Protection To Judicial Officers

S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in

Part : A

1(A). Judicial Officers perform sovereign judicial functions of the State : A Judicial Officer is not an ordinary government servant. He exercises sovereign judicial functions and powers of the State. Judicial Officer holds office of great trust and responsibility and his conduct must be beyond suspicion. Personality of an honest Judicial Officer is ultimate guarantee to justice. A slightest dishonesty by him may have disastrous effects. See **: High Court of Judicature at Patna Vs. Shiveshwar Narayan and Another, 2011 (3) SLJ 392 (SC)=(2011) 15 SCC 317.**

1(B). Judicial Officers exercise sovereign judicial powers of the State like members of the Council of Ministers & Legislatures : The judicial service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to e conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State-power are the ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity is between the political executive, the legislators and the judges and not between the Judges and the administrative executive. This distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a

stake in ensuring the independence of the judiciary, and no price is too heavy to secure it. To keep the judges in want of the essential accoutrement's and thus to impede them in the proper discharge of their duties is to impair and whittle away justice itself. See : **All India Judges' Association Vs. Union of India & Others, AIR 1993 SC 2493 (Three-Judge Bench)** (Para 4).

1(C). Judicial and legal services are not like any other services : Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of undertrials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial. Vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. In spite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. Presiding Officer of a court cannot rest in the state of helplessness. See : **Hussain Vs. Union of India, AIR 2017 SC 1362 (para 26).**

2(A). Laws governing services of Judicial Officers: Various laws governing the services of Judicial Officers are as under :

(1a). Article 235 of the Constitution of India

(1) Articles 309, 310 & 311 of the Constitution of India
(2) The Judicial Officers' Protection Act, 1850
(3) The Judges (Protection) Act, 1985
(4) Section 52 IPC
(5) Section 77 IPC
(6) Section 228 IPC
(7) Section 197 CrPC
(8) Uttar Pradesh Judicial Service Rules, 2001
(9) Uttar Pradesh Higher Judicial Service Rules, 1975
(10) Section 19 of the Prevention of Corruption Act, 1988
(11) Sub-sections (6), (7), (12) of Section 57 of the Evidence Act, 1872
(12) Section 114(e) of the Evidence Act, 1872

(13) Contempt of Courts Act, 1971
(14) Allahabad High Court Rules, 1952
(15) UP Government Servants Conduct Rules, 1956
(16) UP Government Servant (Discipline & Appeal) Rules, 1999
(17) Public Servants (Inquiries) Act, 1850
(18) Uttar Pradesh Class II services (Imposition of Minor Punishments) Rules, 1973
(19) Principles of Natural Justice
(20) UP Government Servants Seniority Rules, 1991
(21) UP Government Servants Resignation Rules, 2000
(22) UP Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974
(23) Uttar Pradesh Government servant (Petition for Adverse ACRs and Disposal of Matters Relating Thereto) Rules, 1995
(24) UP Temporary Government Servants (Termination of Service) Rules, 1975
(25) CCA Rules i.e. Civil Services (Classification, Control & Appeal) Rules, 1930
(26) Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992,
(27) Rules in Financial Hand Books
(28) G.Os. & Government Notifications
(29) Judicial Pronouncements
(30) Scheme of Destiny and Divinity.

2(B). **Conditions of service of civil servants including Judicial Officers :** Generally speaking, subject to the rules governing the services of the civil servants, following are the conditions of service applicable to them:

(i) Salary or wages
(ii) Periodical increments
(iii) Seniority
(iv) Promotion
(v) Leave
(vi) Provident fund
(vii) Gratuity
(viii) Subsistence allowance during suspension
(ix) Disciplinary proceedings
(x) Tenure or termination of service
(xi) Deputation
(xii) Transfer
(xiii) Superannuation
(xiv) Pension.

2(C). Judicial Officer holds his post during the pleasure of the Governor : Article 310 of the Constitution of India provides that a civil servant holds his post during the pleasure of the President or the Governor of the State.

2(D). Doctrine of pleasure & constitutional safeguards : The 'doctrine of pleasure' is a constitutional necessity, for the reasons that the difficulty in dismissing those public servants whose continuance in office is detrimental to the State would, in case necessity arises to prove some offence to the satisfaction of the court, be such as to seriously impede the working of public service. Article 309 of the Constitution is subject to the provisions of the Constitution. Hence, the rules and regulations made relating to the conditions of services under Article 309 are subject to Articles 310 and 311 of the Constitution. See: **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

2(E). Applicability of doctrine of pleasure is subject to rule of law: There is distinction between the doctrine of pleasure as it existed in a feudal set up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set up unfettered power and discretion of the crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good. See : **B.P. Singhal Vs. Union of India (2010) 6 SCC 331(Five-Judge Bench).**

2(F). Doctrine of pleasure is a constitutional necessity : The "pleasure doctrine" is a constitutional necessity for the reason that the difficulty in dismissing those public servants whose continuance in office is detrimental to the State, would in case necessity arises to prove some offence to the satisfaction of the court, be such as to seriously impede the working of public services**.** See : **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351 (Three-Judge Bench).**

2(G). Clauses (1) & (2) of Article 311 impose restrictions upon the President or the Governor on exercise of his power of pleasure under Article 310(1) : Article 309 of the Constitution is subject to the provisions of the Constitution. Hence, the rules and regulations made relating to the conditions of service under Article 309 are subject to Articles 310 and 311 of the Constitution. It is worth mentioning that the opening words of Article 310 "Except as expressly provided by this Constitution" make it clear that a government servant holds the office during the pleasure of the President or the Governor except as expressly provided by the Constitution. From a bare perusal of the provisions contained in Article 311 of the Constitution, it is manifestly clear that

clauses (1) and (2) of Article 311 impose restrictions upon the exercise of powers by the President or the Governor of the State of his pleasure under Article 310(1) of the Constitution. However, proviso to Article 311(2) makes it clear that Article 311(2) shall not apply inter alia where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold an enquiry before termination of service. See : **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

2(H). Withdrawal of pleasure cannot be at the sweet will, whim & fancy of the authority: In a democracy governed by the rule of law, where arbitrariness in any form is eschewed, no government or authority has the right to do what it pleases. Where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons. The doctrine of pleasure is not a licence to act with unfettered discretion, to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of pleasure. See : **B.P. Singhal Vs. Union of India, (2010) 6 SCC 331(Five-Judge Bench).**

3(A). Control of High Court over sub-ordinate judiciary is comprehensive, exclusive and effective: Control of High Court over sub-ordinate judiciary under Article 235 of the Constitution of India is comprehensive, exclusive and effective and is to sub-serve a basic feature of the Constitution i. e. independence of judiciary. See:

(i). Prakash Singh Badal Vs. State of Punjab, (2007) 1SCC 1 (Para 80).

(ii). High Court of Judicature for Rajasthan Vs. Ramesh Chandra Paliwal, (1998) 3 SCC 72.

(iii). Registrar(Admin), High Court of Orissa Vs. Sisir Kanta Satpathy,(1999) 7 SCC 725.

3(B). The Judicial Officers' Protection Act, 1850 : The Judicial Officers' Protection Act, 1850 contains only one section and is aimed at providing protection to the judicial officers acting in **good faith** in their **judicial capacity**. Section 1 of the 1850 Act reads as under :

"**Section 1--- Non liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders**—No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction : Provided that he at the time in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

3(C). The Judges (Protection) Act, 1985 : Parliament passed The Judges (Protection) Act, 1985 to provide certain additional protections to Judges and Magistrates in addition to what was already available to them under The Judicial Officers' Protection Act, 1850. Certain important provisions contained under the Judges (Protection) Act, 1985 are as under :

"**Section 3: Additional Protection to Judges:** (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-sec. (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-sec. (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

"**Sec.4: Saving:**The provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges."

4. The Judges (Inquiry) Act, 1968 : The Judges (Inquiry) Act, 1968 has been enacted by the Parliament to regulate the procedure for the investigation and proof of the **misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court** and for the presentation of an address by Parliament to the President and for matters connected therewith. This Act does not cover the matter of protection to the Judicial Officers of the subordinate judiciary and exclusively deals with the matters like misbehaviour or incapacity of the Judges of the Supreme Court and High Courts.

5(A). Protection to Judges u/s 77 IPC : Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith, he believes to be, given to him by law.

5(B). Acting in good faith---- when to be inferred? : Word "good faith" has been defined in Section 52 of the IPC which reads as under—

5(C). "Good faith" & its definition : (Section 52 IPC) : Nothing is said to be done or believed in 'good faith' which is done or believed without **due care and attention**."

5(E). Good reputation and personal security: A good reputation is an element of personal security. See: **Union of India Vs. State of Maharashtra, (2020) 4SCC 761 (Three-Judge Bench)**

6(A-1). **Lawyers and litigants cannot be allowed to terrorize or intimidate Judges with a view to secure orders which they want :** No lawyer or litigant can be permitted to browbeat the Court or malign the Presiding Officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to terrorize or intimidate Judges with a view to secure orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. A litigant cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand. At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance, for the proper administration of justice, that judicial powers must be exercised impartially and within the bounds of law. It must always be remembered that justice must not only be done but it must also be seen to be done. **See : M/s. Chetak Construction Ltd** Vs. **Om Prakash & Others, AIR 1998 SC 1855 (paras 19 & 20)**.

6(A-2). **Only because a lawyer appears as a party in person in his own case, he does not get a license to commit contempt of Court by intimidating the Judges or scandalizing the Courts :** Does the law give a lawyer, unsatisfied with the result of a case, any licence to permit himself the liberty of scandalizing a Court by casting unwarranted imputations against the Judge in discharge of his judicial functions? Does the lawyer enjoy any special immunity under the Contempt of Courts Act, 1971 where he is found to have committed a gross contempt of Court? The answer has to be an emphatic No. In the instant case, the alleged contemnor has been making continuous attempts to subvert the course of justice in whichever Court his case was. He has been acting not only as if he is above the law but as if he is law unto himself. Notwithstanding his own

assessment of his 'merit and 'competence' as stated by him in the memo of petitions, the alleged contemnor appears to be blissfully ignorant of the role of a lawyer and the law relating to drafting of pleadings which must be precise and not scandalous or abusive. By filing the applications, and the petition, as a party in person, couched in very objectionable language, he has permitted himself the liberty of indulging in an action which does little credit to the noble profession to which he belongs. An advocate has no wider protection than a layman when he commits an act which amounts to contempt of Court. It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. Only because a lawyer appears as a party in person, he does not get a license to commit contempt of the Court by intimidating the Judges or scandalizing the Courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary and which has the tendency to interfere in the administration of justice and undermine the dignity of the Court and the majesty of law. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the Courts and for upholding the majesty of law. Judges and Courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken, but made without any malice and without attempting to impair the administration of justice and made in good faith in proper language do not attract any punishment for contempt of Court. However, when from the criticism, a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute; the Courts must bitter themselves to uphold their dignity and the majesty of law. The alleged contemnor, has, undoubtedly committed contempt of the Court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalizing the Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions, as it undoubtedly amounts to an interference with the due course of administration of justice. No litigant, even a lawyer appearing in person in his own cause, can be permitted to overstep the limits of fair, bona fide and reasonable criticism of the judgment and bring the Courts generally into disrepute or attribute motives to the Judges rendering the judgment. Perversity calculated to undermine the judicial system and the prestige of the Court cannot be permitted for otherwise the very foundation of the judicial system is bound to be undermined and weakened. Liberty of free expression is not to be confused with a licence to

make unfounded, unwarranted and irresponsible aspersions against the Judges or the Courts in relation to judicial matters. In the established facts of the case, the alleged contemnor would be guilty of gross contempt of Court and liable to be convicted accordingly. The alleged contemnor sentenced to undergo simple imprisonment for a period of four months and to pay a fine of Rs. 1,000/- (one thousand) and in default of payment of fine, to further undergo simple imprisonment for a period of 15 days. Since the contemnor has abused professional privileges while practicing as an Advocate, the Supreme Court also directed that the copy of the judgment together with the relevant record be forwarded to the Chairman, Bar Council of India, who may refer the case to the concerned committee for appropriate action as is considered fit and proper. See : **In re Ajay Kumar Pandey, Advocate, AIR 1998 SC 3299.**

6(B). A judicial officer is entitled to protection against the litigants to whom his decision might offend : A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a Judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the Judge had come to a particular decision or conclusion. A Judge is not bound to explain later on for what reason he had come to such a conclusion. A Judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is per se illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt Judges, but to protect the public from the dangers to which the administration of justice would be exposed if the judicial officers concerned were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A Judge should be free to make independent decisions. See : **Khanapuram Gandaiah Vs. Administrative Officer, (2010) 2 SCC 1***(paras 11 & 13)***=AIR 2010 SCC 615.**

7. **Judicial Officers cannot have two standards of conduct whether in court or outside court :** In the case noted below, the petitioner was a member of the Uttar Pradesh State Judicial Service. He was appointed as Munsif on 27.01.1979 and posted at Aligarh. When he was working at Aligarh, he sought permission of the High Court to study LL.M. course of the Aligarh University. He appeared for 1st Semester examination in July, 1980. He was found to have used unfair means in the examination. The Registrar, Aligarh Muslim University, informed the District Judge, Aligarh that the petitioner was found copying from the manuscript lying with his answer book. The District Judge thereupon communicated all the information to the

High Court. Upon receipt of the information, the High Court referred the matter to Vigilance Cell with the direction to conduct necessary inquiry into the matter. The Cell submitted its report on 18.09.1980 which was placed before the Administrative Committee. The Administrative Committee resolved that disciplinary proceedings be initiated against the petitioner and he in the meanwhile be placed under suspension. In pursuance of the said resolution, the petitioner was placed under suspension and the Disciplinary inquiry was entrusted to one Hon'ble Judge of the High Court. A charge-sheet was supplied to him and after providing him opportunity of hearing, enquiry report was submitted against him wherein he was found guilty of the said charge. The enquiry report was placed before the Full Court of the High Court and the delinquent Munsif/petitioner was removed from service. The petitioner, in judicial side, took the plea that as his examination at the LL.M. was already cancelled by the Aligarh Muslim University, therefore, he could not have been punished twice for the same misconduct and could not have been removed from service. The Supreme Court dismissed his petition by holding that the Judicial Officers cannot have two standards, one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. A judicial officer, who has been found guilty of using unfair means in the LL.M. Examination, is undoubtedly not a fit person to be retained in judicial service. Rule of double jeopardy as envisaged in **Article 20(2)** of the Constitution of India does not apply in such matters. See **: Daya Shankar Vs. High Court of Allahabad, AIR 1987 SC 1469 (Para 11).**

8(A). <u>Protection under the Judicial Officers' Protection Act, 1850</u> <u>when Available</u> ? : Where an Executive Officer/Sub-Divisional Officer was holding two offices----one as Executive Office as a Sub-Divisional Officer and the other as Judicial Officer as Sub-Divisional Magistrate and had ordered the arrest of a person for an offence u/s 436 IPC but the proceedings were closed without any trial and thereafter the aggrieved person filed a suit for damages against the Sub-Divisional Officer, the Supreme Court, interpreting the scope of Section 1 of the Judicial Officers' Protection Act, 1850 held that **:** "In view of the admission made by the SDO that he had not taken cognizance as a Magistrate of the offence against the plaintiff before ordering his arrest, and his main defence that he had acted under the direction of his Superior Executive Officer, he must be held to have acted in his executive capacity and not in discharge of his duties as a Magistrate and hence was not entitled to protection under the 1850 Act. **The Judicial Officers Protection Act, 1850 protects a judicial officer only when he is acting in his judicial capacity and not in any other capacity**. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no inquiry will be entertained whether the act done or ordered to be done was erroneous, irregular or even illegal, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. If the act done or ordered to be done is not within the limits of his jurisdiction, the Judicial Officer

acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act. The expression "jurisdiction" does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter." See : **Anowar Hussain Vs. Ajoy Kumar Mukherjee, AIR 1965 SC 1651**

8(B). **Judicial Officer entitled to protection of the 'Judicial Officers' Protection Act, 1850' even when he had passed the order beyond his jurisdiction** : In the case noted below, an Additional Subordinate judge dismissed the suit of the plaintiff/appellant and decreed that of the then defendant. During the pendency of the decree holder's petition for execution of the decree and that of the appellant for its stay, the plaintiff/appellant issued a notice to the judge *inter alia* alleging that in his judgment he had created new facts by making third version without evidence; that he had intentionally, with bad faith and maliciously, distorted the existing oral and documentary evidence; that he had maintained different standards in the same judgment; that he had side-tracked the binding direct decisions of the High Courts and the Supreme Court; and that in the circumstances he could be said to have acted with mala fide exercise of powers without jurisdiction and, therefore, he was liable for damages for the loss incurred by the appellant and for the injury. The Supreme Court, interpreting the provisions of Section 1 of the Judicial Officers' Protection Act, 1850 held thus : "If the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from the protection of Sec. 1 of the Judicial Officers Protection Act, 1850 the complainant has to establish that--- **(i) the judicial officer complained against was acting without any jurisdiction whatsoever**; and **(ii) he was acting without good faith in believing himself to have jurisdiction**. The expression "jurisdiction" in this section has not been used in the limited sense of the term, as connoting the 'power' to do or order to do the particular act complained of, but is used in a wide sense meaning 'generally the authority of the judicial officer to act in the matters'. Therefore, if the judicial officer had the general authority to enter upon the enquiry into the cause, action, petition or other proceedings in the course of which the impugned act was done or ordered by him in his judicial capacity, the act, even if erroneous, will still be within his 'jurisdiction', and the mere fact that it was erroneous will not put it beyond his 'jurisdiction'. Error in the exercise of jurisdiction will not put it beyond his 'jurisdiction'. Error in the exercise of jurisdiction is not to be confused with lack of jurisdiction in entertaining the cause or proceeding. Initiation of criminal contempt proceedings against the appellant was held proper by the Supreme Court. See : **Rachapudi Subba Rao Vs. Advocate General, A.P., (1981) 2 SCC 577.**

8(C). **Disciplinary proceedings against Judicial Officer cannot be initiated merely for passing wrong orders:** In case a Judicial Officer passes a wrong order which is

against the settled legal norms but there is no allegation of any extraneous influences leading to the passing of such order, then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the Judicial Officer concerned. These matters can be taken into consideration while considering the career progression of the concerned Judicial Officer. Once note of the wrong order is taken and they form part of the service record, these can be taken into consideration to deny selection grade and promotion etc. and in case there is continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the Judicial Officer in accordance with the Rules. Thus, unless there are clear –cut allegations of misconduct, extraneous influences or gratification of any kind etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the Judicial Officer or merely on the ground that the judicial order is incorrect. **See: Krishna Prasad Verma(Dead) through LRs Vs. State of Bihar, AIR 2019 SC 4852**

8(D). Compulsory retirement of JMFC-cum-Civil Judge Junior Division for granting bail u/s 307 IPC and granting ex parte injunction and then recalling the same next day: Where a Judicial Magistrate First Class –cum- Civil Judge Junior Division was found guilty for granting bail for the offence u/s 307 IPC and granting ex parte injunction in civil suits and then recalling the same next day, the Gujarat High Court compulsorily retired the said Judicial Officer. On challenge of the order of compulsory retirement in judicial side, the Gujarat High Court set aside the compulsory retirement but refused to reinstate him on the ground that he was aged about 53 years and was out of judicial service for the last eight years. The Supreme Court set aside the order of non-reinstatement by holding that once the charges were found not proved, honour and dignity of the Judicial Officer required that he should have been brought back in service. The Judicial Officer had already crossed the age of superannuation. Hence, the Supreme Court directed the State to pay a lump-sum amount Rs, 20,000,00/- to the said Judicial Officer. **See: Yogesh M. Vyas vs. Registrar, High Court of Gujarat, AIR 2019 SC 4192.**

8(E). CJM compulsorily retired for acquitting accused for offences u/s 120-B, 406, 420, 467, 468, 471,474 IPC: The petitioner Ram Murti Yadav as the Chief Judicial Magistrate, Bhadohi acquitted the accused by his judgment dated 17.09.2007 in Criminal case titled State Vs. Mohd. Ayub for the offences u/s 120-B, 406, 420, 467, 468, 471,474 of the IPC. A complaint was made against him to the Allahabad High Court. The Administrative Judge made recommendation for vigilance inquiry against him and a report adverse to him was submitted by the inquiry officer. A censure entry was recorded against him by the Administrative Judge. He did not challenge the adverse entries recorded in his character roll. The judgment of acquittal recorded by him was also reversed in appeal and the accused stood convicted. In departmental

enquiry also, he was found guilty. Meanwhile, he was promoted as the Addl. District Judge.His performance chart showed that his assessment during the period from 1996-97 was recorded as a "Fair or Good Officer" except for one entry as " Very Good Officer' for the year 2011-12. A committee of three Hon'ble Judges of the High Court constituted for screening of the Judicial Officers recommended for his compulsory retirement from service. The Full Court of the High Court accepted the recommendations and endorsed his compulsory retirement. The Governor i. e. the State Government issued the final order compulsorily retiring him from service. His writ petition challenging his compulsory retirement was dismissed by the Allahabad High Court. The SLP filed by him before the Supreme Court was also dismissed. The Supreme Court while upholding his compulsory retirement held that dispensation of justice is not only an onerous duty but also a pious one and hence, standards of probity, conduct and integrity that may be relevant for performance of other jobs is higher for judicial officers who hold office of public trust. Standard or yardstick for judging conduct of judicial officers has therefore necessarily to be strict. However, that does not mean that every inadvertent flow or error would make judicial officer culpable. Bona fide error may need correction or counselling but a conduct which creates perception beyond ordinary cannot be countenanced. For a trained legal mind, judicial order speaks for itself. In the case of the present appellant, the extent of error committed by him in acquitting the accused of the said gave offences was found sufficient for his compulsory retirement from service. See: **Ram Murti Yadav Vs. State of Uttar Pradesh and Others, (2020) 1 SCC 801**

9. **<u>Pre-conditions of FIR & Arrest of Judicial Officers</u> :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

10. **<u>Judicial Officers Not to Visit Police Station</u> :**No Judicial Officer should visit a Police Station on his own except in connection with his official and judicial duties and functions. If it is necessary for a Judicial Officer or a Subordinate Judicial Officer to visit the Police Station in connection with his official duties, he must do so with prior intimation of his visit to the District & Sessions Judge. See : **Delhi Judicial Service Association Tis Hazari Courts Delhi Vs. State of Gujarat, AIR 1991 SC 2176 (Three-Judge Bench).**

11(A). **<u>Delhi Judicial Service Association Tis Hazari Courts Delhi Vs. State of Gujarat, (1991) 4 SCC 406 (Three-Judge Bench</u>) :** The facts of this case are as under :

"Soon after the posting of 'P' as Chief Judicial Magistrate at Nadiad in the State of Gujarat in October 1988, he found that the local police was not co-operating with the courts in effecting service of summons, warrants and notices on accused persons as a result of which the trials of cases were delayed. He made complaint against the local police to the District Superintendent of Police and forwarded a copy of the same to the Director General of Police but nothing concrete happened. On account of these complaints, 'S', the then Police Inspector Nadiad, became annoyed with the Chief Judicial Magistrate and withdrew constables posted in the CJM's Court. When 'P' directed the police to drop the criminal cases against certain persons who had caused obstruction in judicial proceedings on their tendering unqualified apology, 'S' reacted strongly to the direction and made complaint against the CJM to the Registrar of the High Court through District Superintendent of Police. On September 25, 1989, 'S' met the CJM in his chamber to discuss a case where the police had failed to submit charge-sheet within 90 days. During discussion 'S' invited the CJM to visit the police station to see the papers and further assured that his visit would mollify the sentiments of the police officials. Accordingly, at about 8.40 p.m. 'S' sent a police jeep at the residence of 'P' and on that vehicle 'P' went to the police station. When he arrived in the chamber of 'S' in the police station, he was forced to consume liquor and on his refusal he was assaulted. He was handcuffed and tied up with a thick rope by the Police Inspector, a Sub-Inspector, a Head Constable and a Constable. This was deliberately done in defiance of Police Regulations and Circulars issued by the Gujarat Government and the law declared by the Supreme Court in *Prem Shankar Shukla Vs. Delhi Administration, (1980) 3 SCC 526.* A panchnama showing the drunken state of 'P' was prepared on the dictation of 'S' and was signed by 'S' as well as two panchas—a Mamlatdar and a Fire Brigade Officer. Thereafter, 'P' was taken to Civil Hospital handcuffed and tied with thick rope where he was deliberately made to sit outside in the verandah on a bench for half an hour to enable the police to have a full view of the CJM in that condition. A press photographer was brought on the scene and the policemen posed with 'P' for the press photograph. The photographs so taken were

published in newspapers. A belated justification for this was pleaded by the notice that 'P' desired to have himself photographed in that condition. Request made by 'P' in the casualty ward of the Civil Hospital to the doctors to contact the District Judge and inform him about the incident was not allowed by 'S' and other police officers. On examination at the hospital, the body of 'P' was found to have a number of injuries. His blood was taken and chemical examination conducted without following the procedure prescribed by the Rules and Circulars issued by the Director of Medical Services, Gujarat. The Chemical Examiner submitted the report holding that the blood sample of 'P' contained alcohol on the basis of the calculation made by him in the report, though he later clearly admitted that he had never determined the quantity of liquor by making calculation in any other case before. At the initial stage only one case was registered against 'P' by the police under the Bombay Prohibition Act, but when the lawyers met 'S' for securing release of 'P' on bail, the offence being bailable, 'S' registered another case u/s 332 and 506 IPC in order to frustrate the attempt to get 'P' released as the offence u/s 332 IPC is non-bailable. The then District Superintendent of Police did not take any immediate action in the matter; instead he created an alibi for himself alleging that he had gone elsewhere and stayed in a Government Rest House there. The register at the Rest House indicating the entry regarding his stay was found to have been manipulated subsequently by making interpolation. All these facts were found established by a then sitting Judge of the Allahabad High Court who was appointed as Commissioner by the Supreme Court to hold inquiry and submit report after the Court took cognizance of the matter and issued notices to the State of Gujarat and other police officers pursuant to the writ petitions under Article 32 filed and telegrams sent to the Court from all over the country by Bar Councils, Bar Associations and individuals for saving the dignity and honour of the Judiciary.

11(B). **Supreme Court has powers to punish contemnor for contempt of sub-ordinate courts :** Supreme Court has power under Article 129 of the Constitution to punish a contemnor having committed contempt of Sub-ordinate Courts. Contempt of Courts Act, 1971 does not impinge upon such powers of the Supreme Court. See : **Delhi Judicial Service Association, Tis Hazari Courts, Delhi Vs. State of Gujarat & Others, AIR 1991 SC 2176 (Three-Judge Bench)**

11(C). **Attacking Presiding Officer inside the Court or outside Court amounts to criminal contempt of Court :** The Chief Judicial Magistrate is head of the Magistracy in the District who administers justice to ensure, protect and safeguard the rights of citizens. The subordinate Courts at the district level cater to the need of the masses in administering justice at the base level. By and large, the majority of the people get their disputes adjudicated in subordinate Courts. It is in the general interest of the community that the authority of subordinate Courts is protected. If the CJM is led into

trap by unscrupulous Police Officers and if he is assaulted, handcuffed and roped, the public is bound to lose faith in Courts which would be destructive of basic structure of an ordered society. If this is permitted, rule of law shall be supplanted by Police Raj. Viewed in this perspective, the incident of arrest, assault and handcuffing of CJM by Police is not a case of physical assault on an individual judicial officer, instead it is an onslaught on the institution of the judiciary itself. The incident is a clear interference with the administration of justice, lowering its judicial authority. Its effect was not confined to one District or State, it had a tendency to affect the entire judiciary in the country. The incident highlights a dangerous trend that if the Police is annoyed with the orders of a presiding officer of a Court, he would be arrested on flimsy manufactured charges, to humiliate him publicly as has been done in the instant case. The conduct of Police Officers in assaulting and humiliating the CJM brought the authority and administration of justice into disrespect affecting the public confidence in the institution of justice. "The summary power of punishment for contempt has been conferred on the Courts to keep a blaze of glory around them, to deter people from attempting to render them contemptible in the eyes of the public. These powers are necessary to keep the course of justice free as it is of great importance to society". The power to punish contempt is vested in the Judges not for their personal protection only but for the protection of public justice whose interest requires that decency and decorum is preserved in Courts of Justice. Those who had to discharge duty in a Court of Justice are protected by the law and shielded in the discharge of their duties. Any deliberate interference with the discharge of such duties either in Court or outside the Courts by attacking the presiding officers of the Court would amount to criminal contempt and the Courts must take serious cognizance of such conduct. See : **Delhi Judicial Service Association, Tis Hazari Courts, Delhi Vs. State of Gujarat & Others**, **AIR 1991 SC 2176 (Three-Judge Bench) (para 43)**

11(D). **<u>Police officials assaulting Judicial Officer liable to be punished both in departmental side and also for criminal contempt of court</u> :** Police Officials involved in assault, arrest and handcuffing of Chief Judicial Magistrate are liable both for disciplinary proceedings and also for criminal contempt of court. In the case noted below, the Supreme Court directed the State Government of Gujarat to initiate disciplinary proceedings against the police officials involved in the incident of assaulting and arresting the CJM. See : **Delhi Judicial Service Association, Tis Hazari Courts, Delhi Vs. State of Gujarat & Others**, **AIR 1991 SC 2176 (Three-Judge Bench).**

11(E). <u>Directions of the Supreme Court regarding FIR and arrest etc. of Judicial Officers</u> : In the case noted below, a Three-Judge Bench of the Supreme Court has

issued following directions regarding registration of FIR and arrest etc. of Judicial Officers :

(A) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

(B) If facts and circumstances necessitate the immediate arrest of a Judicial Officer of the Subordinate Judiciary, a technical or formal arrest may be affected.

(C) The fact of such arrest should be immediately communicated to the District & Sessions Judge of the concerned district and the Chief Justice of the High Court.

(D) The Judicial Officer so arrested shall not be taken to a police station without the prior order or directions of the District & Sessions Judge of the concerned district, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisors and Judicial Officers including the District & Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Advisor of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) There should be no handcuffing of a Judicial Officer. If however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the Police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the police officers causing the arrest will be responsible for such arrest and handcuffing and would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

(H) The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a judicial officer. These guidelines should be implemented by the State Governments as well as by the High Courts. See : **Delhi Judicial Service Association, Tis Hazari Courts, Delhi Vs. State of Gujarat, AIR 1991 SC 2176 (Three- Judge Bench)**

Note: The relevant **Circular Letters** of the Allahabad High Court and the **G.Os.** issued by Central Government for strict observance of the directions of the Apex Court in the abovenoted case are as under :

(i) C.L. No. 54/IX-f-69/Admn. 'G' dated October 22, 1992
(ii) C.L. No. 190117/4/90-Jus. Dated 26.4.1990/3.5.1990
(iii) Central Government's G.O. No. VII-11017/15/88-G.P.A. II, dated 4.10.1988
(iv) Central Government's Letter No. 19017/3/92-Jus., dated 3.4.1992/23.4.1992
(v) Central Government's Letter No. VI-25013/42/89-G.P.A. II, dt. 31.3.1992

12. **Chief Justice's prior permission mandatory for FIR :** No crime or criminal case shall be registered against a judicial officer in respect of anything allegedly done or purported to be done in discharge of his duty or in his capacity as holder of such judicial office without prior permission of Chief Justice of the High Court concerned. See : **U.P. Judicial Officers' Association versus Union of India, (1994) 4 SCC 687.**

13(A). **Superior Courts must protect the reputation of judicial officers of sub-ordinate courts against false allegations :** The facts of the case noted below were thus **:** "Shri Vishram Singh Raghuvanshi is an Advocate practicing for last 30 years in the District Court, Etawah (UP). On 25.07.1998, Shri Vishram Singh Raghuvanshi Advocate produced one Om Prakash for the purpose of surrender by impersonating him as Ram Kishan s/o of Asharfi Lal who was wanted in a criminal case in the court of IInd ACJM, Etawah. There was some controversy regarding the genuineness of the person who came to surrender and, therefore, the Presiding Officer of the court raised certain issues. So, Shri Vishram Singh Raghuvanshi Advocate misbehaved with the Presiding Officer in the court and used abusive language. The Presiding Officer of the court vide his letter dated 28.09.1998, made a complaint against Shri Vishram Singh Raghuvanshi Advocate to the UP Bar Council and vide letter dated 27.10.1998, made a reference to the Allahabad High Court for initiating contempt proceeding u/s 15 of the Contempt of Court Act, 1971. The Division Bench of the Allahabad High Court after due hearing of the matter, vide its judgment and order dated 05.05.2006 held Shri Vishram Singh Raghuvanshi Advocate guilty of committing contempt of the said court and sentenced him to undergo 03 month's simple imprisonment with a fine of Rs. 2000/-. Shri Vishram Singh Raghuvanshi Advocate then filed appeal before the Hon'ble Supreme Court." The Hon'ble Supreme Court while dismissing the appeal ruled thus : "The contempt jurisdiction is to uphold majesty and dignity of the law Courts and the image of such majesty in the minds of the public cannot be allowed to be distorted. Any action taken on contempt or punishment enforced is aimed at protection of the freedom of individuals and orderly and equal administration of laws and not for the purpose of providing immunity from criticism to the judges. The superior Courts have a duty to protect the reputation of judicial officers of subordinate Courts, talking not of the growing tendency of maligning the reputation of judicial officers by unscrupulous practicing advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose. Such an issue

touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the institution as a whole. The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse. The Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. Liberty of free expression is not to be confounded or confused with license to make unfounded allegations against any institution, much less the judiciary". Kindly see : **Vishram Singh Raghuvanshi Advocate Vs. State of UP, AIR 2011 SC 2275** *(paras 15 & 16)*

13(B).High Court must protect honest Judicial Officers : In the case noted below, a probationer lady Civil Judge (Junior Division) of Gujarat faced several difficulties from her sub-ordinate staff and wrote several letters to the District Judge by recording their objectionable conduct but there was no response to her letters and she was ultimately awarded adverse entries in her ACR by the District Judge and the same was also approved by the High Court. Her services were terminated by the High Court on the basis of the said adverse entries and also on the ground that she used to cross permitted lines of behavoiur while talking to her male colleagues. Quashing her termination order, the Hon'ble Supreme Court has held that since the probationer lady Judicial Officer was facing hostile atmosphere of staff and Bar, her complaint made to the District Judge was also not attended to rather adverse entries in her ACR were recorded and the Vigilance Judge of the High Court appear to be biased against her and had not provided her any opportunity to defend her and, therefore, her termination was bad in law. The Supreme Court further observed that when the misconduct leading to termination order is stigmatic in nature, even a probationer is entitled to enquiry as such penalty attracts Article 311 of the Constitution even to a probationer. The Supreme Court also observed that no enquiry can be held behind the back of the delinquent/Judicial Officer. The High Court must protect honest Judicial Officers. See : **Registrar General, High Court of Gujarat Vs. Jayshree Chamanlal Buddhbhatti, 2014 (1) SLJ 130 (SC).**

13(C). Protection to Judicial Officers Against Executive as Litigant : There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant

sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

14. **Protection to Judicial Officers Against Malicious Prosecution :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 of the Delhi Special Police Establishment Act, 1946 provides for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless Judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

15(a). **Application of mind by authority before according sanction for prosecution of judicial officers :** There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) of the Delhi Special Police Establishment Act, 1946 without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking

action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

15(b). Duty cast on High Court to protect honest Judicial Officers : Article 235 of the Constitution confers supervisory jurisdiction on High Courts over sub-ordinate judiciary. A duty is also cast on the High Court to protect the honest Judicial Officers as that is paramount for survival of judicial system. See : **Nirmala J. Jhala Vs State of Gujarat, AIR 2013 SC 1513.**

16(A). D.O. dated 03.10.2014 of Hon'ble the CJI to the Chief Justices of all High Courts not to entertain complaints against Judicial Officers unless the same is accompanied by affidavits and verifiable material to substantiate the allegations (circulated amongst the judicial officers of the State of UP vide C.L. No. 1416/conf. dated 11.06.2015) : In pursuance of a D.O. dated 03.10.2014 written by Hon'ble the Chief Justice of India to all the Chief Justices of the High Courts not to entertain any complaint against a judicial order unless the same is accompanied by sworn affidavits and verifiable material to substantiate the allegations, a D.O. letter dated 31.12.2014 of the Department of Justice, Ministry of Law of Justice, Govt. of India issued to the Registrar Generals of all High Courts reads as under :

"F.No. L-18011/50/12-Jus
Government of India
Ministry of Law & Justice
Department of justice
******

Jaisalmer House, 26, Mansingh Road,
New Delhi-110011, dated the 31st December, 2014.

To

The Registrar General
All High Courts

Subject : **Guidelines for dealing with the complaints against the subordinate judiciary.**

Sir/Madam,

As you are aware, recently, Hon'ble the CJI, vide his D.O. No. CJI/CC/Comp/2014/1405 dt. 3.10.2014, addressed to the Chief Justice of all the High Courts, has asked the **High Court and subordinate judiciary not to entertain any complaint against a judicial officer unless it is accompanied by sworn affidavits and verifiable material to substantiate the allegation.** Expressing concern over the large number of complaints being filed against subordinate judiciary by people having

vested interest and personal agenda, Hon'ble CJI has directed that authenticity of the complaints must be ascertained before any action is taken on it. In view of the provisions of the Article 235 of the Constitution, further action relating to the grievances/complaints against the judicial officers lies at the High Court level.

All the Chief Justices of the High Courts have been requested to give publicity to these guidelines laid down in the communication dated 3rd October, 2014.

This being the position, you are requested to give such wide publicity including through website of the High Courts and subordinate Courts under the control of the High Court so that litigants having any grievances/complaints relating to the judiciary are aware of the procedure required to be followed in such cases. Department of justice may be apprised of the action taken in this regard so that once publicity has been given to these guidelines, complaints/grievances received in the Department of Justice can be responded to by referring to these guidelines.

Yours faithfully,

(Y.M. Pande)
Director (Justice)
Telefax : 23072135"

16(B). **Revised guidelines dated 04.04.2017 of the High Court on processing of complaints received against the Judicial Officers :** Circular Letter No. 500/Conf. dated 04.04.2017 issued by the Hon'ble Allahabad High Court on the modified guidelines for dealing with the complaints against the officers of the Sub-ordinate Judiciary is reproduced below :

"In continuation of the Court's Circular Letter No. 1416/Conf. dated 11.06.2015, Allahabad, I am directed to say that the Hon'ble Court has been pleased to issue the following modified guidelines to be followed uniformly while dealing with the complaints against the members of the Sub-ordinate Judiciary in the light of the communication made by Hon'ble the Chief Justice of India vide letter dated 16.03.2017 :

(A) The complaint making allegations against members of the Sub-ordinate Judiciary in the States should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn affidavit and/or verifiable material to substantiate the allegation made therein.

(B) If action on such complaint meeting the above requirement is deemed necessary, authenticity of the complaint should be duly ascertained and further steps thereon should be taken only after satisfaction of the competent authority designated by the Chief Justice of the High Court.

(C) If the above requirements are not complied with, the complaint should be filed/lodged without taking any steps thereon.

I am, therefore, to request you to follow the aforesaid directions/guidelines and to give a wide publicity of the same by affixing the copy of these guidelines in a conspicuous place/Notice Board of your judgeship (including outlying courts), Collectorate, Tehsil and also upload the copy of this Circular Letter on the website of your judgeship and also circulate among the Judicial Officers under your administrative control." Yours faithfully : Dinesh Kumar Singh-I/Registrar General, High Court of Judicature at Allahabad.

16(C). No Publicity of complaint against Judicial Officer : There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 provides for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

17(A). Fearless & Honest Judges Not to Be Harassed : There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 provides for prior sanction from the competent authority and direction that no court shall take cognizance of the offence under Section 5(1) without such prior sanction. It is indeed a protection for Judges from frivolous and malicious prosecution. It is a settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court, which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity, will have a far-reaching impact on the Judge and the

litigant public. The need, therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected. See : **U.P. Judicial Officers' Association Vs Union of India, (1994) 4 SCC 687.**

17(B). Civil Court or its Presiding Officer cannot be impleaded as party in Writ, Appeal or Revision etc.: The civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High Court without the court or the Presiding Officer being impleaded as a party. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties. See : **Jogendrasinhji Vijaysinghji Vs. State of Gujarat, (2015) 9 SCC 1.**

17(C). Judicial Officers Not to be Made Party in Petitions etc. : The practice of impleading judicial officers, who had disposed of the civil proceedings, as parties in writ petitions under Article 226 or in SLP under Article 136 of the Constitution, has been strongly deprecated by the Supreme Court. It has been further directed by the Supreme Court that such practice should be stopped as the judicial officers cannot be in any way equated with the officials of the State. See :

1. **Savitri Debi Vs. 1. District Judge, Gorakhpur & 2. IV Addl. Civil Judge (Junior Division), 1999 (2) SCC 577**
2. **Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749.**

18(A). Police Protection to Judicial Officers : For security to judicial officers at their courts and residences, following Circular Letters and G.Os. have been issued by the Allahabad High Court and the Government of U.P. :

(i). C.L. No. 9/IVh-40/Admn. (G) dated/Alld./29th January, 1998 : ***To ensure security arrangements in district civil courts and at the residence of the Judicial Officers*** : "I am directed to draw your attention to the security arrangements in district civil courts and at the residence of the Judicial Officers whereupon the Government of Uttar Pradesh had issued a letter No. 344A/Chha-pu-1-94-113/93 TC/dated 10.11.94 to A.D.G.P. (Security) and all the DMs/SSPs/SPs of the State (copy enclosed). In order to review implementation of the guidelines contained in U.P. Govt.'s letter dated 10.11.94 and also tone up security arrangements, the Government of Uttar Pradesh have also issued Fax to all the District Magistrates/Senior Superintendents of Police/Superintendents of Police of State of U.P. with intimation to the court. I am, therefore, to request you kindly to apprise the Court immediately as to what action District Magistrates and Superintendents and Police have taken in the matter of security of Civil Courts and the residences of the Judicial Officers. I am, further, to

request you kindly to report to the Court if the arrangements made by the District Authorities are sufficient or not."

(ii) <u>शासनादेश संख्या–33उ/छः–30.1.94–114/93/टी.सी.</u>

गृह (पुलिस) अनुभाग–1 लखनऊ दिनांक : 10 नवम्बर 1994

विषयः जिला न्यायालयों के कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीशों की सुरक्षा व्यवस्था के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अतिरिक्त पुलिस महानिदेशक सुरक्षा, अभिसूचना विभाग, उत्तर प्रदेश लखनऊ के अर्द्ध शा. पत्र संख्या–एच–4(क33)/93, दिनांक 20 दिसम्बर, 93 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि उत्तर प्रदेश के जिला न्यायालयों में कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीशों की निम्नलिखित बिन्दुओं के अनुसार सुरक्षा व्यवस्था की जाय तथा कृत कार्यवाही से शासन को यथा समय अवगत कराया जाय।

(क) न्यायालयों के परिसर में एक सशस्त्र आर्म गार्ड नियुक्त किया जाना चाहिए जिसका प्रमुख कर्तव्य न्यायालयों की सुरक्षा सुनिश्चित करना होगा।

(ख) प्रत्येक दिन न्यायालयों की कार्य अवधि के दौरान नागरिक पुलिस का एक उपनिरीक्षक तथा डेढ़ सेक्शन पी.ए.सी. नियुक्त की जानी चाहिए जो न्यायालय परिसर में बनी रहेगी।

(ग) जिला न्यायाधीश (जिला तथा सेशन न्यायाधीश) के आवास पर एक सशस्त्र आर्म्ड गार्ड की नियुक्ति की जानी चाहिए ।

(घ) जिला न्यायाधीश की अति समीप सुरक्षा (क्लोज प्राक्सीमेट) के लिए एक गनर स्टेनगन के साथ नियुक्त किया जाना चाहिए।

(ङ) यदि कई न्यायाधीश एक ही परिसर में रहते हैं तो पूरे परिवार के लिए एक ही सशस्त्र आर्म्ड गार्ड की व्यवस्था की जानी चाहिए। प्रत्येक न्यायाधीश के लिए अलग–अलग गार्ड देना सीमित संसाधनों के कारण सम्भव नहीं है।

(च) यदि किसी न्यायाधीश को विशेष जीवन भय है तो उन्हें आवेदन पत्र देना चाहिए। जीवन भय के मूल्यांकन के आधार पर उन्हें विशेष सुरक्षा व्यवस्था उपलब्ध करायी जानी चाहिए।

(iii). **<u>G.O. No.45/IVh-40 Dated 19th October, 2000</u>**

To provide sufficient security to the Judicial Officers

In Criminal Contempt Case No. 16 of 1999 and 19 of 1999, In Re- Sri Swami Nath Yadav, Advocate and 4 Others, Hon'ble Court (Hon. Sri B.K. Roy and Hon. Sri M.C. Jain, JJ.) has given directions with regard to the security of Judicial Officers. See-- **In re, Swami Nath Yadav, Adv., 2001 Cr.L.J. 639 (Allahabad)(DB)** *Known as the case of Sri S.S. Nimesh, the then I/c District Judge, Azamgarh.*

I am desired to enclose herewith copy of the judgment given by the Hon'ble Court for your information and compliance as and when situation so demands.

(iv). <u>गृह (पुलिस) अनुभाग–2</u>, लखनऊः दिनांक 6 फरवरी, 2001

विषयः जिला न्यायालयों में कार्यरत मुंसिफ मजिस्ट्रेटों/न्यायाधीषों की सुरक्षा के सम्बन्ध में।

महोदय,

कृपया उपर्युक्त विषयक शासनादेश सं0 7334ए/6–30–1–94–114/93 टी0सी0 दिनांक 10.11.94 का संदर्भ ग्रहण करने का कष्ट करें।

मा0 उच्च न्यायालय, इलाहाबाद द्वारा क्रिमिनल कन्टेंप्ट सं0–19/99 एस.एस. निमेश बनाम स्वामीनाथ व अन्य में अपने निर्णय दिनांक 18.9.2000 में यह आदेश पारित किये गये हैं कि–

"If any Judicial Officer of the State apprehends any type of obstruction in fearless administration of justice, he shall inform his District Judge, who in turn, will first examine the same objectively and after finding substance shall at once bring to the

notice of the Senior Superintendent of Police/Superintendent of Police of his district of the same, who in turn shall be duty bound to afford sufficient police protection to that Judicial Officer and if even then the District Judge finds that no proper action has been taken in that regard by the aforesaid police authorities, in that event he will make a report to the Chief Secretary of the State through the Registrar General/Registrar of this Court and in that event the Chief Secretary shall take a serious view of the matter and apart from directing the Director General of Police of this State to take an appropriate action at once in relation to providing sufficient security to the Judicial Officer concerned shall also take further action against the erring Policing Authority concerned. The District Judges of the Judgeships shall also follow the same course if they apprehend the same by reporting to the Inspector General of police of their area thereafter the same course will be followed by all concerned."

इस संबंध में मुझे यह कहने का निदेश हुआ है कि कृपया माननीय न्यायालय के उपर्युक्त आदेशों के अनुसार आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करें।

(v). **C.L. No. 4331/IV-40/Admn. (G)/Dated 7th March, 2001**

To provide sufficient security to the Judicial Officers

Kindly refer to Court's Circular Letter No. 45/IVh-40/dated 10.10.2000 wherein a copy of judgment dated 28.9.2000 passed by Hon'ble Court (Hon'ble Sri B.K. Roy and Hon'ble Sri M.C. Jain, JJ.) in Criminal Contempt Case No. 16 of 1999 and 19 of 1999 in Re-Sri Swami Nath Yadav. Advocate and 4 others was sent to you on the above subject for compliance. In this connection, I am directed to say that the Government of Uttar Pradesh vide letter No. 5319/6-pu-2-2000/dated 6.2.2001 issued directions of the Hon'ble Court passed in aforesaid contempt case to all the Senior Superintendent of Police/Superintendents of Police of Uttar Pradesh for necessary action with regard to security to Munsif Magistrates/Judges of the District Courts.

I, am, therefore, to send a copy of Government's letter dated 6.2.2001 for information.

18(B). S.P., Sant Kabir Nagar, Uttar Pradesh warned by the State Government of UP for not providing police protection to CJM, Sant Kabir Nagar: See the UP Government's Order given below:

7 2019 7:48 PM FAX +5222238407 HCR 0001

उत्तर प्रदेश शासन
गृह (पुलिस सेवायें) अनुभाग–2
संख्या–501डीजी/छ:पु0से0–2–19–522(48)/2019
लखनऊ: दिनांक:05 जुलाई, 2019

कार्यालय–आदेश

मा0 जिला जज संतकबीर नगर द्वारा मा0 उच्च न्यायालय के समक्ष यह आख्या प्रस्तुत की गई कि मुख्य न्यायिक मजिस्ट्रेट संतकबीर नगर को प्रदत्त गनर/सुरक्षा गार्ड श्री आकाश तोमर, पुलिस अधीक्षक, संतकबीर नगर द्वारा बिना किसी कारण और पूर्व सूचना के वापस लिया गया तथा मा0 जिला जज द्वारा की गई संस्तुति के उपरान्त भी उन्हें गनर/सुरक्षा उपलब्ध नहीं कराये गये जो श्री स्वामी नाथ यादव व अन्य बनाम कंटीमनर्स में पारित डिवी बेंच के आदेश का उल्लंघन है। इसके अतिरिक्त मुख्य न्यायिक मजिस्ट्रेट व अन्य न्यायि अधिकारियों के आवासीय परिसर की सुरक्षा हेतु तैनात किये गये सुरक्षाकर्मियों को भी वा कर लिया गया, जिससे न्यायिक अधिकारी और उनके परिवार असुरक्षित हो गये। यह भी संज्ञान में लाया गया कि श्री आकाश तोमर, पुलिस अधीक्षक, संतकबीर नगर द्वारा मॉनिटरिंग सेल की मीटिंग में प्रतिभाग नहीं किया जाता है तथा श्री तोमर द्वारा 09 बैठकों में केवल दो बैठक में ही प्रतिभाग किया गया है, जो पुनः शासनादेश दिनांक 28.12.93 का उल्लंघन है। इसके अतिरिक्त श्री तोमर द्वारा संयुक्त जेल निरीक्षण में भी आना–कानी की जाती रही है।

2– उक्त प्रकरण में श्री आकाश तोमर, आईपीएस को अपने मूल कर्त्तव्यों के प्रति उपेक्षात्मक कार्य का परिचय दिये जाने का दोषी पाये जाने के सम्बन्ध में शासन के पत्र संख्या–494/छ:पु0से0–2–19–522(48)/2019, दिनांक 12.06.19 द्वारा अखिल भारतीय सेवायें (अनुशासन एवं अपील) नियमावली–1969 के नियम–10 के अन्तर्गत उनका स्पष्टीकरण मांगा गया। इस सम्बन्ध में अपर पुलिस महानिदेशक, कार्मिक, उ0प्र0 के पत्र दिनांक 04.07.19 एवं श्री आकाश तोमर, आईपीएस का स्पष्टीकरण दिनांक 13.06.19 प्राप्त हुआ।

3– उक्त के सम्बन्ध में पुलिस महानिदेशक, उ0प्र0 लखनऊ द्वारा दी गई सहमति एवं श्री आकाश तोमर, आईपीएस द्वारा प्रस्तुत स्पष्टीकरण दिनांक 13.06.19 में उल्लिखित तथ्यों एवं पत्रावली में उपलब्ध अन्य संगत अभिलेखों के सम्यक विचारोपरान्त् कालान्तर में सुधार/अनुभव–संवर्धन हेतु मा0 न्यायिक अधिकारियों से उच्च स्तर का समन्वय व संवाद बनाये रखने हेतु श्री आकाश तोमर, तत्का0 पुलिस अधीक्षक, संतकबीरनगर सम्प्रति पुलिस अधीक्षक, बाराबंकी को व्यक्तिगत पत्रावली पर "चेतावनी" देते हुए भविष्य में और अधिक सतर्क रहकर अपने दायित्वों एवं कर्तव्यों के निर्वहन हेतु निर्देशित करते हुये उनके विरुद्ध निर्गत स्पष्टीकरण दिनांक 12.06.19 को तदनुसार एतदद्वारा निर्णीत किया जाता है।

राज्यपाल महोदय की आज्ञा से,

अवनीश कुमार अवस्थी
अपर मुख्य सचिव।

संख्या–501डीजी(1)/छ:पु0से0–2–2019, तद्दिनॉक।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः–

1– पुलिस महानिदेशक, उ0प्र0, लखनऊ।
2– श्री मानवेन्द्र सिंह, एच0जे0एस0, वरिष्ठ रजिस्टार मा0 उच्च न्यायालय, लखनऊ बेंच लखनऊ।
3– श्री आकाश तोमर, पुलिस अधीक्षक, बाराबंकी।
4– व्यक्तिगत पत्रावली/चरित्र पंजिका में रखने हेतु।
5– गार्ड फाइल।

आज्ञा से

(जयवीर सिंह)
अनु सचिव।

Scanned with CamScanner

18(C). <u>Powers of Judicial Officers u/s 228 IPC & Sec. 345 CrPC</u> : In case any person intentionally offers any insult or causes any interruption in the judicial functioning of the court, the presiding officer may proceed summarily against such person u/s 345

CrPC and may punish him u/s 228 of the IPC. Section 28 of the IPC reads thus : *"Intentional insult or interruption to public servant sitting in judicial proceeding : Whoever, intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."*

19(A). Use of unfair means by Judicial Officer in LL.M. Examination- Protection not available : Where a Munsif Magistrate had appeared in LL.M. examination held by the Aligarh Muslim University and was caught by the invigilator using unfair means and was first suspended and after departmental enquiry by the Allahabad High Court, was removed from service, the Supreme Court held that judicial officers cannot have two standards, one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. A judicial officer, who has been found guilty of using unfair means in the LL.M. Examination, is undoubtedly not a fit person to be retained in judicial service and as such the Supreme Court refused to extend the benefit of Sec. 1 of the Judicial Officers' Protection Act, 1850 to the delinquent Munsif Magistrate. See. **Daya Shankar Vs. High Court of Allahabad, AIR 1987 SC 1469**

19(B). Governor is bound by the recommendations of the High Court made to him under Article 235 of the Constitution : The true import of Article 235 of the Constitution is that the order of removal from service of a person holding the substantive rank of District Munsiff has to be made only by the Governor even though the Governor must act in accordance with recommendation of the High Court which is binding on the Governor. See :

(i) B.S. Yadav Vs. State of Haryana, (1981) 1 SCR 1024.
(ii) Chief Justice of AP Vs. LVA Dixitulu, (1979) 2 SCC 34.
(iii) Lakshmi Narsimhachari, Govt. of AP Vs. High Court of AP, Judgment dated 09.5.1996 by the Supreme Court in civil appeal/writ petition (c) No. 331 of 1994.

20. Magistrate issuing NBW against acquitted accused---Not entitled to protection : Where an accused was convicted by the trial court but on appeal was acquitted by the Allahabad High Court and even after the order of the High Court having been notified to the Judicial Magistrate concerned, he issued NBW against the acquitted accused and got him arrested, it was held by the Allahabad High Court that a committal Magistrate complying with an order certified u/s 425 CrPC does not act under that provision but only performs a ministerial and not a judicial act or a protected executive function. If he negligently signs arrest warrants against acquitted persons he is not protected by **Section 1** of the Judicial Officers' Protection Act, 1850. Even if he does so out of negligence of his subordinate, he will still be liable for damages. He will not be

relieved of his liability by the failure to implead that subordinate in the suit for damages, even if the latter can be considered a joint tortfeasor. See : **State of UP Vs. Tulsi Ram, AIR 1971 All 162.**

21. **Judicial Officer's Prosecution for Defamatory Comments on Transfer Application & Sec. 197 CrPC :** Where the appellant, a Munsif Magistrate, by a letter to the District Judge submitted his remarks against the allegations made by the respondent, an advocate, in a transfer petition for transfer of a suit pending in appellant's Court and while so doing, called the respondent **'rowdy'**. **"a big gambler"** and **"a mischievous element"** and on this letter being read in open court, the respondent filed criminal complaint against the appellant without the sanction contemplated u/s 197 CrPC, it was held that the act complained of had no connection with the discharge of official duty of the appellant. Hence Sec. 197 CrPC was not in any way attracted. See : **B.S. Sambhu Vs. T.S. Krishnaswamy, AIR 1983 SC 64.**

22. **No protection under the 1850 Act when not acting judicially :** Where some record sent by the court of Magistrate to a Sarpanch acting under U.P. Panchayat Raj Act, 1947 got lost and on enquiry against the Sarpanch, plea was taken by him regarding protection under the provisions of the Judicial Officers Protection Act, 1850, it was held by the Allahabad High Court that **since the Sarpanch was not acting as a court or judicial tribunal**, therefore, he was not entitled to any protection u/s. 1 of the 1850 Act. See : **Indra Pati Singh Vs. State of U.P., 1986 All LJ 1258 (All).**

23. **Family court judge not covered within the word 'judicial officer' :** Judges presiding over family courts are neither members nor integral part of judicial services. The word "judicial officer" has not been defined in the Constitution of India. A family court judge cannot be considered for elevation to High Court. See : **S.D. Joshi Vs. High Court of Judicature at Bombay, 2011(1) SCJ 169.**

24. **Refusal of transfer of Ghaziabad GPF scam case involving judicial officers to Delhi :** Turning down the transfer application of the CBI under section 406 CrPC, the supreme court has held that power of transferring case u/s 406 CRPC should be sparingly and with great circumspection exercised and merely because the accused persons in Ghaziabad PF scam are judicial officers of the state of UP, it cannot be a ground for transferring the case from Ghaziabad to Delhi where subordinate judiciary is already heavily burdened. See : **Nahar Singh Yadav Vs. union of India, 2011 CrLJ 997 (SC).**

25. **Promotions not proof of competence of a Judicial Officer :** Promotions are not proof of competence of a Judicial Officer. See : **High Court of Judicature at Patna Vs. Shiveshwar Narayan & Another, 2011 (3) SLJ 392 (SC)**

26. **Slightest dishonesty disastrous for a Judicial Officer :** A slightest dishonesty is disastrous for a Judicial Officer. See : **High Court of Judicature at Patna Vs. Shiveshwar Narayan and another, 2011 (3) SLJ 392 (SC)**

27(A). **Even unproved complaints may disentitle a Judicial Officer of certain benefits :** Even unproved complaints may disentitle a Judicial Officer of certain benefits. It is not 'proved dishonesty' or 'proved misconduct' that is determinative but doubtful integrity or suspicious judicial conduct may be sufficient to deny a Judicial Officer benefit of enhancement of superannuation age to 60 years. It is in totality of the circumstances available from the entire service record and all other relevant circumstances that an opinion has to be formed whether or not the Judicial Officer deserves to be given benefit of increase of superannuation age to 60 years. See : **High Court of Judicature at Patna Vs Shiveshwar Narayan & another, 2011 (3) SLJ 392 (SC).**

27(B). **Pre-mature retirement of Judicial Officer on the basis of credible complaints found justified :** Where a member of Higher Judicial Service of the State of J & K was prematurely retired by the Full Court of J&K High Court on the basis of credible complaints found periodically with regard to his conduct, it has been held by the Supreme Court that the order of pre-mature retirement of the Judicial Officer was justified. The fact that the Supreme Court had held the adverse ACR of the Judicial Officer recorded by the High Court in the absence of assessment of his work and conduct as non est was immaterial. See : **Shakti Kumar Gupta Vs. State of J&K, AIR 2016 SC 832.**

28. **Judicial Review & Merit Review are different :** Judicial Review & Merit Review are two different aspects. See : **High Court of Judicature at Patna Vs. Shiveshwar Narayan & Another, 2011 (3) SLJ 392 (SC)**

29(A). **ACR recording of Judicial Officers needs urgent reforms** : The process of evaluation of a Judicial Officer is intended to contain a balanced information about his performance during the entire evaluation period. Experience however shows that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on one hand and unable to check subjectivity on the other. Undoubtedly, ACRs play a vital and significant role on the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a Judicial Officer. The ACRs of such Officer hold supreme importance in ascertaining his conduct, and therefore, the same have to be reported carefully with due diligence and caution. There is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardization. See : **Registrar General, Patna High Court Vs. Pandey Gajendra Prasad & Others, AIR 2012 SC 2319.**

29(B). **<u>How to record ACR of Judicial Officers</u> ? :** The process of evaluation of a Judicial Officer is intended to contain a balanced information about his performance during the entire evaluation period. Experience however shows that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on one hand and unable to check subjectivity on the other. Undoubtedly, ACRs play a vital and significant role on the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a Judicial Officer. The ACRs of such Officer hold supreme importance in ascertaining his conduct, and therefore, the same have to be reported carefully with due diligence and caution. There is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardization. See : **Registrar General, Patna High Court Vs. Pandey Gajendra Prasad & Others, AIR 2012 SC 2319.**

29(C).<u>Entries in ACR of a pubic servant must be communicated to him whether poor, fair, average, good or very good etc.</u> : Overruling its two earlier Division Bench rulings reported in the cases of (i) Satya Narain Shukla Vs. Union of India, (2006) 9 SCC 69 and (ii) K.M. Mishra Vs. Central Bank of India, (2008) 9 SCC 120 and giving approval to its earlier Division Bench ruling reported in the case of Dev Dutt Vs. Union of India, (2008) 8 SCC 725, a **Three-Judge Bench** of the Hon'ble Supreme Court, in the case noted below has ruled thus : *"In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving three-fold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - Poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."* See : **Sukhdev Singh Vs Union of India & Others, (2013) 9 SCC 566 (Three-Judge Bench)** *(para 8)*.

29(D).<u>ACR of a judicial officer recorded by High Court without assessment of his work and conduct liable to be treated as non est for all intents and purposes</u> : Where a member of Higher Judicial Service of the State of J&K was

prematurely retired by the Full Court of J&K High Court on the basis of his annual confidential report by saying that he had not submitted his Self Assessment Report, the Supreme Court disapproved recording of the adverse ACR of the Judicial Officer by observing that merely because the Judicial Officer had not submitted his Self Assessment Report, the same cannot be a ground to record his ACR as "Average". Such recording of ACR cannot be taken as truthful Assessment of various constituents of the Judicial Officer's work and conduct. Evaluation of an Officer can be done on the basis of record accessible and available to the High Court. ACR bereft of any assessment of work and conduct of the Judicial Officer is liable to be treated as non est for all intents and purposes. See **: Shakti Kumar Gupta Vs. State of J&K, AIR 2016 SC 832.**

30(A). Calling for report from the Sub-ordinate Judges on the judicial orders passed disapproved by the Supreme Court : It has been ruled by the Supreme Court that the High Courts should not ask the subordinate Judicial Officers to send up report in defence of their judicial orders as reasons in support of a judicial order can appear only in the order itself and it is an unwholesome practice to compel a Judicial Officer to write a report subsequently in defence of his conclusions. See : **Braj Kishore Thakur Vs. Union of India and others, AIR 1997 SC 1157.**

30(B). High Court should be extremely careful in summoning the Judicial Officers : High Court has discretion to summon a person whose attendance is necessary in the Court for deciding the case. When the summoning of a serving Judicial Officer is concerned, the Court must record sufficient reasons for summoning him or her and give sufficient indication for the purpose for which he or she is summoned to the High Court. The judicial officers discharge important judicial functions under the supervision of the court. The High Court is required to be extremely careful when summons are issued to the judicial officers to appear in the Court. It is only when the allegations are substantiated that the Court may, if it is necessary to decide any case and if it is absolutely necessary in a rarest of rare case to summon the judicial officer after recording reasons on record, and if such necessity arises the proceeding should be held in camera, so that the judicial officer is not put to embarrassment and is not required to face the same litigants, who are appearing or have appeared in Court. So far as possible the proceedings should be concluded on affidavits filed by the judicial officer concerned. ***See :*** *Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.*

30(C). <u>On summoning of a Judicial Officer, proceedings should be held in camera</u> : On summoning of a Judicial Officer, proceedings should be held in camera. **See :** *Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.*

30(D).**<u>Direction of High Court to ASJ to appear in chamber and explain as to how a judgment of conviction was passed by him despite his findings that the prosecution had failed to prove its case beyond all reasonable doubts</u>** : In the Criminal Appeal noted below, the observations of a Division Bench of the Lucknow Bench of the Allahabad High Court are reproduced here thus : "This appeal has been filed challenging the order dated 17.04.2017 passed by Additional Sessions Judge/Special Judge Gangster Act, Court No. 4, Sultanpur in Gangster Case No. 448/2012 arising out of Case Crime No. 717/2003, Police Station-Gosaiganj, District-Sultanpur whereby the appellant has been convicted under Section 147 IPC and sentenced to under go the rigorous imprisonment for one year and under Section 148 IPC rigorous imprisonment for two years, under Section 302 read with 149 IPC rigorous life imprisonment and Rs. 20,000/- fine and further convicted him under Section 307 read with 149 IPC sentencing the appellant to undergo rigorous imprisonment for ten years with fine of Rs. 10,000/- under Section 504 IPC rigorous imprisonment for one year and further convicted under Section 506(2) IPC and sentenced to undergo the rigorous imprisonment for two years with default stipulation. Petitioner is also challenging the order dated 17.04.2017 passed by Additional Sessions Judge/Special Judge in Gangster Case No. 450/2012 arising out of Case Crime No. 718/2003 relating to Police Station - Gosaiganj, District - Sultanpur convicting the appellant under Section 25 Arms Act and sentencing him to undergo rigorous imprisonment for three years and a fine of Rs. 3000/- with default stipulation. While arguing the appeal for admission learned counsel for the appellant has been able to show that there are several infirmities in the order of the trial court. He has referred to a number of findings which are spread on pages 24, 25, 27, 29, 30, 34, 39, 43 and finally 55. Learned counsel for the appellant has been able to demonstrate that learned Judge of the trial court has also observed that the prosecution has not been able to prove its case beyond reasonable doubt, yet conviction has been awarded. He has been able to make out an arguable case. It is a fit case for admission. Admit. Summon the lower court record. Learned A.G.A. shall file objection on the bail application by the

next date of listing. Sri Vinay Kumar Singh, Additional District Judge, Sultanpur shall also appear before this Court on 18.05.2017 personally. Appearance will be taken in Chambers." **See : Order dated 03.05.2017 of Division Bench of the Lucknow Bench passed in Criminal Appeal No. 704/2017, Pradeep Singh Vs. State of UP.**

30(D). <u>Affidavit of Judicial Officer concerned may be required by the Court</u> : Affidavit of Judicial Officer concerned may be required by the Court. **See : Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.**

30(E). <u>Magistrate recording statements of a witness or confessional statement of an accused cannot be summoned as witness to give oral evidence</u> : Section 164 CrPC by conferring on Magistrate the power to record statements of a witness or confessional statements of an accused, by necessary implication, prohibits the Magistrate from giving oral evidence of the statements or confessions made to him. See :

(i) **Dhananjayaya Reddy Vs. State of Karnataka, AIR 2001 SC 1512**
(ii) **State of UP Vs. Singhara Singh, AIR 1964 SC 358 (Three-Judge Bench)***(para 8)*
(iii) **Saleem Vs. State of UP, 2011 (74) ACC 744 (All)**
(iv) **Judgment dated 05.02.2014 of the Lucknow Bench of the Hon'ble Allahabad High Court passed in Criminal Revision No. 32/2014, Manoj Kumar Singh Vs. State of UP.**

30(F). <u>Non compliance of judicial orders when to be taken cognizance of</u> : In contempt proceedings, the Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, the Supreme Court is not supposed to go into the nittygritty of the various measures taken by the respondents. It is also correct that only if there is willful and contumacious disobedience of the orders, that the court would take cognizance. Even when there are two equally consistent possibilities open to the court, case of contempt is not made out. At the same time, it is permissible for the court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. **See : Bihar State Govt. Secondary School Teachers Association Vs. Ashok Kumar Sinha, (2014) 7 SCC 416. (para 24)**

31. <u>Suspension of clerk by Officiating District Judge held proper</u> : Where a clerk was suspended by the Officiating District Judge, Fatehpur for the allegations that the clerk had used unparliamentary language against the In-charge District Judge on 01.01.2016 and had misbehaved with him and appeared to be in a state of intoxication, the suspension order passed by the In-charge District Judge was held proper by the

Allahabad High Court. Interpreting the provisions of Article 309 of the Constitution of India, Rule 23(2) of the Uttar Pradesh State District Court Service Rules, 2013 and Section 10 of the Bengal, Agra & Assam Civil Courts Act, 1887, it has further been observed that the Additional District Judge in the absence of the District Judge was statutory delegatee as there was no delegation of power by the District Judge and being a statutory delegateee, the In-charge District Judge could not have further delegated his powers. But the suspension of the clerk by the In-charge District Judge pending enquiry was not penal in nature and the suspension order passed by him was proper. **See : Siddharth Pandey Vs. State of UP, 2016 (3) ALJ 316 (All)**

32(A). Probation of Civil Judges (Junior Division) : Rule 24 of the 'Uttar Pradesh Judicial Service Rules, 2001' provides for probation period of the Civil Judges (Junior Division). Rule 24 is reproduced below :

(1) All persons shall, on appointment to the serving in the substantive vacancies, be placed on probation. The period of probation shall, in each case, be two years.

(2) The Court may, in special cases, extend the period of probation upto a specified date.

(3) An order extending period of probation shall specify whether or not such extension shall count for increment in the time-scale.

(4) If, it appears, to the Court at any time during or at the end of period of probation or extended period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, it may make recommendation to the appointing authority whereupon the probationers shall be discharged from the service by the appointing authority.

(5) A person, whose services are dispensed with under sub-rule (4) shall not be entitled to compensation and shall also not be eligible for reappointment to the service.

32(B). Probationer not to be dismissed or terminated on stigmatic grounds without enquiry: Where the services of Probationary Officers were terminated on the ground of using unfair means in test/examination, it has been held by the Supreme Court that since their services were terminated not on account of any deficiency in their performance during probation period or failure to secure qualifying marks in confirmation test but on the ground of their misconduct as to use of unfair means in the test and no enquiry was conducted and no opportunity of hearing was granted to them and they were condemned unheard despite stigmatic allegations as above, therefore, termination of their services was declared unsustainable. See: **State Bank of India Vs. Palak Modi, (2013) 3 SCC 607.**

32(C).**Ad hoc or temporary employee's services can be terminated outright if the termination is made not for any misconduct but for unsatisfactory performance etc**: In the case noted below, the services of a temporary Assistant Project Officer appointed under the National Adult Education Scheme in UP were terminated by the competent authority on the ground of her irregular presence on duty by giving one month's pay to her without conducting an enquiry into the alleged misconduct. Interpreting the provisions of the 'Uttar Pradesh Temporary Government Servant's (Termination of Service) Rules, 1975', it has been ruled by the Supreme Court that: "if misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is not the motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated in terms of the order of appointment or rules giving one month's notice or pay salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment." **See: State of UP & Another Vs. Km. Premlata Mishra & Others, AIR 1994 SC 2411.**

32(D). **Dismissal of probationer for misconduct without enquiry held improper:** In the case noted below, a lady constable was temporarily appointed and during probation period, she committed misconduct by staying in nights with a male constable and on her aforesaid misconduct, she was dismissed from service by the competent authority without a proper enquiry. It has been held by the Supreme Court that "the order of dismissal from service was bad in law in as much as no charge-sheet was supplied to her, no explanation was called from her, no opportunity to cross examine the witnesses examined was given to her, no opportunity to show cause against the proposed dismissal from service was given to her and all that was made in total contravention of the provisions of Article 311(2) of the Constitution and her dismissal order was set aside." **See: Smt. Rajinder Kaur Vs. Punjab State & Another, AIR 1986 SC 1790.**

32(E). **Even a casual labour cannot be dismissed or removed from service without regular enquiry if his removal etc. is made for any misconduct:** In the case noted below, a casual labour of the Telecom Department had acquired the status of a temporary employee and his services were terminated for certain misconduct like assaulting and threatening the gateman without conducting a regular departmental enquiry as per law. Setting aside the termination order, the Supreme Court held that: "Once an employee attains the temporary status, he becomes entitled to certain benefits, one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. The services were terminated on account of the allegation of assault by the delinquent employee. The order of termination cannot be treated to

be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary enquiry and without holding a regular departmental enquiry, cannot be sustained." **See: Nar Singh Pal Vs. Union of India & Others, (2000) 3 SCC 588.**

32(F).Termination etc. of service of an officiating, temporary or probationer government servant when to amount to punishment ?: The principle as that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary, either on probation or on an officiating basis, and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself, be a punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311 of the Constitution. In other words and broadly speaking, Article 311(2), will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or under the rules, the right to terminate the employment at any time, then such termination, in the manner provided by the contract or the rules, is prima facie and per se not a punishment and does not attract the provisions of Article 311. Where, however, the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very

reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servants with any penal consequences. The use of the expression "terminate" or "discharge" is not conclusive. Thus in each case, the court has to apply the two tests namely, (1) whether the servant had a right to the post or the rank or (2), whether he has been visited with evil consequences of the kind herein-before referred to? If the case satisfies either of the two tests, then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311 which give protection to the Government servant have not been complied with, the termination of service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant. The enquiry against the probationer can be conducted to ascertain whether he is fit to be confirmed in service. An order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification, may appropriately be regarded as one by way of punishment but an order discharging a probationer following upon an enquiry to ascertain whether he should be confirmed in service is not of that nature and clearly amounts to punishment. See : **(i) State of Orissa Vs. Ram Narayan Das, AIR 1961 SC 177 (Five-Judge Bench) (Paras 12), (ii) Purshotam Lal Dhingra Vs. Union of India, AIR 1958 SC 36 (Five-Judge Bench) and (iii) State of Bihar Vs. Gopi Kishore Prasad, AIR 1960 SC 689.**

32(G). Probationer can be discharged in the manner provided by Rule 55-B of the CSR: A Probationer has no right to the post held by him. Under the terms of his employment, the probationer could be discharged in the manner provided by Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules. Again, mere termination of employment does not carry with it "any evil consequences" such as forfeiture of his pay or allowances, loss of his seniority, stoppage or postponement of his future chances of promotion, etc. It is then difficult to appreciate what indelible stigma affecting the "future career" of the probationer was cast on him by the order discharging him from employment for unsatisfactory work and conduct. The use of the expression "discharge" in the order terminating employment of public servant is not decisive. It may, in certain cases, amount to dismissal. If a confirmed public servant holding a substantive post is discharged, the order would amount to dismissal or removal from service but an order discharging a temporary public servant may or

may not amount to dismissal. Whether it amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. Where under the rules governing a public servant holding a post on probation, an order terminating the probation is to be preceded by a notice to show cause why his service should not be terminated and a notice is issued asking the public servant to show cause whether probation should be continued or the officer should be discharged from service, the order discharging him cannot be said to amount to dismissal involving punishment. Undoubtedly, the Government may hold a formal enquiry against a probationer on charges of misconduct with a view to dismiss him from service and if an order terminating his employment is made in such an enquiry without giving him reasonable opportunity to show cause against the action proposed to be taken against him within the meaning of Article 311(2) of the Constitution, the order would undoubtedly be invalid. **See : State of Orissa Vs. Ram Narayan Das, AIR 1961 SC 177 (Five-Judge Bench) (Paras 12 and 13).**

32(H). Termination does not deprive government servant of his pay or allowances, seniority and his future chances of promotion etc.: Mere termination of services of a government servant does not carry with it “any evil consequences” such as forfeiture of his pay or allowances, loss of his seniority, stoppage or postponement of his future chances of promotion, etc. See : **(i) State of Orissa Vs. Ram Narayan Das, AIR 1961 SC 177 (Five-Judge Bench) (Paras 12), (ii) Purshotam Lal Dhingra Vs. Union of India, AIR 1958 SC 36 (Five-Judge Bench) and (iii) State of Bihar Vs. Gopi Kishore Prasad, AIR 1960 SC 689.**

33. Information as to 'why' and for what 'reasons' judge had come to a particular decision or conclusion cannot be sought under the RTI Act, 2005 : Information as to 'why' and for what 'reasons' judge had come to a particular decision or conclusion cannot be sought under the RTI Act, 2005. A Judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. A Judicial Officer is entitled to protection under the provisions of the **Judicial Officers' Protection Act, 1850** and the object of the same is not to protect malicious or corrupt judges but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly

affect the independence of the judiciary. A judge should be free to make independent decisions. See : **Khanapuram Gandaiah Vs. Administrative Officer, AIR 2010 SCC 615.**

34. Important reported cases where dismissed/terminated/compulsorily retired Judicial Officers got relief from Courts in judicial side :

(i) Naresh Singh Vs. State of U.P. & Others, 2013 (1) ESC 429 (Allahabad)(LB)(DB)
(ii) Ramesh Chandra Singh Vs. High Court of Allahabad, (2007) 4 SCC 247
(iii) P.C. Joshi Vs. State of U.P., (2001) 6 SCC 491
(iv) Vijendra Pal Singh, Vs. State of U.P., (2001) 3 UPLBEC 2659
(v) Yoginath D. Badge Vs. State of Maharashtra, (1999) 7 SCC 739
(vi) Union of India & Others Vs. A.N. Saxena, AIR 1992 SC 1233
(vii) Zunjarrao Bhikaji Nagarkar Vs. Union of India & Others, AIR 1999 SC 2881
(viii) Iswar Chandra Jain Vs. High Court of Punjab & Haryana, AIR 1988 SC 1395
(ix) K.P. Tiwari Vs. State of M.P., AIR 1994 SC 1031
(x) Kashi Nath Roy Vs. State of Bihar, AIR 1996 SC 3240.

******

Part : B

(Section 195/340 CrPC)

1. **Untoward happenings which generally take place against the Judicial Officers and Courts:** The untoward incidents which generally take place against the Judicial Officers during the course of performance of their judicial functions are as under:
   (i) Misbehaviour
   (ii) Insult
   (iii) Abusive and derogatory words
   (iv) Interruptions in judicial proceedings
   (v) Intimidations
   (vi) Shouting and sloganeering
   (vii) Assaults
   (viii) Gherao and building pressure for favourable orders
   (ix) Complaints and affidavits with false allegations
   (x) False allegations in applications and affidavits seeking transfer of cases
   (xi) Tearing of court records
   (xii) Causing destruction and disappearance of court records
   (xiii) Contempt of Court

2. **Good reputation and personal security:** A good reputation is an element of personal security**. See: Union of India Vs. State of Maharashtra, (2020) 4SCC 761 (Three-Judge Bench).**

3. **Action under Section 195/340 CrPC should be initiated in the larger interest of administration of justice and not to satisfy the personal revenge or vindictiveness or to serve the interest of a private party:** Action under Section 195/340 CrPC should be initiated in the larger interest of administration of justice and not to satisfy the personal revenge or vindictiveness or to serve the interest of a private party. **See: Santosh Singh Vs. Izhar Hussain, AIR 1973 SC 2190.**

4. **Sections of IPC for which court complaint can be filed u/s 340 CrPC:** According to Section 195 CrPC, a court complaint can be filed u/s Section 340 CrPC for the following offences of the IPC:
   (i) Offences u/s 172 to 188 IPC together with their abetment or attempt to commit or make criminal conspiracy to commit such offences.
   (ii) Offences u/s 193 to 196, 199, 200, 205 to 211, 228 IPC
   (iii) Offences of forgery of documents described in Section 463, or punishable u/s 471, 475, 476 IPC if produced in a judicial proceeding.

5. **Pre-conditions for initiating action under Section 195/340 CrPC:** Pre-conditions for initiating action under Section 195/340 CrPC are as under:
   (i) materials produced before the court make out a prima facie case for the complaint u/s 340 CrPC, and
   (ii) it is expedient in the interest of justice to prosecute the offender for the offences enumerated in Section 195 CrPC. **See: K. Karunakaran Vs.Echara Warrier, AIR 1978 SC 290**

6. **Mentioning exact offences committed by the offender in the complaint mandatory for the court filing the complaint u/s 340 CrPC:** It is incumbent on the court filing the complaint to record a clear finding regarding the exact offence which was committed. In the absence of such a finding, the order filing the complaint cannot be supported in law. **See: Har Gobind Vs. State of Haryana, AIR 1979 SC 1760.**

7. **Scope and object of Section 195/340 CrPC:** Section 195(1)b(i) CrPC refers to offences of false evidence and offences against public justice while Section 195(1)(b)(ii) CrPC relates to offences in respect of documents produced or given in evidence in judicial proceeding in any court. Prosecution can be initiated only by sanction of court under whose proceedings the offence referred to in Section 195(1)(b) CrPC was allegedly committed. Object of Section 340 CrPC is to ascertain whether any offence affecting administration of justice was committed in relation to any document produced or given in evidence in court during the time when the document or the evidence was in *custodia legis* and whether it is also expedient in the interest of justice to take such action. Court has not only to ascertain *prima facie* case but also to see whether it is in the public interest to allow criminal proceedings to be instituted. In the present case, the Magistrate had erred in taking cognizance of the offence under Section 193 IPC on the basis of a private complaint and the High Court was justified in setting aside the order of the Magistrate. **See:**
   (i) Narendra Kumar Srivastava Vs. State of Bihar and Others (2019) 3 SCC 318.
   (ii) K. Karunakaran Vs.Echara Warrier, AIR 1978 SC 290

8. **Complaint u/s 195 (1) (a) (i) CrPC in the event of fraud, concealment of fact, misrepresentation etc:** Furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is an offence punishable u/s 182 IPC. Cognizance of such offence can be taken by court once a proper complaint as per Section 195 (1) (a) (i) CrPC is filed. Any person who makes attempt to deceive the court interferes with the administration of justice and can be held guilty of contempt of court. Anyone who takes recourse to fraud deflects the course of judicial proceedings or if anything done with oblique motive or any publication with intent to deceive the court or made with intention to defraud, same is contempt as it would interfere with the administration of justice. Concealment of material facts is jugglery, manipulation, manoeuvring or misrepresentation, which has no place in prerogative jurisdiction. If the applicant does not disclose all material facts fairly and truly but states them in distorted manner and misleads the court, then court has inherent power to protect itself and prevent abuse of its process and refuse further examination of case on merits. If the court does not reject the petition on that ground, it is failing in its duty. Such application requires to be dealt with as contempt of court for abusing process of court. See: **ABCD Vs. Union of India, (2020) 2 SCC 52.**

9. **Section 195/340 CrPC when attracted in respect of forgery of documents and false affidavit?:** In the case noted below, the petitioner had earlier filed certain documents before the trial court in Bombay and the same were exhibited by the trial court. The petitioner filed copies of those exhibited documents before the Supreme Court in SLP with certain handwriting corrections therein. On comparing the original copies as exhibited before the trial court with the copies filed in the SLP before the Supreme Court, it was noticed that the handwriting modifications appeared for the first time in the in the documents filed before the Supreme Court. The Supreme Court held that all that was required at that stage was to assess

whether a prima facie case was made out to initiate proceedings on complaint in the court of the competent Magistrate against the petitioner/ accused for the offences under Section 340 read with Section 195(1) (b) CrPC. Relying on its previous decision by a Three-Judge Bench in the case of R. Karuppan Advocate ,In re , (2001) 5 SCC 289, the Supreme Court directed its Registrar General/ Secretary General to depute an officer of the rank of the Deputy Registrar or above of the Supreme Court to file a complaint against the petitioner company u/s 340 CrPC for the offences u/s 193 and 199 IPC. **See: New Era Fabrics Limited Vs. Bhanumati Keshrichand Jhaveri, (2020) 4 SCC 41.**

10. **Section 195/340 CrPC when not attracted in respect of forged documents?** : Where forged document (sale deed) was produced in evidence before the court and the same was relied on by the party for claiming title to the property in question, it has been held by the Hon'ble Supreme Court that since the sale deed had not been forged while it was in *custodia legis*, bar of Section 195 CrPC against taking cognizance of offences u/s 468, 471 of the IPC was not attracted. **See:**
    - **(i) C.P. Subhash Vs. Inspector of Police, Chennai, 2013 CrLJ 3684 (SC).**
    - **(ii) Iqbal Singh Marwah vs. Minakshi Marwah, AIR 2005 SC 2119 (Constitution Bench).**

11. **In which court complaint u/s 340 CrPC should be filed**: A complaint u/s 340 CrPC should be filed in the court of the Magistrate having territorial jurisdiction to try the offences committed at the place where the court filing the complaint is situate**.**

12. **Who can file complaint u/s 340 CrPC:** A complaint can be filed u/s 340 CrPC either by the Presiding Officer of the court or by an official of the court under his direction. See: **Virender Kumar Satyawadi Vs. State of Punjab, AIR 1956 SC 153.**

13. **Can a third party or stranger not affected by the offence file complaint u/s 340 CrPC**: Yes. A third party or stranger can also file complaint u/s Section 340 CrPC for an offence enumerated u/s 195 CrPC. **See:**
    - **(i) N. Natarajan Vs. B. K. Subba Rao, AIR 2003 SC 541**
    - **(ii) Iqbal Singh Narang Vs. Veeran Narang, (2012) 2 SCC 60.**

14. **Whether a third party or a stranger can also be heard in a criminal proceeding without the consent of the Public Prosecutor? If yes, under what conditions:** An aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them. Though there is no obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased in order to provide him an opportunity to be heard at the time of consideration of the final report of the police (except when the final report is to the effect that no offence had been made out in the case) the informant who lodged the FIR is entitled to a notice from the Magistrate. In other instances, the injured or any relative of the accused can appear before the Magistrate at the time of consideration of the police report if such person otherwise comes to know that the Magistrate is going to consider the report. If such person appears before the Magistrate, it is the duty of the Magistrate to hear him. **See : M/s JK International vs. State, JT 2001 (3) SC 130.**

15. **Is filing of complaint u/s 340 CrPC mandatory by the public servant or court**: No. Filing of complaint u/s 340 CrPC by the complaining Presiding Officer is discretionary and not mandatory. Such complaint has to be filed when the Presiding Officer is of the view that it is expedient in the interest of administration of justice. **See: Pritish Vs. State of Maharashtra, AIR 2002 SC 236 (Three-Judge Bench).**

16. **Court suo motu or party can initiate action for filing of complaint by court u/s 340 CrPC:** Court suo motu or party can initiate action for filing of complaint u/s 340 CrPC provided the court thinks that taking such action is necessary in the interest of administration of justice and there is a prima facie case for that. See: **K. Karunakaran Vs. Echara Warrier, AIR 1978 SC 290.**

17. **Holding preliminary enquiry not necessary for filing complaint u/s 340 CrPC:** A complaint under Section 340 to 341CrPC may be filed even without holding preliminary inquiry into the facts on which it appears to the complainant Court prima facie that offence, as contemplated, had been committed and that it is expedient in the interests of justice that inquiry should be made into such offence by the Magistrate. Court complaint u/s 340 CrPC can be out right filed in the court of Magistrate without making an enquiry first in the complaint if the court is satisfied that filing of the complaint is expedient. **See:**
    (i) State of Goa Vs. Jose Maria Albert Vales Alias Robert Vales, AIR 2018 SC 140.
    (ii) Pritish Vs. State of Maharashtra, AIR 2002 SC 236 (Three-Judge Bench).

18. **Inquiry into allegations in complaint under Section 195/ 340 CrPC not to be initiated if no grounds are made out therefor:** The Supreme Court, in the case of Rafale fighter planes, declined to inquire into the allegations made in the complaint u/s 340 CrPC against the Prime Minister of India and others on the ground that no case was made out for that on the basis of the alleged false documents and statements produced and made before the Supreme Court. **See: Yashwant Sinha Vs. CBI, (2020) 2 SCC 338 (Three-Judge Bench).**

19. **Examining complainant and recording his statements before summoning the accused not necessary:** A complaint u/s 340 CrPC is a complaint by a public servant and therefore examining the complainant and recording his statements before passing the summoning order is not necessary in much as the same would be in the teeth of Section 343(1)CrPC. The procedure prescribed u/s 200 or 202 CrPC for cases instituted otherwise than on police report would not be relevant and applicable in respect of complaints under Sections 340 & 341 of CrPC. Recording statements of the complainant Presiding Officer and witnesses u/s 200 and 202 CrPC is not permissible in a complaint filed u/s 340 CrPC. **See:**
    (i) State of Goa Vs. Jose Maria Albert Vales Alias Robert Vales, AIR 2018 SC 140.
    (ii) Ranjit Singh Vs. State of Pepsu, AIR 1959 SC 843.

20. **Giving show cause notice to accused before filing complaint u/s 340 CrPC not necessary:** In the case of the trial court, giving show cause notice to accused before filing the proposed complaint u/s 340 CrPC is not necessary but so far as the appellate court is concerned , giving of an opportunity to the witness to show cause against the contemplated complaint is mandatory**. See: Narayanswami Vs. State iof Maharashtra, (1971) 2 SCC 182**

21. **An offence u/s 228 IPC to be treated as contempt of court:** An offence u/s Section 228 IPC may be tried as contempt of court even if the acts complained of cannot be confined or covered by Section 228 IPC. **See: Waryam Singh Vs, Sadh Ram, AIR 1972 SCC 905.**

22. **Procedure for punishing contemnor for offence u/s 228 IPC:** Following procedural steps should be taken to punish the offender/ contemnor for offence under Section 228 IPC:
    (i) Record in the order-sheet of the case the act of insult or interruption committed by the contemnor as required by sub-section (2) and (3) of Section 345 CrPC the same day when the case was being heard.
    (ii) Presiding officer may take the contemnor into custody of the court if possible
    (iii) Cognizance of the offence must be taken the same day and this should be mentioned in the order-sheet
    (iv) Show cause notice to the offender be issued the same day , if possible or the next day or as early as possible
    (v) If the offender refuses to receive the notice or is not found at his normal address , this fact as mentioned in the process server's report should be mentioned in the final order to be passed by the court
    (vi) The statements of the court staff in whose presence the offender had committed the offence should be recorded on oath and the same should used in the final order
    (vii) Pass final order awarding appropriate penalty provided by Section 228 IPC

OR Alternatively

Presiding Officer can proceed in accordance with the procedure in Section 346 CrPC and either himself file a complaint or direct his Reader/office clerk to file it in the court of the Magistrate having local territorial jurisdiction over the place where his court is situated for the offence u/s 228 IPC.

23. **Deciding the case u/s 228 IPC the same day not mandatory**: It is the cognizance alone which has to be taken the same day when the offence of contempt is committed, and like all other criminal trials must be disposed of as expeditiously as possible but not necessarily on the same day. **See: Jagir Singh Vs. Gram Panchayat, (1983) Crimes 157 (P& H).**

24. **Hearing of accused before filing complaint u/s 340 CrPC not necessary:** The scheme underlying Sections 340, 343, 238, 243 CrPC clearly shows that there is no statutory requirement to afford an opportunity of hearing to the persons against whom the court might file a complaint u/s 340 CrPC before the Magistrate for initiating prosecution proceedings. See: **Pritish Vs. State of Maharashtra, AIR 2002 SC 236 (Three-Judge Bench).**

25. **Principles of natural justice not violated if accused is not provided hearing before filing of court complaint u/s 340 CrPC:** In the present case of land acquisition proceedings, the claimants/land owners after playing chicanery on the court had wangled a bumper gain as compensation and the reference court which granted a quantum leap in awarding compensation to the land owners/claimants later found that they had used forged documents of sale deeds inveigling such a bumper gain as compensation and hence the court ordered some of the claimants/landowners to face prosecution proceedings in a criminal court. The Supreme Court held that the court is not under a legal obligation to afford an opportunity to be heard to claimant/landowner before ordering such prosecution. The scheme underlying

Section 340, 343, 238, 243 CrPC clearly shows there is no statutory requirement to afford an opportunity of hearing to the persons against whom the court might file a complaint u/s 340 CrPC before the Magistrate for initiating prosecution proceedings. Once the prosecution proceedings commence, the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the CrPC itself. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or not. The court at the stage envisaged in Section 340 CrPC is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. At that stage, the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. See**: Pritish Vs. State of Maharashtra, AIR 2002 SC 236 (Three-Judge Bench).**

26. **Procedure of trial to be adopted by the Trial Magistrate on complaint u/s 340 CrPC:** According to Section 343 CrPC**,** the Trial Magistrate will adopt that procedure of trial on the complaint received u/s 340 or 341 CrPC which is adopted on police report (charge-sheet) received u/s 173(2)CrPC**.**

27. **Accused has right to be heard before the Trial Magistrate:** Once the prosecution proceedings commence before the trial Magistrate, the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code of Criminal Procedure itself. **See: Pritish Vs. State of Maharashtra, AIR 2002 SC 236 (Three-Judge Bench).**

28. **Trial Magistrate shall very sparingly conduct an enquiry on receiving a complaint u/s 340 CrPC to proceed further:** Trial Magistrate has discretion to collect further materials by way of inquiry, even if summary in nature, if genuinely felt necessary in the interest of justice, for generating required satisfaction to proceed on receiving the complaint u/s 340 CrPC. However, in exercising such discretion, the Trial Magistrate has to be cautiously conscious of the fact that complaint pertains to the offence affecting administration of justice and is preceded by prima facie satisfaction of the complaining Court that same might have been committed and that it was expedient in the interest of justice to inquire into the same. In other words, the discretion available to the Trial Magistrate under Section 343(1) CrPC has to be very sparingly exercised and only if it is genuinely felt that further materials are required to be collected through an inquiry by him only to sub-serve the ends of justice and avoid unwarranted judicial proceedings. Thus, the Trial Magistrate, on receipt of complaint under Section 340 and/or 341CrPC, if there is preliminary inquiry and adequate materials in support of considerations impelling action under above provisions are available, would be required to treat such complaint to constitute the case, as if instituted on police report and proceed in accordance with law. However, in the absence of any preliminary inquiry or adequate materials, it would be open for Trial Magistrate, if he genuinely feels it necessary, in the interest of justice and to avoid unmerited prosecution to embark on summary inquiry to collect further materials and then decide future course of action as per law. **See: State of Goa Vs. Jose Maria Albert Vales Alias Robert Vales, AIR 2018 SC 140.**

29. **Complaint u/s 340 CrPC by clubbing offences other than those enumerated in Section 195 CrPC cannot be filed:** Complaint u/s 340 CrPC by clubbing offences other than those enumerated in Section 195 CrPC cannot be filed. Such a complaint being beyond the scope of

Section 195 read with Section 340 CrPC would be liable to be quashed. See: **Jose John Vs. K. C. Kuruvila, 1996 CrLJ 1449 (Kerala High Court).**

30. **Magistrate cannot take cognizance of offences mentioned in Section 195 CrPC on charge-sheet submitted by police after investigation of FIR**: Magistrate cannot take cognizance of offences mentioned in Section 195 CrPC on charge-sheet submitted by police after investigation of FIR. However, the court could then file a complaint u/s 340 CrPC on the basis of the FIR and the material collected by the police during investigation provided the procedure in Section 340 CrPC is followed. See: **M. Narayandas Vs. State of Karnataka, 2004 CrLJ 822 (SC).**

31. **FIR registered for offences mentioned in Section 195 CrPC liable to be quashed:** FIR registered for offences mentioned in Section 195 CrPC is liable to be quashed u/s 482 CrPC. **See: Paras Ram Vs. State of Haryana, 1995 CrLJ 1603 (P&H).**

32. **Apology can be accepted by court under Section 195/340 CrPC :** Where an accused had made false statements before the company court and proceedings against him for the offence of perjury was initiated under Section 195/340 CrPC and the accused had filed affidavit before the Hon'ble Supreme Court tendering unconditional apology and humbly begged to be pardoned by stating that he never had intention to show any disrespect or dishonor to the court and the alleged false statements were unintentional and he would not indulged in any such adventures in future, the Hon'ble Supreme Court accepted the unconditional apology of the accused and exonerated him of the said offence of perjury. It has also been held that other parallel proceedings under the provisions of the Contempt of Courts Act, 1971 and u/s 21 of the Company Secretaries Act, 1980 would not be proper. **See : Dhiren Dave Vs. Surat Dyes & Others, (2016) 6 SCC 253.**

33. **Stricture against Sessions Judge for misunderstanding the provisions of Section 156(3)CrPC r/w Sec. 195/340 CrPC:** Where the Sessions Judge, Rampur had recorded findings in the judgment in a sessions trial that the informant had lodged false FIR against the accused and, contrary to the provisions of Sections 195/340 and 344 CrPC, directed the SSP, Rampur in his judgment for registration of FIR against the informant for the offence u/s 182 of the IPC, the Hon’ble Allahabad High Court quashed the order of the Sessions Judge to register the FIR as being illegal and without jurisdiction and directed the Registrar General of the High Court to send a copy of the judgment of the High Court to the Sessions Judge, Rampur for his guidance in future. See: **Lekhraj vs. State of UP, 2008 (61) ACC 831 (All)**

34. **Appeal by complainant or accused u/s 341 CrPC:** A private complainant on whose application the court had refused to file a complaint u/s 340 CrPC and the accused have right to prefer an appeal u/s 341 CrPC against any order passed by the court u/s 340 CrPC.

****

Part : C

Reference to High Court by Subordinate Court under Section 15(2) of the Contempt of Courts Act, 1971 for taking Action Against its Criminal Contempt

1. **Object behind Contempt of Courts Act, 1971:** The introduction of the Contempt of Courts Act, 1971 has been for the purposes of securing a feeling of confidence of the people in general for due and proper administration of justice in the country. See: **Prem Surana Vs. Addl. Munsif & Judicial Magistrate, AIR 2002 SC 2956.**

2. **Contempt proceedings should be sparingly exercised:** The contempt of Court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. **See: Prodip Kumar Biswas Vs. Subrata Das, 2004 SCC (Criminal) 1341.**

3. **Kinds of contempt:** According to Section 2 of the Contempt of Courts Act, 1971 contempt is of two kinds:
   - **(i)** **Civil Contempt:** means wilful disobedience to any judgment, decree direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;
   - **(ii)** **Criminal Contempt:** means the 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:
     - (a) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
     - (b) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
     - (c) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

4. **Power of contempt not to be exercised lightly:** The power of punish for contempt has to be exercised not casually or lightly, but with great care and circumspection; and only where it is necessary to punish the contemner to uphold the majesty of law and the dignity of the Courts: **See: Babu Ram Vs. Sudhir Bhasin, AIR 1979 SC 1528.**

5. **High Court can take *sou motu* cognizance of contempt of subordinate courts:** In case of contempt of subordinate courts, the jurisdiction of the High Court to take cognizance of the contempt *suo motu* is proper. Such action is not barred on the ground that its alleged offence is punishable u/s 228, IPC, since offence u/s 228, IPC is not punishable as contempt of court. So, when the Presiding Officer of the Court is alleged to have been assaulted by the police officers, the same amounts to criminal contempt and the action of the High Court in initiating *suo motu* contempt of court proceeding and promptly taking action on giving reasonable opportunity of hearing of the contemners cannot be faulted: **See: Daroga Singh Vs. B.K. Pandey, AIR 2004 SC 2579.**

6. **Reference of criminal contempt by subordinate court to High Court:** Any court subordinate to the High Court can make a reference under Section 15(2) of the **Contempt of Courts Act, 1971 to** take action against the contemner for criminal contempt of the subordinate court. High Court can also take such action for criminal contempt of subordinate court on a motion made to it by the Advocate General of the State.

7. **One Rupee symbolic fine awarded by the Supreme Court against a lawyer for criminal contempt:** The Supreme Court on 31.08.2020 convicted Advocate Prashant Bhushan and awarded Rupee one as the symbolic fine for having committed the criminal contempt of the Supreme Court of India.

8. **A model reference u/s 15(2) of the Contempt of Court Act, 1971 to be sent to the High Court for drawing proceedings for criminal contempt of the subordinate court.**

09.12.2020

From :

Ramesh Kumar
Addl. Chief Judicial Magistrate
Banda.

To,

The Registrar General
Hon'ble High Court of Judicature
at Allahabad.

Through,

The District Judge
Banda.

Subject: Reference u/s 15(2) of the Contempt of Court Act, 1971 to take action against Shri Mohan Narayan Advocate, Registration No._______/2011 for having committed criminal contempt of the Court of the Addl. Chief Judicial Magistrate, Court No. 22, Banda.

Sir,

I most respectfully beg to state on the subject noted above as under:

1. That on 06.12.2020, I was conducting the judicial functions of my court i.e. the Addl. Chief Judicial Magistrate, Court No. 22, Banda when at about 12.30 PM, an accused named Ritesh Lal of the Criminal Case No. 1214 /2011, State Versus Ritesh Lal, u/s 419, 420, 467, 471 of the IPC, PS: Meethapur, District: Banda was produced by the police of the PS: Meethapur, Banda before the Court after his arrest made in pursuance of the non-bailable warrant issued against him long back. The said accused had jumped the bail and had absconded. Processes u/s 82 and 83 CrPC were also issued against him. Soon after the judicial custody warrant of the said accused was signed by me, Shri Mohan Narayan Advocate who had already

filed his vakalatnama in favour of the said accused in the case mentioned above appeared and moved an application for releasing him on bail.

2. I directed the advocate named above to provide a copy of the bail application of the accused Ritesh Lal to the learned APO of my court who was present in the court and was requesting for copy of the bail application and time to file objections and seek report from the concerned police station. The said advocate refused to give copy of the application to the learned APO and insisted to grant bail to the accused at once. I again asked the said advocate to provide a copy of the bail application to the learned APO for filing his objections and seeking report from the concerned police station. On my this direction, the advocate named above got extremely angered and started shouting at me to immediately release the said accused by granting him bail. When I tried to pacify him and again asked him first to give a copy of the bail application to the learned APO and posted the bail application next day for hearing, the advocate named above lost his tempers and started threatening me not to allow me to function as the Addl. Chief Judicial Magistrate in the District Court Banda by saying that he would procure false complaints against me from his colleagues and send the same to the Hon'ble High Court and would ensure that I am harmed in my career if I did not grant bail to the said accused at once. Despite my repeated attempts to pacify him, he kept on shouting and intimidating me as above and ultimately tore the bail application and threw it at me on the dais and went away from the court menacingly staring and shouting at me. The Reader Shri Kedarnath, Orderly Shri Sukhdev, Peon Shri Chetram besides the learned APO of my court Shri Suresh Chandra who were then present in the court room and saw this contemptuous intimidation and insult of the court by the said advocate got stunned.
3. The aforesaid utterances and intimidations of the advocate named above have fully been recorded by me in the order sheet dated .6.12.2020 of the criminal case mentioned above and a duly certified copy of the same is annexed herewith. Similarly, the separate reports given by the Reader Shri Kedarnath, Orderly Shri Sukhdev and Peon Shri Chetram of my court in their hand writings and signatures are also annexed herewith in original for kind perusal of the Hon'ble Court.
4. The aforesaid objectionable conduct of the advocate named above clearly lowered the dignity of my court in the glare of all those who were present in my court room. The said advocate thereby committed criminal contempt of my court.
5. A Show Cause Notice dated 07.12.2020 was issued by me to the said advocate to furnish his explanation if any by 08.12.2020 but as has been reported by the process server of the District Court Banda, the said advocate after going through the Show Cause Notice at his chamber within the campus of the District Court Banda, refused to receive its copy and asked the process server to go back. A duly attested copy of the report dated 07.12.2020 given by the process server Shri Suresh Kumar is annexed for kind perusal.
6. A reference u/s 15(2) of the Contempt of Court Act, 1971 is hereby being made to the Hon'ble Court to initiate proceedings against Shri Mohan Narayan Advocate, Banda, Registration No. _____/ 2011 for having committed criminal contempt of the court of the Addl. Chief Judicial Magistrate, Court No. 22, Banda as stated in the preceding paragraphs together with the copies of documents mentioned hereinabove. You are therefore requested to place this reference of criminal

contempt before the Hon’ble Court for necessary action against the advocate named above.

With profound regards,

(Ramesh Kumar)
Addl. Chief Judicial Magistrate
Banda

Annexures: As above.

****

09.12.2020

Part : D

Certain Tips to Avoid Untoward Happenings with the Judicial Officers

1. Easier to find service than doing it
2. Try to realize the difference between idealism and realism
3. Try to transform your personality according to the expectations of your job and the Institution you belong to.
4. Adopt twofold strategy to avoid untoward happenings in your court : 1. Preventive and 2. Punitive
5. Maintain and improve your Quality and Credibility
6. Earn respect and good will for you by your conduct , behaviour and reaction
7. You need not worry. After all, 3000 judges are working in UP. So will you do. Gradually adopt the practices and traditions of the Judicial Department and become a successful Judicial Officer.
8. Let you speak through your pen, orders and judgments.
9. Be polite but firm
10. Remain alert when two lawyers are shouting at each other
11. Do not side with any of them, try to pacify them if you can
12. You can ask the lawyers "Please cool down, calm down." But do not be a third party to the noisy scene.
13. Do not become party or witness to any incident in your court
14. Retire to your chamber before they exchange abusive words against each other or start fighting
15. Before retiring to chamber, ask your Reader to remain in court and tell him to sit after one hour
16. If office bearers of Bar come to you to enquire from you as to who was the lawyer who assaulted first or abused the victim lawyer, do not disclose the name. You do not identify any lawyer personally but from their vakalatnamas. Ashwatthama Mrito, Naro Vaa Kunjaro.
17. If you report the incident to District Judge in writing, avoid disclosing names of lawyers involved in the incident unless necessary. In verbal talks with your District Judge, you can tell the names of lawyers.
18. Running arguments and altercations with the lawyers–No.
19. Be a Good Listener.
20. No Hot Talks.
21. No outbursts. Remain unperturbed, cool, calm and poised. Be a Neelkanth.
22. By angering you, many a times lawyers entrap you into their strategy to make you outburst and make irresponsible and objectionable utterances and then make them an

issue to settle their score against you. Be extremely cautious of such ploys of advocates. Akrodhen Jayet Krodham (Gita).

23. Do not pass orders or record order sheets in anger. Krodhat Bhawati Sammohah, Sammohat Vibhramah, Vibhramat Buddhi Nashah, Buddhi Nashat Vinashyati (Gita).
24. Do not use intemperate, impolite, terse or unpleasant words for lawyers, employees or litigants.
25. In the event of any untoward incident in your court, if you want to report the incident to the District Judge or want to make a reference to the High Court or want to lodge an FIR with the police, besides recording the detailed facts in the order sheet of the case, also obtain written reports thereof in the hand writing and signature of your staff like the Reader, Clerks and Peons present in the court to be used as evidence in future. But ensure that they write the report correctly.
26. Do not record the happening in the order sheet in the presence of the contemnor or at once when the happening takes place. Record the facts of the happening first on a separate rough paper preferably in chamber and then record its final version fairly on the order sheet of the case.
27. Send your Reader or Clerk to the CAO of the Administrative Office of the District Judge to inform him of the happening. You can directly inform the CAO on his Mobile. But if you want to pass any message through your Mobile to the CAO or to the District Judge about the happening, ensure that only proper version of the incident passes from your electronic device/Mobile as the same could be used in future as the electronic evidence.
28. Seek time through the CAO to meet the District Judge and apprise him of the incident personally same day when he calls.
29. If you have really made up your mind to make a reference to the High Court to initiate proceedings against the contemnor, then let you first prepare your reference and send it to the office of the District Judge in a sealed cover by entering it into the Dak Bahi of your court and preserve its receipt given by the clerk in the office of the District Judge and then seek time from District Judge to apprise him of the incident personally.
30. Take things easy without over-reactions. There is always a solution to any problem.
31. Believe in destiny and divinity unless you are an atheist.
32. Try to assess the counter reaction to your reaction and formulate your response to any thing or utterance accordingly. There is always equal and opposite reaction to every action.
33. Do not disclose your mind by your queries.
34. After heated arguments between lawyers in the case, you can show your wit at the end to thank them by saying that both of them were well prepared and argued quite impressively. Best way to shame and deter them from creating scene in your court next time.
35. Be considerate in fixing short dates if insisted and possible. It enhances your respect and good will for you.
36. Do not arrogate to be the “Angrejo ke Jamane ka Jailor”.
37. Do not arrogate to be revolutionary. Whilst in Rome, live as Romans live.

38. One should never quarrel, one should seldom fight but if fights, a funeral must follow. Try to ensure such things never happen with you.
39. Remain well informed about the good or bad happenings in the Department. Try to analyze such happening as to whether the response of the Judicial Officer was proper or lacking in some respects. What would you have done, had you been there in his/her place. It sharpens your ability to respond effectively to such happenings.
40. If you cannot do anything else, then pardon. (Kshama Beerasya Bhushnam).
41. Class on "Protections to Judicial Officers".
42. Certain major unpleasant incidents with the Judicial Officers in UP:
    (i) ACMM- Kashyap Kand of Kanpur Nagar in 1980s
    (ii) CJM-JP Gupta Kand of Faizabad in 1990s
    (iii) Special Judge (Gangster Act) Kand of Faizabad in 1990s
    (iv) ACJM- PK Consul Kand of Ghaziabad in 1990s
    (v) CJM- Lal Chand Kand of Mirzapur in 1990s
    (vi) ACJM Aligarh Kand in 2010s
    (vii) ADJ- Manoj Kumar Shukla Kand of Raebareli in 2018
    (viii) District Judge- Bajpayee Kand of Agra in 1990s
    (ix) District Judge- Sukh Lal Adarsh Kand of Ballia in 1990s
    (x) Civil Judge Junior Division Kand of Pratapgarh in November, 2020
43. These tips are only advisory in nature. You can follow or reject it in toto.

****

09.12.2020

Part : E

List of Difficult Situations For Judicial Officers and Wayouts Therein

1. When and how to verbally apprise the District Judge of any incident having occurred in the court?
2. Officials in the office of the District Judge not receiving application or representation to be sent to High Court—option of the Judicial Officer?
3. When a written application or representation should be sent first to the administrative office of the district judge and then to seek time from him to apprise him of the subject matter of such application or representation?
4. Two lawyers clashing and assaulting each other in the court in presence of the Presiding Officer---options of the Presiding Officer?
5. Lawyer shouting in court: What should Presiding Officer do?
6. Drafting show-cause notice to be issued to lawyer u/s 345 CrPC for offense u/s 228 IPC.
7. Proceeding u/s 346 CrPC against lawyer—How to draw?
8. Different steps for punishing lawyer for committing offense u/s 228 IPC
9. Show-cause notice to lawyer as to why reference of contempt be not made to High Court?---How to draft the show cause notice?
10. Reference of contempt against lawyer to High Court—How to draft? Lawyer saying that he will move application to the District Judge for transfer of case---what should be done by the Presiding Officer?
11. Skill required in fixing short or long date for hearing on injunction applications
12. Time of passing ex-parte order in the case when defendant is not present?
13. Time of dismissal of suit or miscellaneous case or execution application when the plaintiff or the applicant or the decree holder is not present?
14. Entering time of ex-parte order or dismissal order
15. Fixing date for hearing of interim injunction application when plaintiff was not granted ex-parte ad-interim injunction.
16. Officials in the office of the District Judge not receiving application or representation to be sent to the High Court---Options of the Judicial Officer?
17. Cautions in dealing with the cases of the in-charge court.
18. What orders in the cases pending in the in-charge court should be passed?
19. What orders in the cases pending in the in-charge court should not be passed?
20. When a report adverse to the peon should be sent to the district judge?
21. When a report against the Reader or the office clerk should be sent to the district judge?
22. Options of the Presiding Officer when case can not be decided within the time fixed by the High Court or the District Judge.

23. 23. How to write explanation when maximum time had elapsed during the period of the predecessor Presiding Officers when there was direction for time-bound disposal of the case.
24. What should be done when a wrong order by mistake or ignorance is passed?
25. How to issue notice again to the defendants when the case was already ordered by the predecessor to proceed ex-parte against the defendants and the case is today fixed for ex-parte evidence or ex- parte argument of the plaintiff?
26. How to avoid deciding those cases which no one among the predecessors decided?
27. How to survive when the District Judge is displeased with the Judicial officer?
28. How to earn pleasure of *Kaal Bhairava* to be bailed out and spared from the wrath of the district judge?
29. How to get rid of a bad Peon or Orderly?
30. How to discipline and tame a bad and non-performer clerk or Reader?
31. Initials of clerks of court under their compliance reports---Cautions exercisable by the Presiding Officers?
32. Quantum of cost------Tact of imposing.
33. Timing of pronouncement of judgments and orders already reserved on previous days.
34. How to conduct court and take up cases for hearing when the court is crowded by lawyers?
35. What types of judicial works can be done when the lawyers are on strike or have passed a resolution of no adverse order?
36. What should be the priority of taking up the cases for hearing in the court?
37. What should the Presiding Officer do when the counsel for both the parties are present in the court but the order-sheet recorded on the previous date does not specify as to what application is to be heard today or what other proceeding is to be undertaken today?
38. What should be done by the Addl. Civil Judges (Junior Division) when the CJM or ACJM suddenly assigns some criminal work like remand, bail, recording of statements u/s 164 CrPC etc.?
39. Arrogance, show offs, pomp and show, over assessment of self are sworn enemies of a Judicial Officer and extremely dangerous and destructive of his future prospects—How to test whether one is suffering from such weaknesses of personality?
40. Interest in village politics, election of village Pradhans highly dangerous for Judicial Officers.
41. How to deal with the family opponents in the native village and Mohalla?
42. Frequenting to the village where parents and family members reside—Cautions exercisable by the Judicial Offcers?
43. How to deal with the classmates practicing as lawyers at the place of posting?
44. Cautions required in going to markets for purchases.
45. Cautions required in purchases of daily needs through peons.
46. Exchanging messages or other contents with others on Mobiles etc loaded with political contents or loose remarks extremely dangerous for Judicial Officers.
47. Extreme level caution required to ensure that crucial conversation of Judicial Officer is not recorded by others on Mobile etc.

48. Humility and mannerism free from arrogance required of a Judicial Officer in all conditions when in journey, especially with the police personnel irrespective of their rank or behavior---Any misdealing with them to prove costlier to the Judicial Officer.
49. Toll Plazas on highways-----Cautions for Judicial Officers?
50. What to do when met with accident on road? Having Mobile Nos. of CJM or of batchmates or of some other Magistrate of the district while passing through his district for contact and help in emergency.
51. How to deal with Sifarish made by relatives and acquaintances for favours in judicial matters?
52. How to deal with Sifarish for favours in judicial matters made by senior or junior judicial officers posted in the same district or else where?
53. Judicial Officer must tell in candid words to his family members not to talk to or assure any one either face to face or on Mobile etc in relation to a case pending in his court and should avoid to be blackmailed later at their hands, especially in the era of Mobiles with voice recording devices.
54. To be voluble either in court or outside is bad trait and erodes the respectability of the Judicial Officer in long term.
55. How to react on being praised by a lawyer in court either for knowledge of law or anything else?
56. How to react in court or outside court when angered by remarks passed by an errant advocate?
57. Understanding the composition of the Bar and various factions formed within it on various negative factors prevalent in the society?
58. Understanding the dangers of going too close to one district Judge means inviting the wrath of the incoming district judge. How to formulate a cautious and uniform policy for long term in this regard?
59. Maintaining normal relations with all Judicial Officers—But how?
60. Monthly meetings or other gatherings of Judicial Officers--- A junior must not speak or give suggestions on any issue unless specifically called upon to do so by the district judge or by any senior officer close to the district judge.
61. Out witting or proving wrong a senior should always be avoided.
62. Posing to be over smart has not been the tradition of the judicial department. Hierarchical distance and respect should be maintained even when the senior is foolish.
63. To speak less and listen more should be the habit without disclosing own mind either in the court or outside in meetings etc.
64. A reasonable seriousness in personality will pay a lot in long term. But what can be its outer limit?
65. No advocate, junior or foolish senior , should be mocked for his foolish submissions. Its simply fraught with the dangers of aberration in one’s own personality.
66. Junior advocates should be guided by the Presiding Judge in their legal mistakes, and not snubbed or mocked. It will gradually bring much respect for the Presiding Judge and make him popular and respectable in the Bar as compared to others. No one moves

applications for transfer of cases or complaints against a well- behaved Judge who commands respect in the Bar.

67. Tacts and tips for smooth and respectful survival on a station without tensions and troubles is an art which a Judicial Officer must try to learn as early as possible.

****