



INDIAN BAR ASSOCIATION

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Honorary Secretary

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NOTICE

A Special General Body Meeting held on 2nd March, 2017 and following resolutions are passed.

RESOLUTION - I

It has come to our notice that one news of sting operation done in the Court of Shri. Justice S. J. Kathwala is being circulated in social media.

That as seen from 'You- Tube' channel and after going through the court records of the proceedings and relevant orders, the Managing Committee comes to the conclusion as under;

- 1) That as seen in CD, during proceeding before Shri Justice S. J. Kathawala it is clear that the Talathi deposed in favour of client of Adv. Ghanshyam Upadhyay, Adv. Nilesh Ojha, Adv. Rajeshwar Panchal, Adv. Vijay Kurle, Adv. Suresh Ghamre, Adv. Iqbal Shaikh, Adv. Nitin Pagare & Ors. However, Shri. Justice Kathawala did not take this thing on the record nor it is mentioned in the order dated 31st August, 2016 or order dated 8th February, 2017.

We are of the view that the said Judge Shri. Justice Kathawala was legally bound to record the deposition of Talathi but his failure as ex-facie proved from the CD recording is violative of rights of above advocates in whose favour the deposition is made and the conduct of Shri. Justice Kathawala to favour or disfavour a party is violative of

Art. 14 of the Constitution and also against the oath taken by him as a Judge of the High Court.

(As per the Third Schedule to the Constitution, oath or affirmation is taken by a Judge that he will duly and faithfully perform the duties of the office to the best of his ability, knowledge and judgment without fear or favour, affection or ill-will and will so uphold the Constitution and the laws. In accordance therewith, Judges must always remain impartial and should be known by all people to be impartial.)

- 2) It will be apt to quote the words of Martin Luther King (Jr.) that 'Injustice anywhere is threat to justice everywhere' and Evil Tolerated is Evil Propagated.

Therefore to save the right of advocates, citizens and the Honest Judges, it is necessary that such tendency of some Judges to help influential people and also to help some Senior Counsels of their close proximity and to discriminate other genius deserving Advocates, has to be stopped. If such tendency is not checked in time, it will harm every common lawyers specially the lawyers of backward community and the Junior Advocates.

- 3) That as a lawyer/advocate, we are also the officers of the court. Our duty is to protect the dignity and majesty of the court and to protect honest Judges, lawyers and litigants. However, we also owe a duty to make complaints against Judges when we found that there is a reasonable foundation against Judge.

Hon'ble Supreme Court in O. P. Sharma's case (2011) 6 SCC 86 ruled that, as per section-I of chapter-II , part VI title "standards of professional conduct and etiquette" of the Bar council India rules specifies the duties of an advocate that '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.

Also Hon'ble Supreme court in Indirect Tax Practitioners Association's case (2010) SCC 681, clarified that it is obligatory/fundamental duty of everyone to expose the irregularity and illegality in the Judicial side of the institution.

So it is resolved that our Bar Association will stand for Adv. Nilesh Ojha, Adv. Vijay Kurle and others who are victims of the unlawful/unconstitutional/un-judicious conduct of Shri. Justice S.J. Kathawala.

RESOLUTION – II

- 4) We further resolve that as mandated by Constitution Bench (5-judges) of Supreme Court in K. Veeraswami's case (1991) 3 SCC 655, the Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not command confidence of public, therefore he must voluntarily withdraw from the judicial work and administration.

Therefore Justice Kathawala, whose conduct of favouring senior counsel and discriminating other advocates is ex-facie proved from video recording and documentary proofs and evidences and there is no explanation in his order that why he did not record the deposition of the said Talathi. Therefore as per law laid down by Hon'ble Court in R.R. Parekh's case (**AIR 2016 SC 3356**) the act of Shri. Justice Kathawala is said to be an order passed with corrupt motive.

In R.R. Parekh's case, it is ruled that when a judge passing an order against provisions of law in order to help accused and

there is no explanation in the order then the said Judge 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.)

Hence, the act of Shri. Justice Kathawala, is not recording deposition of Public servant is said to be an order passed with corrupt motive and he has to leave this temple of justice. Therefore, he has to be directed to resign by Hon'ble Chief Justice of India as per 'In House Mechanism -1999'

- 5) We resolve that the advocates who are involved in supporting corrupt judges and acting against the advocates Act, Bar Council of India Rules, must face action at the hands of Bar Council of Maharashtra and Goa.
- 6) We resolve that the act of Mr. Nitin Thakkar & Mr. Viresh Purwant by filing contempt petition No. 03/2017 with prayer to stop Adv. Nilesh Ojha from filing cases against judges is to be treated as encroachment upon right and duties of an advocate to file genuine complaints against the Judge who are acting illegally. This is also an attempt to help the Judges acting illegally.

We found support from following authorities;

- i. AIR 2015 SC 326
- ii. 2016 (2) Mh.L.J. 75

In that, it is ruled that the right to judicial remedies for their redressal is a Constitutional right of citizens of this country.

- 7) We resolve that, as mentioned in Criminal Application No. 1 of 2017 in Contempt Petition No. 3 of 2017, which is filed by Adv. Nilesh Ojha, it is ex-facie clear that Adv. Nilesh Ojha is not the owner of 'You-Tube' channel and he had not filed cases against every judges who passes an order against him. In fact, Adv. Nilesh Ojha performed his duty as a member of noble profession and as an officer of the court by making complaint against some Judges wherever he found that it is necessary and his complaint are based on sound proofs.

Therefore, the affidavit filed by Mr. Nitin Thakkar and Mr. Viresh Purwant before High Court against Mr. Nilesh Ojha is false, misleading and scandalous and by doing so. Mr. Nitin Thakkar and Mr. Viresh Purwant defamed the noble profession of advocacy and we are feeling ourselves digressed due to such act of Bombay Bar Association and AAWI; and therefore it is necessary that Mr. Nitin Thakkar and Mr. Viresh Purwant are liable to be dealt with under appropriate provisions of law. For which our Bar Association will file a case against Adv. Viresh Purwant and Adv. Nitin Thakkar before Bar Council of Maharashtra and Goa and will also intervene the proceeding to support Adv. Nilesh Ojha.

- 8) We further resolve that the prayer of Adv. Nilesh Ojha in his criminal Application No. 01 of 2017 for direction to C.B.I for investigation of the said two tainted advocates to find out the corrupt judges behind such conspiracy in filing petition and further to bring the truth to surface is necessary. Therefore all the members of our Bar Association shall stand firmly along with Adv. Nilesh Ojha for getting the investigation done through C.B.I., and we will ensure that at least 100 Lawyers/Members of our Bar Association shall sign the Vakalatnama in favour Adv. Nilesh Ojha and Adv. Vijay Kurle.

- 9). We resolve that as seen from the previous instances and after going through detail proofs it is crystal clear that there is nexus between some corrupt Judges and some senior counsels.

Many times, Junior or non- designated Senior advocates are discriminated by twisting the laws. When some senior counsels are given undue advantage in poor cases the general advocates are not even allowed to address their grievances and resultantly they are losing the cases and this is affecting their practice and also leading to lawlessness. They are unable to face the clients and this is leading towards a situation where poor and common people are forced to lose their faith in Court of Law. Also, the people are thinking to appoint Advocates with link. Many talented and deserving advocates are struggling for their bread and butter, living in rented houses and many undeserving advocates are earning 100's and 200's Crores by doing unethical practices. The best example as seen from two major instances,

- (9.1) As mentioned in Suicide note of Shri. Pul, Ex Chief Minister of Arunachal Pradesh, an Advocate coming from Delhi got order forthwith while previously High Court was reluctant. Moreover, Rs.27 Crores were given to Justice H.L Dattu, then Chief Justice of India for passing a stay order. Mr. H. L. Dattu, who had built a Bungalow of Rs. 100 Crores as exposed by Justice Katju.
- (9.2) Adv. Vishal Kanade , Son of Justice V. M Kanade and Mrs. Jui Vishal Kanade are earning Crores of Rupees only for appearance and their other back screen managements as proved from evidence given by Mr. Ashiq Merchant & Gopal Shetye, that Adv. Vishal Kanade changed the order of Justice Kathawala.

Therefore it is necessary to form a committee of 100 Lawyers of our Association who will see that such unsocial, unethical elements which are polluting the pure fountain of justice should be sent to their real place i.e. 'Jail'.

THIS COMMITTEE SHALL ENSURE

- 9.3(a) To see that the corrupt Judges should be prosecuted and investigated at the hands of C.B.I as done in the case of Justice Nirmal Yadav 2011 (4) RCR (Cri) 809, Justice Shameet Mukherjee, 2003 (70) DRJ 327, etc.
- 9.3(b) To ensure that the Corrupt Judges should be forthwith asked to resign from their post in view of 'In House Mechanism, 1999' & also as per law laid down by Constitutional Bench in K. Veerswami's Case **1991 (3) SCC 655.**
- 9.3(c) To ensure that the Judges passing whimsical orders and acting against the law laid down by Hon'ble Supreme Court and other binding precedents should face contempt proceedings as mandated by Supreme Court in Rabindranath Yadav's Case (2010) 6 SCC 417 & Spencers's case (1995) 1 SCC 259.
- 9.3(d) That, whenever any Whistleblower/ Advocate dares to file genuine complaint against corrupt Judges then the agents of the corrupt Judge should not be allowed to misuse the Contempt jurisdiction to silence the voice of the Complainants or whistle- blowers with ulterior purpose to stop the investigation against the corrupt Judges.

Our committee shall ensure that the contempt jurisdiction should not be allowed to be used to protect corrupt Judges (vide: **2011 Cri. L.J. 3239, (2010) 8 SCC 281.**)

- 9.3(e) To ensure that the Senior Counsel like Mr. Aspi Chinoy, indulging in unethical practices should face action as has been faced by Adv. Anand (2009 Cr.L.J. 677)& (2009) 8 SCC and their designation as a senior counsel to be stripped off.
- 9.3(f) To ensure that all the members of Bar Association should work for poor advocates and shall not come under pressure of corrupt Judges, and some Senior Counsels who are working as agents for Corrupt Judges.
- 10) We further resolve that as per legal position settled by Hon'ble Supreme Court in Umesh Kumar's case (AIR 2014 SC 1106), any evidence/ sting operation even if it is illegally obtained, it is evidence and it should be relied to punish the culprit. Therefore, the prayer of Bombay Bar Associations Vice President Nitin Thakkar & Mr. Viresh Purwant of AAWI, to destroy the CD is an attempt to interfere into investigation and an attempt to destroy the evidence of the complaint given by Mr Ashiq Merchant to C.B.I., C.J.I. and Hon'ble President of India and therefore it is an offence under section 201,511,120(B) & 34 of I.P.C. and it they are also liable for action under Contempt of Courts Act to interfere with the investigation.
- 11) We resolve that, as seen from the Contempt Petition No. 03 of 2017 and order passed by Hon'ble Bombay High Court (Coram : Hon'ble Shri. Justice A.S. Oka & Hon'ble Shri. Justice Anuja Prabhudesai) , it is clear that Adv. Nilesh Ojha while appearing for Mr. Gopal Shetye in his case under section 219, 220, 500, 501 of I.P.C. against Justice

V.M. Kanade was performing his duty as an Advocate and there was nothing wrong in his interview and therefore Hon'ble Justice A.S. Oka did not take any action on the said interview and therefore it is proved that the allegations of BBA and AAWI are baseless and unfounded and therefore Mr. Nitin Thakkar & Mr. Viresh Purwant should be prosecuted under Contempt of courts Act and also under Section 211 of Indian Penal Code for their pressure tactics to deter the advocate from performing his duties. [vide : AIR 1966Bom19]

- 12) We resolve that Mr. Nitin Thakkar & Mr. Viresh Purwant made categorical false statements before High Court that Justice V.M. Kanade is prosecuted by Mr. Gopal Shetye, because he did not give early date to Adv. Nilesh Ojha in Gopal Shetye's case. In fact the prosecution of Justice V.M. Kanade is for rejecting bail application of Mr. Gopal Shetye, without giving any reason to a poor man from backward community. The order passed by Justice V.M. Kanade is without any reason and that too false observation by Justice V.M. Kanade that there is lots of evidence against Mr. Shetye. The falsity of observation of Justice V.M. Kanade is proved from the order passed by Justice Abhay Thipsay on 30/10/2015. Therefore, Mr, Nitin Thakkar and Mr. Viresh Purwant are liable for prosecution u/sec 191, 193, 199, 200, 201, 211, 196, 465, 466, 471, 474 r/w 120(B) & 34 of I.P.C and we support Adv. Nilesh Ojha in his stand to prosecute such unethical advocates.

We further resolve that Justice V.M. Kanade should be asked by Hon'ble Chief Justice of India to resign forthwith for his offensive act of unlawful detention of poor person for 5 years in false case.

- 13) We further resolve that the order of Justice A.K. Menon dated 22nd January 2016 as relied by Mr. Nitin Thakkar and Mr. Viresh Purwant but not taken note by Hon'ble Justice A.S. Oka's bench, is an order obtained by Mr. Aspi Chinoy by practicing fraud upon the Court on

the basis of following factual and legal position. Shri. Justice A.K. Menon passed the order based on the wrong submission given by Mr. Aspi Chinoy.

All observations in the said order are proven to be based on wrong assumption as explained above. which is based on a wrong notion that the suppression of the Chamber Summons bearing nos. 427/2012, 428/2012, 429/2012, 430/2012, 431/202 in Suit No. 1611/79, 1612/79, 917/81, 919/81, 920/81, has nothing to do with the suit filed by plaintiffs and also on surmises that the suit is not based on the cause of action related with the Power of Attorney dated 24/11/2011. It is ex facie proven to be false from record itself as the prayer clause (e) of the Suit is for declaration of said power of attorney as null and void , which is as under:

prayer clause (e)

***(e)** that this Hon'ble Court be pleased to declared and decree that the Power of Attorney dated 24/11/2011 being Exhibit 'C' hereto alleged to be executed in respect of sit Property, is illegal non-est, void-ab- ignition, null and avoid not binding on the plaintiffs and is an unenforceable and invalid documents.*

*Furthermore, the entire a Suit is Declaratory Suit for declaring Plaintiffs as owner and the prayer clauses (**f**) (**h**), (**i**), (**k**), (**l**), (**m**), (**n**), (**q**), (**r**), (**t**), (**v**) , (**w**), (**z**) are directly or indirectly connected with said Power of Attorney dated 24/11/2011 only.*

Therefore, as per Art. 56 and as per law laid down in (2013) (138) DRJ. 261, the limitation is for 3 years from knowledge of Power of Attorney.

Hence, the whole order / judgment based on wrong notion and misconception of material fact is vitiated, non est, null and void as being product of fraud.

Again , the content of the said order are threat to the petitioner advocate who is trying to unveil the falsity of the case and if the same is hindered, justice can never be achieved.

This proves that Shri. Justice A.K. Menon passed the order against three 'Maharshtrian Advocates' based on false statement of Senior counsel Mr. Chinoy. Shri. Justice Menon even did not bother to see Court records and thus injustice is done to three advocates Mr. Prasad Sant, Mr. Kuldeep Pawar & Mr. Nilesh Ojha. Therefore Adv. Nilesh Ojha rightly prosecuted Mr. A.K. Menon by taking deemed sanction from President Of India & Chief Justice Of India vide ref.no. 26/04/2016.

- 13-A) We resolve that, the act and conduct of both the Judges viz. Shri. Justice S.J. Kathwala & Shri. Justice A.K. Menon is fraud on power i.e. an order by ignoring material on record and by considering extraneous factors/materials. [vide: Vijay Shekhar Vs. Union Of India 2004(3) Crimes 33 (SC)]

But then also Mr. Nitin Thakkar & Mr. Viresh Purwant tried to rely on the said order and therefore they are guilty of Gross Professional misconduct.

- 14) We resolve that the Advocates who appeared in Contempt Petition No. 03 of 2017 and argued in favour of Justice S.J. Kathwala , Shri.

Justice V.M. Kanade should not be allowed to appear before the said two judges in view of Bar Council of India rules. Also the said Judges are duty bound to recuse themselves if any of the following Advocates appear before them. (vide: (2011) 14 SCC 770, Davinder Pal Singh Bhulla's Case).

Name of the Advocates:

- i. Mr. Rafiq Dada, Senior Advocate
- ii. Mr. Janak Dwarkadas, Senior Advocate,
- iii. Dr. Milind Sathe, Senior Advocate
- iv. Mr. Venkatesh Dhond, Senior Advocate
- v. Mr. Rajeev Chavan, Senior Advocate
- vi. Mr. Mukul Taly
- vii. Mr. Rohan Kelkar
- viii. Mr. Bhushan Deshmukh
- ix. Ms. Mallika Taly
- x. Ms. Sanchitta Sridhar
- xi. S. Mahomedbhai & Co
- xii. Mr. Nitin Thakkar
- xiii. Mr. Viresh Purwant

- 15) We resolve that, as per report given by Hon'ble Chief Justice of India and collegiums of 5 senior most Judges of Hon'ble Supreme Court on the basis of report of Intelligence Bureau (IB) and also on the basis of letter given by Adv. Dushyant Dave, Chairman, Supreme Court Bar Association, it is clear that Justice Mohit Shah, then Chief Justice of Bombay High Court was proved to be corrupt on or before 6th February, 2015.

But then also he continued to be Chief Justice of Bombay High Court and some agents of that corrupt Justice Mohit Shah, misused their position to get the signatures of Advocates in his support for

elevating him as Judge of Supreme Court but due to strong opposition by Hon'ble Chief Justice S.J. Khehar and & Hon'ble Justice Anil Dave, the elevation of corrupt Justice Mohit Shah was rejected for the second time.

Therefore, it is clear that the Advocates signing in favour of Corrupt Justice Mohit Shah were found to have signed the letter under pressure from some agent Senior Counsels or willingly to support the corruption of Justice Mohit Shah and therefore they lowered down the image of noble profession.

In fact it was the duty of Bar Associations working in Bombay High Court, to ask corrupt Justice Mohit Shah to resign in view of law laid down in K. Veerswami's case, but the Bar Association failed to do so.

Moreover, adding salt on wound, the same corrupt Justice Mohit Shah is being appointed as Arbitrator even today also, by some of the Judges of Hon'ble Bombay High Court and this is an attempt to pollute the pure fountain of justice and we strongly condemn the same. In K. Veerswami's case Hon'ble Supreme Court held that;

*(53) The judiciary has no power of the purse or the sword. It survives only by public confidence and it is important to the stability of the society that the confidence of the public is not shaken. **The Judge whose character is clouded and whose standards of morality and rectitude are in doubt may not have the judicial independence and may not command confidence of the public. He must voluntarily withdraw from the judicial work and administration.***

(54) The emphasis on this point should not appear superfluous. Prof. Jackson says "**Misbehavior by a Judge, whether it takes place on the bench or off the bench, undermines public confidence in the administration of justice, and also damages public respect for the law of the land; if nothing is seen to be done about it, the damage goes unrepaired. This a must be so when the judge commits a serious criminal offence and remains in office**". (Jackson's Machinery of Justice by J.R. Spencer, 8th Edn. pp. 369-70.

(55) The proved "misbehaviour" which is the basis for removal of a Judge under clause (4) of Article 124 of the Constitution may also in certain cases involve an offence of criminal misconduct under Section 5(1) of the Act. But that is no ground for withholding criminal prosecution till the Judge is removed by Parliament as suggested by counsel for the appellant. One is the power of Parliament and the other is the jurisdiction of a criminal court. Both are mutually exclusive. Even a government servant who is answerable for his misconduct which may also constitute an offence under the Indian Penal Code or under S. 5 of the Act is liable to be prosecuted in addition to a departmental enquiry. If prosecuted in a criminal court he may be punished by way of imprisonment or fine or with both but in departmental enquiry, the highest penalty that could be imposed on him is dismissal. The competent authority may either allow the prosecution to go on in a court of law or subject him to a departmental enquiry or subject him to both concurrently or consecutively. It is not objectionable to initiate criminal proceedings against public servant before

*exhausting the disciplinary proceedings, and a fortiori, **the prosecution of a Judge for criminal misconduct before his removal by Parliament for proved misbehaviour is unobjectionable.***

*“.....But we know of no law providing protection for Judges from criminal prosecution. Article 361(2) confers immunity from criminal prosecution only to the President and Governors of States and to no others. Even that immunity has been limited during their term of office. **The Judges are liable to be dealt with just the same way as any other person in respect of criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required.***

- 16) We resolve that the silence on the part of AAWI & Bombay Bar Association on the issue of corrupt Justice Mohit Shah is a proof to doubt their integrity.
- 17) We resolve that, we appreciate the stand taken by Hon'ble Chief Justice J.S. Khehar, Hon'ble Justice Anil Dave, Adv. Dushyan Dave, Chairman, Supreme Court Bar Association, Adv. Ahmad Abdi, Chairman, Bombay Lawyers Association, Adv. Nilesh Ojha National President, Human Rights Security Council and all others who opposed corrupt practices of Shri. Justice Mohit Shah. We condemn the act of Shri. H.L. Dattu, then Chief Justice of India to take the name of Shri. Mohit Shah into consideration for elevation in spite of being aware of his previous reports of corruption given by 5 Judges of Hon'ble Supreme Court.
- 18) We further resolve that our Bar Association be registered soon and we shall make request to Hon'ble Chief Justice to make us available,

the space in High Court for our members as the number of members of our Bar Association are much larger than both Association i.e., BBA & AAWI.

- 19) We further resolve that as per law declared by various Courts and more particularly as has been laid down by Hon'ble Bombay High Court in (1997) 4 Bom. C.R. 372, (The judicial officers Association Vs. State) where it is ruled that when the concerned person/ judge is capable of approaching the Court then on his behalf no Association/Organization can be permitted to file a petition. (on behalf of that Judge) (Also the view is approved in MANU/ JH/ 1606/ 2012).

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

Mumbai

March 3, 2017

(Adv. Divyesh H. Joshi)

Hon. Secretary