Mahipal Singh Rana vs State Of U.P on 5 July, 2016

Equivalent citations: AIR 2016 SC 3302, 2016 (8) SCC 335, AIR 2016 SC(CRI) 1041, 2017 (1) ALJ 499, (2016) 3 PAT LJR 307, (2016) 165 ALLINDCAS 196 (SC), 2017 CALCRILR 3 20, (2016) 3 RECCRIR 933, (2016) 4 ALLCRILR 799, (2016) 2 ALLCRIR 2146, (2016) 3 DLT(CRL) 351, 2016 (3) SCC (CRI) 476, (2016) 4 KCCR 430, (2016) 3 JLJR 198, (2016) 4 KER LT 306, (2017) 98 ALLCRIC 7, (2016) 3 RECCIVR 938, (2017) 1 MAD LJ(CRI) 318, (2016) 3 CRILR(RAJ) 842, (2016) 3 CURCRIR 163, (2016) 64 OCR 1024, (2016) 6 SCALE 353, (2016) 3 CRIMES 179, 2016 CRILR(SC MAH GUJ) 842, 2016 CRILR(SC&MP) 842, (2016) 2 ALD(CRL) 515, AIR 2016 SUPREME COURT 3302, AIR 2016 SC (CRIMINAL) 1041 2017 (1) ALJ 499

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Bench: Adarsh Kumar Goel, Kurian Joseph, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 63 OF 2006

Mahipal Singh Rana, Advocate ….Appellant

VERSUS

State of Uttar Pradesh ....Respondent

J U D G M E N T

ANIL R. DAVE, J.

1. The present appeal is preferred under Section 19 of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”) against the judgment and order dated 02.12.2005 delivered by the High Court of Judicature at Allahabad in Criminal Contempt Petition No. 16 of 2004, whereby the High Court found the appellant guilty of Criminal Contempt for intimidating and threatening a Civil Judge (Senior Division), Etah in his Court on 16.4.2003 and 13.5.2003 and sentenced him to simple imprisonment of two months with a fine of Rs. 2,000/- and in default of payment of the fine, the appellant to undergo further imprisonment of 2 weeks. The High Court further directed the Bar

Council of Uttar Pradesh to consider the facts contained in the complaint of the Civil Judge (Senior Division) Etah, and earlier contempt referred to in the judgement and to initiate appropriate proceedings against the appellant for professional misconduct.

Reference to larger Bench and the Issue

2. On 27th January, 2006, this appeal was admitted by this Court and that part of the impugned judgment, which imposed the sentence, was stayed and the appellant was directed not to enter the Court premises at Etah (U.P.). Keeping in view the importance of the question involved while admitting the appeal on 27th January, 2006, notice was directed to be issued to the Supreme Court Bar Association as well as to the Bar Council of India. The matter was referred to the larger Bench. Learned Solicitor General of India was requested to assist the Court in the matter.

3. On 6th March, 2013 restriction on entry of the appellant into the court premises as per order dated 27th January, 2006 was withdrawn. Thereby, the appellant was permitted to enter the court premises. The said restriction was, however, restored later. On 20th August, 2015, notice was issued to the Attorney General on the larger question whether on conviction under the Contempt of Courts Act or any other offence involving moral turpitude an advocate could be permitted to practise.

4. Thus following questions arise for consideration:

> Whether a case has been made out for interference with the order passed by the High Court convicting the appellant for criminal contempt and sentencing him to simple imprisonment for two months with a fine of Rs.2,000/- and further imprisonment for two weeks in default and debarring him from appearing in courts in judgeship at Etah; and Whether on conviction for criminal contempt, the appellant can be allowed to practise.
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> The facts and the finding of the High Court

5. The facts of the present appeal discloses that the Civil Judge (Senior Division), Etah made a reference under Section 15 (2) of the Act to the High Court through the learned District Judge, Etah (U.P.) on 7.6.2003 recording two separate incidents dated 16.4.2003 and 13.5.2003, which had taken place in his Court in which the appellant had appeared before him and conducted himself in a manner which constituted “Criminal Contempt” under Section 2 (c) of the Act.

6. The said letter was received by the High Court along with a forwarding letter of the District Judge dated 7.6.2003 and the letters were placed before the Administrative Judge on 7.7.2003, who forwarded the matter to the Registrar General vide order dated 18.6.2004 for placing the same before the Hon’ble Chief Justice of the High Court and on 11.7.2004, the Hon’ble Chief Justice of the High Court referred the matter to the Court concerned dealing with contempt cases and notice was also issued to the appellant.

7. Facts denoting behaviour of the appellant, as recorded by the Civil Judge (Senior Division), Etah, can be seen from the contents of his letter addressed to the learned District Judge, Etah. The letter reads as under:-

> "Sir, It is humbly submitted that on 16.4.2003, while I was hearing the 6-Ga-2 in Original Suit No.114/2003 titled as "Yaduveer Singh Chauhan vs. The Uttar Pradesh Power Corporation", Shri Mahipal Singh Rana, Advocate appeared in the Court, and, while using intemperate language, spoke in a loud voice:
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> "How did you pass an order against my client in the case titled as "Kanchan Singh vs. Ratan Singh"? How did you dare pass such an order against my client?
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> I tried to console him, but he started shouting in a state of highly agitated mind:
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> "Kanchan Singh is my relative and how was this order passed against my relative? No Judicial Officer has, ever, dared pass an order against me. Then, how did you dare do so? When any Judicial officer passes an order on my file against my client, I set him right. I shall make a complaint against you to Hon'ble High Court", and he threatened me: "I will not let you remain in Etah in future, I can do anything against you. I have relations with highly notorious persons and I can get you harmed by such notorious persons to the extent I want to do, and I myself am capable of doing any deed (misdeed) as I wish, and I am not afraid of any one. In the Court compound, even my shoes are worshipped and I was prosecuted in two murder cases. And I have made murderous assaults on people and about 15 to 20 cases are going on against me. If you, in future, dare pass an order on the file against my client in which I am a counsel, it will not be good for you".

Due to the above mentioned behaviour of Shri Mahipal Singh Rana, Advocate, the judicial work was hindered and aforesaid act of Shri Mahipal Singh falls within the ambit of committing the contempt of Court.

In this very succession, on 13.5.2003, while I was hearing 6-Ga-2 in the O.S. No. No. 48/2003 titled as "Roshanlal v Nauvat Ram", Shri Mahipal Singh Rana Advocate appeared in the Court and spoke in a loud voice: "Why did you not get the OS No. 298/2001 title as 'Jag Mohan vs. Smt. Suman' called out so far, whereas the aforesaid case is very important, in as much as I am the plaintiff therein". I said to Shri Mahipal Singh Rana, Advocate:

> "Hearing of a case is going on. Thereafter, your case will be called out for hearing", thereupon he got enraged and spoke: "That- case will be heard first which I desire to be heard first. Nothing is done as per your desire. Even an advocate does not dare create a hindrance in my case. I shall get the case decided which I want and that case will never be decided, which I do not want. You cannot decide any case against my wishes". Meanwhile when the counsel for Smt. Suman in O.S. No. 298/2001 titled as "Jag Mohan vs. Smt. Suman" handed some papers over to Shri Mahipal Singh Rana,

> Advocate for receiving the same, he threw those papers away and misbehaved with the counsel for Smt. Suman. Due to this act of Shri Mahipal Singh Rana, the judicial work was hindered and his act falls within the ambit of committing the contempt of Court.
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> Your good self is therefore requested that in order to initiate proceedings relating to committing the contempt of Court against Shri Mahipal Singh Rana, Advocate, my report may kindly be sent to the Hon'ble High Court by way of REFERENCE".
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> With regards,"

8. On the same day, the learned Civil Judge (Senior Division) also wrote another letter to the Registrar-General of the High Court, giving some more facts regarding contemptuous behaviour of the appellant with a request to place the facts before the Hon'ble Chief Justice of the High Court so that appropriate action under the Act may be taken against the appellant. As the aforestated letters refer to the facts regarding behaviour of the appellant, we do not think it necessary to reiterate the same here.

9. Ultimately, in pursuance of the information given to the High Court, proceedings under the Act had been initiated against the appellant.

10. Before the High Court, it was contended on behalf of the appellant that it was not open to the Court to proceed against the appellant under the provisions of the Act because if the behaviour of the appellant was not proper or he had committed any professional misconduct, the proper course was to take action against the appellant under the provisions of the Advocates Act, 1961. It was also contended that summary procedure under the Act could not have been followed by the Court for the purpose of punishing the appellant. Moreover, it was also submitted that the appellant was not at all present before the learned Civil Judge (Senior Division), Etah on 16.4.2003 and 13.5.2003.

11. Ultimately, after hearing the parties concerned, the High Court did not accept the defence of the appellant and after considering the facts of the case, it delivered the impugned judgment whereby punishment has been imposed upon the appellant. The High Court observed:

> "22. Extraordinary situations demand extraordinary remedies. The subordinate courts in Uttar Pradesh are witnessing disturbing period. In most of the subordinate courts, the Advocates or their groups and Bar Associations have been virtually taken over the administration of justice to ransom. These Advocates even threaten and intimidate the Judges to obtain favourable orders. The Judicial Officers often belonging to different districts are not able to resist the pressure and fall prey to these Advocates. This disturbs the equilibrium between Bar and the Bench giving undue advantage and premium to the Bar. In these extraordinary situations the High Court can not abdicate its constitutional duties to protect the judicial officers.
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> 24. .....The criminal history of the contemnor, the acceptance of facts in which his actions were found contumacious and he was discharged on submitting apologies on two previous occasions, and the allegations against him in which he was found to continue with intimidating the judicial officers compelled us to issue interim orders restraining his entry of the contemnor in the judgeship at Etah. The Bar Council of Uttar Pradesh, is fully aware of his activities but has chosen not to take any action in the matter. In fact the Bar Council hardly takes cognizance of such matters at all. The Court did not interfere with the statutory powers of the Bar Council of Uttar Pradesh to take appropriate proceedings against the contemnor with regard to his right of practice, and did not take away right of practice vested in him by virtue of his registration with the Bar Council. He was not debarred from practice but was only restrained to appear in the judgeship at Etah in the cases he was engaged as an Advocate.

The repeated contumacious conduct, without any respect to the Court committed by him repeatedly by intimidating and brow beating the judicial officers, called for maintaining discipline, protecting the judicial officers and for maintaining peace in the premises of judgeship at Etah.

25. Should the High Court allow such advocate to continue to terrorise, brow beat and bully the judicial officers? It is submitted that he has a large practice. We are not concerned here whether the contemnor or such advocates are acquiring large practice by intimidating judicial officers. These are questions to be raised before the Bar Council. We, however, must perform our constitutional duty to protect our judicial officers. This is one such case illustrated in para 78, of the Supreme Court Bar Association's case (supra), in which the occasion had arisen to prevent the contemnor to appear before courts at Etah. The withdrawal of such privilege did not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunal, drafting the petitions and advising his clients. It only prevented him from intimidating the judicial officers and from vitiating the atmosphere conducive for administration of justice in the judgeship at Etah.

31. The Supreme Court held that Section 20 of the Contempt of Courts Act, has to be construed in a manner which would avoid anomaly and hardships both as regards the litigant as also by placing a pointless fetter on the part of the court to punish for its contempt. In Pallav Seth the custodian received information of the appellant having committed contempt of taking over benami concerns, transferring funds to these concerns and operating their accounts, from a letter dated 5.5.1998, received from the Income Tax Authorities. Soon thereafter on 18.6.1998 a petition was filed for initiating action in contempt and notices were issued by the Court on 9.4.1999. The Supreme Court found that on becoming aware of the forged applications the contempt proceedings were filed on 18.6.1998 well within the period of limitation prescribed by Section 20 of the Act. The action taken by the special court by its order dated 9.4.1999 directing the applications to be treated as show cause notice, was thus valid and that the contempt action was not barred by Section 20 of the Act.

32. In the present case the alleged contempt was committed in the court of Shri Onkar Singh Yadav, Civil Judge (Senior Division) Etah on 16.4.2003 and 13.5.2003. The officer initiated the proceedings by making reference to the High Court through the District Judge vide his letters dated 7.6.2003,

separately in respect of the incidents. These letters were received by the Court with the forwarding letter of the District Judge dated 1.6.2003 and were placed before Administrative Judge on 7.7.2003, who returned the matter to the Registrar General with his order dated 18.6.2004 to be placed before Hon'ble the Chief Justice and that by his order dated 11.7.2004, Hon'ble the Chief Justice referred the matter to court having contempt determination. Show cause notices were issued by the court to the contemnor on 28.10.2004. In view of the law as explained in Pallav Seth (supra) the contempt proceedings would be taken to be initiated on 7.6.2003 by the Civil Judge (Senior Division) Etah, which was well within the period of one year from the date of the incidents prescribed under Section 20 of the Act.

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36. We do not find that the contemnor Shri Mahipal Singh Rana is suffering from any mental imbalance. He is fully conscious of his actions and take responsibility of the same. He suffers from an inflated ago, and has a tremendous superiority complex and claims himself to be a champion for the cause of justice, and would not spare any effort, and would go to the extent of intimidating the judges if he feels the injustice has been done to his client. We found ourselves unable to convince him that the law is above every one, and that even if he is an able lawyer belonging to superior caste, he could still abide by the dignity of court and the decency required from an advocate appearing in any court of law.

37. The due administration of law is of vastly greater importance than the success or failure of any individual, and for that reason public policy as well as good morals require that every Advocate should keep attention to his conduct. An Advocate is an officer of the Court apart of machinery employed for administration of justice, for meeting out to the litigants the exact measure of their legal rights. He is guilty of a crime if he knowingly sinks his official duty, in what may seem to be his own or his clients temporary advantage.

38. We find that the denial of incidents and allegations of malafides against Shri Onkar Singh Yadav, the then Civil Judge (Senior Division) Etah have been made only to save himself from the contumacious conduct.

39. Shri Mahipal Singh Rana, the contemnor has refused to tender apologies for his conduct. His affidavit in support of stay vacation/modification and supplementary affidavit do not show any remorse. He has justified himself again and again, in a loud and thundering voice.

40. We find that Shri Mahipal Rana the contemnor is guilty of criminal contempt in intimidation and threatening Shri Onkar Singh Yadav the then Civil Judge (Senior Division) Etah in his court on 16.4.2003 and 13.5.2003 and of using loud and indecent language both in court and in his pleadings in suit No. 515/2002. He was discharged from proceeding of contempt in Criminal Contempt Petition No. 21/1998 and Criminal Contempt No. 60 of 1998 on his tendering unconditionally apology on 3.8.1999 and 11.11.2002 respectively. He however did not mend himself and has rather become more aggressive and disrespectful to the court. He has virtually become nuisance and obstruction to the administration of justice at the Judgeship at Etah. We are satisfied that the

repeated acts of criminal contempt committed by him are of such nature that these substantially interfere with the due course of justice. We thus punish him under Section 12 of the Contempt of Courts Act 1971, with two months imprisonment and also impose fine of Rs. 2000/- on him. In case non-payment of fine he will undergo further a period of imprisonment of two weeks. However, the punishment so imposed shall be kept in abeyance for a period of sixty days to enable the contemner Shri Rana to approach the Hon'ble Supreme Court, if so advised.

41. We also direct the Bar Council of Uttar Pradesh to take the facts constituted in the complaints of Shri Onkar Singh Yadav, the then Civil Judge (Senior Division) Etah, the two earlier contempts referred in this judgment, and to draw proceedings against him for professional misconduct.

42. Under the Rules of this Court, the contemnor shall not be permitted to appear in courts in the Judgeship at Etah, until he purges the contempt.

43. The Registrar General shall draw the order and communicate it to the Bar Council of Uttar Pradesh and Bar Council of India within a week. The contemnor shall be taken into custody to serve the sentence immediately of the sixty days if no restrain order is passed by the appellate court."
Rival Contentions:

> 12. The learned counsel appearing for the appellant before this Court specifically denied the instances dated 16.4.2003 and 13.5.2003 and further submitted that the appellant had not even gone to the Court of the learned Civil Judge (Senior Division), Etah on the aforestated two days and therefore, the entire case made out against the appellant was false and frivolous. The learned counsel, therefore, submitted that the High Court had committed an error by not going into the fact as to whether the appellant had, in fact, attended the Court of the learned Civil Judge (Senior Division), Etah on 16.4.2003 and 13.5.2003. The learned counsel further submitted that the High Court ought to have considered the fact that the appellant had filed several complaints against the learned Judge who was the complainant and therefore, with an oblique motive the entire contempt proceedings were initiated against the appellant. The said complaints ought to have been considered by the High Court. It was further submitted that contempt proceedings were barred by limitation. The incidents in question are dated 16th April, 2003 and 13th May, 2003 while notice was ordered to be issued on 28th April, 2004.
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> 13. The learned counsel, thus, submitted that the action initiated against the appellant was not just and proper and the impugned judgment awarding punishment to the appellant under the Act is bad in law and therefore, deserved to be set aside. In the alternative, it is submitted that the appellant was 84 years of age and keeping that in mind, the sentence for imprisonment may be set aside and instead, the fine may be increased.
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> 14. On the other hand, the learned counsel appearing for the State of Uttar Pradesh submitted that the impugned judgment was just, legal and proper and the same was

> delivered after due deliberation and careful consideration of the relevant facts. He submitted that looking at the facts of the case, the High Court rightly came to the conclusion that the appellant was not only present in the Court on those two days i.e. on 16.4.2003 and 13.5.2003, but the appellant had also misbehaved and misconducted in such a manner that his conduct was contemptuous and therefore, the proceedings under the Act had to be initiated against him.

The learned counsel also drew attention of the Court to the nature of the allegations made by the appellant against the learned Judge and about the contemptuous behaviour of the appellant. The learned counsel also relied upon the report submitted to the learned District Judge and submitted that the impugned judgment is just, legal and proper. He also submitted that the misbehaviour and contemptuous act of the appellant was unpardonable and therefore, the High Court had rightly imposed punishment upon the appellant.

15. In response to the notice issued by this Court on 20th August, 2015 in respect of the question framed, the learned counsel appearing for the Bar Council of India submitted that Section 24A of the Advocates Act, 1961 provides for a bar against admission of a person as an advocate if he is convicted of an offence involving moral turpitude, apart from other situations in which such bar operates. The proviso however, provides for the bar being lifted after two years of release. However, the provision did not expressly provide for removal of an advocate from the roll of the advocates if conviction takes place after enrollment of a person as an advocate. Only other relevant provision under which action could be taken is Section 35 for proved misconduct. It is further stated that though the High Court directed the Bar Council of Uttar Pradesh to initiate proceedings for professional misconduct on 2.12.2005, the consequential action taken by the Bar Council of the State of Uttar Pradesh was not known. It is further stated that the term moral turpitude has to be understood having regard to the nature of the noble profession of law which requires a person to possess higher level of integrity. Even a minor offence could be termed as an offence involving moral turpitude in the context of an advocate who is expected to be aware of the legal position and the conduct expected from him as a citizen is higher than others. It was further submitted that only the State Bar Council or Bar Council of India posses the power to punish an advocate for “professional misconduct” as per the provisions of Section 35 of the Advocates Act, 1961 and reiterated the law laid down by this Court in Supreme Court Bar Association versus Union of India[1]. In addition, the counsel submitted that a general direction to all the Courts be given to communicate about conviction of an advocate for an offence involving moral turpitude to the concerned State Bar Council or the Bar Council of India immediately upon delivering the judgment of conviction so that proceedings against such advocates can be initiated under the Advocates Act, 1961.

16. The Learned Additional Solicitor General of India appearing on behalf of Union of India, submitted that normally in case of all professions, the apex body of the professionals takes action against the erring professional and in case of legal profession, the Bar Council of India takes disciplinary action and punishes the concerned advocate if he is guilty of any misconduct etc. Reference was made to Architects Act, 1972, Chartered Accountants Act, 1949, Company Secretaries Act, 1980, Pharmacy Practice Regulations, 2015, Indian Medical Council (Professional Conduct Etiquettes and Ethics) Regulations, 2002, National Council for Teacher Education Act, 1993, Cost

and Works Accountants Act, 1959, Actuaries Act, 2006, Gujarat Professional Civil Engineers Act, 2006, Representation of Peoples Act, 1951, containing provisions for disqualifying a person from continuing in a regulated profession upon conviction for an offence involving moral turpitude. Reference was also made to Section 24A of the Advocates Act which provides for a bar on enrolment as an advocate of a person who has committed any offence involving moral turpitude. It was further submitted that if a person is disqualified from enrolment, it could not be the intention of the legislature to permit a person already enrolled as an advocate to continue him in practice if he is convicted of an offence involving moral turpitude. Bar against enrolment should also be deemed to be bar against continuation. It was further submitted that Article 145 of the Constitution empowers the Supreme Court to make rules for regulating practice and procedure including the persons practicing before this Court. Section 34 of the Advocates Act empowers the High Courts to frame rules laying down the conditions on which an advocate shall be permitted to practice in courts. Thus, there is no absolute right of an advocate to appear in court. Appearance before Court is subject to such conditions as are laid down by this Court or the High Court. An Advocate could be debarred from appearing before the Court even if the disciplinary jurisdiction for misconduct was vested with the Bar Council as laid down in Supreme Court Bar Association (supra) and as further clarified in Pravin C. Shah versus K.A. Mohd. Ali[2], Ex-Captain Harish Uppal versus Union of India[3], Bar Council of India versus High Court of Kerala[4] and R.K. Anand versus Registrar, Delhi High Court[5]. Thus, according to the counsel, apart from the Bar Council taking appropriate action against the appellant, this Court could debar him from appearance before any court.

17. Shri Dushyant Dave, learned senior counsel and President of the Supreme Court Bar Association supported the interpretation canvassed by the learned Additional Solicitor General. He submitted that image of the profession ought to be kept clean by taking strict action against persons failing to maintain ethical standards.

18. We have heard the learned counsel appearing for the parties and have perused the judgments cited by them.

Consideration of the questions We may now consider the questions posed for consideration:

Re: (i)

19. Upon going through the impugned judgment, we are of the view that no error has been committed by the High Court while coming to the conclusion that the appellant had committed contempt of Court under the provisions of the Act.

20. We do not agree with the submissions of the learned counsel for the appellant that the appellant did not appear on those two days before the Court. Upon perusal of the facts found by the High Court and looking at the contents of the letters written by the concerned judicial officers, we have no doubt about the fact that the appellant did appear before the Court and used the language which was contemptuous in nature.

21. So far as the allegations made by the appellant with regard to the complaints made by him against the complainant judge, after having held that the appellant had appeared before the Court and had made contemptuous statements, we are of the opinion that those averments regarding the complaints are irrelevant. The averments regarding the complaints cannot be a defence for the appellant. Even if we assume those averments about the complaints to be correct, then also, the appellant cannot use such contemptuous language in the Court against the presiding Judge.

22. There is no merit in the contention of the appellant that there was delay on the part of the complainant Judge in sending the reference and he could have tried the appellant under Section 228 of the Indian Penal Code and the procedure prescribed under Code of Criminal Procedure. It is for the learned judge to decide as to whether action should be taken under the Act or under any other law.

23. The High Court has rightly convicted the appellant under the Act after having come to a conclusion that denial of the incidents and allegations of malafides against the complainant Judge had been made by the appellant to save himself from the consequences of contempt proceedings. The appellant had refused to tender apology for his conduct. His affidavit in support of stay vacation/modification and supplementary affidavit did not show any remorse and he had justified himself again and again, which also shows that he had no regards for the majesty of law.

24. It is a well settled proposition of law that in deciding whether contempt is serious enough to merit imprisonment, the Court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate. In the case at hand, the High Court has rightly held that the appellant was guilty of criminal contempt. We are however, inclined to set aside the sentence for imprisonment in view of advance age of the appellant and also in the light of our further direction as a result of findings of question No. (ii) Re: (ii) Court's jurisdiction vis a vis statutory powers of the Bar Councils

25. This Court, while examining its powers under Article 129 read with Article 142 of the Constitution with regard to awarding sentence of imprisonment together with suspension of his practice as an Advocate, in Supreme Court Bar Association (supra), the Constitution Bench held that while in exercise of contempt jurisdiction, this Court cannot take over jurisdiction of disciplinary committee of the Bar Council[6] and it is for the Bar Council to punish the advocate by debarring him from practice or suspending his licence as may be warranted on the basis of his having been found guilty of contempt, if the Bar Council fails to take action, this Court could invoke its appellate power under Section 38 of the Advocates Act[7]. In a given case, this court or the High Court can prevent the contemnor advocate from appearing before it or other courts till he purges himself of the contempt which is different from suspending or revoking the licence or debarring him to practise[8].

26. Reference may be made to the following observations in SCBA case (supra):

"79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

> 80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-

Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals.

81. We are conscious of the fact that the conduct of the contemner in V.C. Mishra case [(1995) 2 SCC 584] was highly contumacious and even atrocious. It was unpardonable. The contemner therein had abused his professional privileges while practising as an advocate. He was holding a very senior position in the Bar Council of India and was expected to act in a more reasonable way. He did not. These factors appear to have influenced the Bench in that case to itself punish him by suspending his licence to practice also while imposing a suspended sentence of imprisonment for committing contempt of court but while doing so this Court vested itself with a jurisdiction where none exists. The position would have been different had a reference been made to the Bar Council and the Bar Council did not take any action against the advocate concerned. In that event, as already observed, this Court in exercise of its appellate jurisdiction under Section 38 of the Act read with Article 142 of the Constitution of India, might have exercised suo motu powers and sent for the proceedings from the Bar Council and passed appropriate orders for punishing the contemner advocate for professional misconduct after putting him on notice as required by the proviso to Section 38 which reads thus:

> "Provided that no order of the Disciplinary Committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard." But it could not have done so in the first instance."

> 27. In Pravin C. Shah (supra) this Court held that an advocate found guilty of contempt cannot be allowed to act or plead in any court till he purges himself of contempt. This direction was issued having regard to Rule 11 of the Rules framed by the High Court of Kerala under Section 34 (1) of the Advocates Act and also referring to observations in para 80 of the judgment of this Court in Supreme Court Bar Association (supra). It was explained that debarring a person from appearing in Court was within the purview of the jurisdiction of the Court and was different from suspending or terminating the licence which could be done by the Bar Council and on failure of the Bar Council, in exercise of appellate jurisdiction of this Court. The observations are:

16. Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

17. When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court.

Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

18. In the above context it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in Prayag Das v. Civil Judge, Bulandshahr {AIR 1974 All 133] : (AIR p. 136, para 9) “The High Court has a power to regulate the appearance of advocates in courts. The right to practise and the right to appear in courts are not synonymous. An advocate may carry on chamber practice or even practise in courts in various other ways, e.g., drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for

regulating the appearance of advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility." xxxxx

24. Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters (vide Words and Phrases, Permanent Edn., Vol. 35-A, p. 307). In Black's Law Dictionary the word "purge" is given the following meaning: "To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt." It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

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27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforecited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt."

28. In Bar Council of India versus High Court of Kerala[9], constitutionality of Rule 11 of the Rules framed by the High Court of Kerala for barring a lawyer from appearing in any court till he got himself purged of contempt by an appropriate order of the court was examined. This Court held that the rule did not violate Articles 14 and 19 (1) (g) of the Constitution nor amounted to usurpation of power of adjudication and punishment conferred on the Bar Councils and the result intended by the application of the rule was automatic. It was further held that the rule was not in conflict with the law laid down in the SCBA judgment (supra). Referring to the Constitution Bench judgment in

Harish Uppal (supra), it was held that regulation of right of appearance in courts was within the jurisdiction of the courts. It was observed, following Pravin C. Shah (supra), that the court must have major supervisory power on the right to appear and conduct in the court. The observations are:

> "46. Before a contemner is punished for contempt, the court is bound to give an opportunity of hearing to him. Even such an opportunity of hearing is necessary in a proceeding under Section 345 of the Code of Criminal Procedure. But if a law which is otherwise valid provides for the consequences of such a finding, the same by itself would not be violative of Article 14 of the Constitution of India inasmuch as only because another opportunity of hearing to a person, where a penalty is provided for as a logical consequence thereof, has been provided for. Even under the penal laws some offences carry minimum sentence. The gravity of such offences, thus, is recognised by the legislature. The courts do not have any role to play in such a matter."

29. Reference was also made to the following observations in Harish Uppal (supra):

> "34.....The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers

> High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other."

30. In R.K. Anand (supra) it was held that even if there was no rule framed under Section 34 of the Advocates Act disallowing an advocate who is convicted of criminal contempt is not only a measure to maintain dignity and orderly function of courts, it may become necessary for the protection of the court and for preservation of the purity of court proceedings. Thus, the court not only has a right but also an obligation to protect itself and save the purity of its proceedings from being polluted, by barring the advocate concerned from appearing before the courts for an appropriate period of time[10]. This court noticed the observations about the decline of ethical and professional standards of the Bar, and need to arrest such trend in the interests of administration of justice. It was observed that in absence of unqualified trust and confidence of people in the bar, the judicial system could not work satisfactorily. Further observations are that the performance of the Bar Councils in maintaining professional standards and enforcing discipline did not match its achievements in other areas. This Court expressed hope and expected that the Bar Council will take appropriate action for the restoration of high professional standards among the lawyers, working of their position in the judicial system and the society. It was further observed:

> "331. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Public Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct.
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> 333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

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335. Here we must also observe that the Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. Indeed the Bar Council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society."

31. In Re: Sanjiv Dutta & Ors.[11], it was observed that the members of legal profession are required to maintain exemplary conduct in and outside of the Court. The respect for the legal system was due to role played by the stalwarts of the legal profession and if there was any deviation in the said role, not only the profession but also the administration of justice as a whole would suffer. In this regard, relevant observations are :

> "20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by the its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligential of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tiredness role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too

> small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

32. In Bar Council of Maharashtra versus M.V. Dabholkar[12] following observations have been made about the vital role of the lawyer in administration of justice.

"15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon (his probity and professional life style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but felt by the collective conscience of the practitioners as right:

> It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice. to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code which would drive irresponsible judges from the profession. Without such a conscience, there should be no judge. and, we may add, no lawyer.
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> Such is the high standard set for professional conduct as expounded by courts in this country and elsewhere."

33. In Jaswant Singh versus Virender Singh[13], it was observed :

> "36. ..... An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court. It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result,

which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favorable orders. Only because a lawyer appears as a party in person, he does not get a license thereby to commit contempt of the Court by intimidating the Judges or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the Courts and for upholding the majesty of law. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, out-spoken, but made without any malice or attempting to impair the administration of justice and made in good faith in proper language do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bistre themselves to uphold their dignity and the majesty of law. The appellant, has, undoubtedly committed contempt of the Court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the dues course of administration of justice."

34. In Subrata Roy Sahara v. Union of India[14], it was observed :

"188. The number of similar litigants, as the parties in this group of cases, is on the increase. They derive their strength from abuse of the legal process. Counsel are available, if the litigant is willing to pay their fee. Their percentage is slightly higher at the lower levels of the judicial hierarchy, and almost non-existent at the level of the Supreme Court. One wonders what is it that a Judge should be made of, to deal with such litigants who have nothing to lose. What is the level of merit, grit and composure required to stand up to the pressures of today's litigants? What is it that is needed to bear the affront, scorn and ridicule hurled at officers presiding over courts? Surely one would need superhumans to handle the emerging pressures on the judicial system. The resultant duress is gruelling. One would hope for support for officers presiding over courts from the legal fraternity, as also, from the superior judiciary up to the highest level. Then and only then, will it be possible to maintain equilibrium essential to deal with complicated disputations which arise for determination all the time irrespective of the level and the stature of the court concerned. And also, to deal with such litigants."

35. In Amit Chanchal Jha versus Registar, High Court of Delhi[15] this Court again upheld the order of debarring the advocate from appearing in court on account of his conviction for criminal contempt.

36. We may also refer to certain articles on the subject. In "Raising the Bar for the Legal Profession" published in the Hindu newspaper dated 15th September, 2012, Dr. N.R.Madhava Menon wrote:

> ".....Being a private monopoly, the profession is organised like a pyramid in which the top 20 per cent command 80 per cent of paying work, the middle 30 per cent managing to survive by catering to the needs of the middle class and government litigation, while the bottom 50 per cent barely survive with legal aid cases and cases managed through undesirable and exploitative methods! Given the poor quality of legal education in the majority of the so-called law colleges (over a thousand of them working in small towns and panchayats without infrastructure and competent faculty), what happened with uncontrolled expansion was the overcrowding of ill-

equipped lawyers in the bottom 50 per cent of the profession fighting for a piece of the cake. In the process, being too numerous, the middle and the bottom segments got elected to professional bodies which controlled the management of the entire profession. The so-called leaders of the profession who have abundant work, unlimited money, respect and influence did not bother to look into what was happening to the profession and allowed it to go its way — of inefficiency, strikes, boycotts and public ridicule. This is the tragedy of the Indian Bar today which had otherwise a noble tradition of being in the forefront of the freedom struggle and maintaining the rule of law and civil liberties even in difficult times.

37. In "Browbeating, prerogative of lawyers", published in the Hindu newspaper dated 7th June, 2016, Shri S. Prabhakaran, Co-Chairman of Bar Council of India and Senior Advocate, in response to another Article "Do not browbeat lawyers", published in the said newspaper on June 03, 2016, writes :

> ".....The next argument advanced against the rules is that the threat of action for browbeating the judges is intended to silence the lawyers. But the authors have forgotten very conveniently that (i) when rallies and processions were taken out inside court halls obstructing the proceedings,
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> (ii) when courts were boycotted for all and sundry reasons in violation of the law laid down by the Supreme Court in Ex-Capt. Harish Uppal, (iii) when two instances of murder of very notorious lawyers inside the Egmore court complex took place on the eve of elections to the Bar Associations, (iv) when a lady litigant who came to the Family Court in Chennai was physically assaulted by a group of lawyers who also coerced the police to register a complaint against the victim, (v) when a group of lawyers barged into the chamber of a magistrate in Puducherry and wrongfully confined him till he released a lawyer on his own bond in a criminal complaint of sexual assault filed by a lady, (vi) when a group of lawyers gheraoed a magistrate for not granting bail and one of them spat on his face, leading to strong protests by the Association of Judicial Officers, and (vii) when very recently, a lady litigant was physically assaulted by a group of lawyers for sitting in the chair intended for lawyers inside the court hall, lawyers such as the authors of the article under response

maintained a stoic silence.

Even lawyers who claim to be human rights activists choose to be silent when the human rights of millions of litigants are affected by boycott of courts. It shows that some lawyers, like the authors of the article under response, have always maintained silence and do not mind being silenced by a few unruly members of the Bar who go on the rampage at times. But they do not want to be silenced by any rule prescribing a decent code of conduct in court halls. The raison d'être appears to be that browbeating is the prerogative of the lawyers and it shall be allowed with impunity." Undesirability of convicted person to perform important public functions:

38. It may also be appropriate to refer to the legal position about undesirability of a convicted person being allowed to perform important public functions. In Union of India versus Tulsiram Patel[16] it was observed that it was not advisable to retain a person in civil service after conviction.[17]. In Rama Narang versus Ramesh Narang[18] reference was made to Section 267 of the Companies Act barring a convicted person from holding the post of a Managing Director in a company. This Court observed that having regard to the said wholesome provision, stay of conviction ought to be granted only in rare cases. In Lily Thomas versus UOI[19], this Court held that an elected representative could not continue to hold the office after conviction[20]. In Manoj Narula versus UOI[21] similar observation was made. In Election Commission versus Venkata Rao[22] the disqualification against eligibility for contesting election was held to operate for continuing on the elected post. Interpretation of Section 24-A: Need to amend the provision

39. Section 24A of the Advocates Act is as follows:

> "24A. Disqualification for enrolment.— (1) No person shall be admitted as an advocate on a State roll—
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> (a) if he is convicted of an offence involving moral turpitude;
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> (b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955); 2[(c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude. Explanation.—In this clause, the expression "State" shall have the meaning assigned to it under Article 12 of the Constitution:] Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his 3[release or dismissal or, as the case may be, removal.
>
> (2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958)."

40. Dealing with the above provision, the Division Bench of the Gujarat High Court in C. versus Bar Council[23] observed:

"2. ... . We, however, wish to avail of this opportunity to place on record our feeling of distress and dismay at the fact that a public servant who is found guilty of an offence of taking an illegal gratification in the discharge of his official duties by a competent Court can be enrolled as a member of the Bar even after a lapse of two years from the date of his release from imprisonment. It is for the authorities who are concerned with this question to reflect on the question as to whether such a provision is in keeping with the high stature which the profession (which we so often describe as the noble profession) enjoys and from which even the members of highest judiciary are drawn. It is not a crime of passion committed in a moment of loss of equilibrium. Corruption is an offence which is committed after deliberation and it becomes a way of life for him.

3. A corrupt apple cannot become a good apple with passage of time. It is for the legal profession to consider whether it would like such a provision to continue to remain on the Statute Book and would like to continue to adroit persons who have been convicted for offences involving moral turpitude and persons who have been found guilty of acceptance of illegal gratification, rape, dacoits, forgery, misappropriation of public funds, relating to counter felt currency and coins and other offences of like nature to be enrolled as members merely because two years have elapsed after the date of their release from imprisonment. Does passage of 2 years cleanse such a person of the corrupt character trait, purify his mind and transform him into a person fit for being enrolled as a member of this noble profession? Enrolled so that widows can go to him, matters pertaining to properties of minors and matters on behalf of workers pitted against rich and influential persons can be entrusted to him without qualms. Court records can be placed at his disposal, his word at the Bar should be accepted? Should a character certificate in the form of a Black Gown be given to him so that a promise of probity and trustworthiness is held out to the unwary litigants seeking justice? A copy of this order may, therefore, be sent to the appropriate authorities concerned with the administration of the Bar Council of India and the State Bar Council, Ministry of Law of the Government of India and Law Commission in order that the matter maybe examined fully and closely with the end in view to preserve the image of the profession and protect the seekers for justice from dangers inherent in admitting such persons on the rolls of the Bar Council."

41. Inspite of the above observations no action appears to have been taken at any level. The result is that a person convicted of even a most heinous offence is eligible to be enrolled as an advocate after expiry of two years from expiry of his sentence. This aspect needs urgent attention of all concerned.

42. Apart from the above, we do not find any reason to hold that the bar applicable at the entry level is wiped out after the enrollment. Having regard to the object of the provision, the said bar certainly operates post enrollment also. However, till a suitable amendment is made, the bar is operative only for two years in terms of the statutory provision.

43. In these circumstances, Section 24A which debars a convicted person from being enrolled applies to an advocate on the rolls of the Bar Council for a period of two years, if convicted for contempt.

44. In addition to the said disqualification, in view judgment of this Court in R.K. Anand (supra), unless a person purges himself of contempt or is permitted by the Court, conviction results in debarring an advocate from appearing in court even in absence of suspension or termination of the licence to practice. We therefore, uphold the directions of the High Court in para 42 of the impugned order quoted above to the effect that the appellant shall not be permitted to appear in courts of District Etah until he purges himself of contempt.

Inaction of the Bar Councils – Nature of directions required

45. We may now come to the direction to be issued to the Bar Council of Uttar Pradesh or to the Bar Council of India. In the present case, inspite of direction of the High Court as long back as more than ten years, no action is shown to have been taken by the Bar Council. Notice was issued by this Court to the Bar Council of India on 27th January, 2006 and after all the facts having been brought to the notice of the Bar Council of India, the said Bar Council has also failed to take any action. In view of such failure of the statutory obligation of the Bar Council of the State of Uttar Pradesh as well as the Bar Council of India, this Court has to exercise appellate jurisdiction under the Advocates Act in view of proved misconduct calling for disciplinary action. As already observed, in SCBA case (supra), this Court observed that where the Bar Council fails to take action inspite of reference made to it, this Court can exercise suo motu powers for punishing the contemnor for professional misconduct. The appellant has already been given sufficient opportunity in this regard.

46. We may add that what is permissible for this Court by virtue of statutory appellate power under Section 38 of the Advocates Act is also permissible to a High Court under Article 226 of the Constitution in appropriate cases on failure of the Bar Council to take action after its attention is invited to the misconduct.

47. Thus, apart from upholding the conviction and sentence awarded by the High Court to the appellant, except for the imprisonment, the appellant will suffer automatic consequence of his conviction under Section 24A of the Advocates Act which is applicable at the post enrollment stage also as already observed.

48. Further, in exercise of appellate jurisdiction under Section 38 of the Advocates Act, we direct that the licence of the appellant will stand suspended for a further period of five years. He will also remain debarred from appearing in any court in District Etah even after five years unless he purges himself of contempt in the manner laid down by this Court in Bar Council of India (supra) and R.K. Anand (supra) and as directed by the High Court. Question (ii) stands decided accordingly.

49. We thus, conclude:

> Conviction of the appellant is justified and is upheld; Sentence of imprisonment awarded to the appellant is set aside in view of his advanced age but sentence of fine and default sentence are upheld. Further direction that the appellant shall not be permitted to appear in courts in District Etah until he purges himself of contempt is also upheld; Under Section 24A of the Advocates Act, the enrollment of the appellant will stand suspended for two years from the date of this order; As a disciplinary measure for proved misconduct, the licence of the appellant will remain suspended for further five years. An Epilogue

50. While this appeal will stand disposed of in the manner indicated above, we do feel it necessary to say something further in continuation of repeated observations earlier made by this Court referred to above. Legal profession being the most important component of justice delivery system, it must continue to perform its significant role and regulatory mechanism and should not be seen to be wanting in taking prompt action against any malpractice. We have noticed the inaction of the Bar Council of Uttar Pradesh as well as the Bar Council of India inspite of direction in the impugned order of the High Court and inspite of notice to the Bar Council of India by this Court. We have also noticed the failure of all concerned to advert to the observations made by the Gujarat High Court 33 years ago. Thus there appears to be urgent need to review the provisions of the Advocates Act dealing with regulatory mechanism for the legal profession and other incidental issues, in consultation with all concerned.

51. In a recent judgment of this Court in Modern Dental College and Research Centre versus State of M.P. in Civil Appeal No.4060 of 2009 dated 2nd May, 2016, while directing review of regulatory mechanism for the medical profession, this court observed that there is need to review of the regulatory mechanism of the other professions as well. The relevant observations are:

> "There is perhaps urgent need to review the regulatory mechanism for other service oriented professions also. We do hope this issue will receive attention of concerned authorities, including the Law Commission, in due course."

52. In view of above, we request the Law Commission of India to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We hope the Government of India will consider taking further appropriate steps in the light of report of the Law Commission within six months thereafter. The Central Government may file an appropriate affidavit in this regard within one month after expiry of one year.

53. To consider any further direction in the light of developments that may take place, put up the matter for further consideration one month after expiry of the period of one year.

……J. (ANIL R. DAVE) ……J. (KURIAN JOSEPH) .....J. (ADARSH KUMAR GOEL) New Delhi July 05, 2016.

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[1] (1998) 4 SCC 409

[2] (2001) 8 SCC 650
[3] (2003) 2 SCC 45
[4] (2004) 6 SCC 311
[5] (2009) 8 SCC 106
[6] Paras 43, 57, 78
[7] Para 79
[8] Para 80
[9] (2004) 6 SCC 311
[10] Paras 238, 239, 242
[11] (1995) 3 SCC 619
[12] (1976) 2 SCC 291
[13] 1995 Supp.(1) SCC 384
[14] (2014) 8 SCC 470
[15] (2015) 13 SCC 288
[16] (1985) 3 SCC 398
[17] Para 153
[18] (1995) 2 SCC 513
[19] (2013) 7 SCC 653
[20] Para 28.
[21] (2014) 9 SCC 1
[22] AIR 1953 SC 210
[23] (1982) 2 GLR 706