R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 16th day of April, 2015

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR

AND

THE HON'BLE MRS. JUSTICE RATHNAKALA

C.C.C. (CRIMINAL) No.20/2009

BETWEEN:

High Court of Karnataka,
Bangalore,
Rep. by Registrar General. ..COMPLAINANT

(By Sri M.Narayana Reddy, SPP.)

AND:

1. Sri Jai Chaitanya Dasa
@ Jayanarayana K., 42 years,
S/o Mr.K.C.D.Nambisan,
Secretary of International Society
for Krishna Consciousness,
A Society Reg. under Karnataka Society
Reg. Act 1960, & claming to have its
Reg. office at Hare Krishna Hill,
Chord Road, Rajajinagar,
Bengaluru City – 10.

2. Sri Madhu Pandit Das,
President of International Society for
Krishna Consciousness,
A Society Reg. under the Karnataka Societies
Registration Act, 1960 & claiming to have it
Reg. office at Hare Krishna Hill, Chord Road,
Rajajinagar, Bangalore – 10.

3. Sri S.K.V.Chalapathi,
Senior Counsel,
No.21/22, II Floor, Krishna Towers,
3rd Main Road, Gandhinagar
Bangalore – 560 009.

4. Sri V.H.Ron (Lex Plaxus),
No.24, I Main Road, Ganganagar
Bangalore – 560 032.

5. Sri Ramesh Babu, Advocate,
No.21/22, II Floor, 3rd Main Road
Krishna Towers, Bangalore – 560 009.

6. Sri S.A.Maruthi Prasad, Advocate,
No.65/1, 2nd Floor, 2nd Cross
4th Main, Gandhi Nagar
Bangalore – 560 009. ...Accused

(By Sri R.B.Naik, Sr. Counsel, for Sri A.Sanath Kumar,
Adv. for A-1;
Sri T.V.Vijay Raghavan, Adv. for A-1 & A-2;
Sri Srinivas V. Raghavan, Adv., for M/s Indus Law,
Adv., for A-3;
Sri Vivek Reddy, Adv. for A-4;
Sri S.S.Naganand, Sr. Counsel for Sriranga, Adv. for A-5;
Sri S.G.Bhagwan, Adv. for A-6.)

This Suo-motu Criminal Contempt of Court case is initiated under Article 215 of the Constitution of India r/w Section 15(2) of the Contempt of Courts Act, 1971, for taking appropriate action against the respondents/accused arising out of RFA No.421 of 2009 (Misc. Civil No.14057/2009) while dismissing the Misc.Civil No.14057 of 2009, the Hon'ble High Court viewed that the entire controversy is one affecting administration of Justice and allegation prima facie attempt to Contempt of Court with in the meaning of Section 2(c)of Contempt of Court Act,1971.

This CCC (Crl.) having been heard, reserved for orders and coming on for pronouncement of orders this day, ***N. KUMAR J.,*** made the following:

O R D E R

GENESIS OF THE CASE

International Society for Krishna Consciousness, Bangalore (for short hereinafter referred to as `ISKCON, Bangalore'), a Society registered under the Karnataka Societies Registration Act, 1960 filed a suit against ISKCON Bombay and others, in O.S.No.7924/2001 on the file of the IX Additional City Civil and Sessions Judge, Bangalore, for a declaration that ISKCON, Bangalore is the absolute owner of Item No.1 of `A', `B' & `C' Schedule properties, as an independent legal entity and for a decree of permanent injunction and for other consequential reliefs. After contest, the suit was decreed in part. Defendants 1 to 4 preferred R.F.A. No.421/2009 before this Court on 20.04.2009 challenging the said judgment and decree. ISKCON, Bangalore, the 1st respondent had entered caveat. The matter was listed before a Division Bench of this Court consisting of Hon'ble Mr. Justice K. Sreedhar Rao and Hon'ble Mr. Justice B. Sreenivase Gowda, on 22.04.2009 for orders on the office objection regarding valuation and deposit of Court fee to be made good. The order sheet discloses that the Court accepted the submission of the learned counsel for

the appellants in respect of Court fee. It was made clear that it was subject to the enquiry to be conducted with regard to valuation by the Trial Court. Accordingly, notice was ordered to be issued to Respondent Nos.2 to 8. A direction was issued to the registry to secure the LCR telephonically within 15 days; the paper books should be filed within six weeks; and the case was ordered to be posted after vacation. The case was listed after vacation on 5.6.2009 before the Division Bench consisting of Hon'ble Mr. Justice K.L. Manjunath and Hon'ble Mr. Justice C.R. Kumaraswamy. After passing orders on the memo for dispensation of notice to R-7; Office objections regarding payment of Court fee and rejecting the request for clubbing the appeal with another connected appeal, the appeal was adjourned to 7.7.2009 for further arguments. On 7.7.2009, the matter did not reach, therefore it was listed on 10.07.2009.

2. On 10.07.2009, the following order was passed:

KLMJ & CRKSJ :
10.07.09 *RFA 421/09*

"The Matter was heard in part. After the case was adjourned, we have received a cover which contains two photographs said to have

been sent by Jayapataka Swami Sisya Samuha. These photographs were taken when one of us Justice K.L. Manjunath had given a visit to ISCON Temple, Bangalore somewhere in the year 2003. The photo contains a presentation of a picture of deity. Below the photograph it is stated as hereunder:

"1. RFA 421/09 is pending before Justice K.L. Manjunath.

2. Parties in RFA 421/09 are ISKCON Mumbai Vs. ISKCON, Bangalore.

3. Above picture shows close association of Justice K.L. Manjunath and receiving gifts at the premises of ISKCON Bangalore.

4. Inspite of having close association starting from 2003 and continue of receiving gifts....Justice K.L. Manjunath is still hearing the above RFA 421/09 for reasons best known to...?

5. Morally and ethically is it right?

6. As a honest Judge and to continue with high reputation of Justice K.L. Manjunath, is he right in hearing of this matter at all???

Your well wisher

C.C: 1. The Hon'ble Chief Justice of India and all his other companion Judges.
2. Honourable Chief Justice of Karnataka.
3. Honourable Justice Kumaraswamy, High Court of Karnataka
4. Fourth Estate."

These Photographs were shown to the learned Senior Counsel appearing for the appellant Sri Udaya Holla and learned Senior Counsel appearing for the respondent Sri S. K. V. Chalapathy. Sri Udaya Holla submits that his client has not dispatched the cover and there was no occasion to get the photo wherein Justice K. L. Manjunath receiving a photo of deity from ISKCON, Bangalore since the dispute between ISKCON, Mumbai and ISKCON, Bangalore was there much earlier to Justice K. L. Manjunath visiting the temple. He further submitted that he and his client have got full faith in this court and the same has been dispatched by the respondent (ISKCON, Bangalore) to bring the name to the appellant and also to scandalize the judiciary and requests the Court to hold an enquiry.

Sri S. K. V. Chalapathy, learned senior counsel for the respondent also submitted that he and his clients have full confidence in the court and that his client are not responsible for sending the cover with photographs.

Sri S. A. Maruthi Prasad, Advocate who is assisting Mr. S. K. V. Chalapathy in the matter on behalf of the respondent is present in the Court Hall. According to Justice K. L. Manjunath, ISKCON, Bangalore invited him through S. A. Maruthi Psrasad and even the other Hon'ble Judges of this Court were invited by ISKCON, Bangalore through Sri S. A. Maruthi Prasad and he had taken most of the Judges to ISKCON, Bangalore.

He was also working under Justice K. L. Manjaunath as a junior lawyer when Justice K. L. Manjaunath was practicing as a lawyer.

In order to ascertain the actual facts, we interrogated Sri S. A. Maruthi Prasad in the presence of both the learned senior counsel appearing for the parties. Sri S. A. Maruthi Prasad admitted that prior to 2003 in all on three occasions Justice K. L. Manjunath on his invitation has visited the temple and he further admitted that he alone was taking all the

Judges to ISKCON, Bangalore on festival days. On looking into the photographs he admitted that what was given as a gift in the photo is only an ordinary picture of Lord Krishna with a wooden frame in a presentation cover and no valuable gift has been given to Justice K.L. Manjunath by ISKCON, Bangalore. He also admitted that whenever Judges have visited ISKCON, Bangalore, photographs have been taken and all those photographs are with the ISKCON, Bangalore.

"Considering the contents in the cover with the photographs, we are of the opinion that it is a black-mail tactics adopted by the persons who are involved to avoid this Bench and to scandalize Justice K. L. Manjunath and bring down the reputation of this Court". We are also of the opinion that what has happened to Justice K. L. Manjunath in this appeal shall not happen to other Brothers/Sisters Judges who have visited the temple as devotees. When the photograph is taken by ISKCON, Bangalore in 2003, it is for them to explain how this could be sent in the name of opposite party. Therefore, both the parties are directed to file the affidavits giving explanation.

Office is directed to keep the cover and the photo in safe custody.

Call this matter on 17-07-2009."

3. From the aforesaid order, it is clear that after the case was adjourned from 07.07.2009 to 10.07.2009, the learned Judges received a cover which contained two photographs said to have been sent by Jayapataka Swami Sisya Samuha. When the same was brought to the notice of the learned Counsel appearing for the parties, both the learned Counsel submitted that they and their clients have full confidence in the Court and their respective clients are not responsible for sending the cover with the photograph. The Counsel for the appellant submitted that the said photograph has been dispatched by the respondent to bring bad name to the appellant and to scandalize the judiciary and requested the Court to hold an enquiry.

4. Even after both the learned Senior Counsel expressed their full confidence in the Court and requested the Court to hear the matter, the Court persisted in holding an enquiry. It is mentioned in the order dated 10.07.2009 that the Court interrogated Sri S. A. Maruthi Prasad in the

presence of both the learned Senior Counsel appearing for the parties. It is further stated in the order that S. A. Maruthi Prasad was a junior lawyer of Hon'ble Mr. Justice K. L. Manjunath. It is borne out from the record that Sri. S.A. Maruthi Prasad has not filed his power for any of the parties in the appeal. However, he had filed power for 1st respondent in O.S. No.1758/2003. He was present in Court when the appeal was called on for hearing. The admissions extracted from him in the course of interrogation is a matter, which is purely between Hon'ble Mr. Justice K. L. Manjunath, S. A. Maruthi Prasad and the ISKCON, which has transpired years back. However, the Court was of the view that when the photograph is taken by ISKCON, Bangalore in 2003, it is for them to explain how this could be sent in the name of opposite party. Therefore, both the parties were directed to file affidavits giving explanation.

5. However, in the order dated 10.07.2009 what transpired in the Court, is not completely recorded. On the next day, i.e., on 11.07.2009, all the Newspapers of Bangalore reported exclusively what transpired in Court on 10.07.2009, in addition to what is recorded in the order.

What was reported in the various news papers on 11.07.2009 is as under:

The report in DECCAN HERALD dated July 11th 2009 reads thus:

> **"Furore in HC over letter to judge**
>
> *An unhappy Justice Manjunath observed, "It is nothing but an attempt to scandalize the Judge and judiciary. It is done with an intention to bring down the reputation of judiciary. I will not budge to this kind of blackmailing tactics of the parties."*
>
> *"The letter has questioned my integrity. The respondent ISKCON, Bangalore should make its stand clear about the letter and photograph by filing an affidavit. What has happened to this court shall not be repeated in other court." Justice Manjunath said.*
>
> *He said he used to visit the temple as a devotee until 2003 and stopped thereafter due to several doubts. "This should not happen to the innocent devotees visiting temples", he said.*

The report in DNA CITY dated July 11th 2009 reads thus:

"ISKCON case: missive to judge angers High Court

The court expressed its anguish over the incident, stating that the missive was a blackmailing tactic as well as a deliberate attempt to weaken the institution of judiciary. Pointing out that the letter was not in good taste, the bench said that it could take action and make it clear that such an incident should not be repeated."

The report in TIMES OF INDIA dated July 11th 2009 reads thus:

"Judges receive mystery packet
Iskcon Faction Told To Explain

"*This is nothing but scandalizing the judges and an attempt to blackmail the court and bring down its reputation."*

The report in THE NEW INDIAN EXPRESS dated July 11th 2009 reads thus:

"HC judge furious after getting letter

"It is nothing but scandalising the judge and judiciary. It is with an intention to bring down the reputation of judiciary that the letter was sent. I will not yield to this kind of blackmailing tactics." He said.

"The letter has questioned my integrity. The respondent Iskcon, Bangalore should make its stand clear about the letter and photograph by filing an affidavit . What was happened to this court shall not happen to other courts and judges," Justice Manjunath remarked."

Similar reports are found in vernacular language news papers as well.

6. In compliance with the directions issued in the order dated 10.07.2009, on 16.07.2009, the first appellant Sri Dayaram Dasa filed his affidavit which reads as under:

"AFFIDAVIT

2. On the last date of hearing of the above RFA the Hon'ble Judges hearing the above RFA informed the counsel appearing for the parties that they have received a communication, sent through a courier, exhorting them not to hear this RFA which is a part heard matter.

3. The said courier bore the address of the Temple/Branch of the 1st Appellant situated at Seshadripuram, Bangalore and

stated that it has been sent by the disciples of the 4th Appellant.

4. *The Appellants respectfully state that they have made extensive enquires with the said Temple/Branch of the 1st Appellant situated at Seshadripuram, Bangalore and people connected with it. Neither the Appellants, nor the disciples of the 4th Appellant, nor anyone remotely connected with them have sent the said communication. In fact the 4th Appellant is paralyzed due to the brain hemorrhage and is taking treatment in Sridham Mayapur, West Bengal. I personally met the 4th Appellant on 14-07-2009 at Mayapur and enquired with him as to whether he or his disciples sent the communication. He told me categorically that neither he nor his disciples have sent the communication in question.*

5. *I firmly believe that the said communication has been sent with malafide intention of protracting the case and to avoid the hearing of this RFA, as well as, to create bad impression about the Appellants in the judiciary and also to malign the Judiciary.*

6. I am also advised & I believe same to be true that litigants should not be permitted to choose a Bench and the "Bench Hunting" ought to be deprecated in no uncertain terms.

7. I respectfully state that the Appellants have the fullest trust and confidence in the Hon'ble Judges who have heard this RFA& they have absolutely no objection for this RFA to be continued to be heard by the same bench.

Dated: 16-7-2009

7. On 17.07.2009 the first respondent filed its affidavit which reads as under:

"AFFIDAVIT

2 I submit that the 1st respondent/plaintiff instituted an original Suit in OS No.7934/2001 on the file City Civil Court at Bangalore (CCH-5) against the Appellant/Defendant No.1 and others seeking a relief of declaration and injunction in respect of the Schedule properties. I submit that the said suit came to be decreed in favour of the Plaintiff on

17-4-2009 by the court below, against which, the 1st Defendant/Appellant has preferred the above appeal.

3 *I submit that the when the above appeal was being listed for admission, the appellant filed an application for early hearing of the above appeal and the matter came to be listed before this Hon'ble Court. I submit that on instructions, our Counsel gave his consent for early hearing and the appeal was posted for final hearing and hearing commenced on 2-7-2009 with complete co-operation of our Counsel.*

4 *I submit that the said appeal was listed for further hearing on 10th July 2009 at 2.30 p.m. When the case was called out for hearing, the Hon'ble Mr. Justice K.L. Manjunath, Senior Member of the bench stated in open court that he has received a cover with photos and handed over the same to our Counsel Shri S.K.V. Chalapathy, Senior Counsel Counsel and enquired as to who has sent the same. Both the parties denied having sent the said cover with photos. Immediately the Senior Counsel representing the respondent No.1 submitted to the Court that the said*

cover and the photos with writing thereon should be ignored and expressing full confidence in the Court requested that the matter be continued to be heard by the same Bench. However, the Hon'ble Court proceeded to pass an order seeking an explanation and directed filing of affidavit by the counsel/parties.

5 I submit that we have applied on 11-7-2009 for a certified copy of the order dated 10-07-2009 passed by this Hon'ble Court so as to understand the complete essence of the order in order to comply with the direction of this Hon'ble Court in the matter of filing of the affidavit as directed. However, as on date we have not yet received the certified copy of the order dated 10-07-2009 from this Hon'ble Court. Hence, this affidavit is being filed upon what has been heard by me/my Counsel while this Hon'ble Court dictated the order in open Court. Hence, I reserve liberty to file a complete/proper/detailed affidavit as and when the certified copy of the order dated 10-7-2009 is received by us.

6 I submit that a similar cover with photos as has been sent to this Hon'ble Court was also received on 09-07-2009 addressed to the

Secretary of the 1st respondent at Bangalore and the same is filed herewith as Annexure-A. I am stationed in Mysore and attended the hearing of the appeal at the High Court at Bangalore on 10-07-2009 by directly coming from Mysore and only on reaching the Bangalore office in the evening of 10th July, I came to notice that a similar cover as shown in the court was also sent to us. Thus, when the matter was heard on 10th July, neither myself nor the counsel for the first respondent were aware of the cover addressed to the Secretary of the first respondent.

7 The 1st respondent and their counsel was shocked with the events that took place in the Court, wherein an attempt was being made to prejudice the case of the 1st respondent. The 1st respondent on receiving a similar cover at their office, brought it to the notice of their Counsel on 10th evening itself stating that they are not responsible for sending such cover to anybody let alone to the Hon'ble Court. I emphatically deny that the 1st respondent is involved in sending cover to the Hon'ble Court or anybody else.

8 I submit that the address in the said cover discloses that the same has been sent by

Jayapataka Swami Sishya Samuha. The Jayapataka Swami Sishya Samuha is an associated of disciples of Jayapataka Swami and is an existence for the last two and odd decades Jayapataka Swami is the fourth Defendant in the OS 7934/2001, from which this appeal arises. Even one document Ext. D 257 dated 26-12-1984 marked by the Appellant herein, i.e., the defendants in OS 7934/2001, carry the name of the said association.

9 I submit that the Hon'ble Justice K.L. Manjunath used to visit the 1st respondent temple between 1998 and 2003 as a devotee of the temple. The 1st Respondent used to invite Hon'ble Justice K.L. Manjunath for various major festivals conducted in the temple, as has been done with other devotees of the temple. It is the custom and practice of the 1st Respondent to take photographs of the important festivals in the temple and the photographs taken on such occasions are displayed freely in Albums kept in the reception areas and other waiting rooms and are also displayed on notice found in the 1st respondent temple. On one such occasion, Hon'ble Mr. justice K.L. Manjunath was invited specifically for a puja on one of the festival

days along with other respectable persons like our donors, sponsors, etc., on that day Hon'ble Mr. Justice K. L. Manjunath participated in the puja and after the puja, as is the custom, he was invited to accept one of the souvenirs, a photo frame of the temple deity, and prasadam. Souvenirs of the temple were given to all the invitees and Hon'ble Mr. Justice K. L. Manjunath was one among them.

10 I submit that ever since filing of the suit and prior to the filing of the suit, the Appellant has been indulging in taking clandestinely the various important and valuable documents of the 1st respondent in collusion with the employees of the 1st respondent. It is pertinent to note that there are nearly 1000 employees employed by the 1st respondent. The appellant is also continuously attempting to disrupt day-to-day activities of the 1st respondent on one pretext or the other. I submit that the Appellant, as is their usual practice, which I shall hereinafter detail, may be probably responsible for dispatching the above cover and the 1st respondent is nowhere involved in sending such cover and is fully innocent. Some of the antecedents of the Appellant are narrated below to demonstrate that it could be

the act of the Appellant is sending the above envelop.

11 The 1st respondent by its Manager, Shri Radha Kantha Das of Sankeerthan Seva Trust (for short SST) and ISKCON Charities, lodged a police complaint on 21-4-2004 regarding theft and missing of various important documents pertaining to SST and ISKCON Charities against one Sri Theertha Pada Das and Rakesh Singh, both employees of SST and ISKCON Charities. The office of SST and ISKCON Charities are situated in ISKCON temple at Rajaji Nagar. On filing of the above complaint, Rakesh Singh has absconded and till date his whereabouts are not known. I submit that based on the above complaint, Sri Theerthapada Das was arrested in Crime No.99/2004 of Subramanya Nagar Police Station, Bangalore. I submit that on 24-4-2004, the said accused Sri Theerthapada Das made a confessional statement under Section 164 of Cr.P.C. before the VII Additional C.C.M. Bangalore, wherein the Accused Sri Theerthapada Das has clearly stated that under threat to his life and his family members by one Sri Sudheer Chaithanya Das, who is defendant No.5 in the suit and on continuous telephonic calls by Sri Ananda

Thirtha Das of ISKCON, Bombay, and Sri Dayaram Das, the trustee of the appellant, the said accused fearing for his life and that of his family members, committed theft of various important documents pertaining to SST and ISKCON Charities from the premises of the 1st respondent and handed over the same to the said persons of the Appellant. A copy of the Confessional statement in Crime No.99/2004 by Sri Theerthapada Das and the Order Sheet is the above Crime No.99/2004 is produced herewith as Annexure-B and C. The said Sri Sudheer Chaitanya Das is Accused No.3 in the said criminal case and Defendant No.5 in the suit in O.S. No.7934/2001. I submit that Sri Anandathirtha Das was examined as a Witness (DW-3) in O.S. No.7934/2001 and Sri Dayaram Das was examined as (DW-1) in O.S. No.7934/2001. The said Criminal case is still pending for adjudication. I submit that it may be possible that various other Society documents of the 1st respondent and as well as photographs could have also been taken at the behest of the appellant.

12 In the year 2001, Sri Ananda Tirta Das (DW3) who was a devotee of 1st respondent, committed theft of original society papers, files, records and other documents from the

premises of the respondent no.1 and subsequently defected to ISKCON Mumbai with all the records. A complaint was lodged against the said person by respondent No.1 and an endorsement for having lodged the said complaint is also produced and marked as Exhibit P-106 in OS No.7934/2001.

13 These clearly demonstrates that the members of the Appellant Trust are in habit of constantly stealing the important materials and documents belonging to the 1st respondent coercing/ threatening/alluring/influencing the employees of the 1st respondent is indicated hereinabove.

14 I submit that another instance of the appellant indulging in production/utilizing documents obtained by theft of the property of the 1st respondent has come to light in a Contempt Petition No.492/2004 filed by the Appellant before the Hon'ble Supreme Court of India against the 1st respondent alleging violation of the interim order of the Supreme Court, arising from O.S. No.7934/2001. In the said Contempt Petition, the Appellant produced all the documents pertaining to the 1st respondent, SST and ISKCON Charities which were stolen and handed over to them

by Theerthapada Das which is clearly borne out of the confessional statement in the said criminal case. All this clearly goes to show that the Appellant has been indulging in stealing and securing all important documents by unlawful means. The 1st respondent is innocent and has been victim of fraud being played by the appellant who are bent upon achieving their oblique motive by adopting unlawful methods.

15 I submit that there are several such instances of theft done at the behest of the Appellant and if required, the 1st respondent shall list out the same.

16 I submit that another incident of the theft committed by the Appellant, that came to the light of the 1st respondent regarding the property/data of the life patron donors of the 1st respondent. During the Sri Krishna Janmastami celebrations of the year 2007 and 2008, nearly 4500 life patron donors of the 1st Respondent received a packet containing the following:

a. Essential information for patrons and well wishes of ISKCON;

b) Special Pass;

c) *Response sheet for sending donations;*

d) *reply envelope*

17. These packets were sent from the address of ISKCON Sri. Jagannath Mandir, No.5 Srirampuram, 1st Cross, Seshadripuram, Bangalore, which incidentally is the same address on the present envelope sent to this Hon'ble Court and as well as to the Respondent. The said address is also the place where the Appellant claims to have established its second branch of ISKCON in Bangalore. The said packets sent during the Sri Krishna Janmastami Celebration 2007 and 2008 were received by all the life patron donors of the 1st Respondent i.e., nearly 45,000 donor members out of which about 20,000 donor members were enrolled after the year 2002. Copies of several affidavits (8 No.s) by the donors who enrolled after the year 2002 who received such packets are collectively produced herewith as Annexure D series.

18. I submit that the Appellant could not have had in their possession the data base of the life patron members of the 1st Respondent who were enrolled after the year 2002 to up to

date, since there was an order of injunction operating against them passed by this Hon'ble Court in M.F.A.No.998/2002, wherein the Appellant was prevented from interfering with the affairs of the 1st Respondent from the year 2002. I submit that the donors who are enrolled subsequent to the period 2002 also received the said packets sent during the Sri Krishna Janmashtami Celebration of 2007 and 2008. This itself is evident of the fact that the Appellant has committed theft and has in its possession the entire date base of life patrons donor members of Respondent No.1 despite the order of injunction passed against it. This is possible only if they have clandestinely accessed our computer department. The Appellant has the ability to obtain material and information of the 1st Respondent by dubious means and using the same to prejudice the interest of 1st Respondent.

19. I submit that the appellant has committed contempt of court and one such incidence occurred when this Hon'ble Court was hearing MFA No.998/2002 which was filed by the 1st Respondent against the Appellant challenging the order of the Trial Court vacating the order of temporary

injunction. During the hearing of the said appeal, one Sri. Sarva Aishwarya Dasa @ Subramanya who was the authorized representative of the Appellant at that time and who had signed various pleadings filed before the court on behalf of the appellant and who is presently a Trustee of Appellant had sent an e-mail dated 27.10.2001 to various ISKCON leaders all over the world, wherein he had made serious allegations of bribery against Judges. A copy of the said e-mail dated 27.10.2001 is produced herewith as Annexure-E. The Respondent No.1 had initiated a Contempt Petition in C.C.C.(Criminal) No.47/2001 against the said Sarva Aishwaya Dasa @ Subramanya. The said C.C.C (Criminal) No.47/2001 was disposed of by this Hon'ble Court by order dated 14.03.2003, wherein accepting unconditional apology tendered by the said Sri. Sarva Aishwarya Dasa, the Division Bench of this Hon'ble Court dropped the said proceeding by accepting the apology and also imposing a fine/cost. The proceedings were also disposed of with a direction to the said Sri. Sarva Aishwarya Dasa to address a communication to all the persons to whom the e-mail dated 27.10.2001 was sent withdrawing the allegations made and

revoking the e-mail in question and also to take possible steps to delete the E-mail in question from the internet. A copy of the order dated 14.32003 passed in C.C.C. (Criminal) No.47/2001 is produced herewith as ***Annexure-F****. This clearly demonstrates that the Appellant are in the habit of making frivolous/vexatious and un-founded allegations against the judiciary with oblique motives.*

20. I submit that the Appellant has on many occasions gone great length in targeting the persons who are supporting the Respondent No.1 by making false allegations against them so as to create prejudice against Respondent No.1 and bring dis-repute to the said Respondent No.1. One instance of such nature, is wherein Sri Jaya Pataka Swami, Defendant No.4 in the present suit and Dayaram Das who is Trustee of Appellant and who has also represented Appellant in the above appeal, is an incident which occurred in Calcutta. A false complaint was lodged on 29-6-2000 by one Basanthi Devi Dasi, wherein she alleged that one Sri Sureswara Das who was active supporter of Respondent No.1 and espousing the same cause of respondent no.1 had committed an offence of rape. Pursuant to the

said complaint the Ballygunge Police Station registered case in FIR No.74 dat3ed 29-6-2000 and the said Sri Sureswara Das was taken into custody. The said Sri Sureswar Das being humiliated by the said false case, committed suicide in jail while injudicial custody leaving behind a suicide note in his personal diary accusing the Sri Jayapataka Swami and Sri Dayaram Das and others as being responsible for the same. Pursuant to the said suicide, a case No.293 dated 3-8-2000 has been lodged against the said Sri Jaya Pataka Swami, Sri Dayaram Das and others. Also the investigation conducted by the police and the final DNA report from CSFL has categoricaily concluded that the allegations of rape made against Sri Sureswar Das is false. It is clear from the same that the Appellant can resort to heinous crimes and nefarious activities and make various false allegations with sole intention of tarnishing the image of the 1st respondent and to prejudice its case. A copy of the FIR in No.74 dated 29-6-2000 is produced herewith as Annexure-G.

21. I submit that the Appellant has resorted to create false propaganda against respondent No.1. It has created anonymous Web Sites and has put up false material making various un-

founded and reckless allegations against the 1st respondent to bring disrepute to the 1st respondent. It is pertinent to state here that after the judgment dated 17-4-2009 passed in OS No.7934/2001, which is impugned in the above appeal, various comments have been posted (albeit anonymous ones) casting serious aspersions on the judiciary in the various Web Sites. That, over the past seven years, the agents of Appellants have indulged in several letter writing campaigns (some of them with anonymous names) including letter to the then Deputy Primary Minister of the country and several ministers of this state and chief minister of different states against the 1st respondent society to obstruct its good work. They appeared in television channels and interfered and made statements prejudicial to the matter before various courts. Several defamation cases have been filed against the agents of the Appellants which are pending before various Courts.

22. I submit that as these instances would make the affidavit too voluminous, the plaintiff has restricted to narrate only some of the above instances to bring forth before this Hon'ble Court, the utter disregard they have for the judicial system and the orders of the

Court. All these incidents have happened after the filing O.S. No.7934 of 2001, by the respondent No.1.

23. I submit that these glaring instances evidenced by un-impeachable documents clearly establishes the fact that it is not the 1st Respondent but the Appellant who has most probably indulged in sending the said envelop with photos thus attempting to scandalize and bring dis-repute to the judiciary as well as to the 1st respondent. This is a clear case of abuse of process of the Court and Contempt of Court.

24. The details of the incident that took place in Court on 10-07-2009 are reported in various newspapers. The reports appearing in Deccan Herald and Prajavani issues of the newspapers dated 11-7-2009 are extracted as follows: "He said he used to visit the temple as a devotee until 2003 and stopped thereafter due to several doubts. This should not happen to the innocent devotees visiting temples." Similar reports have appeared in the Prajavani, Indian Express, Times of India, DNA City, the Hindu, Kannada Prabha, Samyuktha Karnataka etc., Copies of othe article published in the aforesaid newspapers

are collectively produced herewith as Annexure-H series.

25. I submit that the said statement, if correct, attributed to have been made by the Hon'ble Mr. Justice K. L. Manjunath demonstrates, if I may say so, prejudice against the 1st respondent. The said statement has seriously and immensely tarnished the reputation and prestige of the 1st respondent institution. The 1st respondent has received hundreds of phone calls from the devotees from various parts of the country regarding the said statement."

8. Thus, the first respondent also denied having sent the envelope with photos and gave a graphic description of the events which has happened after the institution of the suit out of which the appeal arises and the part played by the appellant and its associates. Therefore both the parties denied that they have sent the said envelope with photos and accused the opposite party of indulging in the same. Therefore, the question as to who sent this envelope with photos and the writing contained below the photos remained a matter to be enquired into.

9. On 17.07.2009, when the appeal was listed, the first respondent engaged a different Senior Counsel Sri Mathai M Paikeday. The Court passed the following order :

> *"KLMJ & CRKSJ :*
> *17.7.09* *RFA 421/09*
>
> *The appellant and the respondent have filed their affidavits. Learned Senior counsel appearing for the respondent Mr. Mathai M Paikeday requests the Court to grant a week's time to file an additional affidavit looking into the order-sheet of this court dated 10.7.2009 and that the respondent is yet to obtain the certified copy of the order dated 10.07.2009. In the circumstances, time is granted.*
>
> *Matter is adjourned to 31.7.2009."*

10. The first appellant on 30.07.2009, filed one more affidavit traversing the allegations made in the affidavit of the first respondent and denying the same. They also made some fresh accusations against the first respondent. On 07.08.2009, the first respondent on receipt of the Order

dated 10.07.2009, filed additional affidavit and rejoinder to the affidavit dated 30.07.2009 filed by the first appellant reiterating what he had earlier stated and denying the allegations made by the first appellant in his affidavit dated 30.07.2009.

11. The case was posted on 31.07.2009. On that day, at the request of the Counsel for the first respondent the matter was listed on 07.08.2009. On 07.08.2009 the following orders were made:

> ***" Per K.L.M.J:***
>
> *This matter was heard in-part on 2.7.2009. Thereafter the matter was adjourned to 7.7.2009. Subsequently the matter was listed before this Court on 10.7.2009. After the case was adjourned, on 2.7.2009 a cover was sent to both of us. The details of which is narrated by us in our order sheet dt.10.7.2009 and that day Sri.S.A. Maruthi Prasad, a Member of the Bar clarified the circumstances under which photo was taken in ISKCON and the nature of Gift (which is a photo of Lord Krishna) said to have been given to Justice K.L. Manjunath by ISKCON. Thereafter, we directed both the parties to the file the*

affidavits giving the explanation and the matter was adjourned to 17.7.2009.

Again the matter was adjourned, from 17.7.2009 at the request of the respondent's counsel to 31.7.2009.

In the mean while two letters are addressed to Justice K.L. Manjunath, one by Sri. Shekhar Shetty, Advocate dt.24.7.2009 stating that Sri. V. Ramesh Babu, colleague of Sri. S.K.V. Chalapathy had approached him to appear for one of the parties in RFA No.421/2009 pertaining to ISKCON which is pending before this Court and that he refused to appear in this case since the matter was pending before Justice K.L. Manjunath and the letter further reads that even after the parties were directed in this case to file affidavit, he had approached and requested him to file Vakalath.

Similarly, another letter is received by Justice K.L. Manjunath from Sri. S.V. Srinivasan, Advocate which discloses that Sri. S.A. Maruthi Prasad working as a colleague with Justice K.L. Manjunath and S.V. Srinivasan had approached Srinivasan requesting him to appear for ISKCON in the

appeal pending before this Court and that he declined to appear fro the party as requested by Sri. S.A. Maruthi Prasad. Though these two letters were received by Justice K.L. Manjunath, on the last date of hearing on 31.7.2009 to avoid any unpleasantness these two letters were shown to Sri. S.K.V. Chalapathy and these two letters were also shown to Sri. Udaya Holla. On perusal of these two letters, Sri. S.K.V. Chalalpathy requested us not to disclose the contents of this letters. Accordingly, on his request the matter was adjourned to this day.

Today Sri. S.K.V. Chalapathy in the presence of Sri. Ramesh Babu submits that these two Advocates are denying for having approached the two Advocates who have addressed letters to Justice K.L. Manjunath.

It may be noted that at this stage that Justice K.L. Manjunath had worked as a junior of Sri. Shekhar Shetty from 15th September 1974 to 10th February 1977 and from 11.2.2007 till his elevation Sri. S.V. Srinivasan was practicing with him and that Sri. Maruthi Prasad was a junior

colleague of Justice Manjunath and Sri. S.V. Srinivasan.

In the light of the submissions of Sri. S.K.V. Chalapathy it is for Sri. Ramesh Babu and Sri. Maruthi Prasad to file their affidavit.

List this matter on 11.8.2009 at 4.30 p.m.

Per C.R. Kumaraswamy, J

Heard the dictation of my brother, His Lordship Sri. K.L. Manjunath. If a Judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation. It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Therefore in this background, post this matter before a Bench of which Justice C.R. Kumaraswamy is not a Member after obtaining necessary orders from the Hon'ble Chief Justice.

In the circumstances, Place this matter before the Hon'ble Chief Justice for necessary orders."

12. From the order dated 07.08.2009 it is clear that two letters were received by Hon'ble Mr. Justice K.L. Manjunath in his Chambers. The two Advocates referred to in the said letters denied the contents of the same. The Junior Judge in the Bench was of the view that the contents of the letter and other allegations have nothing to do with the administration of justice and if at all, it is a matter between the Senior Judge and others. When the Senior Judge persisted in holding the enquiry, he wanted to be recused from the hearing and the further proceedings.

13. The appeal was posted on 11.08.2009. On that day, at the request of the Counsel for R-1, the matter was adjourned to 18.08.2009. In the mean while, in view of the orders dated 07.08.2009, the matter was placed before the Hon'ble Chief Justice on 13.08.2009. The Hon'ble Chief Justice directed that the appeal be heard by the Bench headed by Hon'ble Mr. Justice K.L. Manjunath. Thereafter, the matter was posted before the Bench consisting of Hon'ble Mr. Justice K.L. Manjunath and Hon'ble Mrs. Justice B.V. Nagarathna.

14. It is in this background, the respondent filed Misc.Civil Application No.14057/09 on 03.08.2009 requesting Hon'ble Mr. Justice K.L. Manjunath to recuse himself from the Bench hearing RFA 421/09. In support of the application, the first respondent filed his affidavit. It reads as under:

AFFIDAVIT

2. I submit that the 1st Respondent/Plaintiff instituted an Original Suit as O.S.No.7934/2001 on the file City Civil Court at Bangalore (CCH-5) against the Appellant/Defendant No.1 and others seeking a relief of declaration and injunction in respect of the Schedule properties. I submit that the said Suit has been decreed in favour of this respondent/Plaintiff on April 17, 2009 by the Court below, against which, the 1st Defendant and others seeking a relief of declaration and injunction in respect of the Schedule properties. I submit that the said Suit has been decreed in favour of this respondent/Plaintiff on April 17, 2009 by the Court below, against which, the 1st Defendant has preferred the above Appeal.

3. It is submitted that as per Order dated July 10, 2009, Hon'ble Mr. Justice K.L. Manjunath received an envelope said to have emanated from one Sri Jayapataka Swami Sishya Samuha,

which contained two photographs and an undated, unsigned, anonymous letter from a "well wisher" containing scurrilous material which is re-produced in the Order.

4. The aforesaid Order further says that Mr. Maruthi Prasad, one of the Advocates of 1st Respondent, was interrogated in Court on the issue of the anonymous letter and on the basis of several admissions from him which are recorded in the Order, reaches a conclusion that ISKCON Bangalore is behind the issuance of the anonymous letter and the photographs.

5. I submit that with regard to the photograph of Mr. Justice K. L. Manjunath receiving a presentation from ISKON Bangalore, I have dealt with the same in para 9 of my affidavit dt. 17-07-09. In addition I state that it is the custom and practice of the 1st respondent to take photographs of important festivals and visits by dignitaries to the temple and those photographs are displayed freely in Albums kept in the reception areas and other waiting rooms and are also displayed on notice boards in the 1st respondent temple accessible to anyone. There is no prohibition with regard to taking photographs by devotees and members of the general public who are present on those occasions. Except in "Sanctum Sanctorum"

in all other places, photography is not prohibited. Other facts with regard to theft of important materials from the possession of 1st respondent are narrated in my Affidavit dated July 17 2009 and therefore are not repeated here for the sake of brevity.

6. However, on reading the Order dated 10-07-2009, any reasonable man can conclude that the photographs enclosed are (only) from the possession of ISKCON Bangalore and that ISKCON Bangalore is resorting to blackmailing and scandalizing His Lordship Mr. Justice K. L. Manjunath and the envelop was sent by ISKCON Bangalore in the name of the opposite party.

7. It may be recalled at this juncture, that in Paragraph 24 of my affidavit dated July 27, 2009, I have extracted reports appearing in the newspaper Deccan Herald on 11th July 2009. The reports appeared in 'Deccan Herald' dated July 11, 2009 quoted Justice Manjunath as extracted below:

> *"He said he used to visit the Temple as a devotee until 2003 and stopped thereafter due to second doubts. "This should not happen to the innocent devotees visiting temples", he said"*

Similar reports have appeared in Prajavani, Indian Express, Times of India, DNA City, The Hindu, Kannada Prabha, Samyuktha Karnataka etc., Copies of the news items published in the aforesaid news papers were produced collectively marked as Annexure-H along with my Affidavit dated July 17, 2009.

8. It is most respectfully submitted, that any right-minded person who reads the aforesaid News Paper reports will reach a conclusion that Hon'ble Mr. Justice K. L. Manjunath is biased against ISKCON Bangalore, entertaining serious doubts and opinion against ISKCON Bangalore. That the learned Judge is having a belief that ISKCON Bangalore are 'Blackmailers' who adopt scurrilous methods for 'avoiding the bench' and that devotees should be beware of them. Obviously the sanctity of the temple is put at stake.

9. It may be submitted that the Appeal R.F.A. No.421/2009, came up for Admission on June 19, 2009 before a Bench presided over by Hon'ble Mr. Justice K. L. Manjunath and strangely, the Appellants have moved at the time of admission itself, an application for early hearing of the R.F.A. It is submitted that Counsel for this Respondent did not oppose the early hearing of

the Appeal, and the matter came to be listed for hearing immediately, on June 29, 2009 and in fact, the counsel for Respondent No.1 waited for three full days prior to 02-07-2009 from morning till rising of the court for the matter to reach and the hearing actually commenced on July 2, 2009 at about 4.00 p.m. and thereafter the regular Bench for hearing RFAs changed. I also state that on 10-07-2009, when the anonymous letter was shown to our counsel, he instantaneously submitted that the same be ignored and requested this Hon'ble Court to proceed with hearing of the Appeal. These facts are narrated for the purpose of showing the bona fides of the 1st Respondent and to expose the Appellant's unfounded allegation of 'bench-hunting'.

10. Thus on the facts and circumstances, the 1st respondent is having a reasonable apprehension that Hon'ble Mr. Justice K. L. Manjunath is biased against this Respondent. It is my humbly submission that since the learned Judge is pre-disposed and having prejudices as stated above, he is unable to act as a Judge in this case.

11. I am advised to submit that the Hon'ble Supreme Court of India has reiterated that for appreciating a case of personal bias, the test is:

Whether there was a real likelihood of a bias even though such bias has not in fact taken place. A real likelihood of bias means at least substantial possibility of bias. Answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done.

12. It is submitted that the Apex Court has held in Fakruddin vs. Principal Consolidation Trg. Instt. (1955) 4 SCC 538, that:

"... ... the propriety is practiced and observed to exclude even the remotest possibility of my misgiving or doubt about the impartiality of the Judge as even if he is just and fair and his decision is correct yet it may not be satisfying"

13. It is therefore most respectfully submitted that this Respondent reasonably apprehended that a real likelihood of bias attributable to Hon'ble Mr. Justice K. L. Manjunath will operate against the 1st Respondent affecting a fair assessment of the merits of the case in the final

decision of this Hon'ble Court in the First Appeal. It is therefore, most respectfully submitted that the Hon'ble Judge may be pleased to recuse himself from the bench hearing this Appeal in order to keep up the Majesty of Justice and Judiciary for the ends of Justice equity and good conscience.

15. The appellants filed statement of objection to the above application on 07.08.2009, denying all the allegations in the affidavit and reiterating what he had averred in his earlier affidavit. The 1st respondent filed his rejoinder denying the allegations in the statement of objections.

16. After hearing the learned counsel for the parties, the Court held that the plea of likelihood of bias raised by the 1st respondent is in respect of two aspects:

(1) The order dated 10.07.2009 and the newspaper.

(2) The contents of the affidavits filed by the 1st respondent.

17. After referring to the various judgments of the Apex Court, the Court was of the firm view that the application was devoid of merits and deserved to be

dismissed. Then they proceeded to observe that if the appellant has full faith in the Bench, they failed to understand as to why the appellant would have sent the courier asking Hon'ble Mr. Justice K.L.Manjunath not to hear the matter, and how the respondent would have sent the letter in the name of the appellant. The truth however, has to be discovered by a thorough investigation. Therefore, they proceeded to hold that they cannot allow the matter to rest. Thereafter, they referred to two letters dated 15.07.2009 and 24.07.2009 written by Sri.S.V.Srinivasan and Sri.S.Shekar Shetty, Advocates and received by the Private Secretary of Hon'ble Mr. Justice K.L.Manjunath in his chambers in the Court. On reading of the said letters, the Court was of the view that it gives an impression that the 1st respondent tried to get the authors of the said letters to appear on its behalf. Then they referred to the relationship of the authors of the letter with Hon'ble Mr. Justice K.L.Manjunath and also to the authors of the letters declining to appear for 1st respondent in the appeal, the two Advocates i.e., A.5 and A.6 have denied having approached the authors of the said letters addressed to Hon'ble Mr. Justice K.L.Manjunath; direction issued to A.5 and A.6

calling upon them to file their affidavits by collecting the copies of the said letters at the Court Hall itself, which was not complied with by A.5 and A.6. Then they referred to the conversation held between Hon'ble Mr. Justice K.L.Manjunath and the Chief Justice wherein Hon'ble Mr. Justice K.L. Manjunath expressed his intention not to hear the matter. It is observed in para 59 of the order that even after hearing the above facts from Hon'ble Mr. Justice K.L.Manjunath, the 1st respondent and their counsel could have submitted that the application would not be pressed. On the other hand, an order on the said application was insisted upon by the applicant and the counsel for the applicant. Further, they observed in para.60 that the instructing counsel and the Senior Advocate engaged by the 1st respondent, who were present in the Court did not say anything contra and thereby they have admitted that they have instructed the Senior Counsel to submit with regard to the prayer made in the application. Further, they have observed that it is unfortunate that the instructing counsel Mr.Ron and the Senior Counsel Sri.S.K.V.Chalapahy, who were present in Court did not understand and realize the implication of the observations made by Hon'ble Mr. Justice

K.L.Manjunath after the conclusion of the arguments on both sides that he was not inclined to hear the appeal. This was the best opportunity for the 1st respondent to withdraw the application. Unfortunately, "wise counsel" did not prevail even at that stage. Then in the order, it is stated at para 61 that after the conclusion of the arguments on the application, Hon'ble Mr. Justice K.L.Manjunath also stated that he had stopped visiting Bangalore ISKCON since he was not having a feeling of devotion considering the fact that the deities are different from the deities in the Temples in South India. That was the reason why Hon'ble Mr. Justice K.L.Manjunath stopped visiting the temples since the year 2003. Therefore, they proceeded on the assumption that in view of the explanation, the newspaper report could not have been the basis of the application. From these materials they came to the conclusion that they perceived a concerted effort made by respondent No.1 and their Advocates to see that the appeal is not heard by Hon'ble Mr. Justice K.L.Manjunath. Though they did not say anything, at that stage, about the persons involved in sending the envelope to the Judges hearing the appeal, they reiterated what transpired in the Court as recorded in the order dated 10.07.2009 and they

found fault with A.5 and A.6 not filing the affidavits as directed by the Court and came to the conclusion that they have intentionally avoided filing their affidavits. Then they have observed that there are no reasons for Sri.S.Shaker Shetty and Sri.S.V.Srinivasan, Advocates, who have put in practice of about 50 years and 40 years as Advocates respectively to address such letters. They are the only two Advocates, who are disabled to appear in the Court of Hon'ble Mr. Justice K.L.Manjunath. There is no contra material placed so as to disbelieve the contents of the said two letters. Thereafter, they proceeded to hold that prima facie they believe that the 1st respondent and counsel for the 1st respondent have left no stone unturned to avoid the appeal being heard by Hon'ble Mr. Justice K.L.Manjunath. The filing of the application is like the proverbial last straw on the camel's back and a final attempt made by respondent No.1 to somehow ensure that the matter is not heard by Hon'ble Mr. Justice K.L.Manjunath. Lengthy arguments was addressed on the application by the learned Senior Counsel for the 1st respondent and no attempt was made to withdraw the said application, even after Hon'ble Mr. Justice K.L.Manjunath clarifying in the open Court that he had

already mentioned to the Hon'ble Chief Justice, that in view of the receipt of the envelope and its contents, he was not inclined to hear the appeal. It is nothing but a concerted effort made by respondent No.1 and the learned counsel to ensure that the case is not heard by Hon'ble Mr. Justice K.L.Manjunath. In their view this is nothing but an aspect of "Bench hunting tactics" adopted by the 1st respondent to avoid Hon'ble Mr. Justice K.L.Manjunath from hearing the appeal which is nothing but "forum shopping" an ingenuity earlier adopted by the respondent No.1 before the Mumbai High Court. This, in their considered view amounted to interference in the administration of Justice. Then they held that it is a fit case where *suo motto* contempt action has to be initiated against the 1st respondent, the Secretary of the 1st respondent, the President of respondent No.1, Sri.S.K.V.Chalapathi, Senior counsel, Sri.V.H.Ron, Sri.Ramesh Babu and Sri. S.A.Maruthi Prasad, Advocates. Thereafter, at para 71 they referred to the observations made by Hon'ble Mr. Justice C.R.Kumaraswamy and at para 75 they observed as under:

> *"In view of this order and being conscious of our limitations we direct the Registry to post the*

contempt proceeding as well as this appeal before a Bench of which Manjunath J, and Nagarathna J., are not members, after obtaining necessary orders from the Hon'ble Chief Justice."

18. Consequently, when the order dated 15.09.2009 was placed before the Hon'ble Chief Justice on 20.10.2009, he ordered for initiation of *suo motto* contempt proceedings. This order dated 15.09.2009 was challenged by the respondents before the Hon'ble Supreme Court of India, which by its order dated 23.10.2009 granted permission to file SLP and thereafter passed the following order:

"As this matter has been sent to another Court for consideration, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.

However, we make it clear that the Division Bench shall consider the matter afresh untrammeled by the observations made in the impugned order."

19. The High Court on 20.11.2009 initiated *suo motto* contempt proceedings on the basis of the order dated 15.09.2009. In particular, the observations found in

paragraphs 68 and 69 of the order dated 15.09.2009, which in fact is extracted in the contempt petition, is also extracted here as under:

> *"Para No.68 From the contents of the affidavits filed by and on behalf of applicant / respondent No.1 it is evident that first respondent had invited Manjunath J., to the temple and after the pooja as per custom he was presented with a photo frame of the temple deity and prasadam. The photographs were taken on such occasions and the same has been sent in the name of the appellant by courier. While referring to the newspaper reporting of the court proceedings dated 10-07-2009, it is stated in the affidavit filed by the applicants/ respondent No.1that if the statements "attributed to have been made by Hon'ble Mr. Justice K. L. Manjunath", "if correct" demonstrates prejudice against the first respondent. Therefore, the applicant is not even sure if the statement reported in the Press could be attributed to Manjunath, J., and is so whether they were correct. In fact the deponent Sri Jai Chaitanya Das was personally present in court along with his counsel, Sri S. A. Maruti Prasad and Sri S. K. V. Chalapathi, Senior Counsel, who*

participated in the proceedings on 10-07-2009 and expressed full confidence in the Bench hearing the matter. Despite this the application has been filed, while at the same time contending that on 10-07-2009 when Manjunath, J., raised the issue of the courier with photographs, Sri S. K. V. Chalapathi, Senior Counsel instantly reacted that the court should ignore the said courier and photographs and proceed with further hearing of the appeal, which clearly indicated full confidence/ trust and faith of the applicant/ respondent No.1 in the court. If that was the instant reaction on the part of the counsel for the applicant/ respondent No.1 on 10-07-2009, we fail to understand as to how the said counsel could have filed the application attributing bias against Manjunath, J., on the basis of the newspaper reports of 11-07-2009. According to the deponent "the apprehension of the respondent No.1that the Hon'ble Mr. Justice K. L. Manjunath is having bias and prejudice against the respondent No.1 has started only on the reading of the newspaper on 11-7-2009…." While stating so, it was also stated that respondent No.1 had expressed full confidence in the court on 10-07-2009 through their counsel. If the counsel for respondent No.1 had expressed confidence in

the Bench hearing the matter, then we fail to understand as to how the very same counsel would have drafted and filed an application that Manjunath J., should recuse himself from hearing the appeal, while the deponent claims innocence and bonafides on the basis of the statement made by the Senior Counsel for the respondent No.1 on 10-07-2009 to ignore the letter and photographs and to proceed to hear the matter. Nevertheless the application has been filed alleging bias on the part of the Manjunath, J.,

"Para No.69. Under the circumstances we are of the considered view that this is fit case where suo motu contempt action has to be initiated against Sri Jai Chaitanya Dasa @ Jainarayan K, S/o Mr. K. C. D. Nambisan, aged 42 years, Secretary of respondent No.1, Madhu Pandit Das, President of respondent No.1, Sri S. K. V. Chalapathi, Senior Counsel Sri V. H. Ron (Lex Plexus), Sri Ramesh Babu and Sri S. A. Maruti Prasad, Advocates."

20. It is between these dates i.e., 20.10.2009 and 20.11.2009, the order of the Supreme Court came to be passed on 23.10.2009, virtually wiping out the aforesaid observations made in the order dated 15.09.2009.

21. When the contempt proceeding was listed before Hon'ble Mr. Justice K.Sreedhar Rao and Hon'ble Mr. Justice Subhash B.Adi, after hearing the parties and after referring to the very same `materials, which were looked into before passing the order dated 15.09.2009, Justice K.Sreedhar Rao in his order dated 08.02.2010 observed after referring to the provisions of the Contempt of Courts Act and the decisions as under:

> *"It appears to be a queer situation, the provisions of Sec. 14 of the Act would attract and apply to A1 to A4. In respect of A5 and A6 their conduct does not constitute contempt in the face of the Court, by may amount contempt U/s 15."*

Then, on consideration of the respective cases, it was held as under:

> *"In the first place it does not appear that, the application filed by A.1 is actuated with any mala-fide. The material facts referred to in the affidavit of A1 in support of the application for recusal is borne on record. According to him, he has a reasonable apprehension that a judge is prejudiced and*

biased. In fact the order dated 10.07.2009 does disclose prima facie opinion of the judge that the courier appears to be a handiwork of the respondents.

The learned Judge in the observations in page 94 of the order dated 15.9.2009 has given a different explanation for his stop-visit to the temple. However, the content of the paper report is not disputed in its entirety. In that view, the conduct of A1 in filing application for recusal cannot be considered as a scandalous act. In fact, the language used in the affidavits is polite and courteous, no disparaging language is used in narrating the facts. There are no reasonable grounds and prima facie case made out to frame charge. The conduct of A1 in filing recusal application and its contents appears to be bonafide. In fact, there is absolutely no material against A1, A3 to A6 to hold them liable for contempt, much less against A2. Therefore, the proceedings for contempt against A1 to A6 dropped."

22. The Junior member of the Bench wrote a separate order and was in agreement with the Senior Judge in so far as, the proceedings that fall under Section 14 of the

Contempt of Courts Act, 1971 and closing this contempt as against accused Nos.2 and 4. However, in his opinion, as against accused Nos.1, 3, 5 and 6, the proceedings have to go on in terms of the procedure contained under Section 14 of the Act. He was of the view that whether the imputation/accusation made against accused Nos.1, 3, 5 and 6 are true or not, it depends on the material and the defence that may be placed by the said accused and to deal with the correctness of the allegation in the order dated 15.09.2009 at this stage without any material to the contrary is not proper. Further he held that accusation of criminal contempt made against accused Nos.1, 3, 5 and 6 in the course of the order by the learned Judges without considering the defence if any, the proceedings cannot be dropped or the said accused could be discharged as there is no material to the contrary on record.

23. In view of the disagreement, the matter was ordered to be placed before the Hon'ble Chief Justice for reference to Third Judge. Thereafter, the matter was placed before Hon'ble Mrs.Justice Manjula Chellur.

24. The Third Judge was of the view that the letter of Senior Counsel Mr. Mathai M Paikeday dated 05.10.2009 addressed to Mr. S.K.V. Chalapathy shows that he has denied making submission in the open Court that he was arguing the matter regarding bias against the Judge concerned on the instruction of the Senior Counsel Mr. S.K.V. Chalapathy and Mr. Ron. The first respondent was represented by one Mr. V.H. Ron appearing for Lex Plexus. The letter of Mr. Paikadey clarifies that Mr. S.K.V. Chalapathy never instructed Mr. Paikadey to address the arguments. The application dated 03.08.2009 was signed by one Mr. Kiran Ron, a partner of Lex Plexus, a law firm and Mr. S.K.V. Chalapathy has nothing to do with either the contents of the application or the affidavit. Therefore, the learned Judge was of the view that Mr. S.K.V. Chalapathy has not committed any contempt on the face of the Court. Therefore, the proceedings against Mr. S.K.V. Chalapathy was dropped. In so far as accused Nos.5 and 6 are concerned, because they did not file affidavit in terms of the directions of the Court, prima facie the material contained in the said two letters amounted to contempt on the face of the Court. Therefore, it was held that the proceedings deserved

to be proceeded against them. The said order is dated 27.12.2010.

25. The said order was also challenged before the Apex Court in two S.L.Ps. The Apex Court by its order dated 09.01.2012 and 03.02.2014 dismissed both the Special Leave Petitions filed against the same order. Thus, these orders have attained finality. Thus the resultant position is, this Court is satisfied that there is a prima facie case to frame the charges against respondents 1, 5 and 6.

26. It is thereafter, by a **Special Order,** the above Contempt Petition was placed before us.

27. As it was already held that prima facie case of contempt is made out against A-1, 5 and 6, after hearing the parties, charges were framed by us on 06.08.2014 against A.1, 5 and 6.

28. In order to substantiate the charges, on 13.08.2014, three witnesses were examined on behalf of the petitioners as C.Ws.1 to 3. Ex.C-1 to Ex.C-15 as well as Ex.D-1 to D-3 were marked. Thereafter, the case was posted to 19.08.2014 for recording of accused statement under

Section 313 of Cr.P.C. On that day, the statement of the accused was recorded. They also filed a written statement along with the documents which were taken on record. The accused submitted that they have no defence evidence to adduce. Thereafter, the arguments were heard.

RIVAL CONTENTIONS:

29. The learned **State Public Prosecutor, Sri Narayana Reddy** after taking us through the affidavit of accused No.1, filed in support of the application where a request was made to the learned Judge to recuse himself, pointed out that the apprehension in the mind of accused No.1 on the basis of the observation made in the order dated 10.7.2009, is not a reasonable one. Similarly, bias cannot be attributed to the learned Judge because of the publication of his observations made in open court in the Press. These two facts, though not disputed, do not constitute sufficient proof in support of the plea of bias.

30. Insofar as A.5 is concerned, he was the Advocate, who was appearing for A.1. He had filed his vakalath in the appeal. He was present in court on

10.7.2009. He was aware that, a cover containing two photographs had been sent to the learned Judge and he was also aware what has been stated in the said letter, which was sent along with the photographs. Knowing fully well that CW-3 was the senior of Hon'ble Mr. Justice K.L.Manjunath and he would not appear before Hon'ble Mr. Justice K.L.Manjunath, he approached him with the intention of disabling Hon'ble Mr. Justice K.L. Manjunath from hearing the appeal, which act constitutes contempt.

31. Further he submitted that though Sri. Maruthi Prasad (A.6) had not filed power in the R.F.A., he was appearing for A.1 in the trial court in the connected proceedings. The accusation is that, he approached CW-2 with a request to file vakalath along with him in the appeal knowing fully well that CW-2 was disabled to appear before the learned Judge. The object of approaching CW-2 by A.6 was to avoid the Bench, which was hearing the Appeal. This, according to him, amounts to contempt of court.

32. **Sri. Ravi B Naik,** the learned Senior Counsel appearing for A.1 contended that the bias pleaded by accused No.1 in respect of the application for recusal is two

fold. Firstly, the events that transpired in the open Court and secondly, reporting of those events by the press in the newspapers. These two factors created apprehension in the minds of accused No.1 that he may not get justice in the hands of Hon'ble Mr. Justice K.L.Manjunath. In fact, after dismissing the application for recusal, the learned Judges sent the matter to another Court. It shows that they too, subconsciously were convinced that they should not hear the matter. It only means that they too believed that there is merit in what accused No.1 has set out in the affidavit filed in support of the recusal application. Therefore, it cannot be said that the reasons given in the affidavit for the recusal is baseless or is flimsy one. It was further argued that the learned Senior Counsel representing the first accused, even without seeing the photographs sent in the cover, made a submission that it could be ignored and they have full confidence in the Court and therefore, the appeal could be heard on merits. But ignoring this aspect, the learned Judge in the order proceeded to observe that, when such a submission is made by the learned Senior Counsel, it means that he knows the contents of that cover which is not correct. Further, it is argued that the observation of the

learned Judge that when the learned Senior Counsel has made submissions that he has confidence in the Court and had no objection or grievance regarding the Bench, still when the application for recusing is filed, it amounts to contempt, is without any basis, which shows he targeted his advocate. In such circumstances, certainly accused No.1 entertained reasonable apprehension that he would not get justice in the hands of the aforesaid Bench. The events which transpired inside the Court and utterances of the learned Judge in the Court hall during the proceedings, clearly establish that he was biased against accused No.1 fortifying his apprehension that he would not get justice. At any rate, these allegations made in the affidavits do not amount to scandalizing the Judge or the Court. Therefore, the prosecution has failed to prove beyond reasonable doubt the charges leveled against accused No.1.

33. The learned Senior Counsel **Sri. S.S. Naganand,** appearing for accused No.5 submitted that accused No.5 was appearing for ISKCON, Bangalore in the trial Court. In this appeal, before the High Court also, he has filed vakalath. However on 17.07.2009, accused No.1 engaged the

assistance of a Senior Counsel - Sri Mathai M.Paikeday and one advocate by name Sri Kiran Rao, who filed power for accused No.1. Accused No.5 did not participate in the proceedings. Similarly as he was instructed by Senior Counsel Sri S.K.V.Chalapathy, he also did not participate in the proceedings. It is after engaging the services of the new advocate and the Senior Counsel, the application for recusing was filed on 03.08.2009. Even the affidavit filed on 17.07.2009 and the subsequent affidavit filed by accused No.1 were by the new Counsel. Therefore, the question of either Sri S.K.V.Chalapathy, learned Senior Counsel or accused No.5 prevailing on accused No.1 from filing such application after submitting to the Court that they have full confidence in the Judge, as observed against them is factually incorrect. That apart, CW.3 in his evidence has deposed that about two months prior to Ex.C.4, in the High Court Premises, Sri Ramesh Babu met him with a request to appear along with him, so that they could effectively argue the matter. Ex.C.4 is dated 24.07.2009 and two months earlier would be around 24.05.2009. RFA No.421/2009 was listed before the Bench presided by Hon'ble Mr. Justice K.L.Manjunath, only on 05.06.2009. If the so called meeting

is true, on that day, i.e., on 24.05.2009 the matter was not before Hon'ble Mr. Justice K.L.Manjunath and CW.3 declining to appear along with him as the appeal was before Hon'ble Mr. Justice K.L.Manjunath, is apparently a false statement. C.W.3 has deposed that accused No.5 did not show any papers to him at any point of time as he declined to appear. Therefore, CW.3 has declined to appear without seeing the papers and without knowing the Bench before whom the said matter is listed. He has also deposed that he has never appeared for ISKCON, Bombay at any time. Some of the persons who were running parallel ISKCON at Kumara Park West, Bangalore, had approached CW.3 with the papers in the original suit, in which RFA.No.421/2009 arises for an opinion before the judgment was delivered by the trial Court. He had given a written opinion and they also gave him a cheque towards his consultation fee. The four books which they had handed over for study are still with him but he does not know the name of the persons who approached him. All that he knows is that they are having a temple in Kumara Park West. This evidence clearly demonstrates that CW.3 was aware of the facts of the case from which RFA.No.421/2009 arose. Having given his opinion, he could

not have appeared for A.1, otherwise it would have amounted to professional misconduct. The reason given for not accepting the engagement was that he was disabled to appear before Hon'ble Mr. Justice K.L.Manjunath. He has categorically stated that he is not saying anything against accused No.5. Even in the second instance, accused No.5 approached him, is only at the instance of his clients. When accused No.5 met him on 23.05.2009 in the High Court premises, he did not bring or give any papers at that time. He only wanted to know whether he is willing to appear in the case. On the day accused no.5 met him for the second time, he was not aware that one of the parties in the case has filed an application requesting Hon'ble Mr. Justice K.L.Manjunath to recuse from hearing the case. When he was very much disinterested in the case, and was not appearing before Hon'ble Mr. Justice K.L.Manjunath as per the request, his conduct of writing Ex.C.4 and sending it through his clerk to the Personal Assistant of the Judge requires to be explained by CW.3. He has not given any satisfactory explanation. It only shows that this letter is only to fix accused No.5 and his Senior Advocate Sri S.K.V.Chalapathy. He submits that above circumstances

show that there is an attempt to fix accused No.5 and his Senior Advocate and there is much more than what the incidents exposed. This letter is an engineered one. Under the circumstances, no case of contempt is made out by the prosecution. He submits that there is more than what meets the eye. Without meaning any disrespect either to the witness or to the Judge, it is a clear case of prosecuting advocates who are honestly and diligently prosecuting the case and to stifle the voice of an advocate.

34. **Sri S.G. Bhagwan,** the learned counsel appearing for A.6 submitted that, the initiation of the contempt proceedings is contrary to the Act and the Rules. Elaborating the same he submits that, when the Registry placed the order dated 16.09.2009 before the learned Chief Justice he was expected to apply his mind and when he grants permission to prosecute, it should disclose his application of mind to the information. It is not an idle formality. The said order permitting prosecution must *ex facie* disclose that he has considered the information and thereafter he has passed the order. In support of his contention, he relies on a judgment of the Apex Court in the

case of Mansukhlal Vithaldas Chauhan Vs. State of Gujarat (AIR 1997 SC 3400).

35. The learned counsel for A.6 further submitted that, A6 was and is a disciple of ISKCON, Bangalore. He was appearing for them as a counsel in the trial Court. However, in appeal he had not filed vakalath for them. He has not approached his erstwhile senior requesting him to appear in the appeal for ISKCON, Bangalore. It is CW2 who in his letter Ex.C4 has implicated him. He cannot be believed because in his evidence he has stated that he does not remember whether A1 was the defendant in OS.1758/2003 which was pending in the City Civil Court. However, when he was confronted with Ex.D2 a memo filed in O.S. No. 1758/2003 dated 27.3.2003 he admitted that it bears his signature. However, he has deposed that he does not remember the contents of the said memo. He also admitted that it also bears the signature of one Sri M.G. Satish, Advocate. The said memo shows that he undertook to appear for A1 in the said suit along with Sri M.G. Satish. However, he did not file vakalath and in his place Sri Maruthi Prasad, A6, filed vakalath along with M.G.Satish. It

is not in dispute that A6 was the junior of CW2 and Hon'ble Mr. Justice Majunath. He left their office only in January 2001. Having regard to his past relationship even if he had approached CW2 with a request to appear for ISKCON, Bangalore, no motives could be attributed to him. More over when CW2 declined to appear there ends the matter. In the first place, A6 did not approach CW2. Even if he had approached with a request to him to appear for ISKCON, Bangalore, nothing follows from the said action. It does not amount to Contempt of Court or scandalizing the Court as sought to be made out. He has nothing either against the Court or against the Judge, nor has he made any attempt to prevent the Judge from hearing the appeal as he was not appearing in the appeal at all. It is sought to be made out that the intention was to prevent Hon'ble Mr. Justice K.L.Manjunath from hearing the appeal by engaging CW2 who was disabled. He being the junior of Hon'ble Mr. Justice K.L.Manjunath, by filing a vakalath could have prevented Hon'ble Mr. Justice K.L.Manjunath from hearing the appeal. But either himself or CW2 did not file vakalath and, therefore, there was no impediment for Hon'ble

Mr. Justice K.L.Manjunath to hear the appeal. Therefore, the charges levelled are baseless and there is no merit.

36. From the aforesaid material on record and the submission made by the learned Counsel, the points that arise for our consideration in this proceedings are as under:

> *(1) Whether the filing of the Misc.Cvl.No.14057/09 in RFA 421/09 requesting Hon'ble Mr. Justice K.L. Manjunath to recuse himself from the Bench hearing the appeal on the allegation of bias, constitutes contempt under Section 2(c) of the Contempt of Court Act, 1971, in so far as A.1 is concerned?*
>
> *(2) Whether allegation that A.5 approaching Sri. Shekhar Setty, the erstwhile Senior of Hon'ble Mr. Justice K.L. Manjunath requesting him to appear for one of the parties in RFA 421/09 as he was disabled from appearing before Hon'ble Mr. Justice K.L. Manjunath, constitutes contempt of Court*

under Section 2(c) of the Contempt of Court Act, 1971?

(3) Whether the allegation that A.6 approaching Sri. S.V. Srinivas, the erstwhile colleague of Hon'ble Mr. Justice K.L. Manjunath requesting him to appear for one of the parties in RFA 421/09 who was disabled from appearing before Hon'ble Mr. Justice K.L. Manjunath, constitutes contempt of Court under Section 2(c) of the Contempt of Court Act, 1971?

37. Before answering the points that arise for consideration, it is necessary to take note of certain undisputed facts which emerge from record which have a bearing in deciding the case on merits.

LETTERS

38. The starting point of this contempt proceedings is the receipt of a cover which contained two photographs said to have been sent by Jayapataka Swamy Sishya Samuha. As is clear from the order dated 10.07.2009, the

photographs were taken when Hon'ble Mr. Justice K.L. Manjunath had visited ISKCON Temple, Bangalore, somewhere in the year 2003. The photo contains a presentation of a picture of a deity. Below the photograph there is a writing where they have referred to RFA 421/2009, which Hon'ble Mr. Justice K.L. Manjunath was hearing and there is a question whether Hon'ble Mr. Justice K.L. Manjunath was morally and ethically right in hearing the appeal.

39. What the learned Judges did after receiving the said photographs, is set out in the separate order passed by Hon'ble Mr. Justice K. L. Manjunath on 15.09.2009 as under:

> *"This matter was heard by me along with my Brother Kumaraswamy J., on 2-7-2009. Thereafter the matter was adjourned for further arguments. After the case was adjourned on 2-7-2009 a courier was received by my Private Secretary and a similar courier was also received by my Brother Kumaraswamy J., The contents of the courier is extracted by us in our order in detail. Immediately after the receipt of the courier, on the next day itself myself and my*

Brother Kumaraswamy J., met His Lordship Chief Justice and showed the contents of the courier received by us and I personally requested His Lordship Chief Justice to post the matter before any other Bench in view of the false allegations made against me. However, His Lordship Chief Justice reposing confidence in me said that the matter has to be heard by us. Even thereafter I made a request to His Lordship to post the matter before any other Bench. However, I sought permission to hear the matter only to find out the persons who are behind in sending the courier to avoid my Bench and to bring bad reputation to me and I also informed His Lordship Chief Justice that the records would be sent back to him to place before any other Bench after finding out the persons who are involved in sending such courier.

In the courier sent to me and to my Brother Kumaraswamy J., it is stated that contents of the courier has also been sent to Hon'ble Chief Justice of India and His Companion Judges, Hon'ble Chief Justice of Karnataka and to the fourth estate.

It was revealed to us by His Lordship Chief Justice that such a cover has not been

sent to him. Thereafter the matter was listed before the Court on 10-7-2009 only to find out the persons who have indulged in sending such a courier to bring a bad name to me."

40. If the learned Judge Hon'ble Mr. Justice K. L. Manjunath was not inclined to hear the appeal, all that he could have done was to pass an order to place the appeal for hearing before a Bench of which he is not a member. There was no reason for him to approach the Hon'ble Chief Justice with a request to post the matter before any other Bench. Similarly his request to the Hon'ble Chief Justice to permit him to hear the matter only to find out the persons who are behind in sending the courier to avoid his Bench was not warranted. If he was so curious, he could have directed the Registrar (Vigilance) to make such enquiry. Once he was not inclined to hear the appeal, he could not have heard the appeal for the aforesaid purpose. At any rate the appeal was not posted for the said purpose and the parties and their Counsel were not notified of the scope of enquiry that the learned Judge intended to undertake, as is clear from the order sheet or the cause list.

41. This incidence brings to the fore, the problem the Judges are facing every day in discharge of their judicial function. We have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. Every Judge, without exception, is subjected today, to the ordeal of reading letters written by the parties to the litigation or the public who are interested and following the said litigation and sometimes with the blessings of the learned members of the Bar. The said letters range from criticizing the learned Judges for their conduct inside and outside the Court as well as making baseless, reckless and defamatory accusations against the Judges. The sole object of such letters appears to be to prevent a Judge from hearing the matter which is listed before him or sometimes, also to influence his judgment. There is no way the Courts can prevent such an assault. Off late it has become a part of our life and a professional hazard in our career.

42. Therefore what is of importance is how should the Judges deal with such letters.

43. ***FRANKFURTHER, J,*** in the case of ***PENNEKAMP V. FLORIDA [(1946) 90 LED 1295 AT P.1313]*** has attempted to find a solution, which reads thus:

> *"If men, including Judges and journalists were angels, there would be no problems of contempt of Court. Angelic Judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding Judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of court is a safeguard not for Judges as persons but for the function which they exercise."*

44. Again, ***LORD DENNING M.R.*** in the case of ***Reg v. Commissioner of Police of the Metropolis, Ex parte Blackburn (No.2)(1)*** has expressed his view in the following manner:

> *"Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or*

not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticism. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication."

45. The persons who write letters criticizing our conduct inside and outside the Court should remember that from the nature of our office, we cannot reply to their criticism. We cannot enter into public discussion. Their letters remain unanswered not because there is nothing to contradict but because of judicial discipline to refrain from sending any such reply. Therefore we ignore it.

46. When by writing such letters improper motives to the Judge is attributed, it not only transgresses the limits of fair and bonafide criticism, but has a clear tendency to affect the dignity and prestige of this Court and also interferes with the administration of justice. We must also remember that the reflection on the conduct or character of a Judge in reference to the discharge of his judicial duties would not be contempt, if such reflection is made in the exercise of the right of fair and reasonable criticism which

every citizen possesses in respect of public acts done in the seat of justice. When attacks or comments are made on a Judge or Judges disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on a judge and what really amounts to contempt of Court.

47. Justice V.R. Krishna Iyer, in the case of ***S. Mulgaokar***, reported in ***AIR 1978 SC 727*** has laid down the rules for guidance of the Judges. The first rule in this branch of contempt power is; a wise economy of use by the Court of this branch of its jurisdiction. The Court should be willing to ignore, by a majestic liberalism, trifling and venial offenses - the dogs may bark, the caravan will pass. The court will not be prompted to act as a result of an easy irritability. Secondly, to criticize the judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy. Free people are the ultimate guarantors of fearless justice. Such is the cornerstone of our Constitution; such is the touchstone of our Contempt power. The third principle is to avoid confusion between personal protection of a libeled judge and prevention of obstruction of public justice

and the community's confidence in that great process. The former is not contempt, the latter is, although overlapping spaces abound. The last guideline for the judges to observe in this jurisdiction is not to become hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude. The law of contempt must adjust competing values, be modified, in its application by the requirements of a free society and by shifting emphasis on paramount public interest in a given situation. Ultimately, he concluded by saying that freedom is what Freedom does and Justice fails when Judges quail and for sure his plea is not for judicial pachydermy, but for dignified detachment which ignores ill-informed criticism in its tolerant stride, but strikes when offensive excesses are established.

48. In the light of the above it is clear that when such insulting letters are addressed to the Judges, we have to develop a dignified detachment. We should not become hyper sensitive even where distortions and criticism oversteps the limits. We have to deflate vulgar denunciation

by dignified bearing, condescending indifference and repudiation by judicial rectitude. The benefit of doubt should be given generously against the judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant contemnors. Curial courage overpowers arrogant might even as judicial benignity forgives errant or exaggerated critics. The wise economy of use of this power should be the rule and only in exceptional cases it has to be resorted to.

49. At the end of the day, ultimately, the judgment and the discretion lies with the Judge who is under attack and he has to act according to his conscience. He is not expected to offer any explanation to anyone. He has to answer his conscience. If there is any iota of truth in the allegation made in the said letter against him, the choice is his. He can ignore the same and discharge his duties without any fear or favour and without any ill will or affection. However, if for any reason, he lacks courage or feels embarrassed to take up the matter and decide the case, he can recuse himself from hearing the matter. It should

end there. The question of initiating contempt proceedings on the basis of such letter or if the author of the letter is not known, to hold an enquiry to trace who the author is, would, in our opinion, a waste of precious judicial and public time which we cannot afford in the circumstances we are placed.

50. In this regard, in the instant case, Hon'ble Mr. Justice K.L. Manjunath was justified in making up his mind not to hear the appeal as is clear from the order dated 15.09.2009. It is not because there was any truth in the letter. It is because to maintain the dignity and majesty of the law and not to give room for any inclination of bias in the mind of the litigant public. In fact, what was mentioned in the letter was a confidential communication. It is evident that the author of the letter had no intention to make it public. It is the learned Judge, who made it public after making up his mind not to hear the appeal. No purpose is served by making the contents of the letter public. He could have avoided the same. As is clear from the events which unfolded subsequently, if Hon'ble Mr. Justice K.L. Manjunath had washed off his hands of the case at that stage, he need not have undergone the subsequent turmoil,

which he did by undertaking the task of finding out the persons involved in sending the said courier. It would be a lesson for all of us and after all we learn by experience. Of course, experience at times costs dear.

EFFECT OF SUPREME COURT ORDER

51. The order dated 15.09.2009 is passed directing initiation of contempt proceedings against five persons. The said order was challenged before the Apex Court in CC No.15717/09. On 23.10.2009 the Supreme Court passed the following order :

> *" Permission to file SLP is granted.*
>
> *As this matter has been sent to another Court for consideration, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.*
>
> *However, we make it clear that the Division Bench shall consider the matter afresh untrammeled by the observations made in the impugned order."*

52. Now, what is the effect of this order has to be considered. In paragraph 75 of the order dated 15.09.2009,

the direction to the Registry was to post the contempt proceedings as well as the appeal before a Bench of which Hon'ble Mr. Justice K.L.Manjunath and Hon'ble Mrs. Justice B.V.Nagarathna are not members. It means that the said Bench was not inclined to hear the appeal nor the contempt proceedings and it has to go before another Bench. When the Apex Court held that they were not inclined to interfere with the order, as the matter has been sent to another Court for consideration, we have to remember that the said order is passed by the High Court on an application filed by the 1st respondent requesting Hon'ble Mr. Justice K.L.Manjunath to recuse himself. Though the said application was dismissed, ultimately, the appeal was sent to another Bench. That is the prayer they had sought for in the application, which in fact was granted even after dismissing the application. Therefore, the subject matter of the proceedings before the Apex Court was not the question "whether Hon'ble Mr. Justice K.L.Manjunath should recuse from hearing the appeal or not?". The subject matter of the appeal was "whether the Court was justified in directing initiation of contempt proceedings?".

53. Therefore, when the Apex Court held that the Division Bench before whom the matter is listed shall consider the matter afresh untrammeled by the observations made in the impugned order, the effect of it is, the observations made in the order dated 15.09.2009 i.e., insofar as the finding that the contents of the affidavits, the contents of the letter written by the two Advocates and the conduct of the Advocates before the Court constitutes Criminal contempt justifying initiation of the contempt proceedings, has to be ignored.

54. The initiation of contempt proceedings by the High Court based on the observations made in Paragraphs 68 and 69 of the order dated 15.09.2009 is vitiated, as the said observation had been wiped out by the order of the Supreme Court in its order dated 23.10.2009. The Bench to which the appeal was transferred should have gone into the question afresh as ordered by the Supreme Court, i.e., whether the allegations in the affidavit annexed to the application for recusal amounts to contempt. But the Court hearing the appeal did not go into the said question at all. On the contrary, the contempt proceedings were initiated on

the basis of the allegations in paragraphs 68 and 69 of the order dated 15.09.2009, which was non-existent on the date the contempt petition was presented, i.e., on 20.11.2009. This aspect has not been noticed by the parties or by the Court. The contempt proceedings initiated is thus without any foundation and is vitiated.

55. In fact such a contention is not taken by the accused. Nonetheless, it is settled law that the parties, by consent, cannot confer jurisdiction on a Court. Now the proceedings initiated is under Section 15 of the Contempt of Courts Act read with Article 215 of the Constitution of India. The said provision empowers a High Court to initiate contempt proceedings. High Court initiates contempt proceedings after permission is granted by the Hon'ble Chief Justice on the basis of sufficient material placed before the Hon'ble Chief Justice, justifying the initiation of proceedings. In the instant case, it is the observation made in the order dated 15.09.2009, which gave raise to initiation of contempt proceedings. When the Hon'ble Chief Justice passed an order on 20.10.2009 granting permission to initiate contempt proceedings, within three days thereafter, i.e., on

23.10.2009 the Apex Court virtually wiped out those observations, which gave rise to initiation of contempt petition and directed consideration of the matter afresh untrammeled by the observations in the said order by the Division Bench before whom R.F.A. No.421/2009 was listed. The same was not brought to the notice of the High Court on 20.11.2009, while contempt proceedings were initiated. The order passed by the Supreme Court takes effect from 23.10.2009. Therefore, the contempt proceedings initiated on the basis of an order and the observations, which are not in existence, cannot be said to be a valid one. However, the contempt petition presented on 20.11.2009 proceeded with full fledged trial. Arguments are heard. At this stage, we are not inclined to dismiss the contempt petition on the ground of maintainability, though such a contention is not taken by any of the parties. Be that as it may, we proceed to decide the case on merits.

56. Now the question is, what is the procedure prescribed under law to deal with a situation like the instant case.

PROVISIONS OF LAW:

57. The Bench consisting of Hon'ble Mr. Justice K.L. Manjunath and Hon'ble Mrs. Justice B.V. Nagarathna, after hearing the learned Counsel for the parties on the application filed for recusal, passed the following order:

> *"69. Under the circumstances we are of the considered view that this is a fit case where suo motu contempt action has to be initiated against Sri Jai Chaitanya Dasa @ Jainarayan K. S/o Mr. K.C.D. Nambisan, Aged 42 years, Secretary of respondent No.1, Madhu Pandit Das, President of respondent No.1, Sri. S.K.V. Chalapathi, Senior counsel, Sri. V.H. Ron (Lex Plexus), Sri. Ramesh Babu and Sri. S.A. Maruti Prasad, Advocates.*
>
> *70. Office is directed to register the contempt proceedings in this regard and place the matter before the Hon'ble Chief Justice for posting."*

58. Thereafter, the High Court Registry placed the matter before the Hon'ble Chief Justice for order to register a *suo moto* Contempt of Court Case (Criminal) against the respondents-accused and for posting the same for

preliminary hearing. The Hon'ble Chief Justice passed the order as prayed for.

59. Thereafter the matter was listed before Hon'ble Mr. Justice K. Sreedhar Rao and Hon'ble Mr. Justice Subash B Adi. After hearing the learned Counsel for the parties, Hon'ble Mr. Justice K. Sreedhar Rao at paragraph 16, 17, 18, 19, 20, 40, 42, 43 and 44 held that the question whether the contempt proceedings is to be considered under Section 14 and Section 15 of the Contempt of Court Act, for short, hereinafter referred to as 'the Act', observed as under:

> *"43. In the instant case, the Bench which took suo-moto cognizance although did not follow the procedure of Section 14(1)(a) and (b), it would be incumbent on this court in law to hear the accused on charge and to frame a formal charge if necessary. In that view of the matter, the accused persons are heard extensively and elaborately on the incriminating material found against them in the order dated 15.9.2009.*
>
> *44. It appears to be a queer situation, the provisions of Sec.14 of the Act would attract and apply to A1 to A.4. In respect of A5 and A6 their conduct does not constitute contempt*

in the face of the Court, but may amount contempt U/s 15. Not withstanding the above legal hassles regarding procedure, it is the duty of the Court to give fair opportunity of hearing the accused before charge and accordingly they are heard."

60. However, Hon'ble Mr. Justice Subash B. Adi, held as under:

"55. No doubt, Section 14 refers to the word "charged", but does not provide any procedure of framing charge or hearing the accused before charge and particularly when this court is a transferee court, it can step into the shoes of the court before which the contempt alleged to have been committed. It cannot sit in appeal to decide as to whether the observations made by the other bench are correct or not. Order passed by the said bench is taken as a statement of facts, it becomes an evidence in terms of Section 14 sub-section (3) of the Act and the matter required to be tried in terms of the provisional Section 14 of the Act. I do not think that at this stage, this Court can go into the correctness of the findings of the other court as regards to the contempt of court. The matter is required to be heard from the

stage of Section 14 sub-section (3) of the Act. A combined reading of both the provisions of Section 14 sub-section (2) and (3) do indicate that, based on the material, such as the statement of facts of the Judge or Judges before whom the contempt is committed, and by giving opportunity to the accused to make their defence, the matter could be determined.

Further it was held as under:

"In view of the above, I am in agreement with my learned brother Justice Sri. K. Sreedhar Rao insofar as the proceedings fall under Section 14 of the Contempt of Courts Act, 1971 and closing this contempt case as against accused Nos.2 and 4. However, in my opinion, as against accused Nos.1, 3, 5 and 6, proceedings have to go on in terms of the procedure contained under Section 14 of the Act."

61. The learned Third Judge Hon'ble Mrs. Justice Manjula Chellur, after referring to Article 215 of the Constitution, Section 14 and Section 15 of the Act, held as under:

> *"24. Sub-section (1) under Section 14 refers to procedure to be adopted where contempt is on the face of the Supreme Court or a High Court. Apparently, when it appeared upon its own view that the contemnors were guilty of contempt, no proceedings as contemplated under the said section was initiated on the same day. But initiation was only thereafter. The order dated 15-9-2009 is to be considered only as a view of the Court that contempt has been committed as no proceedings were initiated as contemplated in the I part of sub-section (1) of Section 14. Therefore, the next stage contemplated is as per sub-section (1) of section 14 ct (a), (b), (c) & (d).*

62. The said judgment of this Court is affirmed. So it is in this background, we are proceeding further.

63. The power conferred upon the Supreme Court and the High Court, being the Courts of Record under Articles 129 and 215 of the Constitution respectively, is an inherent power and that the jurisdiction vested is a special power not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India.

Therefore, the Constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. Inherent power of a Superior Court of Record remains unaffected even after the codification of the law of contempt of courts. Though Section 15 of the Act of 1971 prescribes the procedure, the inherent power under Article 215 cannot be curtailed by anything contained in the said Act. The provisions of the Act of 1971 are in addition to and not in derogation of the Article and it cannot be used for limiting or regulating the exercise of the Jurisdiction contemplated by the Article. The power to punish for contempt is inherent in the Courts of record and described as a necessary incident to every Court of Justice. This power, though inherent to the High Court, is given a Constitutional status by Article 215 of the Constitution for securing public respect and confidence in the judicial process.

64. In order to find out whether any of the statements in the aforesaid affidavits and letters constitutes a defamatory statement against the Judge or whether it is

calculated to interfere with the due course of justice or proper administration of law of this Court, it is necessary to look into the definition of the Criminal Contempt as defined under the Act.

65. Section 2(c) of the Contempt of Courts Act, 1971 defines what criminal contempt means, which reads as under:

> *" In this Act, unless the context otherwise requires,-*
>
> *(a) xxxxxx*
>
> *(b) xxxxxx*
>
> *(c) "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-*
>
> *(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any*
>
> *(ii) court; or*
>
> *(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or*

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

66. The Parliament amended the Act and substituted Section 13 by Contempt of Courts (Amendment) Act, 2006 by way of substitution which reads as under:-

*"**13. Contempts not punishable in certain cases**.- Notwithstanding anything contained in any law for the time being in force.-*

a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or lends substantially to interfere with the due course of justice;

b) the court may permit, in any proceeding for contempt of court justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide."

67. Sections 14 and 15 of the Act of 1971, prescribe procedure for two different types of cases. Where Contempt of Court is committed in the presence of the Supreme Court or High Court, procedure prescribed in Section 14 has to be followed. In all other cases, procedure of Section 15 has to be followed. Proceedings under Sections 14 and 15 of the Act of 1971 contemplate two entirely different types of and mutually exclusive procedure.

68. Section 14 of the Contempt of Courts Act reads as under:

> *14. **Procedure where contempt is in the face of the Supreme Court or a High Court**.— (1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—*
>
> *(a) cause him to be informed in writing of the contempt with which he is charged;*

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court:

Provided further that the Court may, if it thinks fit, instead of taking bail from such

person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

69. Section 14 exclusively deals with the contempt committed in the face of the Supreme Court or the High Court, the procedure to be followed and the evidence to prove the charge of contempt. If the Court is of the view that any person is guilty of contempt committed in its presence or hearing, the said provision vests power in the Court to detain such person in custody. After such detention, either before rising of the Court, on the same day, or as early as possible thereafter, shall cause him to be informed in writing of the contempt with which he is charged and afford him an opportunity to make his defence to the charge. Thus, Section 14 of the Contempt of Courts Act contemplates issuance of notice and an opportunity to the contemnor to answer the charges leveled in the notice to satisfy the principles of natural justice. Where an incident amounting to contempt of Court takes place within the presence and sight of the Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for

maintaining the dignity and majesty of the Courts. It is more so when the object is not merely to scandalize or humiliate the Judge, but to scandalize the institution itself and thereby lower the dignity and majesty of the institution in the eyes of the public. In other words, under sub-section (1) of Section 14, the Court will act as a Complainant, Prosecutor and the Judge. That is the procedure contemplated by the statute. Thereafter, the Court holds an enquiry and take such evidence as may be necessary or as may be offered by such person and after hearing him, proceed either forthwith or after adjournment to determine the matter of the charge; then, pass such order for the punishment or discharge of such person as may be just. This is the procedure prescribed which the Court has to follow if a contempt is committed in the face of the Supreme Court or High Court.

70. However, sub-section (2) of Section 14 provides that a person charged with contempt under sub-section (1) can apply whether orally or in writing to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to

have been committed, and the Court is of the opinion that it is practicable to do so and that in the interest of proper administration of justice, the request of such person may be allowed. Then, the Judge shall cause the matter to be placed together with a statement of facts of the case, before the Chief Justice for such directions as he may think fit to issue in respect of the trial thereof. Sub-section (3) provides that when once the Judges act under sub-section (2) of Section 14, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness. The statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

71. The Apex Court interpreting Section 14 of the Act, in the case of ***LEILA DAVID Vs. STATE OF MAHARASHTRA & ORS*** reported in ***AIR 2010 SC 862*** has held as under:

> *"18. Section 14 of the Contempt of Courts Act, 1971, deals with contempt in the face of the Supreme Court or the High Court. The expression "Contempt in the face of the Supreme Court" has been interpreted to mean an incident taking place*

within the sight of the learned Judges and others present at the time of the incident, who had witnessed such incident.

19. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the Courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a Court proceeding, the object is not to merely scandalize or humiliate the Judge, but to scandalize the institution itself and thereby lower its dignity in the eyes of the public. In the instant case, after being given an opportunity to explain their conduct, not only have the contemnors shown no remorse for their unseemly behaviour, but they have gone even further by filing a fresh writ petition in which apart from repeating the scandalous remarks made earlier, certain new dimensions in the use of unseemly and intemperate language have been resorted to further denigrate and scandalize and

over-awe the Court. This is one of such cases where no leniency can be shown as the contemnors have taken the liberal attitude shown to them by the Court as licence for indulging in indecorous behaviour and making scandalous allegations not only against the judiciary, but those holding the highest positions in the country. The writ proceedings have been taken in gross abuse of the process of Court, with the deliberate and willful intention of lowering the image and dignity not only of the Court and the judiciary, but to vilify the highest constitutional functionaries.

72. In the instance case, the contempt alleged against A.1 is the words used in the affidavit filed in support of the application for recusal. As the said application was presented before the Court and that affidavit contained the words accusing bias of Hon'ble Mr. Justice K.L. Manjunath, it is alleged that it amounts to committing contempt in the face of the High Court. If the Judges on entertaining the said application felt as such, A.1 should have been detained in custody and pending determination of the charges, he could have been released him on bail as provided in sub-section (4) of Section 14 of the Act. Thereafter inform him in writing, of the contempt with which he is charged and afford

him an opportunity to make his defence to the charge. Then they should have taken such evidence as may be necessary or as may be offered by A.1. After hearing the matter, they could have decided whether the charge is proved or not and accordingly punished A.1 or discharge him. Admittedly, the Court did not follow this procedure.

73. Similarly, no proceedings were initiated under Section 14(1) even against A.2, A.3 and A.4 who are also accused of the same. In so far as A.5 and A.6 are concerned, they are not accused of anything being done in the face of the Court. Therefore the question of proceeding against them under Section 14(1) did not arise.

74. Even Section 14(2) is not attracted, because, the Court did not inform A.1 of the contempt of which he is charged. It is only if A.1 had been informed about the charge, then, he could have requested the Judges who had issued him the charge that he be tried by some Judge other than them. As the accused were not informed in writing the charge of contempt, the accused did not have any occasion to apply orally or in writing to have the charge against them tired by some Judge other than the Judges, who had framed

the charge against him. Therefore, the procedure prescribed even in sub-section (2) was not followed. It is under these circumstances, the contempt proceedings now which is initiated cannot be construed as the proceedings under Section 14 of the Act.

75. In the instant case, cognizance of the criminal contempt against the accused has been taken by the Court *suo moto* under Section 15 of the Act. Section 15 reads as under:

> *15.* ***Cognizance of criminal contempt in other cases****.— (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—*
>
> *(a) the Advocate-General, or*
>
> *(b) any other person, with the consent in writing to the Advocate-General, [or]*
>
> *[(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or*

any other person, with the consent in writing of such Law Officer.]

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression "Advocate-General" means—

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification

in the Official Gazette, specify in this behalf.

76. Sub-section (1) of Section 15 empowers the Supreme Court or the High Court to take action on its own motion in respect of a contempt other than referred to in Section 14. Sub-section (3) of Section 15 mandates that every motion under this Section shall specify the contempt of which the person charged is alleged to be guilty. When the contempt is on the face of the Court, then it is very essential for that Court to follow the procedure as prescribed in Section 14 of the Act. But for any reason if the concerned Court does not proceed in accordance with Section 14 of the Act and refers the matter to the Hon'ble Chief Justice of the High Court informing about the alleged contempt, then in that event, it is always open and within the powers of the High Court to take *suo moto* cognizance of the same and proceed against the alleged contemnor in accordance with the procedure as laid down under Section 15 of the Act. The High Court can deal with contempt summarily and adopt its own procedure. All that is required is that the procedure is fair and the contemnor is made aware of the charge against

him and is given a fair and reasonable opportunity to defend himself. Section 15 of the Act prescribes procedure for cases not covered by Section 14 of the Act. Court is not bound by the procedure laid down by the Code of Criminal Procedure. It can have its procedure. Even Evidence Act has no play in the matter of procedure. Even though the provisions of the Code of Criminal Procedure do not apply, yet, the degree of proof is the same. Benefit of reasonable doubt must go to the alleged contemnor. Contempt proceedings are summary proceedings. In a criminal case the accused has the benefit of presumption of innocence and an opportunity of demolishing the prosecution case without exposing himself to cross-examination. In cases of criminal contempt, the standard of proof has to be that of criminal case, i.e., charge has to be established beyond reasonable doubt. A person should not be convicted unless his conviction is essential in the interests of justice. Accordingly, the proceedings in the instant case is held keeping in mind the aforesaid principles and in terms of Section 15 of the Act.

77. Now, it is in this background, the points for consideration as framed hereinbefore is taken up for consideration.

POINT NO.1

RECUSAL APPLICATION - BIAS

78. Whether the filing of an application by a party to the proceedings requesting a Judge to recuse himself from hearing the case on the ground that he is biased constitutes contempt?

79. In order to appreciate the case of bias alleged against a Judge, we have to carefully scan the allegations made in the affidavit of the 1st respondent.

80. From paragraph 9 of the affidavit of the first respondent filed on 17.07.2009 it is clear that Hon'ble Mr. Justice K.L. Manjunath used to visit the 1st respondent temple between 1998 and 2003 as a devotee of the temple. It is a private temple. The 1st Respondent used to invite Hon'ble Mr. Justice K.L. Manjunath for various major festivals conducted in the temple, as has been done with other devotees of the temple. In fact, the litigation started in

the year 2001 as is clear from the number of the suit, O.S.7934/2001. Even after the litigation, Hon'ble Mr. Justice K.L. Manjunath, used to visit the temple as a devotee. As is clear from the affidavit filed, Sri. Hon'ble Mr. Justice K.L. Manjunath was invited to the temple as he was a devotee and not as a Judge of the High Court of Karnataka. In fact, the observations made by the learned Judge as published in the Deccan Herald dated 11.07.2009 reads as under:

> *"He said he used to visit the temple as a devotee until 2003 and stopped thereafter due to several doubts. This should not happen to the innocent devotees visiting temples."*

81. In a separate order passed by Hon'ble Mr. Justice K.L. Manjunath on 15.09.2009 regarding this news item, he has stated as under:

> *"…I stopped visiting ISKCON temple since I was not getting devotion considering the appearance of the statue of the deity and not for any other reason…"*

82. Further, the order dated 10.07.2009 also discloses that on Sri. S.A. Maruthi Prasad upon being interrogated in the presence of both the learned Senior Counsel appearing for the parties, what transpired is stated as under:

> *"Sri. S.A. Maruthi Prasad admitted that prior to 2003, in all on three occasions Justice K.L. Manjunath on his invitation has visited the temple and he further admitted that he alone was taking all the Judges to ISKCON, Bangalore on festival days".*

83. However, in the additional affidavit and the rejoinder dated 30.07.2009, at paragraph 4, the first respondent has sworn to the fact that he, through Sri. S.A. Maruthi Prasad, Advocate had sent invitation to only two Hon'ble Judges of this Court, namely Hon'ble Mr. Justice K.L. Manjunath and Hon'ble Mr. Justice Chandrashekaraiah, a former Judge of this Court. He has further sworn to as under:

"I submit that apart from the above two Hon'ble Judges, no invitation was sent through Sri Maruthi Prasad, inviting the other Hon'ble Judges to ISKCON Bangalore."

84. Therefore from these undisputed facts, it is clear that Hon'ble Mr. Justice K.L. Manjunath has visited the first respondent temple as a devotee from the year 1998 till 2003. He was elevated to the Bench in the year 2000. Thereafter, invitation has been sent by the first respondent through the former junior of Justice K.L. Manjunath, namely Sri. S.A. Maruthi Prasad, not only to him but also to another Judge who has since retired. It is not a case where, a Judge was invited to a temple and during such visit he was honoured and he was presented with a memento, a photo of the deity and a Shawl. On the contrary, it is a case where a devotee of the temple who had become a Judge of the High Court was invited through his former junior colleague to visit the temple as a devotee. In the year 2003, when he visited the temple, there was a litigation pending in the Civil Court between two factions. The first respondent is the person who was in-charge of the temple who sent invitation and who honoured the Judge/devotee, when he came to the temple.

The suit which was pending ended in favour of the first respondent. As is clear from the writing sent along with the photograph, what is stated therein is about the close association of Hon'ble Mr. Justice K.L. Manjunath and receiving gifts at the premises of ISKCON Bangalore. Further it says that :

> *"Inspite of having close assosciation starting from 2003 and continue of receiving gifts....Justice K.L. Manjunath is still hearing the above RFA 421/09 for reasons best known to...?"*

Is it morally and ethically right? Was the question put.

85. From this it is clear that on the date the letter was sent, the first respondent had succeeded in the Trial Court. The appeal was by the opposite party. The gifts received by Hon'ble Mr. Justice K.L. Manjunath was from the first respondent, the successful party. He was a devotee of the temple. Therefore, to say that the first respondent has sent this letter with photographs to prevent Hon'ble Mr. Justice K.L. Manjunath from hearing the appeal, is difficult to accept. If at all, the grievance should be of the appellant,

who has lost the battle in the trial Court and who should have been worried about the close association of Hon'ble Mr. Justice K.L. Manjunath with the first respondent. Otherwise, subsequent to the said visit, when the learned Judge stopped visiting the temple for the reasons set out above, their relationship should have been strained, for the reasons best known to them. Probably, that is the reason why the learned Judge considering the contents of the cover with the photograph, was of the opinion that he should not hear the appeal and accordingly he made up his mind to recuse himself from hearing the appeal.

86. The first respondent was not aware of this fact. He filed an application on 03.08.2009 requesting him to recuse himself from hearing the appeal. After setting out the facts and circumstances as recorded in the order sheet dated 10.07.2009 and the News Paper reports, it was stated in paragraph 8 of the affidavit filed in support of the application that any right minded person who reads the newspaper reports will reach a conclusion that Hon'ble Justice K.L. Manjunath is biased against ISKCON, Bangalore, entertaining serious doubts and opinion against ISKCON

Bangalore. The learned Judge is having a belief that ISKCON Bangalore are 'Blackmailers' who adopt scurrilous methods for avoiding the bench and that devotees should be beware of them. Obviously, the sanctity of the temple is put at stake. When they expressed full confidence and requested the Bench to hear the appeal on merits, still the learned Judge was proceeding against the first respondent and their Counsel. It is in those circumstances, the first respondent entertained a reasonable apprehension that Hon'ble Justice K.L. Manjunath is biased against the first accused. Therefore, he stated that if the learned Judge is pre-disposed and having prejudices as stated above, he is unable to act as a Judge in this case. He reasonably apprehended that a real likelihood of a bias attributable to Hon'ble Mr. Justice K.L. Manjunath will operate against the first respondent affecting a fair assessment of the merits of the case in the final decision of this Court in the First Appeal. Therefore, a request was made to the learned Judge to recuse himself from the Bench hearing this appeal.

87. On 07.08.2009, the learned Judge, Hon'ble Mr. Justice K.L. Manjunath brought to the notice of the learned

Counsel appearing for the parties that he has received two letters from Sri. Shekar Shetty, dated 24th July 2009 Ex.C2, his learned Senior and Sri. S.V. Srinivasan, dated 15th July 2009, his learned colleague accusing A.5 and A.6 of approaching them to disable Justice Mr. K.L. Manjunath from hearing the appeal and when both of them denied having approached the said two Advocates, a direction was issued to them to file their affidavits. Even after Justice Kumaraswamy disagreed with Hon'ble Mr. Justice K.L. Manjunath with the order dated 07.08.2009 and he recused himself from hearing the appeal, again, yet another Bench was constituted with Hon'ble Mr. Justice K.L. Manjunath heading the Bench.

88. Therefore, in the facts of the case, we have to decide whether those words used in the affidavit filed in support of the application for recusal constitutes criminal contempt? The words used in the affidavits are as under:

> *"10. Thus on the facts and circumstances, the 1st respondent is having a reasonable apprehension that Hon'ble Mr. Justice K. L. Manjunath is biased against this Respondent. It is may humbly submission that since the learned*

Judge is pre-disposed and having prejudices as stated above, he is unable to act as a Judge in this case".

"13. It is therefore most respectfully submitted that this Respondent reasonably apprehended that a real likelihood of bias attributable to Hon'ble Mr. Justice K. L. Manjunath will operate against the 1st Respondent affecting a fair assessment of the merits of the case in the final decision of this Hon'ble Court in the First Appeal. It is therefore, most respectfully submitted that the Hon'ble Judge may be pleased to recuse himself from the bench hearing this Appeal in order to keep up the Majesty of Justice and Judiciary for the ends of Justice equity and good conscience."

89. From the aforesaid paragraphs in the affidavit, what emerges is, Hon'ble Mr. Justice K.L. Manjunath is accused of likelihood of bias. The language employed is that the first respondent is having reasonable apprehension that Hon'ble Mr. Justice K.L. Manjunath is biased against the first accused. The learned Judge is predisposed and having prejudice as stated above. The first respondent reasonably apprehended that a real likelihood of bias attributable to

Hon'ble Mr. Justice K.L. Manjunath will operate against the 1st respondent affecting a fair assessment of the merits of the case in the final decision of this Hon'ble Court in the First Appeal. Therefore, he was requested to recuse himself from the Bench hearing the appeal. The said imputations do not relate to lack of integrity or oblique motives. No dishonesty is imputed. No harsh words are used. It was not intended to insult the learned Judge. The Court or the Judge was not scandalized. No disparaging statements regarding the character or derogatory to the dignity of the Judge were made. Since the learned Judge in the open Court expressed the opinion that contents in the cover with the photographs is 'blackmail tactics' adopted by the persons who are involved, to avoid this Bench and what has happened to him in this appeal shall not happen to other Brother/Sister Judges, who have visited the temple as devotees. Further, he has stated that he used to visit the temple as a devotee till 2003 and stopped thereafter due to several doubts and the same should not happen to the innocent devotees visiting the temple and that he is not getting devotion considering the appearance of the statue of the deity. He made it clear that when the photograph is taken by ISKCON

Bangalore in 2003, it is for them to explain how this could be sent in the name of the opposite party and they were directed to file an affidavit giving explanation. These statements taken as a whole, would normally give an impression to a right minded person that the learned Judge is angry and there was a real likelihood of bias on the part of the Judge, as those words amounts to pointing the needle of suspicion to the first respondent. When the learned Judge says that what has happened to him should not happen to others, it is clear that he wants to take action, thus preventing the repetition of such acts. When the said utterances of the learned Judge in the open Court were widely published in all the news papers, general public came to know what the learned Judge said about the first respondent. The affidavit further discloses that after the publication of the news in the news papers, the first respondent started getting phone calls from devotees all over the world enquiring as to what happened. They all felt that the reputation of the temple and the deity is seriously damaged. It is in this context the first respondent perhaps entertained apprehension about what the learned Judge might do in the case, and brought to the notice of the

learned Judge by way of an affidavit, their apprehension, their understanding of the situation and requested him to recuse himself from the Bench hearing the appeal.

90. Now the question is, whether such apprehension or understanding of the first respondent is reasonable or not and whether those allegations would constitute criminal contempt?

91. The law on the point of bias is fairly well settled. Lord Denning in the case of ***METROPOLITAN PROPERTIES CO. (FGC) LTD., Vs. LONDON RENT ASSESSMENT PANEL COMMITTEE (1969) 1 QB 577*** observed as under:

> *"....in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be nevertheless*

if right minded person would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit. And if he does sit his decision cannot stand."

"The Court will not enquire whether he did in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking, 'the Judge was biased".

FRANKFURTER, J, in ***PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA Vs. POLLAK, (1951) 343 US 451*** at Pg. 466 has held thus:

" The judicial process demands that a Judge move within the framework of relevant legal rules and the court covenanted modes of though for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole, Judges do lay aside private views in discharging their judicial functions. This achieved through training, professional habits, self-discipline and that fortunate alchemy by

which men are loyal to the obligation with which they are entrusted. But it is also true reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, Judges recuse themselves. They do not sit in judgment.

The Apex Court in the case of ***MANK LAL Vs. DR. PREM CHAND SINGHVI & OTHERS*** reported in ***AIR 1957 SC 425,*** explained the meaning of the word 'bias' as under:

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

that it is often said that justice must not only be done but must also appear to be done.

In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest however small it may be in a subject- matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. " The principle", says Halsbury, "nemo debet esse judex in causaproprta sua precludes a justice, who is interested in the subject matter of a dispute, from acting as a justice therein". In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justice as mentioned by Halsbury but to all tribunals and bodies

which are given jurisdiction to determine judicially the rights of parties."

The Apex Court in the case of ***A.K. KRAIPAK & OTHERS Vs. UNION OF INDIA AND OTHERS*** reported in ***AIR 1970 SC 150,*** held as under:

"The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

Again in the case of ***BHAJANLAL, CHIEF MINISTER, HARYANA Vs. JINDAL STRIPS LIMITED & OTHERS*** reported in ***(1994) 6 SCC 19***, dealing with 'bias' the Supreme Court has held as under:

"Bias is the second limb of natural justice. Prima facie no one should be a

Judge in what is to be regarded as 'sua cause', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject matter, from a close relationship or from a tenuous one."

The Apex Court in the case of ***P K GOSH, IAS Vs. J.G. RAJPUT*** reported in (***1995) 6 SCC 744,*** held as under:

"10. A basic postulate of the rule of law is that 'justice should not only be done but it must also be seen to be done.' If there be a basis which cannot be treated as unreasonable for a litigant to expect that this matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should recuse himself from the Bench hearing that matter. This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the

mind of the learned Judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done."

The Supreme Court in the case of ***CHETAK CONSTRUCTIONS LTD Vs. OM PRAKASH*** reported in ***(1998) 4 SCC 577,*** held as under:

"17. In the course of the impugned "reference", the learned single Judge has also suggested that contempt proceedings be initiated against some of the lawyers who appeared before him besides the appellant. On the basis of what we have noticed above, we find to cause to have been made out to institute contempt proceedings, as suggested. We may notice here that even on an earlier occasion the learned single Judge (Vyas, J.,) had in the same appeal (Misc.Appeal No.143 of 1994) made a

reference to this Court for taking action against Shri Girish Desai, Senior Advocate, representing the appellant besides his instructing counsel and the company secretary of the appellant under the Contempt of Courts Act. On 12.2.96, this Court declined to proceed against them for contempt of Court. Contempt of Court jurisdiction is a special jurisdiction. It has to be used cautiously and exercised sparingly. It must be used to uphold the dignity of the Courts and the majesty of law and to keep the administration of justice unpolluted, where the facts and circumstances so justify. "The corner stone of the contempt law is the accommodation of two constitutional values – the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel". Long long ago in Queen v. Grey, (1900) 2 QB 36 at 40) it was said that Judges and Courts are alike open to criticism and if reasonable argument is offered against any judicial act as contrary to law or to the public good, no Court could or would treat it as contempt of Court." Therefore, contempt jurisdiction has to be exercised with scrupulous care and caution, restraint and circumspection.

Recourse to this jurisdiction, must be had whenever it is found that something has been done which tends to effect the administration of justice or which tends to impede its course or tends to shake public confidence in the majesty of law and to preserve and maintain the dignity of the Court and the like situations. "The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction." We have given our careful consideration to the facts and circumstances of the case but are not persuaded to initiate contempt proceedings as suggested by the learned Single Judge either against the lawyers or the appellant for their "action" in making request to the learned Judge or recuse himself from the case. The reference to that extent is also declined.

This Court after referring to the aforesaid judgments in the case of ***M/s NATIONAL TECHNOLOGICAL INSTITUTIONS (NTI) HOUSING CO-OPERATIVE SOCIETY LTD., AND OTEHRS Vs. THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF KARNATAKA, REVENUE DEPARTMENT AND OTHERS*** reported in ***ILR 2012 KAR 3431***, at paragraph 39, held as under:

39. It is of the essence of judicial decisions and judicial administration that judges should act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a Judge might have operated against him in the final decision of the tribunal. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi

judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years, many more subsidiary rules came to be added to the rules of natural justice. The purpose of the rules of natural justice is to prevent miscarriage of justice. Arriving at a just decision is the aim of judicial enquiries. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened, the Court should decide whether the observance of that rule was necessary for a just decision on the facts of that case.

Bias may be generally defined as partiality or preference. ***FRANK J, in LINAHAN, Re (1943) 138 F 2nd 650, 652,*** observed thus:

"If however, 'bias' and 'partiality' be defined to mean the total absence of

preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudiced."

92. Bias is a condition of mind which sways the judgment and renders the Judge unable to exercise impartiality in a particular case. Bias is likely to operate in a subtle manner. A prejudice against a party also amounts to bias. Reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such subconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, Judges ought to recuse themselves. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that a person was likely to have been biased. A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias, we have to take into consideration human probabilities

and ordinary course of human conduct. The Court looks at the impression which would be given to an ordinary prudent man. Even if he was as impartial as could be, nevertheless if right minded person would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand. For appreciating a case of personal bias or bias to the subject matter, the test is whether there was a real likelihood of bias even though such bias, has not in fact taken place. A real likelihood of bias presupposes at least substantial possibility of bias. The Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. Whether there was a real likelihood of bias, depends not upon what actually was done but upon what might appear to be done. Whether a reasonable intelligent man fully apprised of all circumstances would feel a serious apprehension of bias. The test always is, and must be whether a litigant could reasonably apprehend that a bias attributable to a Judge might have operated against him in the final decision.

93. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done. The initiation of contempt action should be only when there is substantial and mala fide interference with fearless judicial action, but not on fair comment or trivial reflections on the judicial process and personnel. The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction.

94. In the instant case, the necessity for filing the recusal application arose out of strong statements/observations made by the learned Judge, in open Court. It is reflected in his order as well as in the news paper publication. He has used words like 'blackmail', which have serious implications. The relevant portion of the order reads as under:-

> *"Considering the contents in the cover with the photographs, we are of the opinion that it is a black-mail tactics adopted by the persons who*

are involved to avoid this Bench and to scandalize Justice K. L. Manjunath and bring down the reputation of this Court".

95. We are of the view that the word "blackmail" used in this context is inappropriate. Blackmail has been defined in the broad sense to mean compelling someone to act against their will for gaining or attempting to gain something of value or compelling another to act against such person's will by threatening to communicate accusations or statements about any persons that would subject such persons or any other person to public ridicule, contempt or degradation.

96. 'Blackmail' is the use of threats to prevent another man from engaging in lawful occupation and writing libelous letters or letters that provoke breach of peace as well as use of intimidation for the purpose of collecting unpaid debt. It is a form of extortion, because the information is usually substantially true, it is for not revealing the information that is criminal but demand money to withhold it.

97. 21st Century Dictionary gives the meaning of 'blackmail' as under:

> *" to extort money, etc illegally from someone by threatening to reveal harmful information about them; to try to influence someone by using unfair pressure or threats"*

98. Courts vary on interpreting what something of value includes; but it is not necessarily a money payment in all cases. Therefore, 'blackmail' presupposes that the information is usually substantially true having harmful implications. If it is said that somebody is blackmailing, then, the identity of the blackmailer should be usually known to the person who is blackmailed. The information which the blackmailer wants to expose should be true. If so exposed, it would be harmful to the blackmailed. From the material on record, when it is said that it is not known to the learned Judge who actually sent the cover with the aforesaid writing, the use of the said word has given rise to apprehension in the mind of the 1st respondent.

99. It is also on record that after the photographs were shown to Sri Udaya Holla, the learned Senior Counsel appearing in the appeal and Sri. S.K.V. Chalapathy, the learned Senior Counsel appearing for the first respondent, both submitted that they and their clients have full confidence in the Court; their clients are not responsible for sending the cover with photographs and that both of them are willing to address arguments on merits in the appeal. In fact though the Court came to the conclusion that the contents of the letter constitutes contempt of Court, the Court was not aware who committed the contempt. Therefore the Court wanted to find out who committed the contempt.

100. In this regard, it is necessary to notice that the said photograph with the letter was sent in a cover with the sender's address: '*Jayapataka Swamy Shishya Samuha, Sheshadripuram, Bangalore'.* The question is who is the addressee. In the affidavit filed by the 1st appellant on 16.07.2009, it is stated as under:

> *"The said courier bore the address of the Temple/Branch of the 1st Appellant situated at Seshadripuram, Bangalore and*

stated that it has been sent by the disciples of the 4th Appellant.

The Appellants respectfully state that they have made extensive enquires with the said Temple/Branch of the 1st Appellant situated at Seshadripuram, Bangalore and people connected with it. Neither the Appellants, nor the disciples of the 4th Appellant, nor anyone remotely connected with them have sent the said communication."

101. Therefore the said addressee shown is none other than disciples of the 4th appellant in this case. Therefore, if the learned Judges were interested in knowing who sent this cover with those contents, in the normal course they should have called upon the 4th appellant to have his say in the matter. However, the 4th appellant was neither questioned nor called upon to file any affidavit stating whether the said cover emanated from him. On the contrary, the learned Judges proceeded on the basis that when the photograph is taken by ISKCON Bangalore in 2003, it is for them to explain how this could be sent in the

name of the opposite party. Therefore both the parties were directed to file affidavits giving explanation.

102. The reasons given by the Bench for directing the parties to file the affidavits are as under:

> *" We are also of the opinion that what has happened to Justice K.L. Manjunath in this appeal shall not happen to other Brother/Sister Judges who have visited temple as devotees."*
>
> *"When the photograph is taken by ISKON, Bangalore in 2003, it is for them to explain how this could be sent in the name of opposite party."*
>
> *"Therefore, both the parties are directed to file affidavits giving explanation."*

103. 4th Appellant has not filed any affidavit. From the affidavit filed on behalf of the first respondent**,** only two Judges of the High Court of Karnataka have visited the temple, i.e., Hon'ble Mr. Justice K.L. Manjunath and Justice Chandrashekaraiah. The invitation was sent to them only through A.6-Maruthi Prasad, erstwhile junior colleague of

Hon'ble Mr. Justice K.L. Manjunath. Therefore, no other Judge is a devotee of the temple, much less they are invited to the temple. Therefore, the apprehension that such incidents may re-occur and therefore the other Brother and Sister Judges have to be insulated from such future attacks, is a misconception and certainly that cannot be the reason for holding any such enquiry.

104. The other reason which is spelt out in the order is that, when the photograph is taken by ISKCON, Bangalore in 2003, it is for them to explain how this could be sent in the name of the opposite party. Therefore, a suspicion appears to have crept in the mind of the Judges that the 1st respondent might have played the mischief of sending the photograph in the name of the opposite party. They wanted the first respondent to file the affidavit, giving explanation. The needle of suspicion was pointed towards the 1st respondent.

105. However, Hon'ble Mr. Justice K.L. Manjunath on 10.07.2009 apart from setting out in the order what transpired in Court, he also has made statements/observations in open Court as under:

> *"He said he used to visit the temple as a devotee until 2003 and stopped thereafter due to several doubts. This should not happen to the innocent devotees visiting temples".*

106. Further, in a separate order dated 15th September, 2009, he has given reasons for his stopping visiting ISKCON temple from 2003. According to him, on 10.07.2009, he made it clear that he stopped visiting ISKCON temple since he was not getting devotion considering the appearance of the statue of the deity and not for any other reason. He has stated as under:

> *"I stopped visiting ISKON temple since I was not getting devotion considering the appearance of the statute of the deity and not for any other reason."*

107. The incident having been widely reported in almost all the newspapers and consequently, when the first respondent received phone calls from the devotees from various parts of the country regarding the statements, they were worried that the said statements have seriously and

immensely tarnished the reputation and prestige of the first respondent institution.

108. The learned Judge further says that his Brother/Sister Judges should not face similar situation in future. Though he had made up his mind not to hear the appeal on merits, the same was not made known to the first respondent or the fact that he wanted to hold an enquiry. He interrogates his own erstwhile junior in the open Court and has extracted admissions regarding his relationship with the temple, his visit to the temple, etc., If only he had made known his intention not to hear the appeal on merits, but only to find out who sent that cover with photograph, the first respondent would probably not have ventured to make an application for recusal. The first respondent might have also co-operated with the Court in finding out the culprit. In fact, in the affidavit filed in compliance to the directions issued by the Court, they have narrated the entire history and they have pointed out how such mischievous instances have happened in the past. They would also have adduced evidence to substantiate their case. On the contrary, when harsh words are used against the first respondent and the

deity, virtually pointing the needle of suspicion against the first respondent, the first respondent became apprehensive. The first respondent is answerable to the devotees. The paper publication created sensation in the mind of the public at large. Enquiries were made with the first respondent by the devotees all over the world. Under these circumstances, if the first respondent felt that the learned Judge is prejudiced against the first respondent and that it may reflect in the judgment to be delivered by him on merits and if they politely requested the Judge to recuse himself from hearing of this appeal, it cannot be said that the words used in the affidavit and the imputations of bias attributed to the Judge would constitute contempt.

109. What transpired in Court on 10-7-2009 as set out in the order dated 10-7-2009 reads as under:-

> *"These photographs were shown to the learned Senior Counsel appearing for the appellant Sri, Udaya Holla and learned Senior Counsel appearing for the respondent Sri. S.K.V. Chalapathy. Sri. Udaya Holla submits that his client has not dispatched the cover and there was no occasion to get the photo*

wherein Justice K.L. Manjunath receiving a photo of deity from ISKCON, Bangalore since the dispute between ISKCON, Mumbai and ISKCON, Bangalore was there much earlier to Justice K.L. Manjunath visiting the temple. He further submitted that he and his client have got full faith in this court and the same has been dispatched by the respondent (ISKCON, Bangalore) to bring bad name to the appellant and also to scandalize the judiciary and requests the court to hold an enquiry.

Sri. S.K.V. Chalapathy, learned senior counsel for the respondent also submitted that he and his clients have full confidence in the court and that his clients are not responsible for sending the cover with photographs."

110. True to their standing at the Bar, both the learned Senior Counsel submitted that their respective clients have full faith and confidence in the Court. That should have assuaged the feeling of hurt and Hon'ble Mr. Justice K. L. Manjunath should have recused himself from hearing the appeal as conveyed to the Hon'ble Chief Justice earlier or he should have heard the appeal on merits.

111. In the order dated 15-9-2009, what the learned Judge has stated about what transpired on 10-7-2009, is slightly inconsistent. It reads as under:

> *"On 10.07.2009 when Mr. Udaya Holla started his arguments I stopped him for a while and informed about the receipt of the courier. Before the contents in the cover could be made known to the counsel for the parties Sri S. K. V. Chalapathy, learned senior counsel appearing for the respondent without even knowing the contents of the cover immediately submitted that I should ignore the contents of the courier and that his client has got full confidence in the court which only indicate that it was known to Mr. Chalapathi what was in the cover. But Mr. Holla said that his clients are no way responsible and they have not indulged and that he is also having full confidence in the Court. Though the cover is said to have been sent to the Hon'ble Chief Justice and companion Judges and the Press, I believe that such covers are not sent to any one of them except to me and to my Brother Kumaraswamy J., If really such courier had been sent to the press, then the press would have published the same considering the background of this case atleast after 10-7-2009. Matter was*

adjourned to 17-7-2009 directing both the parties to file affidavits.

112. Therefore, Hon'ble Mr. Justice K. L. Manjunath was of the view that Sri. S. K. V. Chalapathy knew the contents of the letter even before it was made known to him. Such an impression is not recorded in his earlier order made immediately after the submission of Sri S.K.V. Chalapathy. Though, we do not know what is the truth, the variation in the perception indicates that the learned Judge was of the view that Sri. S.K.V. Chalapathy knew the contents of the cover and the letter. Such an inference in his mind is at best an assumption. Senior Counsels with vast, varied experience and with number of years practice, are accustomed to such mischief being done in the course of hearing of a case. Their experience tells them that it is not worth knowing the contents of such letter. Therefore, when they make a submission to ignore such letter and hear the matter as they have confidence in the Judge, attributing motives to them may not be proper.

113. In a separate order dated 15.09.2009 passed by Hon'ble Mr. Justice K.L. Manjunath, it is observed as under:

"At the time of hearing Mr.Mathai, learned senior counsel made a submission in the open court that he is argueing the matter in regard to the bias against me on the instructions of the Senior Counsel Mr.Chalapathy and Mr.Ron who is an advocate on record. Though they were present in the court hall when such a submission was made by Mr.Mathai, they did not deny the same. From the conduct of the counsel for the parties and in view of the letters written by Mr.Shekhar Shetty and Mr.S.V.Srinivasan, I am of the prima facie view that a concerted effort has been made to avoid my Bench even prior to the commencement of the arguments and subsequently.

114. Dealing with this issue, the learned third Judge, Hon'ble Mrs. Justice Manjula Chellur in her order dated 27th December 2010 has held as under:

37. Then coming to the case of 3rd contemnor Mr.S.K.V.Chalapathy, one has to see what exactly was the role played by this contemnor. The application dated 3-8-2009, letter dated 5-10-2009 and the affidavit of the 1st contemnor are relevant. One has to see who had prepared these applications. The application dated

3-8-2009 requesting Justice K.L.Manjunath to recuse himself from the Bench is not filed by Mr.S.K.V.Chalapathy's office. He has also not identified the 1st contemnor Jai Chaitanyadas. The letter of senior counsel Mr.Mathai M. Paikeday dated 5-10-2009 is also part of the records. This is addressed to 3rd contemnor Mr.S.K.V.Chalapathy – senior advocate. As per this letter Mr.Paikeday denies making submission in the open Court that he was arguing the matter regarding bias against the Judge concerned on the instruction of the senior counsel Mr.S.K.V.Chalapathy and Mr.Ron.

38. On 10-7-2009 the very senior counsel Mr.Chalapathy the 3rd contemnor unhesitatingly and categorically had expressed full confidence in the Bench hearing the matter. Therefore, when senior counsel S.K.V.Chalapathy had not drafted the application dated 3-8-2009 nor the affidavit of the 1st contemnor dated 17-7-2009, the contents of these two documents, cannot be held against Mr.S.K.V.Chalapathy. As a matter of fact, in the defence statement of the 3rd contemnor, he categorically says that subsequent to the adjournment of the matter

on 10-7-2009 to 17-7-2009 this contemnor was informed by the 1st contemnor that he had engaged Mr.Mathai M. Paikaddy, senior counsel practicing at Delhi to appear for them and argue the recusal application. He categorically says he was instructed to address arguments only on the merits of the appeal in RFA 421/2009. According to the 3rd contemnor, he appeared on several dates only to argue the main appeal since the cause list issued indicated that the appeal was posted for further hearing. He emphatically denies any nexus between him or his office with reference to the affidavit filed on 17-7-2009 and as well as the application dated 3-8-2009 by the 1st contemnor. He contends that but for the matter coming up for hearing of the appeal, he would not have appeared in the court. He categorically says that he would not have appeared in the court if the matter was listed for hearing on the recusal application. He further clarifies that when a question was put to Mr.Mathai M. Paikaday whether he was arguing the application on the basis of the instruction, he said 'yes'. As the instructing counsel was instructing Mr.Mathai M. Paikaday, the 3rd contemnor,

another senior counsel instructing Mr.Paikaday would not arise.

39. Contemnor No.1 was represented by one Mr.V.H.Ron appearing for Lex Plexus. The letter of Mr.Paikaday further clarifies the position that the 3rd contemnor never instructed Mr.Paikaday to address the arguments. Therefore, the defence taken by the 3rd contemnor based on the above material, would only indicate that the application dated 3-8-2009 was signed by one Mr.Kiran Ron – a partner of Lex Plexus law firm and Mr.S.K.V.Chalapathy has nothing to do with either the contents of the application or the affidavit. Therefore, viewed from any angle, Mr.S.K.V.Chalapathy the 3rd contemnor has not committed any contempt in the face of the Court. Therefore, the proceedings as against the 3rd contemnor deserves to be dropped.

115. From the aforesaid observations it is clear that Mr. Paikedey who argued the application for recusal has denied making any submission in the open Court on the basis of any instruction issued by Sri. S.K.V. Chalapathy. Sri. S.K.V. Chalapathy also has denied the said fact and has

offered his explanation for his presence in Court at the time of hearing the said application. Acting on the letter of Sri. Paikeday, the learned Senior Counsel, the learned third Judge held that Sri. S.K.V. Chalapathy has not committed any contempt in the face of the Court. Therefore, it shows that the said observation by Hon'ble Mr. Justice K.L. Manjunath is inappropriate.

116. When such motives are attributed to their Counsel, even if the Counsel is not disturbed, one cannot expect the same equanimity on the part of the party who has engaged such a Senior Counsel. Fear lurks in their mind about the fate of their case, when the Judge is prejudiced against his Counsel and consequently they may apprehend that the said anger may be visited on the case. Such a situation is to be avoided for proper administration of justice and also to uphold the dignity and decorum of the Court.

117. In this context, it is necessary to point out that Hon'ble Mr. Justice C.R.Kumaraswamy, who was present in the Court in the Bench on 10.07.2009, again on 17.07.2009 and on 07.08.2009, was of the view that if a Judge is

defamed in such a way as not to affect the administration of justice, he has the ordinary remedies for defamation. He was of the view that the Court was not defamed. There was no intention to bring down the reputation of the Court. It does not amount to scandalizing the judiciary. Therefore he wanted to disassociate himself from the said proceedings, as he was unable to agree to the approach of the senior Judge in the matter. Therefore he recorded his dissent in his order as under:

> ***Per C.R. Kumaraswamy, J***
>
> *Heard the dictation of my brother, His Lordship Sri. K.L. Manjunath. If a Judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation. It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Therefore in this background, post this matter before a Bench of which Justice C.R. Kumaraswamy is not a Member after obtaining necessary orders from the Hon'ble Chief Justice.*

In the circumstances, Place this matter before the Hon'ble Chief Justice for necessary orders."

118. Therefore, being a Junior Member of the Bench, when he was not inclined to proceed with the enquiry and he did not want to be party to any further order, he requested that the appeal be posted before a Bench of which he is not a member. This conduct of the Judge cannot be questioned nor commented upon. A Judge cannot be made to go against his own conscience. He has every right to have his own opinion. In a Bench of two Judges, if there is any disagreement, the law provides for referring the said disputed question to a third Judge. Instead of referring the said disagreement to a third Judge, as Hon'ble Mr. Justice C.R. Kumaraswamy wanted to recuse himself, again another Division Bench headed by Hon'ble Mr. Justice K.L. Manjunath was constituted. The said Bench, in the order dated 15.09.2009 at para 71 held as under:

"71. As far as the order passed by Kumaraswamy J on 7-8-2009 is concerned, we are of the view that it was the opinion of his Lordship that it was a case of a Judge

being defamed and not one affecting the administration of justice. However, we have taken the view that the entire controversy is one affecting the administration of justice and the allegations are prima facie contemptuous within the meaning of Section 2(c) of the Contempt of Courts Act 1971. The pleadings filed by the applicant and also the affidavits of the applicant/respondent No 1 are prima facie contumacious."

119. They accepted the view of Hon'ble Mr. Justice K.L. Manjunath and disagreed with the view expressed by Justice Hon'ble Mr. C.R. Kumaraswamy. Having said that, in a separate order dated 15.09.2009 of Hon'ble Mr. Justice K.L. Manjunath, it is observed as under at Page 92:

"It is unfortunate that a companion Judge who was well aware of the fact that we were hearing the parties only to find out the persons responsible in sending the courier to avoid the Bench has passed an order as if parties had defamed a Judge and that he should resort to an ordinary civil suit. In the interest of the judiciary I feel it was not be proper for me to comment about the order passed by my Companion Judge.

Accordingly, the matter was adjourned to 11-8-2009."

120. After the order dated 15.09.2009, the High Court initiated *suo moto* contempt proceedings in compliance with the said order after obtaining the permission of the Hon'ble Chief Justice. When the matter was placed before the Bench consisting of Hon'ble Mr. Justice K. Sreedhar Rao and Hon'ble Mr. Justice Subhash B Adi. Hon'ble Justice Mr. K. Sreedhar Rao held that the conduct of A.1 in filing the application for recusal cannot be construed as scandalous act, the language used in the affidavits is polite and courteous and no disparaging language is used in narrating the facts. The conduct of A.1 in filing the recusal application and its contents appears to be bonafide. There is absolutely no material against A.1, A.3 to A.6 to hold them liable for contempt much less against A.2. Therefore he ordered for dropping of contempt proceedings against A.1 to A.6.

121. The companion Judge was in agreement with the said order in so far as dropping the contempt proceedings against A.2 and A.4. However, in his opinion, as

against A.1, A.3, A.5 and A.6, the proceedings were required to go on.

122. When the matter was referred to the Third Judge, Hon'ble Mrs Justice Manjula Chellur categorically held that A.3 has nothing to do with either the contents of the application or the affidavit and that he has not committed any contempt on the face of the Court. However, as against A.1, A.5 and A.6, she wanted the proceedings to be continued.

123. The aforesaid utterances of the learned Judge as reflected in the order and also the observations made in the open Court published in the news papers and the explanation offered by the learned Judge in his subsequent order regarding the said paper publication would clearly indicate to an ordinary person that the learned Judge may be prejudiced against the first respondent and the said bias, prejudice, may likely affect the judgment to be delivered by him. At any rate, bias is imputed against only one Judge. There is no imputation against the Court. In this regard it is to be noticed that the learned Judge is not a total stranger to the first respondent. The learned Judge was a devotee of the

temple from 1998 to 2003. It is a private temple. He had visited the temple several times. In 2003 he was invited and honoured. When the learned Judge started visiting the temple in the year 1998, there was no dispute and there were no factions. In 2003, he was invited not because he was a Judge, but he was a devotee of the temple. The invitation was sent through his erstwhile junior Advocate. Subsequently he stopped visiting the temple due to several doubts that he entertained. He was not getting devotion considering the appearance of the statue of the deity. He did not want anything to happen to the innocent devotees visiting the temple. Therefore, it is clear that the learned Judge had devotion from 1998 to 2003, when the appearance of the statue of the deity was the same. Subsequently, the deity is not changed. It continues to be the same, but the change of perception of the deity is in the mind of the learned Judge. It is quite possible. Now the order dated 15.09.2009 makes it clear that after receipt of the cover containing photograph and the letter, the learned Judge made up his mind not to hear the appeal. If by receiving such letter, the learned Judge was of the view that he should not hear the appeal and when he made such

utterances in the open Court, which he incorporated in the order and some of the utterances which were not incorporated in the order was published in the news paper, if the first respondent got reasonable doubt in his mind that the learned Judge is prejudiced against the first respondent for the reasons set out, it cannot be said that the said utterances do not support the plea of bias.

124. It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men. The nature of the allegations will have to be closely examined and so long as they do not satisfy the requirements of what may be regarded as contempt of court no punishment can possibly be inflicted.

125. Mere filing a recusal application does not constitute contempt. There was no intention on the part of the first respondent to insult the learned Judge. They have not made any allegations against his integrity. They have

not accused him of any dishonesty. The words chosen in the affidavit are mild, courteous and respectful. The said allegations are neither serious nor scurrilous in nature scandalizing the Court and imputing improper motives to the learned Judge trying the case. He was only expressing the apprehension in his mind which is induced because of the utterances of the learned Judge in the open Court as well as its wide publicity given in the news papers. He bonafidely believed that the learned Judge is prejudiced against them. It was a reasonable doubt which he entertained in his mind. There was no intention to interfere with the due course of justice or proper administration of law by the Court. On the contrary, for proper administration of law, he wanted the learned Judge to recuse himself.

126. The Apex Court in the case of ***C.K. DHAPTHARY, SR. ADVOCATE & ORS VS. O.P. GUPTA & ORS*** reported in ***AIR 1971 SC 1132*** has categorically held that it is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a Judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because 'justice is not

cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men'. A distinction must be made between a mere libel or defamation of a Judge and what amounts to a contempt of Court. The test in each case would be whether the impugned words are a mere defamatory attack on the Judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by this Court. It is only in the latter case that it will be punishable as contempt. Alternatively, the test will be whether the wrong is done to the Judge personally or it is done to the public.

127. The Apex Court in the case of ***GOBIND RAM Vs. STATE OF MAHARASHTRA*** reported in ***AIR 1972 SC 989,*** while dealing with the allegations against the Court in a transfer application on the question whether it amounts to contempt, has held as under:

> *"The mere statement in an application for transfer that a Magistrate is friendly with a party who happens to be an advocate and enjoys his hospitality or has friendly relations with him will not constitute*

contempt unless there is an imputation of some improper motives as would amount to scandalizing the Court itself and as would have a tendency to create distrust in the popular mind and impair the confidence of the people in the courts. It is true that in the garb of a transfer application a person cannot be allowed to commit contempt of court by making allegations of a serious and scurrilous nature scandalizing the court and imputing improper motives to the judge trying the case. But then the nature of the allegations has to be closely examined and so long as they do not satisfy the requirements of what may be regarded as contempt of court no punishment can be inflicted."

128. The Apex Court in the case of ***PERSPECTIVE PUBLICATIONS (P) LTD., Vs. STATE OF MAHARASHTRA*** reported in ***AIR 1971 SC 221*** has held as under:

"It is necessary to refer only to the principles laid down for cases of the present kind i.e. scandalising the court. It has been observed that there are two primary considerations which should weigh with the court when it is called upon to exercise

summary power in cases of contempt committed by "scandalising" the court itself. In the first place, the reflection on the conduct or character of a Judge in reference to the discharge of his judicial duties would not be contempt, if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. Secondly, when .attacks or comments are made on a Judge or Judges disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on a judge and what really amounts to contempt of court. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. "it will be 'an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties.

It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends is, any way, to interfere with the proper administration of law."

17. There can be no manner of doubt that in this country the principles which should govern cases of the present kind are now fully settled by the previous decisions of this Court. we may re; state the result of the discussion of the above cases on this head of contempt which is by no means exhaustive.

(1) It will not be right to say that committals for contempt for scandalizing the court have become obsolete.

(2) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.

(3) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on

any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men".

(4) A distinction must be made between a mere libel or defamation of a judge and what amounts to a contempt of the court.

The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court. It is only in the latter case that it wilt be punishable as Contempt.

(5) Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. To borrow from the language of Mukherjea, J. (as he then was) (Brahma Prakash Sharma's case)(1) the publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is

likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties.

129. Following the said judgment and after referring to several other judgments of the Apex Court, this Court in the case of ***SRI. PHANIRAJ KASHYAP Vs. S.R. RAMAKRISHNA & OTHERS*** reported in ***ILR 2011 KAR 2437***, held as under:

40. One has to avoid confusion between personal protection of a libelled judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt, the latter is, although overlapping spaces abound. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. He must resort to action for libel or criminal intimidation. The position therefore is that a defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libellor in a proper action, if he so chooses. One is a wrong done to the Judge personally while the other is a wrong done to the public. A distinction must be made

between a mere libel or defamation of a judge and what amounts to a contempt of the court. The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by the Court. Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. The object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected, if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice is weakened. It is not to be used for the vindication of a Judge as a person.

41. The broad test to be applied in such cases is, whether the act complained of was calculated to obstruct or had an intrinsic tendency to interfere with the course of justice and the due administration of law. The strong arm of the law must, in the name of public interest and public justice, strike a blow on

him who challenges the supremacy of the rule of law by fouling its source and stream. Criticism of the Judges would attract greater attention than others and such criticism sometime interferes with the administration of justice and that must be judged by the yardstick whether it brings the administration of justice into a ridicule or hampers administration of justice. The punishment for contempt, therefore, is intended to protect the public who are subject to the jurisdiction of the Court and to prevent undue interference with the administration of justice. The liberty of expression should not be a licence to violently make personal attack on a judge. Subject to that, an honest criticism of the administration of justice is welcome since justice is not a cloistered virtue and is entitled to respectful scrutiny. The Court has to consider the nature of the imputations, the occasion of making the imputations and whether the contemnor foresees the possibility of his act and whether he was reckless as to either the result or had foresight like any other fact in issue to be inferred from the facts and circumstances emerging in the case. The jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of

justice. The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice. The Court is willing to ignore, by a majestic liberalism trifling and venial offences. The Court will not be prompted to act as a result of an easy irritability. The Judges should not be hypersensitive, even when distortions and criticisms overstep the limits. They should deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude. Therefore, dignified detachment, ignoring ill-informed criticism in its tolerant stride, should be the underlining principle.

"The dogs may bark, the caravan will pass"

42. The best way to sustain the dignity and respect for the office of judge is to deserve respect from the public at large by fearlessness and objectivity of the approach to the issues arising for decision, quality of the judgment, restraint, dignity and decorum a judge observes in judicial conduct off and on the bench and rectitude. It has been well said that if judges decay, the contempt power will not save them and so the other side of the coin

is that judges, like Caesar's wife must be above suspicion. We must turn the search light inward.

130. The Apex Court in the case of ***CHARAN LAL SAHU Vs. UNION OF INDIA AND ANOTHER*** reported in ***(1988) 3 SCC 255*** dealing with a petition filed by an experienced advocate of the Apex Court by way of a public interest litigation when it was couched in unsavoury language and an intentional attempt was made to indulge in mudslinging against the advocates, the Supreme Court and other constitutional institutions, as many of the allegations made by him were likely to lower the prestige of the Supreme Court and it was also alleged that the Supreme Court had become a constitutional liability without having control over the illegal acts of the Government, held that the pleadings in the writ petition gave the impression that they were clearly intended to denigrate the Supreme Court in the esteem of the people of India. In the facts of the case, the petitioner therein was prima facie held to be guilty of contempt of Court.

131. The Apex Court in the case of ***NAND LAL BALWANI RE*** reported in ***(1999) 2 SCC 743***, where an Advocate shouted slogans and hurled a shoe towards the Court causing interference with judicial proceedings and did not even tender an apology held that he would be liable for contempt in the face of the Court. It was observed by the Bench of three Judges which heard the matter that law does not give a lawyer, dissatisfied with the result of any litigation, licence to permit himself the liberty of causing disrespect to the Court or attempting, in any manner, to lower the dignity of the Court. It was also observed that Courts could not be intimidated into passing favourable orders. Consequently, on account of his contumacious conduct, Apex Court sentenced the contemnor to suffer four months simple imprisonment and to pay a fine of Rs.2,000/-.

132. The law of contempt has been enacted to secure public respect and confidence in the judicial process. The power to punish for contempt, as a means of safeguarding Judges in deciding on behalf of the community impartially is not a privilege accorded to Judges. The power to punish for

contempt of court is a safeguard not for Judges as persons but for the function which they exercise. As per the Third Schedule to the Constitution, oath or affirmation is taken by a Judge that he will duly and faithfully perform the duties of the office to the best of his ability, knowledge and judgment without fear or favour, affection or ill-ill and will so uphold the Constitution and the laws. In accordance therewith, Judges must always remain impartial and should be known by all people to be impartial. Should they be imputed with improper motives, bias, corruption or partiality, people will lose faith in them. Scandalizing the Court, therefore would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge, any intention in connection with the office he holds is dealt with under law of libel or slander. The Court has to consider the nature of imputations, occasion of making the imputations and whether the contemnor foresees the possibilities of his act and whether he was reckless as to either the result or had foresight like any other fact in issue to be interfered from the facts and circumstances emerging in the case. The Court has to find out whether the impugned action is a mere defamatory attack on the Judge or whether it is calculated to

interfere with the due course of justice or the proper administration of law by his Court. The law is not in any doubt that in a free democracy everybody is entitled to express his honest opinion about the correctness or illegality of a judgment or sentence or an order of a Court but he should not overstep the bounds. It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a Judge in his judicial capacity. Though he is entitled to express that criticism objectively and with detachment in a dignified language and respectful tone with moderation, the liberty of expression should not be a licence to violently make personal attack on a Judge. A distinction must be made between a mere libel or defamation of a Judge. Summary jurisdiction by way of contempt must be exercised with great care and caution. Only when it is necessary for the proper administration of law and justice, the said jurisdiction is to be exercised. If wrong is done to the Judge personally, no case for contempt is made out. After all, it cannot be denied that pre-disposition or subtle prejudice or unconscious prejudice or what in Indian language is called 'sanskar' are inarticulate major premises

in decision making process. That element in the decision making process cannot be denied, it should be taken note of.

133. In the garb of the recusal application a person cannot be allowed to commit contempt of Court by making allegations of a serious and scurrilous nature scandalizing the court and imputing improper motives to the Judge trying the case. But at the same time, it is to be remembered that such a recusal application is made only to see that a particular judge does not take up that matter. Such an application is made when the party making the application is of the view that the Judge may not give an unbiased decision. There may be circumstances beyond the Judge's control such as the acquaintance with one of the parties or personal interest in the subject matter of the proceedings which in law would be considered as preventing him from giving an unbiased decision. When the party did not expect a fair and impartial trial and he wants the Judge to recuse himself, there is no intention on the part of the party to insult the Court to scandalize the Court to bring down the reputation or dignity in the hands of public. The sole object being merely to procure a transfer of his case to another

Bench. In those circumstances, the nature of allegations made by such party in the recusal application will have to be closely examined and so long as they do not satisfy the requirements of what may be regarded as contempt of court no punishment can possibly be inflicted. In construing the said allegation, the Court has to find out whether there is any criticism of any judicial act of the Judge; or any imputation was made for anything done or omitted to be done by him in the administration of justice; or was there any criticism of him in his administrative capacity. Some latitude has to be given in such an application but the question is whether or not the applicant in the case had exceeded the limits permissible in law. The exercise of the punitive jurisdiction is confined to cases of very grave and scurrilous attack on the court or on the Judges in their judicial capacity, the ignoring of which would only result in encouraging a repetition of the same with a sense of impunity and which would thereby result in lowering the prestige and authority of the Court.

134. The power of the Court to initiate a proceeding for criminal contempt is a plenary one with grave

consequences but the same ought to be sparingly exercised. The Contempt of Courts Act is a penal statute. In the matter of interpreting a penal provision, it is well known that it must be strictly construed so far as the penal consequences are concerned. Contempt proceedings should not be initiated at every irritant or pin-prick. Normally, the Courts should not be oversensitive and should not take very serious note of any loose expressions in the application. Deference to judiciary cannot be secured by the scepter of contempt but is to be attained by the sublime-quality of the conduct of the Judges and their judgments. Contempt jurisdiction is to be sparingly exercised and in very exceptional cases. If a Judge is defamed in such a way as not to affect the administration of justice, he has the ordinary remedies for defamation, if he should feel impelled to use them.

135. This incidence also throws up a recent trend in the functioning of Courts and the atmosphere prevailing in Courts and the reporting of the proceedings of the Court in the Print and Electronic media. The Judges speak through their judgments. The media after collecting a copy of the order, extensively reporting the same is understandable. It

is a part of legal reporting. In fact, the public are very much interested in knowing the judgments and the law laid down by the Courts. The reports based on judgments are part of legal awareness. The Legal Service Authority Act was passed by the Parliament with the object of spreading legal awareness to the masses, so that they know their rights and obligations under law in order to uphold the rule of law. The fundamental objectives of journalism is to serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased, sober and decent manner and language. However, the utterance of Judges and lawyers in the course of open court proceedings and hearing are also widely reported in the Press, sometimes giving a inaccurate or distorted versions, which some times put the Judges, lawyers and parties in an embarrassing situation besides portraying a wrong notion about them. The journalists covering the Court proceedings are mostly youngsters who have no specific training in reporting of Court proceedings. Many of them are considerably newcomers in the field of journalism who have no clear knowledge of the Court proceedings. Many a time, within minutes of the adjournment of the case, the news about

what transpired in Court is flashed in Electronic media. The competition to give information to the public at the earliest cannot be found fault with. But at the same time, in their anxiety to flash information, they should not be giving incorrect information or information without proper verification. The competition in giving 'Breaking news' amongst representative of electronic media appears to have resulted in inaccurate and sensationalism of reporting of arguments made in open Court proceedings. It will bring a bad name to the media when it is later found out that the information given is incorrect and inaccurate.

136. In so far as print media is concerned, many a times the dialectic process between the Judges and the Advocates during the course of arguments are reported like speeches or conversation and portraying the words uttered by the Judges in this process as their views, personal or judicial, on a particular case. Instances of inaccurate reporting, quoting out of context and lack of understanding of the law and procedures of the Court resulting in denting the credibility of the print media in the recent past are not uncommon. Naturally, it would be the desire of every

newspaper or television channel to stand first in giving information or news in the present competitive world. But when it comes to reporting of Court proceedings, one should be accurate first.

137. Press/Media is a very powerful instrument in democracy. It is through Press and Media, today, in our country, injustice, illegalities and frauds at the highest level are fought. People Adore the Press and Media. They have respect. But at the same time, the Press should not become an instrument of oppression also. Paid news, yellow journalism are some of the new features which are bringing down the reputation of the Press and Media. Similarly, half baked, incorrect, false and inaccurate information also affects the credibility of the media. Some times, publication of such news completely destroys an individual. Spicy news, few sentences quoted out of context would make reading of the news very attractive. Initially, the public will be carried away by it. But once they come to know the truth, then such news is not taken seriously. At the most, it may give some cheap entertainment to the public. Press and Media should know that their job is to report news and not 'create news'.

138. As in other fields, the professional standards are coming down in the field of Press and Media also. It is a matter of great concern. Freedom of speech is a fundamental right. Similarly, reputation of a citizen of this country is also a fundamental right. Right to information is also a fundamental right. Exercise of one fundamental right should not destroy or curtail the other fundamental right of a citizen. It is here the persons who exercise this fundamental right should exhibit a sense of proportion, responsibility and respect for law and the rights of others. This is possible only by way of education and training of the Press and Media personnel, which is very much lacking today.

139. It is for all the concerned to bear in mind that what they report should be nothing but truth. More importantly, even if they are reporting something which is true, they should further think over and decide whether is it necessary to report the said truth which has no useful purpose to achieve. After all, the information furnished to the public should have an object behind such reporting. When some bonafide mistakes are committed, when some

utterances are made by mistake or slip of the tongue, sometimes words are used, without knowing the proper meaning, reporting such news items and giving colour to the same, which the person who uttered those words himself never dreamt of, serves no purpose except embarrassing the person who has uttered those words, that leads to confusion in the minds of public and sometimes disharmony in otherwise peaceful society. Is it the object of reporting? Is it in conformity with the professional ethics? These are matters for the journalists and leaders of Press and Media organizations to ponder.

140. However, it is also an eye opener for the Judges. No doubt, they are human beings. They are irked by the submissions made. They work under tremendous pressure. In the early years of Judgeship, they are also on probation in judging men and matters. They tend to respond by strong words either commenting on the Counsel or the parties. Instead of light, heat is generated in Court. This leads to unfortunate situation. Many times the words uttered by them at the spur of the moment are unintended. At the same time, the way those words are understood/conceived

by the members of the Bar and the meaning attributed by them or the parties may be different. Based on those utterances, they try to read the mind of the Judge and impute motives. Therefore, restraint on the part of the Judges is the only way to prevent the situation going out of control. Of course, over a period of time, by experience they cultivate this habit. Economy of words uttered on the Bench would be a solution to this problem. More over, whatever may be the provocation, Judges have to be careful in choosing the words which they use in the Bench. That is the only way, Judges can maintain dignity and decorum of the Bench. But, at any rate, the Judges should not think of initiating any contempt proceedings to defend such actions.

141. The Press Council of India (PCI) long ago has adopted 'Norms of Journalistic Conduct' which also include a broad guideline on 'reporting news pertaining to court proceedings'. In fact, the PCI in collaboration with the National Services Authority of India, and the media organizations had conducted many workshops at regular intervals for media persons on 'how to report Court proceedings'. These issues are required to be addressed by

the PCI and the media organization jointly, else there is a threat to the credibility of both the judiciary as well as the media. It is on these aspects, the PCI and the media organizations need to apply their mind so that the correspondents who report Court proceedings and the editors are trained appropriately. Also, the Editors of the news papers and television channel should insist their correspondents to be accurate while reporting court proceedings rather than insisting on quickness in disseminating information.

142. A necessary amendment for the 'Norms of Journalistic Conduct' may also be considered by the PCI to fix specific responsibilities and to prevent dissemination of inaccurate or wrong reporting of Court proceedings. Therefore, today, the leaders of the Press and Media should have introspection and see what best they could do to improve their profession. Both the PCI and Media Academy should take active interest in curbing the excess in reporting and try to channelize the energy of the journalists in a proper and meaningful manner, so that the news that is

reported would acquire credibility and acceptable by public at large.

143. From the aforesaid discussion, it is clear that there was no intention on the part of the first accused to defame the learned Judge. Because of the facts and circumstances set out above, he entertained a bonafide belief that the learned Judge is prejudiced against him. He therefore, did not want the learned Judge to hear the appeal. A.1 had no intention to scandalize the Court and he had no intention to interfere with the administration of justice. He has not made any disparaging statement in the affidavit filed in support of the recusal application. The only object is to see that another Bench hears the appeal. Therefore, it cannot be held that in the facts of this case, the filing of the recusal application and the allegations made therein are scurrilous in nature scandalizing the Court and imputing improper motives to the learned Judge hearing the appeal and that it amounts to contempt of the Court.

POINT NO.2

CHARGE AGAINST A.5

144. Whether A.5 approaching Sri. Shekhar Setty, the erstwhile Senior of Hon'ble Mr. Justice K.L. Manjunath requesting him to appear for one of the parties in RFA 421/2009 as he was disabled from appearing before Hon'ble Mr. Justice K.L. Manjunath, constitutes contempt of Court under Section 2(c) of the Contempt of Court Act, 1971?

145. The charge against accused No.5 – Ramesh Babu is that he approached Sri. Shekar Shetty, erstwhile senior of Hon'ble Mr. Justice K.L.Manjunath and requested him to appear for one of the parties in R.F.A. No.421/2009 being heard by a Bench consisting of His Lordships Hon'ble Mr. Justice K.L. Manjunath and Hon'ble Mr. Justice C.R.Kumaraswamy as reflected in the letter dated 24.7.2009 from Mr. Shekar Shetty to His Lordship Hon'ble Mr. Justice K.L.Manjunath.

146. The foundation on which this *suo motto* contempt proceedings are initiated by the Registrar General, High Court of Karnataka is the facts stated in paras 68 and 69 of the order dated 15.09.2009 in Misc. Civil

No.14057/2009. Neither in para 68 nor in para 69, there is any reference to the letter dated 24.07.2009 written by Mr.Shaker Shetty to Hon'ble Mr.Justice K.L.Manjunath. However in paragraph 63 of the order, the accused No.5 was directed to file his affidavit. Thereafter, a memo was filed by the accused No.5 seeking a direction to the Registry to furnish a copy of the letter written by the said Advocate to enable him to file an affidavit. However, no affidavit was filed. It is observed that the Advocate has intentionally avoided filing his affidavit. There are no reasons for Mr. Shaker Shetty who has put in practice of about fifty years, to address the said letter. He is one of the Advocates, who is disabled to appear in the Court of Hon'ble Mr. Justice K.L.Manjunath. There is no contra material placed so as to disbelieve the contents of the said letter. This, in their considered view amounted to interference with the administration of justice. Hon'ble Mr. Justice K.L.Manjunath, in his separate order has observed that, though there was ample opportunity for Mr.Ramesh Babu to collect the copies of the letters in the open Court, and when the same was offered by the Court in the open Court without collecting the same, at the time of hearing the application

filed by respondent No.1, he filed a memo stating that he may be furnished copies of the letters. There are no reasons for a Senior Member of the Bar Mr.Shaker Shetty to address letter to Hon'ble Mr. Justice K.L.Manjunath about Mr.Ramesh Babu approaching Mr.Shekar Shetty and requesting him to file Vakalath for respondent No.1. He proceeded to conclude that from the conduct of the counsel for the parties and in view of the letter written by Mr.Shekar Shetty, he was of the prima facie view that a concerted effort has been made to avoid his Bench even prior to the commencement of the arguments and subsequently.

147. Appreciating the aforesaid facts, by the order dated 8th February, 2010 in Crl. CCC No.20/2009, Hon'ble Mr. Justice K.Sreedhar Rao held that the conduct of A.5 does not constitute contempt in the face of the Court. There is absolutely no material against him to hold him liable for contempt. Therefore, contempt proceedings against him was dropped. However, the companion Judge Hon'ble Mr. Justice Subhash B.Adi was of the view that accused No.5 approached Sri. S.Shaker Shetty, Advocate, a Senior colleague of Hon'ble Mr. Justice K.L.Manjunath, while he

was in legal profession, who is disabled before him to appear, requesting him to appear on behalf of respondent No.1 to disable Hon'ble Mr. Justice K.L.Manjunath from hearing the appeal. This act of the counsel representing respondent No.1, namely Ramesh Babu – A.5 amounts to interference with the due administration of justice. Whether the imputation/accusation made against A.5 is true or not, it depends on the material and the defence that may be placed by him and to deal with the correctness of the allegation in the order dated 15.09.2009 at this stage without any material to the contrary is not proper and therefore in his opinion contempt proceedings against A.5 has to go on in terms of the procedure contained under Section 14 of the Act.

148. The third Judge, Hon'ble Mrs. Justice Manjula Chellur was of the view that as A.5 has not filed his affidavit as directed by the Court. Prima facie the material contained in the said letter amounts to contempt on the face of the Court. Therefore, proceedings deserves to be continued against A.5.

149. One of the factors which weighed in the mind of the Judges to come to the conclusion that prima facie a case of contempt is made against this accused is that in spite of directions issued by the Court to file his affidavit in respect of the said letter, the accused did not file the affidavit. In this regard it is pertinent to note that the order dated 7.8.2009 shows that in the light of the submissions of Sri S.K.V. Chalapathy it is for Sri Ramesh Babu-A5 and Sri Maruthi Prasad-A6 to file their affidavits and the matter was directed to be listed on 11.8.2009 at 4.30 PM. However, the learned Junior Member of the Bench did not agree with the order dated 7.8.2009 passed by Hon'ble Mr. Justice K.L. Manjunath. Therefore, he wanted the matter to be listed before a Bench of which he is not a Member after obtaining necessary orders from the Hon'ble Chief Justice. It is not in dispute that, when the two Judges do not concur, the matter is to be referred to a third Judge. However, the learned Chief Justice listed the matter before another Bench of which Hon'ble Mr. Justice C.R. Kumaraswamy was not a Member. Therefore, it was contended that the order directing to file affidavit cannot be strictly considered as an order and therefore A5 and A6 did not file any affidavit. Therefore,

non-filing of the affidavit cannot be held against them as in their understanding there was no order by the Division Bench at all.

150. In the light of what is stated above, the point that arises for our consideration is.

> *Whether the contents of the said letter and the conduct of A.5 amounts to Contempt of Court?*

The letter reads as under:

> *"S. Shaker Shetty*
> *A. Anil Kumar Shetty*
> *Advocates & Consultants*
>
> *#14, 1st Floor, 1st Cross*
> *Madhavanagar*
> *Bangalore-560 001*
> *Tel: 080-22261433*
> *Telefax: 080-22281040*
> *Email:*
> *ssslawfirm@gmail.com*
>
> *24th July 2009*
>
> *TO WHOMSOEVER IT MAY CONCERN*
>
> *It is a fact that few days ago Mr. V. Ramesh Babu, Advocate No.21-22, III Floor, Krishna Towers, III Main, Gandhinagar, Bangalore – 560 009, asked me whether I am prepared to appear for one of the parties in RFA No.421/2009 pertaining to ISKCON pending before the High Court of Karnataka at Bangalore. I said I am not prepared to appear in that case. He said if I appear it will be helpful as both of us can join together and effectively argue the matter. But, I refuse to appear. Once again, the previous day of the day fixed for filing*

the affidavits by both the parties, he asked me that one of the parties intend to engage me and whether I can appear for him. I refused to appear for any of the parties and I made it very clear as the matter is pending before the Bench consisting of his Lordship Hon'ble Mr. Justice K. L Manjunath, I am not prepared to appear for any party in any case much is less in this appeal.

Sd/-
Advocate

151. The letter is dated 24th July, 2009. As is clear from the contents of the letter, few days prior to that date, A.5 approached Mr.Shaker Shetty and asked him whether he is prepared to appear for one of the parties in R.F.A. No.421/2009 pertaining to ISKCON, pending before the High Court of Karnataka, Bangalore. He declined the request. A.5 stated that if Sri.Shaker Shetty – C.W.3 appears, it would be helpful as both of them could join together and effectively argue the matter. C.W.3 refused to appear. Once again, the previous day of the day fixed for filing of the affidavits by both the parties, A.5 asked C.W.3 that one of the parties intend to engage him and whether he can appear for him. He again refused to appear for any of the parties, as the matter is pending before the Bench consisting of his

Lordship Hon'ble Mr. Justice K.L.Manjunath. Further, he stated that he is not prepared to appear for any party in any case much less in this appeal. This letter is not addressed to Hon'ble Mr. Justice K.L.Manjunath as the caption shows "To whomsoever it may concern". A.5 has denied that he ever approached C.W.3 with the said request. When C.W-3 declined to appear on both the occasion, the said letter did not come in the way of Hon'ble Mr. Justice K.L. Manjunath hearing the appeal, if he wanted to hear the appeal. Therefore, the said letter did not interfere with the administration of Justice.

152. Now in order to substantiate the allegations Sri.Shaker Shetty has been examined as C.W.3 on 13.08.2014. He has stated as under:

> *"Ex.C4 is the letter written by me which is dated 24.7.2009. It bares my signature. I did not hand over Ex.C4 to Justice Manjunath. I handed over the said letter to my clerk who in turn handed over the same to P.A. of Justice Manjunath in the office cover. It was sent on 24.7.2009. Two months' prior to Ex C4 Sri. Ramesh Babu, A-5 approached me with a request to appear for one of his clients in*

RFA.No.421/09. He stated that if I were to appear along with him, they could effectively argue the same before the Court."

153. As per the above deposition, this meeting of C.W.3 and A.5, was two months prior to 24th July, 2009 i.e., roughly about 13th May, 2009. The said fact is not referred to in Ex.C4. It is to be pointed out at this stage that R.F.A. No.421/2009 was listed before the Bench consisting of Hon'ble Mr. Justice K.L.Manjunath and Hon'ble Mr. Justice C.R.Kumaraswamy for the first time on 02.07.2009. Therefore there was no disability for C.W.3 to appear for A.1 in the appeal as on that day Earlier, it was before Hon'ble Mr. Justice K.Sreedhar Rao and Hon'ble Mr. Justice B.Sreenivase Gowda. In the cross-examination, he was unable to say when exactly A.5 approached him for the first time. Roughly, it was about two months prior to Ex.C4. He met him in the High Court premises itself. He did not show any case papers to him at that point of time as he declined to appear. The reason for declining to appear is that the appeal was before Hon'ble Mr. Justice K.L.Manjunath. He did not send any letter as per Ex.C4 to Hon'ble Mr. Justice

K.L.Manjunath on the earlier occasion because, all that was said then was, that if he appears along with A.5, they could effectively argue the matter. When he said no, he agreed and went away. Therefore, there was no cause for him to send any letter as per Ex.C4 to Hon'ble Mr. Justice K.L.Manjunath. Further, he has stated that till now, in about 10 to 12 matters, he has refused to accept any engagement to appear before Hon'ble Mr. Justice K.L.Manjunath. In all those cases, he has not written any letter to Hon'ble Mr. Justice K.L.Manjunath as was done in this case. He has not issued any letter as Ex.C4 in those cases, when he declined the brief. He had not addressed Ex.C4 to Hon'ble Mr. Justice K.L.Manjunath as he was of the opinion that letters should not be addressed to sitting Judges. After sending Ex.C4, he did not personally speak to Hon'ble Mr. Justice K.L.Manjunath about Ex.C4. He did not think it appropriate or an important matter to speak to Hon'ble Mr. Justice K.L.Manjunath in this regard. In fact he categorically stated that he is not saying anything against A.5. In the second instance, A.5 approached him only at the instance of his client. A.5 met him on 23.07.2009 in the High Court Premises. He did not bring or give him any

papers at the time. He only stated that his client wants to engage his service and wanted to know whether he is willing to appear. C.W.3 said that he is not willing. He also made it very clear that he will not appear before Hon'ble Mr. Justice K.L.Manjunath neither in this case nor in any other case. Further, he has deposed that on the day A.5 approached him, he was not aware that one of the parties in R.F.A. No.421/2009 had filed an application in the appeal requesting Hon'ble Mr. Justice K.L.Manjunath to recuse himself from hearing the appeal. He did not ask A.5 the stage of the appeal as he was not interested in appearing in any case before Hon'ble Mr. Justice K.L.Manjunath. In the letter Ex.C4 where he has mentioned that A.5 approached him when the appeal was posted for filing of the affidavits, the said information came to his notice from the newspaper reports. He was also not aware whether ISKON, Bangalore has initiated any Criminal proceedings against ISKCON, Bombay for stealing records and photographs from the possession of ISKCON, Bangalore. Therefore, if this is the factual position, no motive could be attributed to A.5 as sought to be done, even if he has approached C.W.3.

154. C.W.3 has stated in categorical terms that the object of writing this letter was to bring to the notice of the Court the true facts, as a Member of the Bangalore Bar. Though the Bench constituted of two learned Judges, he thought it appropriate to send it only to the Senior Judge, who was heading the Bench. He did not deem it appropriate to send Ex.C4 to the Hon'ble Chief Justice. He also did not deem it proper to send this letter to the President of Bangalore Advocates Association or the Bar Council of Karnataka. He has denied the suggestion that he wrote Ex.C4 with an intention of falsely implicating the Advocates appearing for Bangalore ISKCON.

155. In fact there are some important admissions in the cross-examination of C.W.3 insofar as ISKCON institution is concerned and the disputes. He has deposed as under:

> *"I have never appeared for ISKCON, Bombay, at any time. Some of the persons who were running parallel ISKCON at Kumara Park West had approached me with the papers in the original suit out of which RFA.421/09 arises for an opinion before the judgment was delivered by the trial Court. I*

have given them a written opinion. They also gave me a cheque towards my consultation fee. Those four books which they had handed over for study are still with me. I do not know the name of the persons who approached me. All that I know is they are having a temple in Kumara Park West."

156. This admission clearly demonstrates that C.W.3 was approached to give his opinion, when the suit was pending before the trial Court. He has given written opinion and he still continues to be in possession of the four books, which were handed over to him for study before giving opinion. The persons who approached him are having a temple in Kumara Park West, which is a parallel organization to ISKCON, Bangalore. As is clear from the said statement of facts, if he has already been approached by persons, who are running a parallel organization to ISKCON, Bangalore and have established a temple in Kumara Park West, the question of C.W.3 appearing for ISKCON, Bangalore would not arise. If he had appeared, it would have amounted to professional mis-conduct. Sri.Shaker Shetty is not a designated Senior counsel. By virtue of

number of years in practice, he is respected as a Senior Counsel, which is why he had direct contact with the parties. The parties handed over four books for study, obtained written opinion and paid him his fees. Whether the appeal was listed before the Bench headed by Justice K.L.Manjunath or before any other Bench, he was precluded from appearing for ISKCON, Bangalore. It is in this background, we have to appreciate his evidence. If two months prior to Ex.C4, A.5 had approached and requested C.W-3 to appear along with him as stated earlier on that day, that was roughly during vacation, the appeal would not have been listed before the Bench headed by Hon'ble Mr. Justice K.L.Manjunath. In fact the material on record discloses that before summer vacation, the appeal was listed for consideration before Hon'ble Mr. Justice K.Sreedhar Rao and Hon'ble Mr. Justice B.Sreenivase Gowda. On the face of it, this statement of C.W.3 does not carry any weight.

157. Admittedly, on more than 10 or 12 occasions, when he was approached to appear in a case before the Bench headed by Hon'ble Mr. Justice K.L.Manjunath, rightly he has declined. But in none of those cases, he thought it

necessary to write a letter like Ex.C4 bringing to the notice of Hon'ble Mr. Justice K.L.Manjunath that some person had approached him and requested to appear in a case listed before Hon'ble Mr. Justice K.L.Manjunath. His evidence further shows that when A.5 approached him, a day prior to the date on which parties were directed to file affidavit, he was not aware that an application was filed requesting Hon'ble Mr. Justice K.L.Manjunath to recuse from hearing the appeal. When he did not get any impression that A.5 was trying to engage him with an intention of avoiding the Bench headed by Hon'ble Mr. Justice K.L.Manjunath, there was no occasion or reason for him to have addressed the letter as per Ex.C4. He is emphatic during his cross-examination that he is not saying anything against A.5. During cross examination he states as under:

> *"In fact, I am not saying anything against A-5. In the second instance he approached me only at the instance of his client. Sri. Ramesh Babu met me on 23.7.2009 in the High Court premises. He did not bring or give me any papers at that time. He only stated his client wants to engage his services and wanted to know whether I am willing to appear."*

158. Therefore, when he did not have any inclination that the object of engaging him is to avoid the Bench headed by Hon'ble Mr. Justice K.L.Manjunath, we do not see any justification for him to address a letter like Ex.C4 bringing to the notice of the Court, the true facts as a member of the Bangalore Bar. As is clear from the evidence, he did not send that letter to the companion Judge nor he sent that letter to the Hon'ble Chief Justice, President of the Advocates Association, Chairman of the Bar Council. But he chose to send the same to the Judge only, Hon'ble Mr. Justice K.L.Manjunath, who was his erstwhile Junior colleague. The caption of the letter "To whomsoever it may concern" makes no sense. After writing the letter he made sure that the said letter reaches Hon'ble Mr. Justice K.L.Manjunath. Therefore, he handed over the letter to his clerk, who in turn handed over the same to the P.A. of Hon'ble Mr. Justice K.L.Manjunath in the office cover. The letter is written on 24.07.2009 and it was sent on 24.07.2009. This conduct of C.W.3 is un-understandable and probably he is not disclosing the true facts. He is not stating why he took this unusual extreme step of writing the letter Ex.C4 with the

contents. If this letter has come in the way of Hon'ble Mr. Justice K.L.Manjunath hearing the appeal, it is the letter and its author, who should be held responsible for interfering with administration of justice. Even if A.5 made a request to C.W.3, when C.W.3 declined the request and he did not appear so as to disable Hon'ble Mr. Justice K.L.Manjunath from hearing the appeal, that act has in no way interfered with the administration of justice. Even without A.5 approaching C.W.3, he could not have appeared in the case for the first respondent, as he has given his written opinion to the appellant in the very same case and the case papers still remained with him and he had been paid professional charges by way of cheque. The only inference that flows from such conduct, i.e, writing of Ex.C4, is to prejudice the mind of the learned Judge insofar as the first respondent and his Counsel are concerned. In fact, as is clear from the material on record even before Ex.C4 came into existence, the learned Judge had made up his mind not to hear the appeal. Therefore reasons mentioned in Ex.C4, even if true, in no way could have come in the way of or interfered with the learned Judge hearing the appeal on merits.

159. Clause (3) of Section 1, Chapter II, Part VI of Bar Council of India Rules, Appendix II which deals with the Advocates' Duty to the court, provides as under:

> *" An Advocate shall not influence the decision of a court by any illegal or improper means. Private communications with a Judge relating to a pending cause are forbidden."*

160. C.W3 is fully aware of this provision. In his evidence he has stated as under :-

> *"I did not address Ex.C4 to Justice Manjunath as I am of the opinion that letters should not be addressed to sitting Judges.*
>
> *Though in the letter I stated that it is addressed to whomsoever I asked my clerk to hand over Ex.C4 to the PA of Justice Manjunath.*
>
> *I did not hand over Ex.C4 to Justice Manjunath. I handed over the said letter to my clerk who in turn handed over the same to P.A. of Justice Manjunath in the office cover. It was sent on 24.7.2009".*

161. C.W3 addresses the letter "TO WHOMSOEVER IT MAY CONCERN", but ensured that his clerk hands over the letter to the P.A. of the learned Judge. A subtle way of getting over the prohibition in law. The reason behind such letter according to him is as under : -

> *"The object of writing this letter was to bring to the notice of the Court the true facts, as a member of the Bangalore Bar."*

162. The erstwhile Senior of the learned Judge has not measured up to the aforesaid standards of professional conduct and etiquette. It was improper on his part to have addressed the letter in a pending case in which one of the parties had consulted him, taken his written opinion and paid his legal fee and still they have not collected the four paper books of the case which they had given him for study. The learned Judge also could not have taken note of this private communication relating to an appeal which was pending before him, as such private communication is forbidden.

163. Therefore, the allegation that A.5 approached C.W.3 requesting him to appear in R.F.A. 421/2009 with the

intention of disabling Hon'ble Mr. Justice K.L.Manjunath from hearing the appeal is not established. The contents of Ex.C4 and the evidence of C.W.3 does not establish that A.5 approached C.W.3 with the intention of disabling Hon'ble Mr. Justice K.L. Manjunath from hearing the appeal. Further, the evidence discloses that on the day Ex.C4 was delivered to the learned Judge, the learned Judge had already made up his mind not to hear the appeal. The evidence of C.W.3 clearly establishes that he could not have appeared for the first respondent in the appeal as in the very same case, he had been consulted by A.1 through A.4 and that he had given a written opinion and received the fees. If he had appeared, it would have amounted to professional misconduct. Therefore, in the facts and circumstances of the case, the charge that A.5 tried to interfere with the administration of justice resulting in criminal contempt is without any basis or substance and not proved.

POINT NO.3

CHARGE AGAINST A.6

164. Whether A.6 approaching Sri. S.V. Srinivas, the erstwhile colleague of Hon'ble Mr. Justice K.L. Manjunath

requesting him to appear for one of the parties in RFA 421/2009 as he was disabled from appearing before Hon'ble Mr. Justice K.L. Manjunath, constitutes contempt of Court under Section 2(c) of the Contempt of Court Act, 1971?

165. The charge against accused No.6 - S.A.Maruthi Prasad is that he approached Sri. S.V.Srinivasan, his erstwhile senior and erstwhile colleague of Hon'ble Mr. Justice K.L.Manjunath and requested him to appear for one of the parties in R.F.A. No.421/2009 being heard by a Bench consisting of His Lordships Hon'ble Mr. Justice K.L. Manjunath and Hon'ble Mr. Justice C.R.Kumaraswamy as reflected in the letter dated 15.07.2009 by Mr. S.V.Srinivasan to His Lordship Hon'ble Mr. Justice K.L.Manjunath.

166. The foundation on which this *suo motto* contempt proceeding is initiated by the Registrar General, High Court of Karnataka is the facts stated in paras 68 and 69 of the order dated 15.09.2009 in Misc. Civil No.14057/2009. Neither in para 68 nor in para 69, there is any reference to the letter dated 15.07.2009 written by Mr.S.V.Srinivasan to Hon'ble Mr.Justice K.L.Manjunath.

However in paragraph 63 of the order, the accused No.6 was directed to file his affidavit. Thereafter, a memo was filed by the accused No.6 seeking a direction to the Registry to furnish a copy of the letter written by the said Advocate to enable him to file an affidavit. However, no affidavit was filed. It is observed that the Advocate has intentionally avoided filing his affidavit. There are no reasons for S.V.Srinivasan, who has put in practice of about forty years, to address the said letter. He is one of the Advocates, who is disabled to appear in the Court of Hon'ble Mr. Justice K.L.Manjunath. There is no contra material placed so as to disbelieve the contents of the said letter. This, in their considered view amounted to interference with the administration of justice. Hon'ble Mr. Justice K.L.Manjunath, in his separate order has observed that, though there was ample opportunity for Mr. Maruthi Prasad to collect the copies of the letters in the open Court when the same was offered to him, without collecting the same at the time of hearing the application filed by respondent No.1, he filed a memo stating that he may be furnished copies of the letters. There are no reasons for a Senior Member of the Bar Mr.S.V.Srinivasan to address letter to Hon'ble Mr.

Justice K.L.Manjunath about Mr.Maruthi Prasad approaching and requesting him to file Vakalath for respondent No.1. He proceeded to conclude that from the conduct of the counsel for the parties and in view of the letter written by Mr.S.V.Srinivasan, he was of the prima facie view that a concerted effort has been made to avoid his Bench even prior to the commencement of the arguments.

167. Appreciating the aforesaid facts, by the order dated 8th February, 2010 in Crl. CCC No.20/2009, Hon'ble Mr. Justice K.Sreedhar Rao held that the conduct of A.6 does not constitute contempt in the face of the Court. There is absolutely no material against him to hold him liable for contempt. Therefore, contempt proceedings against him was dropped. However, the companion Judge Hon'ble Mr. Justice Subhash B.Adi was of the view that accused No.6 approached Sri.S.V.Srinivasan, Advocate, the erstwhile colleague of Hon'ble Mr. Justice K.L.Manjunath, while he was in legal profession, who is disabled to appear before him, requesting him to appear on behalf of respondent No.1 to disable Hon'ble Mr. Justice K.L.Manjunath from hearing the appeal. This act of the counsel representing respondent

No.1, namely Maruthi Prasad – A.6 amounts to interference with the due administration of justice. Whether the imputation/accusation made against A.6 is true or not, it depends on the material and the defence that may be placed by him and to deal with the correctness of the allegation in the order dated 15.09.2009 at this stage without any material to the contrary is not proper and therefore in his opinion contempt proceedings against A.6 has to go on in terms of the procedure contained under Section 14 of the Act.

168. The third Judge, Hon'ble Mrs. Justice Manjula Chellur was of the view that as A.6 has not filed his affidavit as directed by the Court. Prima facie the material contained in the said letter amounts to contempt on the face of the Court. Therefore, proceedings deserves to be proceeded against A.6.

169. One of the factors which weighed in the mind of the Judges to come to the conclusion that prima facie a case of contempt is made against this accused is that in spite of directions issued by the Court to file his affidavit in respect of the said letter, the accused did not file the affidavit.

170. In this regard it is pertinent to note that the order dated 7.8.2009 shows that in the light of the submissions of Sri S.K.V. Chalapathy it is for Sri Ramesh Babu-A5 and Sri Maruthi Prasad-A6 to file their affidavits and the matter was directed to be listed on 11.8.2009 at 4.30 PM. However, the learned Junior Member of the Bench did not agree with the order dated 7.8.2009 passed by Hon'ble Mr. Justice K.L. Manjunath. Therefore, he wanted the matter to be listed before a Bench of which he is not a Member after obtaining necessary orders from the Hon'ble Chief Justice. It is not in dispute that, when the two Judges did not concur, the matter was required to be referred to a third Judge. However, the learned Chief Justice listed the matter before another Bench of which Hon'ble Justice C.R. Kumaraswamy was not a Member. Therefore, it was contended that the order directing to file affidavit cannot be strictly considered as an order, as such, non-filing of the affidavit cannot be held against them warranting initiation of contempt proceedings as in their understanding there was no order by the Division Bench at all.

171. In the light of what is stated above, the point that arises for our consideration is:

Whether the contents of the said letter and the conduct of A.6 amounts to Contempt of Court?

The letter reads as under:

"S. V. SRINIVASAN, B.A.B.L.,
Advocate
Off.#105, 2nd Floor, 3rd Cross, Gandhinagar
Bangalore – 560 009
Phone: 2204756, Mobile: 9343796588

15-7-09
Bengaluru

Hon'ble Mr. Justice K. L. Manjunath

Sir,

After having read the news pertaining to ISKCON issued in the Times of India News Paper I felt very much.

In this connection I may bring to your kind notice that Sri S. A. Maruthi Prasad, Advocate our erstwhile colleague had approached me to appear for ISKCON in the appeal pending before the Hon'ble High Court of Karnataka at Bangalore. Since the matter was before you, I declined to appear as requested by Sri S.A. Maruthi Prasad, Advocate.

This is for your kind information.

Yours affectionately,

Sd/-
S. V. Srinivasan

172. The letter is dated 15.07.2009. It is in the handwriting of Sri.S.V.Srinivasan – C.W.2 in this case. The said letter is addressed by him to Hon'ble Mr. Justice K.L.Manjunath. A perusal of the letter discloses that having read the news pertaining to ISKCON issued in the Times of India newspaper he felt very much. In that connection, he wanted to bring to the notice of Hon'ble Mr. Justice K.L.Manjunath that A.6, their erstwhile colleague had approached him to appear for ISKCON in the pending appeal before the Hon'ble High Court of Karnataka. As the matter was before Hon'ble Mr. Justice K.L.Manjunath, he declined to appear as requested by A.6. A.6 has categorically denied in Court itself that what is stated in the said letter is not correct. He was asked to file an affidavit, which is not filed. When C.W2 declined to appear, the said letter did not come in the way of Hon'ble Mr. Justice K.L. Manjunath, hearing the appeal if he wanted to hear the appeal. Therefore, the said letter did not interfere with the administration of justice.

173. The material on record discloses that after the Hon'ble Chief Justice ordered for initiation of *suo moto*

contempt of Courts case (Criminal) against the respondents including A.6, the office put up a note, which reads as under:-

> *"Submission: It is further submitted that the order passed in Misc.Cvl.14059/2009 to initiate suo moto criminal contempt of court case against the respondent Nos.1 to 6, the address of one Sri.S.A.Maruthi Prasad, Advocate, who should also be one of the respondents, his address is not available, he has not filed vakalath in R.F.A.No.421/2009, his address is necessary.*
>
> *In the circumstances, whether the correct address of Sri.S.S.Maruthi Prasad, Advocate may be obtained from Advocate for appellant in R.F.A.No.421/2009 by way of filing a memo on the file of this Court, to enable to array him as a respondent in the CCC (Crl.) case to be filed."*

174. From the said note, it is clear that A.6 has not filed Vakalath in R.F.A. No.421/2009. In other words, he was not appearing for any party in the said appeal.

175 The learned State Public Prosecutor submits though Sri.Maruthi Prasad (accused No.6) had not filed power in the R.F.A., he was appearing for accused No.1 in

the trial court in the same proceedings. The accusation is that, he approached CW-2 with a request to file vakalath along with him in the appeal knowing fully well that CW-2 was disabled to appear before the learned Judge. The object of approaching CW-2 by accused No.6 was to avoid the Bench, which was hearing the Appeal. This, according to him, amounts to contempt of court.

176. The evidence of C.W.2 discloses that Ex.C3 is a letter, which is in his handwriting, which he handed over to Hon'ble Mr. Justice K.L.Manjunath. It is dated 15.07.2009. This is what he has stated in examination-in-chief.

> *"Ex. C3 is the letter in my handwriting which I handed over to Justice Manjunath. It is dated 15.7.2009. I have duly affixed my signature to the said letter. I handed over the said letter to Justice Manjunath on 15.7.2009.*
>
> *I handed over Ex.C3 personally to Justice Manjunath. I handed over the said letter to him in his Chambers at High Court. It was handed over on the same day i.e., on 15.7.2009. I do not know about accused No.1. I had no occasion to write letters to Judges earlier. Ex.C3 is the only letter written by me to the Judge".*

177. He has deposed that A.6 whose name he has mentioned in the letter approached him with a request to appear on behalf of ISKCON, Bangalore, the 1st respondent in R.F.A. No.421/2009. He declined to appear in the said case because Hon'ble Mr. Justice K.L. Manjunath had asked him not to appear in any case before him. His reaction to such a request was that he would not appear before Hon'ble Mr. Justice K.L.Manjunath. Beyond that nothing transpired between him and A.6.

178. During his cross-examination by A.1, he has deposed that he handed over Ex.C3 personally to Hon'ble Mr. Justice K.L.Manjunath on 15.07.2009 in his Chambers at High Court. He did not know about A.1. He had no occasion to write letter to Judges earlier. Ex.C3 is the only letter written by him to the Judge. Hon'ble Mr. Justice K.L.Manjunath, on receipt of Ex.C3 from him did not ask for another copy of the same. A.6 approached him only after the publication of the news items as per Ex.C5 to Ex.C13. He does not remember whether he had appeared as an Advocate for A.1 earlier. In the cross-examination on behalf of A.6 he

had deposed that he was not a Junior colleague of Hon'ble Mr. Justice K.L.Manjunath. However, both of them were practicing together for a period of 23 years. A.6 was in their office for a period of four to five years when he and Hon'ble Mr. Justice K.L.Manjunath were running the office together. A.6 left their office and started independent practice in January 2001. He does not remember whether A.1 was the defendant in O.S. No.1758/2003, which was pending before the City Civil Court. He admits that Ex.D2, a memo filed in O.S.No.1758/2003 dated 27.03.2003 bears his signature. However, he does not remember the contents of the said memo. It also bears the signature of Sri.M.G.Sathish, Advocate. In this regard he has deposed as under : -

> *"I do not remember whether A-1 was the defendant in O.S. No. 1758/03 which was pending in City Civil Court. Ex.D2 a memo filed in O.S. No.1758/03 dated 27.3.2003 bears my signature. However, I do not remember the contents of the said memo.*
>
> *I do not remember whether I filed vakalath in pursuance of the said memo in the said case on behalf of anybody".*

179. As on 27.03.2003 he had put in more than 30 years of practice as an Advocate. In his entire career, before he affixed his signature to any memo or any writing, he would read it and then affix his signature. He has denied the suggestion that he knew A.1 earlier and therefore, he filed Ex.D2 and to wriggle out of the situation he is deposing falsely before the Court. He does not remember whether he has filed Vakalath in pursuance of the said memo in the said case on behalf of anybody. He also does not know whether A.6 appeared for A.1 in the said suit. He admits that Hon'ble Mr. Justice K.L.Manjunath had his office at premises No.105, 2nd floor, 3rd Cross, Gandhinagar, Bangalore – 560 009. He continues to be there even now and he is not paying any rent for occupying the said office to any person. His colleague Sri.H.A.Kumaraswamy, Advocate takes care of such aspects. The said H.A.Kumaraswamy, is in their office since the time of Hon'ble Mr. Justice K.L.Manjunath. He has denied the suggestion that A.6 did not approach him with a request to appear for ISKCON in R.F.A. No.421/2009.

180. From the contents of the aforesaid letter and the evidence of C.W.2, it is clear that A.6 was the Junior

colleague of C.W.2 and Hon'ble Mr. Justice K.L.Manjunath. He was there with them for four to five years. He left that office in 2001 after elevation of Hon'ble Mr. Justice K.L.Manjunath as a Judge of the High Court of Karnataka in the year 2000. Ex.D2 is a memo of undertaking filed in O.S.No.1758/2003. It reads as under:

Memo of Undertaking

> *I the undersigned has been instructed to appear and plead on behalf of Defendant No.14 – Sri. Jai Chaitanya Dasa in the above suit. Since the Defendant No.14 is not in station as he is away in Kerala, We are instructed to file this memo of under taking to file Vakalath on behalf Defendant No.14. Hence this Hon'ble court may be pleased to permit the under signed to file vakalath for Defendant no.14 on the next date of hearing in the interest of Justice and equity. (Sic.)*

181. It is signed by C.W.2 as well as one Sri.M.G.Sathish. The signature in this Memo of undertaking is admitted by C.W.2. From the aforesaid Memo of undertaking, it is clear that he has been instructed to appear and plead on behalf of Sri.Jai Chaitanya Dasa – defendant

No.14 in the above suit, who is A.1 in these proceedings. Permission was sought to file Vakalath on his behalf on the next date of hearing. In this background, the evidence that he does not remember whether A.1 was the defendant in O.S.No.1758/2003, which was pending in the City Civil Court, is hard to be accepted when he categorically admits that Ex.D2 is a memo filed by him with his signature. He pleads ignorance about the contents of the said memo. He is an Advocate, who has put in more than 30 years of practice, on the day he signed the said Memo of undertaking in the Court. He also admits that in his entire career, before he affixed his signature in any memo or any writing, he read it and then affixed his signature. He does not remember whether he filed Vakalath in pursuance of the said memo. These undisputed facts clearly establish that C.W.2 knew A.1 and he undertook to file Vakalath in the aforesaid suit, where he was arrayed as 14th defendant. A.6 was appearing for A.1 in O.S.No.1758/2003 as is clear from the Vakalath, which is produced.

182. From the aforesaid material, it is clear that A.6 did not file Vakalath in this appeal at all. He was not

representing A.1 in the appeal. A.1 was duly represented in this case by other Advocates. A.1 had also engaged the services of a Senior counsel. As A.6 did not file Vakalath, there was no disability for Hon'ble Mr. Justice K.L.Manjunath to hear the appeal. If A.6 had filed Vakalath, probably, he would not have taken up the appeal for hearing at all. If the intention of A.6 was to disable Hon'ble Mr. Justice K.L.Manjunath from hearing the appeal, he very well could have filed his Vakalath. There was no necessity for him to go to his Senior C.W.2 with a request to appear for A.1. Even if such a request had been made, as C.W.2 had undertaken to appear for A.1 in the suit in O.S.No.1758/2003 as far back as on 27.03.2003, there was nothing strange. Even otherwise, it is an admitted fact that his erstwhile colleague had undertaken to file the vakalath for R-1 and in fact his junior colleague had filed vakalath and conducted the case. Whether the learned Judge could have heard this matter on coming to know of the same is the moot point. C.W.2 in his examination-in-chief has categorically stated that except Sri. Maruthi Prasad approaching him with a request to appear on behalf of ISKCON client in R.F.A. No.421/2009, nothing transpired

between him and A.6 . C.W.2 has not imputed any motive to A.6 in approaching him with such request. All that is stated by C.W.2 is that such a request was made by his erstwhile colleague. But what is surprising to note is, when such a request is made, C.W.2 makes out a letter as per Ex.C3 and hands over the same on the very same day to Hon'ble Mr. Justice K.L.Manjunath. What is the object or purpose behind such writing and handing over of the letter is not forthcoming from his evidence. When A.6 himself has not been engaged in the appeal, he engaging his erstwhile Senior to appear in the appeal would sound unnatural. Assuming that such a request was made, there is nothing wrong for a junior colleague approaching his Senior to engage him in a case. But C.W.2 has declined such request. Therefore, this conduct of A.6 requesting C.W.2 to appear in the appeal, which is declined by C.W.2, in no way amounts to interference with the proceedings in R.F.A.No.421/2009. There was absolutely no impediment for Hon'ble Mr. Justice K.L.Manjunath to hear the appeal as neither his Junior A.6 nor his colleague C.W.2 and his Senior C.W.3 ever filed Vakalath in the said appeal. Therefore, the allegation that A.6 interfered with the administration of justice is, on the

face of it, is without any substance. On the contrary, writing of a letter and handing over the same personally to Hon'ble Mr. Justice K.L.Manjunath by C.W.2 and if it had resulted in Hon'ble Mr. Justice K.L.Manjunath declining to hear the appeal, that would interfere with the administration of Justice.

183. Part VI of the Bar Council of India Rules, Chapter II, deals with Standards of Professional Conduct and Etiquette. Section 1 deals with Duty to the Court. Clause (3) thereof provides as under:

> *" An Advocate shall not influence the decision of a court by any illegal or improper means. Private communications with a Judge relating to a pending cause are forbidden."*

184. The erstwhile colleague of the learned Judge has not measured up to the aforesaid standards of professional conduct and etiquette. It was improper on his part to have addressed the letter in a pending case, when he undertook to file memo of appearance in the connected suit, in which his two junior colleagues had filed power. The learned Judge

also could not have taken note of this private communication relating to an appeal which was pending before him, as such private communication is forbidden.

185. Therefore, as rightly contended by the learned counsel for A.6, neither the letter Ex.C3, its contents nor the conduct of A.6 would amount to interfering with the administration of justice and therefore the proceedings initiated against him is devoid of any merit.

186. This incidence brings us to the fore the responsibility of the Bench and the Bar, in the administration of Justice, as it is the conduct of the Judge and the Advocate which has given rise to these contempt proceedings.

ADMINISTRATION OF JUSTICE - BAR AND THE BENCH

ROLE OF THE BENCH

187. This case throws up an important issue regarding the conduct of Judges and the Lawyers in discharge of their respective duties. The behavioural discipline of a Judge is an integral component of judicial

independence. Independence of judiciary is *sine qua non* for the efficacy of the rule of law. The conduct of the Judges of the superior judiciary should be above the conduct of ordinary mortals in the society. Criticism of a Judge's conduct or of the conduct of a Court even if strongly worded, is, however, not contempt, provided that the criticism is fair, temperate and made in good faith and is not directed to the personal character of a Judge or to the impartiality of a Judge or Court. The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional standards among the members of the Bar are preconditions even for high ethical standards of the Bench. The freedom of speech and expression guaranteed by Article 19(1)(a) is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the Court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must

strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the Court not because Judges need the protection but because the citizens need an impartial and strong judiciary. So the nation's interest requires that criticism of the judiciary must be measured without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. The public are vitally interested in the cleanliness of the public administration of justice which is of paramount importance. Public justice is the hallmark of public good.

188. Therefore it is of utmost importance that one must bear in mind the role of Judges and Advocates in the administration of Justice and the unwritten limitations which are practiced over the years. In this context, it is useful to refer to the judgment of the Apex Court dealing with the role of the Bench.

189. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the Court would be deleterious to the efficacy of judicial process. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than what is expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety and be higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

190. The standards of judicial behaviour, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct

of well-established traditions is the guideline for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed.

191. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution."

(C. RAVICHANDRAN IYER Vs. JUSTICE A.M. BHATTACHARJEE AND OTHERS (1995) 5 SCC 457)

192. To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or of any

sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

(KRISHNA SWAMI Vs.UNION OF INDIA & OTHERS (1992 (2) SCC 605)

193. Those who are informed of the question and think deeply upon it entertain no doubt that the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is questionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the judge. A discourteous judge is like an ill-tuned instrument in the setting of a court room. But members of the Bar will do well to remember that

such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system which no democracy can survive.

(R.K. GARG, ADVOCATE Vs. STATE OF HIMACHAL PRADESH (1981) 3 SCC 166)

ROLE OF THE BAR:

194. 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 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 civilized 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 stellar role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practiced 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.

195. Both the Bench and the Bar are equipments of the same machinery designed for the administration of justice. They are born and bred in the same nursery, and have common ideals and traditions. Both are equally necessary in a free country. A strong and impartial judiciary is the greatest bulwark against tyranny and wrong and impulsive action of the executive. This spirit of independence is also instinctive, in the advocate, for he is by habit a free thinker and tolerant of the views and criticisms of others.

196 The first duty which the counsel owes to the Court is to maintain its honour and dignity. Respect and allegiance which the counsel owes is not to the person of the

Judge but to his office. The duty of courtesy to the Court does not imply that he should not maintain his self-respect and independence as his client's advocate. Respect for the Court does not mean that the counsel should be servile. It is his duty, while respecting the dignity of Court, to stand firm in advocacy of the cause of his client and in maintaining the independence of the Bar. It is obviously in the interests of justice that an advocate should be secured in the enjoyment of considerable independence in performing his duties. An over subservient Bar would be one of the greatest misfortunes that could happen to the administration of justice.

197. It is the duty of the Bar to support judges in their independence. In the integrity of judges lies the greatest safeguard of a nation's laws and liberties. Judicial independence is the only protection against tyranny and whims of the executive. Unless Judges are free from influence of the executive, and of outside persons, they cannot discharge their function to stand by the law and they cannot inspire public confidence. A free judiciary is the greatest bulwark of the independence of the Bar. In fact one

cannot exist without the other. A strong Judge will always uphold the law, and that is also the aim of advocacy, even though the Judge and the advocate may differ in their point of view. The advocate must not do anything which is calculated to obstruct, divert or corrupt the stream of justice.

198. The cardinal principle which determines the privileges and responsibilities of advocate in relation to the Court is that he is an officer of justice and friend of the Court. This is his primary position. A conduct, therefore, which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. His status as an officer of justice does not mean that he is subordinate to the Judge. It only means that he is an integral part of the machinery for the administration of justice.

199. Advocates share with Judges the function that all controversies shall be settled in accordance with the law. They are partners in the common enterprise of the administration of justice. The difference in their roles is one of division of labour only; otherwise they are two branches of

the same profession and neither is superior or inferior to other. This fact is now recognized in India by the autonomy given to the Bar by The Advocate Act, 1961. Judges cannot do without the help of advocates if justice is to be administered in accordance with law, and its administration is to command popular confidence. It is the function of an advocate not merely to speak for the client, whom he represents, but also to act as officer of justice and friend of the Court. The first duty which advocates and Judges owe to each other is mutual co-operation, that is a fundamental necessity. Without it there can be no orderly administration of justice. Nothing is more calculated to promote the smooth and satisfactory administration of justice than complete confidence and sympathy between Bench and the Bar. If the Advocate has lost confidence of the Bench he will soon lose that of his clients. A rebuke from the Bench may be fatal to his chances of securing a high standing at the Bar. Similarly if the Judge has lost confidence of the Bar he will soon lose confidence of the public.

200. There is the danger of a Judge placing over emphasis on the dignity of the Court in a manner which

would be in conflict with the equally valuable principle of independence of the Bar in the advocacy of causes. An advocate in the conduct of his case is entitled to considerable latitude and the Courts should not be unduly sensitive about their dignity. Advocates like Judges are after all human beings and in the heat of argument occasional loss of temper is but natural. However, the advocate must not do anything which lowers public confidence in the administration of justice.

201. The casualness and indifference with which some members practice 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.

CONCLUSION

202. In a nutshell, if this proceedings are to be explained, it boils down to this: It is a case of a learned

Judge who was a devotee of a private temple prior to his elevation, visiting the temple on invitation by the temple after he became the Judge. After visiting the temple for more than five years, he stopped visiting the temple because he was not getting any devotion towards the deity. There was no faction in the temple earlier. Subsequently, factional fight was going on in the temple. One faction took legal advise from the former Senior of the learned Judge. Yet another faction engaged the services of the former colleague and the former junior colleague of the learned Judge. The faction which had engaged the service of the former Junior colleague of the learned Judge, succeeded in the trial Court and the other faction which took the advise from the former Senior of the learned Judge, was in appeal. Strangely, none of them have filed power in the appeal. Both the factions are represented by different Counsel.

203. When the matter was listed before the learned Judge, he receives a letter pointing out his proximity to the temple, probably from one of the factions. Immediately he makes up his mind not to hear the appeal. However, he seeks permission of the Hon'ble Chief Justice to list that

appeal before him only for the purpose of finding out who are behind the said letter. This fact is not made known to the parties. The learned Judge brings to the notice of the parties in the open Court, the receipt of the letter and its contents. It is thereafter there is an outburst and anger exhibited by the learned Judge regarding what is written in the said letter. The said outburst is widely reported in the Press. The learned Judge shows his anger on the Counsel representing one of the parties. In fact, he interrogates his junior colleague in the open Court in the presence of the parties and the Advocates and what is extracted from such interrogation is made a part of the judicial order. Because of the strong language used by the learned Judge and his conduct in the open Court, which points the needle of suspicion against the 1st accused, fear lurks in the faction which has succeeded in the trial Court. Therefore they requested the learned Judge to recuse himself from hearing the appeal.

204. The senior colleague of the learned Judge, writes out a letter addressed to "whomsoever it may concern" and promptly sees to it that the said letter which is typed in his

office is carried by his clerk and handed over to the P.A of the learned Judge on the very same day of writing the letter. The erstwhile colleague of the learned Judge writes a letter in his handwriting, walks into the Chambers of the learned Judge and hands over the same to him on the very same day. The purport of these two letters is to inform the learned Judge that they were approached with a request to appear for the first respondent in the appeal, which they declined. The learned Judge takes note of those letters, though the contents of the same were denied by the learned Counsel who are referred to therein. Then an order is passed for initiating contempt proceedings against all of them. In fact, one of the learned Judges who was in the Bench protested and sought for recusal from the said Bench. Three learned Judges, who heard this matter were not unanimous in deciding whether it amounts to contempt or not. The two letters issued by the erstwhile Senior and erstwhile colleague of the learned Judge show that they wanted to implicate the brother Lawyers appearing in the case without any justification, which only speaks of professional jealousy. Apparently the learned Judge could not see through the game and unnecessarily, he was caught in the web.

205. The erstwhile Senior of the learned Judge and the erstwhile colleague of the learned Judge have not measured up to the standards of professional conduct and etiquette which was expected of them and it was improper on their part to have addressed those two letters. The learned Judge also could not have taken note of these private communications relating to an appeal which was pending before him, as such private communications are forbidden. The cause of action for the contempt proceedings is the utterances of the Judge and the said two private communications, which are forbidden in law. The said utterances are because of the conduct of one of the clients of either the erstwhile senior colleague or colleague or junior colleague of the Judge. In the entire episode, the Court is not involved. No scandalous attack is made on any Judges or Judiciary, in discharging their judicial function. It is purely a private matter between the learned Judge who was a devotee of the private temple, its factions and the Advocates representing those factions. The Contempt of Court Act, 1971 was not enacted by the Parliament to deal the situations arising out of circumstances displayed before

us. ***Therefore, we do not see any merit in this contempt proceedings. Accordingly it is dropped.***

Sd/-
JUDGE

Sd/-
JUDGE

ksp/sps/-