



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/MISC. CIVIL APPLICATION (FOR CONTEMPT) NO.1067 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA **Sd/-**
and
HONOURABLE MS. JUSTICE GITA GOPI **Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

JAHIRMIYA REHAMUMIYA MALEK
 Versus
 STATE OF GUJARAT

Appearance:

MR I H SYED, SENIOR ADVOCATE WITH MR PRITHU PARIMAL WITH MR VISHRUT BHANDARI WITH MR GULREJ SAIYED WITH MR ANIQ KADRI WITH MR SHAAN MUNSHAW WITH SHREYA OJHA WITH MR ASFAK G. MALEK for the Applicant(s) No. 1,2,3,4,5

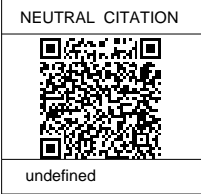
MR MITESH AMIN, PUBLIC PROSECUTOR WITH MS VRUNDA SHAH, APP for the Opponent(s) No. 1,15,16

MR JAL UNWALA, SENIOR ADVOCATE WITH MS TEJAL A VASHI(2704) for the Opponent(s) No. 10,14,4,7,8

MR PRAKASH JANI, SENIOR ADVOCATE WITH MR SHIVANG P JANI for the Opponent(s) No. 11,12,13,2,3,5,6,9

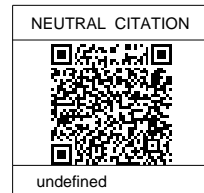
CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
 and
HONOURABLE MS. JUSTICE GITA GOPI

Date : 19/10/2023
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)



“Human rights are not a privilege conferred by government. They are every human being's entitlement by virtue of his humanity. The right to life does not depend, and must not be contingent, on the pleasure of anyone else, not even a parent or sovereign” : Mother Teresa.

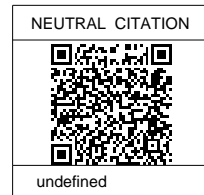
- (1) In the instant case, the respondents, who are the responsible police officers, have defiled the human rights and dignity of the complainants as if they were conferred the privilege to do so.
- (2) The present contempt application emanates from an incident, which has taken place on 03.10.2022 at Village Undhela, Taluka Matar, District Kheda during the Garba festival. It is alleged by the complainants that the respondent nos.2 to 14 had illegally detained them and assaulted in the night of 03.10.2022 and thereafter, an F.I.R. was registered on 04.10.2022 against them for the offence punishable under Sections 34, 143, 147, 148, 149, 295A, 307, 323, 332, 337, 427, 504 and 506(2) of the Indian Penal Code, 1860 (IPC), wherein the complainants along with others were also arraigned as accused. It is further



alleged that on 04.10.2022 at around 2:00 p.m., they were brought back to Undhela Village Masjid Chawk and were tied to a pole in the middle of the Chawk and brutally beaten up by the respondent nos.2 to 14 using sticks in front of the crowd. It is further alleged that videos of such beating up were recorded and circulated in the public and had also been reported in the press and they were beaten at the instance of the Member of Legislative Assembly (MLA) of the Mater Constituency namely, Shri Kesharsinh Solanki.

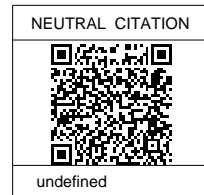
- (3) It is the case of the complainants that their arrest and subsequent act of the respondent nos.2 to 14 of tying them to the pole on the next date i.e. on 04.10.2022 and thereby, flogging them in public view and also instructing the public to record the video would amount to flagrant violation of the law enunciated by the Apex Court in the case of *D.K.Basu vs. State of West Bengal*, 1997(1) S.C.C. 416 and will amount to contempt of Court under section 2(b) read with section 12 of the Contempt of Courts Act, 1971 (for short "the Act").

It is contended by the respondent nos.2 to 14 that since the application does not contain



under Article 215 of the Constitution of India, the same may not be entertained. As per Article 215 of the Constitution of India, the High Court is a Court of record and powers of a Court include the power to punish for contempt and jurisdiction of High Court under Article 215 of the Constitution of India is inherent to enable it to uphold the majesty of the Institution as well as for preventing interference in administration of justice.

The Apex Court in the case of Sahdeo @ Sahdeo vs. State of Uttar Pradesh, 2010 (3) S.C.C. 705, while examining the contempt proceedings emanating from the violation of guidelines in the case of *D.K.Basu (supra)* has held that the High Court has a power to initiate the contempt proceedings *suo motu* for ensuring the compliance of the orders passed by the Court. However, it is clarified that such powers can be invoked as vested in the High Court under Article 215 of the Constitution of India in accordance with the procedure prescribed by the law. The Apex Court in the case of Priya Gupta vs. Additional Secretary, Ministry of Health and Family Welfare, (2013) 11 S.C.C. 404 has held



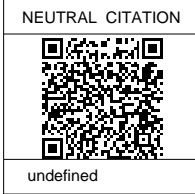
that "the orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it."

- (4) We have heard the learned Senior Advocates appearing for the respective parties on numerous occasions. Learned Senior Advocate Mr.Jani, while placing reliance on the judgement of the Apex Court in the case of **Sahdeo @ Sahdeo** (supra), has contended that in a case, the order passed by the Court is not complied with by mistake, in inadvertence or by misunderstanding of the meaning and purport of the order, unless it is intentional no charge of contempt can be brought home. In this regard he has also placed reliance on the judgements in cases of Dr.U.N.Bora, Ex.Chief



Executive Officer Vs. Assam Roller Flour Mills Association, 2022 (1) S.C.C. 101 and Ashok Paper Mills Kamgar Union Vs. Dharam Godha, 2003 (11) S.C.C. 1. He has also placed reliance on decision in case of Three Cheers Entertainment (P) Ltd. Vs. C.E.S.C Ltd, 2008 (16) S.C.C. 592, and has contended that for enforcing the order passed by the Court, a roving inquiry is impressible, and the Court has to permit the cross-examination of witnesses to enable the Court to reach a particular finding. With regard to the imposition of sentence in contempt proceedings reliance is placed by the learned Senior Advocate Mr.Jani on the decisions of the Apex Court in the cases of Supreme Court Bar Association vs. Union of India, 1998 (4) S.C.C. 409, Mrityunjoy Das vs. Sayed Hasibur Rahman, 2001 (3) S.C.C. 739 and Pushpaben vs. Narandas V Badiani, 1979 (2) S.C.C. 394.

- (5) Learned Senior Advocate Mr.Jani has also tendered the written submissions. It is noticed by us that by enlarge the contentions raised in the written submissions pertain to non-maintainability of the present application under the Act. While dealing with the issue of maintainability of the present application



filed under section 12 of the Act, seeking initiation and punishment of respondent nos.2 to 14 for violation of the guidelines of the Supreme Court in the case of *D.K.Basu (supra)*, this Court, vide a comprehensive order dated 12.07.2023 has held that the same as maintainable, and further directions were issued to the learned Chief Judicial Magistrate, Kheda at Nadiad to prepare a report recording the role of each of the respondents upon verifying the contents of the videos and images placed on record. Hence, we are not inclined to again deal with the issues raised in the written submissions in this regard.

- (6) The learned Magistrate sent a report dated 31.07.2023. By an order dated 11.08.2023, the same was taken on record and copies were also supplied to the respective respondents, and further opportunity was granted to them to respond to the same.
- (7) In the report dated 26.09.2023, filed by the learned Magistrate, following observations are recorded.

“(V) Conclusion:

1) The respondent No.02-Mr.A.V.Parmar is identified as person in white shirt and blue



jeans in the videos, who is seen giving 03-06 stick blows on buttock of applicant no 03-05 (out of which three applicants identified themselves and him in the videos).

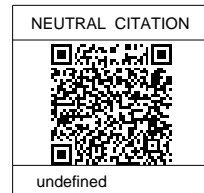
2) The respondent No.03-Mr.D.B.Kumavat is identified as man in lightblue shirt and black pants, who is seen in the videos sitting in the chair and in some screenshots standing in the background. Not seen with stick or beating any applicants.

3) The respondent No.05-Mr.Kanaksingh Laxman Singh is identified as man in orange white checks and dark blue jeans in the videos. His presence is seen in videos of applicant No.03 and 04 holding white pipe and pushing applicants towards Van. Not seen beating the applicants in the videos but can be seen pushing them towards Van. He is seen raising pipe on applicant No.03 in one screenshot photograph.

4) The respondent No.13-Mr Raju Rameshbhai Dabhi (identified by the applicant number 03-05). He can be seen holding hands of the applicants no 03-05 to the pole while respondent No.02 giving blows of the stick on their buttock.

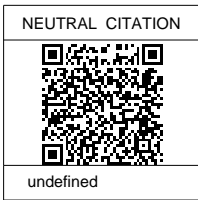
5) No role can be identified by this court, also not identified by the applicants in the Court as to other respondents No.04, 06 to 12 and 14 for beating them in any of the videos in the pendrive and photographs as to alleged incident produced by them."

(8) In light of the report of the learned Magistrate, this Court, after hearing the learned Senior Counsel at length vide order



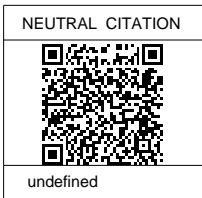
dated 04.10.2023 framed charge against the respondent no.2-Mr.A.V.Parmar, the respondent no.3-Mr.D.B.Kumavar, respondent no.5-Mr.Kanaksingh Laxman Singh, the respondent no.13-Mr.Raju Rameshbhai Dabhi, who are identified and their presence is shown at the time of incident. The role of each of the accused was examined, including the respondent no.3, who had contended to drop the proceedings since he is not seen assaulting anyone, but was sitting on a chair when the complainants were being assaulted. The other respondents were ordered to be deleted from the array of parties and the contempt proceedings were closed against them.

- (9) After the charge was framed, further opportunity was extended to the respondents to respond to the charges and the matter was ordered to be listed on 11.10.2023. The respondents have thereafter, also filed additional affidavits. On 11.10.2023, the respondents requested for awarding compensation, and the matter was adjourned on 16.10.2023. Since the complainants have refused to settle the matter, it was further listed today for dictation of judgment.



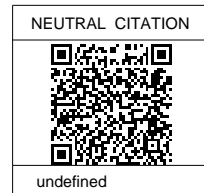
::ESTABLISHED FACTS:::

- (a) On 03.10.2022 around 11:00 p.m., an altercation broke out at Village Undhela, Taluka Matar, Dist.Kheda arising out of Garba Festivities. It is stated that the Garba festivities took place at this venue for the first time, even though there is an existing venue in the village for Garba to take place.
- (b) On 03.10.2022 around 11:30 - 12:30 in the night hours, the police personnel from the Local Crime Branch (LCB), including the present respondents arrived at the scene and detained the present complainants.
- (c) After being detained, the complainants were taken to the Special Operations Group (SOG) Police Station, Kheda and were kept in detention overnight.
- (d) On 04.10.2022 at 4:30 a.m., an FIR bearing No.11204040220241 of 2022 was lodged with Matar Police Station for offences punishable under Sections 34, 143, 147, 148, 149, 295A, 307, 323, 332, 337, 427, 504 and 506(2) of the IPC, wherein the

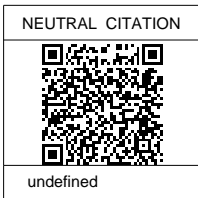


complainants and others were arraigned as accused.

- (e) On 04.10.2022 around 12:00 p.m., the complainants were brought back, while in police custody in a police van at Undhela village, Masjid Chawk and were tied to the police in the middle of the Chawk and brutally beaten up by using lathis in front of the crowd. The videos of such beating up were recorded and circulated in the public and has also been reported in the press.
- (f) On 04.10.2022 at 9:15 p.m., the complainants were taken for Matar Police Station, District Kheda where they were arrested in connection with the FIR bearing No.11204040220241 of 2022. In fact, the complainants were shown to have been arrested only on 04.10.2022 at 9:15 p.m.
- (g) On 04.10.2022, the petitioners preferred a representation before the Inspector General (I.G.) (Ahmedabad Range) requesting that necessary steps, in the form of a departmental inquiry, be taken against the erring policemen.

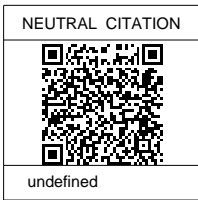


- (h) On 05.10.2022, around 2:00 p.m., the petitioners were produced before the concerned Magistrate, after their arrest in connection with the aforesaid F.I.R. Upon production, some of the complainants preferred a complaint of police atrocities before the Magistrate and the Magistrate directed the medical examination.
- (i) On 05.10.2022, the medical certificates clearly show the history as "*assault by police with injuries*" on the victims.
- (j) On 10.10.2022, a private complaint under section 190 of the Code of Criminal Procedure, 1973 (Cr.P.C.) being Criminal Inquiry No.26 of 2022 was filed before the Magistrate arising out of the same incident. On the same day, the Magistrate ordered an investigation under Section 202 of the Cr.P.C. by the I.G. (Ahmedabad Range) pursuant to the aforesaid complaint.
- (k) On 13.10.2022, the Magistrate passed an order holding that since an investigation under section 202 of the Cr.P.C. is underway by the I.G. (Ahmedabad Range),



the application under Section 91 of the Cr.P.C. stands rejected.

- (l) On 24.10.2022, the complainants preferred an application before the I.G. (Ahmedabad Range) for seizure of the CCTV footage and DVR so that it may not be destroyed or manipulated, since an investigation under Section 202 of the Cr.P.C. was already underway.
- (m) On 06.12.2022, the I.G. (Ahmedabad Range) issued a charge memo to the erring policemen.
- (n) On 29.01.2023, the Superintendent of Police, Nadiad has filed an affidavit before this Court, which confirms the allegations levelled by the complainants in the present application.
- (o) On 07.02.2023, the report under section 202 of the Cr.P.C. of the I.G. (Ahmedabad Range) to the Magistrate, wherein it is concluded that the victims were beaten by six policemen viz. (1) Police Inspector, A.V. Parmar; (2) Armed Head Constable, Kanaksinh Laxmansinh; (3) Armed Police

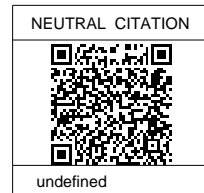


Constable, Arjunsinh Fatehsinh; (4) Armed Police Rajendrasinh Rameshbhai; (5) Unarmed Head Constable Maheshbhai Vashrambhai; (6) Unarmed Head Constable Vishnubhai Harjibhai and are seen beating the victims in the video, which got viral. Hence, the I.G. has concluded that the offences under Sections 323 and 166 of the IPC are made out.

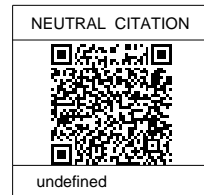
VIOLATION OF GUIDELINES:

(10) After the charge was framed, further opportunity was extended to the respondents to respond to the charges and matter was ordered to be listed on 11.10.2023. The respondents have thereafter, also filed additional affidavits. On 11.10.2023, the respondents requested for awarding compensation, and the matter was adjourned on 16.10.2023. Since the complainants have refused to settle the matter, it was further listed today for dictation of judgment.

(11) The arrest of the complainants has the following infirmities in contravention of the judgment of the Apex Court in the case of **D.K.Basu** (supra):



(i) The complainants were detained on 03.10.2022 between 11:30 to 12:30 in the night hours from Undhela village, Tal.Matar, Dist. Kheda. The complainants were taken to the SOG Police Station at Kheda and were detained in the night hours. The F.I.R is registered at 04:30 a.m. on 04.10.2022 at Matar Police station. The arrest memos specify that the time of arrest was 11:15 p.m. on 04.10.2022. Thus, though the complainants were detained at the SOG Police Station at Kheda during the night hours of 03.10.2022, the F.I.R is registered at the Matar Police Station, Kheda in the morning hours at 04:30 a.m. of 04.10.2022 and their time of arrest is shown as 9:15 p.m. on 04.10.2022 for the reasons best known to the respondents. It is also shocking and surprising to note that, during the period of registration of the F.I.R at 04:10 a.m., and their arrest at 09.:15 p.m. on 04.10.2022, the complainants are brought at Village Chawk, tied to the pole and brutally beaten. Thus, after they are mercilessly assaulted, they are arrested. Thus, it appears that in order to come within the limit of 24 hours prescribed for production before the Magistrate, the arrest appears to have been shown at 9:15 p.m. on 04.10.2022, though they were already detained and beaten in full public view. Thereafter, on 05.10.2022 around 2:00 p.m.,



the petitioners were produced before the concerned Magistrate.

- (ii) No signatures of the relatives were taken on the arrest memo.

LEGAL PRECEDENTS:

- (12) We shall now endeavour to consider the legal precedents set by the Apex Court on the issue raised in the present application.

- (13) In the case of *Sunita Devi vs. state of Bihar*, 2005 (1) S.C.C. 608, the Apex Court has noticed the definition of custody as under:

"6. In Black's Law Dictionary by Henry Campbell Black, MA (6th Edn.), the expression "custody" has been explained in the following manner:

"The term is very elastic and may mean actual imprisonment or physical detention.... Within statute requiring that petitioner be 'in custody' to be entitled to federal habeas corpus relief does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty. ... Accordingly, persons on probation or parole or released on bail or on own recognizance have been held to be 'in custody' for purposes of habeas corpus proceedings."

- (14) In the case of *Priya Gupta (supra)*, the Apex Court has observed as under:



"9 The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. [Ref. East India Commercial Companies Ltd. V/s. Collector of Customs [AIR 1962 SC 1893] and Official Liquidator V/s. Dayanand & Ors [(2008) 10 SCC 1].

10 These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice."

(15) In the case of Dr.Mehmood Nayyar Azam vs. State of Chhattisgarh, 2012 (8) S.C.C. 1, the Apex Court, while examining the case of custodial harassment at the hands of the police, has held thus:



"22 After referring to the case of Joginder Kumar (supra), A.S. Anand, J. (as his Lordship then was), dealing with the various facets of Article 21, stated that any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen, for a citizen does not shed off his fundamental right to life, the moment a policeman arrests him. The right to life of a citizen cannot put in abeyance on his arrest. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

23 At this juncture, it becomes absolutely necessary to appreciate what is meant by the term "harassment". In P. Ramanatha Aiyar's Law Lexicon, Second Edition, the term "harass" has been defined, thus: -

"Harass. "injure" and "injury" are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word "harass" excluding the latter from being comprehended within the word "injure" or "injury". The synonyms of "harass" are: To weary, tire, perplex, distress, tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit."

The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment.

24 At this juncture, we may refer with profit to a two-Judge Bench decision in Sunil Gupta and others V/s. State of Madhya Pradesh and others. The said case pertained to handcuffing where the accused while in judicial custody were being escorted to court from jail and bound in fetters. In that context, the Court stated that the escort



party should record reasons for doing so in writing and intimate the court so that the court, considering the circumstances may either approve or disapprove the action of the escort party and issue necessary directions. The Court further observed that when the petitioners who had staged 'Dharna' for public cause and voluntarily submitted themselves for arrest and who had no tendency to escape, had been subjected to humiliation by being handcuffed, such act of the escort party is against all norms of decency and is in utter violation of the principle underlying Article 21 of the Constitution of India. The said act was condemned by this Court to be arbitrary and unreasonably humiliating towards the citizens of this country with the obvious motive of pleasing 'someone'.

25 In *Bhim Singh, MLA V/s. State of J & K*, this Court expressed the view that the police officers should have greatest regard for personal liberty of citizens as they are the custodians of law and order and, hence, they should not flout the law by stooping to bizarre acts of lawlessness. It was observed that custodians of law and order should not become depredators of civil liberties, for their duty is to protect and not to abduct.

26 It needs no special emphasis to state that when an accused is in custody, his Fundamental Rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Article 21 of the Constitution and a fortiori, it includes the right to live with human dignity and all that goes along with it. It has been so stated in *Francis Coralie Mullin V/s. Administrator, Union Territory of Delhi and others*, and *D.K. Basu (supra)*.

27 In *Kharak Singh V/s. State of U. P.*, this court approved the observations of Field, J. in *Munn V/s. Illinois*:-

"By the term "life" as here [Article 21] used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed."

28 It is apposite to note that inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience.



29 In *Arvinder Singh Bagga V/s. State of U.P. and others*, it has been opined that torture is not merely physical but may even consist of mental and psychological torture calculated to create fright to submit to the demands of the police.

30 At this stage, it is seemly to refer to the decisions of some of the authorities relating to a man's reputation which forms a facet of right to life as engrafted under Article 21 of the Constitution.

31 In *Smt. Kiran Bedi V/s. Committee of Inquiry and another*, this Court reproduced an observation from the decision in *D. F. Marion V/s. Davis*:-

"The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property."

32 In *Board of Trustees of the Port of Bombay V/s. Dilipkumar Raghavendranath Nadkarni and others*, it has been ruled that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.

33 In *Smt. Selvi and others V/s. State of Karnataka*, while dealing with the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the Brain Electrical Activation Profile test for the purpose of improving investigation efforts in criminal cases, a three-Judge Bench opined that the compulsory administration of the impugned techniques constitute 'cruel, inhuman or degrading treatment' in the context of Article 21. Thereafter, the Bench adverted to what is the popular perception of torture and proceeded to state as follows: -

"The popular perceptions of terms such as 'torture' and 'cruel, inhuman or degrading treatment' are associated with gory images of blood-letting and broken bones. However, we must recognize that a forcible intrusion into a person's mental processes is also an affront to human dignity and liberty, often with grave and long-lasting consequences. [A similar conclusion has been made in the following paper: Marcy Strauss, 'Criminal



Defence in the Age of Terrorism - Torture', 48 New York Law School Law Review 201-274 (2003/2004)]."

After so stating, the Bench in its conclusion recorded as follows: -

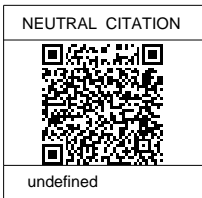
"We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to 'cruel, inhuman or degrading treatment' with regard to the language of evolving international human rights norms."

34 *Recently in Vishwanath S/o Sitaram Agrawal V/s. Sau. Sarla Vishwanath Agrawal, although in a different context, while dealing with the aspect of reputation, this Court has observed as follows: -*

".....reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."

35 *We have referred to these paragraphs to understand how with the efflux of time, the concept of mental torture has been understood throughout the world, regard being had to the essential conception of human dignity.*

36 *From the aforesaid discussion, there is no shadow of doubt that any treatment meted to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history." The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector. That is why, an investigator to a*



crime is required to possess the qualities of patience and perseverance as has been stated in Nandini Sathpaty V/s. P. L. Dani.

37 In Delhi Judicial Services Association V/s. State of Gujarat, while dealing with the role of police, this Court condemned the excessive use of force by the police and observed as follows:-

"The main objectives of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police and it must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated."

38 It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities. We may hasten to add that a balance has to be struck and, in this context, we may fruitfully quote a passage from D. K. Basu (supra): -

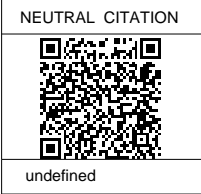
"There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the Courts. The right to interrogate the detenus, culprits or arrestees in



the interest of the nation, must take precedence over an individual's right to personal liberty.The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated- indeed subjected to sustain and scientific interrogation- determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplishments, weapons etc. His constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal."

39 In the case at hand, the appellant, while in custody, was compelled to hold a placard in which condemning language was written. He was photographed with the said placard and the photograph was made public. It was also filed in a revenue proceeding by the 7th respondent. The High Court has recorded that the competent authority of the State has conducted an enquiry and found the erring officers to be guilty. The High Court has recorded the findings in the favour of the appellant but left him to submit a representation to the concerned authorities. This Court, as has been indicated earlier, granted an opportunity to the State to deal with the matter in an appropriate manner but it rejected the representation and stated that it is not a case of defamation. We may at once clarify that we are not at all concerned with defamation as postulated under Section 499 of the IPC. We are really concerned how in a country governed by rule of law and where Article 21 of the Constitution is treated to be sacred, the dignity and social reputation of a citizen has been affected.

40 As we perceive, from the admitted facts borne out on record, the appellant has been humiliated. Such treatment is basically inhuman and causes mental trauma. In "Kaplan & Sadock's Synopsis of Psychiatry", while dealing with torture, the learned authors have stated that intentional physical and psychological torture of one human by another can have emotionally damaging effects comparable to, and possibly worse than, those seen with combat and other types of trauma. Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the



victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied. We have referred to such aspects only to highlight that in the case at hand, the police authorities possibly have some kind of sadistic pleasure or to "please someone" meted the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator. As Pithily stated in *Jennison V/s. Baker*:-

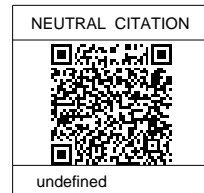
"The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."

(16) In the case of *Dr. Balwant Singh Vs. Commissioner Of Police*, 2015 (4) S.C.C. 801, it is reiterated as under:

"31 Indeed, this reminds us of the subtle observations made by Justice M.C. Chagla, Chief Justice of Bombay High Court in *Firm Kaluram Sitaram V/s. The Dominion of India*, AIR 1954 Bombay 50, wherein while deciding the case between the citizen on the one hand and State on the other, the learned Chief Justice in his distinctive style of writing reminded the State of their duty towards the citizens while contesting his rights qua State and made the following observations.

"....we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent judges, as an honest person....."

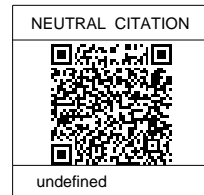
32 We are in complete agreement with the aforementioned statement of law laid down in *Firm Kaluram Sitaram* (supra) as far back as in 1954. In our considered view, the Constitution, inter alia, casts a duty on the State and



their authorities to ensure that every citizen's cherished rights guaranteed to him under the Constitution are respected and preserved, and he/she is allowed to enjoy them in letter and spirit subject to reasonable restrictions put on them, as dreamt by the framers of the Constitution. Intervention of the Court is called for at the instance of citizen when these rights are violated by fellow citizens or by any State agency."

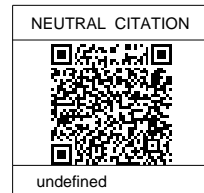
(17) **PRECEPTS FROM THE APEX COURT JUDGEMENTS INCLUDING IN THE CASE OF D.K.BASU (SUPRA)**

- (A) The orders passed by the Supreme Court are the law of the land in terms of Article 141 of the Constitution of India and no Court or Tribunal and for that matter any other authority, the executive and instrumentalities of the State and all of them have to fall in line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice.
- (B) Any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen,

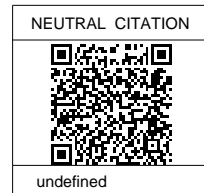


for a citizen does not shed-off his fundamental right to life, the moment a policeman arrests him. The right to life of a citizen cannot be put in abeyance on his arrest. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

- (C) The police officers should have greatest regard for the personal liberty of citizens as they are the custodians of law and order and, hence, they should not flout the law by stooping to bizarre acts of lawlessness. The custodians of law and order should not become depredators of civil liberties, for their duty is to protect and not to abduct. When an accused is in custody, his Fundamental Rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Article 21 of the Constitution and *a fortiori*, it includes the right to live with human dignity and all that goes along with it.



- (D) It is apposite to note that an inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience.
- (E) Intentional physical and psychological torture of one human by another can have emotionally damaging effects comparable to, and possibly worse than, those seen with combat and other types of trauma. Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator.

**CONCLUSION :**

(18) The direction issued by the Apex Court till today remain in its true and pristine form. Hence, any deviation or violation of such directions or guidelines would definitely trigger the observations made in Paragraph No.37 in the case of ***D.K.Basu (supra)***. In the case of *Ahmed Noormohmed Bhatti Vs. State of Gujarat and Ors.*, (2005) 3 S.C.C. 647, after referring to the eleven guidelines declared in the case of ***D.K.Basu (supra)***, the Apex Court has observed that these guidelines/requirements are in addition to the constitutional and statutory safeguards and do not trim down the various directions given by the Court from time to time in connection with the safeguarding of the rights and dignity of the arrestees.

(19) In the case of ***Ashok Paper Mills Kamgar Union (supra)***, the Apex Court had an occasion to consider the concept of 'willful disobedience' of an order of the Court. It is held that 'willful' means an act or omission, which is done voluntarily and with a specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with

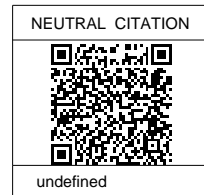


bad purpose either to disobey or to disregard the law. According to the Apex Court, it signifies the act done with evil intent or with a bad motive for the purpose.

- (20) The Division Bench of this Court in case of Prakash Kapadia, President Of Jagega Gujarat Sangharsh Vs. Commissioner Of Police (Ahmedabad City), 2012 (5) G.L.R. 3825 has held thus:

"35 In the historic judgment in D.K.Basu v/s. State of West Bengal (A.I.R. 1997 SC 610) the Supreme Court initiated the development of "Custodial Jurisprudence" including torture to arrestee infringement of fundamental rights, citizen entitled to receive compensation from State, quantum of compensation would depend on peculiar fact of each case and punishment under section 330 of Penal Code is inadequate to repair the wrong done to citizen. The Supreme Court of India lamented on the control of police power of arrest and issued guidelines in carry out arrest and detention by police and law enforcement agencies in the country. They also have the force of law (Article 141 of the Constitution states that the law declared by the Supreme Court is binding on all courts in India). An officer who willfully or inadvertently ignored Supreme Court directives can be tried in court under relevant provisions of the Indian Penal Code and/or under the Contempt of Courts Act, 1971."

- (21) The established facts of the present case, indicate that the respondents have indulged themselves in the acts which are forbidden by law and they have disregarded the law declared by the Apex court in *D.K.Basu (supra)* and catena of decisions. The Division Bench of



this Court has held "*An officer who willfully or inadvertently ignored Supreme Court directives can be tried in court under relevant provisions of the Indian Penal Code and/or under the Contempt of Courts Act, 1971.*". Thus, even if the respondents have inadvertently ignored the Supreme Court directives, they are liable to be tried under the Contempt of Courts Act. The acts of the respondents are reminiscent of their intent to fail to do something the law required them to do, and they have engaged themselves in committing an inhuman act with a horrific purpose to humiliate the complainants in full public view. The law enunciated by the Apex court in the case of ***D.K.Basu (supra)*** is flagrantly violated by the respondents in committing the egregious act. The insensate act of the respondents cannot be restricted to the violation of guidelines stipulated in paragraph No.35 of the judgement of ***D.K.Basu (supra)***, but it also breaches the true spirit and purport of the judgement, i.e. the protection of human dignity, values and rights guaranteed under the Constitution of India.

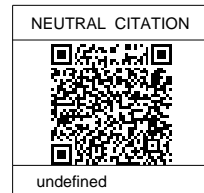


APOLOGY

(22) The respondents in their affidavits and submissions advanced before us have also urged that the apology tendered by them may be accepted. The exposition of law on the acceptance of apology in contempt proceedings, has been dealt with and reiterated by the Supreme Court in catena of decisions. Being conscious of the facts of the case, we may refer couple of them as below:

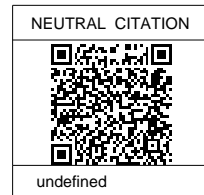
(23) In the case of J.Vasudevan Vs. T.R.Dhananjaya, 1995 (6) S.C.C. 249 : AIR 1996 SC 137, while examining the aspect of mercy in contempt proceedings, the Supreme Court has held thus:

"14 Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemnor, the Court does so the uphold to majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unflinching faith of the people in the Courts remain intact. But, if the order of even the highest Court of the land is allowed to be wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would sent wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest Court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of the administration of justice and would desist from approaching the Court, by spending time, money and energy their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the Courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a



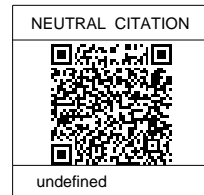
death knell to the rule of law and social justice would receive a fatal blow. The Court cannot be a party to it and, harsh though it may look, it is duty bound to award proper punishment to unhold the rule of law, how so high a person may be. It may be stated, though it is trite, that nobody is above the law. The fact that the petitioner is an I. A. S. Officer is of no consequence, so far as the sentence is concerned. We would indeed think that if a high officer indulges in an act of contempt, he deserves to be punished more rigorously, so that nobody would take to his head to violate Court's order. May we also say that a public officer, being a part of Government, owes higher obligation than an ordinary citizen to advance the cause of public interest, which requires maintenance of rule of law to protect which contemnors are punished."

(24) The Apex Court has declared that while awarding sentence on a contemnor, the Court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity and it is really to see that unflinching faith of the people in the Courts remain intact. It is cautioned by the Supreme Court that if the order of even the highest Court of the land is allowed to be flagrantly violated and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everyone in the country and it will be deleterious to the rule of law. In a situation like this, if mercy is shown, the effect would be that people would not knock the door of the Courts to seek justice, but would settle score on the streets, where muscle power and money power



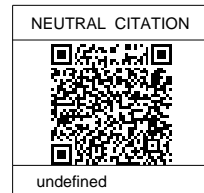
would win, and the weak and the meek would suffer, and that would be a death knell to the rule of law and social justice would receive a fatal blow. It has been asserted that the Court cannot be a party to it and, harsh though it may look, it is duty bound to award proper punishment to uphold the rule of law, how so high a person may be. In the instant case the barbaours act has been videographed and has been widely circulated in media and has not remained confined to Undhela Chowk. The apology tendered cannot be accepted in a routine manner, although the apology may be unconditional and *bona fide*. If the conduct is so serious and reckless which disintegrates the law declared by the highest court of land, and has debilitating effect on the rule of law, the apology cannot be accepted. In the present case, it is not only the majesty of the Court that has been degraded, but the self-respect of the complainants is blown to smithereens. The apology tendered to this Court "only" will not wipe out the scars left on the psyche of the complainants.

(25) Even after the declaration of guidelines in the case of *D.K.Basu (supra)*, the Supreme Court on numerous occasions has reiterated and



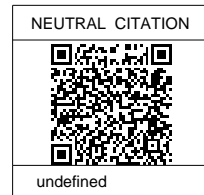
emphasised to follow and enforce them, but it appears that the same has fallen in deaf ears, and there seems to be no improvement in the state of affairs. The guidelines are blatantly violated and ignored, perhaps in the expectation of gaining yellow pages fame and with self assurance and self security of being immune to legal consequences. In the present case, it is apparent that the respondents meted the appellants with merciless and humiliating treatment. If we accept the apology of the respondents, the same will be a travesty of justice. The inhuman acts committed by them are beyond the contours of forgiveness. It is not open for the respondents to contend that the law declared by the Apex Court does not apply to them, since it cannot be said that the complainants were not subjected to custodial torture. Such a contention is not only fallacious, but also runs contrary to the spirit of the judgment of ***D.K.Basu (supra)***.

- (26) The feeling of getting humiliated to the extent that it obliterates their sense of being human is a stand alone feeling and is not legally compensable. Thus, the acceptance of apology tendered by the respondents will



sent a wrong message to the society at large, and everyone who has committed such an inhumane act will cultivate a feeling of being pardoned by the Court of law, and those who have not yet engaged in such act, will be encouraged to do so. In order to uphold the majesty of law and to protect the unflinching faith of the people in the "Judiciary", We hold the **respondent No.2-Mr.A.V.Parmar, the respondent No.3-Mr.D.B.Kumavar, Respondent No.5-Mr.Kanaksingh Laxman Singh, and the respondent No.13-Mr.Raju Rameshbhai Dabhi** guilty of the Act, as defined under Section 2(b) of the Act.

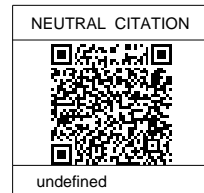
(27) Section 12 of the Act prescribes the punishment of simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both. The judgments, on which the reliance is placed by the respondents with regard to determination of sentence cannot come to their rescue, since neither the facts nor the precedent of law applied will apply to the facts of the present case. It is also contended that the respondent no.2 has recovered from a major surgery of brain tumor, and he is advised another surgery, the



respondent no.3 has completed 23 years of service in the Police Department and has an unblemished record, the respondent no.5 has completed 27 years of service, hence, no sentence should be imposed.

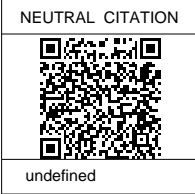
SENTENCE

- (28) We have heard the learned Senior Advocates for the respective parties on the aspect of sentence.
- (29) Learned Senior Advocate Mr.Jani, while placing reliance on the judgement of the Apex Court in the case of ***Bar Council Association (supra)*** has submitted that considering the social aspects of the respondents, fine may be imposed instead of sentencing for imprisonment. He has requested on behalf of the respondents to take a liberal view and has suggested that any directions regulating their future conduct may be passed and the matter may be kept pending, in order to observe whether they are abiding any directions issued by this Court in this regard.
- (30) In response to the aforesaid submissions, learned Senior Advocate Mr.Syed, while placing reliance on the decision of the Apex Court in



the case of *J. Vasudevan (supra)* has submitted that since the Court has already expressed/formed an opinion of the blatant disregard to the rule of law by the respondents, the contemnors should be rigorously punished though they are high ranking officers. He has submitted that the Apex Court has observed that a public officer, being a part of Government, owes higher obligation than an ordinary citizen to advance the cause of public interest, which requires maintenance of rule of law, to protect which contemnors are punished. The reliance is also placed by him on the decision of the Apex Court in the case of *Balram Singh vs Bhikam Chand Jain And Ors.*, (1985) 4 S.C.C. 246 and has submitted that the Apex Court has rejected the similar request made by the contemnors for imposition of fine instead of simple imprisonment with fine. He has thus submitted that the acts, which are committed by the respondents, are worthy of inviting simple imprisonment instead of imposition of fine.

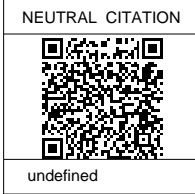
(31) At this stage, we may incorporate observations made by the Apex Court in the case of *Balram Singh (supra)* :



"As a last resort, he contended that even if they are committed for contempt, they should be sentenced to pay a fine. It would be a travesty of justice if the Court were to allow such gross contempt of Court to go unpunished, without an adequate sentence and we find no mitigating circumstances whatever not to pass a sentence of imprisonment. We accordingly commit the contemnors for contempt of Court and sentence each of them to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 1,000 or in default, to undergo simple imprisonment for a further period of one month."

::ORDER::

(32) We have already discussed the inhuman acts committed by the respondents on the complainants by violating the law declared by the Supreme Court. Looking to the over all facts and the manner, in which the incident has occurred and in light of the service rendered by the respondents in the Police department, in our considered opinion, the interest of justice would be served if the respondents are ordered sentence of undergoing simple imprisonment of 14 days and fine of Rs.2,000/- and in default, further simple imprisonment of 3 days. Hence, **the respondent No.2-Mr.A.V.Parmar, the respondent No.3-Mr.D.B.Kumavar, Respondent No.5-Mr.Kanaksingh Laxman Singh, and the respondent No.13-Mr.Raju Rameshbhai Dabhi** are sentenced to undergo simple imprisonment of 14 (fourteen) days and fine of Rs.2000/- and in default, shall further undergo simple imprisonment for 3 days. The contempt application is allowed. Rule made absolute. No order as to costs.



- (33) We appreciate the efforts put in by the learned Chief Judicial Magistrate, Nadiad in preparing the report, which has facilitated us to effectively deal with the instant contempt application.
- (34) The respondents are directed to present themselves before the Registrar Judicial of this Court within 10 days from the date of receipt of the present order. The Registrar Judicial shall accordingly refer them to the appropriate jail authority.
- (35) At this stage, learned Senior Advocate Mr.Jani, while inviting attention of this Court to the provisions of Section 19(4)(b) of the Contempt of Courts Act, 1971 has submitted that the directions issued by this Court may be stayed for the period of 60 days.
- (36) We accede to his request. The directions issued by this Court with regard to the sentence are stayed for a period of 03 (three) months.

Sd/- .
(A. S. SUPEHIA, J)

Sd/- .
(GITA GOPI, J)

NVMEWADA/2