

IN THE SUPREME COURT OF INDIA
(CRIMINAL ORIGINAL JURISDICTION)

I.A. NO. _____ /2020
IN
SUO MOTO CONTEMPT (CRL.) NO. 1 OF 2020

IN THE MATTER OF:

IN RE: PRASHANT BHUSHAN AND ANOTHERALLEGED
CONTEMNOR/APPLICANT

PAPER BOOK

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COUNSEL FOR THE APPLICANT: KAMINI JAISWAL

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**APPLICATION U/S 17(5) OF THE CONTEMPT OF
COURTS ACT, 1971**

To,
The Hon'ble Chief Justice of India
and His Companion Justices
of the Hon'ble Supreme Court of India.

The Humble Application of the
Alleged Contemnor/Applicant

MOST RESPECTFULLY SHOWETH:

1. That by order dated 22.07.2020 this Hon'ble Court issued notice to me in the above captioned matter. The Hon'ble Court converted Mr. Maheswari's petition which was only as regards the *Harley Davidson* tweet dated 29.06.2020 into a Suo Moto petition. Further, Suo Moto cognizance was taken by the Hon'ble Court of a second tweet of 27.06.2020 regarding 'destruction of democracy' that was mysteriously published in *Time of India* on the morning of 22.07.2020 and notice was issued to me as regards that also. On 24.07.2020, alleged contemnor was served a notice which did not include a copy of the contempt

petition on the basis of which the notice was issued to me. This was in violation of of Rule 6(2) of Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, (hereinafter 'Rules 1975) framed under Article 145 of the Constitution which provides,

" When action is instituted on petition, a copy of the petition along with the annexure and affidavits shall be served upon the person charged."

(emphasis supplied)

2. That "*Action*" includes conversion of petition to *Suo Moto* petition as regards the first tweet. "*Shall be*" vests an undilutable right in me. This right vests in me even under *Suo Moto* proceedings under Article 129 because Rules, 1975, have been framed under Article 145.

3. Reliance is placed on ***Vijay Kurle, In re, (2019) 9 SCC 521***, where the alleged contemnor complained that he was not supplied with the copies of the complaint on the basis of which *Suo Moto* action was initiated against him in his preliminary affidavit. Therefore, this Hon'ble Court was pleased to direct that the complaint with all annexures be supplied to him as under:

This extract is taken from ***Vijay Kurle, In re, (2019) 9 SCC 521 : 2019 SCC OnLine SC 1274 at page 521***

1. Heard the learned counsel for the parties. We direct the Registry to supply three sets of Annexures P-1 to P-15 attached with the complaint sent to the Hon'ble the Chief Justice of India, to Mr Jai Ram Yadav, who shall receive the same on behalf of Respondents 1 and 2 as well as Respondent 3 in person on 4-10-2019 at 2 p.m. from the office of the Registrar concerned.
(emphasis supplied)

4. Further, the Hon'ble Court was pleased to direct that a fresh affidavit be allowed to be filed by the alleged contemnors as under:

This extract is taken from ***Vijay Kurle, In re, (2019) 9 SCC 521 : 2019 SCC OnLine SC 1274 at page 521***

2. Fresh reply to the contempt petition after going through the annexures may be filed within three weeks thereafter. (emphasis supplied)

5. That the reply filed by me specifically states that it is a **preliminary reply** where I have offered a explanation for the tweets without prejudice to my right of having a copy of the complaint as under at Para 2 which was also read out by my counsel in the hearing of 05.08.2020 as under:

*I had written on 28.07.2020 to Secretary General of the Supreme Court, seeking a copy of these documents, which have since not been provided to me. In the absence of that, I am somewhat handicapped in dealing with this contempt notice. However, **without prejudice to the above, my preliminary reply to the notice issued to me is as under.** (emphasis supplied)*

6. That if my **preliminary reply** where I explained my tweets and laid down the law of the land as to why the notice was not sustainable as against me is not acceptable to the Court then I invoke my right to lead evidence under Section 17(5) of the Contempt of Courts Act, 1971, which provides:

"17. Procedure after cognizance:

(1),(2), (3), (4): Omitted

*(5) Any person charged with contempt under Section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking **such further evidence** as may be necessary, and pass such order as the **justice** of the case requires." (emphasis supplied)*

7. In accordance with *Kurle* and in conformity with Section 17(5) therefore I may be allowed to lead further evidence

in case the Hon'ble Court wishes to proceed further against me in this matter especially because in ***R.S. Sehrawat v. Rajeev Malhotra, (2018) 10 SCC 574*** and other judgements it has been held that Contempt proceedings are quasi-criminal in nature. Standard proof, applicable is therefore that of proof beyond reasonable doubt.

8. Lastly, as regards the second tweet which was allegedly published by the *Time of India* on the morning of the hearing on 22.07.2020 and of which copy even I don't have and of which this Hon'ble Court took suo moto cognizance, it is submitted:
 - a. It constitutes a separate cause of action.
 - b. The court having taken cognizance of the second tweet is required to initiate it as a separate proceeding (which submission my counsel has also made orally on 05.08.2020)
 - c. Proceedings as regards the second tweet are required to be placed before the CJI who is the master of the roster for allocation of bench as held in ***Vijay Kurle, In Re 2020 SCC Online SC 407*** where after taking cognizance and issuing notice to Kurle and others in a pending contempt matter against one advocate Nedumpura, Hon'ble Justice Nariman's bench correctly placed the matter before the Hon'ble Chief Justice for allocation of bench.

Reliance is placed on ***Vijay Kurle, In Re, 2020 SCC Online SC 407*** at para 39 as under:

*"....the Bench in deference to the principle of master of the roster, after taking cognizance of the scandalous allegations made in the complaints of the alleged contemnors and issuing notice to them directed that the matter be placed before Hon'ble the Chief Justice for listing before an appropriate Bench. **This, in our view, is the proper procedure. If an article,** letter or any writing or even something visual circulating in electronic, print or social media or in any other forum **is brought to the notice of any Judge of this Court** which prima facie shows that the allegation is contemptuous or scandalises the court then that Judge can definitely **issue notice and thereafter place it before Hon'ble the Chief Justice for listing it before an appropriate Bench.**"*(emphasis supplied)

PRAYER

In light of these facts and circumstances it is most humbly prayed that:

- i) In case the Hon'ble Court is not satisfied by my **preliminary reply** and wishes to proceed further in the matter allow me to lead further evidence u/s 17(5) of the

Contempt of Courts Act, 1971, after supplying copy of the complaint by Mr. Mehak Maheshwari to me in accordance with **Paras 1 & 2 of Vijay Kurle, In re, (2019) 9 SCC 521 : 2019 SCC OnLine SC 1274 at page 521.**

- ii. Direct that proceedings as regards the suo moto notice issued to me with respect to tweet of 27.06.2020 be placed before the Hon'ble Chief Justice of India for allocation of bench as per **Para 39 of Vijay Kurle, In Re, 2020 SCC Online SC 407**

AND FOR THIS ACT OF KINDNESS THE HUMBLE APPLICANT SHALL FOREVER BE DUTY BOUND

APPLICANT THROUGH-



(KAMINI JAISWAL)

COUNSEL FOR THE APPLICANT

NEW DELHI

DATED: 06.08.2020

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AFFIDAVIT

I, Prashant Bhushan, S/o Shanti Bhushan, aged about 62 years, R/o House No. B-16, Sector 14, Noida, Uttar Pradesh - 201301, presently at New Delhi, do hereby solemnly affirm and state as under:

1. That I am the Respondent No. 1 in the above mentioned matter and as such fully acquainted with the facts & circumstances of the case. I am competent to swear the present Affidavit.
2. That I have read and understood the contents of the accompanying application. I state that the facts therein are true and correct to the best of my knowledge and nothing material has been concealed therefrom. Source of information is official records of this Court.
3. I further state that all the Annexures to the application are true copies of their respective originals.

4. That I have done whatsoever enquiry that was possible and I state that no relevant facts in my knowledge have been withheld.

Rashant Bhusan

DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this 6th day of August, 2020.

Rashant Bhusan

DEPONENT