States Of Rajasthan vs Prakash Chand & Ors on 2 December, 1997

Equivalent citations: AIR 1998 SUPREME COURT 1344, 1998 AIR SCW 1219, (1998) 1 CAL LJ 183, 1998 (1) SCC 1, (1998) 2 KER LT 27, 1997 (7) SCALE 411, (1997) 2 GUJ LH 1033, (1998) 1 CAL HN 1, (1998) 1 RECCRIR 322, (1998) 1 CURCRIR 88, (1997) 7 SCALE 411, (1998) 1 ALLCRILR 105, (1997) 4 CRIMES 329, (1997) 4 CURCC 157, (1997) 10 SUPREME 122, (1998) SC CR R 367, (1998) 2 GUJ LR 1149, 1998 (1) ANDHLT(CRI) 112 SC, (1998) 1 ANDHLT(CRI) 112

Bench: M.K. Mukherjee, K. Venkataswami

PETITIONER:
STATES OF RAJASTHAN

Vs.

RESPONDENT:
PRAKASH CHAND & ORS.

DATE OF JUDGMENT: 02/12/1997

BENCH:
A.S. ANAND, M.K. MUKHERJEE, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T DR. ANAND, J.

Leave granted.

This is an unusual case. The observations, comments and allegations made and the order passed by a learned Single Judge of the Rajasthan High Court, Mr. Justice Shethna, in relation to a disposed of writ petition, by sending for its record in a totally unrelated and unconnected criminal revision

petition, which have been put in issue in this appeal, touch not only upon the discipline of the High court and the powers of the Chief Justice to assign cases and allot Benches but also the larger issue of judicial propriety. the order directing issuance of notice of contempt to the Chief Justice of the High Court raises a fundamental question about the jurisdiction of a single Judge to issue such a notice in the established facts of the case. It is not individuals but the prestige of the Institution which is at stake in this case. The manner in which 'allegations' have been made against the Chief Justice of the High Court, the Division Bench of the High Court which had disposed of the writ petition and the some of the former chief Justices of the Rajasthan High Court, including the present Chief Justice of India, Mr, Justice J.S. Verma, has caused us much anguish. We wish we did not have to deal with a case like this but we shall be singularly failing in our duties to the Institution, if we do not deal with the matter and take it to its logical conclusion. first, some salient 1 Writ Petition No. 2949 of 1996 was filed, as a Public Interest Litigation, on 9.9.1996 in the High Court of Rajasthan at Jodhpur by an advocate of that court, inter alia seeking directions to provide suitable accommodation to the Judges of the Rajasthan High Court and for certain other benefits for the Judges. During the proceedings of the writ petition certain interim orders came to be made by Shethna, J. from time to time. On 29.4.1997 Shethna, J. directed the writ petition to be treated as part-heard at the 'request' of learned counsel for the parties. In the meanwhile, Shri D.R. Bhandari, Advocate, filed an application for being impleaded as petitioner No.2 in that writ petition. he inter alia challenged the legality and validity of the constitution of a Bench of the High Court at Jaipur as also the order of the State Government declaring bungalow No. A/2 at Jaipur as the Guest House for the exclusive use of the Chief Justice and bungalow No. A/5 at Jaipur as the High Court Guest House. Certain other issues were also raised by Shri Bhandari in that application. Over-ruling the objections raised by the respondent therein inter alia, to the effect that the application of Shri Bhandari would widen the scope of the writ petition, the application of Shri Bhandari was allowed by Shethna, J. on 29.7.1997 and he was impleaded as petitioner No.2 in the writ petition. The case was then adjourned from time to time on being listed as part-heard before the learned single Judge. In the meantime, the roster was changed and Shethna, J. was required to sit in a Division Bench instead of sitting singly between 4.9.1997 and 12.9.1997. On 8.9.1997, the Additional Advocate General for the State of Rajasthan moved an application under Rule 55 of the Rules of the High Court of Judicature for Rajasthan (hereinafter the Rules) with the prayer that since challenge to the legality and validity of the constitution of a Bench of the High court at Jaipur had been raised by petitioner No.2, Shri Bhandari, Writ Petition No. 2949/96 should be refereed to a Division Bench for hearing. By an administrative order, the Chief Justice directed, on 8.9.97, that the application filed by the Additional Advocate General be put up for orders on the next day at 10.30 A.M. A judicial order then came to be made on 9.9.1997 by the Chief Justice, in presence of all the parties to the writ petition. It was directed that the writ petition should be listed before a Division Bench of the High court comprising Mr. Justice M.P. Singh and Mr. Justice B.S. Chauhan since it involved constitutional questions. When the writ petition was listed before the Division Benchon 10.9.1997, the following order came to be passed:-

10.09.1997

HON'BLE MR. JUSTICE M.P. SINGH HON'BLE DR.JUSTICEB.S. CHAUHAN MR. M. C. Bhoot) MR. D. R. Bhandari) for the petitioners Mr. I. R. Chaudhary) Mr. L. S. Udawat)for the respondents Mr. R. P. Dave) Mr. M. C. Bhoot, learned counsel for the petitioners, states that the relief sought for, in the writ petition, do not survive for consideration now. The writ petition has become infructuous.

Accordingly, the writ petition is dismissed as infructuous.

Since the main petition itself has been dismissed, the right of the intervenor to be heard does not survive for consideration.

Accordingly, the application filed by his mis also rejected."

Thus, writ petition No. 2949 of 1996 was dismissed as 'infructuous' and, the proceedings in that writ petition concluded.

A criminal Revision petition No. 357 of 1997 was filed by one Prakash Chand, respondent No.1, herein challenging his conviction and sentence for an offence under Section 304 A IPC. This petition, as per the roster, was listed for admission and bail before Shethna, J. on 3.9.1997. it appears the preliminary hearing of the petition did not conclude on that date and the learned judge directed that the revision petition be listed before him "alongwith other partheard" cases on 5.9.1997, even though as per the change of the roster, he could not take up single bench matters on 5.9.97, since he was to sit in a Division Bench on that date, Shethna, J. directed the Registry to list those cases "on a separate board". Since, the Registry could not create a 'separate board". Since, the Registry could not create a 'separate board' for shethna, J., without obtaining directions from the chief justice, the matter was placed for orders before the chief Justice on 3.9.97 itself. The Chief Justice directed :

> "There will be no roster for Hon'ble Justice B. J. Shethna for sitting in Single Bench on 5.9.1997. Those part heard matters may e listed on some other day some time next week as the business of the Court would permit with my specific order.
>
> Providing roster is the prerogative of the Chief Justice, which must be brought to the Knowledge of the Hon'ble Judge."

Despite the above order, Shethna, J. while still sitting in the Division bench, on a mention made by the learned Advocate for the revision petitioner, passed an order on 8.96.1997, as a single Judge, directing that Criminal Revision Petition No. 357/97 alongwith "other part-heard cases" should be listed before him " on a separate board" on 9.9.97, knowing fully well that on that date also he was to continue to sit in the Division Bench and that no cases could be listed before him without appropriate directions of the Chief Justice. In view of the earlier order of the Chief Justice. In view of the earlier order of the Chief Justice dated 3.9.97 (supra) the Registry could not act on the directions of Shethna, J. and therefore the Registry once again sought directions of the Chief Justice. the chief Justice, It appears accommodated Shethna, J. and directed that the criminal revision petition and 'other part-heard cases' be listed before him on a separate board. That was done.

Since, W.P. No. 2949/1996 had already been disposed of by the Division Bench on 10.09.1997, it was no longer a "part-heard case" on the Board of Shethna, J. and therefore it was not listed alongwith the "other part-heard cases". Still then, surprisingly however while hearing preliminary arguments in Criminal Revision Petition No. 357 of 1997 filed by Prakash Chand for admission and bail, the record of the disposed of writ petition No. 2949 of 1996 was also called for by Shethna, 3. and in a detailed order, comments and observations were made regarding (and unrelated to) that writ petition and an exception was taken to its disposal by the Division Bench. Caustic comments, and unjustified allegations in intemperate language were made not only against the Chief Justice for transferring that writ petition from his board to the Division Bench but also against the learned Judges constituting the Division Bench which heard the writ petition. While making those observations that Shethna, J. took exception to the manner in which the writ petition was transferred to the Division bench by the Chief Justice and "opined" that by doing so, the Chief Justice had prima facie committed criminal contempt of court and concluded:

> " Thus, the act of Shri Mukul Gopal Mukherji, the Chief Justice of Rajasthan High Court in withdrawing the part heard writ petition from this court and getting it disposed of in a most suspicious circumstances and not placing that petition alongwith other part heard matters before this court on 5.9.97 and 9.9.97 as per my earlier order dated 3.9.97 and 8.8.97 prima facie constitute a " criminal contempt".

Therefore, office is directed to issue notice against Shri Mukul Gopal Mukherji, the Chief Justice of Rajasthan High Court to show cause as to why the contempt proceedings should not be initiated against him for committing criminal contempt under the Contempt of Courts Act, 1971. The office shall register this case and give separate number to this as S. B. Cr. Misc. Contempt Petition No. ..... /97 and title as State of Rajasthan vs. Mukul Gopal Mukherji, the Chief Justice of Rajasthan High Court."

In the course of the order comments were made not only against the Chief Justice and the Judges constituting the Division Bench but also against some of the former Chief Justices regarding the "illegal" drawl by them of daily allowance while sitting at Jaipur.

While the judicial propriety, validity and justification for making insinuations against the Chief Justice of the High Court, casting aspersions on the learned Judges constituting the Division Bench and making comments and allegations against some of the former Chief Justices of that court including the present Chief Justice of India, has been squarely put in issue by the State of Rajasthan in this appeal by special leave, the Chief Justice of Rajasthan High Court-respondent No.2, has called in question the notice directed to be issued to him to show cause why contempt proceedings be not initiated against him.

Did Shethna, J. have any judicial or administrative authority to send for the record of a writ petition which had already been disposed of by a division Bench - that too while hearing a wholly unconnected Criminal revision petition - and pass "comments" and make "aspersions" against the chief Justice of the High Court and the Judges constitution the Division Bench regarding the merits of the writ petition and manner of its disposal.

Can a single Judge of a High Court itself direct a particular roster for himself, contrary to the determination made by the Chief Justice of the High Court ? Is not such an action of the single Judge subversive of judicial discipline and decorum expected of a puisne Judge?

Could a notice to show cause as to why contempt proceedings be not initiated against the Chief Justice of the High Court for passing a judicial order on the application of the Additional Advocate General of the State in the presence of Counsel for the parties transferring writ petition No. 2949/96, heard in part by shethna, J., for its disposal in accordance with law to a Division bench be issued by the learned single Judge ?

Did Shethna, J. have any power or jurisdiction to case 'aspersions' on some of the former Chief Justices of that Court, including the present Chief Justice of India, Mr. Justice J.S. Verma, behind their backs and that too on half- backed facts and insinuate that they had "illegally" drawn daily allowances at the full rate of 'Rs. 250/-' per day, to which "they were not entitled", and had thereby committed "criminal misappropriation of public funds" while making comments on the merits of the disposed of writ petition ?

These are some of the important and fundamental questions which arise in this case?

Before proceeding further, it is necessary to first examine the powers of the Chief Justice in the matter of constitution of Benches, providing of roster and in particular his prerogative to transfer even a par-heard case from the board of a learned Single Judge to a Division bench for disposal on being satisfied that the case involved constitutional issues, which under the High Court Rules was required to be heard by a Division Bench.

Para 44 of the Rajasthan High Court Ordinance, 1949 deals with the distribution of business and administrative control of the High Court. it provides:

> " Distribution of business and administrative control.- (1) The High Court may, by its own rules, provides as it thinks fit for the exercise by one or more Judges, or by Division Courts constituted by two or more Judges, of the high Court, of its original and appellate jurisdiction.
>
> (2) The Chief Justice shall be responsible for the distribution and conduct of the business of the High court, and shall determine which Judge in each case will sit alone and which Judges of the Court will constitute a Bench.
>
> (3) The administrative control of the High Court shall vest in the Chief Justice who may exercise in such manner and after such consultation with the other Judges as he may think fit or may delegate such of his functions, as he deems fit to any other Judge of the High Court.

By virtue of the powers conferred by the Rajasthan High Court Ordinance, 1949 read with Article 225 of the constitution of India, the High Court of Rajasthan, with the approval of the Governor of

the State, framed Rules of the High Court of Judicature for Rajasthan, 1952. Chapter v of the Rules deals with the constitution of Benches. Rule 54 provides:

> Rule 54: Constitution of Benches.-
>
> Judges shall sit alone or in such Division Courts, as may be constituted from time to time and do such work, as may be allotted to them by order of the Chief Justice or in accordance with his direction."

A careful reading of the aforesaid provisions of the ordinance and rule 54 (Supra) shows that the administrative control of the High Court vests in the Chief Justice of the High Court alone and that it is his prerogative to distributive business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted:

which Judge is to sit alone and which cases he can and is required to hear as also as to which judges shall constitute a Division Bench and what work those benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order of or in accordance with the directions of the Chief justice. That necessarily means that it is not within the competence or domain of any single or division bench of the court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a single Judge or a division bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The Puisne judges are not expected to entertain any request from the Advocates of the parties for listening of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the chief Justice and obtain appropriate orders. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the 'first amongst the equals', on the administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause list is to be prepared under the directions of the Chief Justice as is borne out from Rule 73, which reads thus:-

> Rule 73: Daily Cause List.- The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may be heard by the different Benches of the Court. The list shall also state the hour at which and the room in which each Bench shall sit. Such list shall be known as the Day's list."

This is the consistent view taken by some of the High courts and this Court which appears to have escaped the attention of Shethna, J. in the present case, when he

directed the listing of certain part-heard cases before him as a single judge by providing a separate board for the purpose, while sitting in a Division Bench.

In State vs. Devi Dayal, AIR 1959 Allahabad 421, a Division Bench of the Allahabad High court considered the scope and powers of the Chief Justice under the Constitution with particular reference to Rule 1 Chapter V of the Rules of that Court (Which is in pari materia with Rule 54 of The Rajasthan High Court Rules, 1952) and held: per Mukherji, J.:

" ..... It is clear to me, on a careful consideration of the constitutional position, that it is only the Chief Justice who has the right and the power to decide which Judge is to sit alone and which cases such Judge can decide;

further it is again for the Chief Justice to determine which Judges shall constitutes Division Benches and what work those Benches shall do. Under the Rules of this Courtly, the rule that I have quoted above, it is for the Chief Justice to allot work to Judges and Judges can do only such work as is allotted to them.

It is not, in my view, open to a Judge to make an order which could be called an appropriate order . Unless and until the case in which he makes the order has been placed before him for orders either by the Chief Justice or in accordance with his directions. Any order which a Bench or a single Judge may choose to make in a case that is not placed before them or him by the chief Justice or in accordance with his directions is an order which, in my opinion. If made, is without jurisdiction." (Emphasis ours) In his separate but concurring opinion H.P. Asthana, J. observed:

"Rule 1, Chapter V, of the Rules of this Court, provides that Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions .

It will appear from a perusal of the above provisions that the high court as a whole consisting of the Chief Justice and his companion Judges has got the jurisdiction to entertain any case either on the original side or on the appellate or on the revisional side for decision and that the other Judges can hear only those matters which have been allotted to them by the Chief Justice or under his directions. It, therefore, follows that the Judges do not have any general jurisdiction over all the cases which the High court as a whole is competent to hear and that theirs jurisdiction is limited only to such cases as are allotted to them by the Chief Justice or under his directions."

(Emphasis supplied) A full Bench of the Rajasthan High Court in Niranjan Singh vs. State, AIR 1974 Rajasthan 171 also examined the ambit and scope of the scope of the provisions of the Rajasthan High Court Rules, 1952 and in particular of Rules 54, 55,

61, 66, 74 etc. with regard to the powers of the Chief Justice in the matter of constitution of the Benches and allocation of work o his companion Judges. The Bench opined:

" It is therefore the responsibility of the Chief Justice to constitute the Division Courts of Benches. The Judges are required to sit alone or in the division Benches and, in either case, do such work as may be allotted to them by order of the Chief Justice or in accordance with his direction. This power to allot the work to the Judges cannot be taken away, in face of the clear provision of rule 54, merely because a date of hearing, has been fixed in a case by a particular Bench .....

The Chief Justice has therefore the power "from time to time" to direct that any particular case or class of cases may be heard by a bench of two or more Judges even though it may, ordinarily fall to be heard by a single Judge. it is well settled that the meaning of the words "from time to time" is that "after once acting the done of the power may act again' and either independently of, or by adding to, or taking from or reversing altogether, his previous act", Stroud's judicial Dictionary. It cannot, in such a case, be said that the person who has the power to act has "Completely discharged his duty when he has once acted." The words "from time to time" have therefore been interpreted to mean "as and when it is appropriate so o do": Re von Dembinska. Ex Party The Debtor, (1954) 2 ALL ER 46. It is thus clearly permissible for the Chief Justice to reverse any earlier order of allotment of any particular case or class of cases to a judge sitting alone, and to direct that it may be heard by a Bench of two or more Judges..... There is nothing in the rule to justify the argument that such a case should always be treated as "tied up " with a Bench simply because it has once fixed the date of its hearing or that with the exception of a case in which a Bench has directed the issue of notices to the opposite party or passed an ex party order all other cases should be deemed to be part- heard. On the other hand, the use of the word "ordinarily" goes to show that if there are extra-

ordinary reasons. even a part-heard case may not be laid before the same Bench for disposal. So far as the second sentence of Rule 66(1) is concerned, it is really in the nature of an illustration, or an explanation."

(Emphasis ours) In State of Maharashtra vs. Narayan Shamrao Puranik, ATR 1982 SC 1198, referring to the power of the Chief Justice to make roster, this Court opined: " The chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in sub-s.(3) of s. 51 of the Act, but inheres in him in the very nature of things."

Again, a Full Bench of the Madras High Court in Mayavaram financial Corporation Ltd. vs. The Registrar of Chits, 1991 (2) L.W. 80, opined: " The Hon'ble the Chief Justice has the inherent power to allocate the judicial business of the High court

including who of the Judges should sit alone and who should constitute the Bench of two or more Judges. No litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judges hearing the case. No person can claim as a matter of right that this petition be heard by a single Judge or a Division Bench or a particular single Judge or a particular division Bench. No Judge or a Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the orders of the Hon'ble the Chief Justice."

More recently, in the case of Inder Mani vs. Matheshwari Prasad, (1996) 6 SCC 587, a Division Bench of this Court has opined :

" It is the prerogative of the Chief Justice to constitute benches of his High Court and to allocate work to such benches. Judicial discipline requires that the puisne Judges of the High Court comply with directions given in this regard by their Chief Justice. In fact it is their duty to do so.

Individual puisne Judges cannot pick and choose the matters they will hear or decide nor can they decide whether to sit singly or in a Division Bench. When the Chief Justice had constituted a Division Bench of Justice V. N. Khare and the learned Judge, it was incumbent upon the learned Judge to sit in a Division Bench with Justice V. N. Khare and dispose of the work assigned to this Division Bench. It was most improper on his part to disregard the administrative directions given by the chief Justice of the High Court and to sit singly to take up matters that he thought he should take up. even if he was originally shown as sitting singly on 22.12.1995, when the Bench was reconstituted and he was so informed, he was required to sit in a Division Bench on that day and was bound to carry out this direction. If there was any difficulty, it was his duty to go to the Chief Justice and explain the situation so that the Chief Justice could then give appropriate directions in that connection. But he could not have, on his own, disregarded the directions given by the Chief Justice and chosen to sit singly. We deprecate this behavior which totally undermines judicial discipline and proper functioning of High court."

(Emphasis supplied) The power of the Chief Justice of the Rajasthan high Court to direct that any case or cases which may ordinarily be heard by a Judge sitting alone shall be heard by a Bench of two or more Judges is traceable not only to his powers under Rule 54 (supra) but also specifically to Rule 55 of the Rules. Cases involving constitutional questions or issues are required to be heard not by a single Judge but by a Bench of at least two judges. Rule 55. Jurisdiction of a Single Judge.- Except as provided by these Rules or other Law, the following cases shall ordinarily be admitted, heard and disposed of by a Judge sitting alone, namely; .....

(xi) the writ petition under Article 226 and 227 of the Constitution of India, except the writ petitions challenging the vires of the provisions of any Act or rules made

thereunder and Writs against the order of the Board of Revenue, the RAJASTHAN State Service Application Tribunal.

(xii) an application under Article 228 of the Constitution of India and the case withdrawn under the said Article:

Provided that-

(a) the Chief Justice may, from time to time direct that any case or class of cases which may be heard by a Judge sitting alone shall be heard by a Bench of two or more Judges,

(b) a Judge may, if he thinks fit, refer a case which may be heard by a Judge sitting along on any question or questions of law arising therein for decision to a Bench of two Judges; and .....

Rule 66 of the High court Rules deals with tied up cases while Rule 74 deals with part- hard cases. These Rules read as follows:-

Rule 66. Tied up cases. - (1) A case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. A case in which a Bench has merely directed notice to issue to the opposite party or passed an ex parted order shall not be deemed to be a case partly heard by such Bench.

(2) Where a criminal revision has been admitted on the question of severity of the sentence only, it shall ordinarily be heard by the Bench admitting it."

Rule 74. Part-heard cases. - A case which remains part-heard at the end of the day shall, unless otherwise ordered by the Judge or judges concerned, be placed first after miscellaneous cases, if any, in the Day's List for the day on which such Judge or Judges next sit. Every part-heard case entered in the Day's List may be proceeded with whether any Advocate appearing in the case is present or not.

provided that if any part-

heard case cannot be heard for more than two months on account of the absence of any Judge or judges constituting the Bench, the Chief Justice may order such part-heard case to be laid before any other Judge or judges to be heard afresh."

Thus, cases involving challenge to the vires of any Act or rules or which involve constitutional issues are required to be heard by a Bench of two or more Judges under Rule 55 (xi) (Supra). Under proviso (a) to Rule 55 (xi) (Supra) the Chief Justice may, from time to time, direct that "any case or class or class of cases which may be heard by a Judge sitting alone shall be heard by a bench of two or more Judges" proviso (b) to the Rule enables reference to the Division Bench of a case on any

question or questions by a Single Judge himself. The jurisdiction under proviso (a) can be exercised by the Chief Justice "at any time" and therefore it makes no difference that the case to be referred to the larger bench under the Rules is a part-heard case before a particular single Judge.

Under Rule 74 (supra), a case which remains part heard at the end of the day, is ordinarily required to be heard by the concerned Judge or the Judges sitting next and is to be placed first after miscellaneous cases in the next list but that does not imply that the chief justice does not have the power or jurisdiction to transfer even a part-heard case, in the peculiar facts and circumstances of a case, from a single judge to a Division Bench in exercise of the jurisdiction vested in the Chief Justice under proviso (a) to Rule 55 (xi) (supra).

A Division Bench of the Calcutta High Court in the case of Sohan lal Baid vs. State of West Bengal, AIR 1990 Calcutta 168 has dealt with this aspect elaborately. After referring to the provisions of the Government of India Act 1935, the Calcutta High Court Rules and a number of decided cases, the Bench observed:-

> " The foregoing review of the constitutional and statutory provisions and the case law on the subject leaves no room for doubt or debate that once the Chief Justice has determined what Judges of the Court ar to sit alone or to constitute the several Division Courts and has allocated the judicial business of the Court amongst them, the power and jurisdiction to take cognizance of the respective classes or categories of cases presented in a formal way for their decision, according to such determination, is acquired. To put it negatively, the power and jurisdiction to take cognizance of and to hear specified categories or classes of cases and to adjudicate and exercise any judicial power in respect of them is derived only from the determination made by the Chief justice in exercise of this constitutional, statutory and inherent powers and from no other source and no cases which is not covered by such determination can be entertained, dealt with or decided by the judges sitting singly or in Division Courts till such determination remains operative. Till any determination made by the Chief Justice lasts, no Judge who sits singly can sit in a Division Bench nor can a Division Bench be split up and one or both of the judges constituting such bench sit singly or constitute a Division bench with another Judge and take up any other kind of judicial business. Even cases which are required to be heard only by a particular single Judge or Division Bench, such as part-heard matters, review cases et... cannot be heard, unless the Judge concerned is sitting singly or he same Division bench has assembled and has been taking up judicial business under the extant determination. Such reconstitution of benches can take place only if the Chief Justice specially determines accordingly."

(Emphasis ours) A Full Bench of the Allahabad High Court in Sanjay Kumar Srivastava Vs. Acting Chief justice & ORs (W.P. 2332 (H.B.) of 1993 decided on 7.10.1993) (1996) Allahabad Weekly cases 644 was confronted with a similar situation. The Full bench precisely dealt with an objection raised in that case to the effect that since the writ petition was a part-heard matter of the Division bench, it was not open to the Chief Justice of the High Court to refer that part-heard case to a Full

Bench for hearing and decision. It was argued before the Full Bench , that once the hearing of the case had started before the Division Bench, the jurisdiction to refer the case or the question involved therein to a larger bench vests only in the Judges hearing the case and not in the Chief Justice. It was also argued that the Chief Justice could not, even on an application made by the Chief Standing Counsel, refer the case which had been heard in part by a Division bench for decision by a Full Bench of that Court.

After referring to the provisions of the Rules of the Allahabad High Court and in particular Rule 1 of chapter V, which provides that judges shall sit alone or in such division courts as may be constituted by the Chief Justice from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions and Rule 6 of Chapter V which inter alia provides:

> " The Chief Justice may constitute a Bench of two or more judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein."

and a catena of authorities, rejected the arguments of the learned counsel fan opined that the order of the chief Justice, on an application filed by the Chief Standing counsel, to refer a case which was being heard by the Division Bench, for hearing by a larger Bench of three Judges because of the peculiar facts and circumstances as disclosed in the application of the chief Standing Counsel, was a perfectly valid and a legally sound order. The Bench speaking through S. Saghir Ahmad, J. (As His Lordship then was) said:

> "Under Rule 6 of Chapter V of the Rules of Court, it can well be brought to the notice of the Chief Justice through an application of even otherwise that there was a case which is required to be heard by a larger Bench on account of an important question of law being involved in the case or because of the conflicting decisions on the point in issue in that case. If the Chief Justice takes cognizance of an application laid before him under Rule 6 of Chapter V of the rules of court and constitutes a Bench of two or more Judges to decide the case, he cannot be said to have acted in violation of any statutory provisions."

The learned Judge then went on to observe:

> "In view of the above, it is clear that the Chief Justice enjoys a special status not only under Constitution but also under Rules of Court, 1952 made in exercise of powers conferred by Article 225 of the Constitution. The Chief Justice alone can determine jurisdiction of various Judges of the Court. He alone can assign work to a Judge sitting alone and to the Judges sitting in Division Bench or to Judges sitting in Full Bench. He alone has the jurisdiction to decide which case will be heard by a Judge sitting alone or which case will be heard by two or more Judges.

> The conferment of this power exclusively on the Chief Justice is necessary so that various Courts comprising of the Judges sitting alone or in Division Bench etc., work in a co-ordinated manner and the jurisdiction of one court is not overlapped by other Court. If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the court would collapse and judicial functioning of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case. The nucleus for proper functioning of the Court is the "self" and "judicial"

discipline of Judges which is sought to be achieved by Rules of Court by placing in the hands of the Chief Justice Full authority and power to distribute work to the Judges and to regulate distribute work to the Judges and to regulate distribute work to the Judges and to regulate distribute work to the Judges and to regulate distribute work to the Judges and to regulate their jurisdiction and sittings."

(Emphasis ours) The above opinion appeals to us and we agree with it. Therefore, from a review of the statutory provisions and the cases on the subject as rightly decided by various High Courts, to which reference has been made by us, it follows that no judge or a Bench of judges can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted. if every judge of a High Court starts picking and choosing cases for disposal by him, the discipline in the High court would be the casualty and the Administration of Justice would suffer. No legal system can permit machinery of the court to collapse. the chief Justice has the authority and the jurisdiction to refer even a part-heard case to a Division Bench for its disposal in accordance with law where the Rules so demand. It is a complete fallacy to assume that a part-heard case can under no circumstances assume that a part-heard case can under no circumstances be withdrawn from the Bench and referred to a larger bench, even where the Rules make it essential for such a case to be heard by a larger Bench.

In the instant case, it was the statutory duty of the Chief justice to assign writ petition No. 2949 of 1996 to a Division Bench of the High Court for hearing since it involved constitutional issues and Rule 55 of the high Court Rules required such a case to be so heard. no exception whatsoever could, therefore, be taken to the order of the Chief Justice made on 9.9.97, referring that writ petition for hearing to a Division Bench. In the facts and circumstances of the case the Chief Justice was statutorily obliged to take cognizance of the application filed by the Additional Advocate General of the State and pass appropriate orders. he could not shut his eyes as regards the requirements of rule 55 (supra) only because a single judge of the High Court was treating the case as part-heard. The correctness of the order of the Chief Justice could only be tested in judicial proceedings in a manner known to law. No single Judge was competent to find fault with it.

As earlier noticed, on 11.9.97 a separate board was prepared for Shethna, J. under directions of the Chief Justice in view of the order made by Shethna, J on 8.9.1997 and part heard criminal revision petitions and writ petitions were placed before placed before his Lordship. Since, writ petition No.

2949/96 had not been put up along with the other part heard cases, Shethna, J., as it appears from the impugned order, sent for Mr. Madani (the dealing officer from the registry) to explain as to why that writ petition had not been placed before him ? Mr. Madani informed him, as is noticed in the impugned order, that since the writ petition had already been disposed of it was not listed before him. The learned Judge directed Mr. Madani to produce the original record of that writ petition which was produce before him on 12.997, on which date the learned Judge directed that the papers of (SB Civil W.P. No. 2949/96) "be kept with this case" (Crl. Revision Petition) even though there was no connection or relevance between the two cases. In our considered opinion Shethna, J. did not have any authority, statutory or otherwise - nor was it necessary - to call for the record of the above Writ petition: firstly because it stood already disposed of by a Division Bench and secondly because t was totally unrelated to and unconnected with the criminal revision petition he was to hear. Therefore, it appears that the record was sent for into for mere perusal but for some other purpose, not strictly judicial. This becomes quite obvious from the fact that while stating "brief" reasons for not placing writ petition No. 2949/96" before him, Shethna, J. observed:

> "If the writ petition had really become infructuous then the same statement could have been made before this court when this Court treated the matter as part heard and this Court would have also passed the same order provided it had really become infructuous. The most interesting part of it is that the matter was disposed of by Division Bench without the second set and only on one set the Division Bench passed the order."

The aforesaid observations cast uncalled for aspersions not only against the learned counsel for the writ petitioner who had made the statement before the Division Bench but also against the learned Judges constitution the Division Bench. To say the least it was improper on the part of the learned Judge to have cast aspersions on the conduct of the counsel and the Bench in relation to a disposed of matter, in a wholly unconnected judicial proceedings. In doing so he transgressed all bounds of judicial propriety. In doing so he transgressed all bounds of judicial propriety and discipline.

The insinuations made by Shethna, J against the Chief Justice of the High court for transferring the Writ petition tot he Division Bench are not only uncalled for, unwarranted and unjustified but are also subversive of proper judicial discipline. to insinuate, as the learned Judge does, that the writ petition was got 'disposed of' in 'suspicious' circumstances is wholly wrong and devoid of sobriety expected of a judicial officer. The insinuation also amounts to contempt of the Division Bench as it implies that the Judges of the Division Bench were so "amenable". The insinuations are aimed at bringing the administration of justice into disrepute and tend to shake public confidence in the impartiality of the judiciary. The observations, insinuations and aspersions lack courtesy and good faith. Judicial restraint has been thrown to the winds. It is unbecoming of a Judge of the High court to travel out of the confines of the issue before him (in this case the criminal revision petition) and to fish out material to unjustifiably malign someone more particularly when that someone happens to be the one who is the head of the judicial family in that High court. We most strongly deprecate this practice. In the case of Braj Kishore Thakur vs. Union of India, (1997) 4 SCC 65, while expunging some adverse remarks made by the High Court against a Judge of the subordinate court, this Court said:

" Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction.

Higher courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in findings or orders of courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to personages in lower cadre. It is well to remember the words of a jurist that " a Judge who has not committed any error is yet to be born....

No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher courts publicly express lack of faith in the subordinate Judges. it has been said, time and again, that respect for judiciary is not in hands by using intemperate language and by hands by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a judicial officer against whom aspersions are made in the judgment could not appear before the higher court to defend his order. Judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary. What was said in relation to the Judges of the lower judiciary applies with equal force to the judges of the superior judiciary.

In A. M. Mathur vs. Pramod Kumar Gupta, (1990) 2 SCC 533, this Court said:

" Judicial restraint and discipline are as necessary to the orderly administration of justice as they to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Respect to those who come before the court as well to other co-

ordinate branches of the State, the executive and the legislature. there must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

The Judge's Bench is a seat of power. Not only do Judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general

principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case.

(Emphasis supplied) There is one other disquieting and disturbing aspect of the matter and that is that the learned judge has cast aspersions and made insinuations against the Chief Justice and the Judges constituting the Division Bench, who had passed judicial orders in the writ petition. They have had no chance or opportunity to reply to those aspersions and insinuations. By the very nature of their office, the judges of the Supreme Court or the High court, cannot enter into a public controversy and the file affidavits to repudiate any criticism or allegations made against them. Silence, as an option, becomes necessary by the very nature of the office which the Judges hold. Those who criticise the Judges in relation to their judicial or administrative work, must remember that the criticism, even if outspoken, can only be of the judgement but not of the judge. By casting aspersions on the Judges personally or using intemperate language against them, the critics, who ever they may be, strike a blow at the prestige of the intemperate language against them the critics, who ever they may be, strike a blow at the prestige of the institution and erode its credibility. That must be avoided at all costs. Shethana, J must be presumed to be aware of this and yet he permitted himself the liberty to make intemperate comments and disparaging and derogatory remarks against the Chief Justice and his Brother Judges as also the former Chief Justices of that Court including the present Chief justice of India who cannot reply or respond to the unfounded charges. it is not merely a case of lack of judicial restraint but it amounts to abuse and misuse of judicial authority and betrays lack of respect for judicial institution. Besides when made recklessly (as in the instant case) it amounts to interference with the judicial process.

The foundation of our of our system which is based on the independence and impartiality of those who man it, will be shaken if disparaging and derogatory remarks are permitted to be made against brother Judges with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from outside forces but also from those who are in integral part of the system. Dangers from within have much larger and greater potential for harm than dangers from outside. We alone in the judicial family can guard against such dangers from within. One of the sure means to achieve it is by the Judges remaining circumspect and self-disciplined in the discharge of their judicial functions. We have been really distressed by the manner in which the learned Judge his acted. We do not wish to say anymore on this aspect.

Thus, for what has been said above, we hold that all comments, observations and aspersions made by shethna, J. against the Chief Justice and the learned Judges costituting the Division Bench are without any justification or jurisdiction and bear no relevance to the case which was before the learned Judge and the same deserve to be set aside and expunged from the record.

That brings us to the next question relating to the propriety of issuance of notice to the Chief Justice of the High Court to show cause why contempt proceedings be not initiated against him. In substance the contempt that is alleged to have been committed by the Chief Justice of the High Court respondent No. 2, is in "transferring" W.P. No. 2949/96 which had been heard in part by shethna J. to a Division bench for its disposal and for not placing that writ petition along with "other part heard cases" before the learned Judge despite his orders to that effect. As already noticed Shethna, J, had twice on 3.9.97, directed criminal revision petition No. 354/97 to be listed alongwith "other part heard cases" before him. The great anxiety to hear "other part-heard cases" alongwith the criminal revision petition, on a date when the learned Judge was sitting in the Division bench exposes an undue interest in some matter, which again is against judicial discipline. perhaps writ petition No. 2949/96 was one such part-heard case which the learned Judge, for reasons best known to him was keen to hear. We have dealt with in an earlier part of this Judgment ass to how and why W.P. 2949/96 was referred by the learned chief Justice for hearing to the Division Bench We need not repeat it. Suffice it, to notice that a judicial order had been passed by the Chief justice allowing the application filed by the Additional Advocate General under Rule 55 for referring the writ petition, for its disposal, to a Division Bench, Shethna, J. therefore had no jurisdiction to question the correctness of that order more so in some unconnected and unrelated collateral proceedings. the withdrawal of the part-heard writ petition from the board of shethan, J. and its transfer to the Division Bench for its disposal in view of the requirements of Rule 55, was an action squarely permitted by the Rules and in conformity with the statue. It was an action of the Chief Justice backed by statutory sanction. That order of the Chief Justice was legally valid and unexceptionable.

We entirely agree with the learned Solicitor General that the issuance of the notice to the Chief Justice to show cause why proceedings under the Contempt of court Act be not initiated against him for transferring the part-heard writ petition No. 2949/96 to the Division Bench for hearing, is not only subversive of judicial discipline and illegal but is also without jurisdiction. No such notice could be issued to the Chief Justice since the order referring the case to the Division bench was an order legally made by the Chief Justice in exercise of his statutory powers. Such an order can never invite initiation on contempt proceedings against him. The issuance of notice smacks of judicial authoritarianism and is not permissible in law.

Even otherwise, it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a Judge of a court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings. This immunity is essential to enable the Judges of the Court of Record to discharge their duties without fear or favour, though remaining within the bounds of their jurisdiction. Immunity from any civil or criminal action or a charge of contempt of court is essential for maintaining independence of the judiciary and for the strength of the administration of justice. The following passage from Oswalds's Contempt of Court, 3rd Edn. 1993 (Reprint) in this behalf is apposite.

> " An action will not lie against a Judge of a Court of Record for a Wrongful commitment in the exercise of his judicial duties, any more than for an erroneous judgment(s). But the Divisional Court refused to strike out as disclosing no cause of

> action a statement of claim in an action for malicious prosecution brought against certain Judges of the Supreme court of Trinidad for having (as it was alleged) of their own motion, and without any evidence, caused the plaintiff to be prosecuted and committed to prison for an alleged contempt of the Supreme court in forwarding tot he Governor of the Colony for transmission to the Queen in Council a petition of appeal complaining of the oppressive conduct of the defendants as Judges
>
> (t). At the trial of this case before Lord coleridge, C.J., the jury found as regards one of the defendants that "he had overstrained "his judicial powers, and had acted in the administration of justice oppressively and maliciously to the "prejudice of the plaintiff and to the perversion of "justice". The jury assessed the damages at pounds 500.

Notwithstanding the verdict, Lord coloridge ordered judgment to be entered for the defendant. This judgement was affirmed by the Court of appeal, Lord Esher, M.R. in delivering the judgment of the Court, said. "if any Judge exercises his jurisdiction from "malicious motives, he has been quality of a gross "dereliction of duty, " And after saving that a judge was liable to be removed from his office for such conduct. lord Eaher went on to say that the common law clearly was that no action lay against a Judge of a Court of Record "for doing something within his jurisdiction but "during it maliciously and contrary to good faith". (Emphasis ours) Thus no action could lie against the Chief Justice acting judicially for doing something within his jurisdiction even if the order is patently erroneous and unsustainable on merits. commenting upon the extent of immunity which the Judges of the superior courts must have for preserving independence of the judiciary, he authors of Salmond and Heuston on the Law Torts, 21st Edn. 1996 in Chapter XIX observe:

> "A judge of one of the superior courts is absolutely exempt from all civil liability for acts done by him in the execution of his judicial functions. His exemption from civil liability is absolute, extending not merely to errors of law and fact, but to the malicious, corrupt, or oppressive exercise of his judicial powers. For it is better that occasional injustice should be done and remain unredressed under the cover of this immunity than that the independence of the judicature and the strength of the administration of justice should be weakened by the liability of judges to unfounded and vexatious charges of errors.
>
> malice, or incompetence brought against them by disappointed litigants -" otherwise no man but a beggar, or a fool, would be a judge."

(See Arenson Vs. Casson, Beckman Rutley & co. (1997) AC 405 at p.440, per Lord fraser) (Emphasis supplied) Even under the Judicial officers' protection Act 1985 immunity has been given to judicial office's his relation to judicial work done by them as well as for the judicial orders made by them. They statement of objects and reasons for introducing the Bill in relation to the 1985 Act which reads thus is instructive:

> "Judiciary is one of the main pillars of parliamentary democracy as envisaged by the Constitution. It is essential to provide for all immunities necessary to enables Judges to act fearlessly and impartially in the discharge of their judicial duties. It will be difficult for the Judges to function if their actions in court are made subject to legal proceedings, either civil or criminal."

Section 16(1) of the Contempt of Court Act 1971 does not apply to the Judges of the court of record but only to the subordinate judiciary.

The issuance of a notice to show cause why contempt proceedings be not initiated against respondent no.2, the chief Justice of the High Court, by Shethna, J. in the facts and circumstances of this case is thus wholly illegal unwarranted and without jurisdiction. Issuance of such a notice is also misconceived since by no stretch of imagination can it be said that there was any interference in the administration of justice by chief Justice in exercising his statutory powers to allocate work to puisne Judges and to the division benches. The order of reference of the part-heard writ petition is the Division Bench for its disposal, as already noticed, was legally sound and statutorily valid. Such an action on the part of a Chief Justice could never become a cause for issuance of contempt notice to him. To expect the Chief Justice to say so in response to the show cause notice before the learned single Judge would be adding insult to injury. We cannot countenance such a situation. The direction to issue show cause notice to the chief justice, respondent No.2 being totally misconceived, illegal and without any jurisdiction and is wholly unsustainable. We quash the same.

This now takes us to that part of the order in which comments have been made regarding drawl of D.A. and non- payment of charges for occupation of Bungalow No. A/2, Jaipur by some of the former Chief Justices of the Rajasthan High Court including the present Chief Justice of India, Mr. Justice J.S. Verma, till 1994. The insinuation made is that all of them had "illegally" drawn full dearness allowance of Rs. 250/- per day to which they were not entitled and their action, amounted to "misappropriation of public funds"

> because it is alleged that each one of them had been "allotted free accommodation by the Government of Rajasthan", Shethna, J discussed this aspect of the case in some details after relying upon materials which we do not find available in the record of Writ petition No. 2949/96 and concluded.
>
> " From the above, it is clear that no Chief Justice of this Court was paying any amount for his stay in Bungalow No. A/2 at Jaipur prior to

10.6.1994 but all of them have illegally drawn full D.A. of Rs.

250/- per day which is clear from Rule 2(1) (e) of the High Court Travelling Allowance Rules, 1966 and sub-rule (iv) of the Rules which is quoted in para 4 of the reply affidavit by the High Court itself. The present CJI Hon'ble Mr. Justice J. S. Verma was also one of the former Chief Justice of this Court from 1986 to 1989. he also initially stayed at Jaipur for 15 days and later on sat more at Jaipur than Jodhpur and illegal drew full D.A. of Rs. 250/- per day for his stay at jaipur without paying any

charges to which there was an audit objection which fact was on the record of this High Court . The High Court Judges are Darwin gand disbursing authorities and nobody else would come to know then in that case they should be;

more careful while drawing such D.A. amount. It is nothing but a mis-appropriation of the public fund which is a criminal offence under the penal Code."

Justification or propriety for making these comments apart, the validity of these comments/observations needs to be tested for procedural propriety factual accuracy and visible legal support.

So far as the procedural propriety is concerned, it need not detain us much as admittedly, the comments have been made in respect of all the former Chief Justices of the Rajasthan High Court who held that high office till 1994, without putting them on any notice and behind their back. All of them have been condemned unheard. it needs no discussion to say, in the light of the settled law, that an order of this type which violated potential principles of natural justice and is made behind the back of the affected is wholly unsustainable. On this short ground, all those comments/observations and conclusions arrived at by Shethna, J. are required to be quashed and expunged. the learned Attorney General submitted that the observations (supra) were both factually and legally not sustainable and urged that keeping in view the high office of Chief Justice of India we should test legal and factual validity of the observations also. We therefore do not propose to rest our order on grounds of procedural infirmities and judicial propriety only. both factually as well as legally the observations/comments, tend, as the discussion shall presently expose, to be the result of total disregard for propriety and decency as to make the motives of the author suspect and in the process the Judge has made himself Coram- non-judice.

Vide Section 2 of High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order 1976, a permanent Bench of the Rajasthan High Court at Jaipur was established at Jaipur.

Sec.2. "Establishment of a permanent Bench of the RAJASTHAN High court at Jaipur.- There shall be established a permanent Bench of the High Court of Rajasthan at Jaipur, and such Judges of the High Court of Rajasthan, being not less than five in number, as the Chief Justice of that High Court may, from time to the, nominate, shall sit at Jaipur in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Ajmer, Alwar, Bharatpur, Bundi, Jaipur, Jhalawar, Jhunjhunu, Kotah, Sawai Madhopur, Sikar and Tonk:

> Provided ..... According to the above provision, it is for the Chief Justice after the constitution of the Bench at Jaipur to nominate, from time to time, at least five judges to sit at Jaipur to hear cases. The Judges so nominated are obliged to sit at Jaipur and do such work as is assigned to them. it is their duty to do so. the duration of their sitting at Jaipur is to be determined by the Chief Justice and he may determine it from time to time.

After the establishment of the Bench of the High Court at Jaipur in 1979, an order came to be made by the Government of Rajasthan bearing No. F(116)/R.G./11/78 on 18.12.1979 declaring bungalow No. A/2 at Jaipur as "High Court Guest House". An English translation of that order reads:

GOVT. OF RAJASTHAN GENERAL ADMINISTRATION (GRZ) DEPTT. TO The Registrar, Rajasthan High Court, Jodhpur.

No. F(116) G.A./11/78 Jaipur Dt. 18.12.79 Sub: Regarding conversion of bungalow no A-2 Gandhi Nagar, as a guest house. Sir, In reference to your above DO letter No. PA/R/4211 dated 28.5.97, use of bungalow No. A-2, Gandhi Nagar, as High Court Guest House is hereby sanctioned.

Yours Sd/-

Special Secretary to the Govt." By another order of the State Government dated 21.8.1991, Bungalow No. C-42 at Jodhpur was also converted and declared as "High Court Guest House" . Both the bungalow, A/2 at Jaipur and c -42 at Jodhpur, were placed at the disposal of the High Court of Rajasthan for their use as High Court Guest Houses. Neither or the two bungalows was allotted free of rent to any Chief Justice of the High Court. Chief Justice of the High Court has been provided with a rent free official residence only at Jodhpur under Rules even though providing of an official bungalow to the Chief Justice at jaipur would also have been in order since by the very nature of his office, the Chief Justice could be required to sit at Jaipur also have been in order since by the very nature of his office, the Chief Justice could be required to sit at jaipur also both for administrative as well as judicial work, depending upon the exigencies of the situation. It was only on 21.6.97, when for the first time the Government of Rajasthan allotted Bungalow NC. A/C at Jaipur for the exclusive use of the Chief Justice and Bungalow No. A/5 at Jaipur was declared as the High Court Guest House and placed under the control of Rajasthan High Court. That order dated 21.6.1997 reads thus:

"Govt. Bungalow No. A-2 Gandhi Nagar, Jaipur has been allotted for the exclusive use of the Hon'ble Chief Justice of Rajasthan and Bungalow No. A-5, Gandhi Nagar, Jaipur has been converted and allowed to be used as Guest House under the Control of Rajasthan High Court.

The Governor of Rajasthan hereby accords sanction.

By order of the Governor Sd/-

(Jagat Singh) Secretary to the Govt.

The order dated 21.6.97 was amended on 1.8.97 in the following manner :

" In continuation of the order of this Office even number dated 21.6.97, the Bungalow No. A- 2, Gandhi Nagar, Jaipur is hereby converted for the exclusive use of Hon'ble Chief Justice, Rajasthan High Court as Guest House w.e.f. 21.6.97.

The Governor has accorded sanction. By order of the Governor Sd/-

(Jagat Singh) Secretary to the Govt.

Thus, what transpires from the record is that Bungalow No. A/2 at Jaipur was declared as High Court Guest House by the Government of Rajasthan as early as in 1979 and placed under the control of the Rajasthan High Court. It was not allotted to the Chief Justice of the High Court- free or rent - nor was it allotted exclusively for the use of the Chief Justice of that High Court as a Guest House till 1997 when that bungalow was allotted for the exclusive use of the Chief Justice and by a subsequent order that Bungalow at Jaipur was declared as a "Guest House" for the exclusive use of the Chief Justice. The High Court of Rajasthan under whose control Bungalow No. A/2 at jaipur had been placed by the Government of Rajasthan since 1979, did not fix or levy any charges for the occupation of the Bungalow till 1994. It was being maintained by the High Court as a Guest House though there were no boarding facilities provided in that Guest House.

Audit of the accounts of the High Court are conducted by the Accountant General of Rajasthan from time to time. According to the affidavit filed by the Registrar of the High Court, Shri Manak Mohta in this Court, an audit objection was raised fro the first time and conveyed to the High Courty on 30.3.1991 regarding drawl of full daily allowance by the Chief Justices who had been provided "free Government accommodation" for their stay at Jaipur. It would be useful to refer to that affidavit at this stage:

"Since the establishment of the permanent Bench at Jaipur on 31.3.1997 till 31.8.1988 there was no audit objection raised by the Accountant General of Rajasthan in any of its audit reports with regards to drawl of daily allowance by former Hon'ble Chief Justice or Judges for their stay at Jaipur. That for the first time an audit objection with regard to drawl of full daily allowance by former Hon'ble Chief Justices for their stay at Jaipur was raised by the Accountant General of Rajasthan for the audit period from 1.9.1988 to 31.12.1990. The audit of this period was conducted from 8.1.1991 to 2.2.1991 which was communicated by the Accountant General to the Registrar of Rajasthan High Court and received on 30.3.1991, during the tenure of former Hon'ble Chief Justice Shri K. C. Agarwal, who occupied the office of the Chief Justice of Rajasthan with effect from 16.4.1990.

That similar audit objections were again raised for the period 1.1.1991 to 31.5.1993. The audit for this period was conducted from 15.6.93 to 9.7.93 and the audit report was communicated by the Accountant General to the Registrar, rajasthan High Court

and was received by him on 12.5.94. During this audit period the amount of audit objections with regard to Hon'ble Chief Justice Shri J.S. Verma and Shri M. C. Jain remained the same whereas the among got increased for Hon'ble chief Justice Shri K. S. Agarwal.

That a similar audit objection was again raised in the audit period from 1.6.93 to 1.1.1995. The audit of this period was conducted from 13.2.1995 to 6.3.1995 and the communication was made by the Accountant General to the Registrar, Rajasthan High Court which was received by him on 5.4.1995. During this period the amount shown recoverable remained the same with regard to Hon'ble Chief Justice Shri J. S. Verma and Shri M. C. Jain wheres it increased in the case of Hon'ble Chief Justice Shri K.C. Agarwal.

However prior to the receipt of such report, a decision was taken by the Hon'ble Chief Justice Shri G. C. Mital on 10.6.1994 that his Lordship would pay Rs. 10/- per day as room rent and Rs. 6/- per day for geyser/heater/air-conditioner, total being Rs.16/- per day which was at par with prevalent circuit House charges."

With a view to meet audit objection, it appears that on 10.6.1994, following proposal was made by the Registrar of the High Court of Rajasthan relating to the charges for stay in the High Court Guest House.

FIXATION OF CHARGES FOR HIGH COURT GUEST HOUSE A-2 JAIPUR ORDER DATED 10.6.94 BY REGISTRAR " 1. Regarding the payment of D.A. to the Chief Justices during their stay at Jaipur Audit Party of Accountant gen. has objected the use of House No. A- 2 by the Chief Justices during their stay at Jaipur because they have been allotted free government accommodation;

1. Hon'ble J. S. Verma

2. Hon'ble M. C. Jain

3. Hon'ble K. C. Aggarwal

2. In the above Govt. accommodation there is no arrangement of boarding and breakfast and no post for the maintenance of A-2 has been sanctioned by the State Government.

Therefore, in connection with the objections the accommodation may be taken in the category of Circuit House for which the rates prescribed by the State Government is as under:

1. Single use Double bed - Rs.10

2. Two Persons Double bed - Rs.10

> 3. If there is arrangement of geyser/heater/cooler Rs. 4 will be charged extra and if air conditioning machine is there Rs.6 instead of Rs. 4 will be charge.

Hence the above mentioned residence may be taken in the category of the circuit House.

4. So if Hon'ble Chief Justice is ready to pay the charges at the rate of Circuit House, they may claim full D.A. during their stay at Jaipur.

Sd/-

The above proposal was followed by the following noting:

> " I have apprised the Hon'ble Chief Justice, the Rules position. His Lordships has agreed to pay the charges for his stay in the Guest House as per Circuit House rate. The P.P.S. may be requested to deposit the charges for the stay of Hon'ble Chief Justice in the Guest House, A-2 at Jaipur."

Sd/-

(G. L. Gupta) 18.6.94 Therefore, what emerges is that an objection was raised by the audit party, while conducting audit from 8.1.1991 to 2.2.1991 for the period 1.9.1988 to 31.12.1990 regarding drawl of full Daily Allowance by the Chief Justices who according to the audit party had been provided "free government accommodation" at Jaipur presumably treating Bungalow No. A/2 as "free government accommodation" allotted to the chief Justices. The audit objection, for the first time, was conveyed by the Accountant General to the Registrar of the High Court and was received by the Registrar on 30.3.1991. The audit objection, thereafter, continued to be repeated in the subsequent years after audits were conducted. Thus, it is obvious that prior to 30.3.91, no audit objection had ever been conveyed to the High Court let alone to any former chief Justice of that Court. There was no audit objection raised for any period prior to 1.9.88, even though the High Court Guest House, as already noticed, was being used for their stay by various Chief justices since 1979. Even after 10.6.94, the Chief Justices of Rajasthan High Court kept on drawing their full daily allowance though they started paying charges for occupation of the High Court Guest House, Bungalow No. A/2 at Jaipur, at the rates indicated in the Registrar's note dated 10.6.1994 (supra). The charges were being paid to the High Court since the bungalow had been allotted to the High Court for its use as a Guest House. Admittedly, at no point of time did the High court call upon any former Chief Justice to deposit the arrears of charges for occupation of the Guest House after the charges were fixed in 1994.

Under the High Court Judges Travelling Allowance Rules 1956, the Judges of the High Court w.e.f. 12.5.1976 were entitled;

> "(c) to a daily allowance at the rate of Rs. 35/- for the entire period of absence from headquarters, the absence being reckoned from the time and departure from headquarters to the time of return to headquarters:

Provided that the daily allowance so admissible shall be regulated as follows:-

(i) full daily allowance for each completed day, that is, reckoned from mid-night to mid-night;

(ii) for absence from headquarters for less than twenty-four hours, the daily allowance shall be at the following rates, namely;-

(1) if the absence from headquarters does not exceed six hours, 90% of the full daily allowance.

(2) If the absence from head quarters exceeds six hours, but does not exceed twelve hours 50% of the full daily allowance;

(3) if the absence from headquarters exceeds twelve hours, full daily allowance;

(iii) if the date of departure from and return to headquarters fall on different dates, the period of absence form headquarters shall be reckoned as two days and daily allowance shall be calculated for each day as in clause

(ii):"

Subsequently, the rate of daily allowance was revised vide G.S.R. 1194 (E) dated 7.11.1986 and the Judges were entitled:

"to a daily allowance at the rate of Rs. 100/- for the entire period of absence form headquarters, the absence being reckoned from the time to departure from headquarters to the time to return to headquarters.

Provided that the daily allowance so admissible shall be regulated as follows:-

(i) full daily allowance for each completed day, that is, reckoned from mid-night to mid- night;

(ii) for absence from headquarters for less than twenty- four hours, the daily allowance shall be at the following rates, namely:-

With effect from 4.12.1991 the rate of daily allowance was further enhanced:

" (e) to a daily allowance at the rate of (Rs. 250/-) for the entire period of absence from headquarters, the absence being reckoned from the time of departure from headquarters to the time of return to headquarters.

Provided that the daily allowance so admissible shall be regulated as follows:-

(i) full daily allowance for each completed day, that is, reckoned from mid-night to mid- night;

(ii) for absence from headquarters fro less than twenty-

four hours, the daily allowance shall be at the following rates, namely:-

Thus, from 1976 to 7.11.1986, the daily allowance admissible to the Judges, including the Chief Justice, was at the rate of Rs. 35/- per day. It was enhanced to Rs. 100/- per day w.e.f. 7.11.1986 and further enhanced to Rs. 250/- per day w.e.f. 4.12.1991.

The provision on the basis of which the audit party has raised the objection as is apparent from the audit report, is sub-clause (E) (ii) of para 2 of the High Court Judges Travelling allowances Rules. 1956 which reads:

" When a Judge is a State Guest or is allowed to avail free board and lodging at the expense of the Central or State Government or any autonomous industrial or commercial under takings or corporation or a statutory body or a local authority, in which government funds have ben invested or in which Government have any other interest, the daily allowance shall be restricted to 25 percent of the amount admissible or sanctioned, and if only board or lodging is allowed free, the Judge may draw daily allowance at one half of the admissible rate."

Before considering the application of the aforesaid provision to the cases of the former chief Justices of Rajasthan High Court, who drew full daily allowance while staying in the High Court Guest House at Jaipur, it is desirable to examine the factual accuracy of the comments made by the learned single Judge.

From an analysis of the rule position relating to the drawl of daily allowance by the Judges, it follows that it is a factually incorrect observation of Shethna, J that all the Chief Justices till 1994 had "illegally drawn full daily allowance of Rs. 250/- per day". Till 1991, the daily allowance, was payable to the Judges either at the rate of Rs. 35/- or Rs. 100/- per day. It was enhanced to Rs. 250/- per day only w.e.f. 4.12.1991. No chief Justice, therefore, could have drawn a daily allowance of Rs.250/- prior to 4.12.91.

Specific reference has been made by Shethna, J to the present Chief Justice of India, Mr. Justice J.S. Verma who it whit alleged had "illegally" drawn full daily allowance of Rs. 250/- per day inspite of an "audit objection", known to the High Court. According to Shethna, J.:

" The present CJI Hon'ble Mr. Justice J.S. Verma was also one of the former Chief Justice of this Court from 1986 to 1989. He also initially stayed at Jaipur for 15 days and later on sat more of Rs. 250/- per day for his stay at Jaipur without paying any charges to which there was an audit objection which fact was on the record of this High Court."

One really wonders where the learned Judge got the figure of Rs. 250/- per day as the D.A. for the period 1986- 89, during which period Verma, J. was the Chief Justice of the Rajasthan High Court. At no point of time, as the Chief Justice of Rajasthan High Court had Justice J.S. Verma drawn a daily allowance at the rate of Rs. 250/- per day for his stay at Jaipur. Therefore, it is wrong to allege that verma, J. had drawn daily allowance at the rate of Rs. 250/- per day, which rate became effective much after Mr. Justice J.S. Verma had relinquished his office as the Chief Justice of Rajasthan High Court on his elevation to the Supreme court. Surely, shethna, J. could not have been unaware of this position. Why then did he choose to record an incorrect fact is not understandable" Insofar as the audit objection is concerned, as already noticed, the audit objection was raised for the first time after the audit was conducted between 8.1.1991 to 2.2.1991 and conveyed to the High Court on 30.3.1991. That audit objection pertained to the period 1.9.1988 to 31.12.1990. There was therefore no question of any audit objection having been conveyed to the High Court till Justice Verma was elevated to the Supreme Court w.e.f. 3.6.1989. No audit objection had admittedly been raised during the tenures of Mr. Justice J.S. Verma and it is an incorrect statement to say that such an audit objection "was on the record of the High Court". Even after the audit objection was for the first time conveyed to the Registrar of the High Court on 31.3.1991, it was never communicated to Verma, J. at any point of time. Shethna, J. has unfortunately 'distorted' facts, for reasons which can be any body's guess. Thus, the allegations (supra) against Mr. Justice J.S. Verma are factually incorrect and appear to have been made recklessly.

Legally, also the observations and comments of Shethna, J. are not sustainable. According to sub-clause (E) (ii) of para 2 of the High Court Judges Travelling allowances Rules, 1956, (supra) a Judge including a Chief Justice is not entitled to draw the admissible full daily allowance, if he has ben declared either as a State Guest or is allowed to avail of free broad and lodging at the expense of the Central or the State Government or any autonomous industrial or commercial under takings or corporation or a statutory body or a local authority in which the Government funds have been invested or in which the government has any other interest. As already noticed, bungalow No. A/2 at jaipur had been declared as a High Court Guest House by the state Government in 1979 and placed at the disposed of the High Court of Rajasthan. It had not been allotted as a rent free accommodation in favour of any Chief Justice. The charges of rent of Bungalow No. A/2 at Jaipur were debited to the account of the High Court of Rajasthan by the State Government. The Bungalow was in possession of and under the control of the High Court of Rajasthan. Occupation of such a building, with or without payment of charges was to be regulated by the High Court of Rajasthan itself. The charges, if any, were to be fixed by the High Court of Rajasthan for occupation of the Guest House and those charges were recoverable by the High court of Rajasthan from the persons occupying the Guest House. May be, the High Court only permitted the Chief Justices to stay in that Guest House, but that was an internal arrangement of the High Court and the Government had no say in it. The Bungalow had been declared by the Government to be used as a Guest House of the High court and placed under control of they High Court, not exclusively for the chief Justices from 1979 to 1997. If the High court chose not to fix any charges ever since 1979 when the Guest House was allotted to the High Court till 1994, it cannot by any stretchy of imagination be said that the Chief Justices had been allotted "free Government accommodation" for their stay at Jaipur in the High court Guest House, so as to disentitle them to draw full daily allowance at the admissible rates.

Providing free boarding/lodging at the expense of the Central or the State Government or declaring the occupant as a "State Guest" is the sine qua non for attracting sub- clause (E) (ii) of para 2 of the Rules (supra), not entitling a Judge including the Chief Justice to draw full daily allowance. After bungalow No. A/2 had been declared as the High Court Guest House in 1979, and placed under the control of High Court, the State Government went out of the picture insofar as its use and occupation was concerned. The stay in that Guest house even without charges, cannot by any rule of construction, be construed as providing "free lodging' at the expense of the Central or State Government so as to attract the provision of para 2(ii) E of the Rules (supra). The Chief Justices were, therefore, not disentitled to draw their full daily allowances at the rates admissible at the relevant time. Even after the charges were fixed at the rate of Rs. 10/- or Rs. 16/- per day for occupation of the Guest House in 1994 by the High Court, the Chief Justices have continued to draw their full daily allowance and not 50% of the D.A. They have paid charges to the High Court for the use of the Guest house at the rate fixed by the High Court w.e.f. 10.6.1994. This appears to be quite in order and shows that the drawl of daily allowance at the full rate has nothing to do with the stay in the High Court Guest House. Admittedly, no audit objection has been raised to the drawl of the full daily allowance by the Chief Justices and Payment of Rs. 10/- or Rs. 16/- per day for the occupation of the Guest House to the High Court since June 1994. NBY no stretch of imagination can, therefore, it be said that any of the Chief Justices, till 1994, had "illegally" drawn the full daily allowance to which they were not entitled to. The further observations of Shethna, J. that:

> " It is nothing but mis-
>
> appropriation of the public fund which is a criminal offence under the penal Code."

are not only based on wrong assumptions but are also legally unsound and untenable.

It is also relevant in this connection to notice the contents of the additional affidavit filled by the Registrar, High Court of Rajasthan in this Court. The relevant portion of that affidavit reads:-

> " By way of a supplemental affidavit to my earlier affidavit dated 2.11.1997, it is respectfully submitted that the Hon'ble Judges as and when they retired or are transferred or are appointed as judges of the Hon'ble Supreme court are issued Last pay Certificate by the Concerned District Treasury Officer of the Government of Rajasthan.
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> The Last Pay Certificates issued to Hon'ble Mr. chief justice J.S. Verma (the then Chief Justice of High Court of Rajasthan) on appointment as Judge of this Hon'ble Court, and Hon'ble Mr. Justice K. C. Agarwal the then Chief justice of High Court of Rajasthan on his transfer as Chief Justice of Calcutta High Court showed in the case of Hon'ble Chief Justice Mr. J. S. Verma that "nil"

recoveries were to be made from his pay and, in the case of Hon'ble Chief Justice K.C. Agarwal, no amount was shown as recoverable from his pay. Annexed hereto and marked as Annexures R1 and R2 are the last pay Certificates of the Hon'ble Chief Justice Mr. Justice J.S. Verma and Hon'ble Mr.

Justice K.C. Agarwal."

copies of the Last Pay Certificates in support of the above deposition have been placed on record. The last pay certificates was issued by the District Treasury of the Government of Rajasthan in 1989. When the Treasury officer has certified that 'no' recoveries were due from Mr. Justice J.S. Verma, on his relinquishing the office of the Chief Justice of Rajasthan High Court, it puts the matter completely beyond doubt that neither Mr. Justice J.S. Verma had, drawn any daily allowance "illegally" nor was he guilty of any "criminal misappropriation of public funds" as alleged by the learned Judge. The "last pay certificate"

> could not have been issued without proper verification by the District Treasury officer and the declaration therein to the effect that "no dues" were recoverable from the pay of mr. justice J.S. Verma, established beyond any doubt that nothing had been "illegally" drawn by Verma, J. and that no public funds were "misappropriated" by him and nothing was 'due' from him to the State Government.
>
> We, therefore, unhesitatingly com to the firm conclusion that the observations, comments, insinuations and allegations made by shethna, J in the matter of drawl of full daily allowances by the former Chief justices of Rajasthan High Court including the present Chief Justice of Mr. Justice J.S. Verma, who used to stay in bungalow No. A/2 at Jaipur without payment of rent, are not sustainable both in law and on facts. the allegations have been made irresponsibly and recklessly. there is no question of any "misappropriation" of "public funds" by any former chief Justice of the High Court of Rajasthan in the established facts of the case. Strong expressions have been used against the Head of the Indian Judicial Family without any factual matrix and legal justification. We express our serious disapproval of the manner in which the learned single Judge has done so as it does no credit to the office that he holds.
>
> Whereas we concedes that a Judge has the inherent power to act freely upon his own conviction on any matter coming before him, but it is a principle of highest importance to the proper administration of justice that the Judge must exercise his powers within the bounds of law and should not use intemperate language or pass derogatory remarks against other judicial functionaries, unless it is absolutely essential for the decision of the case and is backed by factual accuracy and legal provisions.
>
> It is educative to quote the views of Benjiman cardazo, the great Jurist in the behalf:
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> " The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. he is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life."

It must be remembered that it is the duty of every member of the legal fraternity to ensure that the image of the judiciary is not tarnished and its respectability eroded. The manner in which proceedings were taken by the learned Judge in relation to the writ petition disposed of by a Division bench exposes a total lack of respect for judicial discipline. Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. Judges must be circumspect and self disciplined in the discharge of their judicial functions. The virtue of humility in the Judges and a constant awareness that investment of power in them is meant for use in public interest and to uphold the majesty of rule of law, would to a large extent ensure self restraint in discharge of all judicial functions and preserve the independence of judiciary. It needs no emphasis to say that all actions of a Judge must be judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is greatest threat to t he independence of the judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we "suffer form self inflicted mortal wounds". We must remember that the constitution does not give unlimited powers to any one including the Judge of all levels. The societal perception of Judges as being detaced and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure that this perception does not receive a set back consciously or unconsciously. Authenticity of the judicial process rests on public confidence and public confidence rests on legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices. It is most unfortunate unfortunate that the order under appeal founders on this touchstone and is wholly unsustainable.

From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusion, should be read with the text of the judgment:

> (1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals. (2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the Court and allocate cases to the benches so constituted. (3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.
>
> (4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the Bench themselves and one or both the Judges constituting such bench sit singly and take up any otherkind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice. (5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the larger bench for its disposal and the can exercise this jurisdiction even in relation to a part-heard case.
>
> (6) That the puisne judges cannot "pick and Choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate

orders of the Chief Justice. (7) That no Judge or judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice. (8) That Shethna, J. had no authority or jurisdiction to send for the record of the disposed of writ petition and made comments on the manner of transfer of the writ petition to the division Bench or on the merits of that writ petition.

(9) That all comments, observations and findings recorded by the learned judge in relation to the disposed of writ petition were not only unjustified and unwarranted but also without jurisdiction and make the Judge coram-non-judice. (10) That the "allegations" and "comments" made by the learned Judge against the Chief Justice of the High Court, the Advocate of the petitioner in the writ petition and the learned Judges constituting the Division Bench which disposed of writ petition No. 2949 of 1996 were uncalled for, baseless and without any legal sanction. (11) That the observations of the learned Judge against the former chief Justices of the High Court of Rajasthan to the effect that they had " illegally" drawn full daily allowance while sitting at Jaipur to which they were not entitled, is factually incorrect, procedurally untenable and legally unsustainable.

(12) That the "finding" recorded by the learned Judge against the present Chief Justice of India Mr. Justice J. S. Verma, that till his elevation to the Supreme Court, he had, as Chief Justice of the Rajasthan High Court, "illegally"

drawn a daily allowance of Rs. 250/- while sitting at jaipur and had thereby committed "criminal" misappropriation of public funds" lacks procedural propriety, factual accuracy and legal authenticity. The finding is wholly incorrect and legally unsound and makes the motive of the author not above personal pique so wholly taking away dignity of the judicial process.

(13) that the disparaging and derogatory comments made in most intemperate language in the order under appeal do not credit to the high office of a High Court Judge. (14) That the direction of Shethna, J. to issue notice to the Chief Justice of the High Court to show cause why contempt proceedings be not initiated against him, for transferring a part-heard writ petition fro his Bench to the Division Bench for disposal, is not only subversive of judicial discipline and illegal but is also wholly misconceived and without jurisdiction.

We, therefore, hold that all observations, comments, insinuations, allegations and orders made by the learned Judge in connection with and relating to the disposed of writ petition No. 2949/96 in the impugned order, are illegal, misconceived and without jurisdiction. The same are quashed and are hereby directed to be expunged from the record.

The direction to issue show cause notice to the Chief Justice of the High Court Respondent No.2, being wholly unwarranted, unjustified and legally unsustainable is hereby quashed and set aside.

Nothing said here inabove shall however be construed as any expression of opinion of the pending criminal revision petition field by respondent No.1 which has been admitted to hearing and in which respondent No.1 has been granted bail. That criminal revision petition shall be decided by the High Court on its own merits.

Before parting with this Judgment, we wish to say that we hope there shall not be any other occasion for us to deal with such a case.

The appeal therefore succeeds and is allowed.