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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CCP(O) 10/2018 IN CS(COMM) 291/2018

LOUIS VUITTON MALLETIER ..... Petitioner
Through Mr. Pravin Anand with Mr. Dhruv Anand, Ms. Udita Patro and Mr. Shamim Nooreyezdan, Advocates

versus

MR. OMI & ANR. ..... Respondents
Through Mr. Nitin Mehta, Advocate

Reserved On : 12th July, 2018

% Date of Decision: 07th August, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J

FACTUAL BACKGROUND LEADING TO FILING OF CONTEMPT PETITION AND DISPOSAL OF THE SUIT

1. The present suit had been filed for permanent injunction restraining infringement of trademark, copyright, passing off, dilution and tarnishment, damages, delivery up etc. by the petitioner/plaintiff Louis Vuitton, which is a highly reputed company.

2. The suit was filed against the respondents/defendants for the sale of counterfeit products bearing the petitioner's/plaintiff's registered trade mark and logo on 29th August, 2013.

3. An ex-parte ad interim injunction was passed in favour of the petitioner/plaintiff and a local commissioner was appointed to visit the

premises of the respondent/defendant on 30th August, 2013. The local commission was conducted on 03rd September, 2013, wherein infringing goods were found at the premises of the respondents/ defendants. The relevant portion of the Local Commissioner's report is reproduced hereinbelow:-

> *"3. That on reaching the said premises at around 2 PM, the undersigned met Mr. Manni Malhotra, an employer of the proprietor of Shop No. 46, Ghaffar Market, Karol Bagh, New Delhi - 110 005. The undersigned apprised Mr. Manni Malhotra of the directions passed by the Hon'ble Court and served upon him a certified true copy of the order dated 30.8.2013. Mr. Manni Malhotra refused to sign the order, informing the undersigned that the order pertained to Mr. Omi. However, he did not divulge the name of the proprietor. He was told that as the address of the premises was correct the name of the proprietor did not matter. He also stated that the address of theses premises was Stall No. 46, Ghaffar Market, Karol Bagh and not Shop No. 46. However, his protest went unheeded since, as soon as the undersigned reached the shop along with the plaintiff's counsel, infringing goods were found.*
>
> *6. Mr. Manni Malhotra refused to sign the inventory report and the "On the spot" proceedings and told me and Mr. Biala, that we could take the goods away, but he would not allow the goods to be handed over to him on superdarinama after being sealed. However, when we got ready to seal and take away the goods as highlighted in the inventory report away, Mr. Manni Malhotra, changed his mind, accepted a copy of the order, gave his acknowledgement on it (Annexed as Annexure A), and also allowed us to seal the goods on superdarinama. Accordingly, the goods have been seized on superdarinama and handed over to the Mr. Manni Malhotra. (Copy of Superdarinama annexed as Annexure C)."*
>
> (emphasis supplied)

4. The respondent no.2/defendant no.2, i.e., Mr. Abhishek Malhotra alias Mr. Manni Malhotra in his written statement filed on 05th October, 2013, stated that the goods were not seized from his premises, but from respondent No.1's/defendant no. 1's premises. The respondent no.1/ defendant no.1 in his written statement stated that the goods were seized from respondent no. 2's / defendant no.2's premises.

5. To ascertain the truth, the respondents no.1 and 2/ defendants no.1 and 2 were examined by the Court under Order X CPC on 20th February, 2018. In his statement under oath, the respondent no. 2/ defendant no.2 stated that he had been working from the Shop No. 46-1, Gaffar Market, Karol Bagh, New Delhi (hereinafter referred to as "suit premises") for the last three years. He also stated that he dealt in shades and eyewear only and that he had never sold any branded products. The said statement is reproduced hereinbelow:-

> *"Statement of Mr. Abhishek Malhotra, S/o Sh. Sweet Malhotra, R/o 1-7609/3, Gali No.6-8, East Gorakh Park, Delhi-110032*
>
> *On S.A.*
>
> *My nick name is Mani Malhotra. I am 12th pass. I passed out from school in 2009. I have brought with me my Aadhar Card (a photocopy of the same is taken on record).*
>
> *I worked with Mr. Gulati Opticals in Karol Bagh for about two years between 2009 and 2011.*
>
> *My father had a Kerosene Oil Depot which was closed about the time I completed my Class 12.*
>
> *I had taken a loan of Rs.50,000/- from one Mr. Vaibhav to take a shop on rent.*

I have taken Shop No.46/1 Gaffar Market, Karol Bagh, New Delhi on rent. The owner of the said Shop is one Mr. Dimpy Singh. I pay Rs.25,000/- as rent. Rent is paid in cash. Actually Shop No.46 comprises three sections which is separated by walls.

I have been running my business from the said shop for the last three years. I am the exclusive occupant of the Shop No.46/1 and I have no partners.

From the date, I had taken the Shop on rent, I have been selling only shades (Sun Glasses). I sell only Indian products. I manage the shop on my own. I have no employees.

(The witness has been shown the inventory prepared by the Local Commission-Mr. Madhav Mallya.) The said inventory bears my signature. The goods seized by the Local Commissioner were left outside my shop and do not belong to me. I signed the inventory report as I was threatened with penal consequences. I do not know as to who is the owner of the said goods. The goods handed over to me on Superdari by the Local Commissioner are still in my possession.

I have no relationship either business or personal with Mr. Omi. I have no common suppliers or customers with Mr. Omi. I have never sold LOUIS VUITTON products. (Vol.) I have never sold ties, belts and/or buckles. My shop does not bear any particular name. It is known amongst the public as Shop No.46/1.

Q.- I put it to you that Mr. Omi in his statement under Order 10 CPC before this Court has stated that the goods seized by the Local Commissioner on 03rd September, 2013 belong to you?

A.- The statement made by Mr. Omi is incorrect. I have never sold any branded goods.

I do not have any Income Tax or GST or Sales Tax registration. My shop is not registered under the Delhi Shops and Establishments Act, 1954. I have not been involved in any civil or criminal case till date.

I have filed the written statement dated 05th October, 2013. The same bears my signatures at Point 'A' and 'B'. The said written statement is also supported by my affidavit which bears my signatures at Point 'C' and 'D'."

(emphasis supplied)

6. Since the respondent no. 2/ defendant no.2 denied selling branded goods in his statement under oath, the petitioner/plaintiff filed another application for appointment of a Local Commissioner. This Court appointed another Local Commissioner to conduct an investigation at the premises of the respondent no.2/ defendant no.2, vide order dated 21st February, 2018. The local commissioner found stock of more than five hundred counterfeit products of thirty four different brands. The relevant portion of the Local Commissioner's report is reproduced hereinbelow:-

"3. The undersigned, along with the representatives of the plaintiff and the Police Officer, reached the premises of Defendant No. 2 at 7:40 PM. The premises of Defendant No. 2 were still open. The Defendant No. 2 was personally present at the premises. The undersigned explained to him the purpose of the visit and the contents of the order dated February 21, 2018 of this Hon'ble Court. The undersigned further informed the Defendant No. 2 the powers of inspection, search and seizure granted to the undersigned by the order of this Hon'ble Court. At this stage, the Defendant No. 2 cooperated and the undersigned was allowed to inspect the premises.

4. On inspection, the undersigned identified infringing goods of various brands. The undersigned prepared an On

Spot Proceedings Report and the same is attached herewith as Annexure B. The undersigned further proceeded to take pictures of the premises and infringing goods. A copy of the same is attached herewith as Annexure C."

(emphasis supplied)

7. Consequently, the petitioner/plaintiff filed the present contempt petition on 21st February, 2018. On 12th July, 2018, Mr. Nitin Mehta, learned counsel for the respondent no. 2/defendant no.2-contemnor admitted in the personal presence of respondent no.2/defendant no.2-contemnor that he had lied before this Court under oath on 20th February, 2018.

8. Subsequently, the present suit being CS (COMM) 291/2018 was disposed of with the consent of the parties on 24th July, 2018. However, it was clarified that the disposal of the suit would not prejudice the rights and contentions of the parties in the present contempt petition. The order dated 24th July, 2018 disposing the suit is reproduced hereinbelow:-

"Present suit has been filed for permanent injunction restraining infringement of trademarks, copyright, passing off, dilution and garnishment, damages, delivery up etc.

Today, Mr. Sarthak Katyal and Mr. Nitin Mehta, learned counsel for defendant No.1 and defendant No.2 state that they have no objection if the present suit is decreed in accordance with para 42 (a), (b), (c) and (d) of the plaint.

Learned counsel for defendant No.2 also states that the defendant No.2 shall pay costs of Rs.50,000/-.

In view of the aforesaid statement, learned counsel for plaintiff does not wish to press for any other or further reliefs.

The statements made by learned counsel for parties are accepted by this Court and parties are held bound by the same.

Accordingly, present suit is decreed in accordance with para 42(a), (b), (c) and (d) of the plaint along with costs of Rs. 50,000/- as well as the statements made by the learned counsel for parties. Registry is directed to prepare a decree sheet accordingly.

Registry is also directed to issue to an authorised representative of the plaintiff a certificate authorizing it to receive back from the Collector half amount of the Court fee paid by it in the present suit.

With the aforesaid observations, present suit and all pending applications stand disposed of.

It is clarified that the disposal of the suit shall not prejudice either of the parties in the disposal of the Contempt petition being CCP(O) 10/2018 in which the judgment has already been reserved."

ARGUMENTS ON BEHALF OF PETITIONER/PLAINTIFF

9. In the present contempt petition, it is averred that the respondent no.2/ defendant no.2 on 20th February, 2018, upon examination by this Court under Order X CPC had knowingly and maliciously made the following false statements (in italics) as would be apparent from the reasons given below against each statement:-

A) *"The respondent no.2/defendant no.2 had been operating his shop from the premises at Shop No.46 only since the last three years."*

According to Mr. Pravin Anand, learned counsel for the petitioner/plaintiff, this statement was evidently false as the respondent no.2/ defendant no.2 had admitted to having signed the inventory of the seized goods and the superdarinama that had been prepared during the

Local Commission raid conducted at his shop on 03rd September, 2013 i.e. more than four years back.

(B) "Respondent no.2's/defendant no.2's shop only dealt in shades/eyewear."

On 03rd September, 2013, the Local Commissioner seized from respondent no.2's/defendant no.2's shop counterfeit ties, belts, etc. bearing the petitioner's/plaintiff's trademarks.

(C) "The goods which had been seized during the Local Commission raid were found outside his shop and he did not know who had left the infringing goods at his shop.

This was contradictory to the Local Commissioner's report which clearly stated that the infringing products were found at the premises of the respondent no.2/ defendant no.2. Further, the said statement was contradictory to the statement made by the respondent no.2/ defendant no.2 in paragraph B of his written statement, wherein he had clearly stated that the infringing goods had been left by Omi (the respondent no.1) at his premises.

(D) "He had never sold any branded goods".

According to learned counsel for petitioner/plaintiff, this was a blatant falsehood as during the Local Commission conducted on 21st February, 2018, the respondent no.2's/ defendant no.2's shop was found to have in stock more than five hundred counterfeit products of thirty-four different brands.

10. Mr. Pravin Anand stated that a clear case of criminal contempt was made out as the act of the respondent no.2/ defendant no.2 clearly fell within the definition of Section 2(c) of the Contempt of Courts Act, 1971 (hereinafter referred to as "Act, 1971"). He contended that the false statements made by the respondent no.2/ defendant no.2 before this Court had lowered the authority of the Court and interfered with the administration of justice, which set a wrong precedent. The acts further prejudiced and interfered with the due course of the present judicial proceeding as by lying with malicious intent the respondent no.2/ defendant no.2 had tried to evade liability for his infringing activities.

11. Mr. Pravin Anand submitted that the Judge in whose face the contempt is committed can himself/herself forthwith take notice and issue orders of contempt against the contemnor. According to him, in other cases when the contempt is not in the face of the Court, matter is to be heard by the Division Bench under Section 15 of Act, 1971. He stated that recourse to summary proceedings can also be taken by the Court when a deliberate and wilful contumacious incidence takes place before the eyes of the Court.

12. He stated that though contempt in the face of the Court is not defined in the Act, the following instances have been recognized universally to be contempt in the face of the Court, i.e., obstructing Court proceedings, Jurors and witnesses absenting from Court proceedings without leave, insult to a witness going to or returning from Court, a barrister absenting himself from Court thus preventing the trial from continuing, distributing pamphlets on a footpath outside Court to jurors and assault in the High Court. He clarified that in certain

situations even giving an evasive reply or answer can amount to contempt in the face of the Court. He stated that an answer to a question maybe so evasive as to be regarded as a refusal to reply and hence a contempt. He submitted that in ***Coward v Stapleton; (1953) 90 CLR 573***, it has been held that it is *"essential not to lose sight of the sharp distinction that exists between a false answer and no answer at all ... Of course a purported answer may be so palpably false as to indicate that the witness is merely fobbing off the question..."* He pointed out that the Criminal Procedure Act, 1995 in Scotland in Section 155(1)(d) provides that if a witness in a summary prosecution *"prevaricates in his evidence"* he shall be deemed guilty of contempt of Court.

13. Mr. Pravin Anand stated that in the present case, the evasive answers given by the respondent no.2/ defendant no.2 were clearly an attempt by him to fob-off the questions put to him by this Court and the respondent no.2/ defendant no.2 is liable to be proceeded against under Section 14 read with Section 12 of the Act, 1971.

ARGUMENTS ON BEHALF OF RESPONDENT/DEFENDANT/ CONTEMNOR

14. Mr. Nitin Mehta, learned counsel for the respondent no.2/ defendant no.2-Abhishek Malhotra admitted that respondent no.2/ defendant no.2-contemnor had unfortunately lied before this court under oath on 20th February, 2018. He specifically admitted that respondent no.2/defendant no.2-contemnor had lied about the duration of operation of his shop from the suit premises as well as the type of the goods that respondent no.2/ defendant no.2-contemnor dealt in. He also admitted

that respondent no.2/ defendant no.2-contemnor had falsely stated under oath that he had never sold any branded goods and further that the goods seized during the Local Commissioner's raid on 03rd September, 2013 did not belong to him.

15. Mr. Mehta, however, stated that examples of conduct amounting to contempt in the face of the Court are assault on anyone in open court [***see: Parashuram Detaram Shamdasani vs. The King Emperor (1945) AC 264*** and ***Borrie and Lowe: The Law of Contempt, Third Edition***]; insulting the judge in court; throwing a missile at the judge [see***: 73 Balogh vs. St. Albans Crown Court (1975) QB 73***]; throwing a dead rat at the court clerk [***See: R v Britzman; R v Hall, (1983) 147 JP 531***]; directing insults at the jury; distributing leaflets in the public gallery; insults or threats to any officer or official of the court; wearing offensive clothing; not wearing any clothing at all (***see: Robertson vs. HM Advocate: 2007 SLT 1153)***; refusing to answer a question when ordered to do so **[*see: Secretary of State for Defence vs. Guardian Newspapers Ltd (1985) AC 339*]**, refusing to stand where directed; and disruptive behaviour. According to him, disruptive behaviour could include calling out or applauding in the public gallery conducting a protest in court, lying down in the courtroom [***see: R vs. Pateley Bridge Justices ex p Percy (1994) Crown Office Digest 453***]; and creating a disturbance in adjacent parts of the building such that the court proceedings are disturbed [***see: R vs. Selby Justices ex p Frame (1991) 2 All ER 344***]. He stated that another example of contempt in the face of the Court was when the Supreme Court issued notice of contempt in the face of the Court to an Advocate for making derogatory remarks

against the Court as her matter had not been taken up on a particular date of hearing.

16. Mr. Nitin Mehta emphasized that in the present case, the respondent no.2/defendant no.2-contemnor had neither assaulted anyone in the open Court nor insulted the Judge in Court nor had interfered with or obstructed the administration of justice in any manner. Consequently, he submitted that, according to him the present case did not fall under the ambit of contempt in the face of the Court and, therefore, the procedure under Section 14 of the Act, 1971 was not applicable in the present case.

COURT'S REASONING

IN A CASE OF PERJURY, THE COURT CAN INVOKE ITS CONTEMPT JURISDICTION.

17. In a case where a false affidavit had been sworn by a deponent, the Supreme Court had invoked its Criminal Contempt jurisdiction under Section 2(c) of the Act, 1971 and punished the contemnor under Section 12 of the said Act. In ***Dhananjay Sharma Vs. State of Hrayana & Ors., (1995) 3 SCC 757***, it has been held that even though the provisions relating to perjury were applicable, the offenders were liable for criminal contempt as it had the effect of interfering and/or impeding with the administration of justice. The relevant portion of the Apex Court judgment in ***Dhananjay Sharma*** (supra) is reproduced hereinbelow:-

> *"38. Section 2(c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as "the publication*

(whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act…."

18. Consequently, as in the present case the respondent no.2/defendant no.2 had perjured himself by admittedly making false statements before court under oath, this Court is of the view that it is entitled in law to invoke its contempt jurisdiction.

A LOCAL COMMISSIONER APPOINTED BY THE COURT IS EFFECTIVELY THE EYES AND EARS OF THE COURT AND THE REPORT IS PART OF THE COURT RECORD. THE DEFENCE THAT A LOCAL COMMISSIONER'S REPORT IS NOT MENTIONED IN ANY REPORTED JUDGMENT, AS THE BASIS OF CONTEMPT IN THE FACE OF THE COURT IS AN UNTENABLE ARGUMENT AS THE INSTANCES OF CONTEMPT MENTIONED IN THE JUDGMENTS, ARE NOT EXHAUSTIVE BUT ILLUSTRATIVE.

19. A Local Commissioner is a person appointed by the Court in pursuance of its powers vested under Order XXVI of the Code of Civil Procedure and is normally authorised to examine witnesses, conduct local and scientific investigations and/or sale of property, perform a ministerial act, examine accounts, partition of property and execute any other order as directed by the Court.

20. While conducting an investigation, a Local Commissioner is given wide powers as he is in effect a ground level representative of the judiciary. This view was favoured by the Andhra Pradesh High Court in ***Sri Mahant Narayana Dossjee Varu vs. The Board of Trustees, the Tirumalai Tirupati Devasthanamas, Tirupathi, 1957 SCC OnLine AP 116.*** The Madras High Court in ***Pormusamy Pandaram v. The Salem Vaiyapamalai Jangamar Sangam, 1984 SCC OnLine Mad 190*** has held as under:-

> *"5……..Its object is to collect evidence at the instance of the party who relies on the same and which evidence cannot be taken in court but could be taken only from its peculiar nature, on the spot. This evidence will elucidate a point which may otherwise be left in doubt or ambiguity on record. The Commissioner, in effect, is a projection of the court, appointed for a particular purpose……"*

21. The Supreme Court in ***Misrilal Ramratan & Ors. Mansukhlal & Os. V. A.S. Shaik Fathimal (Dead) by LRs. & Ors. 1995 Supp.(4) SCC 600*** has held that even a specious plea of non-examination of a Local Commissioner at the stage of trial cannot lead to the Commissioner's report being overlooked or rejected by the Court. The above view of the Supreme Court was also relied upon by the Delhi High Court in ***Levi Strauss and Co. v. Rajesh Agarwal, 2018 SCC OnLine Del 6421***, wherein it has been held as under:-

> *"9. The Local Commissioner is in fact a representative of the Court itself and it is for this reason that Order 26 Rule 10(2) of CPC clearly provides that once the Commissioner has filed the evidence along with his report the same shall be treated as evidence in the suit and shall form part of the record."*

22. In the opinion of this Court, a Local Commissioner appointed by the Court is an extended arm and agent of the Court. The Local Commissioner is appointed by the Court because a Judge, normally, cannot personally step out of the precincts of his Court to see for himself the situation prevailing at the relevant site. [See: ***Autodesk Inc. & Anr. v. Arup Das & Ors, 2013 SCC OnLine Del 4225*** and ***Anil K. Aggarwal V. Union of India, 2014 SCC OnLine Del 2292***].

23. Consequently, the Local Commissioner is effectively the eyes and ears of the Court. Moreover, as the reports of the two Local Commissioners have now been admitted, the facts therein must be taken to be true and correct.

24. The contemnors' only defence that a Local Commissioner's report is not mentioned in any reported judgment, as an instance of contempt in the face of the Court, is an untenable argument as the

instances of contempt mentioned in the judgments are not exhaustive but illustrative.

25. Accordingly, this Court holds that the reports of the Local Commissioner form a part of the Court record and what is recorded therein, especially as it has not been disputed, shall be deemed to have been recorded/seen by this Court and the said reports can form the basis of an action under Section 14 of the Act 1971.

26. In fact, in the present case, the statements made by respondent no.2/ defendant no.2 under oath, contrary to the two Local Commissioners' reports, prejudice and/or interfere and/or tend to interfere with, the due course of the judicial proceeding and/or obstruct and/or tends to obstruct, the administration of justice.

THE PRESENT CASE IS A CASE OF CONTEMPT IN THE FACE OF THE COURT AND THEREFORE, THE PROCEDURE UNDER SECTION 14 OF ACT, 1971 APPLIES. FOR ALL OTHER CASES OF CRIMINAL CONTEMPT SECTION 15 IS APPLICABLE.

27. Criminal Contempt is defined under Section 2(c) of the Act, 1971. Section 14 deals with contempt in the face of the Court. Under the said section, the Judge in whose face the contempt is committed can himself/herself forthwith take notice and issue orders of contempt against the contemnor. Lord Denning has held *"contempt in the face of the Court was never confined to conduct which a judge saw with his own eyes. It covered all contempts for which a judge of his own motion could punish a man on the spot. So contempt in the face of the court is the same thing as contempt which the court can punish of its own*

motion. It really means contempt in the cognisance of the court." [*73* ***Balogh vs. St. Albans Crown Court*** (supra)].

28. Contempt in the face of the Court may be criminal or civil contempt. However, in both cases of contempt in the face of the Court, the procedure under Section 14 of the Act, 1971 is attracted. For all other cases of criminal contempt Section 15 is applicable.

29. Further, this Court is of the opinion that a contemnor is not in a position of an accused and contempt proceedings are separate and distinct from criminal proceedings. In a criminal trial where a person is accused of an offence, there is a Public Prosecutor who prosecutes the case on behalf of the prosecution against the accused, but in contempt proceedings the Court is both the accuser as well as the Judge of the accusation as observed by the Supreme Court in ***Debarata Bandopadhyay Vs. State of West Bengal, AIR 1969 SC 189*****.** In fact, contempt proceeding is sui generis. It has peculiar features which are not found in criminal proceedings. In this view the contemnors do not stand in the position of a person accused of an offence and the Court is free to evolve its own procedure consistent with principles of fair play and natural justice. The Supreme Court in ***Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat & Ors.,*** **(1991) 4 SCC 406** has held so. The relevant portion of the said judgment is reproduced hereinbelow:-

> *" 12. .....A criminal contempt is punishable by the superior courts by fine or imprisonment, but it has many characteristics which distinguishes it from ordinary offence. An offence under the criminal jurisdiction is trial by a Magistrate or a Judge and the procedure of trial is*

regulated by the Code of Criminal Procedure, 1973 which provides an elaborate procedure for framing of charges, recording of evidence, cross-examination, argument and the judgment. But charge of contempt is tried on summary process without any fixed procedure as the court is free to evolve its own procedure consistent with fair play and natural justice. In contempt proceedings unlike the trial for a criminal offence no oral evidence is ordinarily recorded and the usual practice is to give evidence by affidavits....."

30. A Division Bench of the Allahabad High Court in ***State of U.P. Vs. Deg Raj Singh & Ors., 1983 Crl.LJ 866*** has similarly held as under:-

" 27. A contempt is not an offence within the meaning of Section 5(2) of the Code of Criminal Procedure nor is the contemnor an accused within the meaning of Section 5 of the Oath's Act, or within the meaning of Article 20, Sub-Clause (3) of the Constitution of India. Contempt is an offence to the Court and not to the person who sits as a Judge. Ergo, an insult to the Court if not punished will create a general dissatisfaction in the minds of the public as to the dignity, solemnity and efficacy of the Courts of Justice.

28. A summary and quick mode of meting out punishment to the contemnor if he is guilty is very efficacious in inspiring confidence in public as to the Institution of justice. Without such protection courts would go down in public respect and maintenance of law and order will be in jeopardy…."

31. Since in the present case the respondent no.2/defendant no.2-contemnor has admitted to lying under oath, this Court is of the view

that it is not necessary to follow the elaborate procedure of framing a charge and proceeding with a trial.

32. In any event, the Apex Court in ***Leila David Vs. State of Maharashtra & Ors., (2009) 10 SCC 337*** has held, *"Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the Court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large…."*

33. In the opinion of this Court, the present case is a case of contempt in the face of the Court and therefore, Section 14 of the Act, 1971 applies.

COURT APPRECIATES THE TRUTHFUL AND HONEST STAND TAKEN BY MR. NITIN MEHTA, COUNSEL FOR THE RESPONDENT NO.2./DEFENDANT NO.2.

34. Before parting with the case, this Court places on record its appreciation for the truthful and honest stand taken by Mr. Nitin Mehta, learned counsel for the respondent no.2/ defendant no.2. May be, the respondent no.2/defendant no.2 was *'caught with his hand in the till'*, yet it requires courage on the part of a counsel to admit that his client had lied. The conduct of the counsel (Mr. Nitin Mehta) is an accord with the highest traditions of the Bar.

SENTENCE

35. However, as the respondent no.2/ defendant no.2 has admittedly made false statements under oath, this Court is of the view that it strikes

a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone giving false statements and/or fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the Court and interfere with the due course of judicial proceedings or the administration of justice. [See: ***Dhananjay Sharma*** (supra)].

36. Consequently, this Court is of the view that the ends of justice would be met if the respondent no.2/ defendant no.2 is committed to one month's simple imprisonment along with a fine of Rs. 2,000/-.

37. The Registry is directed to prepare the necessary warrants forthwith. With the aforesaid directions, the present contempt petition stands disposed of.

38. Order dasti under the signatures of the Court Master.

MANMOHAN, J

AUGUST 07, 2018
js/KA/rn