

Bhagwan Singh vs State Of U.P on 20 September, 2024

Author: Bela M. Trivedi

Bench: Bela M. Trivedi

2024 INSC 708

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.....OF 2024
(@ SLP(CRL.)Nos.....OF 2024 @ DIARY NO. 18885 OF 2024)

BHAGWAN SINGH

VERSUS

STATE OF U.P. & ORS.

J U D G M E N T

BELA M. TRIVEDI, J.

1. Delay condoned.
2. Leave granted.

PREFACE

3. While the finest of the legal minds and legal eagles on the Bench and in the Bar of the Supreme Court are busy developing the best of the jurisprudence and laying down the best of the laws for the country, there are certain sinister cabal of unscrupulous litigants and a coterie of their counsellors, who are always busy in taking undue advantage of the Nisha Khulbey Date: 2024.09.20 11:37:24 IST Reason:

systemic lacunae and in misusing the process of law, in turn damaging the image of the Courts as also of the entire legal fraternity/legal profession. The huge quantum of work load in the Courts, limitations of the human agencies in manning the Justice Delivery System and the fertile minds of the unscrupulous litigants and their legal counsellors are some of the factors responsible for not allowing the Justice Delivery System to work as effectively and efficiently as it is expected to work.

4. The wrongdoers must fear the law that they will be punished, the innocents must rest assured that they will not be, and the victims must be confident that they will get the justice. This is what a citizen of the democratic country like India, governed by Rule of Law would legitimately expect from the Courts. The Courts are called the 'Temple of Justice'. However, often brazen attempts are being made to abuse and misuse the process of law by committing frauds on Courts. This is one of such cases where such an attempt has been made to pollute the stream of justice. With this little Preface let us deal with the facts of the case.

PROCEEDINGS BEFORE THIS COURT

5. The instant two appeals were sought to be filed in the name of the appellant- Bhagwan Singh. One Appeal is filed challenging the Judgment and Order dated 16.12.2019 passed by the High Court of Judicature at Allahabad in an Application under Section 482 No. 41533 of 2019, filed by the respondent no. 2 – Ajay Katara, whereby the High Court had allowed the said Application and quashed the entire proceedings in respect of the Supplementary Chargesheet No. 163A dated 05.12.2018 in Case No. 410 of 2014, arising out of the Case Crime No. 443 of 2013, under Sections 363, 366, 376 IPC at Police Station Sehaswan, District Budaun, pending in the Court of the Additional Chief Judicial Magistrate-II, Budaun. The other Appeal is filed challenging the order dated 02.04.2024 passed in Criminal Miscellaneous Recall Application No.3/2020, whereby the High Court had rejected the said application.

6. Vide the order dated 17.05.2024, this Court had issued Notice to the Respondent nos. 1 & 2 on the application seeking condonation of delay as well as on the SLPs, making it returnable after eight weeks. The Registry vide the office report dated 29.07.2024 submitted that a letter dated 09.07.2024 was received from Bhagwan Singh (in vernacular language) wherein it was stated that he had not filed any SLP before this Court and the same was falsely filed in his name. It was also stated in the said office report that an email dated 29.07.2024 was received from Mr. Rishi Kumar Singh Gautam, Advocate that he was appearing on behalf of the appellant- Bhagwan Singh.

7. When the matter was listed on 30.07.2024, Mr. Nikhil Majithia, learned advocate appearing along with the AOR Mr. Rishi Kumar Singh Gautam, drew the attention of the Court to the office report dated 29.07.2024 and the letter dated 09.07.2024 received by the office from the appellant- Bhagwan Singh and submitted that the appellant was personally present in the Court and was confirming the contents of his letter dated 09.07.2024. We, therefore called for the original papers from the Registry to verify the signature of Shri Bhagwan Singh on the 'Vakalatnama' filed in the SLP. One Mr. R.P.S. Yadav, an Advocate who was present in the Court on the said date stated that he had an instruction to appear on behalf of Mr. Anubhav, Advocate on Record, who had signed on the 'Vakalatnama' identifying and attesting the signature of Bhagwan Singh as the petitioner-appellant on the Vakalatnama. Since the AOR Mr. Anubhav was not present in the Court, the matter was adjourned to the next date i.e. 31.07.2024.

8. On 31.07.2024, the AOR Mr. Anubhav, remained present before the Court. Since on 30.07.2024, the learned Advocate Mr. R.P.S. Yadav had stated that the 'Vakalatnama' was signed by the appellant-Bhagwan Singh in his presence, and on 31.07.2024 he had changed his version by stating

that he had received the 'Vakalatnama' with the signature of the appellant-Bhagwan Singh from one lawyer named Mr. Karan Singh practicing in the Allahabad High Court, the Court had directed the Registry to issue notice to the said Advocate Mr. Karan Singh for remaining present before the Court on 09.08.2024.

9. The Court on 31.07.2024 passed the following order recording the statements of Mr. Anubhav, Mr. R.P.S. Yadav and Mr. Bhagwan Singh.

"1. In continuation of the yesterday's order, Mr. Anubhav, learned Advocate-on-Record whose 'Vakalatnama' has been filed on behalf of the petitioner – Bhagwan Singh in the Special Leave Petition is present in the Court. He states his full name to be Anubhav Yashwant Yadav. He further states that though on the 'Vakalatnama' he had identified and attested the signature of the petitioner, that was not correct, and that he had received the 'Vakalatnama' with the signature of the petitioner – Bhagwan Singh from the Advocate Mr. R.P.S. Yadav, who is also present in the Court.

2. Yesterday, Mr. R.P.S. Yadav was present in the Court and Mr. Anubhav was not present, and on our being asked, Mr. R.P.S. Yadav had stated that the 'Vakalatnama' was signed by the petitioner – Bhagwan Singh in his presence. Today, he states that he had received the 'Vakalatnama' already signed by the petitioner – Bhagwan Singh from one lawyer named Karan Singh Yadav, who is practicing in the Allahabad High Court.

3. The petitioner – Bhagwan Singh is also present in the Court and he states that he does not know either Mr. Anubhav or Mr. R.P.S. Yadav or Karan Singh, and that he came to know about the present proceedings having been filed in his name only when the concerned Police Station of his area came to serve notice of this Court on him in respect of the present S.L.P. proceedings.

4. Today, Mr. Nikhil Majithia, learned Advocate-on-Record states that he is also AOR but Mr. Rishi Kumar Singh Gautam has filed 'Vakalatnama' on behalf of the petitioner who states that the SLP was not filed by the petitioner.

5. In view of the above, before passing any further order, let Mr. R.P.S. Yadav give the correct name, full address with Phone Number of Mr. Karan Singh who, according to him, had given the papers along with the signed 'Vakalatnama' of the petitioner to file the SLP in this Court.

6. The Registry is directed to issue notice to the Advocate Mr. Karan Singh at the address furnished by learned Advocate Mr. R.P.S. Yadav, to remain present in the Court on 9-8-2024 at 2.00 p.m. The address is as follows: - Chamber 8b, Old Building, High Court, Allahabad, U.P. Mobile No.9935256980

7. Let the petitioner – Bhagwan Singh file an affidavit with regard to the correct facts in respect of the present proceedings.

8. List on 9-8-2024 at 2.00 p.m."

10. On 09.08.2024, the said Advocate Mr. Karan Singh Yadav practicing in Allahabad High Court remained present before the Court and stated that he had received the papers of the case along with signed 'Vakalatnama' i.e. with the signature of the appellant-Bhagwan Singh from his client Sukhpal Singh, who happened to be the son-in-law of Bhagwan Singh. He also stated that he had appeared before the High Court in the Recall Application No. 3/2020 filed on behalf of Ms. Rinki, daughter of Bhagwan Singh and wife of Sukhpal Singh, for recalling of the Order dated 16.12.2019 (which is impugned herein), and since the Sukhpal Singh wanted to file the Special Leave Petition before the Supreme Court, he (Karan Singh) had asked Sukhpal Singh to get the 'Vakalatnama' with the signature of either Rinki or Bhagwan Singh. Thereafter the said Sukhpal Singh gave him the papers along with the 'Vakalatnama' signed in the name of Bhagwan Singh, which he had handed over to the Advocate Mr. R.P.S. Yadav, practicing in the Supreme Court. It may be noted that the said Bhagwan Singh who was also present in the Court on 09.08.2024 stated that his daughter Rinki had eloped and married with Sukhpal Singh in 2013 and since then he had not met either Sukhpal Singh or his daughter Rinki, and therefore he could not have signed the 'Vakalatnama' or the papers of the SLP. At this juncture Mr. R.P.S. Yadav, learned advocate stated that he had prepared the Memo of SLP and got it attested through the Notary Mr. A.N. Singh and at that time the appellant-Bhagwan Singh was not present; and that he had identified the signature of Bhagwan Singh before the Notary, and thereafter handed over the papers to the AOR Mr. Anubhav for presenting in the Supreme Court. The learned AOR Mr. Anubhav Yashwant Yadav also stated that Mr. R.P.S. Yadav having prepared the SLP Memo and got the papers ready, he had put his signature as an AOR on the Memo of SLP and also on the 'Vakalatnama' stating that he had attested and identified the signature of appellant – Bhagwan Singh. In view of the said statements, the Court had directed the Notary Mr. A. N. Singh to remain present before the Court on the next date of hearing. Ms. Rinki, the daughter of the appellant and her husband Mr. Sukhpal Singh were also directed to remain present before the Court on the next date of hearing i.e. 23.08.2024.

11. The Order dated 09.08.2024 reads as under:

“1. Pursuant to the order dated 31-07-2024 passed by this Court, Mr. Karan Singh Yadav, Advocate practicing at Allahabad High Court is present in the Court and states that he received the papers of the case along with signed 'Vakalatnama' i.e., with the signature of the petitioner – Bhagwan Singh from his client Sukhpal Singh, son of Rishi Pal, resident of Raisinghnagar, Post – Kadar Chowk, District Budaun, U.P., who happens to be the son-in-law of Bhagwan Singh. Mr. Karan Singh also states that he had appeared before the High Court in the Recall Application No.3/2020 filed on behalf of Ms. Rinki, daughter of Bhagwan Singh and wife of Sukhpal Singh, in which it was prayed to recall the order dated 16-12-2019 passed in the Application under Section 482 No.41533/2019. However, the said application was dismissed by the High Court vide the impugned order dated 02- 04-2024. He further states that after the said dismissal, since the said Sukhpal Singh wanted to file the Special Leave Petition before the Supreme Court, he was asked to get the 'Vakalatnama' with the signature of either Rinki or Bhagwan Singh. Thereafter the said Sukhpal Singh gave him the papers alongwith the 'Vakalatnama' signed in the name of Bhagwan Singh. Mr. Karan Singh further states that thereafter he had handed over all the papers

along with signed 'Vakalatnama' to the Advocate Mr. R.P.S. Yadav practicing in the Supreme Court, who is today present in the Court.

2. At this stage, the petitioner – Bhagwan Singh, who is present in the Court, states that his daughter Rinki had eloped and married with Sukhpal Singh in 2013 and since then he has not met Sukhpal Singh or his daughter Rinki, and therefore, he could not have signed the 'Vakalatnama' or the papers of the SLP.

3. On being asked by the Court, Mr. R.P.S. Yadav states that he had prepared the Memo of SLP and got it attested through the Notary Mr. A.N. Singh. He further states that at the time of getting the SLP notarized, the petitioner – Bhagwan Singh was not present, however as per the practice prevailing in the Supreme Court, he identified the signature of Bhagwan Singh before the Notary and the Notary also notarized the said Memo. He thereafter handed over papers to the AOR Mr. Anubhav for presenting in the Supreme Court.

4. Mr. Anubhav Yashwant Yadav, learned Advocate-on-Record states that since he knew the learned Advocate Mr. R.P.S. Yadav, and Mr. Yadav having prepared the SLP Memo and got the papers ready, he had put his signature as the AOR on the Memo of SLP and also on the 'Vakalatnama' stating that he himself had attested and identified the signature of petitioner – Bhagwan Singh.

5. From the above, it appears that Mr. A.N. Singh, Notary Government of India whose registration Number is 16959 and who sits in front of the UCO Bank, Supreme Court Compound, is also involved in notarizing and attesting the papers and signatures of the petitioner, though he was not personally present before him. Hence, it is directed that he shall remain present before the Court on the next date of hearing.

6. It is pertinent to note that the petitioner has filed an affidavit before this Court on 06-08-2024, which was also got notarized before the said Notary - Mr. A.N. Singh.

7. The daughter of the petitioner – Bhagwan Singh i.e., Ms. Rinki and her husband – Mr. Sukhpal Singh are also directed to remain present on the next date of hearing. Accordingly, the office shall issue notices to Mr. A.N. Singh, Ms. Rinki and Mr. Sukhpal Singh on the next date of hearing. On the said date, the petitioner and all concerned advocates also shall remain present before the Court.

8. At this stage, the Court informed all the concerned Advocates and the Petitioner present in the Court that this is a very serious matter and the Court is going to take a serious view in the matter.

9. List on 23.08.2024.”

12. On 23.08.2024, the matter was directed to be listed on 28.08.2024, on which date the Notary Mr. A.N. Singh and Mr. Sukhpal Singh, son-in-law of the appellant-Bhagwan Singh were present. However, Ms. Rinki was not present on the ground that she was down with fever. The Court recorded the statements of the Notary Mr. A.N. Singh and Mr. Sukhpal Singh as reflected in the order and directed them to file their respective affidavits. At this juncture, Mr. Nikhil Majithia, learned counsel appearing for the appellant-Bhagwan Singh and Mr. Sanchar Anand, learned counsel appearing for the Respondent no. 2- Ajay Katara submitted that one Vikas Yadav, son of Mr. D.P. Yadav, Former Member of Parliament, was convicted in the famous Nitish Katara Case only on the basis of the testimony of Respondent no. 2 – Ajay Katara, who was the witness in the said case and therefore number of false cases were filed against him and this one is filed against respondent no. 2, in the name of Bhagwan Singh . They also drew the attention of the Court to the list of Advocates shown in the Order Sheets/Record of Proceedings dated 10.06.2024 of SLP(Crl.) No. 7893 of 2024 filed by said Vikas Yadav before this Court and submitted that out of 10 Advocates mentioned therein, 08 Advocates are also shown as appearing advocates in the Order Sheets/Record of Proceedings dated 30.07.2024 in the present SLP. In view of the said submissions, the Court had directed the Registry to explain as to on what basis and why the names of so many advocates are being shown in the Order sheets/Record of Proceedings though, they would be neither appearing as an AOR nor as arguing/senior Counsel. The Court also directed Mr. Sukhpal Singh and Ms. Rinki to be impleaded as party respondent nos. 3 and 4 to the present proceedings and call for the original record of the Application under Section 482 No. 41533/2019 from the Allahabad High Court.

13. The Order dated 28.08.2024 reads as under:

“1. This matter was directed to be posted on 23.08.2024 vide the Court’s Order dated 09.08.2024, whereby, the Notary 2 Mr. A.N. Singh, Ms. Rinki-daughter of petitioner-Bhagwan Singh and her husband, Mr. Sukh Pal were directed to remain present on the said date. However, due to paucity of time, the matter could not be heard on 23.08.2024, and was directed to be listed on 28.08.2024.

2. Accordingly, today, when the matter is taken up, the Notary Mr. A.N. Singh and Mr. Sukh Pal, son-in-law of the petitioner-

Bhagwan Singh are present before the Court. It is stated by Mr. Sukh Pal that his wife-Ms. Rinki is down with fever and therefore, has not come to the Court.

3. The Notary Mr. A.N. Singh, states that he had committed a mistake by attesting an affidavit of the petitioner-Bhagwan Singh, who was not personally present before him, but his signatures were identified by Advocate, Mr. R.P.S. Yadav on 19.04.2024. According to him, thereafter, the petitioner-Bhagwan Singh had again personally come to him on 06.08.2024 for getting another affidavit attested.

4. Let the Notary, Mr. A.N. Singh file an affidavit explaining the procedure of notarizing any document, and also explaining as to why, and under what circumstances the affidavit of the petitioner- Bhagwan Singh, in the present case, was attested by him in his absence on 19.04.2024.

The affidavit shall be filed on or before 02.09.2024.

5. Mr. Sukh Pal, son of Rishi Pal, is present in the Court. He is the resident of Raisi Nagla, Post-Kadar Chowk, Budaun, Qadarchawk, Uttar Pradesh, as per the Aadhar Card of Mr. Sukh Pal, bearing No. 6790 1351 1082 submitted before us and has been identified by the Advocate, Mr. Karan Singh, who is practicing in the High Court of Allahabad. Mr. Sukh Pal states that he and his wife Rinki had met his father-in-law, i.e. petitioner- Bhagwan Singh, 3-4 years back at Budaun, Uttar Pradesh and at that time, petitioner-Bhagwan Singh had handed over a signed vakalatnama to his wife Ms. Rinki. According to him, he had handed over the said vakalatnama to the Advocate, Mr. Karan Singh, who was practicing in the High Court of Allahabad. On being asked by the Court, he states that he had never met his father-in-law petitioner-Bhagwan Singh before the said incident.

6. Since, Mr. Sukh Pal is making some inconsistent statements, he is directed to file an affidavit with regard to the whole incident explaining as to under what circumstances he had met his father-in-law, i.e. the petitioner herein, also stating the whole Chronology of dates and events when he met his father-in-law. The affidavit shall be filed on or before 02.09.2024.

7. On the next date of hearing, Ms. Rinki, the daughter of petitioner-Bhagwan Singh and wife of Mr. Sukh Pal shall remain present before this Court under any circumstances.

8. Mr. Nikhil Majithia, learned counsel appearing for petitioner- Bhagwan Singh and Mr. Sanchar Anand, learned counsel appearing for the respondent no.2 Ajay Katara, in the present proceedings, have drawn the attention of the Court to the Order passed by this Court on 10.06.2024 in SLP(Crl.) No.7893/2024 filed by the petitioner Vikas Yadav, arising out of the final judgment and order dated 21.05.2024 passed by the High Court of Delhi in CRLMA No. 15617/2024. According to them, the said Vikas Yadav was convicted in the famous Nitish Katara Case, where in, the respondent no.2-Ajay Katara was the only witness who had deposed against him and whose testimony was relied upon by the Courts below for convicting Vikas Yadav, and that was the reason, false case was sought to be made out against the respondent no.2-Ajay Katara in the present proceedings. They have also drawn the attention of the Court to the list of Advocates shown in the Order Sheet/ Record of Proceedings of SLP(Crl.) No.7893/2024 dated 10.06.2024 and submitted that out of 10 Advocates, 08 Advocates are also shown as the appearing Advocates in the Order Sheet/ Record of Proceedings dated 09.08.2024 in the present SLP.

9. In view of the above submissions, the Registry is directed to explain as to on what basis and why the names of so many Advocates are being shown in the Order Sheets/Record of Proceedings though, they would be neither appearing as an AOR nor as arguing/ Senior Counsel.

10. Let Mr. Sukh Pal and Ms. Rinki be impleaded as party respondent nos. 3 and 4 to the present proceedings. Cause title be amended accordingly.

11. Mr. Karan Singh, Advocate practicing in Allahabad High Court undertakes to appear for Mr. Sukh Pal, son in law of petitioner- Bhagwan Singh and Ms. Rinki, daughter of petitioner-Bhagwan Singh and make them understand the present proceedings since he knows Mr. Sukh Pal for years.

Though, Mr. Karan Singh is not an Advocate on Record, he is granted permission to file his vakalatnama, duly signed by both Mr. Sukh Pal and Ms. Rinki, and the same shall be taken on record by the Office.

12. Having regard to the seriousness of the case, the Registrar General of the Allahabad High Court is directed to send the original Record and proceedings pertaining to the Application filed under Section 482 of the Cr.P.C. bearing No. 41533 of 2019 to this Court through Special Messenger on or before 02 nd September, 2024.

13. List the matter on 3rd September, 2024 at 02:00 p.m.”

14. On 03.09.2024, the said Rinki, Bhagwan Singh and the Notary, Mr. A.N. Singh, were present in the Court, however, the Court was busy in the Special Bench matter(s), therefore directed the office to list the matter on 09.09.2024. On 09.09.2024 Ms. Rinki, Mr. Sukhpal Singh, learned advocates Mr. Karan Singh & Mr. R.P.S. Yadav, Mr. Anubhav, AOR and the Notary Mr. A.N. Singh were present in the Court. Ms. Rinki stated that she used to talk to her father- Bhagwan Singh very often on telephone and that five-six months back, she and her husband Mr. Sukhpal had met her father at Budaun, who had handed over the ‘Vakalatnama’ signed by him to her, which was in turn handed over by her husband Mr. Sukhpal to Mr. Karan Singh, Advocate practicing in the High Court of Allahabad. At this juncture, the appellant-Bhagwan Singh refuted the said statement made by Ms. Rinki and reiterated that he had neither met his daughter nor his son-in-law since the year 2013, nor he had any telephonic contact with her or by way of any other mode at any point of time. Learned Advocate Mr. Karan Singh and Mr. R.P.S. Yadav, reiterated their earlier stand. Mr. Amar Nath Singh, Notary represented through the senior advocate Mr. Sanjay R. Hegde tendered apology as stated in his affidavit. Mr. Anubhav Yadav, learned AOR represented by the learned senior advocate Mr. Siddharth Dave, also tendered unconditional apology.

15. The Order passed on 09.09.2024 reads as under: -

“1. Heard the learned senior counsel/ learned counsel appearing for the parties. We have also perused the explanations tendered by the Registry pursuant to this Court’s Order dated 28.08.2024.

2. Today, Ms. Rinki, daughter of petitioner-Bhagwan Singh, and the wife of Mr. Sukh Pal, is present in the Court.

3. She states that she used to talk to her father, petitioner-

Bhagwan Singh, very often from the below mentioned numbers; a. 9027068541- her own mobile number.

b. 6399367927- mobile number of her husband c. 8077687246- mobile number of her brother-in-law, Dhaalu.

4. She further states that, 05-06 months back she and her husband, Mr. Sukh Pal, met with her father, petitioner-Bhagwan Singh, at Budaun, Uttar Pradesh, who handed over her the vakalatnama signed by him, and the said vakalatnama was handed over by Mr. Sukh Pal to Mr. Karan Singh, Advocate, who is practicing in the High Court of Allahabad.

5. Mr. Sukh Pal, who is also present in the Court affirms/ supports the statement made by Ms. Rinki, her wife.

6. However, the petitioner-Bhagwan Singh, who is also present in the Court, refutes the said statement made by Ms. Rinki, her daughter and reiterates that he had neither met his Daughter, Rinki or his son-in-law, Mr. Sukh Pal since the year 2013, nor he had any contact with her telephonically or by way of other means at any given point in time.

7. Learned Advocates, Mr. Karan Singh and Mr. R.P.S. Yadav, reiterates what they have said in earlier occasions and stand by it today also.

8. Mr. Amar Nath Singh, Notary is represented by Mr. Sanjay R. Hegde, learned senior counsel, who relies on the affidavits filed by him and apologies for notarizing the documents produced in the SLP paperbooks, in the absence of the petitioner-Bhagwan Singh.

9. Mr. Anubhav, learned Advocate on Record, who is represented by Mr. Siddharth Dave, learned senior counsel, also reiterates what he had stated on earlier occasions, and tenders unconditional apology for attesting and certifying the signatures of petitioner-Bhagwan Singh on the vakalatnama filed in the present Special Leave Petition, though petitioner-Bhagwan Singh was not present before him, nor he knew petitioner-Bhagwan Singh.

10. Having recorded the above submissions/ statements, the matter is reserved for orders”.

16. So far as affidavits filed in the present appeals are concerned, the Respondent No.2- Mr. Ajay Katara has filed his counter-affidavit dated 26.07.2024 resisting the present proceedings on the ground of delay and on merits. While narrating the history of the case to show as to how he was falsely implicated, he has stated as under: -

“5. That, in order to appreciate the facts of the present case it is necessary to give a brief background history of the answering respondent. Pertinently, the answering respondent is the only independent prosecution witness in the well-known and infamous Nitish Katara murder case, wherein, pursuant to the answering respondent deposing truthfully in the court against Vikas Yadav, Vishal Yadav and Sukhdev Yadav alias Pahalwan, all of them were convicted under section 302 IPC and were sentenced to imprisonment for life by the Ld. Trial Court and thereafter in appeal the Honourable High Court ordered that accused Vikas and Vishal shall not be entitled to any remission till they have completed 25 years of actual sentence.

6. However, it is pertinent to mention that the accused persons namely Vikas Yadav and Vishal Yadav, are son and nephew of DP Yadav, Ex-Minister and Member of Parliament, who is a known history sheeter having more than 57 criminal cases registered against him and a copy of the same is annexed herewith as annexure R-2/1 (Pages 28-30). That it is also appropriate to mention here that due to continuous intimidation, cajoling and threats by D P Yadav and his associate, except the answering respondent all other prosecution witnesses had turned hostile, but the answering respondent being a responsible citizen has deposed truthfully and has in this way has significantly contributed in the administration of justice.

7. Pertinently, the Division Bench of the Hon'ble High Court in its order dated 06.02.2015, had categorically observed the traumatising and the pressure put on the answering respondent to prevent him from deposing against the accused persons, in as much as the Hon'ble Court has categorically inter-alia observed that the answering respondent was subjected to continuous threats and still continues to be under pressure for having appeared as a witness. The Hon'ble Court has observed as under: -

"The only public witness Ajay Kumar who could not be influenced and stood by his statement has needed court orders for police protection and is being subjected to multiple criminal complaints by relatives of the appellants or persons associated to them. The fact that all these complaints and cases arose only after he surfaced before the police speaks for itself."

"...we have noted the traumatization and the pressure put on Ajay Katara to prevent him from deposing in the present case. Prior to the case in hand Ajay Katara seems to have been living an ordinary existence...

Post the murder of Nitish Katara and his deposition as a witness in the case, he is facing multiple cases....." 8-9....

10. That it is pertinent to mention here that the answering respondent is paying a heavy price for speaking truth in the court, in as much as, after appearing as prosecution in the abovementioned case, the answering respondent, who never had any civil or criminal case against him has been thereafter continuously targeted with a campaign of false and frivolous legal cases and has been since thereafter named as an accused in around (37)thirty - seven cases including six (6) cases under section 376 IPC, including the present case all at the behest of powerful Yadav family and their associates and the answering respondent. However, the name of the answering respondent has been cleared in 35 out of 37 cases inter-alia at the stage of Inquiry/Investigation itself and the proceedings against the answering respondent have been stayed by the Hon'ble High Court at the Judicature of Allahabad in the remaining 2 cases. Pertinently, in none of the cases, the answering respondent has been put to trial, which is indicative of the fact that answering respondent has been falsely implicated in false and frivolous cases.

11-12....

13. Succinctly stated, on 28.06.2013 one Bhagwan Singh i.e., the father of the alleged victim, lodged an FIR bearing Case Crime No. 443/13 under sections 363 and 366 of the Indian Penal Code, 1860, at P.S Sahaswan, Badaun, against (i) Sukhpal, (ii) Smt. Chetinya wife of Jaywahan, (iii) Jaywahan and (iv) Shyam Singh by alleging therein that these four persons have taken his daughter who was allegedly minor at that point in time. A copy of the FIR dated 28.06.2013 and identified as Case Crime No. 443/13 under sections 363 and 366 of the Indian Penal Code, 1860, at P.S Sahaswan, Badaun is already annexed as Annexure P-1 in the SLP.

14-15....

16. That it is pertinent to mention that the name of the answering respondent is nowhere to be seen till this stage i.e. he has not been named anywhere, (i) either in the FIR filed by the father of Victim or (ii) in the Writ Petition filed by the victim herself before the High Court nor (iii) in the statement of the victim when she appeared in person before the Honourable High Court. However, very surprisingly, when pursuant to the High Court order, the statement of the victim was recorded by the police under section 161 CRPC, and also under section 164, CRPC, on 22.08.2013 i.e. after about two months of the alleged incident, then, the victim for the very first time introduces a new story and says that the answering respondent has did wrong thing on her person when she reached Ghaziabad for eight days i.e., on 24.06.2023 till 01.07.2023.

17-21....

22. That, on 20.12.2013 after a thorough investigation, the investigating officer closed the investigation in crime case no. 443/13 qua the answering respondent herein vide supplementary chargesheet no. 1. At this juncture it is extremely pertinent to mention that the petitioner or the victim herein did not even file any protest petition regarding the closure of the case.

23. However, after a gap of more than 5 years i.e., on 20.06.2018 the victim moved an application before the court of the Ld. A.C.J.M-II class, Badaun praying that the police have not taken any steps to the accused and therefore S.H.O. Sahaswan be directed to arrest the accused and put them to trial. That as the said application of the victim was rejected by the court, therefore, the victim preferred a Criminal Misc. Application (482 Cr.P.C.) No.25888 of 2018 (Smt. R. vs. State of U.P. and another) before the Hon'ble High Court wherein a direction for investigation to be carried out by the police in this regard was given and the matter was remitted to the learned court to decide the application of the victim afresh and directed the Magistrate to ensure that the investigation against those accused for offence under Section 376 I.P.C. is taken to its logical end strictly in accordance with law.

24....

25. That the entire proceedings were challenged by the answering respondent herein by presenting a petition under section 482 CRPC number 41533 of 2019, before the High Court of Judicature at

Allahabad, wherein, the Honourable High Court vide it's a well-reasoned Judgement and Final Order dated 16.12.2019, was pleased to quash the aforesaid criminal proceeding against the answering respondent by inter alia, holding and observing that if the entire material collected during evidence is assumed to be true on its face value, then also any commission of cognizable offence under 376 IPC is not made out against the answering respondent.

26....

27. That it is further to mention that interestingly the above said order dated 16.12.2019, passed by the Honourable High Court, thereby quashing the criminal proceedings against the answering respondent were not challenged before this honourable court by anyone for more than four years. However, after more than 4 years of passing of the order dated 16.12.2019, a petition bearing number 41533 of 2019 seeking to recall the earlier order dated 16.12.2019 passed by the High Court was filed before the Hon'ble High Court, but, the same was dismissed by the Hon'ble High Court on 02.04.2024."

17. The appellant-Bhagwan Singh pursuant to the order passed by the Court dated 31.07.2024 filed an affidavit dated 06.08.2024 stating inter alia the following: -

"3. That the correct facts are that on 03.07.2024, a call was received by Prem Singh, Former Pradhan of my Village Mudari from Police Station Sahaswan, Distt Badaun, U.P., who asked Prem Singh to bring me (Bhagwan Singh) to Police Station Sahaswan as some notice has to be served upon me. Accordingly, I accompanied Prem Singh to Police Station Sahaswan, where I was handed over three papers by the police and the true copy of the documents given to me by the police on 03.07.2024 at Police Station Sahaswan, District Badaun, Uttar Pradesh are annexed herewith and marked as Annexure A (Colly). The police also obtained my signature on one form on which "Petitioner Intimation Letter" was written. The police official told me that these documents relate to a case titled as 'Bhagwan Singh versus State of U.P' which had been filed by me in the Supreme Court of India and the same arise out from a First Information Report lodged by me several years back with respect to my daughter's kidnapping.

4. That as I had not filed any Special Leave Petition before Hon'ble Supreme Court of India therefore, I came to Delhi and filed my complaint before the Supreme Court of India. A true copy of the complaint dated 9.7.2024 filed with the office of Secretary General, Supreme Court of India is being annexed herewith as Annexure B hereto.

5. I say that I have never instructed any Advocate on Record or Advocate for filing the present Special Leave Petition, on my behalf and in my name before this Hon'ble Court. I further say that I have never visited the office of any of the Advocate or Advocate on Record either in New Delhi or at Allahabad for the purpose of signing the vakalatnama, affidavit or for filing the present Special Leave Petition, in any manner whatsoever.

Further, I have also not travelled to Allahabad since the year 2014 for any purpose.

6. I further say that I was not even aware about the filing, pendency and disposal of A U/S 482 No. 41533/2019 before the Hon'ble Allahabad High Court, which passed the judgment dated 16.12.2019, now under challenge in the present Special Leave Petition.”

18. The Advocate/Notary Mr. Amar Nath Singh filed his affidavit dated 31.08.2024 in compliance with the order dated 28.08.2024 stating inter alia the provisions of Section 8 of the Notaries Act, 1952 and Rule 11 of the Notaries Rules, 1956 and further stated as under: -

“7. That the Deponent has attested the Affidavit dated 19.04.2024 of one Bhagwan Singh only after identifying the signature of Bhagwan Singh by an Advocate of this Hon'ble Court, namely Shri R.P.S. Yadav. However, the attested Affidavit was taken away by the Lawyer, namely Mr. R.P.S. Yadav of this Hon'ble Court and he did not turn up again, and that is why, the Deponent was not able to make entry in the Notarial Register.”

19. Mr. Sukhpal newly added Respondent No.3 also filed an affidavit dated 02.09.2024 in compliance with the order dated 28.08.2024 passed by the Court. He stated inter alia as follows: -

“3. That the after said incident Rinki/Sukhpal regularly met his father/Father-In-Law Bhagwan Singh at the Badaun District Court regularly. Bhagwan Singh pushing Rinki/Sukhpal for parivi of aforesaid case.

4. That the chronology of this present case was as under: -

28.06.2013 - FIR of the said incident was registered under Section 363, 366 & 376 IPC at Police Station Sehaswan, District Budaun, U.P. 05.12.2018 - That the Charge sheet has been filed by I.O, in the said FIR No. 443/2013.

03.01.2019 - That the Cognizance was taken by Additional Chief Judicial Magistrate in the said FIR.

16.11.2019 - That the Respondent No. 2, i.e. Ajay Katara, filed an application Under Section 482 before the Hon'ble High Court of Judicature at Allahabad.

16.12.2019 - That the said application was allowed by the Hon'ble High Court of Judicature at Allahabad.

01.02.2020 -1st recall application bearing No. 03/2020 was filed by the Sukhpal and the said applicanton's affidavit was attested by the Sukhpal as witness and Rinki gave her signed/thumb impression on the Vakalatnama.

28.11.2021 - That the Father-In-Law Bhagwan Singh was not satisfied of merits of the 1st recall application, thereafter Bhagwan Singh filed 2nd wish to join the recall application as applicant then he gave the signed Vakalatnama dated 28.11.2021, copy of the Vakalatnama is annexed herewith as Annexure 'B', to Sukhpal to file a fresh recall application bearing No. 07/2020 and 8/2021 which was filed by the another advocate at Allahabad.

March 2024 - That the Sukhpal handed over a Vakalatnama to Mr. Karan Singh for arguing in recall application bearing No. 3/2020 in the High court of Judicature at Allahabad. 02.04.2024 - That the 1st recall application bearing No. 3/2020 was rejected by the Hon'ble Court of Judicature at Allahabad, arguing by Karan Singh Yadav Advocate, and the other application bearing No. 7/2020 and 8/2021 was not pressed by the Ld. Advocate.

April 2024 - That after dismissal of Recall application bearing No. 3 of 2020, Victim/Rinki wants to file Special leave petition before this Hon'ble Apex Court and for filing of Special leave petition Victim Rinki given signed Vakalatnama to Sukhpal for handed over to Mr. Karan Singh Yadav (Advocate) for further proceedings.

5. That after taken signed Vakalatnama deponent/Sukhpal came at the chamber of Mr. Karan Singh Yadav and his bag was present on his seat but Mr. Karan Singh Yadav was busy in argue in the case before Hon'ble High court Allahabad, hence he puts the signed Vakalatnama in the bag/Basta of Mr. Karan Singh Yadav and informed him by mobile phone.”

20. From the aforesaid affidavits of the concerned Parties and the Notary and the statements of the concerned Advocates recorded by the Courts in the orders, the following facts emerge: -

(i) The present SLPs (Appeals) proceedings in the name of Bhagwan Singh were filed by the Advocate on Record, Mr. Anubhav Yashwant Yadav, with his signatures at the end of the SLP memorandum and other papers. He also signed the certificate at the end of the SLP dated 19.04.2024 required to be filed in the prescribed form as per the Supreme Court Rules, 2013, along with the affidavit dated 24.04.2024 of Bhagwan Singh as notarized by the Notary Mr. A.N. Singh. The said Advocate on Record, Mr. Anubhav Yadav also submitted the Vakalatnama identifying and attesting the signatures of the appellant-petitioner- Mr. Bhagwan Singh. However, during the course of hearing, he had stated that - “though on Vakalatnama he had identified and attested the signature of the petitioner, that was not correct, and that he had received the Vakalatnama with the signature of the petitioner-Bhagwan Singh, from the Advocate Mr. R.P.S. Yadav who is present in the Court.” The said statements have been recorded by the Court in the order dated 31.07.2024.

(ii) Though the Learned Advocate Mr. R.P.S. Yadav had stated on 30.07.2024 that the Vakalatnama was signed by the petitioner- Bhagwan Singh in his presence, on 31.07.2024, he changed his version and stated that he had received the Vakalatnama already signed by the petitioner-Bhagwan Singh from one lawyer named Karan Singh Yadav who is practicing in the Allahabad High Court.

(iii) Mr. Karan Singh Yadav, Advocate practicing at Allahabad High Court was directed to remain present before the Court on 09.08.2024 and he stated that he had received the papers of the case along with the signed Vakalatnama i.e with the signature of the petitioner- Bhagwan Singh from his client Sukhpal, son of Rishipal, who happened to be the son-in-law of Bhagwan Singh. He further stated that he had appeared before the High Court in Recall Application No.3/2020 filed on behalf of Ms. Rinki, daughter of Bhagwan Singh and wife of Sukhpal Singh seeking recall of the order dated 16.12.2019, and after the dismissal of the said application on 02.04.2024, he had asked Sukhpal to get the Vakalatnama with the signature of either Rinki or Bhagwan Singh. Thereafter, said Sukhpal gave him the papers along with the Vakalatnama signed in the name of Bhagwan Singh, which he handed over to the Advocate Mr. R.P.S. Yadav practicing in the Supreme Court.

(iv) The Notary Mr. A.N. Singh admitted in his affidavit that he had attested the affidavit dated 19.04.2024 of one Bhagwan Singh, on Mr. RPS Yadav, Advocate having identified the signature of Bhagwan Singh. Meaning thereby, the said affidavit of Mr. Bhagwan Singh was notarized by the Notary without Bhagwan Singh being present before him and the said affidavit was submitted before the Court along with the SLP memo.

(v) The Respondent No.3- Sukhpal kept on making inconsistent statements in the court as stated in the order dated 28.08.2024. He had made the statements that he and his wife Rinki met his father-in-law, petitioner- Bhagwan Singh 3-4 years back at Budaun, Uttar Pradesh and at that time petitioner-Bhagwan Singh had handed over the signed Vakalatnama to his wife Rinki, which she handed over to the Advocate Mr. Karan Singh, advocate practicing in the High Court of Allahabad. In the affidavit dated 02.09.2024 filed by him he had stated that the first recall application bearing no. 3/2020 was filed by him with his affidavit as the witness, and Rinki had put her thumb impressions on the Vakalatnama. He further stated that on 28.11.2021, Bhagwan Singh gave him a signed Vakalatnama to file a fresh Recall Application bearing No. 7/2020 and 8/2021, which was filed by another Advocate at Allahabad. In March, 2024, he handed over the Vakalatnama to Karan Singh for arguing the Recall Application No. 3/2020 in the High Court. According to him, in April 2024 since Rinki wanted to file SLP before the Supreme Court, she gave a signed Vakalatnama to him (Sukhpal) which he gave to Advocate Mr. Karan Singh Yadav for filing further proceedings. He also stated that since Mr. Karan Singh Yadav was busy arguing a case, he put the signed Vakalatnama in the bag of Mr. Karan Singh Yadav and informed him by mobile phone.

(vi) On 09.09.2024, Ms. Rinki, daughter of Bhagwan Singh and wife of Sukhpal Singh stated that she used to talk to her father very often on mobile phone. She gave numbers of the phones from which she used to talk which have been recorded by the Court in the order. She further stated that 5-6 months back she and her husband Sukhpal had met her father who handed over the Vakalatnama signed by him to her. The said Vakalatnama was handed over by Mr. Sukhpal to Mr. Karan Singh, Advocate. Her husband, Mr. Sukhpal who was present in the Court supported the said statements made by his wife Rinki.

(vii) However, the appellant-petitioner Bhagwan Singh all throughout the proceedings maintained his stand and stated in his affidavit that he had never met his daughter Rinki or his son-in-law Sukhpal since 2013, nor he had any contact with his daughter telephonically or by any other means

as sated in his affidavit he had not travelled to Allahabad since 2014 for any purpose. He also stated that he had neither filed the present SLP proceedings, nor was aware about the filing, pendency or disposal of the application under Section 482 No. 41533/2019 before the Allahabad High Court.

(viii) As transpiring from the affidavit filed by the Respondent No.2 Mr. Ajay Kataria that since he was a star witness in the famous Nitish Katara case, and on the basis of whose evidence the accused Vikas Yadav and Vishal Yadav, who happened to be the son and nephew of Mr. D. P. Yadav, Ex-Minister, and M.P. were convicted, he was falsely implicated in number of cases. This is one of such cases, filed in the name of Bhagwan Singh, at the instance of Respondent No.3 Sukhpal, Respondent No.2 Rinki, with the help of their Advocates appearing for them in the High Court and this Court.

PROCEEDINGS BEFORE THE HIGH COURT

21. The Court vide the order dated 28.08.2024 had directed the Registrar General of Allahabad High Court to send the original records and proceedings pertaining to the Application filed under Section 482 of Cr.P.C bearing No.41533/2019. From the perusal of the Records of the said case, it is found that the said Application under Section 482 Cr.P.C was filed by the present Respondent No. 2- Ajay Katara against the State of U.P and Bhagwan Singh seeking quashing of the proceedings of the supplementary chargesheet No.163A filed against him in case No.410/2014 for the offence under Section 363, 366, 376 IPC. It appears that no Vakalatnama was filed in the said proceedings on behalf of Bhagwan Singh, who was the opponent No.2 in the said Application, however as recorded by the High Court in the impugned order dated 16.12.2019, Senior Advocate Mr. Anoop Trivedi assisted by the Advocates Mr. Santosh Kumar Yadav and Pradeep Kumar had appeared for the opposite party No.2 i.e. Bhagwan Singh and argued the said Application. It is pertinent to note that in the said proceedings Advocate Mr. Santosh Kumar Yadav had filed his Vakalatnama for Rinki on 21.11.2019, though she was not a party to the proceedings. It further appears that though the said Application under Section 482 was allowed by the High Court vide the order dated 16.12.2019, a Vakalatnama with the thumb impression of Bhagwan Singh was sought to be filed by the Advocates, Mr. Jai Singh Yadav and Mr. P.B. Mishra on 30.11.2023 i.e. almost 4 years after the disposal of the said Application.

22. From the record of the said Application being No. 41533/2019, it further appears that a Criminal Miscellaneous Recall Application No.3/2020 was sought to be filed in the name of the applicant-Rinki by Advocates Arun Kumar Mishra and Hemant Kumar Srivastava, seeking recall of the order dated 16.12.2019 in the said Application no. 41533/2019. It is very pertinent to note that in the said Recall Application, Mr. Sukhpal filed an affidavit on 01.02.2020 in support of the Recall Application though he was not a party to the proceedings. The Advocate Mr. Karan Singh Yadav appeared for the opponent No.2 Bhagwan Singh, though in the record there is no Vakalatnama filed by Karan Singh Yadav for Bhagwan Singh either in the Recall Application proceedings or in the Main Application under Section 482. As transpiring from the Order dated 02.04.2024, it appears that the main contention raised by Mr. Karan Singh was that the opponent no.2 Bhagwan Singh was not given opportunity of filing counter affidavit before passing the judgment on 16.12.2019 in the Main Application under Section 482.

23. It further appears that Criminal Miscellaneous Recall Application Nos. 7/2020 and 8/2021 were also filed by one Advocate Mr. Alok Kumar Yadav on 20.12.2020 seeking condonation of delay and on 28.11.2020 seeking recall of the order dated 16.12.2019. Along with the said Applications, one affidavit with the signature of said Advocate Alok Kumar Yadav, without the signature of Bhagwan Singh on whose behalf it was sought to be filed and without the signature of the Oath Commissioner, was sought to be filed. The said Alok Yadav also filed his Vakalatnama on 28.11.2021 with the alleged thumb mark of Bhagwan Singh. All the said three Recall applications were argued by the Advocate Karan Singh Yadav purportedly on behalf of Bhagwan Singh, who was opponent No.2 in the main proceedings under Section 482 filed by Ajay Katara. The Recall Application No.3/2020 came to be rejected by the Court vide order dated 02.04.2024 by observing that the main case was argued by the two reputed Senior Advocates appearing for the opponent No.2, as stated in the judgment dated 16.12.2019. The other two Recall Applications being No. 7/2020 and 8/2021 were not pressed for by the said Advocate Mr. Karan Singh Yadav and therefore were dismissed vide the said order dated 02.04.2024.

24. From the said proceedings of the High Court, it clearly emerges that though there was no Vakalatnama filed on behalf of Bhagwan Singh who was opponent No.2 in the Application under Section 482 No. 41533 of 2019, two Senior Advocates and other Advocates made their submissions on behalf of Bhagwan Singh. After the final judgment was passed by the High Court on 16.12.2019, three Recall Applications came to be filed one after the other, almost four years after the said judgment in the name of Bhagwan Singh and Rinki. The concerned advocates also appeared on behalf of the Bhagwan Singh without his authority, knowledge or consent.

25. From the aforesaid state of affairs, we are of the opinion that the Respondent No.3 Mr. Sukhpal, son of Rishipal and Respondent No.4 Ms. Rinki, wife of Sukhpal, with the able assistance of a battery of advocates in the Supreme Court namely AOR Mr. Anubhav Yashwant Yadav, Mr. R.P.S Yadav, Mr. Karan Singh Yadav along with the Advocate and notary Mr. A.N. Singh, and a battery of Advocates in the High Court namely Santosh Kumar Yadav, Jai Singh Yadav, Alok Kumar Yadav and Karan Singh Yadav and many other unknown persons had made brazen attempts to falsely implicate the Respondent No.2 Ajay Katara by filing false proceedings in the name of Bhagwan Singh in the High Court and Supreme Court, by filing false and fabricated documents. Though, the said Bhagwan Singh had never met any of the said Advocates nor had instructed any advocates to file the proceedings in the High Court or the Supreme Court and, though he had never met his daughter Rinki and son-in-law, Sukh Pal since the time they had eloped and married with each other in 2013, they with the help and assistance of the said Advocates had tried to misuse and abuse the process of law and malign the stream of justice.

26. It is also very pertinent to note that as stated earlier, the said Respondent no.2-Ajay Katara was the star witness in the famous Nitish Katara Murder Case and on the basis of his evidence along with the other evidence the accused in the said case namely Vikas Yadav and Vishal Yadav, (who happened to be the son and nephew of D.P. Yadav, Ex- Minister and Member of Parliament) were convicted and sentenced to imprisonment for life by the trial court. In the appeal, the High Court had confirmed the conviction and further ordered that the said two accused shall not be entitled to any remission till they have completed 25 years of actual sentence. The said judgment was also

confirmed by the Supreme Court. Mr. Katara is made to suffer for being witness in the said case. As stated by him in the affidavit, he was subjected to continuous threats and still continues to be under pressure for having appeared as the witness. He has stated that before the said case, he had no case civil or criminal filed against him, and after the said case, he has been continuously targeted with a campaign of false and frivolous cases and named in around thirty-seven cases, including the present one at the behest of Yadav family and their associates. However, he has been cleared in 35 out of 37 cases.

27. It would not be out of place to reiterate that the witnesses play a vital role in facilitating the court to arrive at a correct findings, particularly in criminal trials. As rightly said by Jereny Bentham, an English Philosopher and jurist, “the witnesses are the eyes and ears of justice.” They are the backbone in the decision making process in the adversial system prevalent in India. In the words of Whittaker Chambers, a witness is -

“a man whose life and faith are so completely one that when the challenge comes to step out and testify for his faith, he does so, disregarding all risks, accepting all consequences.”¹ As very aptly said in a book on Witness Protection-

“In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion.² 1 Whittaker Chambers, WITNESS QUOTES (Washington DC, Regnery Gateway, 1952) p. 5 2 Witness Protection in Criminal Trial in India by Girish Abhyankar & Asawari Abhyankar

28. However, the condition of witnesses in the Indian Legal System is very pathetic. The witnesses are threatened, coerced by using force and lured by monetary considerations, at the instances of those who are in power, their henchmen and hirelings, with a view to smother and stifle truth, and to make mockery of justice. Though the “Witness Protection Scheme, 2018” has been framed by the Central Government and approved by this Court in Mahendra Chawla vs. Union of India³ there is hardly any effective implementation of the same.

29. To create or to assist creating false documents and to use them as genuine knowing them to be false in the Court proceedings, to falsely implicate somebody in the false proceedings filed in the name of the person who had no knowledge whatsoever about the same are the acts attributable to the offences punishable under the Bhartiya Nyaya Sanhita, 2023. They are also acts of frauds committed not only on the person sought to be falsely implicated and on the person in whose name such false proceedings are filed without his knowledge and consent, but is a fraud committed on the Courts. No Court can allow itself to be used as an instrument of fraud and no Court can allow its eyes to be closed to the fact that it is being used as an instrument of fraud. As held by this Court in V. Chandrasekaran & Anr. vs. Administrative Officer & Ors.⁴ (2019) 14 SCC 615 4 2012 (12) SCC 133 “The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.”

30. The matter assumes serious concern when the Advocates who are the officers of the Court are involved and when they actively participate in the ill-motivated litigations of the unscrupulous litigants, and assist them in misusing and abusing the process of law to achieve their ulterior purposes.

31. People repose immense faith in Judiciary, and the Bar being an integral part of the Justice delivery system, has been assigned a very crucial role for preserving the independence of justice and the very democratic set up of the country. The legal profession is perceived to be essentially a service oriented, noble profession and the lawyers are perceived to be very responsible officers of the court and an important adjunct of the administration of justice. In the process of overall depletion and erosion of ethical values and degradation of the professional ethics, the instances of professional misconduct are also on rise. There is a great sanctity attached to the proceedings conducted in the court. Every Advocate putting his signatures on the Vakalatnamas and on the documents to be filed in the Courts, and every Advocate appearing for a party in the courts, particularly in the Supreme Court, the highest court of the country is presumed to have filed the proceedings and put his/her appearance with all sense of responsibility and seriousness. No professional much less legal professional, is immuned from being prosecuted for his/her criminal misdeeds.

32. In the extraordinary facts and circumstances, and considering the gravity and seriousness of the case, when the High Court and Supreme Court were sought to be taken for a ride and when the entire justice delivery system was sought to be put to stake, by the respondent no. 3 Mr. Sukhpal, the respondent no. 4 Ms. Rinki, and their concerned associates and the Advocates, who helped them in forging and fabricating the documents to be filed in the High Court and Supreme Court, and to pursue the false proceedings filed in the name of Bhagwan Singh without his knowledge, consent or authority, we deem it appropriate to hand over the investigation of the case to the CBI. The CBI shall register the regular case, after holding preliminary inquiry if necessary to do so, against all the persons found involved and responsible, and shall investigate all the links leading to the commission of the alleged crimes and fraud on court. The Director, CBI is directed to do the needful in this regard and to submit the report to this court within two months. The office is directed to hand over Original Record of the Application under Section 482 No.41533/2019 and Recall Applications 3/2020, 7/2020 and 8/2021 and the Original Record of the instant Appeals to the Director, CBI in a sealed cover, after retaining the certified copies of all the records of the said proceedings and instant appeals. WAY FORWARD TO CORRECTIVE MEASURES

33. This is the opportune time to remind the Advocates about the Standard of Professional misconduct and Etiquettes as contained in Chapter II Part VI of the Bar Council of India Rules. As stated in the Preamble thereof, an Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may still be improper for an advocate. Though an Advocate is expected to fearlessly uphold the interests of his client, his conduct must conform to the Rules of Conduct and Etiquettes laid down in the said Chapter, both in letter and in spirit.

34. The role and the duty of the Advocates particularly Advocates-on-Record are contained in Order IV of the Supreme Court Rules, 2013. The relevant part of Rule 7 Order IV of the said Rules reads as under:

“7. (a).

(b) (i) Where the vakalatnama is executed in the presence of the Advocate-on-Record, he shall certify that it was executed in his presence.

(ii) Where the Advocate-on-Record merely accepts the vakalatnama which is already duly executed in the presence of a Notary or an advocate, he shall make an endorsement thereon that he has satisfied himself about the due execution of the vakalatnama.”

35. The Special Leave Petitions civil or criminal have to be filed in the Supreme Court in compliance with the Rules contained in Order XXI and XXII of the said Rules.

36. As observed by this Court in *Saumya Chaurasia vs. Directorate of Enforcement*⁵ -

“13. It cannot be gainsaid that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. It hardly needs to be emphasised that a very high standard of professionalism and legal acumen is expected from the advocates particularly designated senior advocates appearing in the highest court of the country so that their professionalism may be followed and emulated by the advocates practising in the High Courts and the District Courts. Though it is true that the advocates would settle the pleadings and argue in the courts on instructions given by their clients, however their duty to diligently verify the facts from the record of the case, using their legal acumen for which they are engaged, cannot be obliterated.”

37. Similarly, the Notaries Act 1952 regulates the profession of Notaries. The functions and duties of Notaries are enumerated in Section 8 thereof. The transaction of business by a Notary is contained in Rule 11 of the Notaries Rules 1956. Any acts or omissions thereof, on the part of the 5 (2024) 6 SCC 401 Notary would tantamount to misconduct, and the person complained against would be unfit to be a Notary.

38. Having recorded above, the Registry is directed to send a copy of the order to the Bar Council of India and to the Government of India for necessary perusal and action as may be deemed necessary.

39. So far as the listing of the names of the Advocates in the Order Sheets is concerned, in response to the order passed by the Court on 28.08.2024, directing the Registry to explain as to on what basis and why the names of so many Advocates are being shown in the Order Sheets/Record of Proceedings though, they would be neither appearing as an AOR nor as arguing/ Senior Counsel, it has been submitted by the concerned officers i.e. AR-cum-PS/Court Masters inter alia that the

Advocate on Records have been authorized to put in appearance of the Advocates appearing with or on his/her behalf on the portal for filing on- line appearance slips in view of Office Circular dated 30.12.2022. It is further stated that it is not possible for the Court Masters to recognize every Advocate appearing in the Court rooms by face and therefore, they have to rely upon the appearance put in by the Advocates-on- Record. In case a Senior Advocate is appearing but his/her name is not reflected in the appearance slip, the Court Masters include their names. The said Circular/Notice dated 30.12.2022 relied upon by the AR-cum- PSs/Court Masters reads as under:

“SUPREME COURT OF INDIA F.No.5/Judl./2022 Dated: 30th December, 2022
NOTICE Re: Activation of Portal of Filing Online Appearance Slips Take Notice that an Online Module has been developed to facilitate procedure of marking appearances of the Advocates in the Record of Proceedings, which is going to be activated from 02.01.2023.

Take Notice that the Advocates-on-Record may mark the appearances of the Advocates appearing in the Court through the link provided on the website <http://main.sci.gov.in> and on the Office Mobile App of the Supreme Court of India. The said facility shall be available for the duration spanning from the publication of the Cause List on the website till 11.30 a.m. on the date of hearing of the matter. The User Manual for the same is available on the website.

In case of any query, the Advocates-on-Record may contact the concerned Court Masters, whose contact details are available on the website on daily basis.

Take further Notice that the existing practice of submitting appearance slips on Court-wise e-mail IDs shall stand dispensed with w.e.f. 02.01.2023.

Sd/-

(Puneet Sehgal)
Registrar (J-III)

(Chirag Bhanu Singh)
Registrar (J-I)”

40. From the bare reading of Notice, it clearly transpires that the Notice only permits the Advocate-On-Record to mark the appearances of the Advocates appearing in the Court, through the link provided on the website or on the office mobile app of the Supreme Court. Meaning thereby, the Advocate on Record may mark the appearances of those Advocates who are actually appearing in the case i.e. the Advocate-on- Record and the Advocates who are going to appear and argue the case on a particular day of hearing. The Advocate on Record is expected to know before 11:30 a.m. on the date of hearing as to which Advocate/Advocates is/are going to appear/argue the particular case, and is accordingly required to mark their appearances as instructed in the Notice. The Notice nowhere permits the Advocates-on-Record to mark appearances of the Advocates who are not authorized either to appear and argue the case.

41. Recently the Coordinate Bench on interpretation of the said Circular dated 30.12.2022 vide the Order dated 29.08.2024 in Contempt Petition(C)No. 1188/2018 in C.A. No. 2703 of 2017 observed and directed as under:

“4. We have perused circular of the Supreme Court Registry dated 30th December, 2022 by which a portal for online appearance was activated w.e.f. 02.01.2023. In terms of the said circular, the Advocates-on-Record are permitted to mark appearances of the “advocates appearing in court.” Meaning thereby, such instruction casts onerous responsibility on the Advocates-on-Record to furnish information of the advocate appearing online or physically in the case. Apparently, it would mean that the advocate who is either present in the case or assisting them in the Court, the presence of only those is to be marked. It would not mean that the advocate, who is neither present personally nor online, may be allowed to mark his presence by furnishing online information. We cannot lose sight of the fact that furnishing such information may have bearing on the sanctity of the Court proceedings in the case.

5. We may hasten to observe that on the basis of the presence of the counsel in the proceedings, the advocates may be entitled to get certain benefits such as allotment of chamber, designation of senior advocates and other. In the long run, if the advocates, who are not present in the Court are permitted to mark their presence, it may have adverse impact on those Bar members who are appearing regularly. Therefore, for sanctity of the proceedings and for betterment of the Institution, online information ought to be submitted of only those advocates who are either appearing or assisting during hearing, personally or online.

6. In view of aforesaid, we forthwith direct that in this Court, online presence of only those advocates be furnished and be marked who are appearing or assisting during hearing as indicated above and not of those who are not present in Court but may be associated in office of the advocates.

7. As observed, we request the member of the Supreme Court Bar Association and Supreme Court Advocates-on-Record Association to furnish online presence only of those advocates as indicated, and ensure its compliance in true sense and spirit.

We also request the Presidents of respective Bar Associations of the Supreme Court to look into the issue and notify the members for taking corrective steps.

8. A copy of this order be sent to the President of the Supreme Court Bar Association and of Supreme Court Advocates-on-Record Association for information and acknowledgment.”

42. In view of the said Notice/Circular dated 30.12.2022 and in furtherance of the afore-stated order passed by the Coordinate Bench, it is directed that the Advocates on-Record may mark the appearances of only those Advocates who are authorized to appear and argue the case on the particular day of hearing. Such names shall be given by the Advocate on Record on each day of

hearing of the case as instructed in the Notice. If there is any change in the name of the arguing Advocate, it shall be duty of the concerned Advocate-on-Record to inform the concerned Court Master in advance or at the time of hearing of the case. The concerned Officers/Court Masters shall act accordingly.

43. The Appeals stand disposed of in terms of this Order. However, the same be listed for the submission of the Report by the CBI on 25th November, 2024.

.....J. [BELA M. TRIVEDI] J.

[SATISH CHANDRA SHARMA] NEW DELHI;

SEPTEMBER 20th, 2024