Before Hemant Gupta & Fateh Deep Singh, JJ.

COURT ON ITS OWN MOTION—*Petitioner*

versus

D.S. CHINNA, ADVOCATE, DISTRICT COURTS, JALANDHAR—*Respondent*

CROCP No. 9 of 2012

November 11, 2013

A. Contempt of Courts Act, 1971 - Ss. 2(c), 15(2) - Criminal contempt - Act of Advocate of one of the parties taking judicial file and tearing the documents, which is part of judicial record - Is an act of interference in the administration of justice - Thus, is a criminal contempt.

Held, that the act of the respondent in taking judicial file and tearing the documents, which is part of judicial record, is an act of interference in the administration of justice and, thus, is a criminal contempt.

(Para 11)

B. Contempt of Courts Act, 1971 - Ss. 2(c), 15, 20 - Criminal contempt - Limitation - Initiation of contempt proceedings - Two manners i.e. by 'Court on its own motion' and 'otherwise' - 'Otherwise', includes a reference made by the subordinate Courts and by a private litigant after seeking consent of the Advocate General - It has been held, making of reference by a subordinate Judge is the initiation of the proceedings for criminal contempt - No merit in the argument that the contempt proceedings are initiated against the respondent only after the notice was issued by the High Court.

Held, that the similar argument as is raised in the present contempt petition to contend that the proceedings of criminal contempt are barred by limitation has been dealt with by a Full Bench of this Court in a judgment reported as Manjit Singh Vs. Darshan Singh, ILR (1983) 2 P&H 453. It has been held that Section 20 of the Act deals with initiation of contempt proceedings in two manners i.e. by 'Court in its own motion' and 'otherwise'. The process of initiation of contempt proceedings 'otherwise', includes a reference made by the subordinate Courts and by a private litigant after

seeking consent of the Advocate General. It has been held that making of a reference by a subordinate Judge is the initiation of the proceedings for criminal contempt. It was held to the following effect:

> "16. .....That being the plain meaning of the word 'initiate' one has to necessarily construe the same in Section 20 in the light of section 15 which prescribes the methodology of taking cognizance of criminal contempt apart from that in facie curiam in section 14. Can it be said that when a dignitary of the level of the Advocate-General files a motion in the High Court in accordance with the rules he still would not initiate, or begin, commence, or take the first step for the contempt proceedings? To hold that this would not amount to even initiation and it would be so only when the matter is heard and the Court after applying its mind actually directs the issuance of the notice, does not appear to me as sound either on principle or on the language employed in the statute. Similarly, when a responsible District Judge makes a reference for criminal contempt of the Subordinate Court expressly provided for under section 15(2), can one still hold that he does not initiate the proceedings thereby? Similarly where a litigant presents a petition before the Advocate-General for getting his consent in writing which is a pre-condition for the High Court to take cognizance at his instance under section 15(1)(b) would he not be initiating the proceedings for criminal contempt. Though we are focussing ourselves primarily on criminal contempt, the analogy of civil contempt is equally apt. If a litigant actually presents a petition in the High Court Registry under the rules for civil contempt, then the Court's action in entertaining such a petition would obviously be a beginning; a commencement or an entering upon and subsequently initiating the proceedings of civil contempt. Whether such a petition later fails or succeeds is another matter but to hold that till a decision for issuing notice thereon is made there will not even be initiation of proceedings, appears to me as unwarranted. On a true meaning of the words 'initiate' it has to be held that beginning the action prescribed for taking cognizance for criminal contempt under section 15 would be initiating the proceedings for contempt and the subsequent refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initiation.

17. I believe that the aforesaid construction placed by me not only possible but appears to be the one most reasonable in view of the somewhat peculiar (and if one may say so) an imprecisely drafted provision of section 20 of the Act. However, the sound cannon of construction is that an interpretation which leads to anomalous and sometimes absurd results causing grave hardship to the parties has to be avoided. ....."

The said view was approved in a judgment reported as **Pallav Sheth *Vs.* Custodian (2001) 7 SCC 549,** wherein the judgment in D.K.Mittal's case (supra) was found to be not warranted. The relevant extract from the judgment read as under:-

"39. In the case of 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 the Law Officer of the Central Government in the case of a Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate- General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the court the wilful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a court was to take a suo motu action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing the attention of the court to the contempt having been committed. When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.

40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon

of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court is necessary for further steps to be taken under the Contempt of Courts Act, 1971".

In view of the above, we do not find any merit in the first argument that the contempt proceedings are initiated against the respondent only after the notice was issued by this Court on 13.08.2012. The proceedings were in fact initiated when the reference was made by the Civil Judge (Junior Division), Jalandhar on 16.09.2010. We also notice that after the reference was received from the learned District & Sessions Judge, Jalandhar, it was not necessary to seek opinion or consent of the Advocate General. It has only delayed the process.

(Paras 12 to 14)

*C. **Contempt of Courts Act, 1971 - Ss. 2(c), 15 - Criminal contempt - Practice and procedure - Initiation of contempt proceedings upon a reference by a subordinate Judge - Presiding Officer, who has referred the reference, not examined - Record of the proceedings made by the Court is sacrosanct - The correctness thereof cannot be doubted merely for asking - Cannot be permitted to be contradicted by a lawyer or a litigant, therefore, such proceedings are not required to be proved, as a document required to be proved under the Evidence Act.***

Held, that the second argument that the Presiding Officer, who has referred the reference, has not been examined is again wholly untenable. It is well settled that the record of the proceedings made by the Court is sacrosanct; the correctness thereof cannot be doubted merely for asking. In State of Maharashtra Vs. Ramdas Shrinivas Nayak & another (1982) 2 SCC 463, the concession recorded in the judgment was sought to be disputed. The Supreme Court held to the following effect:

"4. ....We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be

dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the every fact of making the concession as recorded in the judgment."

Similar view was reiterated later by a three Judges' Bench in **D.P.Chadha** *versus*. **Triyugi Narain Mishra & others (2001) 2 SCC 221,** wherein the Court also considered an argument that the presiding officer has been transferred, therefore, such an application could not been filed before him. The Court observed as under:

"20. The explanation given by the appellant for not moving the trial court for rectification in the record of proceedings is that the presiding Judge of the court had stood transferred and therefore it would have been futile to move for rectification. Such an explanation is a ruse merely. The application for rectification should have been moved as the only course permissible and, if necessary, the record could have been sent to that very Judge for dealing with the prayer of rectification wherever he was posted. In the absence of steps for rectification

having been taken a challenge to the correctness of the facts recorded in the order-sheet of the court cannot be entertained, much less upheld. We agree with the finding recorded in the order under appeal that the proceedings dated 8-4-1994 correctly state the appellant having appeared in the court and argued the matter in the manner recited therein".

The conduct of the respondent finds mention in the Court proceedings. Such order is conclusive and the respondent cannot contradict it or seek proof thereof except by making an application to the said Court. Admittedly, the respondent has never moved an application before the Court to say that what is recorded therein is not correct. In view of the fact that the Court proceedings are sacrosanct and cannot be permitted to be contradicted by a lawyer or a litigant, therefore, such proceedings are not required to be proved, as a document required to be proved under the Evidence Act. Therefore, the examination of the Presiding Officer to prove the interim order passed is an argument wholly devoid of any merit.

(Paras 15 to 17)

D. Contempt of Courts Act, 1971 - Ss. 2(c), 15(2) - Criminal contempt -Lawyer tearing documents from judicial record - Documents part of nathi be and not initialled by the Court - Any document, which is part of the judicial record though not part of evidence, is a document on the judicial record - No one has a right to remove or mutilate any such document - The usefulness of the document or its purpose cannot be judged by the counsel representing a party - Such jurisdiction exclusively vests with the Court - Will not absolve the contemnor, representing one of the parties, to tinker with the document in any manner whatsoever - Respondent exceeded the limits of propriety and the confidence of the Court reposed on the Member of the Bar for the smooth functioning of the Court - Such conduct lowers the authority of the Court; interferes with the due course of judicial proceedings and also interferes in the administration of justice - Respondent guilty of commission of criminal contempt.

Held, that the argument that the documents were part of nathi be and were not initialled and, thus, not part of the judicial record is not tenable. Any document, which is part of the judicial record though not part of evidence, is a document on the judicial record and no one has a right to

remove or mutilate any such document. The usefulness of the document or its purpose cannot be judged by the counsel representing a party. Such jurisdiction exclusively vests with the Court. Therefore, even if the document in question was part of nathi be and was not initialed by the Court, will not absolve the respondent, representing one of the parties to tinker with the document in any manner whatsoever.

(Para 21)

Held further, that in view of the judgments of Supreme Court in **R.K.Anand and D.P. Chadha cases** *(supra)*, we find that the respondent has exceeded the limits of propriety and the confidence of the Court reposed on the Member of the Bar for the smooth functioning of the Court. Such conduct lowers the authority of the Court; interferes with the due course of judicial proceedings and also interferes in the administration of justice. In view of the above discussion, we hold the respondent guilty of commission of criminal contempt as defined under Section 2 (c) of the Act.

(Paras 28 and 29)

H.S.Brar, Additional Advocate General, Punjab, *for the petitioner.*

Sarwan Singh, Senior Advocate, with M/s Eshan Bhardwaj & Ajay Aggarwal, Advocates, *for the respondent-contemner.*

HEMANT GUPTA, J.

Reference of the present contempt petition has been sent by the learned District & Sessions Judge, Jalandhar on 08.10.2010 in respect of conduct of the respondent in tearing the copies of the Bills dated 23.06.2008 & 26.06.2008 i.e. part of the judicial file as reported by the Civil Judge (Junior Division), Jalandhar, when the case file titled 'Joginder Singh Vs. Rajinder Singh' was handed over to him at his request to furnish affidavit and to tender documents in evidence.

(2) The basis of the reference i.e. an order passed by the Civil Judge(Junior Division), Jalandhar on 15.09.2010, reads as under:

Sh. D.S.Chhina,Adv. Counsel for plaintiff.

Sh. P.L.Malhotra,Adv. Counsel for the defendant.

Today, the case was fixed for evidence of plaintiff and on request of learned counsel for plaintiff Sh. D.S.Chhina, Advocate he was handed over the file in the court to furnish the affidavit and to tender the documents in evidence. However, instead of furnishing the documents and the affidavits of witnesses, he tore off copy of bill dated 23.06.08 showing the amount of Rs.137376.00 and copy of bill dated 26.06.08 amounting to Rs.68580.00 which were already a part of the judicial record and did not seek the permission of the court before doing the said act and stated that he tore off the papers because he wanted to place on record the original bills. However, no such bills were ever placed by him on judicial file. This act of learned counsel for the plaintiff amounts to tampering of judicial record. This matter is immediately reported to the Hon'ble Punjab & Haryana High Court, Chandigarh through proper channel. Now to come up on 02.11.2010 for further proceedings.

Sd/-
VJJF/15.09.2010"

(3) The two bills, which find mention in the reference order, are issued by M/s H.J.Traders, Jalandhar to M/s Anupam Timber House, Jalandhar. Both the bills dated 23.06.2008 & 26.06.2008 are in the total sum of Rs.1,37,376.00 & 68,580.00 respectively.

(4) The reference received on the basis of communication dated 16.09.2010 from the trial court was placed before the Hon'ble Chief Justice on 7.10.2010 to seek orders as to whether opinion from the Advocate General, Punjab may be obtained in the matter. Such course of the matter was approved by the Hon'ble Chief Justice on 08.10.2010. Thereafter, the learned Advocate General, Punjab submitted his opinion dated 20.07.2012 to the effect that the act of the counsel in removing the documents from the court file without the permission of the Court and in not placing on record the originals thereof, which he wanted to do, amounts to tampering with the judicial record and would necessarily be a case of interfering with the due course of judicial proceeding as also of obstructing the administration of justice. The learned Advocate General, Punjab also opined that such act, thus, constitutes criminal contempt within the meaning of Section 2 (c) of the Contempt of Courts Act, 1971 cognizance whereof can be taken under

Section 15(2) of the said Act. In pursuance of such opinion, the reference was placed before the Bench on 13.08.2012, when show cause notice was issued to the respondent as to why contempt proceedings be not initiated against him.

(5) In response to such notice, the respondent filed his reply by way of affidavit dated 19.01.2013, wherein it is inter alia stated that he retired as District & Sessions Judge on 31.12.1998 and thereafter got himself enrolled as an Advocate. He stated that he prepared an affidavit as examination-in-chief of the plaintiff and got the same attested on 15.09.2010 for tendering the same in evidence. He further stated that when he entered into Court room along with the plaintiff, he found rush and that the Reader and the Steno were recording evidence while the learned Judge was hearing arguments. One of the Court officials informed the plaintiff that the case had already been adjourned to 02.11.2010, therefore, he along with the plaintiff came out of the Court room without tendering the affidavit of the plaintiff in evidence. He stated that he inspected the Court file on 18.09.2010 after a news item was published in a Hindi news paper i.e Daily Bhaskar on 17.09.2010 regarding tampering with the record of the Court file by him. He found that a reference has been made to this Court regarding tampering of the judicial record. It is the stand of the respondent that the order dated 15.09.2010 was not recorded in the presence of the plaintiff or his counsel nor was communicated to the plaintiff or his counsel. He categorically denied that he did not tear any paper from the Court file. He submitted that the photocopies of the Bills supplied to him are the copies of the Bills and are part of miscellaneous Court file described as Nathi Be. The said photocopies do not bear the initials or stamp of the Court and, thus, cannot be said to part of the judicial record. He submitted that the original bills have been tendered in evidence as Exs.PA and PB on 03.02.2011. He also mentioned that when the plaintiff appeared as his own witness on 09.06.2011, it was suggested to him during the course of his cross-examination that it is he, who has torn the papers from the Court file. It is, thus, sought to be inferred that the respondent has not torn any copy of the bills.

(6) Since there was denial of allegations levelled against the respondent, this Court vide order dated 30.04.2013 framed charges and directed the Registrar (Vigilance) to hold an enquiry and return a firm finding

of fact after affording the respondent adequate opportunity to lead defence evidence. The charges read as under:

> "You, D.S.Chhina, Advocate allegedly tore off copies of Bill Nos.23.06.2008 and 26.06.2008 amounting to Rs.1,37,376/- and Rs.68,580/- respectively which were part of the judicial record. By committing the afore-stated act, you are said to have tempered with the judicial record."

(7) In pursuance of the order passed, the Registrar (Vigilance) submitted his enquiry report dated 22.08.2013. The relevant extract from the enquiry report reads as under:

> ".....Besides this the said reference was based upon order-sheet Ex.C-1 dated 15.09.2010 which was duly proved by the then Reader of Ms. Archana Kamboj, PCS, Civil Judge (Jr.Divn.), Jalandhar. Copies of the bills in question, which were allegedly torn, are also available on the record. "A bare perusal of the said copies also gives the impression of the tearing of the bills from the place where they were annexed. The said impression is visible on the top left corner of copies of those bills.
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> It has, however, also emerged during the inquiry that the copies of the bills were not removed from the judicial record because Sh. Gurpratap Singh, then then Reader of Ms. Archana Kamboj, PCS, Civil Judge (Jr.Divn.), Jalandhar in his evidence clarified that the said copies were on the record of the original file produced by him at Sr.No.131 and 133.
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> In view of the facts and circumstances recorded above and after going through the documents on record, it has emerged in this enquiry that the copies of the bills in question were torn by Sh. D.S.Chinna, Contemner/Advocate."

(8) The respondent has also filed objections to the report submitted by the Enquiry Officer -cum- OSD (Vigilance), Haryana on 21.10.2013.

(9) Mr. Brar, learned counsel representing the Court, argued that the respondent has torn two bills from the Court file. Such conduct is not expected from any Member of the Bar much less from the respondent, who

retired as District & Sessions Judge after putting long number of years of service as a Judicial Officer. The fact that the Bills were photocopies and not the original is not a factor, which could mitigate the severity of the act of the respondent, as any paper which is part of the judicial record cannot be removed from the judicial file except after adopting a procedure, which is known to law i.e. by the orders of the Court. It is contended that the factum of tampering of the documents from the judicial record is noticed in an order passed by the Court and, therefore, on the basis of order recorded, the respondent is guilty of committing criminal contempt as defined under Section 2 (c) of the Act.

(10) On the other hand, learned counsel for the respondent argued that the contempt petition is barred by limitation inasmuch as the notice of the petition was issued only on 13.08.2012 and that will be the date of initiating proceedings against the respondent. In terms of Section 20 of the Act, no proceedings could be initiated after the expiry of one year of the alleged act of commission of contempt, which is 15.09.2010. Reliance is placed upon **Om Parkash Jaiswal** versus ***D.K.Mittal (1).*** Secondly, the Presiding Officer has not appeared as a witness, therefore, the best evidence of tearing of the documents has been withheld by the Court and, thus, the allegations against the respondent cannot be said to be proved. Thirdly, that the learned trial Court is habitual in marking wrong presence, which is evident from another complaint mode by Shri S.S.Sahi, Advocate on 16.03.2012 to this Court. Fourthly, that no hearing has taken place in the presence of the counsel on 15.9.2010. The proceedings recorded including the presence of the respondent, are factually incorrect and that the respondent reached the Court after the case wasalready adjourned. Fifthly, it is argued that since nothing was to be gained by the respondent by tearing the documents, therefore, no case of criminal contempt is said to be made out. Reliance is placed upon ***O.N.Mohindroo*** *versus* ***The District Judge, Delhi & another*** **(2).** Lastly, it is argued that the proceedings of contempt of Court are quasi judicial and the standard of proof is not of probability of commission of criminal contempt, but has to be established beyond all reasonable doubts.

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(1) (2000) 3 SCC 171
(2) AIR 1971 SC 107

(11) Having heard learned counsel for the parties, we find that the act of the respondent in taking judicial file and tearing the documents, which is part of judicial record, is an act of interference in the administration of justice and, thus, is a criminal contempt.

(12) The similar argument as is raised in the present contempt petition to contend that the proceedings of criminal contempt are barred by limitation has been dealt with by a Full Bench of this Court in a judgment reported as ***Manjit Singh*** versus ***Darshan Singh, (3)***. It has been held that Section 20 of the Act deals with initiation of contempt proceedings in two manners i.e. by 'Court in its own motion' and 'otherwise'. The process of initiation of contempt proceedings 'otherwise', includes a reference made by the subordinate Courts and by a private litigant after seeking consent of the Advocate General. It has been held that making of a reference by a subordinate Judge is the initiation of the proceedings for criminal contempt. It was held to the following effect:

> "16. .....That being the plain meaning of the word 'initiate' one has to necessarily construe the same in Section 20 in the light of section 15 which prescribes the methodology of taking cognizance of criminal contempt apart from that in facie curiam in section 14. Can it be said that when a dignitary of the level of the Advocate-General files a motion in the High Court in accordance with the rules he still would not initiate, or begin, commence, or take the first step for the contempt proceedings? To hold that this would not amount to even initiation and it would be so only when the matter is heard and the Court after applying its mind actually directs the issuance of the notice, does not appear to me as sound either on principle or on the language employed in the statute. Similarly, when a responsible District Judge makes a reference for criminal contempt of the Subordinate Court expressly provided for under section 15(2), can one still hold that he does not initiate the proceedings thereby? Similarly where a litigant presents a petition before the Advocate-General for getting his consent in writing which is a pre-condition for the High Court to take cognizance at his instance under section 15(1)(b) would he not be initiating the proceedings for criminal contempt. Though we are focussing

(3) ILR 1983(2) A & H 453

ourselves primarily on criminal contempt, the analogy of civil contempt is equally apt. If a litigant actually presents a petition in the High Court Registry under the rules for civil contempt, then the Court's action in entertaining such a petition would obviously be a beginning; a commencement or an entering upon and subsequently initiating the proceedings of civil contempt. Whether such a petition later fails or succeeds is another matter but to hold that till a decision for issuing notice thereon is made there will not even be initiation of proceedings, appears to me as unwarranted. On a true meaning of the words 'initiate' it has to be held that beginning the action prescribed for taking cognizance for criminal contempt under section 15 would be initiating the proceedings for contempt and the subsequent refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initiation.

17. I believe that the aforesaid construction placed by me not only possible but appears to be the one most reasonable in view of the somewhat peculiar (and if one may say so) an imprecisely drafted provision of section 20 of the Act. However, the sound cannon of construction is that an interpretation which leads to anomalous and sometimes absurd results causing grave hardship to the parties has to be avoided. ....."

(13) The said view was approved in a judgment reported as ***Pallav Sheth*** versus ***Custodian (4)***, wherein the judgment in D.K.Mittal's case (supra) was found to be not warranted. The relevant extract from the judgment read as under:-

"39. In the case of 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 the Law Officer of the Central Government in the case of a Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate-General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence

(4) (2001) 7 SCC 549

with a person aggrieved bringing to the notice of the court the wilful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a court was to take a suo motu action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing the attention of the court to the contempt having been committed. When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.

40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court is necessary for further steps to be taken under the Contempt of Courts Act, 1971".

(14) In view of the above, we do not find any merit in the first argument that the contempt proceedings are initiated against the respondent only after the notice was issued by this Court on 13.08.2012. The proceedings were in fact initiated when the reference was made by the Civil Judge (Junior Division), Jalandhar on 16.09.2010. We also notice that after the reference was received from the learned District & Sessions Judge, Jalandhar, it was not necessary to seek opinion or consent of the Advocate General. It has only delayed the process.

(15) The second argument that the Presiding Officer, who has referred the reference, has not been examined is again wholly untenable. It is wellsettled that the record of the proceedings made by the Court is sacrosanct; the correctness thereof cannot be doubted merely for asking. In **State of Maharashtra** versus **Ramdas Shrinivas Nayak & another** **(5)** the concession recorded in the judgment was sought to be disputed. The Supreme Court held to the following effect:

(5) (1982) SCC 463

"4. ....We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the every fact of making the concession as recorded in the judgment."

(16) Similar view was reiterated later by a three Judges' Bench in **D.P.Chadha** versus **Triyugi Narain Mishra & others (6)**, wherein the Court also considered an argument that the presiding officer has been transferred, therefore, such an application could not been filed before him. The Court observed as under:

"20. The explanation given by the appellant for not moving the trial court for rectification in the record of proceedings is that the presiding Judge of the court had stood transferred and therefore it would have

(6) (2001) 2 SCC 221

been futile to move for rectification. Such an explanation is a ruse merely. The application for rectification should have been moved as the only course permissible and, if necessary, the record could have been sent to that very Judge for dealing with the prayer of rectification wherever he was posted. In the absence of steps for rectification having been taken a challenge to the correctness of the facts recorded in the order-sheet of the court cannot be entertained, much less upheld. We agree with the finding recorded in the order under appeal that the proceedings dated 8-4-1994 correctly state the appellant having appeared in the court and argued the matter in the manner recited therein".

(17) The conduct of the respondent finds mention in the Court proceedings. Such order is conclusive and the respondent cannot contradict it orseek proof thereof except by making an application to the said Court. Admittedly, the respondent has never moved an application before the Court tosay that what is recorded therein is not correct. In view of the fact that the Court proceedings are sacrosanct and cannot be permitted to be contradicted by alawyer or a litigant, therefore, such proceedings are not required to be proved, as a document required to be proved under the Evidence Act. Therefore, the examination of the Presiding Officer to prove the interim order passed is an argument wholly devoid of any merit.

(18) The reliance of the respondent on a complaint (Ex.R-5) made by Shri S.S.Sahi, Advocate is again wholly irrelevant to determine the act of commission of criminal contempt by the respondent. Firstly, the respondent has not produced any evidence that on the basis of such complaint any action was even proposed against the Presiding Officer. Secondly, the complaint has been made in respect of a case, in which the order was allegedly passed in February, 2012. We do not find that any notice of such subsequent complaint can be taken for permitting the respondent to contradict the interim order passed by the Presiding Officer on the basis of which present proceedings have been initiated.

(19) The argument that the respondent reached the Court room after the court proceedings stood adjourned is not tenable for the reasons recorded above and also for the reason that the respondent admits that he

was present in Court though as per his stand, he reached late, when the Presiding Officer was hearing arguments and the Reader as well as Steno were recording the evidence. The respondent has not moved any application before the learned Judge that his presence has been wrongly marked and that he was not present, but the plaintiff was present or that none of them were present. The stand is that an affidavit of the plaintiff was ready and the respondent was to tender the same. The said assertion made by the respondent is without any proof. Even if, the affidavit was ready, the fact remains that such affidavit was not produced/tendered before the Court, when the case was taken up for hearing on 15.09.2010. He has not even given the name of the official who has told him that the case stands adjourned. Therefore, the respondent cannot be permitted to dispute his presence before the Court at the time of hearing of the suit.

(20) The respondent did submit an application before the learned District & Sessions Judge for summoning of the Court file and sealing of the same on the strength of news item published. The said application is not an application for transfer of the suit. It is an application filed on judicial side, but under which jurisdiction such an application can be filed has neither been delineated in the application nor during the course of arguments before this Court.

(21) The argument that the documents were part of nathi be and were not initialed and, thus, not part of the judicial record is not tenable. Any document, which is part of the judicial record though not part of evidence, is a document on the judicial record and no one has a right to remove or mutilate any such document. The usefulness of the document or its purpose cannot be judged by the counsel representing a party. Such jurisdiction exclusively vests with the Court. Therefore, even if the document in question was part of nathi be and was not initialed by the Court, will not absolve the respondent, representing one of the parties to tinker with the document in any manner whatsoever.

(22) There is no dispute with the argument raised that the contempt proceedings are quasi judicial and the standard of proof is not of probability ofcommission of criminal contempt, but has to be established beyond reasonable doubt. However, we find that the reliance of the learned counsel

for the respondent on the judgment in O.N.Mohindroo's case (supra) is misconceived. In the said case, the Supreme Court was exercising appellate jurisdiction under the Advocates Act, 1961 against the finding of the Bar Council of India holding the appellant guilty of professional misconduct and suspending his license to practice for a year. While considering the act of commission of professional misconduct, it was observed that nothing was to be gained by an Advocate by tearing the exhibited document i.e. carbon copy of notice served by Anant Ram Whig, Advocate. The Court found that the document mutilated was not needed for the case. The Court found it difficult to believe that this mutilation was done with a sinister motive. That was the view of the Bar Council, which was upheld by the Supreme Court while allowing the review sought by the appellant therein.

(23) The said judgment has been considered by a Constitutional Bench in a judgment reported as **Supreme Court Bar Association** versus **Union of India & another (7),** wherein it has been held that while exercising contempt jurisdiction, the only cause or matter before this Court is regarding commission of contempt of court. There is no cause of professional misconduct and that the Court cannot take over the jurisdiction of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his license. It was held to the following effect:

> "41. When this Court is seized of a matter of contempt of court by an advocate, there is no "case, cause or matter" before the Supreme Court regarding his "professional misconduct" even though, in a given a case, the contempt committed by an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the licence to practice law but no issue relating to his suspension from practice is the subject matter of the case. The powers of this Court, under Article 129 read with Article 142 of the Constitution, being supplementary powers have "to be used in exercise of its jurisdiction" in the case under consideration by this Court. Moreover, a case of contempt of court is not stricto senso a cause or a matter between the parties inter se. It is a matter between the court and the contemner. It is not, strictly speaking, tried as an adversarial litigation. The party,

(7) (1998) 4 SCC 409

which brings the contumacious conduct of the contemner to the notice of the court, whether a private person or the subordinate court, is only an informant and does not have the status of a litigant in the contempt of Court case.

42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution, whenever an act adversely effects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely effects the Majesty of Law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."

(24) Therefore, the judgment in **O.N.Mohindroo's case (supra)** dealing with the question of examining 'professional misconduct' cannot be made basis to raise an argument that it is not a case of commission of criminal contempt as well.

(25) In ***R.K.Anand*** versus ***Delhi High Court, (8),*** the misconduct which a professional can indulge was said to include tampering with the Court's record by an Advocate. The Contempt proceedings were considered to be a measure to maintain the dignity and orderly functioning of the courts and also necessary for the self-protection of the court and for preservation of the purity of court proceedings. It was held as under:

(8) (2009) 8 SCC 106

"238. *In Supreme Court Bar Association vs. Union of India,* (1998) 4 SSC 409 the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practise law and the bar was considered as a punishment inflicted on him. In *Ex. Capt. Harish Uppal Vs. Union of India and Another,* (2003) 2 SCC 45 it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and orderly functioning of the courts but may become necessary for the selfprotection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an "inconvenient" court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately these examples are not from imagination. These things are happening more frequently than we care to acknowledge."

(26) In **D.P. Chadha's** case (supra), it has been observed that the courts justifiably expect from the lawyers a high standard of professional and moral obligation in the discharge of their duties. Any act or omission on the part of a lawyer which interrupts or misdirects the sacred flow of justice or which renders a professional unworthy of right to exercise the privilege of the profession would amount to misconduct attracting the wrath

of disciplinary jurisdiction. Though the aforesaid case pertains to professional conduct, but the role of an Advocate has been succinctly delineated. It was observed as under:

> "24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called — and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.
>
> **25.** An advocate while discharging duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet acounsel, in his zeal to earn success for a client, need not step over the welldefined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms."

(28) In view of the judgments of Supreme Court in ***R.K. Anand*** and ***D.P. Chadha*** cases (supra), we find that the respondent has exceeded the limits of propriety and the confidence of the Court reposed on the Member of the Bar for the smooth functioning of the Court. Such conduct lowers the authority of the Court; interferes with the due course of judicial proceedings and also interferes in the administration of justice.

(29) In view of the above discussion, we hold the respondent guilty of commission of criminal contempt as defined under Section 2 (c) of the Act.

(30) List again on 07.02.2014 for hearing the respondent on the quantum of sentence.

V. Suri