INDIAN BAR ASSOCIATION

(THE ADVOCATES' ASSOCIATION OF INDIA)

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Date: 08.04.2025

To,

The Hon'ble Chief Justice of Bombay High Court

Shri. Alok Aradhe

Sub: - Request for corrections of mistake committed in taking Suo Moto cognizance of the Contempt and becoming the member of Five Judge Bench constituted to hear the case.

Ref:- SMCP No. 1 of 2025 between High Court on its Own Motion vs Nilesh Ojha and Anr.

Hon'ble Sir,

1. The undersigned humbly submits this representation in my capacity as an Officer of the Court and a responsible member of the Bar, in the interest of upholding the majesty, dignity, and credibility of this Hon'ble Court. This representation is made to respectfully highlight and seek correction of certain fundamental legal errors and procedural improprieties in the captioned suo motu contempt proceedings, which, if not addressed, risk undermining public confidence in the fairness and neutrality of judicial conduct.

2. **Grave Perception of Bias and Departure from Settled Law**: - There is a growing perception, both within the legal fraternity and among the general public, that the Chief Justice of the High Court has acted in contravention of settled legal principles laid down by the Hon'ble Supreme Court and even by this Hon'ble High Court itself. The Chief Justice, being the authority who has taken suo motu cognizance of the alleged contempt and who has also constituted the Five-Judge Bench, is now a member of that very Bench, which is impermissible in law.

3. **Violation of Fundamental Legal Norms**

This representation is confined to three core legal violations:

3.1. Principle of Nemo Judex in Causa Sua (No One Can Be a Judge in Their Own Cause): - It is a well-settled principle of law, reaffirmed by the Hon'ble Supreme Court in multiple cases, that a Judge who initiates suo motu contempt proceedings cannot adjudicate the same matter. The Chief Justice, having taken cognizance and exercised administrative powers to constitute the Bench, stands disqualified from sitting in judgment over the proceedings. Recusal is a mandatory consequence of the doctrine of bias, as recognized in *many* decisions. [**Court own its own motion Vs. Nilesh C. Ojha 2019 SCC OnLine Bom 3908, Richard Mayberry 1971 SCC OnLine US 14, Union of India vs. Ram Lakhan Sharma (2018) 7 SCC 670, *Offutt v. United States, 348 U.S. 11, 17, 75 S.Ct. 11, 15, 99 L.Ed. 11*], R. Vs. Commissioner of Pawing (1941) 1 QB 467, R.V. Lee, (1882) 9 Q.B.D. 394, Lession Vs. General Council of Medical Education and Registration, (1889) 43 Ch. D. 366 at P. 384), Mitchell v. State 320 Md. 756 (Md. 1990), Dorsey K. Offutt, An Attorney, Vs. United States Of America 1954 SCC OnLine US SC 64, Allinson Vs. General Council of Medical Education and Registration, (1894) 1 QB 750 at p. 758), Suo Motu (Court on it own Motion Vs. Satish Mahadeorao Uke 2019 SCC OnLine Bom 5164,**

Mohd. Zahir Khan Vs. Vijai Singh AIR 1992 SC 642, P.K. Ghosh Vs. J.G. Rajput (1995) 6 SCC 744, Fadiah Saad Al-Abduyllah Al-Sabah Vs. Sanjay Mishrimal Punamiya 2015 (1) Bom CR 842 : 2014 SCC OnLine Bom 665]

3.2. Criminal Nature of Contempt – **Necessity of State Involvement First**:- Contempt proceedings, being quasi-criminal in nature, must adhere to safeguards applicable to criminal jurisprudence. The Hon'ble Supreme Court had followed the ratio laid down in ***Balogh v. St. Albans Crown Court*** **[1975] 1 QB 73**, where it has been categorically ruled that the initiation of contempt proceedings should, in the first instance, be routed through the office of the Advocate General or equivalent State Law Officer. The Court may resort to suo motu proceedings only if the State refuses to act. Direct initiation and adjudication by the Court compromises the impartiality and dignity of the judicial process and violates the fundamental separation between the roles of prosecutor and judge.

3.3. Incorrect Title of the Proceedings: - The title of the present proceedings is *High Court on its Own Motion vs. Nilesh Ojha & Anr.* , which is legally unsustainable and contrary to binding precedent. In ***B.K. Kar v. Chief Justice of Orissa High Court*****, AIR 1961 SC 1367,** the Hon'ble Supreme Court laid down that in contempt proceedings initiated suo motu, the proper title must be "In Re: [Name of the person proceeded against]". Judges and the Court should not appear as parties to the case, as this creates a perception of partisanship, undermining neutrality and due process. When the Respondent-alleged contemnor is an Advocate or a sitting Judge, this format was strictly followed even in sensitive cases such as *In Re: Justice C.S. Karnan* (2017) 7 SCC 1.

4. Supreme Court on Cautious Exercise of Contempt Powers: - The Hon'ble Supreme Court in ***Bar Council of India v. High Court of Kerala*** **(2004) 6 SCC 311** cautioned against the routine and excessive invocation of contempt powers. The relevant observations are as under:

> *"9.* ***Law of contempt both as regards its interpretation and application had posed complex questions before the court. 'No branch of law possibly has been more misconstrued or misutilised within the contempt jurisdiction', observed Lord Denning.*** *[...]*
>
> *13. Summary power of punishing for contempt is used sparingly and only in serious cases. Such a power a court must of necessity possess but its usefulness would depend upon the wisdom and restraint with which it is exercised."*

4.1. These principles are central to ensuring that the power to punish for contempt does not become a tool for silencing legitimate criticism or dissent.

5. Presumption of Innocence and Respect for Officers of the Court:- The respondent in this case Adv. Nilesh Ojha, is a renowned Advocate and national President of Indian bar Associationand, therefore, an Officer of the Court entitled to the same respect and dignity as judicial officers. The Hon'ble Supreme Court and this Hon'ble High Court have reiterated the parity of status between the Bench and the Bar:

5.1. In ***Latief Ahmad Rather v. Shafeeqa Bhat*****, 2022 SCC OnLine J&K 249:**

> ***"Advocates are officers of the Court and deserve the same respect and dignity as is being given to the Judicial Officers and Presiding Officers of the Courts... Bench and Bar are two wheels of the chariot of justice."***

5.2. *In* ***Ghanshyam Upadhyay v. State of Maharashtra*****, 2017 SCC OnLine Bom 9984**:

> *"The Bench and the Bar are two wheels of the golden chariot of administration of justice. None is superior and none is inferior."*

5.3. Full Bench of this Hon'ble High Court in ***Bombay High Court on its Own Motion vs. Ketan Tirodkar*****, 2018 SCC OnLine Bom 3162; 2019 (1) Mh.L.J. 252 (FB),** ruled as under:

> *"40...Though we have proceeded to issue a suo motu notice in contempt, we refrained from terming the respondent as contemnor either during the course of these proceedings or in this judgment..."*

5.4. Thus, the use of language, framing of the title, and manner of adjudication must reflect the presumption of innocence and due respect for the Respondent(Alleged Contemnor) , unless and until proven guilty.

6. The High Court Should Avoid Taking Suo Motu Cognizance of Contempt and Becoming Prosecutor — Legal Mandate to First Seek Government's Intervention

6.1. In ***Balogh v. St. Albans Crown Court*** **[1975] 1 QB 73,** the foundational principle was laid down that judicial officers should not assume the dual role of prosecutor and judge except in cases of extreme urgency. It was held:

> *"A Judge should act of his own motion only when it is urgent and imperative to act immediately. In all other cases he should not take it upon himself to move. He should leave it to the Attorney-General or to the party aggrieved to make a motion [...] The reason is so that he should not appear to be both prosecutor and judge: for that is a*

role which does not become him well… The power of the court to commit for contempt by summary procedure should be jealously watched… It should be exercised only in rare cases where there is no other remedy to preserve the dignity of the court and protect the public..."

6.2. The above ruling has been explicitly approved by the Full Bench of the Hon'ble Supreme Court in *Vinay Chandra Mishra* (1995) AIR 2348, and reiterated in *Suo Motu v. S.B. Vakil, Advocate, High Court of Gujarat*, LAWS (GJH) 2006 7-5.

6.3. In ***Hari Dass v. State*** **AIR 1964 SC 1773**, the Full Bench of the Hon'ble Supreme Court held that criminal contempt constitutes an "offence" within the meaning of Section 41 of the IPC, thus reinforcing the necessity of prosecutorial safeguards and procedural fairness inherent in criminal proceedings.

6.4. Similarly, in ***United States v. Vlahos*****, 33 F.3d 758, 764 (7th Cir. 1994)**, the Court emphasized:

> ***"The prosecutor should be given the right of first refusal to prosecute contempt, because prosecution of contempt — even though it is a crime against the judiciary — is a responsibility which the Constitution gives to the executive branch."***

6.5. The United States Supreme Court in *Young v. U.S. ex rel Vuitton* (481 U.S. 787, 801) held that judicial initiation of contempt proceedings:

> *"...must be restrained by the principle that 'only the least possible power adequate to the end proposed' should be used."*

The Court emphasized that the judiciary must first request the appropriate prosecuting authority to act, and only upon refusal may it appoint a special prosecutor — thereby ensuring that the court exercises its inherent power only as a last resort.

6.6. It is well-settled that where the State Law Officer is the designated authority to conduct a prosecution, permitting a private party/Counsel to lead prosecution results in grave miscarriage of justice and violates the fundamental rights of the accused. The following precedents support this principle:

(a) ***Medichetty Ramakistiah v. State*, AIR 1959 AP 659**

(b) ***Sundeep Kumar Bafna v. State of Maharashtra*, (2014) 16 SCC 623**

(c) ***Deepak Aggarwal v. Keshav Kaushik*, (2013) 5 SCC 277**

(d) ***Shiv Kumar v. Hukum Chand*, (1999) 7 SCC 467**

These rulings make it abundantly clear that such deviation from prescribed procedure vitiates the fairness of trial and is liable to be set aside.

7. Precedents Where the Supreme Court Sought Attorney General's Opinion Before Initiating Suo Motu Contempt

7.1. In ***P.C. Sethi v. State of Punjab* (1979) 4 SCC 797**, the Hon'ble Supreme Court first obtained a written report from the Attorney General who concluded that no contempt had been committed. Consequently, the Court declined to initiate proceedings, affirming the importance of prior legal consultation before exercising such extraordinary jurisdiction.

7.2. In ***Subramanian Swamy v. Arun Shourie*, (2014) 12 SCC 344**, a Constitution Bench of the Supreme Court reiterated this practice:

> "*4. It is pertinent to notice here that the then Chief Justice of India obtained the opinion of the Attorney General for India...*

5. The Attorney General opined that while the editorial in question may have prima facie overstepped permissible criticism, a notice could be issued only to seek explanation — not direct prosecution — thereby reflecting the balanced approach required in contempt cases."

7.3. In the instant case, neither was any opportunity granted to the State authorities to initiate contempt proceedings, nor was any preliminary opinion or advice sought from the Advocate General or any other competent State Law Officer, which is a prerequisite in law before invoking the Court's extraordinary power of suo motu cognizance. This essential procedural safeguard, meant to ensure objectivity, legality, and fairness, has been bypassed, thereby giving rise to serious and widespread concerns within the legal fraternity and civil society.

7.4. It is an established convention — backed by binding judicial precedents — that the Court must act as the *arbiter of last resort* in contempt matters and should resort to suo motu proceedings only when there is a demonstrable failure or refusal of the State to act. However, in the present matter, the State machinery was entirely bypassed, and the Court assumed dual roles — both as initiator and adjudicator — which creates a perception of procedural impropriety and institutional bias.

7.5. This has understandably led to the growing public perception that the present contempt proceedings may have been triggered by extraneous or retaliatory motives, especially considering that Adv. Nilesh Ojha has been fearlessly pursuing several high-profile cases involving allegations against influential individuals, including those concerning judicial misconduct and corruption in the system. His legal activism and public interest

interventions have, over the years, attracted both recognition and hostility, particularly from those vested in maintaining the status quo.

7.6. In such a backdrop, the initiation of contempt proceedings — without affording due process to the State law officers or following established norms — lends credence to the apprehension that the proceedings are not entirely free from bias. Even if such perception is unintended or unfounded, the very appearance of partiality is damaging to the majesty of the institution. As famously held by the Hon'ble Supreme Court in ***State of Punjab v. Davinder Pal Singh Bhullar*** **(2011) 14 SCC 770:**

> ***"It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."***

Therefore, in the interest of upholding institutional integrity, transparency, and public confidence in the impartiality of this Hon'ble Court, it becomes imperative that the procedural irregularity be acknowledged and rectified.

8. Hon'ble Chief Justice Must Recuse from the Proceedings in View of Settled Law on Judicial Disqualification

8.1. It is a well-established principle of law that a Judge who has acted in an administrative or quasi-judicial capacity to initiate or direct prosecution, particularly in criminal or contempt proceedings, stands disqualified from adjudicating the same matter. The foundational tenet of natural justice—"nemo judex in causa sua" (no person shall be a judge in their own cause)—is violated when the initiator becomes the adjudicator.

8.2. In ***R. v. Lee*****, (1882) 9 Q.B.D. 394,** Field, J. observed:

> ***"There is no warrant for holding that, where the Justice has acted as member by directing a prosecution for an offence***

under the Act, he is sufficiently disqualified person so as to sit as Judge at the hearing of the information."

This principle has stood the test of time across common law jurisdictions and is fundamental to ensuring impartial adjudication.

8.3. Justice V.R. Krishna Iyer, one of India's most respected judicial reformers, poignantly described the impropriety of combining the roles of prosecutor and judge in contempt proceedings. He stated:

> *"Contempt jurisprudence which makes prosecutor and judge rolled into one is itself contempt of natural justice."* (*V.R. Krishna Iyer, 'Freedom of Information', 1990, p. 319*)

8.4. The Hon'ble Supreme Court in *In Re: Justice C.S. Karnan* (2017) 7 SCC 1 emphasized:

8.5. In *Court on its own motion v. Nilesh C. Ojha*, 2019 SCC OnLine Bom 3908, the Bombay High Court itself has upheld this principle. Justice Z.A. Haq recused from a contempt proceeding initiated on his own judicial order, ruling:

> *"As the above order was passed by me (Z.A. Haq, J.), as per judicial propriety, it would not be appropriate for me to take up this matter... Office is directed to place the matter before a Bench of which I am not a member."*

8.6. Similarly, in ***Richard Mayberry v. Pennsylvania*, 1971 SCC OnLine US SC 14,** the U.S. Supreme Court held that a Judge who has initiated contempt proceedings is disqualified from conducting the trial, as this would violate principles of impartiality and fair trial.

8.7. In ***R. v. Commissioner of Pawing* (1941) 1 QB 467**, William J. stated:

"I am strongly disposed to think that a Court is badly constituted of which an interested person is a part, whatever may be the number of disinterested persons. We cannot go into a poll of the Bench."

This makes it unequivocally clear that even the presence of one disqualified Judge vitiates the entire composition of the Bench, regardless of how many impartial Judges it may include.

8.8. This doctrine has been consistently upheld by Constitution Benches of the Hon'ble Supreme Court in the following landmark cases:

- ***Gullapalli Nageswara Rao v. A.P.S.R.T.C.*, AIR 1959 SC 308**
- ***Mineral Development Ltd. v. State of Bihar*, AIR 1960 SC 468**

8.9. Most significantly, in ***State of Punjab v. Davinder Pal Singh Bhullar* (2011) 14 SCC 770 : (2012) 4 SCC (Cri.) 496**, the Hon'ble Supreme Court ruled:

"A judgment which is the result of bias or want of impartiality is a nullity and the trial coram non judice."

Quoting further:

"The question is not whether the Judge is actually biased, but whether the circumstances create a reasonable apprehension of bias in the minds of others...

The test is whether a reasonable person, in possession of relevant information, would have thought that bias was likely, and that the adjudicator would be disposed to decide the matter only in a particular way...

Public policy requires that there should be no doubt about the purity of the adjudication process..."

8.10. The Hon'ble Court in ***Manak Lal v. Dr. Prem Chand Singhvi*, AIR 1957 SC 425**, also held:

"Actual proof of prejudice may make the appellant's case stronger, but such proof is not necessary. What is relevant is the reasonableness of the apprehension in the mind of the appellant."

8.11. In light of the above legal principles and precedents, it is respectfully submitted that the Hon'ble Chief Justice, having taken suo motu cognizance and constituted the Bench himself, stands disqualified from being a part of the said Bench. His continued presence, even if well-intentioned, creates an undeniable appearance of bias and violates both judicial propriety and the doctrine of natural justice.

8.12. Recusal in such circumstances is not a matter of personal discretion but a constitutional and ethical imperative, necessary to preserve the dignity, fairness, and credibility of judicial proceedings in the eyes of the public.

9. Perpetuation of Judicial Error Is Against the Conscience of the Court — Binding Nature of Precedents and Judicial Discipline.

9.1. It is a settled constitutional principle that once a legal issue has been authoritatively decided by the Hon'ble Supreme Court, every Court and Judge — including the High Court — is bound to follow it under Article 141 of the Constitution of India. Deviation from such precedents is not permitted unless the matter is referred to a larger Bench. The Hon'ble Supreme Court in ***Sundarjas Kanyalal Bhathija v. The Collector, Thane*****, AIR 1990 SC 261: (1989) 3 SCC 396,** has held:

> *"The Judges of the High Court are bound by the declarations of law made by the Supreme Court. They could use their discretion only when there is no declared principle to be found, no rule and no authority."*

9.2. The Hon'ble Supreme Court in ***Medical Council of India v. G.C.R.G. Memorial Trust*****, (2018) 12 SCC 564**, observed with strong emphasis on judicial propriety:

> *"The judicial propriety requires judicial discipline. A Judge cannot think in terms of 'what pleases the Prince has the force of law'.*
>
> *A Judge even when he is free, is still not wholly free; he is not to innovate at pleasure; he is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw inspiration from consecrated principles. No heroism, no rhetoric. A Judge should abandon his passion and must constantly remind himself that he has a singular master — duty to truth — to be arrived at within the legal parameters."*

9.3. It is also equally well-settled that even **obiter dicta of the Supreme Court**, in the absence of a direct ruling on the same point, are binding and are to be followed by High Courts. The Bombay High Court in *Dayaram*

Bhondu Koche v. State of Maharashtra, 2016 SCC OnLine Bom 10004, held:

> *"Obiter dicta of the Hon'ble Supreme Court is binding on High Courts when there is no direct decision on the subject."*

9.4. Furthermore, in ***Union of India v. S.P. Sharma*, (2014) 6 SCC 351**, it was held:

> *"Even the obiter dicta of a dissenting judgment of a Judge of the Supreme Court is entitled to great respect and may be followed, especially when there is no authoritative pronouncement on the issue under another enactment."*

9.5. The Constitution Bench of the Hon'ble Supreme Court in ***Distributors (Baroda) (P) Ltd. v. Union of India*, (1986) 1 SCC 43**, eloquently declared:

> *"To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience."*
>
> *Quoting Justice Bronson in* Pierce v. Delameter, *the Court stated: "A Judge ought to be wise enough to know that he is fallible, great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead, and courageous enough to acknowledge his errors."*

The Court further clarified:

> *"The doctrine of stare decisis should not deter the Court from overruling an earlier decision, if it is manifestly wrong or proceeds upon a mistaken assumption... Both cannot stand together. If one is correct, the other must logically be wrong. Therefore, it becomes necessary to resolve such conflicts to maintain the purity and coherence of law."*

9.4. That Hon'ble Supreme Court in the case of **State Vs. Mamta Mohanty (2011) 3 SCC 436** had ruled as under;

> **"37.** ***It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage.*** *A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order……. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in* ***Hotel Balaji & Ors.*** **v. State of A.P..,** ***AIR 1993 SC 1048*** *observed as under:*
>
> *"...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter (A.M.Y. at page 18: `a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors***"**

9.5. That in the case of **Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd., (2019) 3 SCC 203** it is ruled as under;

> ***"10.*** *In so far as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:*

> *"**215. High Courts to be courts of record**.—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."*
>
> *It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognised in several of our judgments."*

10. It is thus clear from the above authoritative pronouncements that there is no discretion vested in a Judge to disregard binding precedents of the Hon'ble Supreme Court, and any such departure constitutes a violation of constitutional and institutional discipline. Further, where a clear error is committed, correcting the error is not optional, but a solemn duty mandated by the judicial conscience.

11. The present matter, involving deviation from the prescribed process for initiating contempt, improper participation of an alleged interested Judge, and disregard of binding rulings on procedural fairness, falls squarely within the scope of such a correctable judicial error. This Hon'ble Court is therefore constitutionally and morally bound to realign its actions with the law declared by the Supreme Court to uphold the integrity of judicial institutions and public faith in the justice delivery system.

12. I remain confident that Your Honour, in the noble tradition of this great institution, shall act with magnanimity and prudence to restore the faith of the public and the Bar in the unbiased and dignified administration of justice.

13.REQUEST: - In light of the above submissions, I most respectfully request Your Lordship to consider the following corrective measures in the interest of justice, institutional integrity, and adherence to binding judicial discipline:

(a) That the Hon'ble Chief Justice sh. Alok Aradhe may kindly recuse himself from the Five-Judge Bench in accordance with settled legal principles;

(b) That the matter be placed before new Bench constituted afresh;

(c) That the caption of the matter be appropriately modified to read: *In Re: Adv. Nilesh Ojha…. Respondent*;

With the highest respect,

Yours faithfully,

ADV. ISHWARLAL AGARWAL
Head, National Co-ordination Committee, Indian Bar Association