IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 28th OF JUNE, 2023

MISC. CRIMINAL CASE No. 9246 of 2018

BETWEEN:-

ANAND SINGH PARIHAR S/O LATE ADHAR SINGH PARIHAR, AGED ABOUT 55 YEARS, OCCUPATION: GOVT. SERVANT, ASSISTANT ENGINEER, MUNICIPAL CORPORATION REWA, R/O INDIRA NAGAR, MIG 1/29/496, REWA, DISTRICT REWA (MADHYA PRADESH)

.....APPLICANT

(SHRI MANISH DATT- SENIOR ADVOCATE WITH SHRI SIDDHARTH KUMAR SHARMA- ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH, THROGUH THE STATION HOUSE OFFICER, POLICE STATION CIVIL LINES, DISTRICT REWA (MADHYA PRADESH)**

2. **PRINCIPAL SECRETARY, URBAN ADMINISTRATION, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

3. **INSPECTOR GENERAL OF POLICE REWA RANGE SIRMOUR CHOWK, DISTRICT REWA (MADHYA PRADESH)**

4. **SUPERINTENDANT OF POLICE, REWA, NEAR SHILPI PLAZA, DISTT. REWA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI RITIWIK PARASHAR- GOVERNMENT ADVOCATE)

This application coming on for admission this day, the court passed the following:

ORDER

1. This M.Cr.C. under Section 482 of Cr.P.C. has been filed against the Judgment dated 21-2-2018 passed by 3rd Additional Sessions Judge, Rewa in S.T. No. 382 of 2014 by which direction has been issued against the applicant and others for their prosecution under Sections 452, 429, 325, 119, 120, 109 of IPC.

2. Facts necessary for disposal of present petition in short are that an FIR was lodged by Sunil Yadav that on an application filed by the deceased, proceedings were initiated for demolition of house of the deceased Rajlallan Singh situated in Ward No. 3, Dhekaha, Rewa, as the same was in dilapidated condition. The front portion of the house was in possession of three tenants, whereas the back portion was in possession of Rajbhan in which his daughter and grand children were residing. An order of demolition was passed by the Municipal Corporation, Rewa. Accordingly on 26-7-2014 at about 12:00, the demolition team reached on the spot for demolition of the house of the deceased. During this drive, the deceased Rajlallan Singh, his son Neeraj Singh and his friends Sunil Yadav, Ram Prakash, Ajju Soni, Satendra Singh and Dheeru Singh also reached on the spot in an official vehicle. The demolition was being done in the absence of Rajbhan Singh and Ranveer Singh. At that time, Rajbhan Singh reached on the spot and started objecting that on whose orders the demolition is being done. The demolition team disclosed that demolition is being done on the orders of Collector. The order was also shown to Rajbhan Singh. Rajbhan Singh thereafter fired a gun shot towards the complainant Sunil

Yadav, but it hit NeerajSingh. Another gun shot was fired thereby causing injuries to Neeraj Singh. Third gun shot was fired causing injury on the chest of deceased Ramlallan Singh. Other persons present on the spot, intervened in the matter. The injured persons were taken to S.G.M.hospital, Rewa, where Ramlallan Singh expired. Accordingly crime no. 451/14 was registered against Rajbhan Singh and Ranveer Singh for offence under Sections 302, 307 read with Section 34 and under Section 28 of Arms Act.

3. It is submitted by the counsel for the applicant that the Court of 3rd Additional Sessions Judge, Rewa in Sessions Trial No.382/2014 exercised its power under Section 319 of Cr.P.C. and by order dated 03/11/2017 took cognizance for offence punishable under Sections 120-B, 109, 113 and 119 of IPC against the petitioner Anand Singh Parihar and others. It was the opinion of the Additional Sessions Judge that the proceedings drawn up by the Municipal Corporation for demolition of the house and the officers and officials of Municipal Corporation who had conducted those proceedings were not correct and only the proceedings for demolition were root cause for the offence of the incident and accordingly, Ramkaran Vishwakarma who had allegedly filed an application for demolition, Officers and Officials of the Municipal Corporation namely Shivbhajan Patel (Court Witness No.1), Rajesh Chaturvedi (Court Witness No.3), Ambrish Singh (Court Witness No.4) and Anand Singh Parihar (Court Witness No.5) were summoned as an additional witness. It was the opinion of the Trial Court that all the proceedings for demolition were conducted in *malafide* manner and were against the law as well as principle of natural justice. The deceased Rajlallan Singh and applicant Anand Singh Parihar had entered into a criminal conspiracy to get the disputed house demolished.

It was further observed that in the entire sequence of events which culminated in the demolition of house, the role of the applicant and other persons was that of an abettor and conspirator. The applicant colluded with the deceased Rajlallan Singh and entered into the criminal conspiracy to get the disputed house demolished knowing fully well that such demolition will be an illegal which may result in stiff resistance as well as leading to unintended and unforeseen consequences.

4. The said order of the Trial Court was challenged by the applicant by filing Criminal Revision No.3463/2017, which was allowed by order dated 15/12/2017 and the order of the Trial Court exercising power under Section 319 of Cr.P.C. was quashed. It is submitted that in complete ignorance of the reasons assigned by this Court, the Trial Court by the impugned judgment has not only acquitted the accused but held that the entire demolition drive was organized to extend undue advantage to the deceased. In paragraph 65 of the judgment, it is mentioned that in view of demolition, either the affected persons were supposed to leave the place or in case if there is any objection, then the person raising objection may act in furtherance of his private defence thereby causing such injury to the aggressor and that was done by the main accused Rajbhan Singh by firing a gun shot causing death of Rajlallan Singh. Therefore, it has been held that *prima facie* the applicant and others have committed an offence under Sections 120, 109, 452, 429, 325 and 119 of IPC. Accordingly, direction was issued to Inspector General, Rewa to register the offence against the applicant Anand Singh and Shailendra Shukla, Ashutosh Pandey, Neeraj Singh, Sunil Yadav, Ram Prakash Yadav, Satendra Singh, Ajju Soni for offence under Sections 120-B, 109, 452, 429, 325 and 119 of IPC.

5. Challenging the aforesaid direction given by the Trial Court, it is

submitted by the counsel for the applicant that it is well established principle of law that the Trial Court is not expected to pass any remark / stricture against any person unless and until an opportunity of hearing is extended to him.

6. Furthermore, it is not a case where any false evidence was given before the Trial Court warranting exercise of power under Section 340 of Cr.P.C. The act of the applicant and others was not the subject matter of trial and the Trial Court has travelled beyond its jurisdiction by directing for registration of offence. It is further submitted that demolition was being done in compliance of an order of demolition, therefore it cannot be said that any right of private defence had accrued in favour of the accused.

7. *Per contra*, it is submitted by the counsel for the respondent that while deciding the Sessions Trial, if the Trial Court had come to a *prima facie* opinion that the applicant has committed an offence, then the Trial Court was well within its right to direct for registration of offence.

8. Heard the learned counsel for the parties.

9. In the present case, following two circumstances emerge:-

> (i) Whether the Trial Court can direct for prosecution of a witness for giving false evidence before the Trial Court or not?
> (ii) Whether the Trial Court by travelling beyond the charges which were leveled against the accused who were facing trial, can hold that the witnesses had committed other offences for which they are liable to be prosecuted?

<u>Whether the Trial Court can direct for prosecution of a witness for giving false evidence before the Trial Court or not?</u>

10. The Supreme Court in the case of **Pritish Vs. State of Maharashtra and Others**, reported in **(2002) 1 SCC 253** has held as

under:-

> **"8.** Chapter XXVI of the Code contains provisions "as to offences affecting the administration of justice". Among the 12 sections subsumed therein we need consider only three. Section 340 consists of four sub-sections of which only the first sub-section is relevant for the purpose of this case. Hence the said sub-section is extracted below:
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> > "340. (1) When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (*b*) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,—
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> > (*a*) record a finding to that effect;
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> > (*b*) make a complaint thereof in writing;
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> > (*c*) send it to a Magistrate of the First Class having jurisdiction;
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> > (*d*) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and
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> > (*e*) bind over any person to appear and give evidence before such Magistrate."
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> **9.** Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form

such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

10. "Inquiry" is defined in Section 2(*g*) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of "warrant case" [as defined in Section 2(*x*)] of the Code the Magistrate

concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

11. Section 238 of the Code says that the Magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the Magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the Magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the Magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the Magistrate has to proceed to conduct the trial. Until then the inquiry continues before the Magistrate.

12. Thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged.

13. The scheme delineated above would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. Learned counsel for the appellant contended that even if there is no specific statutory provision for affording such an opportunity during the preliminary inquiry stage, the fact that an appeal is provided in Section 341 of the Code, to any person aggrieved by the order, is indicative of his right to participate in such preliminary inquiry.

14. Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would-be accused. In any event the appellant has already availed of the opportunity of the provisions of Section 341 of the Code by filing the appeal before the High Court as stated earlier.

15. Once the prosecution proceedings commence the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or not.

16. Be it noted that the court at the stage envisaged

> in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In *M.S. Sheriff* v. *State of Madras* [AIR 1954 SC 397 : 1954 Cri LJ 1019] a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into."

11. Thus, where the Court decides to exercise its power under Section 340 of Cr.P.C., the *prima facie* satisfaction of the Court that the person has committed an offence punishable under Sections 192 to 196 of IPC is sufficient. Therefore, no preliminary enquiry is required and a direction can be given to file a complaint.

Whether the Trial Court by travelling beyond the charges which were leveled against the accused who were facing trial, can hold that the witnesses had committed other offences for which they are liable to be prosecuted.

12. In the present case, the Trial Court has not directed for lodging a complaint for committing an offence punishable under Section 193 to 196 of IPC. It has directed for registration of offence by holding that the applicant and others had *malafidely* entertained and allowed an

application for demolition of house which compelled the main accused Rajbhan to open firing resulting in death of Rajlallan. The Trial Court had also come to a conclusion that the applicant and others had entered into a conspiracy with Rajlallan for demolition of his house which according to him was in dilapidated condition. It is not out of place to mention here that the question regarding the authenticity of the demolition proceeding was not involved in the trial in question.

13. From the information available on the official website of the High Court, it is clear that M.Cr.C. No.22942/2018 was filed by the State thereby challenging the acquittal of the respondent and by order dated 20/03/2023 leave has been granted and Criminal Appeal No.4450/2023 has been registered. Therefore, this Court is refraining itself on the merits of the judgment passed by the Trial Court but one thing is clear that in spite of the fact that the order by which power under Section 319 Cr.P.C. was exercised by the Trial Court against the applicant and other persons was quashed by this Court. The Trial Court by travelling beyond its jurisdiction has passed certain comments which were not the subject matter of the Trial Court. The authenticity of the order of demolition was not the subject matter of the Trial Court.

14. Section 99 of the Indian Penal Code reads as under:-

> 99. **Acts against which there is no right of private defence.—**There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.
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> There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public

> servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.
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> There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.
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> **Extent to which the right may be exercised.—**The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.
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> Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.
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> Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

15. The applicant and others were acting in discharge of their official duties. Unless and until the order of demolition is challenged separately, there was nothing on record to come to a conclusion that the public servants were not acting in good faith. When an application for demolition is filed on the ground that the house is in dilapidated condition and if the authorities come to a conclusion that the house should be demolished in order to avoid any loss to the public, then in a criminal trial of a person who opened the firing during the demolition drive, the Trial Court was not required to look into the correctness or genuineness of the order of demolition passed by the Competent Authority.

16. Furthermore, the findings given by the Trial Court are that the applicant and others entered into conspiracy with deceased Rajlallan. This Court is unable to understand as to how the deceased Rajlallan can enter into a compromise for creating a situation which may lead to his own murder. The property in dispute was occupied by three tenants also whose silently collected their belonging and vacated the premises. Even otherwise, it is well established principle of law that the Court should be slow and conscious enough while passing adverse remarks against the parties involved.

17. Furthermore, the Courts should not pass any adverse remark unless and until it is essential to do the complete justice.

18. The Supreme Court in the case of **Niranjan Patnaik Vs. Shashibhusan Kar and Another**, reported in **(1986) 2 SCC 569** has held as under:-

> **"21.** In *State of U.P.* v. *Mohammad Naim* [AIR 1964 SC 703 : (1964) 2 SCR 363, 374 : 1964 (1) Cri LJ 549] it was held as follows:
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> > "If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against

persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (*a*) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (*b*) whether there is evidence on record bearing on that conduct justifying the remarks; and (*c*) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

19. The Supreme Court in the case of **Manish Dixit and Others Vs. State of Rajasthan**, reported in **(2001) 1 SCC 596** has held as under:-

> **"43.** Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensure serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW 30 (Devendra Kumar Sharma). (*State of U.P.* v. *Mohd. Naim* [AIR 1964 SC 703 : (1964) 2 SCR 363 : (1964) 1 Cri LJ 549] , *Ch. Jage Ram* v. *Hans Raj Midha* [(1972) 1 SCC 181 : 1972 SCC (Cri) 118] , *R.K. Lakshmanan* v. *A.K. Srinivasan* [(1975) 2 SCC 466 : 1975 SCC (Cri) 654] , *Niranjan Patnaik* v. *Sashibhusan Kar* [(1986) 2 SCC 569 : 1986 SCC (Cri) 196] and *State of*

> *Karnataka* v. *Registrar General, High Court of Karnataka* [(2000) 7 SCC 333 : 2000 SCC (Cri) 1359 : (2000) 5 Scale 504] .)"

20. The Supreme Court in the case of **Amar Pal Singh Vs. State of Uttar Pradesh and Another**, reported in **(2012) 6 SCC 491** has held as under:-

> **"27.** A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A Judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on the use of dignified language and sustained restraint, moderation and sobriety. It is not to be forgotten that independence of the Judiciary has an insegregable and inseparable link with its credibility. Unwarranted comments on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law. The sanctity of decision-making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the part of the superior courts to take recourse to correctional measures. A reformative method can be taken recourse to on the administrative side.
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> **28.** It is condign to state that it should be paramount in the mind of a Judge of a superior court that a judicial officer projects the face of the judicial system and the independence of the Judiciary at the ground reality level and derogatory remarks against a judicial officer would cause immense harm to him individually (as the expunction of the remarks later on may not completely resuscitate his reputation) but also affects the credibility of the institution and corrodes the sacrosanctity of its zealously cherished philosophy. A Judge of a superior court however strongly he may feel about the unmerited and fallacious order passed by an officer, but is required to maintain sobriety, calmness, dispassionate

> reasoning and poised restraint. The concept of *loco parentis* has to take a foremost place in the mind to keep at bay any uncalled for or any unwarranted remarks.
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> **29.** Every Judge has to remind himself about the aforesaid principles and religiously adhere to them. In this regard it would not be out of place to sit in the time machine and dwell upon the sagacious saying of an eminent author who has said that there is a distinction between a man who has command over the "Shastras" and the other who knows it and puts it into practise. He who practises them can alone be called a "Vidvan". Though it was told in a different context yet the said principle can be taken recourse to, for one may know or be aware of that the use of intemperate language should be avoided in the judgments but while penning down the same the control over the language is forgotten and the acquired knowledge is not applied to the arena of practise. Or to put it differently, the knowledge stands still and is not verbalised into action. Therefore, a committed comprehensive endeavour has to be made to put the concept to practise so that it is concretised and fructified and the litigations of the present nature are avoided."

21. The Supreme Court in the case of **State of Gujarat and Another Vs. Justice R.A. Mehta (Retired) and Others**, reported in **(2013) 3 SCC 1** has held as under:-

> ***"Language of the judgment***
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> **102.** It appears that the third learned Judge has used harsh language against the Chief Minister, after examining the various letters written by him wherein he contradicted himself as at one place he admits not just to the *primacy* of the Chief Justice, but to his *supremacy* in this regard, and in another letter he states that the recommendation made by the Chief Justice *would not be acceptable* to him and also revealed his perpetual insistence as regards

consideration of the name of Justice J.R. Vora for appointment to the said post of Lokayukta. At an earlier stage, the Chief Minister had taken a stand to the effect that a retired Judge who has been given some other assignment should not be considered for appointment to the post of Lokayukta. However, with respect to the case of Justice J.R. Vora, he seems to have taken an altogether different view.

103. The third learned Judge made numerous observations inter alia that a constitutional mini crisis had been sparked by the actions of the Chief Minister compelling the Governor to exercise her discretionary powers under Article 163 of the Constitution to protect democracy and the rule of law while appointing Respondent 1 as the Lokayukta; that, there was an open challenge by the Council of Ministers in their non-acceptance of the *primacy* of the opinion of the Chief Justice of the Gujarat High Court which revealed the discordant approach of the Chief Minister; that, the conduct of the Chief Minister demonstrated deconstruction of democracy and tantamounts to a refusal by the Chief Minister to perform his statutory or constitutional obligation and, therefore, in light of this a responsible constitutional decision was required to be taken by the Governor so as to ensure that democracy thrived, or to preserve democracy and prevent tyranny. The same seem to have been made after examining the attitude of the Chief Minister as referred to hereinabove.

104. This Court has consistently observed that Judges must act independently and boldly while deciding a case, but should not make atrocious remarks against the party, or a witness, or even against the subordinate court. Judges must not use strong and carping language, rather they must act with sobriety, moderation and restraint as any harsh and disparaging strictures passed by them against any person may be mistaken or unjustified and in such an eventuality they do more harm and mischief than good, therefore resulting in injustice. Thus, the

courts should not make any undeserving or derogatory remarks against any person, unless the same are necessary for the purpose of deciding the issue involved in a given case. Even where criticism is justified, the court must not use intemperate language and must maintain judicial decorum at all times keeping in view always the fact that the person making such comments is also fallible. Maintaining judicial restraint and discipline are necessary for the orderly administration of justice and courts must not use their authority to "make intemperate comments, indulge in undignified banter or scathing criticism". Therefore, while formation and expression of honest opinion and acting thereon, is a necessity to decide a case the courts must always act within the four corners of the law. Maintenance of judicial independence is characterised by maintaining a cool, calm and poised mannerism, as regards every action and expression of the members of the judiciary and not by using inappropriate, unwarranted and contumacious language. The court is required "to maintain sobriety, calmness, dispassionate reasoning and poised restraint. The concept of *loco parentis* has to take foremost place in the mind of a Judge and he must keep at bay any uncalled for, or any unwarranted remarks." (Vide *State of M.P.* v. *Nandlal Jaiswal* [(1986) 4 SCC 566 : AIR 1987 SC 251] , *A.M. Mathur* v. *Pramod Kumar Gupta* [(1990) 2 SCC 533 : AIR 1990 SC 1737] , *State of Bihar* v. *Nilmani Sahu* [(1999) 9 SCC 211] , *'K', A Judicial Officer, In re* [(2001) 3 SCC 54 : AIR 2001 SC 972] , *'RV', A Judicial Officer, In re* [(2004) 7 SCC 729 : 2004 SCC (Cri) 2062 : AIR 2005 SC 1441] and *Amar Pal Singh* v. *State of U.P.* [(2012) 6 SCC 491 : (2012) 3 SCC (Civ) 1013 : (2012) 3 SCC (Cri) 179 : (2012) 2 SCC (L&S) 271 : AIR 2012 SC 1995] , SCC p. 501, para 28.)"

22. The Supreme Court in the case of **Om Prakash Chautala Vs.**

Kanwar Bhan and Others, reported in **(2014) 5 SCC 417** has held as under:-

> "1.Leave granted. Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the downtrodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. The memory of nobility no one would like to lose; none would conceive of it being atrophied. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented. One would like to perceive it as an honour rather than popularity. When a court deals with a matter that has something likely to affect a person's reputation, the normative principles of law are to be cautiously and carefully adhered to. The advertence has to be sans emotion and sans populist perception, and absolutely in accord with the doctrine of audi alteram partem before anything adverse is said.
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> **9.** In *Testa Setalvad* v. *State of Gujarat* [(2004) 10 SCC 88 : 2004 SCC (Cri) 1675] the High Court had made certain caustic observations casting serious aspersions on the appellants therein, though they were not parties before the High Court. Verifying the record that the appellants therein were not parties before the High Court, this Court observed : (SCC p. 92, para 7)
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> > "*7.* … It is beyond comprehension as to how the learned Judges in the High

> Court could afford to overlook such a basic and vitally essential tenet of the 'rule of law', that no one should be condemned unheard, and risk themselves to be criticised for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics."

And again : (SCC p. 92, para 7)

> "*7.* … Time and again this Court has deprecated the practice of making observations in judgments, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons."

12. At this juncture, it may be clearly stated that singularly on the basis of the aforesaid principle the disparaging remarks and directions, which are going to be referred to hereinafter, deserve to be annulled but we also think it seemly to advert to the facet whether the remarks were really necessary to render the decision by the learned Single Judge and the finding recorded by the Division Bench that the observations are based on the material on record and they do not cause any prejudice, are legally sustainable. As far as finding of the Division Bench is concerned that they are based on materials brought on record is absolutely unjustified in view of the following principles laid down in *Mohd. Naim* [*State of U.P.* v. *Mohd. Naim*, AIR 1964 SC 703 : (1964) 1 Cri LJ 549] : (AIR p. 707, para 10)

> "*10.* … It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be

> decided by them, it is relevant to consider (*a*) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (*b*) whether there is evidence on record bearing on that conduct justifying the remarks; and (*c*) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct."

23. Under these circumstances, this Court is of the considered opinion that the directions given by the Trial Judge were not only passed in complete ignorance and the findings recorded by the Co-ordinate Bench of this Court in Cr.R. no.3463/2017 but were not only unwarranted but were without jurisdiction.

24. Under these circumstances, all the directions given by the Trial Court against the applicant and other persons as mentioned in paragraph 77, 79, 80 of the impugned judgment are hereby **set aside**.

25. Accordingly, this application succeeds and is hereby **allowed** and the judgment dated 21.02.2018 passed by Third Additional Sessions Judge, Rewa, District Rewa in S.T. no.382/2014 by which directions have been given to the Authorities to not only to criminally prosecute the applicant as well as to proceed against him departmentally as contained in paragraph 77, 79, 80 are hereby **set aside**.

26. The application succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE

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