

CROCP 9 of 2017 (O&M)

[1]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CROCP 9 of 2017 (O&M)

Date of Decision: May 31, 2018

Court on its own motion

.....Petitioner

Vs.

Manish Vashishth and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE HARI PAL VERMA.

-. -

Present: Mr.H.P.S. Ghumman, Advocate for Ishwar Singh Yadav,

Contemnor Manish Vashishth, Advocate in person

-. -

M.M.S. BEDI, J.

Manish Vashishth is an Advocate practicing at District Narnaul. He is also a correspondent of newspaper 'Punjab Kesri' (Hissar Edition). The contemnor has some personal litigation with Ishwar Singh Yadav, an employee of Bharat Sanchar Nigam Limited, Narnaul and Jai Parkash Sharma, another official of the same Nigam which litigation found its way in the High Court. The Court on its own motion has initiated Contempt proceedings against Manish Vashishth, Advocate- respondent No.1, hereinafter referred to as the 'contemnor' on account of his having sent a post on his face book against Inderjit Singh, J. regarding a judicial order passed by him on August 24, 2017. The reference made by Inderjit Singh, J.

passed in CRM M-33994 of 2017, hereinafter referred to as the Referring Judge, reads as follows:-

“Petitioners-Ishwar Singh Yadav and Jai Parkash Sharma have filed this petition under Section 407 of Code of Criminal Procedure for transfer of Criminal Appeal bearing No.CRA/725 of 2016, titled as 'Ishwar Singh Yadav and another vs. State of Haryana and another' and Criminal Revision No.19/2017, titled as 'Maneesh Vashisth Advocate Vs. Ishwar Singh Yadav, pending in the Court of Shri Sudhir Parmar, Addl. Sessions Judge, Narnaul, both arising out of judgment of conviction dated 05.11.2016 and order of sentence dated 07.11.2016, out of Haryana State.

During the course of arguments, learned counsel for the petitioners has brought to the notice of this Court that respondent No.2- Manish Vashishth, who is an Advocate and a Correspondent of Punjab Kesari (Hisar Edition), has cast remarks on the facebook against this Bench, regarding passing of order dated 24.08.2017 and copy of the same is placed on record as Annexure P/8.

From the perusal of aforesaid document (Annexure P/8), it is clear that remarks displayed by respondent No.2 on facebook are contemptuous one and require initiation of contempt proceedings and such act needs to be taken as a strongest possible exception.

Registry is also directed to put the contempt reference along with complete paperbook before the appropriate Hon'ble Bench.

This case be put up before some other Bench, after taking appropriate orders from Hon'ble the Chief Justice.”

Pursuant to the above said directions by the Referring Judge, the Registry after obtaining orders from the first puisne Judge who in the exercise of the powers of the Chief Justice entrusted to him listed the Contempt Petition before this Bench as per the roster and also listed the proceedings pending (CRM M- 33994 of 2017) before the Referring Judge to another bench as per roster as he opted to recuse himself. Photocopy of the paper book of CRM M-33994 of 2017 from which the contempt proceedings have been initiated has also been appended with the reference. Reference was treated as Criminal contempt and was put up before this Bench for adjudication.

The publication in the form of facebook post (Annexure P-8) which is the subject of this contempt reference, on translation, reads as follows:-

“Maneesh Vashistha

24. August I had appeared in the Hon'ble High Court before Hon'ble Mr. Justice Inderjit Singh. On that there were three matters of mine listed before the Hon'ble Court of Justice Inderjit Singh and when I wanted to state about law, he started threatening me for writing contempt reference against me. I told that it is your will, got flared up. Without hearing me, the three matters decided against me in illegal manners.

Today there has been 7 days since 24 August but in only one matter the order has been uploaded on the website, which is not speaking, the decision better than this can be written by a Magistrate. In two matters the orders have not been uploaded till today, perhaps, has not got dictated, what should dictate, must be thinking. The

decision is false, it would demand hard labour for got it written.

When Magistrate does not load order on website till 5 P.M. then this High Court would take up danda. Himself has taken 7 days and it is not sure how many days would be taken for uploading.

From the conduct of Justice Inderjit Singh of that day, I think if there had been camera in the Court, everybody would have known the reality of Hon'ble Judge.

It is not uploaded till today. My lord must not be understanding, what to get written.”

On September 29, 2017, we had gone through the facebook post as well as material placed before us which included record of CRM M-33994 of 2017 with all the annexures. This Court issued show cause notice to the respondent-contemnor. The operative part of the order dated September 29, 2017 reads as follows:-

“Be that as it may, we are *prima facie* of the opinion that the act of the respondent in posting the facebook publication leveling allegations against the Judge of this Court before whom the matter was pending would *prima facie* fall within the definition of criminal contempt under Section 2 (c) of the Contempt of Courts Act, 1971, as the words in the publication above have got the effect of not only scandalizing and lowering the authority of the Courts but has got the effect of interference in the due course of judicial proceedings and obstructing the administration of justice. Cognizance of the criminal contempt is hereby taken in the exercise of powers under Section 15 (2) of the Contempt of Courts Act, 1971.

Let a show cause notice be issued to the respondent for 17.11.2017.

Respondent will be required to appear in person before this Court on the said date. Registry is directed to furnish a copy of the order and the entire paper-book to the contemner alongwith the notice.”

A contemner appeared before this Court in person on November 17, 2017 and asked for supplying the copy of the complete paper book. The complete paper book was supplied to him in the Court and was directed to show-cause notice as to why action in accordance with law under the Contempt of Courts Act on the basis of the reference made by the Hon’ble Single Bench be not initiated against him. He sought time. The case was adjourned to January 9, 2018.

The respondent-contemner had filed reply in the Court which was taken on record. He admitted that on January 9, 2018 the contemner appeared in the Court and denied to have made the publication which was contemptuous. He admitted that he was on facebook but denied to have uploaded the material pertaining to the Judge as such we had put certain questions to him, presuming that the contemner is an Advocate and had remained President of the Bar of District Narnaul, being officer of the Court, would clarify the circumstances for issuing publication. The statement of the contemner was not on oath. The questionnaire dated January 9, 2018 reads as follows:-

“Question: Did you appear before the High Court on 24.08.2017 in the Court of Mr. Justice Inderjit Singh?

Ans. Yes.

Question: Are you an Advocate? Did you want to refer some case law before the Hon'ble Judge?

Ans. Yes I wanted to cite law on said date before the Hon'ble Judge.

Question: Whether three matters were decided on that date?

Ans. Yes three matters were decided on said date.

Question: Were the cases finally decided?

Ans. Yes. My complaint before the trial Court against Ishwar Singh Yadav, was quashed.

Question: Do you want to inform this Court anything which happened in the said Court?

Ans. Yes. I had read out Section 405 IPC but was stopped and wanted to refer to a decided case of Mohd. Hadi in context to the provisions of Section 197 Cr.P.C. to substantiate my contention that no protection under Section 197 Cr.P.C. was available to the petitioner in that case. The judgment in the case was not provided by me. I wanted to cite case law.

Question: Anything else you want to say?

Ans. The Judge told me to pass an adverse order against me.

Question: Do you have any grievance that you were not heard?

Ans. Yes, definitely I have got a grievance that I was not heard.

Question: When you got the judgment on the website about the case of quashing of complaint?

Ans. After 10 or 12 days.

Question: Do you have any grievance of not uploading the case on website for few days?

Ans. I was aggrieved and upset for the fact that for seven days the orders were not uploaded on the website.

Volunteered, I was aggrieved by the action of the Judge in not uploading the order on the website but I did not express my grievance in any complaint.

Question: Are you on facebook?

Ans. Yes.

Question: Did you reflect your grievance on the facebook vide Annexure P-8?

Ans. No.

Question: Are you ready to give confidentially in a sealed cover your password for opening your facebook account?

Ans. No.

I affirm that the above said statement has been made by me in the Court.”

Since the publication Annexure P-8 had been brought to the notice of the Referring Judge by Ishwar Singh Yadav, a party in CRM M-33994 of 2017, we deem it appropriate to issue notice to him to assist the Court. Notice was issued to Ishwar Singh Yadav by impleading him as a party. Mr.H.P.S. Ghuman, Advocate for Ishwar Singh Yadav present in the Court accepted notice and brought to the notice of the Court that it was Ishwar Singh Yadav who had noticed the contemptuous publication annexure P-8 and brought the same to his notice as such it was brought to the notice of the Referring Bench. He informed that subsequently the said publication had been deleted.

Faced with this situation we required Ishwar Singh Yadav or any other persons to place affidavit on the record regarding the facebook publication annexure P-8 on the facebook account of contemner Manish Vashishth. Since the assistance of third person was being sought we

directed that copy of the reply filed by the contemner be also supplied to counsel for Ishwar Singh Yadav. The order dated January 9, 2018 reads as follows:-

“Reply filed by the contemnor in the Court is taken on record.

The contemnor present in the Court has denied to have made any publication which was allegedly contemptuous. He has submitted that he is on facebook but he had not uploaded any material pertaining to the Judge of the High Court. We have put certain questions to the contemnor. The questions put and the answers offered by the contemnor are recorded separately which are made part of record.

The question to be determined in the present criminal contempt petition is whether the contemnor by his act of publication on his facebook account vide Annexure P-8 has scandalized and lowered the authority of the Court bringing his act within the meaning of Section 2 (c) (i) of the Contempt of Courts Act, 1971.

We have read Annexure P-8. The answers offered by the contemnor to the questionnaire prima facie corroborate the allegations made in the publication Annexure P-8 but the contemnor present in the Court though admit to have a facebook account, has refused to admit to have made any such publication Annexure P-8.

A controversy has been raised by the contemnor by stating that though he is on facebook but he has not issued the publication Annexure P-8.

Since the publication Annexure P-8 was brought to the notice of the Single Bench of this Court by Ishwar Singh Yadav, petitioner No.1 in CRM-M-33994-2017 before the Single Bench, we deem it appropriate to issue

notice to him at this stage, to assist this Court. Ishwar Singh Yadav son of Ghisa Ram Yadav, Divisional Engineer, Telecom Department, Bharat Sanchar Nigam Ltd. Narnaul, at present AGM, Behror is impleaded as party in this case. Registry to do the needful.

Notice to the added party Ishwar Singh Yadav.

Mr. H.P.S. Ghuman, Advocate for Ishwar Singh Yadav, present in the Court, accepts notice. He submits that it was Ishwar Singh Yadav who has noticed the publication Annexure P-8 and brought it to the notice of the Single Bench. It has been informed that subsequently the said publication was erased.

Let an affidavit of Ishwar Singh Yadav or any other person be placed on record regarding the facebook publication Annexure P-8 on the facebook account of contemnor Manish Vashishth.

Since the assistance of a third person is being sought, let a copy of the reply filed by the contemnor be supplied to counsel for Ishwar Singh Yadav.

For further order and affidavit of Ishwar Singh Yadav, to come up on 01.02.2018.”

On February 1, 2018, when the contempt petition was taken up by this Court, the contemner raised a technical objection that since his statement dated January 9, 2018 was not on oath, the word SA may be struck off. His request was accepted as such he signed his statement. On said date contemner filed objections regarding the procedural irregularities committed by our Bench. Affidavits of Ishwar Singh Yadav, Jai Parkash and Jag Parvesh were produced on the record. Copies of the same were furnished to the contemner and was given an opportunity to file reply to the affidavits of

said persons. The operative part of the affidavit of Ishwar Singh Yadav read as follows:-

“2. That the respondent is working as Journalist and has got a habit of writing in newspapers, on facebook and also writing confidential letters to the Hon’ble Judges. One confidential letter written to Sh. Dharam Pal, Ld. Magistrate Mahendergarh dated 14.10.2016 is appended herewith as Annexure P-11 and order passed by the Hon’ble High Court dated 14.10.2016 is appended herewith as Annexure P-12. The respondent also wrote two confidential letters to Sh.Arun Kumar Singhal, Ld. Sessions Judge, Narnaul and same finds mentioned in order dated 4.4.2016, Annexure P-7.

3. That the respondent is telling a lie in this Hon’ble Court by stating that he has not made facebook publication, Annexure P-8 whereas he has made the said publication and he has erased it later on to save his skin. The respondent being a Journalist and the perusal of above said Annexures P-7, P-11 and P-12 will lead to an irresistible conclusion that he is the author of the said publication, annexure P-8.

4. That the respondent is becoming smart by removing the said publication from facebook under the impression that the such publication is now not available on facebook and no harm can be done to him whereas the publication P-8 downloaded from his facebook lying in the email record of deponent provides a link for opening the facebook of the respondent.”

Similarly Jagparvesh deposed an affidavit that Annexure P-8 was uploaded on facebook by Manish Vashishth, Advocate on August 24, 2017 and same and the same was checked by the him on the facebook

and same was also seen on the facebook by Jai Parkash, JTO and Ishwar Singh Yadav. He also deposited that said publication has been made by Manish Vashishth when he had been defeated in three cases pending in the High Court. He had discussed said publication made by Manish Vashishth on facebook with Jai Parkash JTO and Ishwar Singh Yadav and was surprised at the conduct of the Advocate for making joke of High Court. He also deposed in the affidavit that contemnor was telling a lie in the High Court by stating that he had not made the facebook publication. The contemptuous publication had been erased later to save his skin and that he has becoming smart by removing the said publication from facebook under the impression that such publication is now not available on facebook and no harms can be done to him whereas the publication downloaded from his facebook lying in the email record of deponent provides a link for opening the facebook of the contemnor.

In order to support the affidavits of Ishwar Singh Yadav and Jagparvesh, Jai Parkash also deposed an affidavit that contemptuous publication was uploaded on the facebook by Manish Vashishth and the same was checked by the by him and the same was got downloaded by him and the same was sent to Mr. H.P.S. Ghuman, Advocate through mail and it was made part of the transfer petition registered as CRM M-33994 of 2017. He also deposed in his affidavit that the contemnor was working as a Journalist and had got habit of writing in newspapers, on facebook and also writing confidential letters to the Hon'ble Judges. He also stated that the contemnor was telling a lie by stating that he had not made facebook

publication whereas he made the said contemptuous publication and had erased later on to save his skin.

Copies of the affidavits had been supplied to the contemnor. He raised certain preliminary objections. The affidavits were sworn on January 29, 2018 by Ishwar Singh Yadav and two other persons at Narnaul and Rewari situated a distance of about 400 kms from Chandigarh; two annexures; numbered as Annexure P-11 and P-12 have been enclosed whereas other two annexures had not been enclosed in the paper book; the Advocate having Vakalatnama of one deponent was not empowered on behalf of other deponents to annex any document as annexures as the exhibits were to be read in evidence. He found defects in the attestation of the affidavits and that the three persons who furnished the affidavits were not in the friend list facebook of the contemnor and that Jai Parkash JTO was not on facebook as such he cannot see the alleged facebook post; it was not established that the alleged publication was posted on August 24, 2017 and that the contents of Annexure P-8 could not have been downloaded on August 24, 2017; Sh.H.P.S. Ghumman has given false certificate that annexure P-8 was true translation. He has not denied to have sent letters to Sh.Dharam Pal, JMIC, Mahindergarh; a reference to Sh.Ashok Kumar Singhal, Sessions Judge, Narnaul. In his affidavit, the contemnor has justified his actions of complaints against the Judges by mentioning as follows:-

“Further, Legislature has created Contempt of Court Act to establish the majesty of law and not to protect unbecoming conduct of Judges. If a person (victim)

reacts against unbecoming conduct of a Judge, then that reaction does not fall in the ambit of Contempt of Court Act.”

Legal submissions made in the counter-affidavit of the applicant are that Ishwar Singh Yadav has given false address in his affidavit. He is posted as SDE Telecom and not AGM and posted at Alwar and being technical employee he cannot leave his work place without prior permission of his superior officers. He also objected that Mr. H.P.S. Ghumman could not have received notice having been issued to Ishwar Singh Yadav. He also objected to the affidavit stating that the age and occupation of the deponent had not been mentioned. Similarly, the contemnor raised objection to the affidavit of Jai Parkash, JTO stating that he is General Manager, Telecom, in Rewari and cannot leave his work place without permission and that he has also disclosed his wrong address of Narnaul.

It is pertinent to mention here that the contemnor had been given a fair opportunity to rebut the affidavits submitted by Ishwar Singh Yadav, Jagparvesh and Jai Parkash by filing counter-affidavit and the rules of natural justice have been followed as per the requirement of law. As we are aware of the law laid down by Hon'ble Court, in **Delhi Judicial Service Assocaition Vs. State of Gujarat and others**, AIR 1991 SC 2176 that charge of contempt is tried as summary process in which Criminal Procedure Code is not applicable. Court is free to evolve its own procedure consistent with fair play and natural justice. The contempt proceedings are not in the nature of criminal proceedings. Following the judgment of Supreme Court

in **Sukhdev Singh Sodhi Vs. The Chief Justice and Judges of the PEPSU High Court**, 1954 SCR 545, it was held in **Delhi Judicial Service Association Vs. State of Gujarat and ors.**, AIR 1991 SC 2176 that the contemnor is not in a position of an accused, it is open to the Court to cross-examine the contemnor and even if contemnor is found to be guilty of contempt, the Court may accept apology and discharge notice of contempt whereas tendering of apology is no defence to the trial of a criminal offence.

It is pertinent to mention here that the contemner had filed (i) reply to the show cause notice; (ii) he had filed objections dated January 8, 2018 challenging the procedure and jurisdiction of this Court; and (iii) he has also filed reply to the affidavits which have been filed by Ishwar Singh Yadav, Jai Parkash and Jag Parvesh . The contents of the above said documents are necessary to be taken into consideration before determining whether the contemner can be held to be guilty for having committed Contempt of Court.

We have taken into consideration the reply to the show cause notice issued to the contemnor. The contemnor, pursuant to the show cause notice issued to him had opposed the same and sought quashing of the proceedings by filing a long reply pointing out the defects and errors in the act of every person dealing with the contempt; be it the Superintendent (General) or any other employee who had initiated the notings; be it the Advocate; be it Inderjit Singh, J. who had initiated the contempt proceedings; be it the first puisne Judge who, instead the Chief Justice had approved the further action disobeying the orders of Inderjit Singh, J., be it this Division Bench which had allegedly failed to disclose the identity of

Inderjit Singh, J., who passed the order on September 15, 2017 while initiating contempt proceedings. He had gone to the extent of challenging the jurisdiction of the Hon'ble Single judge that he cannot take suo moto cognizance of the criminal contempt, against the contemnor in proceedings of transfer petition. Contemnor has referred to the provisions of Section 15 (1) of the Contempt of Courts Act that no one can become judge in a matter relating to him.

Though the gist of the objections have been taken into consideration, since the contemnor is a member of noble profession and is an Advocate and in his wisdom has raised many objections, we deem it appropriate to reproduce all his objections submitted in writing in the shape of request for quashing of the contempt proceedings:-

“IN THE HIGH COURT OF PUNJAB AND
HARYANA AT CHANDIGARH

In CROCP 9 of 2017

Court on its own motion

.....Petitioners

Versus

Manish Vashistha, AdvocateContemnor/Respondent

Opposition to quash the proceedings of CROCP 9 of 2017 by way of affidavit of Manish Vashistha son of Durga Datt Pradhan, Age 43 years, resident of Mohalla Nai Sarai, Narnaul, Distt. Mahendergarh.

I, the above named deponent do hereby solemnly affirm and declare as under:-

Grounds of opposition are as under:-

1. It is pertinent to mention here that Registry did not prepare paper-book as required under Rule 15 of Contempt of Court (Punjab and Haryana) Rules 1974.

Despite the orders dated 29.09.2017 passed by Hon'ble Division Bench of this court that "Registry is directed to furnish a copy of order and entire paper book to the contemnor along with notice.

But Show Cause notice dated 02.11.2017 issued by Superintendent Criminal for Registrar General of this court sent to Respondent through process server along with enclosures as follows:-

Encls: Copy of order dated 29.09.2017 and pages 1-102.

Instead of enclosing required paper-book, Registry enclosed pages 1 to 102 of paper-book of petition No. CRM-M-33994 of 2017, but as per Index, this petition is comprised of 103 pages. Page No. 103 is mentioned as Power of Attorney dated 09.09.2017 but it was eluded. This petition is not signed by the petitioners it has been signed by Sh. H.P.S. Ghuman, Advocate, Enrollment No. P/115/1991, as a counsel for petitioners, without any power of attorney (*Vakalatnama*), on behalf of petitioners. Hence this petition is signed by an unauthorized person and a forged document. Page No. 82 to 101 annexed with this petition were totally illegible.

Due to these material defects Respondent returned that Show Cause notice as un-served, endorsing objections in detail.

On 17.11.2017 the date fixed for hearing Respondent appeared before Hon'ble Division Bench in person and urged it to quash these proceedings on the grounds of non compliance of orders of Hon'ble Division Bench.

But instead of quashing these proceedings on that ground, Hon'ble Division Bench ordered its office to

supply the complete paper-book but copy supplied to respondent by its office also has page No.103 missing and pages 82 to 101, being dark, not properly legible, respondent recorded this objection on a paper given to him in court room.

This time 6 more pages supplied along with, copy of petition of CRM-M-33994 of 2017, as a so called paper book. Details of these 6 pages is as follow—

Bulk filing receipt along with copy of noting pages dated 27.09.2017 pages marked as 1, 3, 5 and an internet copy of order dated 15.09.2017 (two papers)

A perusal of this bulk filing receipt along with above mentioned 5 papers shows that these are not submitted in the High Court of Punjab and Haryana. It shows that these papers are photocopies of noting papers dated 27.09.2017 of original noting present in office of Registrar General.

Because original petition No. 33994 of 2017 is pending before the Bench of Justice Ramender Jain for 02.04.2018, hence only an attested photocopy of above mentioned paper-book of petition CRM-M-33994 of 2017 is present on the court file of Hon'ble Division Bench.

Hence Court file before Hon'ble Division Bench has a paper-book comprised of unattested photocopies of aforementioned bulk filing receipt along with aforementioned noting dated 27.09.2017 and unattested photocopy of paper-book of petition CRM-M-33994 of 2017. Hence court file before Hon'ble Division Bench does not has any original paper (even attested paper) except order. This order is not a independent document without its complimentary document (that is copy of petition CRM-M-33994 of 2017) because

contents of this document are pickup to pass this order without making any reference of CRM-M-33994 of 2017 in this order.

It is pertinent to mention here that affidavit annexed at page No. 10 of petition CRM-M-33994 of 2017 is inadmissible in evidence due to following defects:-

- i. Certificate of Attesting officer given on this affidavit annexed at page No. 10 of this petition is completely illegible. Hence it is a inadmissible affidavit.
- ii. There are 10 Annexures (Annexure P1 to P10) are annexed with this petition, but it is not stated in this affidavit about these Annexures and none the these annexures have initials of attesting officers with date, hence these Annexures P-1 to P-10 are waste papers and inadmissible in evidence.
- iii. This affidavit is not verified as per form No. 1 of Rules of High Court Rule and Orders.
- iv. Name of respondent party has been altered by cutting of the name of Respondent and writing State of Haryana by hand after its execution, this cutting and after addition is not signed by the deponent and attesting officer. Hence it is a forged document as defined in second category of section 464 IPC. Hence not an admissible affidavit.
- v. That this petition has been changed after execution of affidavit. Hence this petition is not only inadmissible but this act of the Advocate, who signed this petition on behalf of petitioners without even *Vakalatnama* has committed an offence under section 193 IPC read with section 192 IPC.

Para No. 2 of affidavit is reproduced below-

“2. That the petitioner has perused the contents of the above said petition from para No. 1 to 16 and after admitting the same has signed the same.”

As per affirmation on oath, this petition was signed by the deponent before signing this affidavit, but a perusal of this petition reveals that it is signed by one Sh. H.P.S. Ghuman Advocate, Enrollment No. P/115/1991 as a counsel for the petitioners (without power of attorney) on behalf of petitioners, and it is not signed by the deponent as affirmed above in para No. 2 of the affidavit.

Hence Sh. H.P.S. Ghuman Advocate has replaced the original petition, which was signed by the deponent petitioner No. 2, by signing on it without Power of Attorney has also committed the offence under sections 465/468 IPC along with offence u/s 192 r/w 193 IPC, being forged petition it is not admissible document.

Hence it is again prayed that despite the orders dated 29.09.2017 and again orders dated 17.11.2017 incomplete and illegible document were supplied to the Respondent i.e. page No. 103 is missing and affidavit annexed at page No. 10 in support of the petition, shows that the aforementioned defects.

Hence, it is a sufficient ground to quash these proceedings. Kindly quash these proceedings on this ground alone.

2. That a vague allegation leveled by the counsel of petitioners during the arguments on 15.09.2017 in petition No. CRM-M-33994 of 2017 filed by petitioners Ishwar Singh Yadav and Jai Prakash Sharma under section 407 Cr.P.C. for transfer of criminal Appeal bearing No. CRA-725 of 2016, titled as Ishwar Singh

Yadav and another Versus State of Haryana and another and Criminal Revision No. 19 of 2017, titled as Maneesh Vashistha Advocate versus Ishwar Singh Yadav and another, pending in the court of Sh. Sudhir Parmar, Additional Session Judge, Narnaul. Petitioners have been convicted and sentenced for committing the offence of criminal breach of trust regarding public property entrusted to them by hatching a criminal conspiracy, under section 409 IPC for 1 year and fine of Rs. 10000/- each and also under section 120B IPC for 6 months each. Petitioners did not disclose even sections of law under which they were convicted and sentenced deliberately, not only during arguments before the court, but in their petition also, to kept Hon'ble High Court in Dark, to conceal the nature of offence committed and quality of evidence produced against them (from their own office record, produced by officers and officials of their own department) to prove the case.

The above said Appeal and Revision, which are prayed for transfer, arising out of judgment of conviction dated 05.11.2016 and order of sentence dated 07.11.2016. Petitioners prayed in the above said CRM-M-33994 of 2017 to transfer the above said Appeal and Revision Petition, out of State of Haryana to District and Session Judge, Mohali (Punjab) or any other place as Hon'ble Court deems fit, as the Judicial Officers of Haryana are afraid of Respondent No. 2 Manish Vashisth Advocate. During the course of argument in the absence of Respondent it has brought to the notice of the Hon'ble Justice Inderjeet Singh (who also decided the 3 matters in favour of these petitioners and against the respondent on 24.08.2017) that Respondent No.2 Manish Vashisth, who is an Advocate and a

correspondent of Punjab Kesari (Hisar Edition) has cast remarks on the facebook against this Bench regarding passing of order dated 24.08.2017 and copy of facebook was placed on record as Annexure P-8. From the perusal of document Annexure P-8, Hon'ble Justice Inderjeet Singh (himself) gave a finding that "it is clear that remarks displayed by respondent No.2 on facebook are contemptuous one and required initiation of contempt proceedings and such act needs to be taken as a strongest possible exception and also directed the registry to put up contempt reference along with compete paper-book".

It is pertinent to mention here that in this order dated 15.09.2017 passed by Hon'ble Justice Inderjeet Singh, wherein he ordered to initiate the contempt proceedings, did not disclose the objectionable contents of alleged facebook which constitute the contempt of Court mentioned in the document Annexure P-8. He also did not mention the nature (civil or criminal) of contempt proceedings to be initiated. It is also not alleged that remarks cast on facebook are false and baseless. He also did not disclose any ingredient which constitute the offence of contempt of court, only made a vague allegation that remarks displayed on facebook are contemptuous one, is not included in the ingredients of Criminal Contempt of Court, mentioned in Section 2(c) of Contempt of Courts Act 1971, and also did not allege that facebook remarks were casted by respondent against the Bench with the intention to commit offence of Contempt of Court.

He also did not disclose the date and time at which the alleged facebook remarks are casted, the Location/place where the alleged facebook remarks are

casted. He also did not disclose the name of presiding officer of that Bench against whom the alleged facebook remarks were casted.

He also did not disclose that by whom the alleged facebook remarks were read, even the Advocate who brought the alleged facebook remarks in the notice of Hon'ble Judge did not claimed that he himself read the alleged remarks on his facebook account or on the facebook account of any other person. Even Hon'ble Justice also not claimed that he read the alleged facebook post on the wall of Manish Vashisth. It is pertinent to mention here that the Advocate of petitioner and petitioners also are not in friend list of Respondent Manish Vashisth. He did not disclose that how they come to know about that facebook post.

It is also not alleged that alleged facebook remarks were sent to the office of Pujab Kesari (Hisar Edition) newspaper as a correspondent to publish these remarks as a news item and document annexure P-8 is a news item published in the Punjab Kesari News paper on certain dates. सत्यमेव जयते

It is pertinent to mention here that facebook is not a print media. The facebook is a electronic media and remarks cast on electronic media is not included in the definition of a document in section 3 of the Indian Evidence Act. The evidence of Electronic Media is stored as an Electronic record, but neither any electronic record was annexed with the petition No. CRM-M-33994 of 2017 as evidence nor any certificate of Section 65B of The Indian Evidence Act.

It is not stated that Manish Vashisth himself has confessed that he has casted the alleged facebook remarks and no one has stated/witnessed that he saw the

Manish Vashisth, publishing the alleged remarks on facebook.

Due to lack of aforementioned mandatory requirements no offence of Contempt of Court is made out against Manish Vashisth. So Respondent cannot be prosecuted on a vague allegation leveled during the arguments of a Transfer Petition, which is not supported by any admissible evidence and lack of other mandatory requirements.

Hence these Criminal Contempt Proceedings initiated against the Respondent are sheer misuse of process of Court and deserves to be quashed. Kindly quash these proceedings in the interest of justice.

3. That as per section 15(1)(b) of Contempt of Court Act 1971, cognizance of Criminal Contempt on a petition filed by any other person can be taken by High Court, with the consent in writing of the Advocate General of the State only. Hence Hon'ble High Court cannot take suo motu cognizance on a petition filed for taking cognizance of Criminal Contempt of Court without the written consent of Advocate General though the petition disclose Contempt of Court have been committed.

But when a petitioner neither filed a petition for taking cognizance of Contempt of Court nor made a prayer for taking cognizance of taking Criminal Contempt of Court against any other person. When a petition is filed for transfer of cases then High Court cannot take suo motu cognizance of Criminal Contempt of Court against a Respondent; however serious contempt of Court appears to would have been committed by the Respondent in the contents of that petition outside the Court.

Hence Hon'ble Justice Inderjeet Singh cannot take suo motu cognizance of Criminal Contempt of Court against the Respondent in the proceedings of a Transfer Petition wherein no prayer for taking Criminal Contempt of Court was made by the petitioners. It is prohibited by Section 15(1) of Contempt of Courts Act 1971.

Further as per the constitution of India no one can become a Judge in a matter relates to him. Hence the direction given by Hon'ble Justice Inderjeet Singh to Registry to put up a contempt reference is infructuous.

Further reference for taking cognizance of criminal contempt of court c be made by a subordinate court not by the High Court. High Court can made a motion for taking suo motu cognizance of Criminal Contempt of Court and not a reference. Further a motion is a formal request before the Court to seek an order on a mater. Hence, motion and order are not synonymous with each other.

Hence these criminal court proceedings initiated against the respondent pursuant to order dated 15.09.2017 passed by Hon'ble Justice Inderjeet Singh in the proceedings of CRM-M-33994 of 2017 i.e. a Transfer Petition filed u/s 407 Cr.P.C. are serious misuse of process of Court. Hence kindly quash these proceedings with costs.

4. It is pertinent to mention here that application for urgent hearing was filed along with petition CRM-M-33994 of 2017 before the Additional Registrar on 09.09.2017. But it came on hearing for admission on 15.09.2017 (after a week) before the Bench of same Hon'ble Justice Inderjeet Singh, who passed the orders dated 24.08.2017 in 3 matters, on that day, related to same parties and all the 3 matters decided in the favour of

petitioners. The same Hon'ble Justice have ordered on 15.09.2017 to initiate the contempt of court proceedings against the respondent, violating the procedure laid down in Section 15 (1) (b) of Contempt of Courts Act, 1971, on a vague allegation levelled during the hearing of (oral) arguments made by a counsel (who himself has signed the abovementioned petition for transfer of cases, on behalf of petitioners, without having power of attorney (Vakalatnama) in his favour, as an unauthorized person.

But it is also pertinent to mention here that in paragraph No. 2 of Affidavit filed in support of that petition and annexed at page No. 10, petitioner No. 2 alone has signed that petition after perusing the contents of that petition, but wherein it is not disclosed that he has annexed even a single Annexure as a part of that petition. The petition submitted before the Hon'ble High Court by one Sh. H.P.S. Ghuman Advocate, Enrollment No. P/115/1991 as a counsel for petitioners, without annexing the Power of Attorney (*Vakalatnama*) given to him, to act as an Advocate. It is a definite proof that either the petition which was signed by petitioner No. 2 was changed by the unauthorized advocate after execution of the affidavit by the petitioner No. 2 by committing the offence of forgery, or the Petitioner No. 2 has sworn a false affidavit by committing an offence of giving false evidence on oath. Both these possibilities constitute serious offence by the so called counsel for petitioners or by petitioner No. 2 or by both.

5. It is also pertinent to mention here that Hon'ble Justice Inderjeet Singh not mentioned this fact in the order passed by him on 15.09.2017 that by whom the petitioners wants to decide their Appeal (filed against their conviction and sentence and revision filed by the

Respondent to enhance their sentence) and on which grounds the cases was sought to be transferred outside the Haryana State, by omitting the remaining part of the prayer made by the petitioners, which is now reproduced below for your kind perusal— "out of Haryana State to District & Session Judge, Mohali or any other place as the Hon'ble Court deems fit, as the Judicial Officer of Haryana are afraid or Respondent No.2 Manish Vashisth Advocate". Why Justice Inderjeet Singh omitted the aforementioned clause from the prayer of the petitioners in the order wherein he has ordered to initiate the Contempt of Court proceedings against the Respondent, the reason not known to the Respondent.

Sh.Vikramjit Singh an employee in the office of the Registrar General of this Court, initiated the noting dated 27.09.2017 in compliance of aforementioned order dated 15.09.2017 passed by Justice Inderjeet Singh in CRM-M-33994 of 2017.

i. For initiating of Contempt proceedings against Manish Vashisth Advocate, Correspondent of Punjab Kesari (Hisar Edition) resident of Nai Sarai, Narnaul (Haryana), separately.

And

ii. For listing the present case CRM-M-33994 of 2017 before some other bench, as per roster.

What was to be done by the Registrar General further is noted below—

In view of the above and in compliance with the orders dated 15.09.2017 (Flag 'A'), further necessary orders of Hon'ble the Chief Justice are solicited to whether:

But the Registrar (J) instead of putting up this noting before Hon'ble Chief Justice of this Court of take

further necessary orders for further compliance, put up this noting to Hon'ble the first Prime Judge to get approval as per proposal made by him and terminated this noting and did not put up it before Hon'ble Chief Justice of this Court for taking further necessary orders by disobeying the orders of Justice Inderjeet Singh, the reason not known to Respondent.

But taking necessary order from Hon'ble Chief Justice for further compliance and getting approval as per own proposal are not identical situations. Kindly quash these proceedings on this material ground with cost.

It is also mentioned that said Sh. Vikramjit Singh who initiated the abovementioned noting to take necessary orders from Hon'ble Chief Justice, also concealed the ground on which petitioners sought transfer of aforesaid Appeal and Revision to Session Judge Mohali (Punjab), that is, as the Judicial Officers of Haryana are afraid of Respondent No. 2 Manish Vashisth Advocate. The reasons of this omission are not known to the respondent.

6. It is pertinent to mention here that Hon'ble Division Bench of this court, who took cognizance of this offence for initiating the Contempt of Court Proceedings against the Respondent vide its order dated 29.09.2017, also refrained itself from disclosing the Identity of petition No. CRM-M-33994 of 2017, titled as Ishwar Singh Yadav & Ors. versus State of Haryana & Ors. filed u/s 407 of Cr.P.C. for getting it to be transferred outside State of Haryana to Session Judge Mohali (Punjab) on the ground that as the Judicial Officers of Haryana are afraid of Respondent No. 2 Manish Vashisth Advocate.

Hon'ble Division Bench also refrained itself from disclosing the identity of Justice Inderjeet Singh who passed the order dated 15.09.2017 in above said petition i.e. CRM-M-33994 of 2017 and pursuant to this order these Criminal Contempt of Court proceedings are initiated against the respondent and this fact also that on 24.08.2017, the 3 matters were also decided by Justice Inderjeet Singh in favour of same accused petitioners along with their two senior officers, in the whole/complete order dated 29.09.2017.

Hon'ble Division Bench did not disclose also in its order dated 29.09.2017 that from where they picked up the contents of alleged facebook post. The source from where alleged facebook post contents are picked up is admissible in evidence or not, who has witnessed that the contents of alleged facebook are published by Manish Vashisth only and by none else. It is also not disclosed on which date and at what time and from where the facebook post was published and who read that facebook post on which date, at what time and where, and what was his reaction and what he felt after reading that facebook post? But the finding given by Hon'ble Division Bench that - "the respondent despite being an advocate has, instead of seeking fair adjudication of the matter has entered into cheap tactics of browbeating the judge by the above said facebook publication" shows that alleged facebook post was published before 24.08.2017, as if it is conveyed to the Hon'ble Justice Inderjeet Singh to browbeat him, as a consequence of this browbeating Learned Justice will decide the 3 matters in his favour and also to show that Respondent is so competent and powerful that Hon'ble Justice cannot ignore his browbeating but in fact

Respondent is not a brow beater but is always a victim of browbeating due to his soft nature.

Both the cases which are desired to transfer from Haryana to Mohali by the petitioner, were pending for adjudication before Sh.Sudhir Parmar, Additional Session Judge, Narnaul, before that, these cases were pending in the Court of Sh.Arun Kumar Singhal, Session Judge, Narnaul (who has declared respondent vide order 04.04.2016 as a habitual browbeater, but never sent reference to Hon'ble High Court against Respondent), who transferred these cases to Sh. Sudhir Parmar, before his regular transfer to other session division in April 2017. These cases were come for hearing before Sh. Sudhir Parmar, Learned Add. Session Judge, Narnaul on 22.05.2017 for first time. On that day petitioners requested a long date, which was granted to them liberally for 24.07.2017, on 24.07.2017, it came to knowledge of respondent that files of both these cases were summoned by Hon'ble High Court in compliance of letter dated 03.06.2017 of Hon'ble High Court. Hence a long date was given for awaiting of files. These files came back in the Court of Sh. Sudhir Parmar in the month of September 2017, and on 29.09.2017, the day was fixed for hearing. Petitioners produced the stay order dated 28.09.2017 passed by the bench of Hon'ble Justice Ramender Jain of this court before Sh. Sudhir Parmar, Learned Add. Session Judge, Narnaul. Hence they appeared before the Court of Sh. Sudhir Parmar Ld. ASJ only once on 22.05.2017. Now Sh. Sudhir Parmar, Add. Session Judge has been transferred to Family Court Gurugram, perhaps on his own request.

It is also pertinent to mention here that at the time of admission of abovementioned Appeal on 22.11.2016

(after 04.04.2016) the above said Session Judge, Sh. Arun Kumar Singhal (Now posted in Nuh) instead of suspending their sentence, stayed their conviction on mere request that Department has sent them on long leave since the date of their conviction and has initiated the proceedings to dismiss their services in the compliance of service rules. Despite the objection raised by the respondent that court are established to ensure the compliance of service rules and not to create hindrance, Learned Session Judge did not take this objection on record, saying that appear as a party after service of notice to you.

Staying the conviction of convict under 409/120B IPC by a Session Judge is an unprecedented decision in the Judicial History of India and this decision was supported by falsely citing a case law 'Kanhaiya versus State'.

At the beginning of this petitioners were summoned (in a private compliant filed by respondent) by issuing summons through their Department and they had no apprehension of arrest at all, even then they were granted bail under the pretext of anticipatory bail by Sh. Narender Sura, Ld. Additional Session Judge, Narnaul by grabbing the domain of Trial Magistrate given to grant regular bail u/s 437 of Cr.P.C. because petitioners are not only prosperous but resourceful also.

Now proceedings of hearing of their abovementioned Appeal has been stayed by this Hon'ble High Court. On 11.12.2017 a date of hearing, this petition was not came up for hearing and adjourned for 02.04.2018. Similarly it will not come up for hearing till years, perhaps till their retirement. As a consequences of stay of their conviction by Sh. Arun Kumar Singhal,

Session Judge, Narnaul on 22.11.2016 (after 04.04.2016). Till now they have been paid more than 20 Lakh by the department and they will be paid Crores Rupees from public funds till the decision of their Appeal.

As per order dated 04.04.2016, only one over act has been attributed to the respondent, submits that he wants the transfer of this case to some other court and noting more. Learned Session Judge has discussed the previous conduct of respondent, which cannot be added with the conduct on 04.04.2016, because as per canons of Judicial ethics mentioned in Chapter-1 of Volume 4 of Punjab and Haryana High Court Rules and Order that " Unprofessional and improper conduct of any Advocate should not be tolerates and any such serious matter to be reported to High Court at once".

A legal submission made u/s 408 Cr.P.C. before a competent Session Judge cannot be declared as a criminal contempt of Court. Learned Session Judge accepted the submission of respondent and transferred the case there and then. Hence to submit before a Session Judge that he want to transfer of this case without leveling any allegation upon Session Judge does not constitute contempt of court at all.

If Learned Session Judge was influenced by browbeating of Respondent then he should not have passed the aforementioned patently unprecedented order of staying conviction of petitioners after 04.04.2016 under the pretext of citing case law passed by Hon'ble Punjab and Haryana High Court.

But these proceedings are not a proper forum to raise the grievances of Respondent; he will raise his grievances to the Hon'ble High Court at a proper forum

in near future, which he has not disclosed due to his soft nature to bear atrocities.

It is pertinent to mention here that respondent makes complaints against Learned Session Judge, Sh. Arun Kumar/ Singh on administrative side before 04.04.2016 to this Hon'ble High Court. How these complaints has been dealt with, not informed the respondent despite of seeking under RTI Act.

7. That Hon'ble Justice Inderjeet Singh must have taken suo motu cognizance of Criminal Contempt of Court against the petitioners and Advocate, who signed the petition CRM-M-33994 of 2017 and appeared before Court on 15.09.2017 with a prayer that their aforementioned Appeal and Revision petition filed against them should be decided by a Khas Judge, i.e. Learned Session Judge, Mohali (Punjab) outside the State of Haryana on the ground that as the Judicial Officer of Haryana are afraid of Respondnet No. 2, Manish Vashisth Advocate. Both the relief claimed by making this prayer constitute the offence of Criminal Contempt of Court. They have scandalized the Presiding Officer of all courts, and lowered the authority of all Courts functioning in Haryana State, who will have confidence in such courts, who are afraid of worthless Advocate like Respondent. Respondent cannot explain the contempt committed by this prayer in words. Hon'ble Division Bench has vast knowledge to imagine the consequences of this prayer than respondent.

Respondent will be put behind the bars if he inform this prayer to any presiding officers of any court on the allegation that he is flaring mutiny in Judiciary.

Respondent think that Hon'ble Justice Inderjeet Singh did not disclose this prayer in his order dated

15.09.2017 and the Registrar General in that noting papers mentioned above due to this reason Hon'ble Division Bench did not mention CRM-M-33994 of 2017 in the order dated 29.09.2017 due to similar reason.

Hence Justice Inderjeet Singh should have taken suo motu cognizance of offence of Criminal Contempt of Court against the petitioners who filed contemptuous material in his court and not against the respondent on oral and vague allegations.

Prayer: Hence it is respectfully prayed that on considering the aforementioned submission in this opposition kindly quash these Contempt of Court proceedings in the interest of Justice with costs.

Narnaul. Sd/-Maneesh Vashistha, Advocate
Dated: 8.1.2018 Mohalla Nai Sarai, Near Sain Chowk,
Narnaul.

.....Contemnor in person.”

It is also pertinent to mention here that this Court had carefully gone through the contents of contemptuous publication alleged to have been posted on the facebook page pursuant to three personal cases of contemnor himself which had been decided against him. It was alleged in the publication that the Judge deciding the cases against him had not uploaded the order for a number of days after pronouncement as he must not be knowing what was to be written in the judgment.

We initially formed an opinion that the grievance of the applicant as a litigant was that of a disgruntled litigant who was upset with a case having been decided against him and had reflected his feelings in the publication. We had put the contents of the publication in the form of questions to the contemnor. This Court can always examine the contemnor

or even cross-examine the contemnor during the course of proceedings under Contempt of Courts Act. A court can accept the apology and discharge the notice of contempt even if he is found to be guilty of contempt. The provisions of Cr.P.C. are not applicable in the contempt proceedings. The above said law has been well settled by the Apex Court in **Sukhdev Singh Sodhi's** case (supra) which still holds the field after the legislation of Contempt of Court Act, 1971 and has been followed by the Apex Court in **Delhi Judicial Service Association's** case (supra).

The contemnor had admitted all the facts mentioned in the contemptuous publication annexure P-8 but disputed the origin of the said facebook publication. We had expected that the contemnor being an Advocate with a reasonable good standing and with the legal wisdom to his credit would come forward with the true facts and would show some remorse for having expressed his anguish in the heat of the moment after three cases were decided against him but we were surprised by the extent and vehemence of resistance of the contemnor who has not come forwarded with any defence or plea of remorse but has gone to the extent of complaining each and every step of every individual who had come in touch with the proceedings for Contempt of Court i.e. the referring Judge, first puisne Judge who referred the contempt petition for adjudication, the staff of the High Court who provided him 102 pages out of 103 pages of the record and even complained about the jurisdiction of this Court by challenging the procedure being adopted.

He admitted all the facts but disputed the origin of the publication from his facebook and even refused to give his password in

confidence of the Court pertaining to his facebook account. The above said approach was an attempt to elicit truth, probability of the allegations of contempt but the contemnor has gone to the extent of finding error in the jurisdiction of this Court and the procedure adopted by this Court. He has gone to the extent of raising a plea that this Division Bench cannot adjudicate the contempt proceedings wherein the Court itself is a party and the Court could not act as a prosecutor on behalf of the Court on its own motion as well as 'a Judge' to decide the controversy between the parties.

It will not be out of place to reproduce his objections to the procedural irregularity of the proceedings before our Court. The petition raising written objections qua procedural irregularities are reproduced hereunder:-

“IN THE HIGH COURT OF PUNJAB AND
HARYANA AT CHANDIGARH.

IN CROCP — 9 OF 2017

Court of its own motion

.. Petitioners

Versus

Manish Vashistha Advocate

...Contemnor/Respondent

Petition/Written objections qua procedural irregularity of proceedings.

Hon'ble Lordships,

Most respectfully submits:-

Prior to reception of any fresh material in the present proceeding in shape of affidavit of any person or anything else against the applicant/alleged contemnor, it would be quite expedient in the larger interest of justice to consider the following legal aspects which have been

emerged in the present proceeding after coming to existence the order dated 09.01.2018 passed by this Hon'ble Division bench because the alleged contemnor as per prescribed procedure had duly filed this written affidavit i.e. the defence raised by applicant/ alleged contemnor and after disclosing of his defence by the applicant, the further incriminating material against the applicant has been asked to produce from third person who was even not party to present proceeding prior to filing of affidavit by the applicant.

Kindly take these objections on record and decide in the interest of justice before proceeding further. Because these proceedings of Criminal Contempt of Court are to be dealt and conducted as per procedure laid down in Section 17 of the Contempt of Court Act, 1971 read with procedure laid down in Rule 8 of the Contempt of Court (Punjab & Haryana) Rules, 1974, but it has been appeared during the course of proceedings conducted by this Hon'ble Court that the very object of statute is being defeated and as such the proceedings are being carried out by overlooking the relevant statutory provisions and also in absolute contraventions as well as violation of the procedure laid by virtue of aforesaid provisions of Act and Rule which have been framed by special enactment which would itself prevail over any general enactment. Further it is golden principal of law duly recognized by Hon'ble Apex Court as well this Hon'ble Court that if an act is required to be done in a particular manner by virtue of statutory provisions, the same must be required to be done in that manner alone and no other manner can be recognized under rule of law.

LAW POINT:

Whether a Division Bench entrusted to adjudicate the proceedings of Criminal Contempt of court, wherein the court is itself a party (as Court on its own motion as petitioner), would function as a Court of neutral Judge or itself as a prosecutor on behalf of Court of its own motion as well as a Court to decide controversy between the party i.e. dual functions of prosecution as well as of Judge.

OBJECTIONS RAISED ARE MENTIONED BELOW:-

1. As per prescribed procedure laid down in above mentioned Section 17 and Rule 8 which have been specifically framed to conduct these proceedings as special law, there is no procedure to implead third person as a party in these proceedings. Hence any Ishwar Singh Yadav, whose name does not appear in the order dated 29.09.2017 vide which Hon'ble Divisional Bench has taken cognizance of this offence, cannot be impleaded and summoned as a party suo motu, to file affidavit in order to create new evidence, under the pretext to seek assistance, but infact to fill up the lacunas in the case by supplying the copy of affidavit i.e. defence taken by the respondent (i.e. alleged contemnor).

2. When there is no reference whatsoever of CRM-M-33994/2017 or of **Annexure P-8** in the order dated 29.09.2017 passed by the Hon'ble Division Bench at the time of taking cognizance of this offence after that this court cannot create a new document to entrap the respondent that too after receiving of his defence to this effect that these proceedings are not maintainable because the Hon'ble Division Bench has not disclosed that from where the alleged facebook post was picked up

as contemptuous material in the order dated 29.09.2017 i.e. source of facebook post was quite unknown in the order dated 29.09.2017.

3. Hon'ble Division Bench was unaware of the fact even after the affidavit filed by the alleged contemnor in his defence, that who has noticed the publication of Annexure P-8 and brought to the notice of the Hon'ble Single Bench, but how this Annexure P-8 came into the notice of the Court, after disclosing the defence by alleged contemnor, who is an accused in these Criminal Contempt of Court Proceedings is not disclosed by the Hon'ble Court i.e. Division Bench. It is Mr. H.P.S. Ghuman, Advocate for Ishwar Singh Yadav, who has disclosed it, before the Hon'ble Court at this belated stage of the proceedings, though he was not a party in these proceedings. But under which section of law and rules the said Sh. H.P.S. Ghuman Advocate was called and examined by the Hon'ble Court of Division Bench to interfere in these proceedings is to be decided before taking the said affidavit from third person on record.

It is pertinent to mention here that the designation of A.G.M. and address of said Ishwar Singh Yadav disclosed in the order dated 09.01.2018 passed by Hon'ble Division Bench is itself false. He is posted as SDET in the office of GMTD, BSNL, Alwar (Rajasthan). It was not possible for this court to serve notice to said Ishwar Singh Yadav upon the said address, if it could not have called Sh. H.P.S. Ghuman Advocate in the court to receive notice in person. Though there is no evidence that Sh. H.P.S. Ghuman Advocate had a Power of *Attorney/Vakalatnama* given to him to work as an Advocate on behalf of Ishwar Singh Yadav in the above

mention petition CRM-M-33994 of 2017 to serve the notice through him to said Ishwar Singh.

4. There is no procedure under above mentioned section 17 and also under Rule 8 framed for conducting the trial of Criminal Contempt of Court Proceedings or in law framed to conduct a trial for criminal offence, which empowered Hon'ble Division Bench to interrogate the alleged contemnor after knowing his defence despite the objection raised by the defendant that there is no procedure to put incriminating questions to the contemnor (i.e. accused of a criminal offence), by putting incriminating questions to procure confessional statement that whether he has published the alleged facebook post or not or to disclose his facebook password to enter in his private life. When there is no admissible evidence exists before the Court about the alleged facebook post which is claimed to be alleged contemptuous material and from where it has quoted in the order taking cognizance of the offence.

The alleged contemnor was stunned when he was asked to put his signature on a statement which was made on S.A. (Solemn affirmation) whereas no oath was administered to him before answering these incriminating questions asked by the Hon'ble Division Bench, which was not according to Act and Rules.

5. The above mentioned Ishwar Singh Yadav and Sh. H.P.S. Ghuman Advocate have committed serious Criminal Contempt of Court by filing, abovementioned CRM- -33994 of 2017 before, the Hon'ble Punjab and Haryana High Court, not only scandalizing the court of Sh.Sudhir Parmar, Additional Session Judge, Narnaul but also scandalized the whole judiciary established for the State of Haryana. They have committed direct contempt

of court before the Hon'ble High Court which is reproduced below.

The prayer made by these contemnors before the Hon'ble High Court in the above mentioned petition CRM-M-33994 of 2017 is reproduce for your kind perusal —

“It is therefore, respectfully prayed that this Hon'ble Court may be pleased to accept the petition by transferring the criminal appeal CRA/725 of 2016 titled as 'Ishwar Singh Yadav versus State of Haryana & anr' and CRR/19 of 2017 titled as 'Maneesh Vashistha Advocate v/s Ishwar Singh Yadav' pending in the court of Sh. Sudhir Parmar, Additional Session Judge, Narnaul for 11.09.2017 out of Haryana State to District and Session Judge, Mohalli or any other place as the Hon'ble Court deems fit, as the Judicial Officers of Haryana are afraid of Respondent No. 2, Manish Vashisth Advocate, in the interest of Justice.”

This petition CRM-M-33994 of 2017 is signed by the abovementioned Sh. H.P.S. Ghuman Advocate, Enrolment No. P/115/1991 on behalf of petitioners as a counsel for petitioners without Power of Attorney (i.e. *Vakalatnama*) as an unauthorized person.

The ingredients of offence of criminal contempt of court, defined under section 2(c) of Contempt of Court Act, 1971, committed by the above mentioned contemnors i.e. Ishwar Singh Yadav and Sh. H.P.S. Ghuman, Advocate, by publishing the contemptuous prayer in the above mentioned petition No. CRM M-33994 of 2017 are disclosed as below:-

i. They have not only scandalized the Court of Sh. Sudhir Parmar, Additional Session Judge, Narnaul but also the whole Judiciary established in Haryana State, by

showing that timid judges of Haryana Courts cannot dare to pass proper orders.

ii) They have lowered the authority of Hon'ble Punjab and Haryana High Court by leveling such a scandalizing libel on all the Judges particularly to Sh. Sudhir Parmar, Additional Session Judge, Narnaul to get transfer their appeal filed against conviction and sentence u/s 409/120B IPC to a specific judge of their choice i.e. Session Judge, Mohali (Punjab) seems to be selected by making efforts of about 5 months before the High Court.

iii. They have prejudiced the Hon'ble High Court not only against Sh. Sudhir Parmar, Additional Session Judge, Narnaul along with whole Judiciary of Haryana State but also against the present respondent (i.e. Maneesh Vashisth Advocate) to secure their own goal by leveling scandalizing

iv. They have interfered with due course of the judicial proceedings of above mentioned criminal appeal CRA/725 of 2016 and criminal revision petition CRR/19 of 2017 by getting stayed the hearing of both these criminal cases to obtain full pay and allowances from BSNL, a Govt. of India Public Sector Undertaking and to escape their dismissal as well as confinement in prison till the decision of these cases.

6. It was moral duty of Justice Sh. Inderjeet Singh being the guardian of lower Haryana Judiciary to take suo-motu cognizance of this offence under section 15 r/w section 10 of Contempt of Court Act, 1971, in order to maintain the dignity of subordinate courts situated in Haryana state, but they did not bother to take any such steps which were supposed to be taken on their part being the seating judge of Hon'ble High Court rather his

lordship concealed their offence by omitting this contemptuous material in the order, which purports to be passed on 15.09.2017 but it was uploaded on 22/23.09.2017, hence it can be safely presumed that said order was dictated after 15.09.2017 probably on 22.09.2017, after a through after thought, by putting a sign of interrogation that who will protect the dignity of subordinate Judiciary established in whole Haryana State.

7. The Hon'ble Division Bench is requested to consider the pleadings made by Ishwar Singh Yadav and his counsel Sh. H.P.S. Ghuman Advocate in CRM-M-994 of 2017 and tonal out that actually who has committed the offence of Criminal Contempt of Court and who is the proved contemnor. Everything would be crystal clear that Ishwar Singh Yadav and Sh. H.P.S. Ghuman Advocate are real contemnors by whom the direct allegations and such a scandalizing libel have been leveled in the above mentioned petition CRM-M-33994 of 2017 upon whole Judiciary established in State of Haryana before Hon'ble High Court to achieve specific purpose, i.e. to get their aforesaid appeal accepted to obtain acquittal and in pursuance of their aforesaid malafide intention the present proceeding has been instituted against Manish Vashisth Advocate without any admissible evidence before this court and even without any knowledge that who have noticed the contemptuous facebook post till the filing of his defence.

On which social moral or principal Hon'ble Division Bench has called these contemnors to assist the Hon'ble High Court to prove an alleged indirect contempt of court by violating procedure laid down by law and what precedent it is going to be established.

This Division Bench is fully empowered u/s 15 r/w section 10 of Contempt of Courts Act, 1971 to take cognizance of criminal contempt of court against the contemnors Ishwar Singh Yadav, Sh.H.P.S. Ghuman, Advocate and Jai Prakash petitioner who have sworn in the affidavit filed with above mentioned contemptuous petition No. CRM-M-33994 of 2017 to support these scandalizing libels against the whole Judiciary of the State of Haryana, to maintain the dignity of Judiciary of Haryana State.

Prayer: Hence it is respectfully prayed that kindly do not take the affidavit called from Ishwar Singh Yadav or by any other person on the record of court file of these proceedings to fill up the lacunas raised in defence affidavit, against the procedure laid down by abovementioned section 17 of Contempt of Court Act 1971 and also by Rule 8 framed regarding Criminal Contempt of the Contempt of Court (Punjab & Haryana) Rules 1974.

Kindly decide my opposition filed to quash these proceedings being non-maintainable before proceeding further;

It is again prayed that to quash these proceedings on the ground that show cause notice dated 02.11.2017 issued to alleged contemnor was not accompanied by copy of any kind of motion and copy of affidavit as required under section 17(2)(a) and also not accompanied by reference of any subordinate court, as required under section 17(2)(b) of the Contempt of Court Act, 1971. Though it was accompanied by a copy of order dated 29.09.2017 for taking the cognizance of alleged offence whereas no such provision/procedure warranted by any law to send the copy of order taking cognizance with the

notice and pages (1 - 102 without disclosing that what kind of documents are these. The documents sent with show cause notice were never required to be sent as per above mentioned Act and Rules. Hence the entire proceedings from the very beginning are nothing, but a sheer abuse of process of Court being against law and as such same are liable to be quashed. May kindly be quashed.

The affidavit sought from Ishwar Singh Yadav or from any other person cannot be a substitute of the motion required u/s 17 (2) (a) or U/s 17 (2) (b) of Contempt of Court Act, 1971.

Hence, these proceedings may kindly be quashed at this stage to save the precious time of Hon'ble Court.

Kindly take suo-motu cognizance of criminal contempt of court committed by above mentionee Ishwar Singh Yadav and Sh. H.P.S. Ghuman and another under section 15 r/w section 10 of the Contempt of Court Act, 1971 to save the dignity of subordinate courts situated in Haryana State.

Kindly decide the law point raised above.

Any other relief, which Hon'ble Court deems fit and proper.

Narnaul. Sd/-Maneesh Vashistha, Advocate
Dated:01.02.2018 Mohalla Nai Sarai, Near Sain Chowk,
Narnaul.

.....Contemnor in person.”

Since the jurisdiction and competence of this Court, alleging that this Court cannot be a prosecutor as well as a Judge to a cause in which the High Court was itself a party was carefully considered by us in the light of the law which has been laid down by the Hon'ble Supreme Court in

number of cases. It would be pertinent to observe that similar question pertaining to the jurisdiction of a High Court to decide the contempt of its own Court stands considered in **Devabrata Bandopadhyay and others Vs. The State of West Bengal and another**, AIR 1969 SC 189, wherein the Court had observed as follows:-

“A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished..... Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.”

The same view has been re-iterated by this Court in **Aligarh Municipal Board & Ors. Vs. Ekka Tonga Mazdoor Union & Ors.**, AIR 1970 SC 1767; **Dushyant Somal (Capt.) Vs. Smt Sushma Somal & Ors.**, AIR 1981 SC 1026; **M/s. Bharat Coking Coal Ltd. Vs. State of Bihar & Ors.**, AIR 1988 SC 127; **Niaz Mohammed & Ors. Vs. State of Haryana & Ors**, (1994) 6 SCC 332; and **Manish Gupta & Ors. Vs. Gurudas Roy**, (1995) 3 SCC 559.”

In **Vinay Chandra Mishra (alleged contemner)**, (1995) 2 SCC 584 it was held that the criminal contempt that the criminal contempt no doubt amounts to an offence but it is an offence sui generis and hence for

such offence, the procedure adopted both under the common law and the statute law in the country has always been summary. It was observed that the need was for taking speedy action and to put the Judge in full control of the hearing. It was emphasised that immediate steps were required to be taken to restore order in the court proceedings as quickly as possible. To quote from the above-referred to case;

“However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of natural justice, viz., *nemo judex in sua causa* since the prosecution is not aimed at protecting the Judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the

main proceedings which paralyses the court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the court is commended and not faulted.”

In accordance with the principle of law regarding procedure to be followed in contempt cases we had given a fair opportunity to the contemnor to explain the circumstances in which he had posted the contemptuous publication on the facebook. It is pertinent to observe here that after considering the reply of the contemnor, his objections to the jurisdiction of this Court and his reply to the three affidavits filed by Ishwar Singh Yadav, Jagparvesh and Jai Parkash, vide order dated February 17, 2018, we found that the following points arose for determination:-

- (i) Whether Annexure P-8 is not the print out of the facebook account of contemnor?
- (ii) Whether Annexure P-8, which was e-mailed by Mr.Ishwar Singh Yadav and Jai Parkash Sharma to Mr.H.P.S. Ghuman, Advocate, has originated from the facebook account of the contemnor?
- (iii) In case Annexure P-8 has not originated from the facebook account of the contemnor, what would be the effect of the same, so far as the present contempt petition is concerned.”

Vide the same order dated February 17, 2018, we had observed in the interim order that since the points for determination involved technical

expertise, we deem it appropriate to seek a report from the Registrar Computerization of this Court who has got official e-mail address as rajneeshbansaladsj@yahoo.com, to determine whether the alleged post can be said to have originated from the facebook account of the contemnor and forwarded through e-mail and was traceable despite having been subsequently deleted from the facebook account of the contemnor. It was directed that assistance of National Informatic Centre can also be obtained. Mr.H.P.S. Ghuman, Advocate who had received the e-mail with the attachment of contemptuous publication was directed to forward the e-mail received by him along with attachment, annexure P-2= Annexure P-8 to the Registrar Computerization of the High Court at his official e-mail address. The case was adjourned for getting report of Registrar Computerization.

Report of Registrar Computerization Mr. Rajneesh Bansal dated March 13, 2018 was received by the Court. The said report reads as follows:-

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“REPORT

The undersigned has been directed to submit a report vide order dated 17.02.2018 in respect of e-mail sent by Mr.H.P.S. Ghuman, Advocate.

The undersigned has gone through the said e-mail along with attachment as at “Annexure P-2” received by him from Mr.H.P.S. Ghuman, Advocate. Whenever, the said post is clicked, it automatically directs the user to the Facebook account of Sh.Manish Vashishth. However, the authenticity of the same could not be verified because the said post was not found on the Facebook page of Sh.Manish Vashishth.

An opinion, in this regard, was also sought from Incharge NIC, PHHC and the same was also discussed in detail with him. He has given the following opinion:

“The document file attached in your mail is having contents seems to be copied from Facebook post and copied into word document. Since this is a document file, it can be altered. The authenticity of the Facebook post copied in this document file may be verified by Facebook.”

**Sd/-Yogender Kumar,
Sr. Technical Director,
NIC, PHHC, 12.03.2018”**

Report is submitted for being placed before Hon’ble Bench for favour of kind perusal and consideration, please.

**Sd/-Rajneesh Bansal,
Registrar (Computerization)-cum-CPC
13.03.2018.”**

The said report was put up before this Court on April 18, 2018. The contemnor present in the Court on said date protested that the report has not been supplied to him. Taking into consideration the rules of natural justice and to give a fair opportunity to the contemnor to rebut the report, a copy of was supplied to him on April 18, 2018. Copy of the order is reproduced hereunder:-

“Report of the Senior Technical Director, NIC, has been sent to this Court. Contemner seeks copy of the same which has been supplied to him in the Court.

In view of the report, we propose that the matter should be referred to the Cyber Crime Branch, Chandigarh Police for opinion on the technical issues involved but the contemner has raised serious objection to the same and has insisted that his objections dated

1.2.2018 may be considered as his oral submissions which should be decided before considering the contempt petition.

We have heard the contemner at length.

Adjourned to 7.5.2018 for disposal of objections and main case.

Be put up at 2:00 P.M.

Meanwhile, it is directed that the contemner will furnish bail bond/surety bond as per Rule 7 (1) of the Contempt of Courts (Punjab and Haryana) Rules, 1974, for appearance before this Court on next date or on any other date fixed before by this Court, to the satisfaction of the Chief Judicial Magistrate, Narnaul, who will send a photocopy of the bail bond/surety bond furnished, after acceptance, to this Court, for record.”

A perusal of the above said order indicates that when a proposal to refer the matter to Cyber Crime Branch, Chandigarh Police for opinion on technical issues involved was put to the contemnor he had raised objection to the same stating that he was not to be treated as a criminal. He was heard at length. He insisted that his objections dated February 1, 2018 may be considered as his oral submission and should be decided before considering the contempt petition. This Bench had asked him if he could given in writing in the Court that he was interested to get only his objections decided, the contemnor refused to give any writing as such we heard him at length and deferred the matter for May 7, 2018. In view of the above said scenario we have taken up the point for determination arisen before this Court considering the resistance of the contemnor at each step of the proceedings.

BACKGROUND AND HISTROY OF THE LITIGATION:

Before considering the conduct of the contemnor we deem it appropriate to consider the background under which the contemnor who is an Advocate and President of Bar Association of Narnaul, besides being an officer of the Court, so far as the system of administration of justice is concerned. The contemnor is a Press correspondent besides being an Advocate. He had published an article on November 23, 2009 against Ishwar Singh Yadav and BSNL. Considering the said publication to be defamatory, the BSNL filed a complaint under Sections 500, 501 and 502 IPC against the contemnor. Vide order dated March 27, 2015, the contemnor was convicted and vide order dated March 30, 2015 he was sentenced to undergo Imprisonment for two months by Mr.M.Z. Khan, JMIC, Narnaul for having committed offence under Section 500 IPC. It is also apparent from the record that an FIR No. 38 under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, was registered at Police Station City Nangal, District Mahendergarh on the allegations of having used some cast based words against the officials of BSNL. Another FIR No. 80 dated May 31, 2010 under Sections 323, 452, 511, 353, 307, 352, 436, 332, 186, 506, 34 IPC read with Sections 3, 4 of PDPP Act, 1984 and Sections 25/54/59 of the Arms Act at Police Station Nangal Chaudhary, Distt.Mahendergarh for assault was registered against the contemnor on the allegation of having abused, beaten and threatened to kill Security Guard of telephone exchange, Nizampur, on April 17, 2010. An FIR No. 395 dated October 10, 2011 was registered by Ishwar Singh Yadav against the contemnor for threatening him and preventing him from performing his

official duty. The contemnor also appears to have filed a complaint against the officials of BSNL in the Court of JMIC, Narnaul alleging that they had provided Broadband Home Unlimited plan to three commercial concerns as such the Department had suffered a loss to the tune of Rs.2550/- per month from each connection by over-charging the monthly charges. The said complaint and the summoning order had been challenged by Ishwar Singh Yadav and Jai Parkash in the High Court. The High Court vide order dated August 24, 2017 had allowed the petition bearing CRM M-15589 of 2017 and CRM M-16299 of 2017, decided on August 24, 2017. By virtue of the said order, Inderjit Singh, J. had set aside the complaint filed by the contemnor as well as the summoning order passed by the trial Court and all the subsequent proceedings. There is also an order passed by Sessions Judge, Narnaul, Sh.Arun Kumar Singal, on April 4, 2016 in criminal revision filed by Ishwar Singh Yadav and others which reads as follows:-

“ Ishwar Singh Yadav and others Vs. Manish Vashishth

Present: Shri S.N. Sharma (A), Advocate for the Revisionist.

Respondent Manish Vashishth in person.

Today the case as fixed for arguments but the respondent in person who is also an Advocate submits that he wants the transfer of this case to some other court. He even will not mind in snubbing the opposite counsel Shri S.N. Sharma (A) Advocate for the revisionist in the presence of the undersigned. The tendency of the respondent has always been to browbeat the undersigned. Even the respondent has sent two confidential letters to overawe the undersigned. By writing confidential letters

he has tried to obstruct the administration of justice which cannot be relished. The behaviour of the respondent has never remained upto mark rather it has always been disgraceful and contemptuous. By his conduct he has always tried to lower the authority and prestige of the court. The respondent appears to have no faith in this Court. Since the justice should not only be done but it should appear to have been done. At a lateral stage it should not appear to the respondent that he has been deprived of justice, so, this court, deems it appropriate to transfer this case from the court of undersigned to the court of Shri Bhupender Nath, Addl. Sessions Judge, Narnaul. Both the parties are directed to appear before the transferee court on 6.4.2016. Contempt of court is not referred to Hon'ble High Court to maintain harmonious relationship between the Bar and Bench. File be sent to the transferee court immediately.

Sd/-Arun Kumar Singal,
Sessions Judge, Narnaul.
4.4.2016.”

CRM M-33994 of 2017-Ishwar Singh Yadav and another Vs. State of Haryana and others was filed in the High Court under Section 407 of Cr.P.C. praying for transfer of the criminal appeal titled as Ishwar Singh Yadav and another Vs. State of Haryana and anr., and CRR 19 of 2017 titled as “Manish Vashisth, Advocate Vs. Ishwar Singh Yadav” which are pending in the Court of Sh.Sudhir Parmar, Additional Sessions Judge, Narnaul for September 11, 2017, both arisen out of the judgment of conviction dated November 5, 2016 and order of sentence dated November 7, 2016 out of the State of Haryana to District and Sessions Judge, Mohali in Punjab or any other place as all the Judicial Officers of Haryana are afraid of

contemnor Manish Vashisth, Advocate. All the above said documents had been mentioned in transfer application. The allegation in para 14 of the said application reads as follows:-

“14. That the above aid facts would make the position crystal clear that the judicial officers of Haryana are very much afraid of the conduct of the Respondent No.2. The judicial officers have been terrified and if any of them is not toeing the line of action of the respondent No.2, he would make complaints against them, would publish something in facebook, newspapers etc. The respondent No.2 has not spared Hon’ble Sessions Judge and High Court Judge not to speak of other lower rank judicial officer. In the prevalent circumstances and surcharged atmosphere, the petitioners would be able to get impartial hearing and decision in the above said appeal and revision petition from any other judicial officers of Haryana and the same need to be transferred to Sessions Judge Mohali and anywhere else in Punjab, so that impartial justice is done to the petitioners.”

It was the above said transfer application which was pending before Inderjit Singh, J., on August 24, 2017 when the counsel for Ishwar Singh Yadav had brought to the notice of the Court that the contemnor had cast remarks on the facebook against Judge regarding passing of the order dated August 24,2017 which has been referred to hereinabove in CRM M-15589 of 2017 titled as Ishwar Singh Yadav and another Vs. Manish Vashisth and another. The contemptuous publication on the facebook

downloaded by Ishwar Singh Yadav, Jagparvesh and Jai Parkash was appended as Annexure P-8.

Since this Court is considering the previous conduct of the respondent-contemnor and there are allegations against him that all the Judicial Officers are afraid of him, as he is in the habit of filing complaints against the Judicial Officers and browbeating them, we still had doubts about the said allegations as it is not expected from an Advocate who is an Officer of the Court to threaten or file complaints against Judicial Officers. Therefore, we made an inquiry from the Registry. Since the matter was of confidential nature, under the orders of the Hon'ble Chief Justice, we were shown the record of complaints made by the contemnor against the Judicial Officers of Haryana. In the interest of confidentiality, we do not deem it appropriate to mention the details of the allegations but it is a fact that complaints have been filed by him against one Additional Sessions Judge on January 27, 2014; against Civil Judge (Junior Division) dated March 27, 2015; against another District and Sessions Judge dated September 21, 2015; against District and Sessions Judge dated November 9, 2015 with repeated reminders and against District and Sessions Judge dated March 17, 2017. The said complaints received in sealed cover were perused and returned in sealed cover to the Registrar.

It is not out of place to mention here that the contemnor had admitted that he has filed certain complaints against the Judicial Officers. The above said factors have been referred to, only to consider the fact whether the contemnor is a habitual complaint maker to find out as the said circumstance will be of some assistance to the Court to determine the

probability of Annexure P-8 having been posted on facebook as a protest to a case having been decided against him by a Judge of the High Court against whom the alleged contemptuous remarks had been published. It is made clear that we are not relying upon any of the documents referred to in this paragraph but the facts apparent on the record can always be taken into consideration to form an opinion regarding the conduct of a person and the probabilities of his having committed a particular act of publication.

ii) **POINTS FOR DETERMINATION:**

Vide order dated February 17, 2018, the Court had formulated three points for determination, which are again reproduced hereunder:-

- “i) Whether Annexure P-8 is not the print out of the facebook account of contemnor?
- ii) Whether Annexure P-8, which was e-mailed by Mr.Ishwar Singh Yadav and Jai Parkash Sharma to Mr.H.P.S. Ghuman, Advocate, has originated from the facebook account of the contemnor?
- iii) In case Annexure P-8 has not originated from the facebook account of the contemnor, what would be the effect of the same, so far as the present contempt petition is concerned.”

A disputed question had been raised by the contemnor, having authored the contemptuous publication as he had deleted the same after posting it. A perusal of the record indicated that the contemptuous publication had been brought to the notice of the referring Judge during the pendency of a transfer petition bearing CRM M-33994 of 2017. The said contemptuous publication in Hindi had been posted on the facebook account of the contemnor and has been seen by the general public including Ishwar

Singh Yadav and Jai Parkash Sharma. They downloaded the same and forwarded the same to their Advocate Mr. H.P.S. Ghumman who brought it to the notice of the referring Judge (Inderjit Singh, J.). It is not disputed that Inderjit Singh, J. had decided three cases against the contemnor on August 24, 2017. The contemnor has admitted in the Court on January 7, 2018 that on account of the referring Judge having quashed his complaint, he had a grievance of not being heard properly. The contemnor was also aggrieved by the judgment having not been uploaded on the website for number of days. The contemnor has admitted that he was aggrieved and upset for the fact that the orders had not been uploaded for seven days. It is not disputed by the contemnor that he is on facebook but denied to have reflected his grievance in the shape of contemptuous publication. The contemnor was not even ready to give confidentially, in sealed cover his password for opening his facebook account.

Since the publication on the facebook had been read by Ishwar Singh Yadav, we deemed it appropriate to implead him as a party and issue notice to him. He furnished an affidavit to the effect that the contemnor had made a publication annexure P-8 and had erased it later on to save his skin and that he is the author of said publication. The contemnor was playing smart by removing the said publication on the facebook on the presumption that no harm could be done to him on account of the contemptuous publication annexure P-8. Ishwar Singh Yadav specifically deposed that his e-mail record provides a link for opening the facebook of the contemnor. Similar affidavit was furnished by Jagparvesh to the effect that contemptuous publication annexure P-8 was uploaded on facebook by

contemnor and it had been checked by him on the facebook. The said publication had also been seen by Jai Parkash, JTO. Sh.H.P.S. Ghumman, Advocate had brought to our notice the e-mail received by him from Ishwar Singh Yadav which had the contemptuous publication as an attachment, on his laptop. When the attachment was clicked, it automatically connected to the facebook account of the contemnor.

Since we found ourselves not expert on the subject we sought a report from the Registrar Computerization-cum-CPC and directed the Advocate Sh.H.P.S.Ghumman to forward the e-mail received by him alongwith the attachment to Registrar Compuerization. He was also permitted to take the expert opinion of the NIC of Punjab and Haryana High Court. A report was submitted on March 13, 2018 which has been reproduced hereinbefore, which clearly indicate that the contemptuous notice was an annexure with the e-mail sent to him by Sh.H.P.S. Ghumman, Advocate. When clicked, it would automatically direct the user to the facebook account of Sh.Manish Vashishth, however, the authenticity of the same could not be verified because the post was not found on the facebook page of Manish Vashishth. As per the opinion of the Incharge, NIC of Punjab and Haryana High Court, it was confirmed that the document file attached with the e-mail of Sh.H.P.S. Ghumman, Advocate and the Registrar Computerization seemed to be copied from the faebook post and copied into word document.. It could have been altered also. A copy of the report was supplied to the contemnor as desired by him. It is pertinent to mention that it had never been the case of the contemnor that he was the author of some facebook publication but the same has been manipulated after downloading

the same by anyone and with an oblique motive to falsely implicate him in contempt proceedings, had incorporated some objectionable material to cause prejudice to him. His case had been throughout that it is not established that he is the author of the publication. The contemnor has gone to the extent of denying that the contemptuous document file has been created by him. He has not come forward with the original document file which could have been published by him on the facebook. We are of the opinion that a person may lie but circumstances will not. It is not the first case in which the contemnor has expressed his anguish against a Judge. The contemnor has got a history of making complaints and browbeating the Judicial Officers. The main petition for transfer bearing CRM M-33994 of 2017 had been filed by the petitioners in the said case, specifically pleading that all the officers of the Haryana are afraid of the contemnor. Such an allegation is very easy to be levelled and the same cannot be believed unless and until it is corroborated by some material.

Since this Court had a constitutional right under Article 215 of the Constitution of India to punish a person for contempt of this Court, we also felt it an obligation to arrive at the actual facts and see whether the contemnor had ever issued any complaint against any Judicial Officer. In order to discharge the said obligation, we made an inquiry from the concerned Branch of the High Court. The Vigilance Branch with the permission of the Chief Justice had provided us the details of the complaints filed by the contemnor against the Judicial Officers. The sealed cover record, as mentioned hereinbefore, indicated that the contemnor had filed complaints against a number of Judicial Officers including District and

Sessions Judge. After perusing the complaints, the same were returned in sealed cover to the Registrar. It would also not be out of place to mention here that during the pendency of proceedings in the Court of Sessions Judge, Narnaul, the conduct of the contemnor has been noticed in the judicial order dated April 4, 2016. The said order has been discussed hereinbefore. It is observed in the said judicial order that the tendency of the contemnor has always been to browbeat him. By writing confidential letters, the contemnor has tried to obstruct the administration of justice which cannot be relished. His behaviour was not upto the mark. The contemnor by his conduct has always tried to lower the authority and prestige of the Court and appears to have no faith in the Court. The District and Sessions Judge, instead of deciding the revision petition had recused himself and it was observed that the contempt reference has not been made to the High Court to maintain harmonious relationship between the Bar and the Bench.

We are satisfied that the contemnor is a habitual complaint maker. He is an Advocate as well as journalist and uses his wisdom and knowledge to malign the Judicial Officers. Contemnor is in the habit of complaining against everyone who comes in contact with him during the course of professional routine.

In view of the above circumstances, we arrive at a conclusion that the contemptuous publication Annexure P-8 had originated from the facebook account of the contemnor. It was made public but after the same had been read by the general public, the same was deleted. It is also established on the record from the affidavits of Ishwar Singh Yadav, Jagparvesh and Jai parkash that the said publication had been downloaded

by them and forwarded to their Advocate as attachment with e-mail. It is established from the report of Registrar Computerization that whenever the post in the attachment was clicked, it automatically directed the user to the facebook account of Manish Vashishth. It has never been the defence of the contemnor that somebody has manipulated the original publication but his case has been that of a 'complete denial'.

It is not out of place to observe here that the entire incriminating material had been supplied to the contemnor and rules of natural justice have been followed. The contemnor had filed reply to the affidavits of Ishwar Singh Yadav and Jai Parkash and had also not filed any objections to the report of the Registrar Computerization. The contemnor did not make any prayer to cross-examine of the persons who had furnished affidavits.

We have considered the contention of the contemnor that the above three persons are not in his friend list but in his reply to the affidavits he has not mentioned about the privacy status of his facebook account to allege that Ishwar Singh Yadav, Jagparvesh and Jai Parkash or general public had been blocked in any manner. The contemnor being a journalist had been issuing various posts meant for the consumption of general public.

In view of the said circumstances, we arrive at a conclusion that the contemptuous publication, annexure P-8, is a publication of the facebook account of the contemnor. The same had been erased after its publication but had been downloaded by Ishwar Singh Yadav and Jai Parkash and forwarded to their Advocate Mr.H.P.S. Ghumman and has not been tampered by anyone.

CONSIDERATION OF OBJECTIONS OF THE CONTEMNOR:

The contemnor has taken up a firm stand that he has raised objections in his reply and in his reply to the show cause notice which have been reproduced hereinbefore and that this Court should adjudicate the law points raised by him.

Though we have reproduced the entire objections but instead of reproducing the same again, his objections are summarized as follows:-

- i) The Division Bench of this Court entrusted with the adjudication of criminal contempt proceedings has no jurisdiction to decide the controversy as no party can be Judge to its own cause;
- ii) The procedure of law has not been followed by this Court while taking the cognizance of the alleged criminal act of the contemnor;
- iii) The allegations of contempt are vague;
- iv) The Division Bench has got no jurisdiction to interrogate the contemnor by putting incriminating questions;
- v) The criminal contempt has actually been committed by Ishwar Singh Yadav and Sh.H.P.S. Ghumman, Advocate as they have interfered in the administration of justice and not maintained the dignity of the Court;

- vi) The affidavits of Ishwar Singh Yadav and others are not admissible as the same have not been executed as per the procedure of law;
- vii) The paper book of CRM M-33994 of 2017 which has been appended with the contempt petition contains unattested documents as such the same is not admissible in evidence and cannot be relied upon;
- viii) Copies of the annexures appended are not the certified copies as such cannot be used against the contemnor;
- ix) Contemnor also raised the objections that the order dated September 15, 2017 passed by Inderjit Singh, J., to initiate contempt proceedings is illegal and is vague and that the facebook is not the print media and is an electronic media. The consent of the Advocate General was required for initiation of contempt proceedings under Section 15 of the Act. Inderjit Singh, J. could not taken the suo motu cognizance of the criminal contempt;
- x) The Division Bench has not disclosed the identity of Inderjit Singh, J. and cannot initiate contempt proceedings against the contemnor.

We have considered all the objections raised by the contemnor regarding the jurisdiction and procedural errors and are of the opinion that

the question of jurisdiction of a Court being a prosecutor and a Judge of its own cause in context to the contempt jurisdiction is no more res integra in the light of the law laid down by the Supreme Court in the judgment of **Delhi Judicial Service Association's** case (supra) wherein it has been held that the Supreme Court and the High Court being the Court of record shall have powers as well as duty to protect the authority and dignity of the Courts. In **R.L. Kapur Vs. State of Tamil Nadu**, AIR 1972 SC 858 , making a reference to Article 215 of the Constitution it has been held that the High Court as a Court of record possesses inherent power and jurisdiction, who is a special one, not arising or derived from Contempt of Courts Act and the provisions of Section 3 of 1926 Act. It was specifically held that under Article 215 of the Constitution, no law made by a Legislature could take away the jurisdiction conferred on the High Court nor it could confer it afresh by virtue of its own authority. .

In view of the said judgment we are of the opinion that the High Court has got wide inherent power to punish for contempt not only of Subordinate Courts but of the High Court itself. Following the judgment of **S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow Vs. Vinay Chandra Misra**, 1981 (2) SCR 331, the Supreme Court had held that Section 15 prescribes procedure for taking cognizance but it does not affect the High Court's suo moto power to take cognizance and punish for contempt of Court.

Whether a Court taking suo moto proceedings for contempt against a contemnor has been considered in the judgment of **Delhi Judicial Service Association's** case (supra) in context to the provisions of the

constitution of India and held that the proceedings of Contempt of Court are of a peculiar nature and are quasi criminal in certain aspects but the jurisdiction is not exercised as part of original criminal jurisdiction of the Court. It is settled principle of law that in summary proceedings, Court is free to evolve its own procedure consistent with fair play and natural justice.

In view of the above said circumstances, we hold that there is no force in the objections of the contemnor regarding the jurisdiction of this Court to be a prosecutor as well as a Judge of its own cause as the objective of the contempt proceedings is not to punish a contemnor for insult of a particular Judge but for saving the dignity of the judicial system. In case the punishment is not awarded to a person, who by his publication scandalizes and lowers the authority of not only the Court but has lowered the authority of the judiciary in the eyes of general public which deserves to be punished in the exercise of powers under Contempt of Courts Act and under Article 215 of the Constitution, the faith of the general public in the judiciary will be shattered. The dignity and authority of the Court has to be maintained not only by the general public but also by the Advocates who constitute an important part of the system of the administration of justice and are considered as officers of the Court. The objections of the contemnor that he had not been supplied the copies or that there had been certain procedural irregularities by the administrative staff are absolutely baseless as each and every document of the paper book had been supplied to the contemnor in the Court. All the objections of the contemnor are, therefore, rejected. He is held guilty of having committed contempt of Court by issuing contemptuous publication, annexure P-8, alleging that the judgment passed against him by

the High Court was not speaking and a better decision could have been written by a Magistrate. The Judge had not uploaded the judgment as the Judge might not have understood what was to be written. Such a derogatory remark is contemptuous on the face of it as such the contemnor is held guilty of having committed contempt of Court. He be heard regarding the sentence today.

To be taken up after lunch.

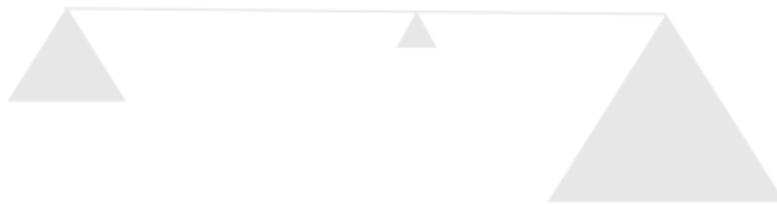
(M.M.S. BEDI)
JUDGE

May 31, 2018
sanjay

(HARI PAL VERMA)
JUDGE

| | |
|-----------------------------|----------|
| Whether speaking/ reasoned: | Yes/ No. |
| Whether reportable: | Yes/No. |

सत्यमेव जयते



Heard on quantum of sentence.

The contemnor has not furnished any apology or remorse and has urged that he should be shown leniency being an Advocate.

We do not find any sufficient ground to agree with the contemnor. Contemnor Manish Vashishth is sentenced to undergo simple imprisonment for a period of one month to be detained in Narnaul jail. Since the contemnor has got a statutory right to file an appeal it is ordered that the order of sentence will not be implemented till the opening of the Supreme Court i.e. till July 02, 2018 in order to enable him to avail the statutory right. He would surrender in the Court of CJM, Narnaul at 10.00 a.m. on July 31, 2018 to undergo the sentence of simple imprisonment for one month. In case of his failure, it will be open to the CJM to issue warrants of arrest against the contemnor subject to any order passed by the Appellate Court.

Copy of the order of conviction and sentence be supplied to the contemnor today under the signatures of the Court Secretary.

(M.M.S. BEDI)
JUDGE

May 31, 2018
sanjay

(HARI PAL VERMA)
JUDGE

| | |
|-----------------------------|----------|
| Whether speaking/ reasoned: | Yes/ No. |
| Whether reportable: | Yes/No. |