SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Original Jurisdiction]

PRESENT:
Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Criminal Misc. No. 13 of 2020
(Filed on 14.03.2020)

Robkar-e-Adalat

VERSUS

Liaqat Ali Mir, Deputy Registrar (Judicial), High Court of Azad Jammu and Kashmir

…. ACCUSED-RESPONDENT

[Contempt of Court proceedings]

FOR THE STATE:	Raja Ayaz Ahmed, Asst. Advocate-General.
FOR THE ACCUSED-RESPONDENT:	In person.

Date of hearing: 26.03.2020

JUDGMENT:

Ghulam Mustafa Mughal, J. The Registrar of the Court submitted a note on 13.03.2020 that one

Mujahid Hussain Naqvi s/o Syed Zahoor Hussain Shah, who is a removed civil servant, is still claiming, writing and pretending himself as an Ex-Senior Secretary of the Government in violation of judgment of the apex Court. His name was removed from the roll of the Advocates but despite this, he attempted to practice before the Courts by filing power of attorney. In this regard, three FIRs were registered against him and after completion of the investigation, the criminal cases are under trial but despite this he writes, claims and pretends to be a senior Advocate. Consequently, this Court while exercising powers vested in it under the provisions of Article 45 of the AJ&K Interim Constitution, 1974 (hereinafter to be referred as "the Constitution") read with Rule 1, Order XLVII of the AJ&K Supreme Court Rules, 1978, initiated contempt proceedings against Mr. Mujahid Hussain Naqvi.

2. During the proceedings, it has also been brought into the notice of the Court that Mr. Mujahid Hussain Naqvi has filed some writ petition in the High

Court containing the contemptuous contents. The copy of the writ petition titled *Mujahid Hussain Naqvi vs. Chairman AJ&K Council & others* has also been brought on record by the Registrar which reveals that the contents of the writ petition and the annexed record are highly scandalous, contemptuous, objectionable, against morality, decency, public order and violative of the constitutional provisions as well as law enforced in the Azad Jammu and Kashmir. The langue employed in the memo of writ petition is so immoral, indecent and dirtiest that the same cannot be referred, however, for instances some wordings used are reproduced as under:-

> "--- شتامت رسول اور تضحیک خداوندی کے قبیح جرائم زیر دفعہ **295-A، 295-C** اور **298 APC** اور دینی اور مذہبی غلط روی اور غلط کاری **(religious misconduct)** کرنے------"
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> "---مرتد اور واجبِ سزائے موت بھی ہوچکے ہیں۔ غلط روی اور دماغی نااہلیت اس پر سوا ہے، دونوں کا شتامِ رسول ہونا بھی ثابت ہے----"
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> "---- تو کیا "راج واڑو" اور "گِڈّر گاہ" بننے کے لیے صرف آزاد کشمیر ہی رہ گیا تھا اور ہے؟ آخر کو یہ پاکستانی آزاد کشمیر ہے کوئی ڈوگروں کا مفتوحہ علاقہ یا سابق تاجِ برطانیہ مفتوحہ کی کوئی کالونی نہیں؟"

3. A notice was also issued to the accused-respondent/Deputy Registrar (Judicial) High Court to explain why contempt of Court and disciplinary

proceedings may not be initiated against him for entertaining such scandalous and contemptuous petition. The accused-respondent personally appeared in response to the notice, tendered unconditional apology and voluntarily got his statement recorded, which reads as under:-

> "بیان کیاکہ عرضی رٹ عنوانی مجاہد حسین نقوی بنام چیئرمین آزادجموں و کشمیر کونسل **06.03.2020** کو مظہر کے پاس پیش ہوئی۔ مظہر نے ریڈر کی رپورٹ سے پہلے معاملہ جناب قائمقام چیف جسٹس عدالت العالیہ (جسٹس اظہر سلیم بابر) کے نوٹس میں لاتے ہوئے عرضی رٹ بھی ملاحظہ کروائی۔ جناب چیف جسٹس صاحب نے ہدایت کی کہ عرضی رٹ **09** مارچ کو پیش کی جائے۔ مقررہ تاریخ پر سائل اصالتاً حاضر ہوا اور درخواست التواء بمعہ میڈیکل سرٹیفیکیٹ پیش کیا۔ جناب چیف جسٹس صاحب کے نوٹس میں معاملہ لایا گیا تو انہوں نے ہدایت کی کہ پتا کریں کہ سرٹیفکیٹ جعلی تو نہیں۔ مظہر نے بذات خود متعلقہ ڈاکٹر سے رابطہ کیا تو معلوم ہوا کہ مبینہ سرٹیفکیٹ ڈاکٹر مذکور کا ہی جاری کردہ ہے۔ اسی اثناء میں سائل (مجاہد حسین نقوی) عدالت سے چلا گیا۔ مظہر نے عرضی رٹ 11مارچ 2020 کے لیے مقرر کر دی۔ بسوال عدالت کہا کے مظہر کی سروس کے دوران اس طرح کی کوئی رٹ نہ آئی ہے۔ 11 مارچ 2020 ءکو فاضل بینچ عدالت العالیہ نے رٹ بعدم پیروی خارج کرتے ہوئے سائل (مجاہد حسین نقوی) کے خلاف توہین عدالت کی کارروائی بھی شروع کردی ہے۔ مظہر نے نیک نیتی سے کام کیا ہے۔ مظہر عدالت ہذا کے نوٹس کے جواب میں تحریری طور پر غیر مشروط معافی کا طلبگار ہے۔ مظہر کا اسی قدر بیان ہے۔ "

A copy of the statement was sent to the Registrar of the High Court for placing the same before the Hon'ble Acting Chief Justice for his perusal and comments. On behalf of the High Court, the Registrar filed following comments:-

"موجبات تبصرہ بصد ادب و احترام گذارش بذیل ہیں:

۱۔ یہ کہ لیاقت علی میر، ڈپٹی رجسٹرار (جوڈیشل) عدالت العالیہ آزادجموں و کشمیر نے رٹ پٹیشن عنوانی "مجاہد حسین نقوی بنام آزاد جموں و کشمیر کونسل وغیرہ"، مورخہ 06.03.2020کو پیش کی۔ ڈپٹی رجسٹرار(جوڈیشل) کو رٹ پٹیشن متذکرہ مورخہ 09.03.2020 کو پیش کرنے کی ہدایت کی گئی۔ مورخہ 09.03.2020کو جناب قائم مقام چیف جسٹس عدالت العالیہ اور ہیڈ کوارٹر پر موجود جج صاحبان عدالت العالیہ، فاضل چیف جسٹس آزاد جموں و کشمیر کو الوداعی دعوت دینے کے لئے سپریم کورٹ تشریف لے گئے۔ سپریم کورٹ سے واپسی پر رٹ پٹیشن متذکرہ پر حکم مناسب کے لئے ڈپٹی رجسٹرار(جوڈیشل) کو طلب کیا گیا تو موصوف نے بتایا کہ پٹیشنر مجاہد حسین نقوی اپنی جانب سے درخواست مع میڈیکل سرٹیفکیٹ پیش کر کے چلا گیا ہے جس پر ڈپٹی رجسٹرار(جوڈیشل) کو میڈیکل سرٹیفکیٹ درست ہونے کی نسبت متعلقہ ڈاکٹر سے رابطہ کرکے تصدیق حاصل کرنے کا کہا گیا۔ رابطہ کرنے پر ڈاکٹر نے پیش کردہ میڈیکل سرٹیفکیٹ اور پٹیشنر مذکور کی بیماری کی تصدیق کی جس پر ڈپٹی رجسٹرار (جوڈیشل)کو، رٹ پٹیشن متذکرہ مورخہ 11.03.2020کو پیش کرنے کی ہدایت کی گئی۔ مورخہ 11.03.2020کو پٹیشنر مذکور کے حاضر نہ آنے کے باعث ڈویژن بینچ نے رٹ پٹیشن متذکرہ بعدم پیروی خارج کرتے ہوئے رٹ پٹیشن میں استعمال ہونے والی زبان کو توہین آمیز گردانتے ہوئے پٹیشنر کے خلاف توہین عدالت کی کارروائی کا حکم صادر فرمایا جو ہنوز زیر کار ہے۔

۲۔ یہ کہ یہ بات اظہر من الشمس ہے کہ اس رٹ پٹیشن میں درج زبان کے اعتبار سے رٹ پٹیشن متذکرہ کو کسی طور بھی ریڈر یا ڈپٹی رجسٹرار کو اسے درج رجسٹر نہیں کرنا چاہیے تھا۔ ڈپٹی رجسٹرار(جوڈیشل) اور ریڈر کا یہ عمل غیر ذمہ دارانہ اور قابل مواخذہ ہے جس کے لئے الگ سے مذکوریان کے خلاف تادیبی کارروائی کی جا رہی ہے۔

۳۔ یہ کہ چیف جسٹس عدالت العالیہ اور جج صاحبان عدالت العالیہ کو اس بات کا بخوبی احساس و ادراک ہے کہ عدالت العظمی آزاد جموں و کشمیر عدلیہ کا سپریم ترین ادارہ ہے جس کے فیصلہ جات تمام ریاستی اداروں بشمول عدالت العالیہ کے لئے واجب التعمیل ہیں۔ اس طرح عدالت العالیہ کے چیف جسٹس یا جج صاحبان فاضل سپریم کورٹ آزاد جموں و کشمیر کی عزت و وقار اور تز ک و احتشام میں کمی کا سوچ بھی نہیں سکتے۔ یہی وجہ ہے کہ متعلقہ عملہ اور درخواست دہندہ کے خلاف بالترتیب تادیبی اور

توہین عدالت کی کارروائی کی جا رہی ہے۔ نیز عدالت العالیہ میں اپیل، رٹ پٹیشن ہاء، درخواست و نگرانی وغیرہ کی دائری کے سلسلہ میں ججز صاحبان عدالت العالیہ کی میٹنگ بلا کر سابقہ پریکٹس میں تبدیلی کے لیئے بھی احکامات دیئے جا رہے ہیں۔

۴۔ یہ کہ رٹ پٹیشن متذکرہ میں اعلیٰ عدلیہ کے جج صاحبان کے بارہ میں درج ریمارکس کے حوالہ سے کسی ریکارڈ کا حصہ نہیں رہنا چاہیے مگر توہین عدالت کی کارروائی کو انجام تک پہنچانے کے لئے رٹ پٹیشن ہمراہ روبکار رہے اور تا فیصلہ فائل ایڈیشنل رجسٹرار عدالت العالیہ کی تحویل میں رہے گی۔اس نسبت حتمی حکم بوقت فیصلہ روبکار دیا جائے گا۔

لہذا بعد از منظوری جناب قائم مقام چیف جسٹس عدالت العالیہ آزاد جموں و کشمیر تبصرہ بر بیان لیاقت علی میر ڈپٹی رجسٹرار (جوڈیشل) عدالت العالیہ پیش خدمت ہے۔

رجسٹرار
عدالت العالیہ آزاد جموں و کشمیر"

Thereafter, a list of allegations was served upon the accused-respondent, who without defending the same placed himself on the mercy of the Court and submitted unconditional apology in the following terms:-

"موجبات بصد ادب و احترام بذیل گزارش ہیں:

۱۔ یہ کہ مظہر نے اپنا تحریری بیان قبل ازیں ریکارڈ کردیا ہوا ہے۔ مظہر بحیثیت ملازم **contest** نہ کرنا چاہتا ہے اور اپنے آپ کو عدالت کے رحم و کرم پر چھوڑتا ہے۔ رٹ پٹیشن کے پیش ہونے پر اس کے مندرجات جناب قائم مقام چیف جسٹس عدالت العالیہ کے علم میں لائے تھے۔ جنہوں نے رٹ پٹیشن مورخہ 2020-03-09 کو پیش کرنے کا حکم صادر فرمایا تھا۔ اس حکم کی تعمیل میں سابقہ طریقہ کار کے مطابق درج رجسٹر کرتے ہوئے رٹ پٹیشن جناب قائم مقام چیف جسٹس کے روبرو مورخہ 2020-03-09 کو پیش کرد۔

۲۔ یہ کہ مظہر عدالت العظمیٰ، جناب چیف جسٹس و سینئر جج صاحب عدالت العظمیٰ یا کسی بھی جج صاحب کی توہین کا تصور بھی نہ کرسکتا ہے۔ مظہر کے اس طرزِ عمل سے اگر کوئی توہین عدالت کا پہلو نکلتا بھی ہو تو

مظہر نہ صرف اس پر نادم ہے بلکہ غیر مشروط معافی کا طلبگار ہے اور اپنے آپ کو عدالتی رحم و کرم پر چھوڑتے ہوئے مستدعی ہے کہ مظہر کے خلاف توہین عدالت کی کارروائی **Drop** فرمائی جائے۔ **"**

The comments filed on behalf of the High Court clearly show that the learned division bench of the High Court on careful examination of the contents of the writ petition not only dismissed the same vide order dated 11.03.2020 but also declared the writ petition contemptuous and non-maintainable. Consequently, the contempt of Court proceedings were initiated against him by the High Court vide order dated 11.03.2020, which reads as follows:-

> "Mujahid Hussain Naqvi filed a writ petition before this Court on 06.03.2020. It was observed that he used contemptuous language about Chief Justice of AJ&K and Senior Judge of the Supreme Court of AJ&K. Although, the writ petition titled *"Mujahid Hussain Naqvi v. Chairman AJ&K Council & others*" has been dismissed for want of appearance of the petitioner, however, it looks appropriate to initiate contempt proceedings for using contemptuous language about Chief Justice of AJ&K and Senior Judge of Supreme Court of AJ&K. So, notice be issued to the petitioner to explain that why contempt proceedings may not be initiated against him for using contemptuous language about Chief Justice of AJ&K and Senior Judge of the Supreme Court of AJ&K in accordance with law."

In this background, this Court vide order dated 19.03.2020, formulated following points for resolution:-

> "(i) whether a lis containing the contemptuous contents punishable under Article 45(2) of the Azad Jammu and Kashmir Interim Constitution, 1974 read with the provisions of Contempt of Courts Act, 1993, can be entertained by the Courts;
>
> (ii) whether any sort of case offending the spirit of Article 4 of the constitutional provisions, can be entertained;
>
> (iii) whether the writ can be filed for issuance of a direction to the Chairman AJ&K Council for referring the matter to the Supreme Judicial Council;
>
> (iv) whether after 13th amendment the Chairman AJ&K Council without advise and approval of the Chief Executive of the Azad Jammu and Kashmir can refer the matter to the Supreme Judicial Council?"

4. While considering points No.(iii) and (iv) of constitutional and public importance, notice was issued to the Vice Chairman Bar Council, Advocate-General and other eminent lawyers of the legal fraternity to assist the Court. Meanwhile, due to outbreak of pandemic disease, *coronavirus*, the lawyers decided not to appear before the Court for an indefinite period, therefore, vide interim

order dated 24.03.2020 hearing on points No.(iii) and (iv) was deferred till normalization of the situation.

5. However, points No.(i) and (ii) relate to contempt which matter is between the Court and the contemnor, furthermore, according to the peculiar facts and circumstances of the case these points are deeply related to the mutual harmony of the constitutional Courts i.e. the apex Court and the High Court, hence, for partially disposing of the matter to this extent the Assistant Advocate-General was directed to assist the Court.

6. Raja Ayaz Ahmed, Assistant Advocate-General at the very outset submitted that the contents of the writ petition and the annexed record are highly scandalous, contemptuous and objectionable, hence, such writ petition is not entertainable. He submitted that the Constitution is the fountain of all other laws and the acts of all the functionaries and institutions of Azad Jammu and Kashmir are subject to limits and spirit of the Constitution. He submitted that under the provisions of

Article 4 (Fundamental Rights) of the Constitution, it has been expressly incorporated that any law made in contravention of this Article shall be void. Although, under Fundamental Right No.9 every state subject has a right of freedom of speech and expression but the same is subject to reasonable restrictions imposed by law in the interest of the security of Azad Jammu and Kashmir, friendly relations with Pakistan, public order, decency and morality, or in relation to contempt of Court, defamation or incitement to an offence. He submitted that while exercising the right of freedom of speech and expression, no body can violate the constitutional limits or misuse the process of law and Courts. If anybody misuses this right, his such act shall be dealt with by law. In this context, such like writ petition was not entertainable and the learned High Court while realizing the sensitivity of the issue not only dismissed the writ petition being non-maintainable and contemptuous but also initiated contempt of Court proceedings against the petitioner (Mujahid Hussain Naqvi). In support of his

arguments, he referred to the cases reported as *In Re: Dr. D.C. Saxena Contemnor v. Hon'ble the Chief Justice of India* [AIR 1996 SC 2481], *Muhammad Ikram Chaudhary vs. Federation of Pakistan & others* [PLD 1998 Supreme Court 103], *Attorney General of Pakistan vs. Yusuf Ali Khan* [PLD 1972 SC 115], *Federation of Pakistan vs. Yusuf Ali Khan* [PLD 1977 Supreme Court 236] and *In Re: Professional Conduct of Two Lawyers in Civil Miscellaneous Petition Noo.45 of 1982* [1982 SCMR 713]. He further submitted that although such like writ petition should not have been entertained or brought on record but as there is no express provisions in the Azad Jammu and Kashmir High Court (Procedure) Rules, 1984, authorizing the concerned Court officials to object or reject such petition, however, even otherwise the accused-respondent has tendered unconditional apology and placed himself on the mercy of the Court. As the High Court has already initiated the contempt of Court proceedings against the contemnor, thus, in this state of affairs for maintaining the mutual harmony of the judicial

institutions the contempt proceedings against the accused-respondent be dropped. He also argued that in the Azad Jammu and Kashmir Supreme Court Rules, 1978, there are clear provisions regarding returning such like cases, hence, this Court should lay down guidelines for the Courts so that in future any such contemptuous act be dealt with according to law.

7. The accused-respondent himself appeared, once again tendered unconditional apology and placed himself on the mercy of the Court. He submitted that he has not intentionally or deliberately done any act to lower down the prestige or dignity of this apex Court.

8. We have heard the learned Assistant Advocate-General and also considered the statement of the accused-respondent, comments filed on behalf of the High Court and other record. In view of the aforesaid facts, there is no dispute that the language employed in the memo of writ petition and the material annexed with it, including the affidavit of petitioner (Mujahid Hussain Naqvi), being scandalous, contemptuous, objectionable, immoral and

indecent is violative of the constitutional provisions, specially, Fundamental Right No.9. The Assistant Advocate-General has rightly argued that every civilized society and the state is run by its Constitution which is the basic fountain of all the laws having controlling and binding force. All other laws and the performance of functions by the state organs, are subject to the constitutional provisions. No doubt Fundamental Right No.9 guarantees the freedom of speech and expression but the same is subject to the limits and restrictions imposed by the Constitution itself. Even any law made by the Legislature, which is the supreme body of the state, in contravention of the prescribed constitutional limits shall be deemed void. Hence, it can be easily inferred that if even the Legislature cannot violate the limits of Article 4 how any other body or person can act or derive power to offend the provisions of Article 4 of the Constitution. In this state of affairs, mere non-existence of any express rule for not entertaining any petition violative to the constitutional provisions, does not authorize any person

to entertain the same. The learned Assistant Advocate-General has rightly placed reliance on the case reported as *In Re: Dr. D.C. Saxena Contemnor v. Hon'ble the Chief Justice of India* [AIR 1996 SC 2481] which is based upon almost identical facts. In the referred case, the petitioner, whose petition was dismissed, filed second petition while levelling allegations against the Judge in an objectionable, scandalous and contemptuous language. The Court not only deemed that such petition should not be registered but while taking notice of such contemptuous language, the contempt proceedings were initiated. The apex Court of India while appreciating all the relevant laws, specially, fundamental right of freedom of speech and expression, has handed down a scholarly judgment and on the basis of such contemptuous and scandalous contents, the contemnor was convicted for three months imprisonment along with Rs.2,000/- fine. It will be useful to reproduce here the relevant portion of the judgment as follows:-

> "28. The question, therefore, arises: whether the afore-enumerated imputations constitute

contempt of this Court? Though the petitioner contended that the provisions of the Act are ultra vires Article 19(1) (a) of the Constitution, it is not necessary for the purpose of this case to dwelve upon that contention. This Court has taken suo motu cognizance of contempt of this Court under Article 129 of the Constitution of India which reiterates as a court of record, its power to punish for contempt of itself. As pointed out in the proceedings of this Court dated January 13, 1996, in spite of the fact that this Court brought to his attention the gravity of the imputations, the petitioner insisted and reiterated that he stood by the scandalous averments made therein. This court being duty bound, was. therefore, constrained to issue notice of contempt. The question, therefore, is whether the aforesaid imputations are scurrilous attack intended to scandalise the Court and do they not impede due administration of Justice? Words are the skin of the language. Language in which the words are couched is media to convey the thoughts of the author. Its effect would be discernible from the language couched proprio vigore. The petitioner, a professor of English language in clear and unequivocal language emphasised and reaffirmed that the averments were ‘"truthfully and carefully” worded. The question is to what extent the petitioner is entitled to the freedom of those expressions guaranteed under Article 19(1)(a) of the Constitution? If they are found scandalous, whether he would get absolved by operation of Article 19(1)(a)? As this Court has taken suo motu action under Article 129 of the Constitution and the word ‘contempt’ has not been defined by making rules, it would be enough to fall back upon the definition of

"criminal contempt" defined under Section 2 (c) of the Act which reads thus:

> " "criminal contempt" means the publication (whether by words, spoken or *written*, or by signs, or by visible representations, or otherwise) of any matter of the doing of any other act whatsoever which —
>
> (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
>
> (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."
>
> *(Emphasis supplied)*

29. It is doubtless that freedom of speech and of expression guaranteed by Article 19(1)(a) is one of the most precious liberties in our secular, socialist republic. Freedom of expression is a prized privilege to speak one's open mind although not always in perfect good taste of all institutions. Since it opens up channels of open discussion, the opportunity of speech and expression should be afforded for vigorous advocacy, no less than abstract discussion. This liberty may be regarded as an autonomous and fundamental good and its value gets support from the need to develop our evolving society from unequal past to a vigorous homogeneous egalitarian order in which each gets equality of status and of opportunity; social, economic and political justice with dignity of person so as to build an

integrated and united Bharat. Transformation for that strong social restructure would be secured when channels for free discussion are wide open and secular mores are not frozen. All truths are relative and they can be judged only in the competition of market. Liberty is not to be equated with certainty. Freedom of expression equally generates and disseminates ideas and opinions, information of political and social importance in a free market place for peaceful social transformation under rule of law. The doctrine of discovery of truth does require free exchange of ideas and use of appropriate language. Words are the skin of the language which manifests the intention of its maker or the speaker. The right to free speech is, therefore, an integral aspects of right to self-development and fulfilment of person's duties some of which are proselytised in Part IVA of the Constitution as Fundamental Duties. The end of the State is to secure to the citizens freedom to develop his faculties, freedom to think as he will, to speak as he thinks and read as indispensable tools to the discovery of truth and realisation of human knowledge and human rights. Public discussion is political liberty. The purpose of freedom of speech is to understand political issues so as to protect the citizens and to enable them to participate effectively in the working of the democracy in a representative form of Government. Freedom of expression would play crucial role in the formation of public opinion on social, political and economic questions. Therefore, political speeches are given greater degree of protection and special and higher status than other types of speeches and expressions. The importance of speaker's potential development on political and social questions is also relevant to encourage human development for effective

functioning of democratic institutions.

30. Equally, debate on public issues would be uninhibited, robust and wide open. It may well include vehement, sarcastic and sometimes unpleasant sharp criticism of Government and public officials. Absence of restraint in this area encourages a well informed and politically sophisticated electoral debate to conform the Government in tune with the constitutional mandates to return a political party to power. Prohibition of freedom of speech and expression on public issues prevents and stifles the debate on social, political and economic questions which in long term endangers the stability of the community and maximum the source and breeds for more likely revolution.

31. If maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libelous speech or expression. There is a co-relative duty not.to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate

others' right to person or reputation. Therefore, freedom of speech and expression is tolerated so long as it is not malicious or libelous so that all attempts to foster and ensue orderly and peaceful public discussion or public good should result from free speech in the market place. If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right.

32. Freedom of speech and expression, therefore, would be subject to Articles 19(2) J 29 and 215 of the Constitution, in relation to contempt of court, defamation or incitement to an offence etc. Article 3 read with Article 19 of the Universal Declaration of Human Rights grants to everyone liberty and right to freedom of opinion and expression. Article 19 of the International Covenant on Civil and Political Rights, 1966 to which India is a signatory and had ratified, provides that everyone shall have the right to freedom of expression, to receive and impart information and ideas of all kinds but Clause (3) thereof imposes corresponding duty on the exercise of the right and responsibilities. It may, therefore, be subject to certain restrictions but these shall only be such as are provided by law and are necessary for the respect of life and reputations of others for the protection of national security or public order or of public health or moral. It would thus be seen that liberty of speech and expression guaranteed by Article 19(1)(a) brings within its ambit, the corresponding duty and responsibility and puts limitations on the exercise of that liberty.

33. A citizen is entitled to bring to the notice of the public at large the infirmities from which any institution including judiciary suffers from.

Indeed, the right to offer healthy and constructive criticism which is fair in spirit must be left unimpaired in the interest of the institution itself. Critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. *Bona fide* criticism of any system or institution including judiciary is aimed at inducing the administration of the system or institution to look inward and improve its public image. Courts, the instrumentalities of the State are subject to the Constitution and the laws and are not above criticism. Healthy and constructive criticism are tools to augment its forensic tools for improving its functions. A harmonious blend and balanced existence of free speech and fearless justice counsel that law ought to be astute to criticism. Constructive public criticism even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public institutions. Section 5 of the Act accords protection to such fair criticism and saves from contempt of court. The best way to sustain the dignity and respect for the office of judge is to deserve respect from the public at large by fearlessness and objectivity of the approach to the issues arising for decision, quality of the judgment, restraint, dignity and decorum a judge observes in judicial conduct off and on the bench and rectitude.

34. In P. N. Dube v. P. Shiv Shanker, AIR 1988 SC 1208, this Court had held that administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e., to defend and uphold the Constitution and the

laws without fear and favour. Thus the Judges must do, in the light given to them to determine, what is right. Any criticism about judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of the Judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised. Motives to the Judges need not be attributed. It brings the administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and Judges to punish a person for an alleged contempt by taking notice of the contempt *suo motu* or at the behest of the litigant or a lawyer. In that case the speech of the Law Minister in a Seminar organised by the Bar Council and the offending portions therein were held not contemptuous and punishable under the Act. In a democracy Judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any Judicial act as contrary to law or public good no court would treat criticism as a contempt of court.

35. Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech which holds so dear in a democracy of ability to express freely. Freedom of

expression produces the benefit of the truth to emerge. It aids the revelation of the mistakes or bias or at limes even corruption. It assists stability by tempered articulation of grievances and by promoting peaceful resolution of conflicts. 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 of other fundamental human rights. Legal procedure illuminates how free speech of expression Constitutes one of the most essential foundations of democratic society. 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. As stated hereinbefore, they equally owe countervailing duty to maintain dignity, decorum and order in the court proceedings or judicial process. 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.

36. In E.M.S. Namboodiripad v. T. Narayanan Nambiar, (1971) 1 SCR 697: (AIR 1970 SC 2015) a Bench of three Judges had held that the law of contempt stems from the right of a court to punish, by imprisonment or fine, persons guilty of words or acts which obstruct or tend to obstruct the administration of justice. This right is exercised in India by all

courts when contempt is committed in facie curiae by the superior courts on their own behalf or on behalf of courts subordinate to them, even if committed outside the courts.

37. Scandalising the Judges or courts tends to bring the authority and administration of law into disrespect and disregard and tantamount to contempt. All acts which bring the court into disrepute or disrespect or which offend its dignity or its majesty or challenge its authority, constitute contempt committed in respect of single Judge or single court or in certain circumstances committed in respect of the whole of the judiciary or judicial system. Therein the criticism by the Chief Minister who described judiciary as an instrument of oppression and the Judges as guided and dominated by class hatred, class interest and class prejudices etc. was held to be an attack upon Judges calculated to give rise to a sense of disrespect and distrust of all judicial decisions. It was held that such criticism of authority of the law and law courts constituted contempt of the court and the Chief Minister was found guilty thereof.

38. The contempt of court evolved in common law jurisprudence was codified in the form of the Act. Section 2(c) defines “criminal contempt” which has been extracted earlier. In A. M. Bhattacharjee’s case (1995 AIR SC 3768) (supra) relied on by the petitioner himself, a Bench of two Judges considered the said definition and held that scandalising the court would mean any act done or writing published which is calculated to bring the court or Judges into contempt or to lower its authority or to interfere with the due course of justice or the legal process of the court. In para 30, it was stated that scandalising the court is a

convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice. Contempt of court is to keep the blaze of glory around the judiciary and to deter people from attempting to render justice contemptible in the eyes of the public. A libel upon a court is a reflection upon the sovereign people themselves. The contemnor conveys to the people that the administration of justice is weak or in corrupt hands. The fountain of justice is tainted. Secondly, the judgments that stream out of that foul fountain is impure and contaminated. In Halsbury's Laws of England (4th Edn.) Vol. 9 para 27 at page 21 on the topic 'Scandalising the Court" it is stated that scurrilous abuse of a Judge or court, or attack on the personal character of a Judge, are punishable contempts. The punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual Judges of the court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of a Judge or a court. On the other hand, criticism of a Judge's conduct or of the conduct of a court, even if strongly worded, is not a contempt provided that the criticism is fair, temperate and made in good faith, and is not directed to the personal character of a Judge or to the impartiality of a

Judge or court.

39. Therefore, it is of necessity to regulate the judicial process free from fouling the fountain of justice to ward off the people from undermining the confidence of the public in the purity of fountain of justice and due administration. Justice thereby remains pure, untainted and unimpeded. The punishment for contempt, therefore, is not for the purpose of protecting or vindicating either the dignity of the court as a whole or an individual Judge of the court from attack on his personal reputation but it was intended to protect the public who are subject to the jurisdiction of the court and to prevent undue interference with the administration of justice. If the authority of the court remains undermined or impeded the fountain of justice gets sullied creating distrust and disbelief in the mind of the litigant public or the right-thinking public at large for the benefit of the people. Independence of the judiciary for due course of administration of justice must be protected and remain unimpaired. Scandalising the court, therefore, is a convenient expression of scurrilous attack on the majesty of justice calculated to undermine its authority and public confidence in the administration of justice. The malicious or slenderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes in their mind to obey them. If the people’s allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice calling for urgent action. Action for contempt is not for the protection of the Judge as private individual but because they are the channels by which justice is administered to the people

without fear or favour. As per the Third Schedule to the Constitution oath or affirmation is taken by the Judge that he will duly and faithfully perform the duties of the office to the best of his ability, know ledge 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 ail people to be impartial. Should they be imputed with improper motives, bias, corruption or partiality, people will lose faith in them. The Judge requires a degree of detachment and objectivity which cannot be obtained, if Judges constantly are required to look over their shoulders for fear of harassment and abuse and irresponsible demands for prosecution or resignation. The whole administration of justice would suffer due to its rippling effect. It is for this reason that scandalising the Judges was considered by the Parliament to be contempt of a court punishable with imprisonment or fine.

40. Scandalising the court, therefore, would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge in connection with office he holds is dealt with under law of lible or slender. Yet defamatory publication concerning the Judge as a Judge brings the court or judges into contempt, a serious impediment to justice and an inroad on majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or majesty of justice. It would, therefore, be scandalising the Judge as a Judge, in other words, imputing partiality, corruption, bias, improper motives to a Judge

is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a Judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to majesty of justice. When the contemnor challenges the authority of the Court, he interferes with the performance of duties of Judge s office or judicial process or administration of justice or generation or production of tendency bringing the Judge or judiciary into contempt. Section 2 (c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs. or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lower or tends to tower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding: or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the Court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority oi majesty of justice would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt Any conduct of the contemnor which has the tendency or produces a tendency to bring me Judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.

41. It is true that in an indictable offence generally mens rea is an essential ingredient and requires to be proved for convicting the offender but for a criminal contempt as defined in Section 2 (c) any enumerated or any other act apart, to create disaffection, disbelief in the efficacy of judicial dispensation or tendency to obstruct administration of justice or tendency to lower the authority or majesty of law by any act of the parties, constitutes criminal contempt. Thereby it excludes the proof of mens rea What is relevant is that the offending or affront act produces interference with or tendency to interfere with the course of justice. At this stage, we would dispose of one of the serious contentions repeatedly emphasised by the petitioner that he had no personal gain to seek in the lis except said to have been fired by public duty and has professed respect for the Court. Those are neither relevant nor a defence for the offence of contempt. What is material is the effect of the offending act and not the act *perse.* in E.M.S. Namboodiripad's case, (AIR 1970 SC 2015) this court had held in paragraph 33 that a law punishes not only acts which had in fact interfered with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. It was held that the likely effect of the words must be seen and they clearly have effect of lowering the prestige of the Judges and courts in the eyes of people. Same view was reiterated in Sambu Nath Jha v. Kedar Prasad Singh. (1972) 1 SCC 573 at 577: (AIR 1972 SC 1515 at p. 1518). As stated earlier, imputation of corrupt or improper motives in judicial conduct would impair the efficacy of judicial dispensation and due protection of the liberties of the citizen or due administration of justice. This paramount

public interest is protected by the definition in Section 2 (c) of the Act. it is, therefore, not necessary to establish actual intention on the part of the contemnor to interfere with the administration of justice. Making reckless allegations or vilification of the conduct of the court or the Judge would be contempt.

42. The question, therefore, to be considered is whether the imputations referred to hereinbefore have necessary tendency to impinge or tendency to impede the public confidence in the administration of justice or would create disbelief in the efficacy of judicial administration or lower the authority or interferes with majesty of Court? The court, therefore, is required to consider whether the imputations made by a contemnor are calculated to bring or have the effect of bringing the court into contempt or casting aspersions on the administration of justice tends to impede justice etc. The court has to consider the nature of the imputations, the occasion of making the imputations and whether the contemnor foresees the possibility of his act and whether he was reckless as to either the result or had foresight like any other fact in issue to be inferred from the facts and circumstances emerging in the case. The reason is obvious that the court does not sit to try the conduct of a judge to whom the imputations are made. It would not be open to the contemnor to bring forward evidence or circumstances to justify or to show whether and how fairly imputations were justified because the Judge is not before the Court. The defence justification to an imputation would not, therefore, be available to the contemnor. The imputation of improper motives or bias cannot be justified on the principle of fair

contempt. In Ambard v. Attorney-General for Trinidad and Tobago, 1936 AC 322 at 335 Lord Atkin in his oft quoted judgment held that justice is not a cloistered virtue and must be allowed to suffer the scrutiny and respectfully, have been, though outspoken comments of ordinary man". But in the same judgment it was further pointed out that provided that members of the public should abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice. That was a case of criticism of the Court proceedings as is saved by Section 5 of the Act.

43. Law' is not in any doubt that in a free democracy everybody is entitled to express his honest opinion about the correctness or legality of a judgment or sentence or an order of a court but he should not overstep the bounds. Though he is entitled to express that criticism objectively and with detachment in a language dignified and respectful tone with moderation, the liberty of expression should not be a licence to violently make personal attack on a Judge. Subject to that, an honest criticism of the administration of justice is welcome since justice is not a cloistered virtue and is entitled to respectful scrutiny. Any citizen is entitled to express his honest opinion about the correctness of the judgment, order or sentence with dignified and moderate language pointing out the error or defect or illegality in the judgment order or sentence. That is after the event as post-mortem.

44. In Baradakanta Mishra v. The Registrar of Orissa High Court. (1974) I SCC 374: (AIR 1974 SC 710), the appellant, a District Judge

was suspended and a spate of litigation in that behalf had ensued. When an order of suspension was set aside by the Government, in exercise of his power under Article 235, the High Court further ordered suspension of him pending enquiry of the allegations made against Judges in a memorandum and letters sent to the Governor in a vilificatory criticism of the judges in their function on the administration side. When contempt action was initiated, he challenged the jurisdiction of the court and the competency to initiate action for contempt on the specious plea that the acts done by the High Court were on the administration side and were not judicial actions. A three-Judge Bench had negatived the plea and convicted the appellant under Section 12 of the Act. When the matter had come up before this Court, a Constitution Bench considered the gravamen of the imputations and had held that the allegations made against the court in the memo submitted to the Governor constituted scurrilous allegations against the High Court. Again some of the allegations made in the memo of appeal and various communications, to the Supreme Court were held to constitute contempt of the court and the conviction was confirmed though sentence was reduced. This court held that imputation of improper motives, bias and prejudice constitutes contempt under Section 2 (c) of the Act.

45. In Special Reference No. 1 of 1964, popularly known as U. P. Legislature's Warrant of Arrest of the Judges of the Allahabad High Court and Keshav Singh Reference, a Bench of seven Judges of this Court observed that the power to punish for contempt alleged must always be exercised

cautiously, wisely and with circumspection. The best way to sustain the dignity and status of their (judges) office is to deserve respect from the public at large by the quality of their judgments, fearlessness and objectivity of their approach and by the restraint, dignity and decorum which they observe in their judicial conduct. It would equally apply to the legislature. Keeping the above perspective in view, the question emerges, whether the imputations itemised hereinbefore constitute contempt of the court. At the cost of repetition, we may reiterate that in a democracy though everyone is entitled to express his honest opinion about the correctness or legality of a judgment or an order or sentence, Judges do requires degree of detachment and objectivity in judicial dispensation, they being duty bound with the oath of office taken by them in adjudicating the disputes brought before the court. The objectivity or detachment cannot be obtained if the judges have constantly to look over their shoulders for fear of 1996S.C./157 XI G-10 harassment and abuse and irresponsible demands for prosecution, resignation or to refrain from discharging their duties pending further action. Cognisant to this tendency, the founding fathers of the Constitution engrafted Articles 121 and 211 of the Constitution and prohibited the Parliament and the Legislatures to discuss on the floor of the House the conduct of any Judge of the Supreme Court or the High Court in the discharge of his duties except upon a motion for presenting address to the President praying for the removal of a Judge under Article 124 (4) of the Constitution in accordance with the procedure prescribed under the Judges (Inquiry) Act, 1968 and the Rules made thereunder. In A. M. Bhattacharjee’s case, (1995 AIR SCW 3768)

on which great reliance was placed by the petitioner emphasising the rectitude on the part of a judge, this Court laid the rule for the advocates to adhere to a code of conduct in seeking redressal on the perceived aberration of the conduct of a judge otherwise than in accordance with the procedure prescribed in Article 124(4) of the Constitution. The respect for and the dignity of the court thereby was protected from scurrilous attack on the Judge or the court. If the forum of the judicial process is allowed to mount scurrilous attack on a Judge, the question arises whether the forum of the judicial process of vilification of the Judges or imputations to the Judges in the pleadings presented to the court would give liberty of freedom of expression to an advocate or a litigant. In the light of the above discussion, we have little doubt to conclude that when an advocate or a party appearing before the court requires to conduct himself in a manner befitting to the dignity and decorum of the court, he cannot have a free licence to indulge in writing in the pleadings the scurrilous accusations or scandalisation against the Judge or the court. If the reputation and dignity of the Judge, who decides the case are allowed to be prescribed in the pleadings, the respect for the court would quickly disappear and independence of the judiciary would be a thing of the past.

46. In Re: Roshan Lal Ahuja, (1993) Supp 4 SCC 446, when the contemnor-petitioner's countless unsuccessful attempts against his order of removal from service became abortive and in spite of this Court granting at one stage compensation of a sum of Rs. 30,000/- he had indulged in the pleadings with scurrilous accusations on Judges who granted

compensation and not reinstatement. It was . held by a three Judge Bench that the contemnor had permitted himself the liberty of using language in the documents and pleadings which not only had the ' effect of scandalisin. and lowering the authority of the Court in relation to judicial matters but also had the effect of substantial interference with and obstructing the administration of justice. The unfounded and unwarranted aspersions on the Judges of this Court had the tendency to undermine the authority of the Court and would create distrust in the public mind as to the capacity of the Judges of this Court to met out fearless justice. Accordingly, he was convicted and sentenced to undergo imprisonment for a period of four months and to pay a fine of Rs. 1,000/ - and in default, to undergo sentence for a further period of 15 days.

47. In L. D. Jaikwal v. State of U. P., (1984) 3 SCC 405: (AIR 1984 SC 1374), the conduct of an advocate in using abusive language in pleadings and vilification of a Judge was held to constitute contempt under Section 2(c)(i) of the Act and his sentence under Section 12 of the Act was upheld. In Re: S. Mulgaokar, (1978) 3 SCC 339: (AIR 1978 SC 727), the conduct of a senior advocate in publishing a pamphlet imputing improper motives to the Magistrate who decided his case was held to constitute substantial interference with the due administration of justice. His conviction was accordingly upheld though sentence was reduced. In K. A. Mohammed Ali v. C. N. Prasannan, 1994 Supp (3) SCC 509: (1994 AIR SCW 4679), while arguing the case, the counsel raised his voice unusually high to the annoyance of the Magistrate and used derogatory, language against the Magistrate

before whom he conducted the trial of an accused. His conviction and sentence for contempt was accordingly upheld.

48. In Gillers "Regulation of Lawyers — Problems of Law and Ethics" (Third Edition — 1992) at page 747 it was pointed out that in spite of first Amendment protection of free speech, lawyers who committed contempt of the Court were punished by American Court even if they were advocating their client's interest at that time. The lawyer's behaviour threatens the dignity and authority of the Courts was held to constitute contempt of the Court.

49. In Charan Lal Sahu v. Union of India, (1988) 3 SCC 255: (AIR 1988 SC 107), in a petition under Article 32 of the Constitution the advocate indulged in mud-slinging against advocates and this Court. It was held that those allegations were likely to lower the prestige of this Court. This Court accordingly held that he committed contempt in drawing up the petition and directed to initiate proceedings against him for overstepping the limits in particular of self-restraint.

50. It would, thus, be seen that when the first writ petition was dismissed by this Court, as a responsible citizen, the petitioner would have kept quiet. When the result animated by the petitioner was not achieved, he embittered to foul at the process of this Court and emboldened to file the second writ petition with imputation made against this Court, in particular targetting the Chief Justice of India, Justice A. M. Ahmadi. As stated hereinbefore and need not be reiterated once over that it is the duty of the Court to hear and decide any matter posted for admission. Therefore, there is

nothing improper for the first Court presided over by the Chief Justice of India to hear and decide the matter. When it came up for admission, the Court appears to have been persuaded to ascertain the correctness of the allegations made in the writ petition. This Court obviously before issuing notice had sent for and directed the Solicitor General to obtain the information from the Government as to the correctness of the allegations made before deciding whether the Court would exercise its prerogative power under Article 32 to issue directions as sought for. In furtherance thereof, the Solicitor General admittedly placed before the Court the record. On perusal thereof, the first Court had declined to exercise the power as enumerated and obviously stated by the petitioner that the exercise of the power under Article 32 was not appropriate since the Government in the Defence Department could recover from the Prime Minister's Secretariat or from the Congress party, as the case may be, all the arrears, if any, due and payable by the respective entities. It is not obligatory for this Court to give reasons for dismissing the writ petition. Day in and day out in countless cases, while refusing to interfere with the orders this Court dismisses the petitions be it filed under Articles 32 or 136 of the Constitution *in limine.* It is also seen that though the case was adjourned for two weeks, no doubt, it was not posted on that day but it was listed some time thereafter. In the proceedings of the Court recorded by the staff, it was recorded that the Solicitor General for India appeared in the Court in his official capacity. Shri Dipankar Gupta as Solicitor General or in personal capacity obviously acted as *amicus* on behalf of the Court. Being the Solicitor General for India, he was directed to have consultation

with Government Departments and to obtain needed information. In appropriate cases this procedure is usually adopted by the Court. Recording of the proceedings by the Court generally is not noted by the Court. Is it improper for the Chief Justice to hear the case? Was the dismissal totally unjust and unfair for not recording the reasons? The petitioner obviously with half-baked knowledge in law mixed up the language as "improper for Chief Justice of India to hear it". Dismissal of the "grouse" of the petitioner was totally unjust, unfair, arbitrary and unlawful, flagrant violation of mandate of Article 14." "Violation of the sacred oath of office" and to "declare justice A_w M. Ahmadi unfit to hold the office as Chief Justice of India". When these imputations were pointed out to the petitioner by three-Judge Bench presided over by brother Verma, J. while dismissing the second writ petition, to be scandalous and reckless, he had stated that he "stood by" those allegations. He reiterated the same with justification in his pre-liminary submissions. He has stated that the accusations made were truthful and "carefully" worded. In this backdrop scenario, the effect of these imputations is obviously reckless apart from scandalising this Court, in particular the Chief Justice of India and was intended to foul the process of the Court or lower or at any rate tends to lower the authority of the Court in the estimate of the public and tends to undermine the efficacy of the judicial process. It would, therefore, be clear that the accusations are gross contempt. At the height of it, he stated that since the first writ petition was not disposed of by a bench of not less than five Judges, the writ petition was not dismissed in the eye of law and the order of dismissal is *non est* and it is "not decided and disposed of

> constitutionally". This assertion of the petitioner flies in the face of the judicial finality of the order of this Court and the assertion tends to question the authority of the Court. It creates tendency to obstruct the administration of justice and, therefore, it would be an outrageous criminal contempt."

Reliance in this regard can be further placed on the cases reported as *Ch. Ghulam Shakeel vs. SHO Naulakha* [1990 PCr.LJ 587], *The State vs. The Principal Bahawalpur Law College* [1991 MLD 914], *In re: Professional Conduct of Two Lawyers in Civil Misc. Petition No.45 of 1982* [1982 SCMR 713], *State vs. Mian Abbas Ahmed* [PLD 1989 Lah. 376] and *Attorney General for Pakistan vs. Yusuf Ali Khanb* [PLD 1972 SC 115].

9. Regarding the restrictions on fundamental right of speech and expression, the apex Court of Pakistan in the case reported as *The State vs. Sheikh Shaukat Ali & others* [PLD 1976 Lahore 355], held that:-

> "To justify their actions the contesting respondents placed reliance on fundamental right of "freedom of speech and expression" contained in Article 19 of the Constitution. This lays down that "every citizen shall have the right of freedom of speech and restrictions

> imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence ". The defence taken has no merit. It may be mentioned that the right is itself subject to the law of contempt. In other words, the right to freedom of speech and expression does not extend to the grant of a license to the citizens to commit contempt of Courts. In this connection Article 19 of the Constitution is in a way subject to Article 204 which now codifies the law of contempt of the superior Courts. It contains, if we can say so, constitutional safeguard against any attempt to scandalize the Court or undermine its dignity in public interest. The law of contempt of Court and the necessity for it is fully recognized in the countries practicing the Anglo-American System of administration of justice. This is a necessary concomitant of our system of administration of justice in force in this country."

Same view has been taken in the case reported as *Radha Mohan Lal vs. Rajasthan High Court* [AIR 2003 SC 1467]. In this regard, further notable cases can also be referred such as *Ranjit D. Udeshi vs. The State of Maharastra* [AIR 1965 Supreme Court 881], *The Superintendent and another vs. Dr. Ram Manohar Lohia* [AIR 1960 SC 633], *Leo Roy Frey vs. R. Prasad & others*

[AIR 1958 Punjab 377], (1999) 8-SCC 308 and (2005) 2-SCC 686 etc.

10. Undisputedly, in the light of principle of law laid down in the above referred judgments; while exercising the right of freedom and expression, which also includes the pleadings, an objectionable, scandalous and contemptuous language is not permissible and the same falls within the sphere of contempt of Court. In this regard, this Court has already held in the case reported as *Robkar-e-Adalat vs. Sardar Khalid Ibrahim* [2019 SCR 17] that:-

> ”6۔ عدلیہ کی نوعیت ذمہ داری کے پیش نظر آئینی و ذیلی قانون سازی کے تحت توہین عدالت کا تصور دیا گیا ہے ۔ تمام دساتیر میں نہ صرف بنیادی آئینی حقوق کا تحفظ کیا گیا ہے بلکہ ان حقوق کا موثر اطلاق و نفاذ آئین کی بنیادی روح و منشاء ہے۔ مہذب دنیا کی دساتیر میں سب سے اہم حصہ بنیادی حقوق کا تعین ہوتا ہے اور بقیہ آئین ان بنیادی حقوق کے اردگرد گھومتا ہے۔ اور عدلیہ کے وجود کا بڑ مقصد ہی آئین میں دیے گئے بنیادی حقوق کا تحفظ اور ان کے عملی نفاذ کو یقینی بنانا ہے۔ یہ ذمہ داری اسی وقت نبھائی جاسکتی ہے جب عدلیہ کو تحفظ حاصل ہو۔ اسی بات کے پیشِ نظر تمام دساتیر میں جہاں اظہارِ رائے کی آزادی کا حق فراہم کیا گیا ہے وہاں اس بنیادی حق کی حدود تعین کرتے ہوئے اسے چند شرائط سے منسلک کیا گیا جن مین دیگر شرائط کے علاوہ توہینِ عدالت کی قدغن بھی شامل ہے۔ اس ضمن میں آئین اسلامی جمہوریہ پاکستان ۱۹۷۳ ؁ء کا آرٹیکل ۱۹ بذیل درج ہے:۔
>
> "19. Freedom of Speech, etc. Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable

restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, commission of or incitement of an offence."

جبکہ اس ضمن میں آزاد جموں و کشمیر عبوری آئین ۱۹۷۴ ؁ء کے آرٹیکل ۴ کا ذیلی آرٹیکل ۹ بذیل درج ہے:-

"9. Freedom of speech. - Every State Subject shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of security of Azad Jammu and Kashmir, friendly relations with Pakistan, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence."

بنیادی آئینی حقوق میں دیئے گئے اسی تصور کو مدِ نظر رکھتے ہوئے الگ سے آئین اسلامی جمہوریہ پاکستان میں آرٹیکل ۲۰۴ اور آزاد جموں و کشمیر عبوری آئین ۱۹۷۴ ؁ء میں آرٹیکل ۴۵ کا نفاذ کیا گیااور آئین کی اس منشاء کے تحت ذیلی قوانین وضع کیے گئے۔ یہاں پر ہم اختصار کی غرض سے باقی ریاستوں کے دساتیرکے حوالہ جات سے اجتناب کرتے ہیں لیکن تمام دساتیر میں اسی قسم کی آئینی شقیں نافذالعمل ہیں۔ حتیٰ کہ توہین عدالت کے دائرہ کار اور اطلاق کے حوالے سے لاتعداد فیصلہ بھی موجود ہیں جن میں سے مطبوعہ مقدمات عنوانی باز محمد کاکڑ وغیرہ بنام وفاق پاکستان (پی ایل ڈی ۲۰۱۲ سپریم کورٹ ۸۷۰ اور ۹۲۳) کا حوالہ دیا جاسکتا ہے۔ لہذا آئین کی روح و منشاء کے مطابق توہین عدالت کی آئینی دفعات اور قوانین پر عملدرآمد نظام فراہمی انصاف کو یقینی بنانے کے لیے ناگزیر ہے۔ اور اگر عدلیہ کے ادارے کو یہ قانونی و آئینی تحفظ حاصل نہ ہو تو فراہمی انصاف کا عملی مظاہرہ ممکن نہیں ہے۔

۷۔ عدالتوں کو تحفظ نہ صرف اس وقت دنیا میں نافذ دساتیر کے مطابق بلکہ قرآن و سنت اور شرعی نقطہ نظر سے بھی حاصل ہے۔ توہین عدالت کے قانون کی شرعی حیثیت جانچنے کا معاملہ

وفاقی شرعی عدالت میں زیر غور آیا اور وفاقی شرعی عدالت کے مکمل بینچ نے متفقہ طور پر اس قانون کا قرآن و سنت کی روشنی میں جائزہ لینے کے بعد مطبوعہ فیصلہ پی ایل ڈی ۱۹۷۸ ایس سی ۲۰۰میں بذیل رائے قائم کی:-

> ''۔ یہ عدالت کا ادب و احترام ہے کہ خلیفہ وقت بھی ایک عام آدمی کی طرح قاضی کے سامنے پیش ہوتا ہے، اور قاضی کے احتراماً کھڑے ہونے کو وقار عدالت کے منافی سمجھتا ہے، بلکہ ایسے شخص کو اس عہدہ کا اہل نہیں سمجھتا جو عدالت کے وقار کو مجروح کرے اور ایسے شخص کو معزول کیا جاسکتا ہے۔''

۸۔ آئینی دفعات اور قوانین نافذالوقت یعنی قانون توہین عدالت۱۹۹۳ ء اور آزاد جموں و کشمیر عدالت العظمیٰ قواعد ۱۹۷۸ ء کے مطابق عدالت العظمیٰ اور عدالت العالیہ کو توہین عدالت کے معاملہ میں کُلی اختیار حاصل ہے ۔اس نسبت یہ عدالتیں کسی دائری درخواست کی محتاج نہ ہیں بلکہ از خود کارروائی کرنے کا کُلی اختیار رکھتی ہیں۔ اس حوالے سے ہماری رہنمائی مطبوعہ مقدمہ عنوانی پریتم پال بنام عدالت العالیہ مدھیا پردیش جبل پور (اے آئی آر ۱۹۹۲ سپریم کورٹ ۹۰۴)سے ہوتی ہے جس میں قرار دیا گیا ہے کہ:-

> "13. As rightly pointed out by the High Court, these contentions in our opinion do not merit any consideration since every High Court which is a Court of Record is vested with 'all powers' of such Court including the power to punish for contempt of itself and has inherent jurisdiction and inalienable right to uphold its dignity and authority.
>
> 14 to 23 .....
>
> 24. From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Arts. 129 and 215 respectively cannot be restricted and

trammeled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit. It would be appropriate, in this connection, to refer certain English authorities dealing with the power of the superior Courts as Courts of Record.

25. .....

26 to 41 .....

41. The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See D.N. Taneja v. Bhajan Lal, (1988) 3 SCC 26) and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any state or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemnor

> should be made aware of the charge against them and given a reasonable opportunity to defend himself."

اسی طرح آزاد جموں و کشمیر عبوری آئین ۱۹۷۴ ؁ء کے آرٹیکل ۴۵ میں بالصراحت درج ہے کہ عدالت العظمیٰ اور عدالت العالیہ کو توہین عدالت کے معاملہ میں سزاد ینے کا اختیار حاصل ہے۔ جبکہ اس نسبت آزاد جموں و کشمیر عدالت العظمیٰ قواعد ۱۹۷۸ ؁ء کے حکم XLVII ،قاعدہ- ۱ میں بالصراحت عدالت کو از خود کارروائی کا اختیار دیا گیا ہے۔ متعلقہ قاعدہ بذیل درج ہے:۔

> "1. The Court may take cognizance of its contempt suo motu or on a petition by any persons:
>
> Provided that where the alleged contempt consists of willful disobedience of any judgment, decree, direction, order, writ, or other process of the Court or a breach of an undertaking given to the Court or a Judge in Chambers, the Court may take cognizance suo motu or on a petition by the aggrieved person."

10. It has already been observed that the learned High Court while realizing the sensitivity of the issue and taking notice of such contemptuous act, has already initiated the contempt proceedings against the contemnor. Although, under the provisions of Article 45 of the Constitution read with Rule 1, Order XLVII of the AJ&K Supreme Court Rules, 1978 we can take suo motu action of such contemptuous act but we for the time being do

not opt to exercise our powers till finalization of the matter by the High Court.

11. Before proceeding further, we deem it appropriate to refer here some judicial record regarding the conduct of Mr. Mujahid Hussain Naqvi. It appears that he is in habit of filing scandalous, objectionable, indecent, immoral and contemptuous pleadings. He also remained involved in fraudulent acts, tampering with the record and filing of false affidavits and applications. During his service, he committed serious fraud and tampering with the record. After due process of law and holding of an inquiry his act of forgery and fraud was proved, consequently, vide notification dated 11.03.1998, the notification issued with tampering of record was recalled and proceedings under Efficiency and Discipline Rules, 1977 were ordered against him. In the inquiry, he was found guilty, whereupon, he was dismissed from service vide notification dated 09.05.1998, which reads as follows:-

"آزاد حکومت ریاست جموں و کشمیر مظفرآباد
سروسز اینڈ جنرل ایڈمنسٹریشن ڈیپارٹمنٹ

مظفرآباد
مورخہ۹-۵-۱۹۹۸

نوٹیفکیشن:

نمبر انتظامیہ/انکوائری ونگ/آئی ۹۸/۱۱۳/جناب وزیراعظم /اتھارٹی مجاز (جناب وزیراعظم) نے نوٹیفکیشن نمبر –انتظامیہ/انکوائری ونگ/آئی-۹۸/۱۱۳مورخہ ۱۱مارچ ۱۹۹۸کی بناء پر کی گئی کارروائی کی روشنی میں مسٹر مجاہد حسین نقوی افسر محکمہ اطلاعات حال آفیسر بکار خاص محکمہ سروسز کو ان کی درخواست نظر ثانی محررہ ۲۶-۱۱-۱۹۹۷ء پر جناب وزیراعظم سے منسوب کردہ احکام مصدر۲-۱۲-۱۹۹۷میں Tempering کرنے پر درخواست نظر ثانی کو قانونی تقاضے پورے کیے بغیر جناب وزیر اعظم سے دوھوکہ سے احکام حاصل کرنے، سرکاری ریکارڈ کو غیر قانونی طور پر مورخہ ۶-۱-۱۹۹۷سے تک اپنی تحویل میں رکھنے اور عدالت العالیہ سے۱۴-۱-۱۹۹۸کو حکم امتناعی حاصل کرنے کے بعد مورخہ ۱۶-۱۱-۱۹۹۸کو دفتر چیف سیکرٹری میں درخواست نظرثانی محررہ۲۶-۱۱-۱۹۹۸وصول کروانے کے الزامات ثابت ہونے کی وجہ سے ایفیشینسی اینڈ ڈسپلن رولز ۱۹۷۷ کے قاعدہ ۲(ڈی) کے تحت Misconduct کا مرتکب ہونے کی پاداش میں ایفیشینسی اینڈ ڈسپلن رولز ۱۹۷۷ کے قاعدہ ۴ بی (iv) کے تحت dismissed from serviceکی سزا دیئے جانے کی منظوری صادر فرمائی ہے۔

سیکشن آفیسر/سروسز/انکوائری"

In relation to his fraudulent act the Prime Minister of the time (Barrister Sultan Mehmood Chaudhary) also filed his personal affidavit, which reads as follows:-

"منکہ بیرسٹر سلطان محمود چوہدری وزیر اعظم آزاد حکومت
ریاست جموں و کشمیر مظفرآباد

مظہر حلفاً بیان کرتا ہے کہ مظہر کا حکم مصدرہ 19 جنوری 1998ء جو کہ چوہدری بشیر حسین سینئر ممبر بورڈ آف ریونیو (وقت) کی درخواست پر تحریر کیا گیا تھا، اس درخواست کے ساتھ عدالت عالیہ کے ایڈمشن آرڈر مورخہ 11-01-1998 ء کی نقل شامل تھی، جس میں میرے احکامات کو reproduce کیا گیا تھا۔ مظہر نے عدالت العالیہ کے حکم (ایڈمشن آرڈر) مصدرہ 11-01-1998 ء میں Reproducedحکم مصدرہ 02-12-1997ء کو ہی درست تصور کرتے ہوئے اس کی منسوخی کا حکم مصدرہ 19-01-1998 ء صادر کیا۔ اس وقت مظہر کے پاس اصل حکم مصدرہ 02-12-1997 ء یا اس سے متلعقہ ریکارڈ پیش نہیں گیا گیا تھا۔ بعد میں جب مظہر کے سامنے میرے اصل دستخطوں والے احکامات مورخہ 02-12-1997 ء کی دستاویز پیش کی گئی تو مظہر پر یہ بات ظاہر ہوئی کہ ان احکامات میں tempering کرتے ہوئے اضافہ کیا گیا ہے اور میرے اصل احکامات تحریر شدہ 02-12-1997 ء میں لفظ "بمنظوری" کا اضافہ اور لفظ "جانا" کو جاتا میں تبدیل کیا گیا ہے جبکہ آخری فقرہ کے الفاظ "بموزونیت مسڑنقوی کو بی-21 میں 16-05-1997ء سے ترقی دی جاتی ہے" مظہر نے صادر نہیں کیے ہیں۔ بلکہ متذکرہ الفاظ مظہر کے دستخط کرنے کے بعد جعل سازی کرتے ہوئے درج کیے گے ہیں۔ یہ تحریف (Tempering)/جعل سازی علم میں آنے پر مظہر نے انضباطی کاروئی کے احکامات صادر کیے۔

مظہر حلفاً بیان کرتا ہے کہ مندرجات بیان حلفی ہذا تا حد علم و یقین درست ہیں اور دانستہ کوئی امر پوشیدہ نہ رکھا گیا ہے۔

المحلف
(بیرسٹر سلطان
محمود چوہدری)
وزیراعظم

The matter came up to this Court in the case reported as *Azad Govt. & others vs. Mujahid Hussain Naqvi & another* [PLJ 2001 SC(AJ&K) 50], wherein it was held that:-

> “13. We have already reproduced the relevant passage in which the High Court indirectly set aside the finding that the respondent had been guilty of forgery. It needs no authority to state that finding of fact recorded by an administrative authority performing functions under a statute is sacrosanct It is also well settled that the High

Court sitting in its writ jurisdiction cannot substitute its opinion for the opinion of an administrative functionary. It has somewhat surprised us that it took only five sentences for the High Court to decide this question and to reach the conclusion that the Prime Minister had actually ordered the promotion of the respondent to B-21 and by implication holding that there was no forgery. The finding that the respondent was guilty of forgery was contained in the order of dismissal passed by the Prime Minister on 9th May 1998 which was present before the High Court as annexure 'D' filed by the writ petitioner. It is stated in the order that the Competent Authority (the Prime Minister) had reached the conclusion in light of the proceedings taken under notification dated 11th March 1998 that Mujahid Hussain Naqvi had tampered with the orders passed by the Prime Minister on 2nd December 1997. The notification of 11th March 1998 is annexure 'E' in the High Court file. It was issued on 11th March 1998 and it is stated in it that the Prime Minister acting as "Authority" under the (Efficiency and Discipline) Rules 1977 had directed that disciplinary proceedings may be taken against Mujahid Hussain Naqvi on the ground that he had interpolated the order passed by the Prime Minister. After the proceedings the charge was held to be proved. In our opinion the finding could not be taken lightly as has been done by the High Court The findings were recorded by the Prime Minister in his capacity as the Authority under Rule 8 of the Azad Jammu and Kashmir Civil Servant. (Efficiency and Discipline) Rules 1977. Under the said rule the Prim, Minister had the exclusive authority to determine the guilt of the respondent in light of the recommendation of the Authorised Officer. The onus of disproving

the finding was on the respondent but no material was brought on the record by the respondent. It was vehemently contended before us that there was an affidavit which went uncontested but fact of the matter is that the High Court has not based its finding on the affidavit. It may also be pointed out here that it has never been held by this Court that absence of a counter affidavit makes it obligatory for the Courts to believe an uncontested affidavit In fact the rule is that an uncontested affidavit has to be believed if there is no material to the contrary on the record. In the present case the material was available before the High Court in the shape of written statement as well as the file which the High Court had summoned from the Services Department. It may also be pointed out that the finding of tampering was recorded by the highest executive authority in the State who is independent and impartial. We note that throughout the litigation the respondent did not level any allegation against the person of the Prime Minister to challenge his impartiality. At the relevant time the respondent was Secretary Information of the Government which office could not be held by him if the position had been to the contrary. If we go by the assertion of the respondent it is the Prime Minister himself who is said to have passed the promotion order of the respondent. If it was actually so there was no question that the Prime Minister could have made a false statement that the respondent had been guilty of forgery. The averments made in the written statement filed by the respondent are fully supported by the record summoned from the Services Department but the High Court did not give any comment on it The file shows that the Prime Minister signed two orders in which he stated that Mujahid Hussain Naqvi had

interpolated his order of 2nd December 1997. One order was passed on 20th January 1998 when he ordered that disciplinary action may be taken against him. A similar order was passed by the Prime Minister on 5th of March 1998 which is a detailed order in which the Prime Minister pointed out the exact interpolation and tampering and confirmed the earlier order for initiating disciplinary, proceedings. Finally, when the Authorised Officer submitted his report to the Prime Minister he accepted it and ordered that the respondent be dismissed for misconduct consisting of forgery etc. The High Court has not even referred to these orders. We also find great force in the submission made by Mr. Abdul Rashid Abbasi that the order of 12th December 1997 in the form in which the respondent wants the Court to declare un-tampered in itself is contradictory and shows that it had been tampered with. The order in its one part says that the Chief Secretary should hear the parties and take further proceedings in the case and on the other hand it says that the review petition of Mujahid Hussain Naqvi is accepted and he is promoted to B-21. This in itself is a sufficient proof to justify the conclusion reached by administrative authorities that the order had been tampered with. The Government file does not contain this factor as basis of the conclusion that the original order had been tampered with. In presence of this weighty material the observation of the High Court that if the Prime Minister's order had been tampered with he should have said so rather that withdrawing it is merely conjectural. It is well settled that conjectures cannot take the place of proof. In the present case proof in support of the finding is voluminous while the conjecture relied upon

> by the High Court is nothing more than a mole as against a mountain. Therefore, we have no hesitation in setting aside the finding of the High Court that the order passed by the Prime Minister had not been tampered with."

These findings were subsequently upheld by this Court in the case titled *Azad Govt. & others vs. Mujahid Hussain Naqvi* [Civil Appeal No.165 of 2000 decided on 09.10.2012], in the following manner:-

> "18. Now we advert to the crucial question i.e., whether the High Court has rightly set aside the finding of fact recorded by the Prime Minister being an administrative Authority. It is celebrated principle of law that finding of fact recorded by an administrative Authority performing functions under a statute is sacrosanct. It is also settled now that the High Court, while exercising writ jurisdiction, cannot substitute its opinion for the opinion of the administrative Authority. The High Court has held that actually the Prime Minister had ordered the promotion of the respondent to grade B-21 and by implication, there was no forgery. The order of dismissal passed by the Prime Minister on 9.5.1998 after holding that the respondent was guilty of forgery was available before the High Court. In the aforesaid order it was stated that the competent Authority (the Prime Minister) had come to the conclusion in the light of the proceedings taken under notification dated 11.3.1998 that respondent, herein, had tampered with the order passed by the Prime Minister on 2.12.1997. It was also stated in the notification dated 11.3.1998 that the Prime Minister acting

as Authority under the E&D Rules, 1977, had directed for initiation of disciplinary proceedings against the respondent on the ground that he had interpolated the order passed by the Prime Minister. After due process, the charge was held to be proved. The finding was recorded by the Prime Minister in his capacity as the Authority under rule 8 of the E&D Rules, 1977. Rule 8 of the E&D Rules, 1977 may advantageously be reproduced below:—

> "8. Action by the authority, In the case of any proceedings the record of which has been reported for orders under sub-rule (4) of rule 6 or rule 7-A, the authority may pass such orders as it deems fit but before imposing a major penalty, the authority shall afford the accused an opportunity of being heard in person, either before himself or before an officer senior in rank to the accused designated for the purpose after taking into consideration the record of such personal hearing prepared by the officer so designated."

The perusal of the above provision reveals that the Prime Minister had the exclusive authority to determine the guilt of the respondent keeping in view the recommendations of the Authorised Officer. It was incumbent upon the respondent to prove his innocence and disprove the finding recorded by the Prime Minister but he miserably failed to bring on record any such material on the basis of which it could be ascertained that he has not committed any forgery. As said earlier, the material in the shape of written statement and the file summoned from the Services and General Administration Department, was available

before the High Court but the same was not properly looked into. It may be observed that the finding of forgery was recorded by an independent, impartial and highest executive authority of the State. Throughout the litigation, the respondent never challenged the impartiality of the Prime Minister. According to the assertion of the respondent, the Prime Minister himself allegedly has passed the promotion order of the respondent. If it was so, then there was no question that the Prime Minister could have made a false statement that the respondent had been guilty of tampering. The averments made in the written statement filed by the appellants, herein, before the High Court, are fully supported by the record summoned from the Services and General Administration Department but the High Court failed to give any finding on it. The record shows that two orders were passed by the Prime Minister in which he stated that the respondent had interpolated his order dated 2.12.1997. On 20.1.1998, an order was passed by the Prime Minister whereby he ordered that disciplinary action may be taken against the respondent. On 5.3.1998, a similar order was passed by the Prime Minister which is a detailed order in which he has pointed out the exact interpolation and tampering and confirmed the earlier order for initiating disciplinary proceedings against the respondent. Later on when the Authorised Officer submitted his report to the Prime Minister, the same was accepted and it was ordered that the respondent be dismissed from service for misconduct. The High Court failed to consider these orders properly.

It may be observed that the order dated 2.12.1997 which, according to the respondent,

is an un-tampered is itself contradictory and shows that it had been tampered with. For better understanding the position, here we again reproduce the alleged order passed by the Prime Minister. The order reads as under: —

"نامنظوری نظر ثانی درخواست تحت اپیل قواعد معاملہ یکسو کیا جاتا ہے۔ اس معاملہ میں انصاف کے تقاضے پورے کرنے کے لئے درخواست گزار اور مسئول کی سماعت کئے جانے کے احکامات مورخہ 11-4-1997کو دیئے گئے تھے جو نہیں کی گئی ۔آپ اسے دیکھ لیں اور مطابقاً مذید کاروائی عمل میں لائیں ۔بموزونیت مسٹر نقوی کوبی۔21میں 14-5-97 سے ترقی دی جاتی ہے۔"

The perusal of the above order reveals that it has two parts. In its one part, the Prime Minister has directed the Chief Secretary to hear the parties and take further proceedings in the case and in the other part, while accepting the review petition, the Prime Minister has promoted the respondent to grade B-21. In these circumstances the Prime Minister was justified to hold that the order has been tampered with. In presence of the above said material, the observation of the High Court that if the Prime Minister's order had been tampered with, he should have said so rather than withdrawing it, is merely conjectural and it is settled that conjectures cannot take the place of proof. Therefore, we have no hesitation in holding that the High Court has erred in holding that the order passed by the Prime Minister had not been tampered with which finding of the High Court is set aside accordingly."

Not only this but even in some other cases, he was found guilty of employing contemptuous, scandalous, objectionable, indecent and immoral

language. Reliance in this regard, can be placed on the case reported as *Mujahid Hussain Naqvi vs. Ehtesab Bureau & others* [2003 SCR 399], wherein it was held that:-

> "6. The appellant in para No.6 of his memo of appeal has alleged in a following manner:
>
> > "That in the meanwhile an incident of contempt of Court of the learned Judge of Shariat Court, Justice Hussain Mazhar Kaleem, cropped up, resulting in conviction of Registrar Shariat Court of Azad Jammu and Kashmir, Mr. Habib-ur-Rehman Shah who challenged his conviction through a writ petition before the High Court of Judicature of Azad Jammu and Kashmir. The Division Bench of learned High Court thus suspended the operation of the judgment and order of the Shariat Court in writ petition No.278/2002 on July 9, 2002, calling comments from the said Judge of the Shariat Court as well as other respondents. Similarly the Registrar of the Shariat Court moved an application to the learned Chief Justice of Shariat Court, the respondent No.7, to suspend the Shariat Court order of the learned Judge dated 8.7.2002. The learned Chief Justice of the Shariat Court took cognizance of the matter and passed an order dated July 10, 2002, on the said application. Mr. Justice Hussain Mazhar Kaleem engaged the petitioner as his counsel before the High Court to file objection as well as in the Supreme Court to file two separate

petitions for leave to appeal/revision petition against the orders of the learned High Court passed on 9.7.2002 in writ petition No.278/2002 as well as in criminal miscellaneous No. 121/2002. The petitioner thus having been appointed as counsel for Mr. Justice Hussain Mazhar Kaleem, the learned Judge of the Shariat Court having some personal animosity, enmity and vendetta with the learned Chief Justice of the Shariat Court, Mr. Justice Syed Manzoor Hussain Gillani, the respondent No.7, put in appearance in the writ proceedings as well as filed two petitions for leave to appeal/revision petitions before the learned Supreme Court of Azad Jammu and Kashmir. These petitions were taken up by the learned vacation Judge of the Supreme Court for hearing and the learned Judge in the Supreme Court was kind enough to issue notice for comments to the parties as well as his lordship was pleased to forthwith suspend the further proceedings being carried into effect by the learned Chief Justice of Shariat Court, i.e. the respondent No.7, in criminal file No. 121/2002. Copies of application moved by Syed Habib-ur-Rehman Shah, Registrar Shariat Court, in criminal Misc. No. 121/2002 as well as the order passed by the learned Chief Justice of the Shariat Court on July 10, 2002, are also attached herewith and have been marked as annexures 'PK' and 'PL'. This was what catalystically annoyed the learned Chief Justice of the Shariat Court already having decades old grudge-ship and personal vendetta with die humble

> petitioner since the days of advocacy of his lordship."

The aforesaid para of the memo of appeal again shows that the appellant has used the most scandalous and dirtiest language which is unbecoming of a good lawyer but we were told that the learned Chief Justice of the High Court/Shariat Court by showing his greatness has forgiven the appellant by putting up a note in a case titled Ehtesab Bureau vs. Mujahid Hussain Naqvi [Criminal Revision No. 107 of 2002 decided on 4.6.2003] which is reproduced below:

> I respectfully agree with the proposed judgment recorded by my learned brother Mr. Justice Sardar Muhammad Nawaz Khan, however, the petitioner during the course of arguments wanted me not to sit in the bench on the ground that he has filed an appeal in the Supreme Court against the order passed by me on 2.8.2002 in his bail application in which he has impleaded me as a respondent in the case and used unbecoming and unwanted language. I had read the contents of the appeal and ignored as I believe in the principle of forgive and forget, though, he could be proceeded against under Contempt of Court Act and for Professional Misconduct."

Same like in the case reported as *Mujahid Hussain Naqvi vs. Director Anti-Corruption & others* [2001 SCR 272], it was held that:-

> “10. Before parting with the judgment, I cannot close my eyes to the fact that the petitioner in

> his petition for leave to appeal as well as in the application for condonation of delay has employed a language which, on the face of it, appears to be scandalous, abusive and highly objectionable by highlighting the fact that he had strained relations with the Chairman Ehtesab Bureau, respondent No. 4, who happens to be the respectable retired Judge of the apex Court. The, language used in drafting the petition for leave to appeal is unbecoming of a senior Advocate of the Supreme Court. After all the decency and etiquettes demand that a due respect should be shown even to one's opponents and particularly to the Judges of the superior judiciary whether they are in service or out of it. When during the arguments the petitioner was confronted with the language used by him in drafting the petition he for sometime tried to justify his action but ultimately tendered apology to be careful in future. Such a sort of language which has been employed by the petitioner in drafting the petition for leave to appeal cannot be allowed to be repeated in future. Indeed such a practice is highly undesirable and is to be deprecated. Therefore, a warning is given to the petitioner that in future he would be careful while drafting his petitions in a scandalous and contemptuous manner, otherwise the law will take its own course."

12. Despite above referred warning of the Court, he being the slave of his habits, once again committed misconduct by filing an application against ex-Chief Justice of Azad Jammu and Kashmir (Mr. Justice Mohammad Azam Khan) containing the scandalous and

contemptuous contents. In the referred application he mischievously attributed to the then Hon'ble Chief Justice that:

> "…The things worsened when on 11th December, 2015, his esteemed lordship during the course of arguments in the case of Mst. Zainab-un-Nisa Kazmi vrs. District Education Officer (Female) Hattian Bala & others disbelieved my argumentation on recitation of *Kalema Tayyeba* in open Court in the unequivocal words: "میں آپ کے کلمہ کو نہیں مانتا" ….As if I was a non-believer or Dahrria"دہریہ"…."

While taking notice of his conduct, the Court took serious action against him, whereupon he tendered unconditional apology and admitted all his follies. In this regard, the withdrawal application, his explanation and statements are reproduced as under:-

> "1. Although to err is human and the memory of human beings (especially the petitioner) is very short, yet during his past professional career the petitioner tried his level best to be utmost submissive, respect giving, curtious and prestige catering advocate to the reverend Courts: Superior and Subordinate Judiciary of all levels as well towards his colleagues (Seniors and Juniors) in the legal profession, and even the litigants especially the opponents of the parties, he represented as advocate before the learned Courts. He also appeared before the dignitious Courts while pleading and

defending his own personal cases and causes at different occasions, and in the wake of representation spreading over a period of aggregating 45 years, hundreds of suits, writ petitions, PLAs, appeals, petitions and applications for transfer of cases were handed down and drafted by him as an Advocate. Wherein, inspite of exercise of all human caution and care some word, figure, sign or gesture might have been inadvertently used therein, which might have been tantamount to be ridiculous, non-prestigious, scandalous or discourteous, regarding the learned Judges (of the time) of this Hon'ble Court; some of whom have passed away from this mortal world and some are not currently on the roster of the Judges of the reverend Supreme Court. Be that as it may, as well the details of the cases not being in petitioner's fresh /ripe knowledge, he cuts a very sorry figure on any such folly/mistake or use of even a single misappropriate word or narration therein, and has nothing else but to offer heartfelt apologies to their falcon heights dignity commanding persons of legal elite in the society of the past.

2. The petitioner thus intends to retrospectively withdraw any such ridiculous or non-prestigious move/transfer application while tendering unqualified apologies from (the then) reverend Judges of the Superior most judiciary especially from the souls of the (Late) Chief Justice Sardar Said Muhammad Khan and (Late) Chief Justice Mohammad Younas Sarakhvl, besides the legend living Chief Justices ®

Ch. Mohammad Azam Khan as well from the reverend current Chief Justice of Azad Jammu and Kashmir Mr. Justice Ch. Muhammad Ibrahim Zia Esq, for any discourteous gesture or remarks used any time before. He thus retrospectively withdraws from any such presentation which request may very generously and graciously be acceded to. Of course, he from the very interior of his heart, is ashamed as to why a word or expression used by him appeared and even smelled to be non-fragrant, odorous, baseless or scandulous from any stretch of legal imagination?

3. The petitioner begs to remain Sir with thousands, of apologies;

'اللہ رب العزت سبحانہ و تعالی میری سب کوتائیاں اور گناہ معاف فرمائیں۔(آمین)

" جناب عالی!
وضاحت عنوان بالا کے تسلسل میں مزید گزارشات بذیل ہیں:۔

1۔ یہ کہ درخواست گزار وضاحت قبل ازیں داخل کردہ بتاریخ 28.02.2018 کے تسلسل میں عرض گزار ہے کہ سائل وضاحت پیش کردہ کے پیرا گراف نمبر 1 کی عبارت کو وضاحت متذکرہ سے حذف کرانے کا خواستگار ہے۔ اس سے (withdrawal) ہوتا ہے۔ بمہربانی اجازت مرحمت فرمائی جائے۔

2۔ یہ کہ وضاحت متذکرہ الصدر کے تسلسل میں مورخہ 06.03.2018 (بزبان انگریزی) پیش کردہ (withdrawal) درخواست میں درخواست گزار دیگر معزز و محترم سابق چیف جسٹس و جج صاحبان فاضل سپریم کورٹ کا تذکرہ کرتے وقت ایک انتہائی واجب الحترام اور قابل ترین فاضل جج عدالت العظمیٰ (وقت) جناب جسٹس بشارت احمد شیخ کا تذکرہ کرنا سہواً بھول گیا۔ جن کی اوعلیٰ اور کمال کی شخصیت سے بھی ہر قسم کی گستاخی

اور بے ادبی کی دل کی گہرائیوں سے معذرت کرتا ہوں اور یہ اظہار کرنے میں سائل کو ہر گز کوئی باک نہیں کہ صاحب ممدوح ایک اعلیٰ پائے کی شخصیت اور عظیم ترین جج سپریم کورٹ تھے۔ جو اپنی لازوال تحریروں اور فیصلہ جات کے ذریعہ ہمیشہ وکلاء برادری کے آذہان اور قانون کی لائیبریریوں میں زندہ و تابندہ رہیں گے۔ اللہ رب العزت سبحانہ و تعالیٰ سے دعا ہے کہ وہ مجھ جیسے ناچیز اور حقیر انسان کی سب کوتاہیاں اور گناہ معاف فرمائے۔

3۔ یہ کہ معاملہ عنوان بالا میں مورخہ 08.03.2018 کو داخل کردہ بیان حلفی میں درخواست گزار کے نام کے ساتھ ایڈریس کے طور پر 'سابق سینئر سیکرٹری حکومت' کے الفاظ اضافی اور غیر ضروری طور پر مستعمل ہو گئے ہیں۔ جن کو بیان حلفی مذکورہ سے حذف کرنے کی بھی مودبانہ استدعا کی جاتی ہے۔

بمہربانی بمنظوری عرضی ہذا مناسب احکام صادر فرمائے جائیں۔"

"بیان با اقرار صالح بتقرر 15.03.2018

سید مجاہد حسین نقوی ولد سید ظہور حسین نقوی ساکنہ بی۔29 اپر چھتر ہاوسنگ سکیم قومی شناختی کارخ نمبر 9-3940875-82203

بر سر اجلاس بیان کیا کہ مظہر نے آج جو درکواست پیش کی ہے اس کے مندرجات صحیح اور درست تسلیم کرتے ہوئے بقائمی ہوش و حواس اپنی آزاد مرضی سے پیش کی ہے۔ جس کے مطابق مظہر نے سابقہ عرصہ میں جتنی بھی درخواست ہا یا باقی کسی تحریر میں اعلیٰ عدلیہ کی ججوں کے خلاف مختلف الزامات یا دیگر نا مناسب الفاظ منسوب کیے ان سب سے دستبرداری کا اعلان کرتا ہے اور غیر مشروط طور پر معافی مانگتے ہوئے استدعا کرتا ہے کہ ان ساری باتوں، الزامات کو سابقہ درخواست ہاء میں سے حذف کیا جائے۔ مظہر یہ بھی بیان کرتا ہے کہ مظہر اب دماغی جسمانی طور پر بالکل تندرست ہے۔ مظہر کا بیان اسی قدر ہے۔ "

Even he has not spared the constitutional heal of the state i.e. the President by filing false affidavit in

which he has levelled the contemptuous, scandalous, indecent and immoral allegations. The affidavit is available on record in the file titled *Mujahid Hussain Naqvi vs. Chief Election Commissioner & others* [Civil PLA No.348 of 2016 decided on 15.05.2018]. In the referred notification, he has levelled allegation against the President that he is not a Muslim. In view of his conduct, the petitioner (Mujahid Hussain Naqvi) has earned perpetual disqualification to be enrolled as an Advocate or to practice as such.

13. For the above sated reasons and principle of law discussed, we deem it appropriate while exercising constitutional powers vested in this Court to direct all the concerned including the State Judicial Policy Making Committee to take necessary steps to provide express provisions in the Procedural Rules of every Court for not entertaining any lis offending the limits prescribed under the Constitution. The concerned officials of the Courts are duty bound to carefully examine the cases presented to them and the appeals, writ petitions, applications, etc.

and the documents which are irrelevant, scandalous, contemptuous, scandalous and against the public order, decency and morality, should not be entertained.

14. Even otherwise, such like writ is also not maintainable in the light of principle of law laid down by the apex Court of Pakistan in the case reported as *Muhammad Ikram Chaudhary vs. Federation of Pakistan* [PLD 1998 SC 103]. It has been held in the referred judgment that:-:-

> "A perusal of the above clause indicates that on an information received from the Council or from any other source, the President is of the opinion that a Judge of the Supreme Court or of a High Court may be incapable of properly performing his duties of his office by reason of physical or mental incapacity or may have been guilty of misconduct, he shall direct the Council to inquire into the matter. The above clause does not admit filing of a Constitutional petition for a direction to the Supreme Judicial Council or to the President to initiate proceedings of a judicial misconduct against a Judge of a superior Court by a practicing lawyer or any other citizen of Pakistan. The wisdom seems to be that in order to keep the Judges free from being pressurized through frivolous Constitutional petitions or other legal proceedings for filing of a Reference, the framers of the Constitution provided above mechanism. This Court or a High Court cannot take upon itself the exercise to record even a tentative finding that a particular Judge has committed misconduct warranting filing of a reference against him under Article 209 of the

> Constitution as it will be contrary to the language and spirit of the said Article."

15. For maintaining the intra-institutional harmony and keeping in view the integrity of the institution we would not like to comment upon the mode of conducting the proceedings in this writ petition, specially, when the learned division bench of the High Court has already declared the writ petition non-maintainable and initiated contempt proceedings. In this context the hereinabove reproduced comments of the High Court are speaking and self-explanatory, hence, no further clarification is required. The timely realization of the sensitivity of the issue by the High Court and steps taken for independence of the judiciary are appreciated. However, in view of the importance of the matter, it is desired that the contempt proceedings initiated by the High Court may be disposed of by the larger bench. In our considered opinion it is the common duty of all the Courts and Judges to maintain the dignity, repute and independence of judiciary, specially, intra-institutional harmony and no blackmailer, exploiter or law offender should be allowed to play with the

dignity, respect, harmony and independence of the Judiciary and the Judges.

16. So far as the conduct of the respondent is concerned, as he has made true statement before the Court and also without defending placed himself at the mercy of the Court, therefore, his conduct proves that he has not intentionally done any act to scandalize or lower down the dignity of the Court or Judges, therefore, while accepting his apology, notice issued against him is recalled and he is discharged.

It has already been stated that this order only relates to disposal of points No.(i) and (ii). The office shall fix the file for arguments on points No.(iii) and (iv), on some suitable date.

JUDGE CHIEF JUSTICE JUDGE

Muzaffarabad.
30.03.2020