

(2015) 06 AP CK 0067

In the Andhra Pradesh High Court

Case No : Criminal P.M.P. No. 5823 of 2015 in CrI.P. No. 5520 of 2015

Elvis Stephenson

APPELLANT

Vs

Jerusalem Mathai and Others

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 20, 21, 219
Contempt of Courts Act, 1971 — Section 14
Criminal Procedure Code, 1973 (CrPC) — Section 145, 157, 173, 2(wa), 24(8)
Evidence Act, 1872 — Section 114
Inter State Water Disputes Act, 1956 — Section 4(2), 5(a)
Penal Code, 1860 (IPC) — Section 120-B, 171-A, 218, 34, 409
Prevention of Corruption Act, 1988 — Section 11, 12, 2(c), 7

Citation : (2015) 3 ALT(Cri) 51

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : Gandra Mohan Rao, for the Appellant; Siddhartha Luthra, Senior Counsel on behalf of P. Ravi Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. B. Siva Sankara Rao, J.

The petitioner (who is the de facto complainant in Cr. No. 11/ACB-CR/2015 of ACB, City Range I, Hyderabad) filed the present petition praying to recuse from the hearing of the Criminal Petition No. 5520 of 2015 (filed by A.4 of the above crime to quash the crime proceedings).

1. The petition with grounds for recusal supported by his verified affidavit also with signature of the advocate reads as follows:

"I, Elvis Stephenson, S/o R.E. Stephenson, aged about 58 years, MLA of the State of Telangana, Resident of H. No. 6-2-101/1/7, New Boiguda,

Secunderabad, do hereby solemnly and sincerely affirm and state as follows:

2. I am the complainant in the above registered Crime Number on the file of Anti Corruption Bureau Police Station, City Range-I, Hyderabad and also 2nd Respondent in CrI.P. No. 5520/2015 and the Petitioner herein as such I am well acquainted with the facts of the case as hereunder.

3. It is submitted, I have addressed a letter to the Director General, Anti Corruption Bureau (ACB) on 28.05.2015 as follows:

"Mr. Elvis Stephenson MLA (Nominated

Dt. 28.5.2015

To The D.G. Anti Corruption Bureau, Hyderabad, Telangana.

Sir,

I would like to bring to your notice that I have been approached by Mr. Mathias Jerusalem, who affected me on account of Rs. 2 crores and a ticket to leave the country on vote in favour of the TDP party.

I was also contacted by Bishop Sebastin Harry who offered me a sum of RS.5 crore to abstain from casting my vote for the Biennial election to be held on the 1st day of June, 2015 or to vote in favour of the TDP Party. I was also informed that the entire transaction will be dealt by Mr. Revanth Reddy personally.

Since, this act is considered as an illegal offence including bribery and voting against my free will. I request you to please take necessary action in lieu of the Indian Law.

Yours sincerely Sd/- Elvis Stephenson, MLA"

4. It is submitted that pursuant to my complaint, an F.I.R. was registered by the Anti Corruption Bureau and investigation was taken up. The 2nd Respondent herein is absconding since registration of the crime. For more than 25 days, the 2nd Respondent is avoiding the investigating agency. I further understand that the 2nd Respondent is taking shelter in Vijayawada City in the State of Andhra Pradesh (outside the State of Telangana). I further understand that the 2nd Respondent while absconding, filed a complaint with the local Police of Vijayawada making certain allegations against the Hon"ble Chief Minister of State of Telangana. It appears, the Police of Vijayawada town registered an F.I.R., based on the complaint made by the 2nd Respondent. It is thus evident that the 2nd Respondent is available to lodge a criminal complaint in the other State, but he is making all efforts to avoid ongoing investigation in the above case.

5. It is submitted that the day-to-day investigation reported in electronic and print media clearly showed an attempt to destroy the democratic process by using the money to buy votes. Hence, there is considerable public interest in the ongoing investigation and it has got nation wide attention.

6. While the matter stood thus, the 2nd Respondent filed a Petition No. 5520/2015 before this Hon''ble Court u/s. 482 of Cr.P.C. seeking relief of quashing the aforesaid complaint filed by me on 18.6.2015. It is submitted that invoking the extraordinary and inherent jurisdiction of this Hon''ble Court u/s. 482, by an absconder (2nd Respondent) is a clear one of abuse of process of law.

7. I further understand the following event took place before this Hon''ble Court on 18.6.2015 as detailed below:

(a) It is submitted that Criminal Petition No. 5520 of 2015 was listed on 18.06.2015 as item No. 157 before this Hon''ble Court (Hon''ble Dr. Justice B. Siva Sankara Rao).

(b) It is submitted that in ordinary course of business of the Court, the case filed by the 2nd respondent may not have reached for hearing on that day.

(c) It is submitted, at about 8.30 A.M the office of the Additional Advocate General, State of A.P. (junior counsel) informed over telephone to the learned Standing Counsel for ACB (Mr. Ravi Kiran Rao) that a mention will be made at 10.30 AM before this Hon''ble Court for taking up the matter or an out of turn basis. This is unusual and unprecedented as the learned Additional Advocate General is not holding any Vakalat nor appearing in the matter.

(d) It is submitted that the learned Public Prosecutor of State of A.P made a mention at 10.30 A.M before this Hon''ble Court on behalf of the 2nd respondent/accused, requesting this Hon''ble Court to take up the matter out of turn. This is unusual and unprecedented, since the learned Public Prosecutor for the State of A.P. was not holding any Vakalath for the 2nd respondent. It is further unknown to the administration of criminal justice system that a Public Prosecutor would represent on behalf of the accused particularly an absconder, before this Hon''ble Court.

(e) It is submitted, in spite learned Standing Counsel for ACB opposing the mentioning, this Hon''ble Court was pleased to order that the matter will be taken up at 4.00 P.M.

(f) It is submitted, this Hon''ble Court, instead of objecting as to how a Public prosecutor, who is not on record could make a mention of the case, the Hon''ble Court readily agreed to hear the case out of turn. This request was granted despite there being several matters in the cause list.

(g) It is submitted that when the matter was called at 4.00 P.M or an out of turn basis, the Hon''ble Court declared that no other matters will be taken up, except this matter. This Hon''ble Court further stated that all the advocates can leave the Court hall. The Hon''ble Court further warned that if the advocates do not leave, he will compelled to pass an order under Section 327 Cr.P.C.

(h) It is submitted that the Hon''ble Court repeatedly made the said statement. I believe that directing the counsels to leave the Court and threatening to pass an

order is unusual and unprecedented.

(i) It is submitted that without hearing the counsels representing the parties, an enquiry was made as to whether any petition filed for any stay application. Thereafter, the Hon''ble Court indicated that it will pass an order for staying the arrest of the 2nd respondent.

(j) It is submitted that the learned Advocate General, Telangana, representing the 1st respondent was attempting to oppose the grant of interim relief, but the learned Judge handed over a copy of some order and directed that no one else should look into the order. This statement was repeatedly made.

(k) It is submitted that thereafter this Hon''ble Court stayed the arrest without hearing any submission from either parties and posted the case to 24.06.2015.

(l) It is submitted that several advocates of this High Court watching the proceedings were totally surprised and shocked at the unusual proceeding before this Hon''ble Court particularly granting interim order to an absconder without hearing the counsels for either parties.

(m) It is submitted, based on the above, several advocates told me that in all likelihood my complaint would be quashed as the Hon''ble Court seems to be pre-determined and pre-disposed."

8. In view of the above, I have reasonable basis for apprehension that justice may not be done before this Hon''ble Court. It is well settled that justice should not only be done, but it must also be seem to be done. It was observed by the Hon''ble Supreme Court in P.K. Ghosh, I.A.S. and another Vs. J.G. Rajput, AIR 1996 SC 513 : AIR 1995 SC 513 : (1995) 8 JT 214 : (1995) 6 SCALE 257 : (1995) 6 SCC 744 : (1995) 5 SCR 51 Supp as follows:

10. A basic postulate of the rule of law is that "justice should not only be done but it must also be seen to be done." If there be a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned judge should recuse himself from the Bench hearing that matter. This step is required to be taken by the learned judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable Perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done.

It is submitted that I am filing the present application for recuse without any

meaning of disrespect of the Hon''ble Court except on a reasonable apprehension.

In view of the above, it is prayed that this Hon''ble Court (the Hon''ble Court Sri Justice Dr. B. Siva Shankar Rao) may be pleased to recuse from the hearing of the Criminal Petition No. 5520 of 2015, in the interest of justice and pass such other order or orders as this Hon''ble Court may deem fit and proper in the circumstances of the case.

Sd/- DEPONENT

Sworn and signed before me On this the 23rd day of June, 2015 At Hyderabad

Before me Sd/- ATTESTOR, HYDERABAD VERIFICATION

I, Elvis Stephenson, S/o R.E. Stephenson, aged about 58 years, MLA of the State of Telangana, Resident of H. No. 6-2-101/1/7, New Boiguda, Secunderabad, do hereby verified that the above stated facts in para-1 to 8 are based on my knowledge and the information derived from various Advocates and therefore I believe it is true and correct and rest of para is based on legal advice. Hence verified on this the 23rd day of June, 2015 at Hyderabad.

2. The first respondent to the petition for recuse, no other than the petitioner for quashing the crime proceedings, opposing the recuse petition, filed counter affidavit which reads as follows:

"I, Jerusalem Mathai, S/o Janaiah, aged about 46 years, R/o. H. No. 2-4-19/5A, Gandhinagar, Uppal, Hyderabad, do hereby solemnly and sincerely affirm and state on oath as follows:

1. I am the 1st respondent/petitioner in the Criminal Petition No. 5520 of 2015 as such I am well acquainted with the facts of the case.

2. I submit at the outset that para-wife reply is not being tendered at this stage, and the Petitioner's counsel (Respondent in this Application), has been served with a copy of the present Application just yesterday, on 23.06.2015, is tendering the present short Affidavit in response to the Application for recusal by this Hon''ble Court. However, the contents of the Application under reply are denied unless hereinafter admitted specifically.

3. I submit that the Application is motivated and unjustified, and based on unsubstantiated and factually inaccurate assertions of an Applicant who, admittedly, was not even present at any stage in the court hall on the last date of hearing, 18.06.2015. Hence, the Application ought to be dismissed with heavy costs.

4. I submit that perusal of the affidavit along with the application shows that it is verified by the Respondent No. 2 (Present petitioner) based on my knowledge and information derived from various advocates". This affirmation in the application is false to the knowledge of the petitioner/Respondent No. 2, who

admittedly was not present any stage in the concerned Court hall on 18.06.2015. Furthermore, no advocate had entered appearance or sought to enter appear, or informed the Court that there was any authority to appear for or represent the present petitioner/Respondent No. 2, as is reflected even in the order passed on the last date of hearing.

5. I submit that the claim of the petitioner that there is a reasonable apprehension in his mind that the bench had pre-judged the issue, and no relief could be expected for the petitioner from the present Bench is motivated and false. The petitioner seeks to make malafide insinuations as to the mentioning of the matter, when he was not present, nor chose to present himself when a request for hearing was made, as is the common practice of listed matters before Benches hearing petitions to take up the matter in view of the fact that counsel from outstation had come in and the matter was on the cause list for the day, and there was urgent relief prayed for in the matter.

6. It is submitted that at 10.30 AM, the practice of mentioning for hearing at a fixed time where urgent relief is sought is an acknowledged practice of this Court, and even the State counsel was informed, and was present, and had consented to the matter being kept for 4.00 P.M on that day itself i.e., 18.06.2015, as the State counsel was otherwise occupied before another Bench at 2.15 P.M.

7. It is further submitted that at 4.00 P.M, the learned Advocate General for the State of Telangana appeared along with the State counsel, and after hearing, this Hon"ble Court inquired from the State whether it wished to conclude arguments or to file a response. A request was again made on behalf of the State, asking for time to file a response, and in these circumstances, the matter was kept for 24.06.2015.

8. I submit that in view of this, there can be no basis to allege/attribute motives in the course of proceedings or to claim that the matter was taken out of turn or in an unusual or unprecedented manner, or that interim relief ought not to have been granted.

9. I submit that needless to say, the matter having been filed in the normal course, and was marked by the Registry of this Hon"ble Court as per roster to this Bench, the tenor and content of the present application is vexatious and inappropriate, and its contents ought to be expunged.

10. It is submitted that the practice of calculated psychological offences and malafide averments such as in the present application to seek recusal has been deprecated by the Hon"ble Supreme Court of India in *Subrata Roy Sahara Vs. Union of India (UOI) and Others*, (2014) AIRSCW 3685 : (2014) 6 JT 1 : (2014) 6 SCALE 257 : (2014) 8 SCC 470 wherein it was held that:

"185.1. We find no merit in the contention advanced on behalf of the petitioner that we should recuse ourselves from the hearing of this case. Calculated

psychological offensives and mind games adopted to seek recusal of Judges need to be strongly repulsed. We deprecate such tactics and commend a similar approach to other courts, when they experience such behaviour...."

11. It is submitted that the Apex Court has held that it is the duty of any Court to hear and decide a matter allocated to it as per the roster. The present matter was listed for hearing on 18.06.2015, and the mere fact of mentioning of the matter for hearing that day instead of the next day in the event it would not reach, after due notice to the State counsel and especially where the liberty of an individual is at stake, cannot by far be any basis for the apprehension as expressed by the present petitioner/Respondent No. 2, which is imaginary.

12. It is submitted that such tactics on the part of the litigant such as Respondent No. 2 ought to be deprecated, and bench-hopping or bench-avoiding is a practice by unscrupulous litigants such as the present applicant, which should not be given heed to. It is further submitted that the oath of office of a Judge of the Hon"ble Supreme Court and High Courts under the Constitution of India requires a Court to hear a matter, and Courts should not fall pray to such sharp practices as reflected in the application under reply.

13. It is submitted that it is not the case of the Applicant that the present bench has any connections with any party in the present case, and to cast aspersions as has been done is neither justified nor ought to be permitted to dissuade this Court to decline to hear the present matter on such inappropriate and unfounded assertions.

14. It is further submitted that on instructions received from me, as the counsel on record another private counsel Shri G. Subba Rao, communicated to the learned Standing Counsel for A.C.B. about the mentioning of the matter for hearing on 18.06.2015. He never associated or affiliated with the Additional advocate General, they did not reveal the source from where they got the information and how they came to know about the conversation between Sri Subba Rao and the learned counsel for the A.C.B. The learned counsel for the A.C.B is not supposed to make it known to the 2nd respondent, what transpired between him and another private counsel. Having known about the non association and non-affiliation of Shri Subbarao with the learned Advocate General, the office of the Additional Advocate General has been dragged into the controversy with a malafide intention, without any reason merely to embarrass and for extraneous reasons.

15. I further submit that the making of a mention by an Advocate instructed by the advocate on record is a common practice known to law and permitted by the Advocates Act and rules thereunder, and to drag the office of the learned Public Prosecutor into this controversy is wholly unjustified and inappropriate. Needless to say, the learned Public Prosecutor for the State of Andhra Pradesh is only restricted from appearing against the State of Andhra Pradesh and can accept private briefs against any other State or body. Therefore, any contention to the

contrary is false and incorrect.

16. It is submitted that there is a claim in the application that certain advocates watching the proceedings were surprised and shocked, and they believed that the Court was pre-determined or pre-disposed. However, this claim is unsubstantiated and not supported by any material particulars. In fact, the whole Application is not only conspicuously silent, but vague in material particulars which demonstrates that it is only a ploy to seek recusal for extraneous reasons by an unscrupulous litigant such as the Applicant.

17. It is submitted that when the State, which was represented on 18.06.2015, neither at 10.30 A.M or at 4.00 P.M raised any objections or claim of bias and was duly heard before the grant of interim relief and had sought an adjournment to file a reply, such an Application, being contrary to the record, ought to be dismissed with heavy costs."

For the stated above, it is therefore prayed that this Hon''ble Court may be pleased to dismiss the Crl.P. No. 5823 of 2015 in Crl.P. No. 5520 of 2015 and pass such other order or orders as this Hon''ble Court may deem fit and proper in the circumstances of the case.

Sd/- DEPONENT

Sworn and signed before me on this the 24th day of June, 2015 at Hyderabad

Sd/- ADVOCATE/HYD."

3. The learned Advocate General for the State of Telangana, representing the learned standing counsel for A.C.B cases Sri V. Ravi Kiran Rao, stated that they are neither admitting the averments nor specifically chosen to deny as it is the matter between the Court and the petitioner exclusively and if the Court wants to recuse it can. Even the Court asked if they want to file to support any of the averments they can do so, they did not do so. They did not even impugn the docket orders of the Court, which are sacrosanct and which clearly reflects that the order dated 18.06.2015 passed is after hearing senior counsel for the petitioner/A-4 Sri S. Luthra and also the 1st respondent-State represented by learned Advocate General for the State of Telangana and assisted by the learned Public Prosecutor, before admission and before notice to the 2nd respondent/defacto-complainant and from the 1st respondent-State wants to file counter before hearing and passing any detailed order, by posted the matter to 24.06(sic. for 07 instead 06).2015 in the motion list and in the meantime there shall be stay of only arrest of the petitioner/A-4.

4. Heard the learned counsel for the petitioner-de facto complainant of the Crime supra in the subject petition (for recuse) and also the learned counsel for the first respondent-quash petitioner (A.4 of the crime) at length on 24.06.2015 and 25.06.2015. The Advocate General did not submit any arguments, as detailed

supra. It is just to reflect the docket order in the Criminal M.P. No. 5823 of 2015 dated 25.06.2015.

"After arguments of yesterday by the learned counsel for the petitioner Mr. Elvis Stephenson, represented by Sri G. Mohan Rao from 3.30 p.m. to 4.20 p.m. and after commencement of arguments today from the morning and after completion of arguments of both sides at 1.00 p.m., Sri G. Mohan Rao, learned counsel for the petitioner in this petition wanted to file re-joinder to the counter filed by the quash petitioner, is given liberty to file any re-joinder to the counter by supplying copy to the other side by tomorrow morning, for any reply by other side also by tomorrow evening.

Post on 29.06.2015 for orders."

5. It is pursuant to which affidavit filed by the defacto-complainant vide U.S.R. No. 3863 of 2015, dated 26.06.2015, the same being reflected in the ensuing paragraph.

6. In this context, to submit that on 26.06.2015 (even the matter not in the cause list and not even made any mention for any urgency to further hearing in the morning to permit Lunch Motion, suddenly at about 3.45 p.m. the learned Advocate General for the State of Telangana, came along with the counsel for recuse petitioner and the counsel for quash petitioner, with a oral request to permit to make a small oral submission to incorporate in the order to be passed, the paragraph No. 2 of page No. 319 (of the Chapter about some judges of the Supreme Court) of the book titled "Before Memory Fades... an autobiography" - Fali S. Nariman [9th Edition 2014]. The same reads as follows:

"It was by an odd quirk of circumstance that Subba Rao came to decide Jeejeebhoy (1965) and Vajravelu (1965) - and here again C.K. Daphtary was to play a part. Both cases had come up before a bench presided over by Justice P.B. Gajendragadkar who was proceeding to hear them. An objection was raised on behalf of intervenors from Bombay that Chief Justice Gajendragadkar should not hear the matter, he being a member of a cooperative housing society for which the land belonging to the intervenors had been acquired in 1963 under the impugned Bombay Act. No counsel was willing to raise this objection before Chief Justice Gajendragadkar - who could be quite brusque in court. But then there was a "tiger" at the Bar: Purushottam Trikamdas! Trikamdas agreed to appear for the intervenors and raise the objection. When the objection was first mentioned by Trikamdas, Chief Justice Gajendragadkar brushed aside the objection. When he forcefully persisted, Gajendragadkar said that he would hear the Madras (Vajravelu) case, not linking it to the case from Bombay (Jeejeebhoy) where he himself had an indirect interest. It was then that Attorney General C.K. Daphtary, appearing for the Union of India, stood up and said to the court that in his opinion the Chief Justice ought not to hear both the matters. The bench was reconstituted next day with Subba Rao presiding. No one was in doubt at that time (certainly not Daphtary), and no one is in doubt today, that had Chief

Justice Gajendragadkar presided, Jeejeebhoy and Vajravelu would have been differently decided (his pronounced views on the subject were too well known). Daphtary's client, the Government of India, would have won. But it was not to be."

7. The learned Advocate General in fact was asked to read the same and he read. The Court asked therefrom whether he wants to say that the Judge herein can recuse or the Judge herein has to recuse in the present facts, with reference to the manner of the occurrence showing interest to the Judge in the cause therein for that has no application. His answer is "if at all the Court wants, the Court can". He supplemented that as in this case the affidavit filed is by a nominated M.L.A, the Court can consider that fact also. The Court then asked whether being a nominated M.L.A in a responsible position can he make such contemptuous allegations in the affidavit, and can the Advocate General say therefrom without even supporting the allegations of his affidavit. He stated "he has no more answer". The learned counsel for quash petitioner Sri Siddhartha Luthra submitted that, that situation seeking recusal arisen where the Judge being a member of the Cooperative Society for which the land belonging to the interveners has been acquired in 1963 under the impugned Bombay Act and in this case on hand, there is no any such interest to the Judge with the cause even to suggest to take a decision if at all to recuse. The learned counsel Sri G. Mohan Rao for recuse petitioner did say nothing more. He did not even say pursuant to the docket order dated 25.06.2015 as to any rejoinder to the counter filed by supplying copy to the other side for any reply by other side. In fact, surprisingly without even endorsement of copies received, the additional material filed with affidavit of the recuse petitioner mentioning on the docket as "reply affidavit" with a stray mention in para No. 7 that he is filing affidavits of advocates who were present in the Court on 18.06.2015 who testified to the events which has taken place in the Court as stated in his petition and the same may be taken into account. He did not even state in his reply affidavit the names of the advocates who were giving affidavits and how many and there is no even list of enclosures which he supposed to mention. It is needless to say what was the permission was accorded is only to file reply affidavit to answer the counter affidavit allegations of the quash petitioner/respondent in this petition for recuse and not for filing any additional material, muchless any affidavits of any advocates, to fill up the gaps that too without even leave of the Court, suffice to eschew the same from consideration, but for judicial equanimity even to have a look over it to answer. The short affidavits of three advocates (1) Sri Joginipally Sai Krishna, (2) R. Venkatesham and (3) K. Bhaskara Reddy are that enclosed. It is not even their case that they got any listed matter in the Court on that particular date. It is not even their case that they informed the recuse petitioner by approaching him about the happenings in the Court. Even they did not say their acquaintance with recuse petitioner. Even in the recuse petitioner's original affidavit-petition, he did not even whisper any of their names as a source of information to him though it is important for him to say in the very affidavit, if true, leave about not

named any of them even in the present affidavit (reply). A perusal of which shows it is a further browbeating on the Court by making improvements from stage to stage, if not in the attempt of him to get over the Criminal Contempt of Court on his part from his affidavit version in seeking recuse. As the Advocate General did not file his version if not by affidavit for any sanctity if at all to say no hearing, all these brow-beating attempts of the recuse petitioner cannot be legally given credence, that too when the docket proceedings are sacrosanct to protect the Court.

8. It is also to say in this context that they can make a mention even the matter is not in the cause list and not even represented in the morning to take as a lunch motion. If so, why such a justification is not available to the other side for making a mention at the morning to take the matter coming in the list, from urgency in the afternoon for hearing, when the Advocate from the Supreme Court all the way? Nothing more is to say but for leaving to the wisdom of the parties. Needless to say, the Court is always bound for any submission if at all just to consider and hear for the inherent power inheres from its very Constitution so to permit in the ends of Justice, hence permitted.

9. From the above, the grounds of which the petitioner sought, the learned Judge of the Court to recuse the hearing is not that he is personally present or anything he personally observed any bias or there are any other grounds other than happenings in the Court regarding his entertaining of suspicion or likelihood of allowing the petition for quashing without going into merits. He did not even name even single as to who the advocate allegedly present in Court that informed him for his so saying. The three short affidavits of three Advocates not even saying their acquaintance to him or any of their going to him or informing him leave about several or various advocates still unnamed claimed as informed him, with bereft of other material details. As observed supra, no credence to be attached to the three cryptic affidavits muchless to consider any recuse therefrom.

10. In fact, the Hon''ble High Court's administrative decision culminating in issuing proceedings by the Hon''ble the Chief Justice also in keeping as a notice at the reverse page of the cause list daily, in the internet notice and also in the notice board with eight guidelines/directions including cooperation of the advocates for smooth functioning of the Courts vide guideline No. 7 with further say by guideline No. 6 of disruption of Court proceedings in any manner including slogan shouting within the premises is prohibited, in breach thereof appropriate legal measures will be taken then and there. Apart from it, the Registry has been deputing High Court staff to each Court with respective Court cause list to permit only those advocates and parties whose matters are pending to enter. When the matter is taken up for hearing at about 4.00 P.M. by made clear of all other matters will come in the next day list, so that other parties and advocates need not wait. Meanwhile all of a sudden, many entered the Court hall, needless to say there were several earlier instances about the disturbances and slogans in Court

obstructing Court proceedings. What the Court requested is only not to stand at the neck of the advocates at the first row presenting the case causing inconvenience to them, take a step back with leg space and adjust, not to cause inconvenience by the noise that disturbs the concentration of the Court and the advocates presenting the matter and by maintain silence. When that was unheeded, the Court is constrained to indicate in order to make them adjust and not even to enforce Section 327(1) proviso Cr.P.C, though same is one of the appropriate immediate legal measure (as covered by the expression of the Apex Court in *Kehar Singh and Others Vs. State (Delhi Administration)*, AIR 1988 SC 1883 : (1989) CriLJ 1 : (1988) 3 JT 191 : (1988) 2 SCALE 117 : (1988) 3 SCC 609 : (1988) 2 SCR 24 Supp), that the Court otherwise would be constrained to pass an oral order so as to only advocates on record and those concerned with them and the parties concerned alone to remain in Court. In fact it is the duty of the staff of High Court, who was deputed at the Court hall, has to enforce with police on duty as per the administrative decision by the High Court already taken that was referred supra.

10(a). The affidavit allegations of the petitioner for recuse, as if stated that all the advocates to leave the Court hall and further warned if the advocates do not leave he will be compelled to pass an order under Section 327 Cr.P.C by repeated the same and directing counsel to leave the Court and threatening to pass an order is unusual and unprecedented and without hearing counsel representing the parties, an enquiry was made as to whether any petition filed for any stay application and thereafter, the Court indicated that it will pass an order for staying the arrest of the accused and even learned Advocate General representing the State in the attempt to oppose the grant of interim relief; the learned Judge handed over copy of some order and directed that no one else should look into the order by repeated the same and thereafter, stayed the arrest without hearing any submission from either of the parties and posted the case to 24.06.2015, are nothing but a false, unjust and per se contemptuous, prone to criminal contempt, that requires to be initiated against him.

11. The stay granted was only for few days of only not to arrest and not even staying any investigation, though the petition for quash filed in detail running in 12 pages with 20 paras impugning the very maintainability of the crime said to have been registered belatedly on 31.05.2015 for the report dated 28.05.2015 and dispatched to the Court on 01.06.2015 also with delay in forwarding under Section 157 Cr.P.C to the prejudice of defence, while arraying A-1 to A-3 pursuant to the alleged trap laid of their involvement and arrest, in showing the petitioner also as A-4 under Section 12 of Prevention of Corruption Act and Section 120-B and 34 I.P.C, even not a case of accused abetting the other to commit the offence, that a classic case of false implication with a false story and as per the Penal provisions, if at all the defacto-complainant shall be tried and punished for the abetment, without person abetting the offence under Section 7 or 11 liable to be punished, with allegation of public servant under Section 2(c) of the P.C. Act must have been induced, else Section 12 of P.C. Act won't attract,

the casting of vote and exercise of franchise not even in discharge of any public duty or official function to attract, the election offences after election notification, under Section 171-A to I of I.P.C and Section 123 to 138 of R.P. Act are even non-cognizable, besides not even complain to the officials of the Election Commission who were conducting the elections as it is for them to conduct any enquiry and file complaint before Court, the investigation is contrary to law and mandatory procedure and abuse of the process of criminal justice system, further that no ingredients of Section 12 of P.C. Act attracts and further the registering of the crime after commencement of investigation from the very same is contrary to law against all accused, the allegation against the petitioner in the report is also vague, incorrect and suffers from want of particulars to prosecute on that basis.

12. It is from the above, covered by paras 1 to 19 of the quash petition, in para No. 20 the prayer sought for in nutshell is that - the police are making hectic efforts to apprehend the petitioner and in the event of such an arrest, the petitioner may be subjected to harassment by employing third degree methods for extracting illegal confession to wreak vengeance against the petitioner and the political opponents of the party in power, that the petitioner did not commit any offence till now including the alleged offence, that the respondent police threatened the petitioner and his family members with dire consequences and the police men in plain clothes are roaming around the houses of the petitioner and his relatives in order to create fear psychosis, that if the petitioner is arrested, his prestige and dignity will be lowered in the eyes of the believers since he is a bishop in the service of Jesus and suffer irreparable loss, undue hardship and grave injury, hence to quash the crime proceedings supra and stay all further proceedings pending disposal of the criminal petition and pass such other just orders.

13. Thus, when the quash petitioner/A-4 is impugning the very application of provisions of Sections 7 or 11 or 12 of the Prevention of Corruption Act and maintainability of F.I.R on fact and law by saying that there is a threat to the petitioner if he is available to the police in the State of Telangana, undisputedly he is a person belongs to State of Telangana, because of the political rivalry, the Government and opponents want to take revenge and the police in mufti are searching vigorously in and around the houses of him and his relatives and by threatening his family members and relatives and if he is being arrested he will be subjected to third degree methods and they bring into illegal confessions, for seeking stay of further proceedings including arrest, the Court has no discretion to ignore the representation for interim relief by the counsel for the petitioner, but for to consider prima facie therefrom and pass some order for entitlement of any relief or not, even the State represented by Advocate General, want to file counter and want time including for passing any detailed order. That too, when it is the submission by the learned Advocate General for the State in opposing stay of arrest is that the quash petitioner has filed criminal complaints in the State of Andhra Pradesh against the present Chief Minister of State of Telangana, thereby if at all the arrest is to be stayed, his immediate custody is required to be given

to the investigating officer for interrogation. Therefrom, this Court is in fact justified without passing any detailed order, for the five days intervening time granted to file counter and for detailed hearing to pass a detailed order. In fact, the citation of the Apex Court that is brought to the notice of the learned Advocate General is a decision on that day while hearing some matters in quash proceedings cited by a counsel for some petitioner, saying even there is a cognizable offence, the arrest of the accused can be dispensed with, as it is a serious matter.

14. It is in fact that judgment when passed to the learned Advocate General, who perused the judgment particularly Para No. 4, asked the Court to pass the order, practically without any further say, even the Court asked whether he has any further say including on the expression and whether it requires to be referred in the order. This Court is thus justified in not referring the judgment. It is for the reason that counter is to be filed and elaborate arguments are to be heard from the submission of both sides to pass a detailed order later.

15. The Court did not pass any detailed order, even it is having in its mind the basic principles and propositions in dealing with quash matters not only for the first time, having earlier also in the roaster dealt with besides criminal revisions, criminal appeals and bail application roasters. Having kept in mind, the principle of law laid down by the Full Bench of the A.P. High Court in *Sheik Khasim Bi Vs. The State*, AIR 1986 AP 345 : (1986) 1 APLJ 297 that even accused shown in abscondence during investigation in the final report filed by police under Section 173 Cr.P.C and that was taken cognizance for the offences against accused and any warrant issued to secure presence, at that stage also a pre-arrest bail is maintainable and it can be granted subject to facts. Thus, the contention that the stay is granted not to arrest the accused in abscondence in an unknown to law manner in a pre-determined or pre-disposed mind or to the shocking and surprise of several advocates watching the Court from whom same came to know by him is not tenable. The Court is not responsible to the ignorance of legal position by said alleged advocates and even if shocked or surprised therefrom.

"Julius Stone on human law and human Justice, 1st Indian reprint, 2000, Universal Law Publishing Company Limited at Page 314 said that doing of justice pre-supposes a knowledge of what are the true facts and law relevant to the Judgment."

"Benjamin N. Cardozo in his book "The nature of the Judicial Process" quotes that the Judge has to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in social life. Wide enough in all conscience is the field of discretion that remains."

"Mrchchakatika (Arka-9: Sloka 5) says A Judge must be thoroughly conversant with the code of the law; expert in detecting deceit and an eloquent speaker. He

must never lose his temper and must be impartial to friends, strangers or relatives. He must base his decision on the examination of actual happenings. He must have regard for higher morality and must not be swayed by greed; at the same time, he must be strong enough to protect the weak and instill fear into the hearts of the wicked. His mind must be set on discovering the highest truth by every possible avenue."

16. Needless to say before making any such allegation, one can keep in mind, the basic principles of Indian Criminal Jurisprudence, that in fact covered by the expression of the Apex Court in *Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)*, AIR 2010 SC 2352 : (2010) 4 JT 107 : (2010) 4 SCALE 1 : (2010) 6 SCC 1 : (2010) 4 SCR 103 : (2010) 3 UJ 1650 - a portion of it "that in the Indian Criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India."

17. In fact, the short Judgment referred supra (given for perusal by Advocate General to make any further submissions and/or to reflect the same with reasons for the order for the few days" stay of arrest pending filing of counter and further hearing sought to be fixed on 24.06.2015, while permitting investigation shall go on and in not considering the request for appearance of the accused before the investigation officer, even within the five days intervening period for purpose of the interrogation claimed saying he filed criminal case against their Chief Minister even belongs to the State of Telangana taken shelter in the State of Andhra Pradesh) is that of *Lal Kamendra Pratap Singh Vs. State of U.P. and Others*, (2009) 7 JT 327 : (2009) 4 SCALE 77 : (2009) 4 SCC 437 : (2009) 4 SCR 1027 : (2009) 4 UJ 1588 . It is outcome on facts of writ petition for quashing of F.I.R 1133 of 2007 registered for the serious and several offences punishable under Sections 467, 468, 471, 420, 409 and 218 I.P.C of S.H.O, Mahoba P.S. (District) of Uttar Pradesh, aggrieved by the High Court order disposing at the admission stage by refusing to quash, but for the limited relief granted in directing to surrender before Magistrate concerned and move for regular bail to consider expeditiously, the accused petitioner when approached the Apex Court, the Apex Court immediately by the interim order dated 30.11.2007 directed that the petitioner shall not be arrested. It is later, after hearing the State in detail and from submission of charge sheet filed completing investigation meantime by the police, the order was passed on para No. 4 as follows:

"Learned counsel for the appellant apprehends that the appellant will be arrested as there is no provision for anticipatory bail in the State of U.P. He placed reliance on a decision of the Allahabad High Court in the case of Amarawati and Another (Smt.) Vs. State of U.P., (2005) 1 AWC 416 : (2005) CriLJ 755 : (2005) 1 UPLBEC 155 in which a Seven Judge Full Bench of the Allahabad High Court held that the Court, if it deems fit in the facts and circumstances of the case, may grant interim bail pending final disposal of the bail application. The Full Bench also observed that arrest is not a must whenever an F.I.R. of a cognizable offence is lodged. The Full Bench placed reliance on the decision of this Court in Joginder Kumar Vs. State of U.P. and others, AIR 1994 SC 1349 : (1994) CriLJ 1981 : (1994) 2 Crimes 106 : (1994) 3 JT 423 : (1994) 2 SCALE 662 : (1994) 4 SCC 260 : (1994) 3 SCR 661 .

We fully agree with the view of the High in Amaravati's case (supra), and we direct that the said decision be followed by all Courts in U.P. in letter and spirit, particularly since the provision for anticipatory bail does not exist in U.P. In appropriate cases interim bail should be granted pending disposal of the final bail application, since arrest and detention of a person can cause irreparable loss to a person's reputation, as held by this Court in Joginder Kumar's case (supra). Also, arrest is not a must in all cases of cognizable offences, and in deciding whether to arrest or not the police officer must be guided and act according to the principles laid down in Joginder Kumar's case (supra)."

18. The learned Advocate General for the State of Telangana and the standing counsel for A.C.B besides him in assisting, when having gone through the Judgment supra and stated no more say, the order passed by the Court, (without even reflecting the expression in the order) from the say by Advocate General, is as follows:

"Heard Sri Siddharth Ludra, the learned Senior counsel for the petitioner-A-4 in Cr. No. 11/ACB-CR/2015 of ACB, City Range I, Hyderabad, so also the 1st respondent-State represented by learned Advocate General for the State of Telangana assisted by the learned Public Prosecutor, before admission and before notice to the 2nd respondent-defacto-complainant. The 1st respondent-State wants to file counter before hearing and passing any detailed order.

Having regard to the above, the matter is posted to 24.06(sic.).2015 in the motion list.

In the meantime, there shall be stay of only arrest of the petitioner/A.4"

19. It is needful to say in this context that the armory of Law is to deliver Justice, Law is thus a means to an end and Justice is that end. Justice is ideal to be achieved by law, Justice is the goal of law, law is a set of general rules applied in the administration of Justice.

19(a) As quoted by Addison, dispensation of Justice an attribute of God is guided by the Rule Fiat Justitia ruat coelum to mean let justice be done though heavens

should fall.

19(b) Court is an agency and legal entity created by the sovereign for purpose of administration of justice. Thus, Court is a generic term and embraces a judge. Judge is an essential constituent of a Court for dispensing Justice, since there can be no dispensation of Justice, without a Judge. It may be for that reason even in the preamble of the Constitution of India only Justice is referred and not Court.

19(c) The term "Judge" is arisen from the Latin term Ju-dex means the judicial power which examines the truth of the facts, the law arising out of it and applies remedy for the same. Justiciary is thus an administrator of justice in contrast to Justice-ship is the dignity of the office of a judge.

19(d) As held by the Apex Court in Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others, AIR 1994 SC 1673 : (1995) 82 CompCas 276 : (1993) 4 JT 573 : (1993) 3 SCALE 471 : (1993) 4 SCC 216 : (1993) 1 SCR 589 Supp and Satyabrata Biswas and others Vs. Kalyan Kumar Kisku and others, AIR 1994 SC 1837 : (1994) 1 JT 325 : (1994) 1 SCALE 286 : (1994) 2 SCC 266 : (1994) 1 SCR 413 : (1994) 2 UJ 1 by referring to several expressions and famous quotes observed as follows:-

"Respect for law is one of the cardinal principles for an effective operation of the Constitution, law and the popular Government. The faith of the people is the source and succor to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication-be it judicial, quasi judicial or administrative as hallmark, the faith of the people in the efficacy of the judicial process would be disillusioned, if the parties are permitted to abuse its process and allowed to go scot free. It is but the primary duty and highest responsibility of the Court to restore the confidence of the litigant public, in the purity of fountain of justice; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the Courts and take recourse to extra constitutional remedies which is a death-knell to the rule of law."

19(e) An Advocate is not a mouth piece of his client. It is apt to refer the solemn duty of an advocate laid down in the WAREVELL'S BOOK ON LEGAL ETHICS at page 182 that a lawyer is under obligation to do nothing that shall detract from the dignity of the court of which he himself is a sworn officer and assistant. He should at all times pay differential respect to the judge and scrupulously observe the decorum of the court room. Judicial function cannot and should not be permitted to be stone walled by browbeating or bullying methodology whether it is by litigants or by council.

19(f) In Yoginath D. Bagde Vs. State of Maharashtra and Another, AIR 1999 SC 3734 : (1999) 7 JT 62 : (1999) 5 SCALE 620 : (1999) 7 SCC 739 : (1999) SCC(L&S) 1385 : (1999) 2 SCR 490 Supp : (2000) 1 SLJ 174 : (1999) AIRSCW

3775 : (1999) 8 Supreme 129 , it was held:

"The Presiding Officers of the Court cannot act as fugitives. They have also to face sometimes quarrelsome, unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs."

19(g) As well said by Benjamin Disraeli-A law is something which must have a moral basis, so that there is an inner compelling force for everyone to obey.

19(h) The above principles explain the solemn duty not only of the Judge but also of the Advocate as officer of the Court and the litigant public.

20. If the Court has to further justify its impartial and independent decision in passing the order supra, it is in fact for the reasons that the Court has to hear both sides including with reference to the counter when the learned Advocate General for State of Telangana representing the learned Standing Counsel for A.C.B for Telangana wants to file a detailed counter for detailed hearing to pass a detailed order, as to whether investigation to be continued or not and if continued whether arrest can be ordered or not and if arrest even dispensed with and stayed whether permission to interrogation be given or not, that too when it is the contention that the petitioner who filed the quash petition already given complaint against the Chief Minister of the State of Telangana and also against some officials, if at all to permit interrogation by the investigating officer is it not in this case only in relation to investigation in the case and not to permit investigation of another case registered by police of another State by intruding into their investigation, whether any interrogation by physical custody for interrogation to be permitted or not, if to permit what is the duration and with what guidelines including as to in presence of his advocate or not and by audio or video recording or not, if not to permit interrogation by physical custody or by physical presence, whether it can be by video conferencing from the principle laid down by the Apex Court in The State of Maharashtra and P.C. Singh Vs. Dr. Praful B. Desai and Another, AIR 2003 SC 2053 : (2003) CriLJ 2033 : (2003) 2 CTC 787 : (2003) 3 JT 382 : (2003) 3 SCALE 554 : (2003) 4 SCC 601 : (2003) 3 SCR 244 : (2003) 2 UJ 769 : (2003) AIRSCW 1885 : (2003) 3 Supreme 19 that presence through video conference tantamount to physical presence of accused during trial, though it is in relation to scope of Section 273 Cr.P.C of recording of evidence shall be in the presence of accused, further it is to consider whether for any necessity or not of the arrest of the accused under Section 41 and 41-A Cr.P.C. of any reasons assigned by the investigating officer since mandatory or not including with reference to any mention in the Part-I C.D and communication of the said part of investigation to the Court in this regard as per the mandate of Jogindar Singh supra that resulted in incorporation of the safeguards and that are bound to be followed as laid down by the Apex Court in the recent expressions in Km. Hema Mishra Vs. State of U.P. and Others, AIR 2014 SC 1066 : (2014) AIRSCW 624 : (2014) CriLJ 1107 : (2014) 2 JT 26 : (2014) 1 SCALE 342 : (2014) 4 SCC 453 (where the Allahabad High Court (7 Judges

bench) expression supra was quoted with approval) and Arnesh Kumar Vs. State of Bihar, AIR 2014 SC 2756 : (2014) AIRSCW 3930 : (2014) 7 JT 527 : (2014) 8 SCALE 250 : (2014) 8 SCC 273 and whether any notice served or not and even served, failed to respond and liable to be arrested or not therefrom. It is leave about the F.I.R first para that reflects against the petitioner/A-4, nowhere mentioned where and when the petitioner approached him.

21. Having regard to the above, when the Court is not in a position to consider any of these legal implications and complicated issues that to be decided only after counter and elaborate hearing, that too for the same requesting by the State, there is nothing to find fault with the interim order dated 18.06.2015 while investigation to continue, not to arrest only till counter and further hearing on 24.06.2015 and in not permitting any immediate custody sought for interrogation till filing of counter and detailed hearing for passing detailed order.

22. Coming to the other allegation regarding office of the Additional Advocate General of State of Andhra Pradesh (junior counsel) telephoned to the Standing Counsel of A.C.B for the State of Telangana Sri V. Ravi Kiran Rao about the matter in that day cause list of this Court as item No. 157 is going to be mentioned at 10.30 A.M before this Court for taking up the matter or an out of turn basis, which otherwise may not reach for hearing on that day, the reply filed by the quash petitioner to the recuse petition, is very clear as reproduced in the para No. 2(14) above as follows:

"14. It is further submitted that on instructions received from me, as the counsel on record another private counsel Shri G. Subba Rao, communicated to the learned Standing Counsel for A.C.B about the mentioning of the matter for hearing on 18.06.2015. He never associated or affiliated with the Additional advocate General, they did not reveal the source from where they got the information and how they came to know about the conversation between Sri Subba Rao and the learned counsel for the A.C.B. The learned counsel for the A.C.B is not supposed to make it known to the 2nd respondent, what transpired between him and another private counsel. Having known about the non association and non-affiliation of Shri Subbarao with the learned Advocate General, the office of the Additional Advocate General has been dragged into the controversy with a malafide intention, without any reason merely to embarrass and for extraneous reasons."

23. In the reply affidavit filed by the recuse petitioner, on 26.06.2015 in USR No. 3863 of 2015, he could not deny specifically of the fact that said Shri G. Subba Rao, who communicated to the learned Standing Counsel for A.C.B about the mentioning of the matter for hearing on 18.06.2015, never associated or affiliated with the Additional advocate General. In fact, the Court is nothing to do with nor same is a basis even for entertaining of any apprehension muchless reasonable apprehension out of any illusion.

24. Coming to the other allegation regarding the so called mentioning by the

learned Public Prosecutor of State of Andhra Pradesh in the morning before taking up the matters of the said listed matter No. 157 to be taken on priority in the after lunch by representing for Supreme Court Advocate Sri Siddhartha Luthra came to argue the matter from urgency, there is nothing to find fault. For permitting by Court of such a representation on behalf of the Supreme Court senior counsel, no vakalath is contemplated by any law because day in and day out in a Court one or the other advocate representing the matters including for mentions or to permit to move lunch motions and not by the advocates on record. The learned Judge also while sitting in the Division Bench with other senior Hon'ble Judge, noticed the said practice for any urgency of permitting lunch motions of matters not in the list and also taking of any matter among the list even could not reach immediately for any urgency.

25. Here, it is not even the case that the learned Public Prosecutor for the State of Andhra Pradesh filed any Vakalath in favour of the accused of a matter though pertains to another State Government from he being the Public Prosecutor of different State Government, for same not a conflict of interest. In fact what the Supreme Court expressions, say on the role of Public Prosecutors as officers of Court and act impartially to assist and conduct the proceedings fairly to uphold the truth, even there is any conflict of interest in obeying direction of his client, the Government, wisdom must prevail to resign and not to act as mouthpiece to his client.

26. In fact such a contingency arisen there only within the State of Telangana, for the reason that Sri V. Ravi Kiran Rao who is the Standing Counsel for A.C.B cases for Telangana state was representing the accused on record and filed quash petitions, not only for matter pertains to State of Andhra Pradesh, vide item No. 51 but also for matter pertains to State of Telangana vide Item No. 53 of the cause list dated 09.06.2015 and the Court is fresh in mind of the orders passed even on one day of the two matters leave about any other.

27. When such is the case, it is unknown same analogy that too only to make a representation of the matter pertains to another State that too at the request of learned senior counsel from Supreme Court. In fact, it is a part of the procedural law and also the practice in vogue of making mentions. Needless to say procedural law is handmaid of Justice, leave about any provisions in the Advocates Act or Bar Council Rules and Criminal Procedure Code and Rules of Practice, like in civil matters covered by Order III Rule 4(5) proviso C.P.C.

28. When said A.C.B. standing counsel of Telangana State filed appearance in favour of an accused, it is unknown how it is making an issue of a representation made by the Public Prosecutor of the State of Andhra Pradesh in the matter pertains to State of Telangana, that too not independently but for on behalf of Sri Siddhartha Luthra claiming known to him and asked to represent as he arrived to argue the matter. In fact undisputedly the said Siddhartha Luthra within no time lapsed came late to the Court and he was there in the Court hall for half an hour or so in the morning by observing the Court proceedings. In fact on behalf of the

State of Telangana, learned standing counsel for A.C.B Sri V. Ravi Kiran Rao, at the time of representation to take up the matter at 2.15 P.M, stated that he wants further instructions and file counter in detail and the matter may be heard at some other day. As it is represented of urgency, the Court wanted to consider his representation also, by taking up the matter at the after lunch at 2.15 p.m. as usual. It is at that stage, learned counsel Sri V. Ravi Kiran Rao represented that he got matters in another Court at 2.15 p.m and he can come by 4.00 p.m. The Court then asked both sides to come by 4.00 p.m for the matter is to be taken up. It is pursuant to which Sri Ravi Kiran Rao represented by the learned Advocate General for State of Telangana appeared before the Court and on behalf of the petitioner in quash proceedings Sri Siddhartha Luthra also and the advocate on record present.

29. It is needless to say in usual practice, the Court is taking up the motion list matters in the order of priority in the morning session and any mentions for urgency in the other matters of the motion list apart from any lunch motions of those not in the list and those of the regular matters of the list as per urgency besides matters relating to extension of stay have been taking up and it is only in that way permitted that too when a Supreme Court Senior Counsel all the way came from Delhi to submit to his say in the matter in claiming urgency. Thus, same can by no stretch of imagination attributed as bias against the Court/Judge presiding the Court.

30. It is accordingly after hearing as reflected in the docket referred supra, the interim order passed. Undisputedly the docket proceedings are sacrosanct and correctness of the docket proceedings not even questioned muchless by filing any petition or memo by the learned Advocate General or Sri V. Ravi Kiran Rao standing counsel for A.C.B for the State of Telangana, even the same passed on 18.06.2015 in their presence after hearing and further hearing also taken up on 24.06.2015 and again on 25.06.2015 and again oral submission by Advocate General at the after lunch session referred supra on 26.06.2015, leave about any whisper in the counter filed on behalf of the 1st respondent-ACB of the quash petition by the Additional Superintendent of Police.

31. The law in this regard is clear from the expression of the Apex Court in Roop Kumar Vs. Mohan Thedani, AIR 2003 SC 2418 : (2003) 96 CLT 409 : (2003) 3 SCALE 611 : (2003) 6 SCC 595 : (2003) 3 SCR 292 : (2003) AIRSCW 2425 : (2003) 3 Supreme 296 of what is laid down regarding happenings in Court that recorded by Court are conclusive. If a party feels that the happenings have been wrongly recorded, it is incumbent upon the party, while the matter is still fresh in the mind of the Judge to promptly call attention of the same Judge who had or have made the record. This is the only way to have the record corrected. Otherwise the matter must necessarily end there. It would not be open to any party to raise the matter in appeal or revision even. Same is the line of the expressions of the Apex Court in Central Bank of India Vs. Vrajlal Kapurchand Gandhi and Another, AIR 2003 SC 3028 : (2003) 3 CTC 238 : (2003) 5 JT 549 :

(2003) 5 SCALE 271 : (2003) 6 SCC 573 : (2003) 1 SCR 560 Supp : (2003) 2 UJ 1350 : (2003) AIRSCW 3485 : (2003) 4 Supreme 565 and State of Maharashtra and others Vs. Admane Anita Moti and others, AIR 1995 SC 350 : (1994) 5 JT 398 : (1994) 3 SCALE 891 : (1994) 6 SCC 109 : (1994) 2 SCR 816 Supp : (1994) 2 UJ 710 .

32. Thus, the petition of the recuse petitioner/defacto-complainant in asking the Court to recuse the matter by expressing apprehension of any reasonable bias is untenable. The recuse petition filed is nothing but bench hoping and bench avoiding and for that by resorting to make contemptuous allegations against the Judge, ignoring the responsibility as representative of the people.

33. It is needless to say a defacto-complainant, if a victim defined in Section 2(wa) (amended) Cr.P.C. can seek permission to conduct prosecution through advocate of his choice. He being respondent to the quash petition, can oppose for passing any order in favour of accused as part of conducting the prosecution. He can even ask by filing any counter to the quash petition for hearing his submissions also. It is unknown after he reported the occurrence, the crime later registered by concerned police representing the State having taken cognizance, the State being a main party to the quash petition to oppose as crime is a public wrong and not confined only to the victim, for the relief sought by accused from the prosecution material, having the State represented by the Advocate General was when heard and order passed and the Advocate General not questioned the order muchless by impugned the sacrosance, how contrary to and what is not contended by Advocate General, the defacto-complainant can, muchless in seeking recusal, that too by making contemptuous allegations against the Judge without even his presence for saying what really happened and not even that he ascertained the standing counsel for A.C.B or the learned Advocate General for the State of Telangana who represented the cause, if at all he got any suspicion to confirm before making allegations. This Court need not even emphasis the responsibility of the counsel for recuse petition, having contra signed the recuse petition, with the averments therein. Without which he has no right even to say he got some suspicion from reading of some news items or informed by several so called advocates, without even naming and without even to support the said allegation filing any affidavit of that source of information. Even the so called belated procured three cryptic affidavits, nowhere mentioned even their names in his reply though that was only permitted to traverse the allegations of the counter of quash petitioner, to the recuse petition, the advocate for recuse petitioner without even leave of the Court has no right to file any additional material including so called three advocates" affidavits and even not the say by the three advocates in their affidavits that they ever informed said recuse petitioner for his so mentioning in his recuse petition, that too when he says that he is the M.L.A and in a responsible position, with all restraint required before making any such attribution against a Judge acting on oath. What more is required to initiate the criminal contempt to the said recuse petitioner in his making the allegations to erode the public confidence against the Justice delivery

system.

34. It is important to mention that from the very quash petition averments, quash petitioner claims as falsely implicated as A-4 without any material particulars and even from F.I.R contents, real culprit is the defacto-complainant and he is not at all within the meaning of a victim. Even taken that he got a role by claiming as victim, the factual matrix referred supra to attribute bias or any reasonable apprehension of bias to the mind of any reasonable person no way in existence and thus the attempt on his part is obstructing the Judge from discharge of the official functions by acting on oath.

35. Before coming to the expressions placed reliance by both sides on the recusal to consider or not, it is necessary to mention few lines on the doctrine.

36. The doctrine of judicial recusal in fact enables a Judge who is lawfully appointed to hear and determine a case to stand down from that case, leaving its disposition to another colleague/s. The social service which the Judge renders to the community is the removal of a sense of injustice as well said by Lord Delwin. For the law will not suppose a possibility of bias or favour in a Judge, who is already sworn to administer impartial Justice, besides the presumption from acting on oath as per the Constitutional mandate, the other presumption under Section 114 of Indian Evidence Act, it is for the person alleges to establish the contrary with basic foundation for reasonable apprehension of any ordinary prudent person, before attributing any element of prejudice or bias against a Judge. It is because judicial oath protects the judicial independence against any type of maneuverings by any party. A judicial oath is to do Justice without fear or favour, affection or ill-will. Fear and favour being enemies of independence, affection and ill-will undermine impartiality; thereby to say independence and impartiality are the twin pillars without which the Justice cannot stand and the only purpose of recusal by a Judge is to underpin them and not otherwise muchless even any party to ask to recuse without reasonable apprehension that can be formed by a right minded person supported by introspective reasons. The Constitutional Court of South Africa in *S. Basson* (2005(12)BCLR-1192, relying upon *BTRISA V. Metal and Allied Works Union* (1992)3 SA 673, by dismissing the claim for recusal held on the reasonable apprehension test supra is to draw only from the basic principle initially to keep in mind as a matter of policy, which is important, that the public should have confidence in the courts. Upon this social order and security depend. In *Rex v Chondi and Another* 1933 OPD 267 Krause JP made the following observations (at 271) which in this country are as pertinent now as they were some sixty years ago - "It is a matter of the gravest public policy that the impartiality of the Courts of Justice should not be doubted, or that the fairness of a trial should not be questioned; otherwise, the only bulwark of the liberty of the subject, in these times of revolutionary tendencies, would be undermined."

37. In the course of hearing, the learned counsel for recuse petitioner placed reliance upon the following:

"(1) Manak Lal Vs. Dr. Prem Chand, AIR 1957 SC 425 : (1957) 1 SCR 575

(2) P.K. Ghosh, I.A.S. and another Vs. J.G. Rajput, AIR 1996 SC 513 : AIR 1995 SC 513 : (1995) 8 JT 214 : (1995) 6 SCALE 257 : (1995) 6 SCC 744 : (1995) 5 SCR 51 Supp

(3) State of West Bengal and Others Vs. Shivananda Pathak and Others, AIR 1998 SC 2050 : (1998) 79 FLR 684 : (1998) 3 JT 701 : (1998) 3 SCALE 411 : (1998) 5 SCC 513 : (1998) SCC(L&S) 1402 : (1998) 1 SCR 811 : (1998) AIRSCW 1908 : (1998) 4 Supreme 467

(4) State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., AIR 2012 SC 364 : (2012) CriLJ 1001 : (2012) 1 Crimes 44 : (2011) 14 JT 213 : (2012) 1 RCR(Criminal) 126 : (2011) 3 SCALE 394 : (2012) AIRSCW 207 : (2011) 8 Supreme 577

(5) Narinder Singh Arora Vs. State (Govt. of NCT of Delhi) and Others, AIR 2012 SC 1642 : (2012) CriLJ 2167 : (2012) 1 Crimes 1 : (2012) 1 DMC 1 : (2012) 283 ELT 481 : (2011) 14 JT 36 : (2012) 1 RCR(Criminal) 243 : (2011) 3 SCALE 352 : (2012) 1 SCC 561 : (2012) AIRSCW 2243

(6) State of Gujarat and Another Vs. Hon"ble Mr. Justice R.A. Mehta (Retd.) and Others, (2013) 1 AD 325 : AIR 2013 SC 693 : (2013) 1 JT 276 : (2013) 1 RCR(Civil) 610 : (2013) 1 SCALE 7 : (2013) 3 SCC 1 : (2013) 1 SCC(L&S) 490 : (2013) AIRSCW 671 : (2013) 1 Supreme 33 "

38. Apart from the above expressions, the learned counsel for the Petitioner relied on the portion of pages 33 & 34 out of 45 pages material in the lecture delivered by Hon"ble the then Chief Justice Sri R.C. Lahoti on 22.02.2005. No doubt true that as held by the apex Court on Judicial independence, to keep the stream of Justice clear and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermined the efficacy of the rule of law and working of the Constitution itself. The Judges of higher echelons, thereof, should not be mere men of clay with all the frailties and foibles, human failings and weak characters which may be found in those in other walks of life. They should be men of fighting faith with tough fiber not susceptible to any pressure, economic, political or of any sort ----- . Behaviour of the Judge is abastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

39. Unless the Judge's function without fear or favour, the question of their being impartial or independent does not arise.

40. Judges owe their appointment to the Constitution and hold position of a privilege under it. They are required to uphold the Constitution and the laws without fear that is the without fear of the executive and without favour that is the without favour from the executive.

41. The standards of judicial behaviour both on and off the bench are normally extremely high. For a Judge, to deviate such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal -----.

42. To perform the duties of judicial office without fear or favour, affection or ill will is the same thing as performing the duties with independence, impartiality and objectivity. In order to achieve this a certain degree of aloofness is required to be maintained by the Judges.

43. In fact, there is no quarrel on principles propounded in the lecture but for to say none of the facts that could be shown relevant to the cause for seeking recusal.

44. Whereas, the learned counsel for quash petitioner in opposing the recuse prayer placed reliance upon the following:

"(1) N.K. Bajpai Vs. Union of India (UOI) and Another, AIR 2012 SC 1310 : (2012) 2 CTC 449 : (2012) 190 ECR 159 : (2012) 3 RCR(Civil) 459 : (2012) 3 SCALE 452 : (2012) 4 SCC 653 : (2012) AIRSCW 1974 : (2012) 2 Supreme 417

(2) Brij Mohan Lal Vs. Union of India (UOI) and Others, (2012) 4 SCALE 450 : (2012) 6 SCC 502 : (2012) AIRSCW 3906

(3) State of Gujarat and Another Vs. Hon"ble Mr. Justice R.A. Mehta (Retd.) and Others, (2013) 1 AD 325 : AIR 2013 SC 693 : (2013) 1 JT 276 : (2013) 1 RCR(Civil) 610 : (2013) 1 SCALE 7 : (2013) 3 SCC 1 : (2013) 1 SCC(L&S) 490 : (2013) AIRSCW 671 : (2013) 1 Supreme 33

(4) Union of India (UOI) and Others Vs. Sanjay Jethi and Another, (2013) 14 JT 23 : (2013) 13 SCALE 82 : (2014) 1 SCT 281

(5) Y.S. Vijaya V. Union of India (W.P. No. 28951 of 2011, dated 16.02.2012 of Division Bench of this Hon"ble High Court)

(6) Court on its own motion V. State (Crl.M. No. 9955 of 2007 in W.P (Crl.) No. 796 of 2007), Dt. 04.10.2007 of Division Bench of Delhi High Court

(7) Subrata Roy Sahara Vs. Union of India (UOI) and Others, (2014) AIRSCW 3685 : (2014) 6 JT 1 : (2014) 6 SCALE 257 : (2014) 8 SCC 470 "

44(a) Besides the above expressions, relied for no grounds to recuse, placed reliance on the very entitlement to maintain for a petition for recusal by the petitioner/defacto-complainant, the expression in (Three Judge Bench) - M/s. J.K. International Vs. State, Govt of NCT of Delhi and Others, AIR 2001 SC 1142 : (2001) CriLJ 1264 : (2001) 3 JT 130 : (2001) 2 SCALE 216 : (2001) 3 SCC 462 : (2001) 2 SCR 90 : (2001) AIRSCW 907 : (2001) 3 Supreme 214 .

45. Learned Advocate General for the State of Telangana representing standing counsel for A.C.B for the State of Telangana placed reliance on the paragraph No. 2 of page No. 319 (of the Chapter about some judges of the Supreme Court) of

the book titled "Before Memory Fades... an autobiography" - Fali S. Nariman [9th Edition 2014] - Same is already discussed supra of no application to the facts on hand, even for the request that the Court may recuse, besides not entitled to ask of the Court has to, from that expression in the factual matrix.

46. Before discussing the principles laid down in the decisions by both sides supra, it is required to mention from the submission made by the learned counsel for the recuse petitioner that sensitive regional feelings were involved in the matter, from apprehension of support by Andhra Pradesh Government to the quash petitioner. There is in fact no averment in the affidavit or additional affidavit, muchless with any basis for having such apprehension and without which for making any mention in the arguments. Admittedly, the defacto-complainant as well as the quash petitioner both belong to the State of Telangana. From that, leave about truth or otherwise if any, he cannot attribute any little reasonable apprehension of bias for the Judge acting on oath. The answer for him is very clear from the expression of the Division Bench of the Delhi High Court in State of Odisha V. Government of India (W.P.(Civil) No. 7203 of 2012), order dated 19.11.2012, where State of Odisha laid a challenge to the notification, dated 08.05.2012 under Section 4(2) and 5(a) of Inter-State River Disputes Act, 1956 appointing Justice Ghulam Mohammed, a Retired Judge of Hon"ble High Court of Andhra Pradesh as a member of the Vamsadhara Water Dispute Tribunal, raising the query of the Hon"ble Judge is hailing from a particular State (Andhra Pradesh), which was a party to the river water dispute. At para Nos. 12 and 13 of the expression, it was observed negating such a contention as baseless that:

"12. On examination of the plea of the parties, we are afraid that we do not agree with the submissions of the learned senior counsel for the petitioner, albeit cast in very appropriate language. We cannot lose sight of the fact that our country has diversity of region, religion, caste, community and other characteristics. There is still perceived a unity in diversity which holds the country together. There may be disputes which are localized to a region, or there may be qua different regions, States, castes, communities. If we were to accept the plea of learned senior counsel for the petitioner, it would be difficult to restrain the application of this principle only to a river water dispute. There may be parties, who may act mischievously by claiming that the composition of benches should exclude persons from certain region, religion or castes. This would be completely unacceptable. A Judge is trained to act in a dispassionate manner and take an objective and impartial view of the matter, uninfluenced by irrelevant considerations which would include as to the region from which he hails or the caste or community to which he belongs.

13. It is not as if there is any specific allegation or plea raised qua the learned Judge in particular, but it is only a perceived possibility of a bias based on the region from where the learned Judge hails. This cannot, in our view, be treated to be a reasonable possibility of a bias."

47. No Doubt, in *Manak Lal Vs. Dr. Prem Chand*, AIR 1957 SC 425 : (1957) 1 SCR 575 , the Apex Court while dealing with the issue of bias held as under:

"Actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not necessary.... What is relevant is the reasonableness of the apprehension in that regard in the mind of the appellant."

However, said principle is not the yard stick of present day world as can be seen from the Constitution Bench expression of the South African Supreme Court and also from the subsequent expressions of our Apex court, on the yard stick of what is the reasonableness of the apprehension.

48. Among the decisions placed reliance by both sides, *Manaklal supra* was referred mostly and also explained away the principle therein, particularly in *N.K. Bajpai and Brijmohan Lal* if not also in *Devender pal Singh Bhullar supra*. Before considering the above, the relevant portion of the expression of the Apex Court in *P.K. Ghosh, I.A.S. and another Vs. J.G. Rajput*, AIR 1996 SC 513 : AIR 1995 SC 513 : (1995) 8 JT 214 : (1995) 6 SCALE 257 : (1995) 6 SCC 744 : (1995) 5 SCR 51 Supp , extracted in the recuse petitioner's affidavit itself, needless to repeat, the facts therein were the learned Judge (B) Shethna, J was hearing a contempt petition and passing order, though earlier he appeared as an Advocate before his elevation as a Judge for that party who moved the contempt petition, therefrom it was held as bias.

49. In the other expression of the Apex Court in *Shivananda Pathak*, it was observed that judicial proceedings held in open Court or to ensure not only transparency but also instill and inspire confidence in impartiality of the proceedings and requirements of natural justice is that hearing should be done by a Judge with an unbiased mind in defining in saying different kinds of biased to define as pre-consent opinion or pre-dispensation or predetermination to decide a case or an issue in a particular manner.

In fact as what is referred *supra*, there is nothing to say any element of bias in the order passed by the Court after hearing.

50. The other expression in *Davinder Pal Singh Bhullar supra* it is observed that there may be a case where allegations may be made against Judge of having biased or prejudice at any stage of proceedings or after the proceedings are over. There may be some substance in it or it may be made for ulterior purpose or in a pending case to avoid the bench if a party apprehends that judgment may be delivered against him. Suspicion or bias displace an official from acting as an adjudicatory. Further, if such allegation is made without any substance, it would be disastrous to the system as a whole for the reason, that it casts doubt upon a Judge which has no personal interest in the outcome of controversy.

51. By referring to *Bhajan Lal, Chief Minister, Haryana Vs. Jindal Strips Ltd. and Others*, (1994) 5 JT 254 : (1995) 109 PLR 200 : (1994) 3 SCALE 703 : (1994) 6 SCC 19 : (1994) 2 SCR 445 Supp it was held at para No. 27 that the

apprehension of bias must be reasonable that is which a reasonable can entertained. Even in such a case, he has no right to ask for a change of bench, for the reason that such an apprehension may be inadequate and he cannot be permitted to have the bench of his choice and it referred the latin maxim *nemo debet esse Judex in propria sua causa*.

52. It was held on facts that there is no even attribution in the affidavit petition that too from a so called unknown third parties say of the Court proceedings of the Judge shown interest in such a way as if of his of own cause to attribute bias referring to the Latin maxim for saying failure to adhere to the principle (not to sit in own cause) creates an apprehension of bias on the part of the Judge.

53. In fact at para No. 34 referring to the expression of the house of Lords *Locabale* case it was observed that where an objection is made, it will be a wrong in the Judge to yield to a tenuous or frivolous objection as it would be to ignore an objection unless there is a real ground for doubt and that doubt must be resolved in favour of recusal by applying the principle, justice must not only be done but be seen to be done, he must be in a position to act judiciously and decide the matter objectively.

54. In fact what was laid down in *Manak Lal* (supra) referring to *R. v. Sussex Justices Ex. P. McCarthy* [(1924) 1 KB 256 KBD at 259] was discussed in detail in the later expression of the Apex Court in *N.K. Bajpai* (supra) at paras 46 to 48, 54 to 57, where it was held as follows:

"46. Under the English Law, the genesis of bias has been described as the perception that the court is free from bias, that it is objectively impartial stems from the overworked aphorism of Lord Hewart C.J. in *R. v. Sussex Justices Ex. P. McCarthy* [(1924) 1 KB 256 KBD at 259] wherein he said,

"It is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done."

However, later the courts there felt that too heavy a reliance upon the Hewart aphorism in instances of alleged bias produces the danger that the appearance of bias or injustice becomes more important than the absence of actual bias, the doing of justice itself. It is, therefore, of importance that perceived bias is not too readily inferred, such as to negate the doing of justice.

47. In *Porter v. Magill* [(2002) 2 AC 357], the House of Lords finally decided the proper test for finding perceived or apparent bias, after judicial debate for over two decades, which displayed the welcome interplay of judicial pronouncements within the jurisdictions of the English common law, Scotland and Strasbourg jurisprudence. The test is now whether the fair-minded observer, having considered the facts, would consider that there was a reasonable possibility that the tribunal was biased. [See Sir Louis Blom, Q.C., "Bias, Malfunction in Judicial Decision-making", (2009) Public Law 199].

48. Bias must be shown to be present. Probability of bias, possibility of bias and reasonable suspicion that bias might have affected the decision are terms of different connotations. They broadly fall under two categories, i.e., suspicion of bias and likelihood of bias. Likelihood of bias would be the possibility of bias and bias which can be shown to be present, while suspicion of bias would be the probability or reasonable suspicion of bias. The former lead to vitiation of action, while the latter could hardly be the foundation for further examination of action, with reference to the facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias, in the circumstances of a given case. If it falls in the prior category, the decision would attract judicial chastise but if it falls in the latter, it would hardly effect the decision, much less adversely.

54. This Court in the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, AIR 2001 SC 24 : (2000) 87 FLR 877 : (2000) 2 JT 206 Supp : (2001) 1 LLJ 583 : (2000) 7 SCALE 19 : (2001) 1 SCC 182 : (2001) SCC(L&S) 189 : (2001) 2 UJ 1185 : (2000) AIRSCW 3826 : (2000) 7 Supreme 112 , having regard to the changing structure of the society, stated that modernization of the society with the passage of time had its due impact on the concept of bias as well.

55. The courts have applied the tests of real likelihood and reasonable suspicion. These doctrines were discussed in the case of S. Parthasarthi Vs. State of Andhra Pradesh, AIR 1973 SC 2701 : (1973) 2 LLJ 473 : (1974) 3 SCC 459 : (1974) 1 SCR 697 : (1974) 1 SLJ 286 : (1973) 5 UJ 882 . The Court found that "real likelihood" and "reasonable suspicion" were terms really inconsistent with each other and the Court must make a determination, on the basis of the whole evidence before it, whether a reasonable man would, in the circumstance, infer that there is real likelihood of bias or not. The Court has to examine the matter from the view point of the people.

56. The term "bias" is used to denote a departure from the standing of even handed justice. After discussing this law, another Bench of -this Court in the case of State of Punjab Vs. V.K. Khanna and Others, (2000) 3 JT 349 Supp : (2000) 7 SCALE 731 : (2000) 5 SCR 200 Supp : (2000) AIRSCW 4472 : (2000) 8 Supreme 105 , finally held as under:-

"8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise."

57. The word "bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in general connotation, means and implies "spite" or "ill will". It is also now a well settled proposition that existence of the element of "bias" is to be inferred as per the standard and comprehension of a reasonable man. The bias may also be malicious act having some element of intention without just cause or excuse. In case of malice or ill will, it may be an actual act conveying negativity but the element of bias could be apparent or reasonably seen without -any negative result and could form part of a general public perception."

55. The principle in N.K. Bajpai was reiterated by the apex Court in Brij Mohan Lal supra.

56. As per Brij Mohan Lal supra, the test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way. Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice, i.e., the Judge has to act fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial "coram non iudice". Therefore, the consequential order, if any, is liable to be quashed. (Vide: Vassiliades vs. Vassiliades and another AIR 1945 38 (Privy Council) ; S. Parthasarathi Vs. State of Andhra Pradesh, AIR 1973 SC 2701 : (1973) 2 LLJ 473 : (1974) 3 SCC 459 : (1974) 1 SCR 697 : (1974) 1 SLJ 286 : (1973) 5 UJ 882 ; and Ranjit Thakur Vs. Union of India (UOI) and Others, AIR 1987 SC 2386 : (1988) CriLJ 158 : (1987) 4 JT 93 : (1988) 1 LLJ 256 : (1987) 2 SCALE 773 : (1987) 4 SCC 611 : (1988) 1 SCR 512 : (1989) 1 SLJ 109).

"In Locabail (UK) Ltd. v. Bayfield Properties Ltd. & Anr., (2000) 1 All ER 65, the House of Lords considered the issue of disqualification of a Judge on the ground of bias and held that in applying the real danger or possibility of bias test, it is often appropriate to inquire whether the Judge knew of the matter in question. To that end, a reviewing court may receive a written statement from the Judge. A Judge must recuse himself from a case before any objection is made or if the circumstances give rise to automatic disqualification or he feels personally embarrassed in hearing the case. If, in any other case, the Judge becomes aware of any matter which can arguably be said to give rise to a real danger of bias, it is generally desirable that disclosure should be made to the parties in advance of the hearing. Where objection is then made, it will be as wrong for the Judge to yield to a tenuous or frivolous objection as it will be to ignore an objection of substance. However, if there is real ground for doubt, that doubt must be resolved in favour of recusal. Where, following appropriate disclosure by the Judge, a party raises no objection to the Judge hearing or continuing to hear a case that party cannot subsequently complain that the matter disclosed gives rise to a real danger of bias.

In Justice P.D. Dinakaran Vs. Hon"ble Judges Inquiry Committee and Others, (2012) 113 CLT 215 : (2011) 7 JT 425 : (2011) 6 SCALE 797 : (2011) 10 SCR 1064 : (2011) 4 UJ 2608 , this Court has held that in India the courts have held that, to disqualify a person as a Judge, the test of real likelihood of bias, i.e., real danger is to be applied, considering whether a fair minded and informed person, apprised of all the facts, would have a serious apprehension of bias. In other words, the courts give effect to the maxim that "justice must not only be done but be seen to be done", by examining not actual bias but real possibility of bias based on facts and materials. The Court further held:

"The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially."

57. In Justice R.A. Mehta (supra) placed reliance upon by both sides on para Nos. 58 to 60 read as follows:

"58. Absence of bias can be defined as the total absence of any pre-conceived notions in the mind of the authority/Judge, and in the absence of such a situation it is impossible to expect fair deal/trial and no one would therefore see any point in holding/participating in one as it would serve no purpose. The Judge/authority must be able to think dispassionately and submerge any private feelings with respect to each aspect of the case. The apprehension of bias must be reasonable i.e., which a reasonable person would be likely to entertain. Bias is one of the limbs of natural justice. The doctrine of bias emerges from the legal maxim *nemo debet esse judex in propria causa*. It applies only then the interest attributed to an individual such so as to tempt him to make a decision in favour of, or to further his own cause. There may not be a case of an actual bias or an apprehension to the effect that the matter most certainly will not be decided or dealt with impartially, but where the circumstances are such so as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision, the same is sufficient to invoke the doctrine of bias.

59. In the event that actual proof of prejudice is available, the same will naturally make the case of a party much stronger, then the availability of such proof is not a necessary pre-condition, for what is relevant, is actually the reasonableness of the apprehension in this regard in the mind of such party. In

case such apprehension exists the trial/judgment/order, etc., would stand vitiated for what of impartiality and such judgment/order becomes a nullity. The trial becomes *corum non judice*.

60. While deciding upon such an issue, the Court must examine the facts and circumstances of the case and examine the matter from the view point of the people at large. The question as regards "whether or not a real likelihood of bias exists must be determined on the basis of probabilities that are inferred from the circumstances of the case by the Court objectively or upon the basis of the impression that they reasonably be left upon the minds of those aggrieved or the public at large. The conclusion was arrived by referring to the expressions in *S. Pardhasaradhi V. State of A.P* referred in *Bajpai supra*, *Bajpai supra*, *State of Punjab V. V.K. Khanna* and *State of Punjab V. Devinder Paul Singh Bhullar supra*."

58. In *Narender Singh Arora supra* referring *Pardhasaradhi supra* among others what was observed is, it is well settled law that a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial capacity in his previous conduct gives ground for that he cannot act with an open mind or impartiality. The broad principle evolved by the Court is that a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias.

59. It is also apt to refer Lord Denning explained in his book "WHAT NEXT IN THE LAW" at page 310 that "they meaning Judges will not be diverted from their duty by any extraneous influences, nor by any hope of reward nor by the fear of penalties; nor by flattering praise nor by indignant reproach.

60. Ultimately, in *Sanjay Jethi supra*, referring to some of the expressions and in particular *Chandra Kumar Chopra Vs. Union of India (UOI) and Others*, (2012) 2 JCC 1464 : (2012) 5 SCALE 384 : (2012) 6 SCC 369 : (2012) 3 SLJ 230 and *Justice R.A. Mehta supra*, it was held categorically that mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one's imagination. It must be brought in record with a prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of a reasonable man that there is likelihood of bias. It is not to be forgotten that in a democratic polity justice in its conceptual eventuality and inherent quintessentially forms the bedrock of good governance. In a democratic system that is governed by Rule of law, fairness of action, propriety, reasonability, institutional impeccability and non-biased justice delivery system, constitute the pillars on which the survival remains in continuum. The plea of bias is thus to be scrutinized on the basis of material brought on record whether someone makes wild, irrelevant and imaginary allegations to frustrate a trial or it is in consonance with the thinking of a reasonable man which can meet the test of real likelihood of bias. The principal cannot be attracted in vacuum.

61. The principle that can be culled out from number of authorities referred and relied *supra* and the handout in two pages submitted by the recuse petitioner as

principles culled out therefrom even, fundamentally is that the question of bias would arise depending on the facts and circumstances of the case. It must be based on reasonable apprehension in the mind of a reasonable prudent person with factual foundation for the same for claiming apprehension of bias and not without basis any allegation by an imaginary one or come into existence by an individual's perception based on figment of imagination, leave about any attempt to prevent the judicial process of hearing the case under that guise of recusal for which the Court shall not heed to. In this regard, for no factual foundation as referred supra, it is apt to refer the following expressions on plea of recusal:

62. In Court on its own motion known as R.K. Anand's case of the year 2007, division bench of Delhi High Court in dealing with a recusal application filed by learned Senior Advocate Sri R.K. Anand referring to Maniklal supra and A.K. Kripak of 1969, Shivanand Pathak supra, P.K. Ghosh supra, observations of Lord Denning M.R. in Metropolitan Properties, Frankfurt's observation in Public Utilities Commission (which are covered by the expressions referred supra) among those cited by both sides, Arundhati Roy of 2000 Supreme Court, Subrahmanya Swamy of 1996 Supreme Court, principle laid down in Locabail Limited referred supra in N.K. Bajpai, other expressions of the Delhi High Court's Division Bench, by considering the principle at length observed in paras 27 to 29 which are relevant herein also as follows:

"27. There is no factual basis or any foundation for nurturing any apprehension of bias, leave aside any reasonable basis therefor, which is altogether missing. The genesis of the alleged hostility is claimed to be misusing of position as Vice President of Delhi High Court Bar Association by moving and passing a resolution against the candidature of applicant. This has been found to be false as noted in para 17. there was, thus, no question of any altercation as alleged or otherwise with the applicant. Besides, these allegations relate to remote decisions of the Bar Associations and no such inference of possible or likelihood of apprehension of bias can be drawn. Reference may usefully be made to Locabail's case (supra).

28. The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour affection or ill will while upholding the constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.

29. Regarding the approach to be adopted when confronted with allegations of bias, hostility and unjustified criticism, one is reminded of the words of Lord Denning while holding that contempt jurisdiction should be sparingly used.

The observations in R. v. Metropolitan Police Commissioner ex p. Blackburn,

(1968) 2 All England reporter 319":

"All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticism. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication. Exposed as we are to the winds of critic, nothing which is said by this person or that nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done."

This impels me to hold that invidious and motivated attempts at Bench hunting or brow-beating the Court need to be firmly dealt with and not permitted. In such a situation, it is the duty of the Judge to bear the "cross" unflinchingly and unmindful of consequences, act with rectitude and sobriety, upholding judicial integrity by discouraging such attempts while retaining the objectivity, will and determination to do justice.

In view of the foregoing discussion, the prayer for recusal is declined. Application is dismissed."

63. The Apex Court in appeal against the above expression, vide R.K. Anand Vs. Registrar, Delhi High Court, (2009) 10 JT 1 : (2009) 10 SCALE 164 : (2009) 8 SCC 106 : (2009) 11 SCR 1026 by approving the Delhi High Court observations categorically held that bench hunting or bench hoping or bench avoiding could not be allowed. In this regard, it is relevant to extract the observation of the Apex Court that:

"we are constrained to pass here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one could simply throw a stone on a Judge (who is quite defenceless in such matters!) and later on cite the gratuitous attack as the ground to ask to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned, but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal therefore needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences".

64. The said expression of the apex Court in R.K. Anand also quoted with approval by the division bench of this Court in Y.S. Vijaya V. Union of India (W.P. No. 28951 of 2011, dated 16.02.2012), after referring to various expressions quoted across the bar including Manak Lal, Kripak, Pardhasaradhi, G. Sarana, Devendra Pal Singh Bhullar, Narendra singh Arora all of these referred and discussed supra.

65. The said expression of the apex Court in R.K. Anand also quoted with approval by another division bench of this Court in Patti Begari Ramaiah V. The

A.P. High Court (W.P. No. 4597 of 2012, dated 15.10.2012) as follows:

"24. The basis for the objection of the petitioners that this Bench should not hear this writ petition seems to be the fact that ----- that the petitioners somehow or the other wanted to avoid a hearing by this Bench.

25. In R.K. Anand Vs. Delhi High Court, the Supreme Court strongly deprecated the tendency of litigants and members of the Bar making requests to the Benches perceived by them to be not favourable to recuse from hearing a case. At para 263 at pg. 192, it quoted with approval the following passage from the judgment of the Delhi High Court which was being considered by it.

"The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill-will while upholding the Constitution and the laws. In a case where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or browbeating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office."

R.K. Anand held that the above course of action should be the courts' response in the face of a request for recusal made with the intent to intimidate the Court or to get better of an "inconvenient" Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice. It held that a motivated application for recusal needs to be dealt with sternly and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.

26. We have no hesitation to hold that the request of the petitioners that this Bench ought not to hear this case is motivated, without any valid reason and is made with an intention to Bench shopping and to cause obstruction and delay to the proceeding. We strongly deprecate the same."

66. It was by referring to it in the very recent expression in Subrata Roy Sahara Vs. Union of India (UOI) and Others, (2014) AIRSCW 3685 : (2014) 6 JT 1 : (2014) 6 SCALE 257 : (2014) 8 SCC 470 it was observed:

"8. It is therefore, that we informed learned Senior counsel, that we would hear the matter. It seems that our determination to hear the matter marked to us by Hon'ble the Chief Justice, was not palatable to some of the learned counsel for the petitioner. For, Mr. Ram Jethmalani, learned Senior Counsel, was now more forthright. He told us, that we should not hear the matter, because "his client" had apprehensions of prejudice. He would, however, not spell out the basis for such apprehension. Dr. Rajeev Dhawan, came out all guns blazing, in support of his colleague, by posing a query: Has the Court made a mistake, serious enough, giving rise to a presumption of bias "... even if it is not there ..."? It was difficult

to understand what he meant. But seriously, in the manner Dr. Rajeev Dhawan had addressed the Court, it sounded like an insinuation. Mr. Ram Jethmalani joined in to inform us, that the Bar (those sitting on the side he represented) was shell-shocked, that an order violating the petitioner's rights under Article 21 of the Constitution of India, had been passed, and it did not seem to cause any concern to us. ----- The seriousness of the submissions apart, none of them, even remotely, demonstrated "bias".

10. We have recorded the above narration, lest we are accused of not correctly depicting the submissions, as they were canvassed before us. In our understanding, the oath of our office required us to go ahead with the hearing. And not to be overawed by such submissions. In our view, not hearing the matter, would constitute an act in breach of our oath of office, which mandates us to perform the duties of our office, to the best of our ability, without fear or favour, affection or ill will. This is certainly not the first time, when solicitation for solicitation for recusal has been sought by learned counsel. Such a recorded peremptory prayer, was made by Mr. R.K. Anand, an eminent Senior Advocate, before the High Court of Delhi, seeking the recusal of Mr. Justice Manmohan Sarin from hearing his personal case. Mr. Justice Manmohan Sarin while declining the request made by Mr. R.K. Anand, observed as under:

"The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office."

The above determination of the High Court of Delhi was assailed before this Court in R.K. Anand Vs. Registrar, Delhi High Court, (2009) 10 JT 1 : (2009) 10 SCALE 164 : (2009) 8 SCC 106 : (2009) 11 SCR 1026 . The determination of the High Court whereby Mr. Justice Manmohan Sarin declined to withdraw from the hearing of the case came to be upheld, with the following observations:

"The above passage, in our view, correctly sums up what should be the Court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an "inconvenient" judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice."

(emphasis is ours)

11. In fact, the observations of the High Court of Delhi and those of this Court reflected, exactly how it felt, when learned counsel addressed the Court, at the commencement of the hearing. If it was learned counsel's posturing antics,

aimed at bench-hunting or bench-hopping (or should we say, bench-avoiding), we would not allow that. Affronts, jibes and carefully and consciously planned snubs could not deter us, from discharging our onerous responsibility. We could at any time, during the course of hearing, walk out and make way, for another Bench to decide the matter, if ever we felt that, that would be the righteous course to follow. Whether or not, it would be better for another Bench to hear this case, will emerge from the conclusions, we will draw, in the course of the present determination."

121. In order to support his above contention, and to bring forth the principles enunciated by this Court, which were relevant to the present case, Mr. Ram Jethmalani, learned Senior Counsel, placed reliance on *Manak Lal Vs. Dr. Prem Chand*, AIR 1957 SC 425 : (1957) 1 SCR 575 . Inviting the Court's attention to the factual background of the controversy in the above case, it was brought out, that Dr. Prem Chand, the respondent, had filed a complaint against Manak Lal, the petitioner, under the Bar Councils Act. During the course of adjudication, both the Members of the Tribunal (under the Bar Councils Act) and the Judges of the High Court of Rajasthan, accepted the complainant's version, and rejected the pleas raised by Manak Lal. Resultantly, Manak Lal was held guilty of gross professional misconduct. It was the above finding, which was assailed by Manak Lal before this Court. The contention advanced on his behalf was, that the Members of the Tribunal, nominated to enquire into the misconduct of Manak Lal, had been improperly nominated. The improper constitution of the Tribunal was premised on the fact, that Shri Chhangani who was the Chairman of the Tribunal, had previously filed a power of attorney on behalf of Dr. Prem Chand, in a matter being determined under Section 145 of the Cr.P.C. It was submitted that Shri Chhangani, had also argued the above matter, on behalf of Dr. Prem Chand on 23.8.1952. Having appeared for the opponent, it was submitted, that Shri Chhangani was disqualified from acting as Chairman/Member of the Tribunal. This Court in the above factual background, held as under:-

"There is some force in this argument. It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a, litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it, is often said that justice must not only be done but must also appear to be done."

(emphasis is ours)

122. On the issue, that justice must not only be done, but must also appear to be done, this Court in the above judgment, had relied on the judgment rendered in *Frome United Breweries Co. v. Bath Justices*, (1926) AC 586, and thereupon,

had observed as under:-

"As Viscount Cave L. C. has observed in *From United Breweries Co. v. Bath Justices*, "this rule has been asserted not only in the case of Courts of Justices and other judicial tribunals but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others ". In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed.

It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant, or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. " The principle says Halsbury, "nemo debet esse iudex in causaproprta sua precludes a justice, who is interested in the subject matter of a dispute, from acting as a justice therein" (Halsbury's Laws of England, Vol. XXI, page 535, para 952). In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

(emphasis supplied)

123. In *Manak Lal's case* (supra), reliance was also placed by this Court on *Rex v. Sussex Justices, Ex parte McCarthy*, (1924) 1 KB 256. Relying on the above judgment, this Court had expressed as under:-

"In support of his argument, Shri Daphtary referred us to the decision in *Rex v. Sussex Justices, Ex parte McCarthy*. In this case, the Court was dealing with a case arising out of a collision between a motor vehicle belonging to the applicant and one belonging to W. At the hearing of the summons the acting clerk to the justices was a member of the firm of solicitors who were acting for W in a claim for damages against the applicant for injuries received in the collision. After the evidence was recorded the justices retired to consider their decision and the acting clerk also retired with them in case they should desire to be advised on any point of law. The applicant was convicted in the case. This conviction was challenged by the applicant on the ground that it was vitiated by the improper conduct of the justices in allowing the acting clerk to be associated with them when they deliberated about the merits of the case. An affidavit was filed on behalf of the justices that they reached their decision without consulting the acting clerk and that the acting clerk had in fact abstained from referring to the case. This affidavit was accepted as true by all the learned judges who heard the case and yet the conviction was quashed. "The question is" observed Lord

Hewart C.J. "whether the acting clerk was so related to the case in its civil aspect, as to be unfit to act as a clerk to the justices in the criminal matter" and the learned judge added that "the answer to that question depends not upon what exactly was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference in the course of justice." Lush J. who agreed with Lord Hewart C.J. likewise accepted the affidavit made on behalf of the justices but observed, "that they have placed themselves in an impossible position by allowing the clerk in those circumstances to retire with them into their consultation room."

(emphasis supplied)

124. This Court in Manak Lal's case (supra) also placed reliance on Rex v. Essex Justices, Ex parte Perkins, (1927) 2 KB 475. The conclusions recorded in the latter judgment were accepted by this Court, by holding as under:-

"The same principle was enunciated with equal emphasis in Rex v. Essex Justices, Ex parte Perkins. This was a dispute between a husband and his wife and it appeared that the wife had consulted the solicitor's clerk in their office about the preparation of a deed of separation from her husband and the lawyer acted in the matter for a time after which she ceased to consult him. No mention of the matter was made to the solicitor himself except one very short reference to it in a weekly report from his clerk. Subsequently the solicitor acted as a clerk to the justices who tried the case. He stated in his affidavit that, when acting as a clerk to the justices on the occasion in question, he had no knowledge that his firm had acted for the wife and that he was in no way adverse to the husband. It was urged that the decision of the justices should be set aside as the justices were not properly constituted and it appears also to have been suggested that the decision might, perhaps, have been influenced by a prejudice though indirectly and to a very small extent. Rejecting the argument that the decision of the justices had been influenced even remotely by the impropriety alleged, Avory J. stated that "though the clerk to the justices and the "justices did not know that his firm had acted for the applicant's wife, the necessary, or at least the reasonable, impression, on the mind of the applicant would be that justice was not done seeing that the solicitor for his wife was acting with the justices and advising" them on the hearing of the summons which she had taken against him."

(emphasis supplied)

135. Dr. Rajeev Dhawan, learned Senior Counsel also accused us of having a pre-disposition in respect of the controversy. This predisposition, according to him, appeared to be on the basis of a strong commitment towards the "other side". This assertion was repeated several times during the hearing. But, which is the other side? In terms of our order dated 31.8.2012, the only gainer on the other side, is the Government of India. The eighth direction of our order dated 31.8.2012, reads as under:-

"8. SEBI (WTM) if, after the verification of the details furnished, is unable to find out the whereabouts of all or any of the subscribers, then the amount collected from such subscribers will be appropriated to the Government of India." (emphasis is ours) If the "other side", is the Government of India, there is certainly no substance in the aspersion cast by the learned counsel. Just the above aspect of the matter is sufficient to burst the bubble, of all the carefully crafted insinuations, systematically offloaded, by learned counsel, for effect and impact.

136. At this juncture we may refer to a decision of this Court which has a bearing on the subject in hand. Reference is being made to the observations made by this Court, in *Jaswant Singh Vs. Virender Singh and others*, AIR 1995 SC 520 : (1991) LabIC 258 : (1994) 4 SCALE 872 : (1995) 1 SCC 384 Supp : (1995) 1 SCC 384 : (1994) 5 SCR 336 Supp :-

"32. Before parting with this judgment, there is however, one matter which has caused us considerable concern and we wish to advert to it. After the recount had been ordered by the learned Single Judge in the High Court and the Deputy Registrar had carried out the inspection of the ballot papers of the specified booths, the appellant filed an application in the High Court under Section 151 CPC seeking stay of the further arguments to enable the appellant to move the Supreme Court. In the said application the appellant referred to certain "observations" made by the learned Judge during the course of arguments and also referred to the manner in which the two packets containing ballot papers which had been objected to by both the parties and had been kept for scrutiny of the learned Single Judge, were handled by the learned Judge. The appellant went on to say that "by doing this the Hon"ble Court was pleased to make these ballot papers suspect and doubtful and these cannot be considered for any decision on them regarding their validity or otherwise as these remained in unsealed condition for uncertainable time without the petitioner or his Counsel being present there". The learned Judge by his order dated 13.5.1993 recorded the following proceedings:

"Counsel for the petitioner has not appeared and the petitioner himself has made a request that he wants to move the Hon"ble Supreme Court for transfer of the Election Petition from this Court. In view of this statement, the petition is being adjourned. The petitioner wants to place as application for transfer on record. He may file it in the Registry, if so advised.

During the course of arguments yesterday, two sealed envelopes relating to polling booth Nos. 28 and 31 had been opened in the presence of the parties and their Counsel at the time when the report of the Commissioner who carried out test checking was being considered. These open envelopes had remained in my custody in my Almirah under lock and key. Since the case is now being adjourned, these open envelopes be resealed and the same be handed over to the Additional Registrar (Judicial) alongwith other sealed envelopes."

33. Thereafter, the appellant as already noticed, filed a transfer petition in this Court which was dismissed on 30.8.1993. The transfer petition like the application (supra) cast aspersions on the learned Judge in the discharge of his judicial functions and had the tendency to scandalise the Court. It was an attempt to brow beat the learned Judge of the High Court and cause interference in the conduct of a fair trial. Not only are the aspersions derogatory, scandalous and uncalled for but they also tend to bring the authority and administration of law into disrespect. The contents of the application seeking stay as also of the transfer petition, bring the Court into disrepute and are an affront to the majesty of law and offend the dignity of the Court. The appellant is an Advocate and it is painful that by filing the application and the petition as a party in person, couched in an objectionable language, he permitted himself the liberty of indulging in an action, which ill behoves him and 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 favorable orders. Only because a lawyer appears as a party in person, he does not get a license thereby to commit contempt of the Court by intimidating the Judges or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. 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, out-spoken, but made without any malice or 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 bestir themselves to uphold their dignity and the majesty of law. The appellant, 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 scandalising a 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 amounts to an interference with the due course of administration of justice."

(emphasis supplied)

137. The observations recorded in the above judgment are fully applicable, to the mannerism and demeanour of the petitioner - Mr. Subrata Roy Sahara and some of the learned Senior Counsel. We would have declined to recuse from the

matter, even if the "other side", had been a private party. For, our oath of office requires us to discharge our obligations, without fear or favour. We therefore also commend to all Courts, to similarly repulse all baseless and unfounded insinuations, unless of course, they should not be hearing a particular matter, for reasons of their direct or indirect involvement. The benchmark, that justice must not only be done but should also appear to be done, has to be preserved at all costs."

185.1. We find no merit in the contention advanced on behalf of the petitioner, that we should recuse ourselves from the hearing of this case. Calculated psychological offensives and mind games adopted to seek recusal of Judges, need to be strongly repulsed. We deprecate such tactics and commend a similar approach to other Courts, when they experience such behaviour."

67. Thus, making of baseless allegations or insinuations against Court and attempts to overawe the Court with psychological offensives and mind games, with ferocity and grandiloquence, without any factual basis held be strongly repulsed and stringently deprecated. It was also observed that the senior counsel who represented that the petitioner therein were surely insincere to the cause of justice when they drummed their assertions without blinking an eye: since they were aware that the factual position was otherwise. Such submissions held unimaginable and they surely ought to have known better because they had appeared in the contempt proceedings in defence of the contemnors and were aware of all the facts. It was referring to Advocates Act Sections 16 and 36 the observations were made including in respect of any solemn duty of judiciary with observations that in the judicial process demand for recusal by Judge on baseless and unfounded insinuations, calculated psychological offensives and mind games adopted by counsel to seek recusal of Judges, held need to be strongly repulsed as done herein and such tactics deprecated and similar approach commended to other Courts when they experience such behaviour. It was also held any act of bench-hunting or bench-hopping or bench-avoiding cannot be allowed. Judge not to recuse himself from the matter unless he/she should not be hearing it for reasons of direct or indirect involvement. The benchmark that justice must not only be done but should also appear to be done, has to be preserved at all costs. Even in the face of calculated psychological offensives and mind games as adopted by counsel in the present case, oath of office of Judge, to decide every case without fear or favour, requires the Judge concerned to press on with the hearing of the matter and bear the brunt of rhetoric of the counsel or party seeking to dissuade him/her from hearing the matter. Fearlessness and resoluteness of the judiciary with equanimity be there. It was also observed that the need for plea of bias or prejudice must be a genuine one. In the absence of a genuine plea of bias, Judge recusing himself from the matter would constitute an act in breach of oath of office of the Judge which mandates the Judge to perform duties of his office, to the best of his ability, without fear or favour, affection or ill will. There is a duty of Judge not to recuse himself unless there is genuine likelihood of bias. The prayer for recusal from matter even on the ground of

possible embarrassment or discomfort to hearing the bench has to be rejected. On facts, it was held that the Petitioner's plea for recusal of present bench was consciously calculated to prolong the proceedings noting that the present bench was well versed with the entire facts of the case and such recusal is deprecated stringently and seeing through the ploy, plea for recusal thereby rejected. It was observed that there is a duty to decide all cases without fear or favour and also equal duty to repulse calculated psychological offensives and mind games to intimidate Judges to seek their recusal.

68. So far as the recuse petitioner concerned, as referred supra, he is the defacto-complainant and there is nothing even supported by any little basis for his claiming reasonable apprehension formed in his mind in asking the Court to recuse from hearing. He could make out nothing even from elaborate hearing with reference to the propositions supra, for what is discussed supra.

69. It is needless to say the Three Judge bench expression of apex Court in J.K. International supra, it was where held that in a quash proceeding by writ petition, the defacto-complainant's should not be a party as it is predominantly the concern of the State to continue the prosecution. But when the complainant wishes to be heard, he can be without negation of such hearing even in a case charge-sheet filed or not. It is because Section 302 Cr.P.C before a Magistrate Court permits private persons conducting prosecution by Court.

70. In fact, as already discussed supra, even apart from Section 302 Cr.P.C. taken by Section 24(8) proviso (amended) Cr.P.C, he can be permitted to participate to conduct the prosecution and even oppose the quash proceeding, but he has no right without basis to make accusations against the Court by filing an application for recusal, when the main person that is the State represented by the concerned police have taken cognizance of the matter by registration of the Crime and participated in opposing the quash proceeding and not even questioned the docket proceedings and not even whispered anything of the order was passed without hearing, when it is not even his case of he was present or got personal knowledge and not even his case that State is acting adverse to his rights. It is needless to say without prejudice to contention of the quash petitioner that, he is innocent and the defacto-complainant is the prime accused and not a victim even. It is thus nothing but browbeating on his part by making untrue and baseless accusations for purpose of recusal. The Court need not fall pray for such an attempt for recusal. The legal position is very clear from the expressions of the apex Court and of the Delhi High Court apart from Division Bench of this Court referred supra.

71. In fact in Sahara supra it is the categorical observation that in prayer for recusal from the matter even on the ground of possible embarrassment discomfort to hearing at the bench has to be rejected. It is also observed that a Judge recusing from the matter of hearing would constitute act of breach of oath.

72. Having regard to the above and in the result:

"(a) The recusal petition is dismissed;

(b) The recuse petitioner is liable to be punished for criminal contempt of Court, after following due procedure as per Section 14 of the Contempts of Courts Act with the rules framed in relation thereto by the Hon''ble High Court and the Registry is hereby directed to take necessary further steps, subject to permission of the Hon''ble Chief Justice, if any required by the Rules;

(c) It is needless to say once the Court is not chosen to recuse, for no grounds and from the caution by the Apex Court in *Subrata Roy Sahara supra* of a Judge recusing from the matter of hearing would constitute act of breach of oath apart from the direction as Law of the Land for all Courts to follow and not recuse for mere asking, this Court is going to hear the matter further and in this regard requesting the parties and learned counsel concerned to cooperate for fair hearing and impartial disposal.

(d) It is for transparency in the proceedings in the matter before this Court, the Court is intending to record (subject to the permission of the Hon''ble Chief Justice) the proceedings with audio and video coverage and by confining permission under Section 327(1) proviso to Cr.P.C. to attend in the Court hall only those advocates on record and the senior counsel with required assistants on permission and the learned Advocate General for the State of Telangana besides the Public Prosecutor concerned and the parties concerned without entry to others.

(e) As it is the first time of the procedure chosen to adopt, though not a new concept for such procedure is required to be adopted in recording evidence by Commissioner as per the amended Cr.P.C that was laid down by the Apex Court in *Salem Advocate Bar Association Vs. Union of India (UOI)*, AIR 2003 SC 189 : (2003) 1 DMC 73 : (2002) 9 JT 175 : (2004) 8 SCALE 115 : (2003) 1 SCC 49 : (2003) 1 UJ 1 and the recording of evidence in criminal cases by video recording as laid down in *Praful B. Desai supra*, by following the guidelines therein 1;

(f) The Registry is directed to place before the Hon''ble Chief Justice for necessary permission and consequent to it for necessary arrangements to be cause made by the Registry and therefrom to list the matter and also put up the proceedings for contempt against the recuse petitioner.

(g) This Court feels it just, with reference to the expression in *Patti Begari Ramaiah supra* by the Division Bench of this Court that - It is settled law that the administrative control of the High Court vests in the Chief Justice of the High Court alone and it is his prerogative to distribute business of the High Court both judicial and administrative, the Chief Justice is since the master of the roster and he alone has the prerogative to constitute Benches of the Court and allocate cases to the Benches so constituted (see *State of Rajasthan Vs. Prakash Chand and Others*, AIR 1998 SC 1344 : (1998) CriLJ 1012 : (1997) 9 JT 492 : (1997) 7 SCALE 411 : (1998) 1 SCC 1 : (1997) 6 SCR 1 Supp : (1998) AIRSCW 1219 : (1997) 10 Supreme 122 , *R. Rathinam Vs. State by DSP, District Crime Branch*

Madurai District, Madurai and Another, (2000) 1 JT 604 : (2000) 1 SCALE 458 : (2000) 2 SCC 391 : (2000) 1 SCR 718 : (2000) 1 UJ 475 : (2000) AIRSCW 423 : (2000) AIRSCW 2228 : (2000) 4 Supreme 31 : (2000) 1 Supreme 431 and State of U.P. and Others Vs. Neeraj Chaubey and Others, (2010) 10 JT 12 : (2010) 10 SCC 320 : (2011) 1 SLR 451 " - the Hon"ble Chief Justice can take any administrative decision if at all the matter is to be listed before any another bench."

1The evidence can be recorded even with the help of the electronic media, audio or audiovisual, and in fact whenever the evidence is recorded by the Commissioner it will be advisable that there should be simultaneously at least an audio recording of the statement of the witnesses so as to obviate any controversy at a later stage.