

## **Strictures & Remedies**

*(Defences Against Judicial Assault)*

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It is often seen that some times disparaging remarks are recorded by the Judges of the Superior Courts in their judgments and orders against the members of Subordinate Judiciary which not only adversely affects their career and reputation but it also deeply hurts them in terms of their peace and calm and confidence as well. In many cases, the Judicial Officers find it quite difficult as to what are the remedies in law available to them in the event of being faced with the condemnatory remarks and strictures at the hands of the superior court Judges. The Hon'ble Supreme Court has, over the years, evolved the law on the subject through its host of judgments and the remedies of the Judicial Officers can well be found in those judgments. Some important decisions of the Hon'ble Supreme Court containing guidelines and remedies regarding expunction of strictures alongwith the instances of cases wherein they were recorded are being discussed here as under :

1. **Object behind creating different tiers of judicial hierarchy** : In the case noted below, the Supreme Court has reminded the Judges of higher courts that the higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that "a Judge who has not committed any error is yet to be born". See : Braj Kishore Thakur Vs. Union of India & others, (1997) 4 SCC 65.
2. **Superior Court Judges to act as friend, philosopher & guide of Sub-ordinate Judges** : The role of High Court is also of a friend, philosopher and guide of Judiciary subordinate to it. See : "K", A Judicial Officer, In Re, (2001) 3 SCC 54.
3. **Judicial Officers deserve parents-like care from their High Courts** : Under the constitutional scheme, control over the district courts and courts subordinate thereto has been vested in the High Courts. The control so vested is administrative, judicial and disciplinary. The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition if committed once innocently or unwittingly. "Pardon the error but not its repetition". The power to control is not to be exercised solely by wielding a teacher's cane; the members of subordinate judiciary look up to the High Court for the power to control to be exercised with parents-like care and affection. The exercise of statutory jurisdiction, appellate or revisional and the exercise of constitutional power to control and supervise the functioning of the district courts and courts subordinate thereto empowers the High Court to formulate an opinion and place it on record not only on the judicial working but also on the conduct of the judicial officers. The existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders cannot be denied, however, the High Courts have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their own mischievous infirmities. Firstly, the judicial officer is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal natural justice so as to shield against being condemned unheard.

Secondly, the harm caused by such criticism or observation may be incapable of being undone. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in open and therefore becomes public. Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge. Fourthly, seeking expunging of the observations by a judicial officer by filing an appeal or petition on his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court— a situation not very happy from the point of view of the functioning of the judicial system. May be for the purpose of pleading his cause he has to take the assistance of a legal practitioner and such legal practitioner may be one practicing before him. Look at the embarrassment involved. And last but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous Judge being caught unaware in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralizing effect not only on him but also on his colleagues. If all this is avoidable why should it not be avoided? See : “K”, **A Judicial Officer, In Re, (2001) 3 SCC 54.**

4. **Strictures amount to grave damage to the confidence of people in judicial institution :** While cancelling the bail order passed by a very senior Sessions Judge under the provisions of NDPS Act in the matter of recovery 97 Kgs. of non-duty paid Ganja, a single Judge of the Patna High Court had passed strictures against the Sessions Judge concerned that he was not aware of the law on the subject, had passed the bail order casually and leisurely possibly for extraneous considerations and therefore he was not entitled to continue as Sessions Judge, the Supreme Court expunged the adverse remarks and observed thus : “No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher Courts publicly express lack of faith in the subordinate Judges. It has been said, time and again, that respect for judiciary is not enhanced by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a Judicial Officer against whom aspersions are made in the judgment could not appear before the higher Court to defend his order. Judges of higher Courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against lower judiciary.” See :
- (i) **Amar Pal Singh Vs. State of UP, AIR 2012 SC 1995**
  - (ii). **Braj Kishore Thakur Vs. Union of India and others, AIR 1997 SC 1157**
  - (iii). **A.M. Mathur Vs. Pramod Kumar Gupta, (1990) 2 SCC 533**
  - (iv). **S.K. Viswambaran Vs. E. Koyakunju, 1987 (24) ACC 318.**

5. **Strictures tantamount to destruction of the institution of Judiciary from within :** In the case noted below, the M.P. High Court while cancelling the bail granted to the accused by a very senior Addl. Sessions Judge for the offences u/s. 147, 148, 149, 506, 341, 302 IPC observed that the ASJ had granted the bail as he was won over by the accused and corrupting influences had worked with the ASJ in granting the bail. Expunging the critical remarks, the Supreme Court issued a note of caution against recording of strictures against the subordinate Judges in these words : “The High Court Judge should not have allowed himself the latitude of ignoring judicial precaution and propriety even momentarily. The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the judges and hence provides for appeals and revisions. A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest. Sometimes,

the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks – more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive. It is possible that a particular judicial officer may be consistently passing orders creating a suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such cases, the proper course for the higher court to adopt is to make a note of his conduct in the confidential record of his work and to use it on proper occasions. The judges in the higher courts have also a duty to ensure judicial discipline and respect for the judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticized intemperately and castigated publicly. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary than when the judges of the higher courts publicly express lack of faith in the subordinate judges for one reason or the other. It must be remembered that the officers against whom such strictures are publicly passed, stand condemned for ever in the eyes of their subordinates and of the members of the public. No better device can be found to destroy the judiciary from within. The judges must, therefore, exercise self-restraint. There are ways and ways of expressing disapproval of the orders of the subordinate courts but attributing motives to them is certainly not one of them. That is the surest way to take the judiciary downhill.” See : **K.P. Tiwari Vs. State of M.P., 1994 Suppl. (1) SCC 540.**

6. **Pre-conditions for recording strictures** : The Supreme Court has laid down following guidelines as pre-conditions to be observed by the Judges of the superior courts before recording strictures against the sub-ordinate Judicial Officers in the judgments and orders :
- (i) whether the judicial officer or any other person whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
  - (ii) whether there is evidence on record bearing on the conduct of the judicial officer or of the person concerned justifying the critical remarks; and
  - (iii) whether it is necessary for the decision of the case, as an integral part thereof, to comment critically on the conduct of the judicial officer or the person concerned.
  - (iv) Judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. See : **S.K. Viswambaran Vs. E. Koyakunju, 1987 (24) ACC 318 (SC).**
7. **Strictures to withstand certain tests** : It has been clarified by the Supreme Court, in the cases noted below, that a superior court has got powers to record critical observations on the objectionable and improper conduct of the persons and authorities whose judgment or order comes for scrutiny before the superior court but if such critical remarks recorded by the superior court are questioned then the critical remarks recorded by the superior court must withstand the following tests--
- (1) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
  - (2) whether there is evidence on record bearing on that conduct justifying the remarks; and
  - (3) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. The overall test is that the criticism or observation must be judicial in nature and should not normally depart from sobriety, moderation and reserve. See----
- (i) Manish S. Pardasani Vs. Inspector State Excise, (2019) 2 SCC 660**

(ii) **Amar Pal Singh Vs. State of UP, AIR 2012 SC 1995**

(iii) **“K”, A Judicial Officer, In Re, (2001) 3 SCC 54.**

(iv) **State of U.P. Vs. Mohd. Naim, AIR 1964 SC 703**

8. **Stricture as potential damage to career** : A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not get approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge. See :
- (i) **“K”, A Judicial Officer, In Re, (2001) 3 SCC 54.**
- (ii) **Manish S. Pardasani Vs. Inspector State Excise, (2019) 2 SCC 660**
9. **Loss of dignity due to strictures cannot be restored even when expunged**: The Supreme Court has held that the critical remarks made in a judicial order of the High Court against a member of subordinate judiciary even if expunged would not completely reconstitute and restore the harmed Judge from the loss of dignity and honour suffered by him. See : **“K”, A Judicial Officer, In Re, (2001) 3 SCC 54**
10. **Confidential report to Chief Justice by superior court Judges—when to be sent?** : It has been laid down by the Supreme Court that the conduct of a judicial officer, unworthy of him, when having come to the notice of a Judge of the High Court hearing the matter on judicial side, the lis may be disposed of by pronouncing upon the merits thereof as found by him by avoiding in the judicial pronouncement criticism of, or observations on the “conduct” of the subordinate judicial officer who had decided the case under scrutiny. Simultaneously, but separately, in-office proceedings may be drawn up inviting attention of Hon’ble the Chief Justice to the facts describing the conduct of the Subordinate Judge concerned by sending a confidential letter or note to the Chief Justice. It will thereafter be open to the Chief Justice to deal with the subordinate judicial officer either at his own level or through the Administrative Judge or by placing the matter before the Full Court for its consideration. The action so taken would all be on the administrative side. The Subordinate Judge concerned would have an opportunity of clarifying his position or putting forth the circumstances under which he acted. He would not be condemned unheard and if the decision be adverse to him, it being on administrative side, he would have some remedy available to him under the law. He would not be rendered remediless. See : **“K”, A Judicial Officer, In Re, (2001) 3 SCC 54**
- 11(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.**
- 11(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.*

- 11(C). On summoning of a Judicial Officer, proceedings should be held in camera :** 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.*
- 11(D). Affidavit of Judicial Officer concerned may be required by the Court :** 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.*
- 12. Grounds for expunction of strictures :** It has been clarified by the Supreme Court, in the cases noted below, that a superior court has got powers to record critical observations on the objectionable and improper conduct of the persons and authorities whose judgment or order comes for scrutiny before the superior court but if such critical remarks recorded by the superior court are questioned then the critical remarks recorded by the superior court must withstand the following tests :
- (i) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
  - (ii) whether there is evidence on record bearing on that conduct justifying the remarks; and
  - (iii) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. The overall test is that the criticism or observation must be judicial in nature and should not normally depart from sobriety, moderation and reserve. *See :*
    - (i). "K", A Judicial Officer, In Re, (2001) 3 SCC 54.
    - (ii). State of U.P. Vs. Mohd. Naim, AIR 1964 SC 703.
- 13. Remedies of Judicial Officers against strictures :** A Judicial Officer has following remedies for expunction of strictures recorded against him :
- (i) Invoking inherent powers of the same court u/s 151CPC if the strictures have been passed in a civil case.
  - (ii) Invoking inherent powers of the High Court u/s 482CrPC if the strictures have been passed by the High Court in a criminal case.
  - (iii) Review Petition before the court recording the strictures in the cases other than criminal ones where Section 362CrPC operates as bar against review or recall of orders.
  - (iv) Writ Petition before the High Court under Article 226 of the Constitution.
  - (v) Petition under Article 136 and/or 142 of the Constitution before the Supreme Court.

**Note :** (a). While seeking expunction of strictures through any of the above modes, the Judicial Officer should not challenge the merits or the decision of the Court concerned and instead should keep his prayer confined to the expunction of the critical remarks. The Judicial Officer can, however, cite the relevant provisions of law, rulings and Circular Orders etc., if any, in

support of the validity of the order passed by him but he must not show any interest in the parties and the subject matter of the case and the decision made therein.

(b) : Any passage from an order or judgment may be expunged by the Court or directed to be expunged subject to satisfying the following three tests :

- (i) that the passage complained of is wholly irrelevant and unjustifiable;
- (ii) that its retention on record will cause serious harm to the person to whom it refers;
- (iii) that its expunction will not affect the reasons for the judgment or order. See :
  - (i) Amar Pal Singh Vs. State of UP, AIR 2012 SC 1995
  - (ii) “K”, a judicial officer, in re, (2001) 3 SCC 54
  - (iii) Raghubir Saran (Dr) Vs. State of Bihar, AIR 1964 SC 1
  - (iv) **State of U.P. Vs. Mohd. Naim, AIR 1964 SC 703**

(c) : Grounds for expunction of strictures can also be taken from 'The Judicial Officers' Protection Act, 1850' & 'The Judges (Protection) Act, 1985'. 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. In the year 1985, the Parliament passed 'The Judges (Protection) Act, 1985' to provide certain more protections to the Judges and Magistrates of the Sub-ordinate Judiciary in addition to what was already available to them under the Judicial Officers' Protection Act, 1850. Section 52 of the IPC defines the word 'good faith' and provides that nothing is said to be done or believed in good faith which is done or believed without due care and attention. Section 77 of the IPC provides that 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. In the case of High Court of Judicature at Patna Vs. Shiveshwar Narayan and another, 2011 (3) SLJ 392 (SC), the Hon'ble Supreme Court has held that a judicial officer exercises sovereign judicial powers.

**14. Certain reported cases involving severe strictures :** A few cases wherein strictures were recorded by the High Court are quoted below :

- (a-1) : Addl. Sessions Judge, Lucknow condemned for being totally negligent, careless and ignorant of the law in framing charge and convicting against a single accused for offence u/s 120-B IPC. The Division Bench directed the ASJ to undergo exhaustive training at the JTRI, Lucknow to be recharged with the nuances of law on the point. See : Judgment dated 25.02.2015 of the Lucknow Bench in Cr. Appeal No. 1150/2011, Hoshiyar Singh Vs. State of UP.
- (a-2) : Addl. Sessions Judge, Aligarh condemned for awarding death sentence to three persons on the basis of incomplete chain of circumstantial evidence. See : Kiran Pal Vs. State of U.P., 2009 (65) ACC 50 (All—D.B.)
- (b) : Strictures against Addl. Sessions Judge (Fast Track Court), Aligarh for illegal conviction and penalty u/s 363 IPC r/w Sec. 3(2)(5) of the SC/ST (Prevention of Atrocities) Act, 1989. See : Munni Devi Vs. State of U.P. 2009 (65) ACC 522 (All—D.B.).
- (c) : Sessions Judge, Ghazipur condemned for holding in revisional order that revision u/s 397 CrPC does not lie against a cognizance taking order passed by Magistrate u/s 190(1)(b) CrPC upon police report (charge-sheet) received u/s 173(2) CrPC. See : Arvind Kumar Tewari Vs. State of UP, 2005 (51) ACC 139 (All) & S.K. Bhatt Vs. State of UP, 2005 (52) ACC 699 (All--D.B.)

- (d) : Strictures against Sessions Judge, Rampur for, contrary to the provisions of Section 195/340/344 CrPC, directing the SSP, Rampur in a judgment delivered in Sessions Trial to register and investigate FIR against the complainant/PW for having lodged false FIR against the accused person. See : Lekhraj Vs. State of UP, 2008 (61) ACC 831 (All).
- (e) : Strictures against CJM, Rampur & other Judicial Officers for not granting bail to accused persons detained under U.P. Prevention of Cow Slaughter Act, 1955 & Prevention of Cruelty to Animals Act for their excessive devotion towards cows and cow progeny. See : Asfaq Ahmad Vs. State of UP, 2008 (63) ACC 938 (All).
- (f) : Strictures (now expunged) against Judicial Magistrate for treating an application u/s 156 (3) CrPC as complaint. See : Smt. Mona Panwar Vs Hon'ble High court of Judicature at Allahabad through its Registrar, 2011(2) ALJ 445(SC).
- (g) : Strictures against ACJM, Agra for lack of knowledge of law while rejecting the discharge application and framing charge u/s 409 IPC against the accused. See : Mukesh Chauhan Vs. State of UP, 2008 (63) ACC 514 (All).
- (h) : Strictures against Magistrate for order diluting and dropping charge without recording reasons. See : R.S Mishra Vs. State of Orissa, 2011 CrLJ 1654 (SC).
- (i) : Strictures against the Addl. District Judge, Lucknow for awarding inadequate compensation to the tune of Rs. 1,86,380/- only in the case of accidental death of an employee of the UP Civil Secretariat, Lucknow and for not applying the law declared by the Hon'ble Supreme Court in the case of Rani Gupta & others Vs. United India Insurance Company Limited & others, (2009) 13 SCC 498 while deciding the said MACP on 29.05.2006 as Presiding Officer of the MACT. A Division Bench of the Lucknow Bench vide its judgment & order dated 30.07.2014 passed in Writ Petition (S/B) No. 1446/2012, Prabhat Chandra Tripathi Vs. High Court of Judicature at Allahabad through Registrar General directed the said stricture to be expunged from his service record.
- (j) : Strictures against the Addl. District Judge, Kanpur Nagar/Judge SCC for having recorded illegal findings on the necessity of notice u/s 106 of the Transfer of Property Act. See : Smt. Anjali Awasthi Vs. Mohammad Shafique, 2006 (65) ALR 204 (All).
- (k) : Strictures (directed to be treated as advisory and not as adverse remarks) against the Addl. Sessions Judge, Deoria for awarding only three years imprisonment for offence u/s 304(II) IPC. See : order dated 21.09.2012 of the Allahabad High Court passed in Criminal Appeal No. 3337/2012, Ram Deni Vs. State of UP.
- (l) : Strictures by the Delhi High Court against an Addl. Sessions Judge of Delhi for committing error of law in passing some judicial order with the direction to undergo four months training in the Delhi Judicial Academy.
- (m) : For strictures against Police Officers, See : (i) State of Karnataka Vs. Registrar General, Karnataka High Court, AIR 2000 SC 2626 (ii) S.K. Viswambaran Vs. E. Koyakunju and others, 1987(24) ACC 318 (SC) and (iii) State of UP Vs. Mohd. Naim, AIR 1964 SC 703.

- (n) : For Strictures against IAS Officers, See : (i) Smt. Aneeta Bhatnagar Vs. State of UP, 2003 (47) ACC 1082 (Allahabad) and (ii) Girish Vyas Vs. State of Maharashtra, AIR 2012 SC 2043.
- (o) : For strictures by P & H High Court against the Chief Minister of Haryana, see : Om Prakash Chautala Vs. Kanwar Bhan, AIR 2014 SC 1220.

### **List Of Important Reported Cases On Strictures**

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| 1.  | Manish S. Pardasani Vs. Inspector State Excise   | (2019) 2 SCC 660   |
| 2.  | Hoshiyar Singh Vs. State of UP   | Judgment dated 25.02.2015 of the Lucknow Bench in Cr. Appeal No. 1150/2011 |
| 3.  | Om Prakash Chautala Vs. Kanwar Bhan,   | AIR 2014 SC 1220.  |
| 4.  | Awani Kumar Upadhyay Vs. Hon'ble High Court of Judicature at Allahabad,                    | AIR 2013 SC 2189   |
| 5.  | Anuja Prabhu dessai Vs. State of Goa,  | AIR 2013 SC 1076   |
| 6.  | Amar Pal Singh Vs. State of UP   | AIR 2012 SC 1995   |
| 7.  | Smt. Mona Panwar Vs. Hon'ble High court of Judicature at Allahabad through it's Registrar, | 2011(2) ALJ 445(SC)  |
| 8.  | Munni Devi Vs. State of U.P.   | 2009 (65) ACC 522 (All—D.B.)   |
| 9.  | Kiran Pal Vs. State of U.P.  | 2009 (65) ACC 50 (All—D.B.)  |
| 10. | Asfaq Ahmad Vs. State of U.P.  | 2008 (63) ACC 938 (All)  |
| 11. | Mukesh Chauhan Vs. State of U.P.   | 2008 (63) ACC 514 (All)  |
| 12. | Lekhraj Vs. State of U.P.  | 2008 (61) ACC 831 (All)  |
| 13. | Smt. Anjali Awasthi Vs. Mohammad Shafique  | 2006 (65) ALR 204 (All)  |
| 14. | Jogendra Vs. State of U.P.   | 2005 (52) ACC 153 (All)  |
| 15. | Samya Sett Vs. Shambhu Sarkar  | (2005) 6 SCC 767   |
| 16. | Teesta Setalvad Vs. State of Gujarat   | 2005 (51) ACC 692 (SC)   |
| 17. | State Vs. N.M.T. Joy Immaculate  | (2004) 5 SCC 729   |
| 18. | In the Matter of: 'RV', A Judicial Officer   | (2004) 7 SCC 729   |
| 19. | Zahira Sheikh Vs. State of Gujarat   | (2004) 5 SCC 353   |
| 20. | Smt. Aneeta Bhatnagar Vs. State of U.P.  | 2003 (47) ACC 1082 (All)   |
| 21. | "K", A Judicial Officer, In Re   | (2001) 3 SCC 54  |
| 22. | Manish Dixit and others Vs. State of Rajasthan   | AIR 2001 SC 93   |
| 23. | Devendra K. Sharma Vs. State of Rajasthan  | AIR 2001 SC 93   |
| 24. | State of Karnataka Vs. Registrar General   | 2000 (41) ACC 577 (SC)   |
| 25. | Pammi Vs. Government of M.P.   | AIR 1998 SC 1185   |
| 26. | Braj Kishore Thakur Vs. Union of India and others  | AIR 1997 SC 1157   |
| 27. | Kashi Nath Roy Vs. State of Bihar  | JT 1996 (4) SC 605   |
| 28. | K.P. Tiwari Vs. State of M.P.  | AIR 1994 SC 1031   |
| 29. | A.M. Mathur Vs. Pramod Kumar Gupta   | (1990) 2 SCC 533   |
| 30. | S.K. Viswambaran Vs. E. Koyakunju  | 1987 (24) ACC 318  |
| 31. | Niranjan Patnaik Vs. Sashibhushan Kar  | (1986) 2 SCC 569   |
| 32. | R.K. Lakshmanan Vs. A.K. Srinivasan  | AIR 1975 SC 1741   |
| 33. | State of U.P. Vs. Mohd. Naim   | AIR 1964 SC 703  |
| 34. | Ishwari Pd. Mishra Vs. Mohd. Isha  | AIR 1964 SC 1728   |
| 35. | Raghubir Saran (Dr.) Vs. State of Bihar  | AIR 1964 SC 1  |

From,



Alok Sharma  
Metropolitan Magistrate,  
Court No. 3  
Kanpur Nagar.  
(ID No. 1751)

To,

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

Through: The District Judge, Kanpur Nagar

**Subject :** Comments as required by the Hon'ble High Court vide its order dated 07.07.2015 passed in Criminal Revision No. 2256/2015, Sunil Sachan Vs. State of UP & Others.

Sir,

I most respectfully submit my comments on the subject noted above as under :

1. That while dismissing the Criminal Appeal No. 43/2013 titled Sunil Sachan Versus State of UP & Others by his judgment & order dated 04.05.2015, **Shri Vipin Kumar-I, the learned Addl. Sessions Judge**, Court No. 23, Kanpur Nagar, upheld the judgment and order of the court of Metropolitan Magistrate--I, Kanpur Nagar whereby the accused Sunil Sachan was convicted by the said Magistrate for the offences u/s 7/16(1)(a)(1) of the PFA Act, 1954 and sentenced with the imprisonment of RI of six months and fine of Rs. 1000/-. The said learned Addl. Sessions Judge had, *inter alia*, passed following order on 04.05.2015 in the said Criminal Appeal No. 43/2013.

“अभियुक्त के अपीलीय न्यायालय में दाखिल जमानतनामे निरस्त किये जाते हैं एवं प्रतिभुओं को उनके दायित्व से उन्मोचित किया जाता है । अभियुक्त को तत्काल विद्वान मजिस्ट्रेट न्यायालय के समक्ष अग्रिम कार्यवाही हेतु पेश किया जाए । मूल पत्रावली इस निर्णय की प्रति के साथ अविलम्ब सम्बन्धित विद्वान मजिस्ट्रेट न्यायालय को प्रतिप्रेषित हो । अभियुक्त-अपीलार्थी को आदेशित किया जाता है कि वह धारा 437ए द.प्र.सं. के अन्तर्गत अतिरिक्त अपील या पिटीशन निस्तारित होने तक इस आशय की दो-दो प्रतिभूगण मुबलिंग 25-25 हजार रुपये की इस आशय के साथ दाखिल करेगा कि वह माननीय उच्चतर न्यायालय में अतिरिक्त अपील या पिटीशन दाखिल होने की दशा में मा0 न्यायालय के निर्देशानुसार उपस्थित रहेगा । उपरोक्त जमानतनामे अतिरिक्त अपील या पिटीशन प्रस्तुत होने पर दिये गये निर्देशों या 6 माह तक प्रवर्तनीय रहेंगे ।”

2. That on 04.05.2015 itself, the convict/appellant Sunil Sachan had moved another application (**Annexure No. 1**) by annexing therewith his personal bond before the learned Addl. Sessions Judge named above with the following contents and prayer :

"न्यायालय माननीय ADJ कोर्ट सं0 23 कानपुर नगर । किमिनल अपील नं0 43 सन् 2013, सुनील सचान बनाम उ0प्र0 राज्य । श्रीमान्जी, सविनय निवेदन है कि प्रार्थी की अपील याचिका माननीय न्यायालय द्वारा निरस्त की गयी है । धारा 437 CrPC के अनुपालन में प्रार्थी आज अपना व्यक्तिगत बन्धपत्र प्रस्तुत कर रहा है । न्यायहित में माननीय न्यायालय द्वारा जमानतगीर प्रस्तुत करने हेतु एक सप्ताह का समय दिया जाना अति आवश्यक है । अतः विनम्र प्रार्थना है कि **प्रार्थी को व्यक्तिगत बन्ध पत्र पर रिलीज करने की कृपा करें तथा जमानतगीर दाखिल किये जाने हेतु एक सप्ताह का समय दिये जाने की कृपा करें । प्रार्थी/अपीलार्थी : सुनील सचान । दि0 4-5-15**" The learned Addl. Sessions Judge named above passed following order on 04.05.2015 (**kindly see on the Margin of Annexure**

**No. 1**) itself on the margin of the above application dated 04.05.2015 :

**“एक सप्ताह में दाखिल करें । Signed/Addl. Sessions Judge, 04.05.15”**

3. That soon after the said judgment & order dated 04.05.2015 and the other order dated 04.05.2015 on the application dated 04.05.2015 of the convict/appellant were passed by the said learned Addl. Sessions Judge, the same were produced before me on 04.05.2015 itself as the Presiding Officer of the concerned Court of Metropolitan Magistrate-I was on leave and as per the order of the learned Chief Metropolitan Magistrate, Kanpur Nagar, I was the In-charge of the said court of the Metropolitan Magistrate-I.
4. That as is clearly visible from the above order dated 04.05.2015 passed by the said learned Addl. Sessions Judge on the application dated 04.05.2015 of the convict/appellant Sunil Sachan, the learned Addl. Sessions Judge named above had clearly directed for release of the convict/appellant Sunil Sachan on his personal bond alone with the direction to furnish the sureties and their bail bonds within a week.
5. That I had released the said convict/appellant Sunil Sachan on his personal bond only in compliance with the above order dated 04.05.2015 of the said learned Addl. Sessions Judge as I was bound by the said appellate order and had no other choice. I had acted bona fide and purely judicially with clean conscience. However, despite the said binding order dated 04.05.2015 passed by the said learned Addl. Sessions Judge on the application dated 04.05.2015 of the convict/appellant Sunil Sachan for releasing him on his personal bond only, I still most humbly request the Hon'ble Court to pardon me for the mistakes, if any, in releasing the said convict/appellant on his personal bond alone and I most conscientiously assure the Hon'ble Court not to repeat any such mistakes in future.
6. The aforesaid comments are hereby being submitted to your goodself with the request to place the same before the Hon'ble Court for its kind perusal.

With profound regards,

Yours sincerely,

Dated : July , 2015

Annexure : As above.

(Alok Sharma)  
Metropolitan Magistrate,  
Court No. 3  
Kanpur Nagar.

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