

**Writ Petition (Civil) No.20253 of 2015 (PIL) Suo Motu**

**26.11.2015**

In the wake of the recent episode concerning a practicing Advocate at Mhow – who, indeed, was an officer of the Court; and the events unfolding thereafter, we deem it appropriate to take *suo motu* cognizance thereof.

2. It appears that before the unfortunate incident occurred, the concerned Advocate had registered his apprehension and complaint with the local police at Mhow. No heed was paid to his request, which apathy must now be explained by the State police.

3. This incident is not first of its kind. In the recent past in the year 2013, the President of the Bar Council, Ujjain wing, was shot dead. Again in December, 2014, another Advocate was abducted and murdered owing to property dispute case. Recently, a lawyer was murdered in Bhanpura Town of Mandsaur District and now at Mhow. This raises serious safety and security issues for the lawyers. This must be addressed by the State with utmost dispatch.

4. The State police must explain the circumstances resulting in mishandling of the complaint made by the Advocate to the local police at Mhow. Further, whether because of the inaction of the local police the situation got

aggravated to the level of killing of the Advocate is also a matter to be enquired into. Besides ascertaining these facts, the persons responsible for the situation must also be identified. For an impartial enquiry into all these matters, it will be appropriate that the State appoints an independent Agency. Moreover, the investigation of the concerned crime also needs to be done by an independent Agency or Senior police official(s) and not left to the local police.

5. There has been a long pending demand of the legal fraternity in the State of Madhya Pradesh, to formulate a mechanism for extending protection to deserving lawyers. The highest Authority of the State is stated to have promised framing of Lawyers' Protection programme, in 2012, pursuant to the demand of the legal fraternity of the State of Madhya Pradesh in that behalf – due to the rising insecurity feeling amongst the lawyers in the State. As a result, a firm stand of the State must be unraveled in relation to this demand.

6. The State must also give a serious thought to the exposition of the Supreme Court in the case of **Zahira Habibullah Sheikh V. State of Gujarat (2006) 3 SCC 374**, which has expressed its concern about the witnesses turning hostile or made to depose in a manner which results in rendering truth and justice to become casualty -

for which it has become necessary to protect the witnesses involved in atleast sensitive cases involving those in power, who have political patronage and could wield muscle and money power and leave no stone unturned to avert trial getting tainted and derailed. This view has been restated by the Supreme Court in a recent decision in the case of **Anjanappa V. State of Karnataka (2014) 2 SCC 776**. It is, therefore, imperative for the State to take a firm position even on the issue of extending protection to the witnesses during the investigation and also its trial, atleast in sensitive cases.

7. The State must, therefore, explain its position as to whether it is or it is not in favour of formulating a protection policy, for extending protection to witnesses in sensitive cases and also to deserving Advocates who are officers of the Court during the period of investigation and/or trial of specified crimes.

8. With utmost humility at our command, we feel pained to observe that the inaction of the State police or for that matter of the State Government in fulfilling its promise to formulate mechanism for Advocates' protection, ought not to have been made the cause to unilaterally boycott the Courts on 24.11.2015. This extreme step by the State Bar Council is in the teeth of the

law enunciated by the Supreme Court in **Ex.-Capt. Harish Uppal vs. Union of India and another, (2003) 2 SCC 45**. In para 35 of this decision, the Supreme Court observed thus :-

“35. In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out a Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. **It is held that lawyers holding Vakalats on behalf of their clients cannot not attend Courts in pursuance of a call for strike or boycott.** All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. **It is being clarified that it will be for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or**

**the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be addition to damages which he might have to pay his client for loss suffered by him.”**

9. Notably, after the unfortunate incident at Mhow a flash boycott decision was announced by the Bar Associations on Monday (i.e. 23.11.2015). As a result of which, the Court work for the second half of the day was completely paralysed. Having done so, was there any need for the Madhya Pradesh Bar Council to announce a State wide boycott, by convening an emergent meeting, even on the following Court working day i.e. 24.11.2015, sans consultation with the Head of the Judiciary nor considering the necessity to explore the available legal remedies?

10. Needless to underscore that it is not only the State but all the citizens of this country and more so the members of the legal fraternity - who are officers of the Court, have a bounden duty to observe the Rule of Law. Indeed, the Bar Council is competent to express concern about the serious

issues affecting the members of the Bar; but that must be done within the legal framework and in consonance with the settled legal position and more so the pronouncement of the Supreme Court. The responsibility is far higher on the members of the legal fraternity in this behalf, who are the protectors of justice for the common man.

**11.** The extreme step taken by the Bar Council has exposed the Advocates on Record appearing in the concerned cases before the Court on the given day, to suffer the consequences of having committed aggravated contempt of Court. We are not sure whether the Madhya Pradesh Bar Council took such decision inspite of knowledge about the pending contempt actions against large number of Advocates practicing in the High Court, initiated against them due to similar unilateral decision of the Bar Associations to boycott the Court in April, 2015.

**12.** Be that as it may, in larger public interests, we issue notices to the following parties to evoke their response on the above noted matters :-

1. Advocate General, State of Madhya Pradesh,
2. State of Madhya Pradesh, through the Chief Secretary,
3. State of Madhya Pradesh, through Principal Secretary of Home Department.
4. Superintendent of Police, District

- Indore.
5. Madhya Pradesh Bar Council, through the Chairman,
  6. Madhya Pradesh Bar Council, through the Secretary,
  7. Bar Council of India, through the Chairman,
  8. Bar Council of India, through the Secretary.

**13.** We make it clear that besides the above noticees, if any Bar Association(s) intends to espouse its cause on the aforesaid issues will be free to appear in the proceedings through the Secretary of the concerned Bar Association.

**14.** Notices are made returnable on **15.12.2015**.

**(A. M. Khanwilkar)**  
Chief Justice

**(Sanjay Yadav)**  
Judge

AM.