

Campaign for Judicial Accountability and Reforms (CJAR)

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21st February 2012

To,
The Hon'ble Chief Justice of India,
The Supreme Court of India,
New Delhi

The Collegium of Judges,
The Supreme Court of India,
New Delhi

Copy to:

Ms. Pratibha Devisingh Patil
The Hon'ble President of India,
Rashtrapati Bhavan,
New Delhi

Mr. Manmohan Singh
The Hon'ble Prime Minister of India
Prime Minister's Office,
South Block,
New Delhi

Mr. Salman Khurshid
Hon'ble Minister for Law and Justice,
Ministry of Law, Justice and Legal Affairs,
Shastri Bhavan
New Delhi

Ms. Sheila Dixit
Chief Minister of Delhi,
Delhi Secretariat,
Civil Lines,
Delhi

Mr Tejinder Khanna
Lt. Governor of Delhi,
Raj Niwas,
Delhi

SUBJECT: MISCONDUCT AND GROSS ABUSE OF JUDICIAL POWERS BY A SITTING JUDGE OF THE HON'BLE DELHI HIGH COURT, URGING IN-HOUSE PROCEEDINGS AND URGING THAT HE MAY NOT BE CONFIRMED AS A PERMANENT JUDGE

RE: SURESH KAIT, J., ADDITIONAL JUDGE OF THE DELHI HIGH COURT, APPOINTED ON 5TH SEPTEMBER 2008.

Dear Sir,

This is to bring to your notice, the gross abuse of powers by Justice Suresh Kait, Hon'ble Judge of the Delhi High Court, in passing vindictive and malicious orders that were calculated to intimidate a litigant.

The orders were passed without jurisdiction or following due process, and confined the litigant to a mental health institute for 15 days with the following observation - *"it seems that he is suffering from some kind of mental disorder as he has been taking the Courts for granted and has been acting over-smart."* The order also abruptly and unlawfully denies him his inherent right to appear and argue in person.

The facts leading up to the orders, as well as the manner in which they were passed, will make it evident that, apart from being totally devoid of jurisdiction and the force of law, they are driven by vindictiveness and mala fides.

It is feared that if such conduct by a judge holding a responsible position in The Delhi High Court were overlooked, it would seriously undermine the rule of law and public confidence in the judiciary. If a judge of the Delhi High Court gets away with impunity even though his misconduct and abuse of position is common knowledge, the public would lose confidence in the very institution of democracy and in those responsible for his appointment.

We accordingly, urge that in-house proceedings be instituted against the said Judge, in the face of such glaring misconduct. This, it is reiterated, is absolutely necessary, to demonstrate swift corrective and deterrent action. We also urge that the Ld Judge may not be confirmed as a permanent judge of the High Court.

Brief Background & History

The litigant concerned is one Mr. Deepak Khosla, who had been arguing his cases himself over the last few years. The core issue relates to a dispute in a company matter challenging shareholding and directorship.

The above-mentioned mala fide order was passed in CCP 165/2008 relating to civil contempt proceeding initiated by the opposite parties, and was before the Court of Justice Suresh Kait of the Delhi High Court.

The said matter had been adjourned *sine die* by the said Court vide an order passed on 15.12.2011, but wrongly recorded as '*adjourned at the request of Mr. Khosla*'. Mr Khosla therefore appealed the above-mentioned order dated 15.12.2011, seeking its stay, and notice was issued on 21.12.2011. He had also filed a review petition, RP 788/2011, which was dismissed by the same court on 22.12.2011.

On 22.12.2011, after dismissal of his review petition, RP 788/2011, the petitioner's and his sister's persons were searched and some electronic equipment including his laptop, phone and audio recording device were taken into custody by authorities at the behest of Justice Suresh Kait. The Court observed that Mr Khosla had been observed recording court proceedings. The matter was listed for 4.1.2012, when Mr Khosla was required to be present.

On 4.1.2012, at 2.15 p.m., when the matter was finally listed, Mr Deepak Khosla entered appearance along with his Counsel. The Court was informed that counsel had just been engaged. However, instead of hearing his counsel or Mr Khosla, the Ld Judge simply commenced dictating the order. The Counsel reminded him that Mr. Khosla had the right to be heard and urged that she be allowed to explain the provisions under S 14 & 13 of the Contempt of Courts Act, wherein, no-one can be punished or arrested, even in the case of contempt in the face of the court, and wherein, even oral applications to hear the party are required to be heard.

Mr Khosla had engaged Mr Prashant Bhushan, Ms Indira Unninarayan & Mr Gurpreet Singh. Ms Unninarayan and Mr Gurpreet Singh appeared for him on that day. Ms. Unninarayan can swear by way of affidavit the events of the day in question.

GROSS ABUSE OF POSITION AND MALICE AND VINDICTIVENESS IN ORDERS:

1. Unfortunately, the Ld. Judge refused to hear either counsel or

- party that day on 4.1.2012, despite repeated pleas, and proceeded to pass orders without hearing the party, Mr Deepak Khosla.
2. Thus, the order dated 4.1.2012 arbitrarily, in a civil contempt matter that had already been *adjourned sine die*, directed that:
 - a. Mr Khosla be detained and confined to a mental health institute for 15 days, with daily mental health assessment.
 - b. Mr. Khosla be denied his right to appear and argue in person in any court in any matter.
 2. Both clearly amount to gross abuse of power, have been passed without jurisdiction, in violation of Natural Justice, are mala fide and, are totally untenable in law.
 3. Shocked and dismayed at such glaring illegality and abuse of powers by the Court, Mr. Khosla's counsel 'mentioned' the matter before the Chief Justice' Court at the Delhi High Court on an urgent basis at around 3.00 p.m. that day, bringing to its notice the passing of such utterly illegal orders with complete lack of jurisdiction, without paying any heed to the law. The Ld. Chief Justice, even while expressing his inability to interfere, suggested to the counsel that she request the Ld. Judge to suspend the order for 24 hours to enable appeal against it in the next morning.
 4. However, despite being informed of this and the Chief Justice's suggestion, and despite repeated pleas to that effect, the order dt 4.1.2012 was not suspended for 24 hours.
 5. Further, despite repeated requests, the Ld. Judge also refused to give order *dasti* to Mr. Khosla's counsel. He said that she could collect it from the internet. Accordingly, the court staff also refused to give the order *dasti*, and so did the branch. That order was not made available on the internet either.
 6. As an after-thought, the Ld. Judge added para '22' to the order saying that the Order be given *dasti* to Mr Khosla. That it is an afterthought may also be seen from the preceding para, para 21, that confines giving order *dasti* to 'both' the police and the mental health institute at Shahadara, and thereafter, adds para 22, saying that it 'also' be given to Mr. Khosla.
 7. The Ld. Judge also remarked to Mr Khosla's counsel that Mr Khosla had in any case said that he was not scared of going behind the bars, so let him go there now. He also said that he

- had made a nuisance of himself in the courts.
8. Finally, in utter disregard for the Rule of Law and due process, and in a gross abuse of a responsible position of public service and public trust, the Judge got Mr. Khosla sent away to the mental health institute at Shahadra that evening.
 9. Mr. Khosla, during his preliminary examination by the health authorities at the Shahadara Mental Health Institute, was asked whether he had any objection to being brought there. He asked to see the court order to understand why he had been sent there, whereupon he saw para 22, which said that a copy was to be provided to him. He then insisted that a copy be supplied to him, and finally, was provided one in the late hours that night. That copy of the order was obtained by counsel around 10.45 p.m. that night, and the appeal could be drawn only thereafter.
 10. The matter was subsequently appealed a day later before a Division Bench of the Delhi High Court, and the order dtd 4.1.2012 was partially stayed vide Order dtd 6.1.2012. The main appeal is still being heard.

However, in the meantime, it was imperative to bring this incident to the notice of the highest authorities of this country, so that prompt deterrent action against the Ld. Judge could be taken at the earliest.

1. Because such conduct by the Ld Judge was glaringly without jurisdiction and lawful basis. The order dt. 4.1.2012 is in contravention of S 14 & 13 of the Contempt of Courts Act, wherein, no-one can be punished or arrested, even in the case of contempt in the face of the court, and wherein, even oral applications to hear the party are required to be heard. The order regarding confinement to a mental health institute completely disregards various provisions of the Mental Health Act. The reference letter dt 6.1.2012 regarding Mr. Deepak Khosla's mental health assessment, issued by the mental health institute, IHBAS (Institute of Human Behaviour and Allied Sciences, Shahdara, Delhi) seeks clarification from the Delhi High Court saying that its order dtd 4.1.2012 is not maintainable in law, as far as Mr. Khosla's admission into the hospital was concerned. Indeed such contravention

of the Mental Health Act, is punishable u/S 85 of the Act, which provides that anyone contravening any provision of the Act or any rule made thereunder, shall, on conviction, be imprisoned or fined or be subject to both.

2. Because the ld. Judge's conduct was without due process of law and against principles of natural justice. Even if Mr Khosla's conduct was unacceptable to the Ld Judge, he could at the most have issued notice to him under the Contempt of Courts Act, and commenced proceedings against him following due process. The order was passed without according a hearing to the litigant despite repeated pleas on the part of his counsel.
3. Because the instant order was driven by vendetta and malice because of the Ld. Judge's fear of exposure if the recording of the CD were to be gone into. His implicit admission of incorrect recording of orders if proved, would put him in a perilous position, and cause him considerable public embarrassment. It is pertinent to mention that this conduct of wrongfully and maliciously confining the litigant to mental institution is a criminal offence under Section 220 of the Indian Penal Code which provides for action against any person being in office which gives him legal authority to commit persons for trial or to confinement, if he corruptly or maliciously commits any person for trial or to confinement, knowing that in doing so he is acting contrary to law.
4. Because despite repeated requests, the Ld. Judge also refused to give order *dasti* to Mr. Khosla's counsel. He said that she could collect it from the internet. Accordingly, the court staff also refused to give the order *dasti*, and so did the branch. That order was not made available on the internet either. Para 22 stating that the *dasti* order may also be give 'dasti' to Mr. Khosla was an afterthought and Mr. Khosla could obtain the order only at 10:45 p.m. that night, and the appeal could be drawn only thereafter. This resulted in his illegal confinement in the mental institution till the order dated 4.1.2012 was rightfully stayed.

Actions urged at this juncture

1. That In-house proceedings be instituted against the said judge, Hon'ble Justice Suresh Kait under the Code of Conduct and In house procedure for entertaining complaints against judges adopted in the Chief Justices Conference in 1997.
2. That Ld Justice Suresh Kait, may NOT be confirmed as a Permanent Judge of the High Court.

We repose confidence and hope in your office and seek that urgent action in this serious matter.

Yours Sincerely,

Prashant Bhushan, Advocate
(CONVENOR, CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS)

Enclosures:

- A. Copy of Order dtd 15.12.2012 adjourning proceedings *sine die* in CCP 165/2008
- B. Copy of Order dtd 22.12.2012 dismissing the Review Petition RP 778/2011, observing recording of proceedings by Mr Deepak Khosla
- C. Copy of Order dtd 4.1.2012, the mala fide and vindictive order, passed by Hon'ble Justice Suresh Kait
- D. Copy of Appeal LPA No. 16/2012, filed in the Delhi High Court, appealing the above-mentioned order dtd 4.1.2012, with relevant annexures including a letter of complaint to the Chief Justice of the Delhi High Court against the said Ld Judge re: his conduct on 22.12.2012 and another letter dated 24.12.2011 seeking preservation of evidence in the form of the said recordings that were in the custody of the Delhi High Court
- E. Copy of Order dtd 6.1.2012 in LPA 16/2012, partially staying order dtd 4.1.2012
- F. Copy of Cover letter from IHBAS (Institute of Human Behaviour and Allied Sciences, Shahdara) dtd 23.1.2012, more detailed reference letter dtd 6.1.2012 re: Mr Khosla's mental health assessment, seeking clarification from the Delhi High Court, saying that the said order dtd 4.1.2012 is not maintainable in law.