justice S. C. Dharmadhikari, Justice Kemkar, Justice Savant was formed to hear this Contempt petition.

- a. It is first time in the history of the Bombay High Court since 1862 that a full bench of five judges has been constituted to hear a contempt of court petition
- b. The case is being heard in the Central Court Room no. 46 where the historic trial of Lokmanya Balgangadhar Tilak was conducted in 1908 and his last words on the verdict of the trial are engraved on a plaque on the outer wall of the Court Room no. 46
- c. The Respondent (Adv. Nilesh Ojha) has raised his preliminary objection regarding the maintainability of the Petition *per se*, which has been considered by this larger bench and clearly stated in order passed by larger bench on March 24, 2017;

**“the objection of maintainability of this petition as raised by Mr. Ojha is kept open”.**

d. There are several other preliminary objections raised by Respondent 1 Adv. Nilesh Ojha in addition to the maintainability of the contempt petition. The detailed document could be accessed at:

[http://www.bvbj.com/file/pdf/20170404\\_PrelimObjections.pdf](http://www.bvbj.com/file/pdf/20170404_PrelimObjections.pdf)

e. Several advocates from across the courts in the Mumbai City had swarmed the Court Room no. 46 on 24<sup>th</sup> March 2017, well ahead of the time when the hearing was to commence, to secure a place inside the court room to witness the hearing. The curiosity and excitement of audience was evident on their face.

f. There was heavy police security around court room No. 46 to avoid a chaotic situation considering the gravity of the matter and attendance of audience in large numbers.

**viii. How has the hearing progressed till date?**

The Contempt Petition was filed by Petitioners in the Bombay High Court on 16<sup>th</sup> February 2017 and the matter was placed for hearing on 17<sup>th</sup> February 2017.

On 17<sup>th</sup> February, Respondent No. 1 attempted to present before the Court (Justice Abhay Oak and Justice Anuja Prabhudesai) the following:

- a. The Petitioner Associations are unregistered and hence have no legal right to file such a contempt petition
- b. The Petitioner associations have not obtained the necessary resolution from its members to file such a petition
- c. The Petitioners have filed false affidavits
- d. The Petition does not contain the sanction of the Advocate General
- e. That the above grounds have rendered the petition unmaintainable.

While the Court perused the alleged contemptuous material which was produced by the Petitioners in the form of Compact Discs (CDs) and transcripts of the interviews, it did not find anything worthwhile against Respondent 1 Adv. Mr. Nilesh Ojha.

To this, the Petitioners misled the court by saying that the CD so annexed indeed had the offensive video, however they have not attached the transcript of the same to their Petition. They further craved leave from the Court to allow them time to amend their Petition. The Court granted the leave to amend the Petition. The Petitioners not only misled the Court, but committed fraud by attributing the approval obtained from Advocate General to a totally different video (which was in fact uploaded a day after the initial approval was obtained from Advocate General), once the court

observed that it had not found anything offensive in the earlier video which the Petitioners had alleged to have contained the contemptuous material and for which they had obtained consent of Advocate General to initiate Contempt proceeding against Respondent No. 1.

While respondent 1 Adv. Mr. Nilesh Ojha tried to present the above situation to the Bench, the Court held that Respondent 1 could be heard only when notice is served to him and as of 17<sup>th</sup> February 2017, no notice was issued to him.

The order dated 17<sup>th</sup> February 2017 can be accessed by clicking on below link:

[http://www.bvbja.com/file/pdf/20170217\\_HCOrderContemptPetition.pdf](http://www.bvbja.com/file/pdf/20170217_HCOrderContemptPetition.pdf)

The Bench then placed the matter for next hearing on February 22, 2017.

On this date, the Petitioners represented by Senior Advocate Mr. Rafique Dada filed the amended Petition and prayed to issue notices to all the Respondents. Respondent No. 1 again reiterated the fraud played upon by the Petitioners (by attributing incorrect video as containing contemptuous material and misleading the Court to believe that Advocate General's approval has been correctly obtained to initiate the contempt proceedings), the Hon'ble Court suggested

Respondent 1 Adv. Nilesh Ojha to take up this matter of professional misconduct of the Petitioners and their Counsels with the appropriate forum.

Adv. Nilesh Ojha brought into the notice of Justice Oak that the Division Bench was not competent to hear such contempt petition which has been aroused out of the corruption issue of the sitting Judge of the same Bench, who also happens to be a colleague of Justice Oak and Justice Prabhudesai and to avoid embarrassing situation to the parties, it was requested to transfer the matter to other Bench.

Considering the valid argument of Respondent No. 1 Adv. Nilesh Ojha which was supported by various judgments from Apex Court pertaining to this issue, Justice Oak directed Registrar General in his order to place this contempt petition before full Bench of Five Judges for next hearing. On request of the Petitioners Justice Oak also issued direction to the respondent contemnor to remove all the videos and to restrain from uploading further videos which tried to convey views on the corruption in judiciary and show a use notice was issued to You tube and Google.

The order dated 22<sup>nd</sup> February 2017 can be accessed on below link:

[http://www.bvbj.com/file/pdf/20170211\\_HCOrderContemptPetition.pdf](http://www.bvbj.com/file/pdf/20170211_HCOrderContemptPetition.pdf)

Accordingly, a Five Judge Bench comprising of Justice Mrs. Manjula Chellur (Chief Justice – Bombay High Court), Justice Abhay Oak, Justice S. C. Dharmadhikari, Justice Kemkar, Justice Savant was formed to hear this Contempt petition on March 24, 2017.

On 24<sup>th</sup> March 2017, the Senior Counsel Rafique Dada who represented the Petitioners on previous date, appeared to have decided to not argue the case for the reasons not known and the Petitioner were represented by Former Advocate General and Senior Advocate Mr. Shrihari Aney.

At the beginning of the hearing, the Petitioners' Advocate Mr. Aney brought into the notice of the Bench that despite of the Hon'ble Court's earlier order in this petition directing the Respondents to remove all the videos talking about judicial corruption in the subject matter and not upload any further/additional videos, the Respondents especially Mr. Ashiq Merchant and Adv. Nilesh Ojha have not removed their videos and they both continue to upload such videos.

The focus of the Petitioner's Counsel then shifted on Respondent 11 You tube. Mr. Aney informed the Bench that despite the previous two orders of the Division Bench dated 17<sup>th</sup> February and 22<sup>nd</sup> February 2017, You tube had failed to completely remove the videos. Mr. Aney's contention was that the contemptuous caption of the video still appeared on the you tube and hence the orders have not been complied

with fully. Mr. Aney suggested to the Bench to direct Respondent 11 to remove/delete the complete page in case the captions could not be removed.

To this, the Respondent No. 11 submitted that the contemptuous videos could be removed in case URLs (Unique Resource Locator) are provided. Counsel for Respondent 11 also stated that he was unsure if entire page could be deleted. For offending videos which might be posted in future on you tube in the subject matter, the Bench directed Respondent 11 to remove such videos on its own and in case Respondent 11 is unable to notice such videos, it shall remove such videos forthwith upon intimation by Registrar General of the Hon'ble High Court of Bombay.

Adv. Nilesh Ojha (Respondent 1 in person), Adv. Rajesh Panchal (appearing for Respondent 4 Mr. Gopal Shetye), Adv. Shahid Ansari (appearing for Respondent 6 Adv. Vijay Kurle), Adv. Priti Brahmania (appearing for Respondent 10 Mr. Ashiq Merchant) strongly opposed the arguments put forth by the Petitioner's Advocate Mr. Aney saying that no blanket or indiscriminate order can be passed by any court restraining the Respondents from uploading and to remove videos. Such an order would amount to a direct attack on the fundamental right of freedom of speech and expression as guaranteed under Article 19 of the Constitution of India.

Respondent advocates also supported their opposition to the arguments of Senior Council Mr. Aney by placing various Apex Court's decisions in this regard.

Considering the valid arguments supported with judgments and the Constitutional provisions, the Hon'ble Bench rejected Petitioner's plea for the blanket/indiscriminate order preventing Respondents from uploading videos in future. The Hon'ble Bench accepted the arguments submitted by the Respondent Advocates and issued directions restricted to the subject matter upholding the freedom of speech and expression as guaranteed under Article 19 of the Constitution of India.

While petitioners Council were aggressively convincing the Hon'ble Bench to try the Respondents under the Criminal Contempt of Court, Respondent No. 1 Adv. Nilesh Ojha substantiated his claim that the very Contempt Petition itself is not maintainable. The Hon'ble Bench also admitted the arguments placed by Adv. Nilesh Ojha which were supported by the Apex Court's judgments over maintainability of the petition. The issue of maintainability of the Petition is kept open for the next hearing in this historical case.

The order dated 24<sup>th</sup> March 2017 can be accessed on link below :

[http://www.bvbja.com/file/pdf/20170324\\_HCOrderContemptPetition.pdf](http://www.bvbja.com/file/pdf/20170324_HCOrderContemptPetition.pdf)

We hope that you would have had a good grasp by now regarding the background, subject matter, contentions and issues which form the essence of this Contempt Petition.

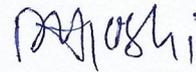
So come and witness the next hearing on 7<sup>th</sup> April 2017 in this historic case which is set to address the long festering issues plaguing our judiciary and which shall certainly restore and preserve the purity of the fountain of justice.

**COMPILED BY:**

**INDIAN BAR ASSOCIATION (IBA)**

Place: Mumbai

Date: 04/04/2017



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(Adv. Divyesh Joshi)

Honorary Secretary

Indian Bar Association