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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CR. WRIT PETITION NO.612 OF 2023

WITH

INTERIM APPLICATION NO.2466 OF 2023

Amar Sadharam Mulchandani

...Petitioner

V/S

Directorate Of Enforcement Through Its

Deputy Director And Ors.

...Respondents

WITH

CR. WRIT PETITION NO.690 OF 2023

WITH

INTERIM APPLICATION NO.2330 OF 2023

WITH

INTERIM APPLICATION NO.1118 OF 2023

WITH

INTERIM APPLICATION NO.1120 OF 2023

Sadhana Manohar Mulchandani And Anr.

...Petitioners

V/S

Directorate Of Enforcement And Ors.

...Respondents

WITH

CR. WRIT PETITION NO.711 OF 2023

WITH

INTERIM APPLICATION NO.1117 OF 2023

WITH

INTERIM APPLICATION NO.1122 OF 2023

Ashok S. Mulchandani And Ors.

...Petitioners

V/S

Directorate Of Enforcement And Ors.

...Respondents

WITH

CR. WRIT PETITION NO.731 OF 2023

WITH

INTERIM APPLICATION NO.917 OF 2023

WITH

INTERIM APPLICATION NO.918 OF 2023

WITH

INTERIM APPLICATION STAMP NO.15945 OF 2023

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Sagar Maruti Suryawanshi ...Petitioners
V/S
Directorate Of Enforcement And Ors. ...Respondents

WITH
CR. WRIT PETITION NO.746 OF 2023
WITH
INTERIM APPLICATION NO.1755 OF 2023
WITH
INTERIM APPLICATION NO.1753 OF 2023

Sheetal Kishanchand Tejwani ...Petitioner
V/S
State Of Maharashtra And Anr. ...Respondents

WITH
CR. WRIT PETITION NO.961 OF 2023
WITH
INTERIM APPLICATION NO.1754 OF 2023
WITH
INTERIM APPLICATION NO.1752 OF 2023

Rajesh P. Sawant ...Petitioner
V/S
Directorate Of Enforcement And Ors. ...Respondents

WITH
CR. WRIT PETITION NO.1030 OF 2023
WITH
INTERIM APPLICATION NO.1751 OF 2023
WITH
INTERIM APPLICATION NO.1750 OF 2023

Girish Kishanchand Tejwani ...Petitioner
V/S
State Of Maharashtra And Anr. ...Respondents

WITH
CR. WRIT PETITION NO.646 OF 2023
WITH
INTERIM APPLICATION NO.1749 OF 2023
WITH
INTERIM APPLICATION NO.1748 OF 2023
WITH
INTERIM APPLICATION NO.1747 OF 2023

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Vinay Vivek Aranha

...Petitioner

V/S

The State Of Maharashtra And Anr.

...Respondents

Senior Advocate Mr. Ravi Kadam a/w Mr. Karan Kadam, Mr. S. R. Phanse & S. S. Bedekar a/w Ilsa Shaikh, for the Petitioner in WP/612/2023.

Mr. S. R. Phanse a/w S. S. Bedekar, for the Petitioner in WP/961/2023, WP/690/2023 & WP/711/2023.

Mr. Ajay Bhise a/w Deepali Kedar, Sagar Kursija for the Petitioner in WP/731/2023, WP/746/2023 and WP/1030/2023.

Senior Advocate Mr. A. V. Anturkar i/by Ms. Minal Chandnani a/w Amol Ekklaspur & Zoheb Merchant, for the Applicant/Intervenor in IA/917/2023, IA/1118/2023, IA/1117/ 2023, IAST/6014/2023, IAST/6012/2023 & IAST/6011/ 2023.

Mr. Zoheb Merchant, for the Applicant/Intervenor in IA/918/2023, IA/1120/2023, IA/1122/2023, IAST/6021/2023, IAST/6023/2023, & IAST/6019/2023.

Mr. Ashutosh Thipsay a/w Mr. Prabhakar Jadhav i/by Shekhar V. Mane, for Petitioner in 646/2023.

Mr. H. S. Venegavkar a/w Aditya Thakkar, Aashish Chavan, Aayush Kedia, Shreeram Shirsat, Manuj Borkar & V. Joshi, for the Respondent Nos.1 & 2/ED.

Smt. M. M. Deshmukh, APP for the Respondent/State.

CORAM : NITIN W. SAMBRE & RAJESH S. PATIL, JJ.

DATE : 10th NOVEMBER, 2023

PC.

1. The matter was posted today so as to report compliance *qua* affidavit to be filed by the respondent No.5 in respect of his act of instructing his lawyer to move praecipe containing contemptuous allegations.

2. Mr. A. V. Anturkar, learned Senior Advocate appearing for the lawyers whose affidavits were taken on record yesterday, submits that attempts made by the lawyers to contact respondent No.5 - Bhasham Hiralal Pahuja were in vain as the said respondent is not available. The learned

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Senior Advocate submits that in the wake of affidavits tendered by both the lawyers details of which are reflected in order dated November 9, 2023, the Court may grant some time to the respondent No.5 to file an affidavit in the matter.

3. In response to above, Mr. Ravi Kadam, learned Senior Advocate would urge that since there is no notice to the respondent No.5, it will be appropriate to cause notice to the said party.

4. Advocate Zoheb Merchant who appears for the respondent no.5 in the present criminal writ petition has signed a praecipe enclosing therewith a newspaper article published in the newspaper 'Rajdharm' casting aspersions on one of us (Nitin W. Sambre, J.) which states that the said Judge would be granting bail to the petitioner in the matter. The said news article further reflects that the petitioner is known to the said Judge and the petitioner's brother has circulated that so as to maintain the relations with the petitioner, the Judge is going to grant the relief. It is further mentioned that against the said Judge a complaint is lodged with the Hon'ble the Chief Justice of India.

5. The said praecipe which is signed by Advocate Zoheb Merchant states that the matter was heard by the Bench consisting of Nitin W. Sambre, J. and Rajesh S. Patil, J. It is further mentioned that after the change in the sitting list, the Division Bench presided over by Nitin W. Sambre, J. was not available and therefore on 11.10.2023, the matter was mentioned before the Division Bench comprising of Nitin W. Sambre, J. and N.R. Borkar, J. on which date there was an order passed "No orders". The said praecipe further states that there were rumours which have come to the knowledge of the said lawyer regarding the Court's integrity and there being allegations of

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bias and partiality leveled by certain unscrupulous elements of the society which is reflected in the aforesaid newspaper article. As such the said lawyer has stated in the praecipe that the matter may be listed before any other Bench.

6. In view of change in assignment, the matter was placed before us so as to enable us to pass appropriate orders. On last date we have orally expressed that we were not to take up the matter for further hearing. However, the very conduct of lawyers and the respondent no.5 has prompted us to pass the present order in the matter.

7. When the matter was heard on the last date, Advocate Minal Jaiwant Chandnani, who is having considerable standing, had attended the hearing and stated that Advocate Zoheb Merchant is working under her and she continued with the argument that what has been stated in the praecipe signed by Advocate Zoheb Merchant is correct.

8. As the aforesaid conduct of both these lawyers is found to be scandalizing the Courts and creating an artificial situation of prevailing upon the Judges not to take up the matters which amount to contempt, this Court pointed out the judgment of the Hon'ble Apex Court in *M.Y. Shareef & Another Versus The Hon'ble Judges of the High Court of Nagpur & Others [1955 SCR (1) 757]*. The lawyers accordingly have tendered their unconditional apology by filing their respective affidavits.

9. However we must record the conduct of the lawyers. When it was enquired with the Registry as to who has submitted the praecipe, it was

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informed that both these lawyers have submitted the praecipe and that time the Registry had advised them to refrain from doing so. After some time both these lawyers came back and insisted the Registry to accept the praecipe. Apart from above, the very tenor of lawyer Ms Minal Jaiwant Chandnani while conducting the matter on the earlier date depicts that she had no respect and regard for the Court proceedings. The said lawyer has tried to substantiate what has been stated in the praecipe submitted by Advocate Zoheb Merchant who is claimed to be working under her.

10. The fact remains that the aforesaid attempt on the part of the respondent no.5 of having an order of placing the matter before any other Bench is with *mala fide* intention thereby scandalizing the Courts and the Judges as could be inferred from the contents of the praecipe as well as the news article annexed with the said praecipe.

11. We deem it appropriate not to refer to the contents of the news article in detail. The option as such open to the Judges comprising the Bench is either to recuse themselves from hearing the matter or to continue with the same ignoring the accusations.

12. The Judges of the Bench are expected to decide the disputes brought before them free from any personal bias or prejudice. The parties like the aforesaid lawyers and the litigants to whom they represent create an artificial perception that by scandalizing the Courts and the Judges they can secure a order of recusal. In such an eventuality, we are of the view that the lawyers and the litigants who exhibit such behavior are required to be dealt with an iron hand by taking stern action. This Court has apprised the above referred lawyers so also the respondent no.5 whom they represent about the law laid down by the Hon'ble Apex Court in *M.Y. Shareef & Another* (supra).

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The Hon'ble Apex Court has held that a section of the Bar seems to be labouring under an erroneous impression that when an advocate is acting in the interests of his client or in accordance with his instructions, he is discharging his legitimate duty towards his client even when he signs an application or pleading which contains matter scandalizing the Court and that when there is conflict between his obligations to the Court and his duty to the client, what prevails first is his obligation to the Court. An advocate, who signs an application or pleading containing matter scandalizing the Court so as to have an order of recusal or such similar order, he can be held guilty for the contempt of Court unless there is a reasonable satisfaction by him about existence of adequate grounds. It is the duty of the advocates to advise their clients to refrain from making allegations of such nature.

13. This is exactly what is noticed in the case in hand. Both the above referred lawyers instead of owning their duty towards the Court have got themselves identified with the litigant i.e. the respondent no.5 and Advocate Ms Minal Jaiwant Chandnani, instead of advising her junior colleague to refrain from signing such praecipe, has continued to assert before this Court to take into account the praecipe, the news article being the annexure to the said praecipe.

14. Though both of the lawyers have tendered an unconditional apology to the Court, it needs to be looked into whether such apology is a *bona fide* one. Similarly, the respondent no.5 as well as the Publisher and Editor of newspaper 'Rajdharm' which has published the said news article, are not before the Court. That being so, we deem it appropriate to defer the hearing of the matter so as to ascertain whether contempt notice should be caused on both these lawyers alongwith the respondent no.5 and the Publisher and Editor of newspaper 'Rajdharm'. However, we deem it

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appropriate to cause notice to the respondent no.5 on the aforesaid issue of contempt which is made returnable on January 12, 2024. We further direct the Commissioner of Police, Pimpri-Chinchwad to ensure the service of notice on the respondent no.5.

15. We further direct the Commissioner of Police, Pimpri-Chinchwad to submit a report through his Senior Officer not below the rank of Assistant Commissioner of Police as to the details of the Publisher and the Editor of newspaper 'Rajdharm' by the returnable date.

16. Stand over January 12, 2024.

[RAJESH S. PATIL, J.]

[NITIN W. SAMBRE, J.]