

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**BEFORE: HON'BLE MR. JUSTICE HARISH TANDON**

**W.P. 28879(W) OF 2017**

**DR. ATANU CHATTOPADHYAY**

**-VS-**

**MR. DEBANGSU BASAK, THE HON'BLE JUSTICE OF HIGH COURT AT  
CALCUTTA & ORS.**

Dr. Atanu Chattopadhyay  
... Petitioner-in-Person.

Mr. Saptangshu Basu, Sr. Adv.,  
Mr. Siddhartha Banerjee, Adv.  
... for the High Court Administration.

Mr. Kaushik Chanda, Ld. Addl. Solicitor General,  
Mr. Manabendra Bandopadhyay, Adv.,  
... for the Respondent Nos. 6 to 9.

Mr. Sirsanya Bandopadhyay  
... for the State.

Judgment On: 04.01.2018.

**The Court:**

It is not only alarming but equally disturbing when a Writ Petition is launched by the citizen against the sitting Judges of the High Court on unfounded and unsubstantiated allegations and / or aspersions not only undermining but also belittling their image, institution, position and the authority of law exercised in course of judicial dispensation. The Petitioner, who is appearing in person was given a patient hearing to extract the real cause of action leading to initiation of a proceeding under Article 226 of the Constitution of India. The Petitioner consistently harps upon denial of access to justice and injustice perpetrated upon him in not acceding to his prayer either listing as per his desire before the particular Judge and refusal

to release the matter as he has inculcated a sense of bias against a particular Judge.

Several allegations / aspersions are made against each of the Respondents but finger is also pointed out against the Respondent No. 2 who recused himself from entertaining the instant Writ Petition filed by the Petitioner as one of the Respondents is known to him. Several write-ups were forwarded to this Court downloaded from the various sites in the internet on access to justice and its compulsion. What is sought to be conveyed to the Court that sense of justice attributable to the people implies the standard of fairness, equity, impartiality as opposed to misuse, abuse, unfairly treatment. I would narrate the salient facts stated in the Writ Petition to find out whether any cause of action is pleaded leading to denial of access to justice and such allegations and / or aspersions have any legal or factual basis.

At the first motion a query was raised whether the Writ Petition can be maintained against some of the Respondents who are the sitting Judges of this Court impleading the other authorities against whom there is virtually no allegations / aspersions in the Writ Petition. The Writ Petition is principally aimed against some of the sitting Judges of the High Court and their conduct in dealing with the instant matter.

This Court, therefore, feels that instead of venturing to enter into the point of maintainability of the instant Writ Petition, it would be appropriate and apposite to deal with the aspersions / allegations on its merit.

The foundation of the Writ Petition is based upon alleged incident happened on 18.08.2017 at midnight when criminals attempted to murder

the old caretaker and the registration of F.I.R was denied by the local police and the Superintendent of Police despite an application dated 19.08.2017 and 22.08.2017. According to the Petitioner, the situation was so alarming that the armed constables or the armed police officers refused to stay without proper force. It is alleged that because of the lackadaisical attitude of the police authorities in retrieving the important documents including the educational certificates of the Petitioner and other family members were robbed, their livelihood was challenged and they were under a constant threat. Taking shelter under the umbrella of peace, liberty and civilization the Petitioner allegedly sensed / experienced palpable injustice with the behavioural conduct of the respective Judges. A Writ Petition being WP 25301 (W) of 2017 was filed on 20<sup>th</sup> September, 2017 for issuance of mandamus upon the authorities to take appropriate actions for expeditious hearing and for proper relief alleging police inaction to be urgently listed on 22<sup>nd</sup> September, 2017 before the Court of one of the Hon'ble Judges having determination. It is alleged that one of the officers in the Filing Section denied to receive the said Writ Petition as the Court in which the Petitioner intended to move the said Writ Petition did not have the determination and unless the correction is made in the presentation form incorporating the name of the Hon'ble Judge having determination, the Writ Petition cannot be received. Though the Petitioner corrected the presentation form but alleged that he was misrepresented by such officer and such act amounts to negligence.

The Petitioner approached the Hon'ble Acting Chief Justice to list the matter before a particular Judge before whom he intended to move the said

Writ Petition as the Court was closing for ensuing Puja Vacation and 22<sup>nd</sup> September, 2017 was the last working day. It is further alleged that no action was taken against the erring officer of the Filing Section and therefore justice was denied to the Petitioner. The Petitioner moved the Hon'ble Judge having determination on 22<sup>nd</sup> September, 2017 and prayed for release of the matter because of the question on determination assigned by Hon'ble Acting Chief Justice so that the Petitioner can approach the Vacation Bench on 25<sup>th</sup> September, 2017. The Petitioner made unsubstantiated remark against the Judge before whom he approached on 22<sup>nd</sup> September, 2017 interpreting as if he has been suggested to commit a suicide. Since the Hon'ble Judge has no determination on 22<sup>nd</sup> September, 2017 an order is passed releasing the same for lack of determination. It is alleged in the Petition that the Petitioner approached the concerned officer to get the urgent copy of the order and the staffs attached to the Court raised voice and threatened him that he would take steps to arrest him in the Court. The Petitioner says that he approached the Joint Registrar (Court) as well as the Registrar General narrating the incident and prayed for proper security and maintenance of his dignity in the Court but was denied any such protection. He informed the matter to the Officer in Charge of the High Court Police outpost and subsequently lodged a General Diary in the Hare Street Police Station.

The Petitioner thereafter informed the Acting Chief Justice through his Secretariat and the copy was also forwarded to the Chief Justice of India and the Registrar of Supreme Court. The Petitioner alleged that the

misconduct of the learned Judge was experienced and such action is clearly violative of Sections 24, 43, 107 and 306 of the Indian Penal Code.

The Petitioner further alleged that due to release of the matter for want of determination without sensing the gravity and urgency pleaded in the Writ Petition, the Hon'ble Judge had committed perjury and violated the fundamental right guaranteed under Article 14 and 21 of the Constitution of India. The Petitioner thereafter approached the Vacation Bench, more particularly the Respondent No. 2 and prayed for immediate protection of the Petitioner and to pass an appropriate interim order. The Respondent No. 2 directed the Advocate representing the State to go through the petition and to narrate the facts pleaded by the Petitioner to ascertain the cause leading to filing of the instant Writ Petition. The matter was taken up after a brief interval and no order could be passed therein. Such conduct of the Respondent No. 2, according to the Petitioner is misconduct amounting to perjury causing breach to the Petitioner.

It is further alleged in the Writ Petition that because of non-issuance of the order, the Inspector in Charge visited house of the Petitioner at late night on 5<sup>th</sup> November, 2017 which was informed to the higher authorities on 9<sup>th</sup> November, 2017. Subsequently, the Petitioner again mentioned the matter on 16<sup>th</sup> and 17<sup>th</sup> November, 2017 before the Respondent No. 1 as the determination was assigned to him by the Hon'ble Acting Chief Justice with vague excuse and unreasonable directions. The Petitioner thereafter approached the Respondent No. 3 alleging the misconduct of the Respondent No. 1 and also informed the other Respondents by electronic mail alleging harassment and deprivation to get justice in paragraph 10 of

the Writ Petition. It is alleged that because of the inaction on the part of the Respondent Nos. 1 to 3, the Petitioner has been denied justice and the Ministry of Law and Justice must take care and responsibility before nominating the advocates as the Hon'ble Judges of the Court, who are not fit for such posts. It would be axiomatic to reproduce the reliefs claimed in the instant Writ Petition based upon the aforesaid allegations which runs thus:-

*"In the facts and circumstances stated above it is most humbly prayed that Your Honour would be graciously pleased*

*to issue writ of mandamus / certiorari or any other appropriate writ or Direction in the like nature to the respondents.*

AND

*For direction to the respondents that our rights to access the justice should not be barred by arbitrary, and oppressive action.*

AND

*For direction to provide proper securities and aids so that we can approach the Hon'ble Court safely.*

AND

*To issue a Rule, calling upon opposite parties to show cause as to why the lawful action shouldn't be taken against them.*

AND

*To ensure the Fundamental rights, Fundamental duties and Directive Principles of State Policy.*

AND

*To grant the cost of this petition and proper compensation as the petitioner is indigent and in a challenged condition and knowingly the respondents putting us to the limit.*

AND

*To kindly consider this petition and as an emergency petition for the speedy justice and social benefits.*

AND

*Pass appropriate interim order or orders, directions or directions and final judgment as Your Lordship may deem fit and proper.”*

As indicated above, the Petitioner has laboured in extracting various judgments from the internet and placed reliance upon them on a proposition which in my mind has no relevance to the core issue involved in the instant case. To eradicate any sense to be developed in the mind of the Petitioner, this Court feels necessary to quote those judgments and its applicability in the instant case. The first judgment cited by the Petitioner was delivered in case of **CPIO, Supreme Court of India -Vs- Subhash Chandra Agarwal & Anr. [WP (C) 288 of 2009]** wherein the core issue was pertaining to the disclosure of certain information in relation to declaration of personal assets by the Judges of the Supreme Court. The Delhi High Court was considering the matter relating to furnishing the information under Right to Information Act where information was sought as to whether the assets have been declared in terms of the resolution of the Full Court dated 07.05.1997 and not the contents thereof.

In the backdrop of the aforesaid facts an observation came to be passed that the Judge's independence paradoxically imposes duties on him to decide within the framework of law and not on individual notion while imparting justice. In doing so, the Judges would follow a fair procedure in tune with the notion of justice. The order of the Division Bench between the same parties, as indicated above, is also relied upon, where certain observations were made on the role of the judiciary in democracy and a judiciary of undisputed integrity was held to be a bedrock institution to

ensure the Rule of Law. The Division Bench further held that the independence of judiciary is a prerequisite for Rule of Law and can be traced in all major human right functions and did not interfere with the order of the Single Bench.

In the case of **State of Uttar Pradesh –Vs- Rajnarayan reported in AIR 1975 SC 865** the Petitioner harps on the concept of right to information as discussed therein. The paragraph relied upon by the Petitioner is basically concerning the right of the people to know every public act and the conduct and the manner in which the public functionaries are discharging their duties.

It would be a mere repetition of the other judgments which are mainly based upon the maintenance of Rule of Law and prevention against any arbitrary action either discreminatory or otherwise against any citizen of the country as it would undermine the basic concept of the Constitution and the fundamental rights guaranteed in Part III thereof.

There cannot be any quarrel to the settled proposition of law as laid down therein. The law should not be applied in abstract manner but should be considered in the light of the facts pleaded in the Writ Petition. It is no doubt that the fundamental rights guaranteed under the Constitution if infringed, gives right to an aggrieved person to approach the Court under Article 226 of the Constitution and it is one of the primary and paramount duties of the Court to restore the same. A trend has developed recently more particularly when the person is appearing in person to consume the valuable time of the Court by placing reliance upon the observations



extracted from the judgment which is unrelated and unconnected with the facts of the given case without venturing to consider that such observations have been made in relation to the facts involved therein. Extracting one word from the midst of the observations without attempting to read whole of the text of the judgment in order to find out the stands behind such observation is not proper. The Court has to give patient hearing to eradicate any sense that a free and fair opportunity of hearing has not been given. The fair play, transparency and an opportunity of hearing is one of the basic factors which the framers of our Constitution adopted but in the garb of the same misuse and abuse of such right should be guarded against. The serious allegations are made bringing within the ambit of perjury without knowing what perjury is. It would be apposite to quote the enlightening observation of the Division Bench of Supreme Court in case of **P.N. Duda – Vs- P. Shiv Shanker & Ors. Reported in (1988) 3 SCC 167** made in connection with the Contempt of Courts Act, 1971 when in a speech, the then Minister of Law and Justice and Company Affairs at the meeting of the Bar Council of Hyderabad made certain statements against the Supreme Court using the language which was extremely intemperate, undignified and unbecoming of a person of his stature and position. The spoken words therein were found with an intent to attack upon the Judges in calculated manner percolating in the minds of the people a general dissatisfaction with a distrust of all judicial decisions:-

*“9. “Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men” — said Lord Atkin in Ambard v. Attorney-General for Trinidad and Tobago [1936 AC 322, 335 : (1936) 1 All ER 704] . Administration of justice and judges are open to public criticism and public scrutiny. Judges*

*have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to defend and uphold the Constitution and the laws without fear and favour. This the judges must do in the light given to them to determine what is right. And again as has been said in the famous speech of Abraham Lincoln in 1965: "With malice towards none, with charity for all, we must strive to do the right, in the light given to us to determine that right." Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of judges and brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised; the motives of the judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. In the free market place of ideas criticisms about the judicial system or judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how courts should approach the powers vested in them as judges to punish a person for an alleged contempt, be it by taking notice of the matter suo motu or at the behest of the litigant or a lawyer."*

In case of **A.M. Mathur -Vs- Pramod Kumar Gupta reported in (1990) 2 SCC 533** the Apex Court emphasized on behavioural act and the conduct of the Judges in discharge of their judicial functions in these words:-

*"13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.*

*14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse*

*their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. [See (i) R.K. Lakshman v. A.K. Srinivasan [(1975) 2 SCC 466 : 1975 SCC (Cri) 654 : (1976) 1 SCR 204] , (ii) Niranjan Patnaik v. Sashibhusan Kar [(1986) 2 SCC 569, 576 : 1986 SCC (Cri) 196] ].”*

Apart from the same, it is not open to any person to make scandalous, disparaging and intemperate remarks directly on the Judges or their judicial act with intent to undermine the majesty of the Court and inculcate any adverse notion against the judicial system of the country to gain publicity. It is one thing to say that the criticism against the conduct, act and the orders of the Judges in dignified and healthy manner but it is totally different when the language and the expressions impair and hamper the administration of justice. In this regard, it is relevant to take note of another judgment of the Supreme Court rendered in case of **Rajendra Sail –Vs- M.P. High Court Bar Association & Ors. Reported in (2005) 6 SCC 109** wherein it is held:-

*“13. In Aswini Kumar Ghose v. Arabinda Bose [1953 SCR 215 : AIR 1953 SC 75] it was held that the Supreme Court is never oversensitive to public criticism; but when there is danger of grave mischief being done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity. The path of criticism is a public way: the wrong-headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.*

**16.** *In C.K. Daphtary v. O.P. Gupta [(1971) 1 SCC 626 : 1971 SCC (Cri) 286] it was said that, a scurrilous attack on a judge in respect of a judgment or past conduct has adverse effect on the due administration of justice. This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the judiciary. If confidence in the judiciary goes, the due administration of justice definitely suffers. There can be no justification of contempt of court.*

**19.** *In P.N. Duda v. P. Shiv Shanker [(1988) 3 SCC 167 : 1988 SCC (Cri) 589] it has been held that administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office i.e. to defend and uphold the Constitution and the laws without fear and favour. Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised, motives to the judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market-place of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as a contempt of court.”*

In the light of the above enunciation of law, there is hardly any substance in the allegation made against the Respondent No. 1 in construing any spoken word (which in my opinion has no semblance of truth) that any such suggestions was made to the Petitioner. The narration of facts preceding such scurrilous remark cannot give any sense in any sensible mind to construe the same as interpreted by the Petitioner.

The impartiality, fairness and transparency lies in course of the judicial dispensation and if the learned Judge, the Respondent No. 2 herein does not find any urgency in the matter to give precedence to the Petitioner's application over the other matter, it cannot be taken as an act infringing any right of the Petitioner. The Judges in the country dealing with large cases and every citizen in the country has equal right to have its matter taken by the Court. Giving precedence to one matter as the Petitioner is appearing in person shall overreach the rights of the other person. There cannot be any discrimination between the right of each individuals guaranteed under the law. Every matter is important and equal treatment is the backdrop of the Constitution. The entire allegation is unfounded, unsubstantiated, far to speak of any truth in it. The Court should not permit any litigant to initiate a proceeding on disparaging, scurrilous and intemperate remarks against the Judges and such person should be dealt with seriously. In this regard, the observation of the Apex Court in case of **Rajendra Sail (Supra)** is quoted as under:-

*“24. In Arundhati Roy, In re [(2002) 3 SCC 343] the Court held, fair criticism of the conduct of a judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself. Litigant losing in the court would be the first to impute motives to the judges and the*

*institution in the name of fair criticism, which cannot be allowed for preserving the public faith in an important pillar of democratic set-up i.e. judiciary.”*

Though this Court feels that immediate action is warranted against the Petitioner for such scurrilous remark made against the Judges, yet considering his lack of understanding of the law and the functioning of the judicial system, this Court does not intend to initiate a contempt proceeding against the Petitioner but must make a remark that he should be vigilant, cautious and careful in initiating proceeding of such nature in future.

Though imposition of costs is inevitable, yet bearing in mind the submission advanced by the Petitioner that he is homeless and have no substantial income, this Court does not impose cost for this frivolous litigation.

The Writ Petition is **dismissed**.

**(Harish Tandon, J.)**