'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 4TH DAY OF SEPTEMBER 2024 / 13TH BHADRA, 1946

CON.CASE(C) NO. 175 OF 2024

AGAINST THE JUDGMENT DATED 03.09.2021 IN WP(C) NO.11880 OF 2021 OF HIGH COURT OF KERALA

PETITIONER:

AQIB SOHAIL P S, AGED 27 YEARS
S/O SAKHEER PB HAVING HIS OFFICE AT NEWMAN LAW PARTNERS, NEAR OLD GOWDER THEATRE, METTUTHERUVU, VADAKKANATHARA, PIN - 678012

BY ADV AYSHA ABRAHAM

RESPONDENTS:

1 RANEESH V. R., AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER, SUB INSPECTOR OF POLICE, ALATHUR POLICE STATION, NEAR TALUK OFFICE, ALATHUR, PIN - 678541

2 UNNIKRISHNAN T.N., AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER, INSPECTOR OF POLICE, ALATHUR POLICE STATION, NEAR TALUK OFFICE, ALATHUR, PIN - 678541

SNEHA P NAIR
OMAR SALIM
A.N.BIJU(K/680/2011)
P.ABDUL NISHAD(K/537/2016)
AMRITHAMOL A.S.(K/001278/2021)

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 04.09.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is stated to be an Advocate and says that he visited the Alathur Police Station “to ensure compliance of an order of the Judicial First Class Magistrate's Court, Alathur” (*sic*). He asserts that he was abused by the respondents, using denigratory vocatives; thus made to feel very unsafe, being threatened with physical abuse also; and that the entire incident has been video recorded, with a statutorily certified copy placed on record, as Annexure A3. He asserts that the actions of the respondents are in blatant violation of the declaratory directives of this Court in **Anil J.S v. State of Kerala and Others** [2021 (5) KLT 222], as also **Siddique Babu I. and another v. State of Kerala and others** [2018 (5) KHC 576]; and thus prays that necessary action against them be initiated and pursued under the Contempt of Courts Act.

2. I am refraining from further inditing the facts involved because, in response to this contempt application, the respondents have filed counter affidavits stating their respective positions, with which this Court will deal presently.

3. Quad hoc the second respondent, his affidavit states

that he was on leave on day in question; and that he had, therefore, no involvement in the alleged incident.

4. Coming to the first respondent, he initially filed an affidavit on 01.02.2024, conceding that he was aware of the afore judgments, as also the subsequent Circular issued by the State Police Chief – namely Annexure P2 - requiring Police Officers to act in a civil manner to the citizens and to behave like a professional force, without use of disrespectful words; but explained that the "*incident happened out of heat of passion and pressure of the circumstances*" (*sic*); but then adding that "*I deeply regret and tender my unconditional apology and I undertake that I will not involve in similar incidents alike*" (*sic*). The affidavit further avers that the District Police Chief had conducted a preliminary investigation into his conduct and that he has been found guilty, thus being issued with a "warning" under the provisions of the Kerala Police Act - producing the said proceedings as Ext.R1(a).

5. The records reveal that, subsequent to this, the first respondent - perhaps being alerted by the subsequent orders of this Court, that his afore affidavit may not be construed as an unqualified apology - filed another affidavit, dated 28.02.2024,

wherein, he accepted every imputation and allegation against him without any reservation and offered apology unconditionally, affirming that "*my conduct fell short of the standards which I was duty bound to uphold. I should not have behaved in such a manner to anyone approaching a Police Station. ..... I am deeply remorseful for the unwarranted behavior and lack of judgement from my side and I repent the same. ..... I will be keeping more care and consciousness in keeping the honor and dignity of the police force with the utmost propriety and adherence to the law*" (sic).

6. Sri.Yashwant Shenoy – learned counsel for the petitioner, argued with great vehemence, that the conduct of the respondents warrants exemplary action, because it emanated out of a perception that they are not accountable even for very bad behaviour. He argued that, when the judgments of this Court are treated with apparent derision - manifest from the factum of the first respondent having conceded to have used objectionable language and unacceptable behaviour - he cannot be left free merely because he makes an apology, since this would amount to a premium for such. He then relied upon the judgment of the Hon'ble Supreme Court in **Balwantbhai Somabhai Bhandari v.**

Hiralal Somabhai Contractor (Deceased) Represented by LRs [AIR 2023 SC 4390], to argue that the Hon'ble Supreme Court has warned that leniency of Courts, pursuant to apologies being quoted over a period of time has actually emboldened and unscrupulous litigants. He concluded saying that, in any event, the apology now tendered by the first respondent cannot be accepted because, in his first affidavit dated 01.02.2024, he denied the allegations, nevertheless offering a formal apology; while, in the second affidavit dated 28.02.2024, he appears to have resiled from that position, solely because he was aware that, by sticking on to his earlier stand, charges would be framed and he would have to face consequences from this Court.

7. Sri.V.Manu – learned Special Government Pleader, submitted that he is not representing the first respondent, but only the second respondent and that he is doing so only because the office of the learned Advocate General is convinced that he has not committed any action which is in violation of law. He pointed out that the affidavit filed by the said Officer would render it crystally clear that he was not even in the Station at the time when the alleged incident happened; and therefore, prayed that this case against him be dropped. He then added that, as

regards the first respondent, his conduct has been viewed very seriously by the State Police Chief and that he has taken disciplinary action against him, ending in punishment, as is evident from Ext.R1(a), as also from the memos filed on record by him.

8. Sri.Omar Salim, appearing for the first respondent, began reiterating that his client categorically and unconditionally admits every allegation made against him in this case; though he tried to whisperingly explain that he was only a victim of the circumstances in the Police Station, particularly because the petitioner and his associate lawyers had behaved in a rude manner to him. He, however, added that his client is not now standing on any such justification and that he "contritely and remorsefully" apologizes for his conduct; undertaking that he will never engage in any such conduct in future and will treat every citizen with the civility and professionalism required of a Police Officer of his rank, as declared by this Court in the aforementioned precedents.

9. The rival position of the parties being so recorded, I am of the firm view that the epoch observations of the Hon'ble Supreme Court in **Balwantbhai Somabhai Bhandari** (*supra*),

require to be read and imbibed very carefully; for which purpose, I extract relevant paragraphs of it *ut infra*:

> "101. We may take judicial notice of the fact with all humility at our command that over a period of time, the courts have shown undue leniency and magnanimity towards the contemnors. This lenient attitude shown by the courts over a period of time has actually emboldened unscrupulous litigants to disobey or commit breach of the order passed by any court or any undertaking given to the court with impunity.
>
> 102. The litigants, proceeded for contempt of court have realised that they have a very potent weapon in their hands in the form of apology. Take for instance, the present case itself. What do the appellants want us to do? The appellants want this Court to accept their apology and set aside the order of punishment and sentence passed by the High Court. There ought not to be a tendency by courts to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness.
>
> 103. In re. Tapan Kumar Mukherjee v. Heromoni Mondal and Another reported in (1991) 1 SCC 397 : (AIR 1991 SC 281), this Court in a contempt matter has observed:-
>
> "9.... we should like to put out a warning that where a case of wilful disobedience is made out, the courts will not hesitate and will convict delinquent officer and that no lenience in the court's attitude should be expected from the court as a matter of course merely on the ground that an order of conviction would damage the service career of the concerned officer".
>
> 104. In re. Tapan Kumar (supra), this Court was dealing with a public servant facing an action for contempt.
>
> 105. We wonder what could be the ultimate outcome if we accept the apology and allow the appellants to go scot-free. First, they would have to face no legal consequences for the alleged act of contempt and secondly, would continue to enjoy or retain the fruits of their contempt.

106. In the case of Sub-Judge, First Class, Hoshangabad v. Jawahar Lal Ramchand Parwar reported in AIR 1940 Nagpur 407, Justice Bose (as he then was) said that an apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power. An apology, which the learned Judge says should be evidence of real contriteness and manly consciousness of the wrong done; it ceases to be so if it is belated, and it becomes instead, to borrow the language of Justice Bose, again the cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head.

107. In the case of Patel Rajnikant Dhulabhai (supra), this Court rejected the argument that an apology can be used as a weapon of defence and while relying upon multiple decisions held as under:

"62. In the celebrated decision of Attorney General v. Times Newspaper Ltd. [(1974) AC 273 : (1973) 3 AILER 54 : (1973) 3 WLR 298 (HL)] Lord Diplock stated: (All ER p. 71f)

"There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity;...."

XXX XXX XXX

74. In Hiren Bose, Re [AIR 1969 Cal 1 : 72 Cal WN 82] the High Court of Calcutta stated: (AIR p. 3, para 13)

"13. ... It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a court of justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom

dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology. It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be."

75. It is well settled that an apology is neither a weapon of defence to purge the guilty of their offence, nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness (vide M.Y. Shareef v. Hon'ble Judges of the High Court of Nagpur [AIR 1955 SC 19 : (1955) 1 SCR 757]; M.B. Sanghi v. High Court of Punjab and Haryana [(1991) 3 SCC 600 : 1991 SCC (Cri) 897 : (1991) 3 SCR 312] : (AIR 1991 SC 1834)).

76. In T.N. Godavarman Thirumulpad (102) v. Ashok Khot [(2006) 5 SCC 1] : (AIR 2006 SC 2007) , a three-Judge Bench of this Court had an occasion to consider the question in the light of an "apology" as a weapon of defence by the contemnor with a prayer to drop the proceedings. The Court took note of the following observations of this Court in L.D. Jaikwal v. State of U.P. [(1984) 3 SCC 405 : 1984 SCC (Cri) 421] : (AIR 1984 SC 1374) : (Ashok Khot case [(2006) 5 SCC 1] : (AIR 2006 SC 2007) , SCC p. 17, para 32)

"32. ... We are sorry to say we cannot subscribe to the 'slap- say sorry-and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry - it is another to 'feel' sorry." The Court, therefore, rejected the prayer and stated: (SCC p. 17, para 31)

"31. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward."

Similar view was taken in other cases also by this Court.

77. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a "tactful move" when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice."
(Emphasis supplied)

108. This Court in Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others reported in (2013) 11 SCC 404 : (2013 AIR SCW 268) , held that:

"7. Tendering an apology is not a satisfactory way of resolving contempt proceedings. An apology tendered at the very initial stage of the proceedings being bona fide and preferably unconditional would normally persuade the court to accept such apology, if this would not leave a serious scar on the dignity/authority of the court and interfere with the administration of justice under the orders of the Court.

8. "Bona fide" is an expression which has to be examined in the context of a given case. It cannot be understood in the abstract. The attendant circumstances, behaviour of the contemnor and the remorse or regret on his part are some of the relevant considerations which would weigh with the Court in deciding such an issue. Where, persistently, a person has attempted to overreach the process of Court and has persisted with the illegal act done in wilful violation to the orders of the Court, it will be difficult for the Court to accept unconditional apology even if it is made at the threshold of the proceedings. It is not necessary for us to examine in any greater detail the factual matrix of the case since the disobedience, manipulation of procedure and violation of the schedule prescribed under the orders of the Court is an admitted position. All that we have to examine is whether the apology tendered is bona fide when

examined in the light of the attendant circumstances and whether it will be in the interest of justice to accept the same.

9. The facts which will weigh with the Court while considering acceptance of an apology are the contemptuous conduct, the extent to which the order of the Court has been violated, irresponsible acts on the part of the contemnor and the degree of interference in the administration of justice, which thereby cause prejudice to other parties. An apology tendered, even at the outset, has to be bona fide and should be demonstrative of repentance and sincere regret on the part of the contemnor, lest the administration of justice be crudely interfered with by a person with impunity. The basic ingredients of the rule of law have to be enforced, whatever be the consequence and all persons are under a fundamental duty to maintain the rule of law. An apology which is not bona fide and has been tendered to truncate the process of law with the ulterior motive of escaping the consequences of such flagrant violation of orders of the court and causes discernible disrespect to the course of administration of justice, cannot be permitted. The court has to draw a balance between cases where tendering of an apology is sufficient, and cases where it is necessary to inflict punishment on the contemnor. An attempt to circumvent the orders of the court is derogatory to the very dignity of the court and administration of justice. A person who attempts to salvage himself by showing ignorance of the court's order, of which he quite clearly had the knowledge, would again be an attempt on his part to circumvent the process of law. Tendering a justification would be inconsistent with the concept of an apology. An apology which is neither sincere nor satisfactory and is not made at the appropriate stage may not provide sufficient grounds to the court for the acceptance of the same. It is also an accepted principle that one who commits intentional violations must also be aware of the consequences of the same. One who tenders an unqualified apology would normally not render justification for the contemptuous conduct. In any case, tendering of an apology is a weapon of defence to

> purge the guilt of offence by the contemnor. It is not intended to operate as a universal panacea to frustrate the action in law, as the fundamental principle is that rule of law and dignity of the court must prevail.
> XXX XXX XXX
> 14. From the above principle, it is clear that consideration of an apology as contemplated under Explanation to Section 12(1) of the Act is not a panacea to avoid action in law universally. While considering the apology and its acceptance, the court inter alia considers: (a) the conduct of the contemnor prior and subsequent to the tendering of apology. If the conduct is contemptuous, prejudicial and has harmed the system and other innocent persons as a whole, it would be a factor which would weigh against the contemnors; and (b) the stage and time when such apology is tendered."
> (Emphasis supplied)
>
> 109. In the case of Sevakram (supra), it was held that an apology neither purges nor washes away the act of contempt and at best it is a mitigating circumstance while considering the consequential order following finding of contempt having been committed."

10. Thus, the Hon'ble Supreme Court has lucidly, but firmly, postulated that the offer of an apology cannot be used always to purge the guilt. Tending of an apology by itself is not a satisfactory way of resolving contempt proceedings, though one such made at the very initial stage *bona fide* and unconditionally, can persuade Courts to accept it as a mitigatory factor.

11. The rather strict observations of the Hon'ble Supreme Court extracted above, render it indisputable that,

merely because an apology is tendered, it does not mean that this Court should accept it *ex facie* and then drop proceedings because, such leniency and perceived magnanimity would only aid in emboldening the contemnors.

12. There is hardly any doubt and hence deserving of being taken judicial notice, that the number of contempt applications before this Court, as also many other Courts, is increasing. This is the scenario which prompted the Hon'ble Supreme Court to deliver judgment in the afore manner, cautioning Courts that, their tendency to show compassion, when disobedience is done with perceived impunity, would reflect poorly on the system; and would violate the trust of the people, whose final guardians of liberty they most often accept to be the Courts.

13. The absolute necessity of this Court dealing with this contempt matter with great caution and care is imperative because the alleged contemnors are police officers; particularly, when both of them concede that they are fully aware of the judgments of this Court in **Anil J.S.** (supra) and **Siddique Babu** (*supra*), unequivocally declaring in rem and mandating the most civil and disciplined behaviour from them as members of a

civilized police force. In fact, in **Siddique Babu** (supra) this Court has held that the members of the police force must conform to strict standards of behaviour; and that any comportment that shows lack of civility is a risk to the trust and confidence the public repose in the system of policing of a nation. It has also been declared emphatically that a police officer is expected to act fairly and professionally and to remain within the limits of decency and not to breach it, even under extreme provocation. The State Police Chief thereupon issued Annexure P2 Circular bearing No.25/2021 dated 10.09.2021 to all the members of the force, which indubitably was intended to make sure that everyone of them were made aware of the declarations of this Court. As said above, the respondents admit that they were fully cognizant of the Circular also.

14. The afore reproduced jural declarations run vitally important in this case because, one of the defence projected by the first respondent in his first affidavit is that the petitioner made great provocation, to which he responded. This makes matters worse. It is also the allegation against him - which now stands expressly admitted by the first respondent through his second affidavit - that he used the word 'നീ and 'പോടാ

repeatedly to address the complainant, which have been declared in **Anil.J.S.** (supra) to be relics of colonial subjugation and hence, prohibited from use by responsible police officers.

15. Sadly, when the first respondent has no contra case that he was expected to behave as per the standards fixed by the above judicial declarations; and when he violated it with full volition and regardless of consequences, his actions certainly would come to have greater bearing on public expectations; and have apodictically harmed the system considerably. A responsible police officer could not, and ought not, to have acted so - which fact is admitted by the first respondent also; and hence, the acceptance of an apology as a method of purging the contempt becomes tenuous; and, at the best, this Court can only concede it to be a consideration in mitigation.

16. Guided by the afore perspective, I asked Sri.Omar Salim whether his client would prefer charges to be framed against him, thus with an opportunity to stand trial; to which, he responded, saying that he does not require so because he is remorseful and repentent for his actions; and reiterated that he has offered an unconditional apology from his heart, without any trace of deceit. He added that his client will accept any

judgment, in such circumstances, from this Court.

17. I, therefore, asked myself the course this Court should now adopt in the afore scenario, where the first respondent takes the stand that his apology is sincere, admitting every allegation against him. I am of the view that this Court will be safely guided by the approach adopted by the Hon'ble Supreme Court in **Mathews Nedumpara, In Re** [(2019) 19 SCC 454] where, after noticing guilt to be expressly admitted and an unconditional apology offered, their Lordships sentenced him, but suspended it on condition that the contemnor would not indulge in any further conduct which would expose him to penal action.

18. But, before that, a survey of the provisions of the 'Act' would be requisite because, in the afore precedent, the Hon'ble Supreme Court was dealing with 'Criminal Contempt'.

19. As per Rule 14 of the Rules under the Contempt of Courts Act, 1971, if the respondent admits the imputation against him/her that he/she has committed the contempt; and is to concomitantly tender an unconditional apology, this Court will become jurisdictionally authorized to pass such orders as it deems fit. If, on the contrary, the respondent does not admit the commission of contempt, then this Court is enjoined to frame

charges; thereafter, record his plea and proceed to trial.

20. As far as this case is concerned and as seen above, the second affidavit of the first respondent, dated 28th February 2024, avers as under:

> "3. I submit that being a trained police officer, my conduct fell short of the standards which I was duty bound to uphold, I should not have behaved in such a manner to anyone approaching a Police Station. I am aware of the order of this Honourable Court in W.P. (C)No.11880 of 2021 in respect of the undependable obligation to treat and address the citizens with respect. I am also aware of Circular No.25/2021 issued dated 10.09.2021 regarding conduct of police officers. I should have exercised restraint and decorum in my conduct in a dignified manner while fulfilling the public duties assigned to me. I recognize the importance of always speaking and behaving with courtesy and professionalism.
>
> 4. I submit that I am deeply remorseful for the unwarranted behaviour and lack of judgment from my side and I repent the same. I hold our judicial system and this Honourable Court in the highest regard and I will be keeping more care and consciousness in keeping the honor and dignity of the police force with the utmost propriety and adherence to the law."

21. It is thus beyond the pale of contest that the first respondent has expressly and unequivocally admitted the commission of the contempt, conceding specifically that he *"should not have behaved in such a manner to anyone*

approaching the police station (sic)". He then admits to be fully aware of the aforecited precedents, as also the resultant Annexure P2 Circular issued by the State Police Chief; and then further concedes that *"he should have exercised restraint and decorum in my conduct"* (sic). As then evident from the afore extracted averments, he says that he is deeply remorseful for the *"unwarranted behaviour and lack of judgment"* (sic); and that he repents the same.

22. Indubitably, therefore, when the petitioner has expressly admitted to the alleged conduct and the commission of guilt, it would not require this court to read charges to him, or to make him stand trial, particularly when, as seen above, his learned counsel has expressly acceded to this.

23. The crucial question, however, is whether this Court, even if to accept the second affidavit, must drop proceedings against the first respondent.

24. I do not need to seek far for answers because, **Balwantbhai Somabhai Bhandari** (*supra*) fully illuminates my path.

25. As unmistakable from the afore extracted

declarations in **Balwantbhai Somabhai Bhandari** (*supra*), the Hon'ble Supreme Court has rendered it limpid that an apology is not a weapon of defence, forged to purge the guilty of their offence; and that it is not an additional insult to be hurled at the heads of those who have been wronged. It then counsels that courts cannot subscribe to the "slap - say sorry - and forget" school of thought in administration of contempt jurisprudence; and further that, saying "sorry" does not make the slapper taken the slap, smart less, upon the said hypocritical word being uttered. It has then cautioned Courts that, apology is not a panacea to avoid action in law; and that if the conduct is contemptuous, prejudicial and has harmed the system and other innocent persons as a whole, it would be a factor which should weigh against the contemnors.

26. The most profound of the holdings of the Hon'ble Supreme Court in the afore precedent is that ***"an apology neither purges or washes away the act of contempt and at best it is a mitigating circumstance while considering the consequential order, following finding of contempt having been committed."***

27. In other words, an apology cannot be a mere set of

words; and Courts should not and would not accept it, if it is intended to be a legal trick to wriggle out of responsibility. The pervading view of the Honourable Supreme Court, that an apology tendered is not to be accepted as a matter of course; and that Courts are not bound to accept the same, is extremely powerful and poignant.

28. Obviously, when this Court decides the worth of the afore extracted apology of the first respondent, it ought to be reflected therefrom that it is an act of penitence, contrition or regret. It requires to be verified whether such an apology has been made at the very initial stage; and also to see if the conduct admitted by the first respondent has harmed the system, as forewarned by the Hon'ble Supreme Court. If this Court is to act otherwise, it will fall foul of the standards set by the Hon'ble Supreme Court in paragraph 101 of the **Balwantbhai Somabhai Bhandari** (*supra*) extracted in paragraph 9 above; and would justifiably lead to an imputation against this Court that it has shown undue leniency and magnanimity towards the contemnor. This is more so, in the backdrop of the unmistakable caution sounded by the Honourable Supreme Court that ***"the lenient***

attitude shown by the courts over a period of time has actually emboldened unscrupulous litigants."

29. There is an adscititious reason why this Court should now not allow contempt applications to be considered as a routine matter and require to adopt a modus to act as deterrent. The number of applications in the contempt jurisdiction are increasing day after day; and many of them are then closed, based on apology or subsequent compliance, thereby, virtually reducing the jurisdiction into one in execution. This ought not to be and it certainly drains energy and time, which this Court should have invested in many other worthy causes. If such a leniency is to be pursued as a rule, then, as correctly warned by the Honourable Supreme Court in **Balwantbhai Somabhai Bhandari** (*supra*), every contemnor would use apology as a method to wriggle out of responsibility; and if this is to be then countenanced, it surely would leave a serious scar on the dignity and authority of Courts and interfere with the administration of justice. The apology would then be reduced to a mere hypocritical word, without any sincerity; and as again correctly said by the Honourable Supreme Court, an apology to be accepted must

porpoise itself as *"a deep ethical act of introspection, self introspection, attornment and self reform"*.

30. To paraphrase, even if an apology contains all the afore, it would not be apposite for this Court to accept it in an automotion fashion and discharge the contemnor, because this would then encourage everyone to adopt this method as a matter of course.

31. Coming to the case at hand, the first affidavit filed by the first respondent, dated 1st of February 2024, certainly contains an apology, but he did not admit to the guilt; and, in fact, he appears to justify his conduct to a large extent. This is unmistakable from the tenor of the said affidavit, which is also extracted, for necessity of full reading:

> "8. As regards paragraph 5 of the contempt petition, it is submitted that this Hon'ble Court was pleased to observe in Annexure 1 judgment that the use of disrespectful words to address the citizens cannot be tolerated or permitted for which necessary instructions by way of Circulars be issued to members of force and citizens be addressed with acceptable vocatives and words as phrases referred to in the judgment should not be used. Based on the judgment, Circular was issued by the State Police Chief wherein the use od disrespectful words is prohibited. Annexure P3 Audio and Video recording is legally inadmissible even if it is accompanied by Section 65B certificate. I have not wilfully and intentionally and

> intentionally committed anything that amounts blatant disregard to the order of this Hon'ble Court and I have never challenged the authority of this Hon'ble Court in any manner.
>
> 9. As regards paragraph 9 of the contempt petition, it is submitted that I have not received any instructions from the 2nd respondent over phone encouraging to violate either the order of this Hon'ble Court or the order of the learned JFCM Court, Alathur.
>
> 10. Regarding paragraph 20 of the contempt petition, I submit that I have not wilfully and intentionally committed any criminal contempt. A reply containing true and correct state of affairs is submitted by me before the learned JFCM Court, Alathur which is pending consideration before the Hon'ble JFCM Court. I have not committed any wilful or intentional act resulting in lowering the authority of the learned Court and I have also not interfered with administration of justice.
>
> 11. I submit that as regards paragraph 11 of the contempt petition, it is incorrect to say that several complaints have been moved against me.
>
> 12. I submit that the incident was unintentional but it happened out of heat of passion and the pressure of the circumstances for which I deeply regret and tender my unconditional apology and I undertake that I will not involve in similar incident alike. The District Police Chief conducted a preliminary investigation on this issue and found carelessness in my conduct and issued a warning prescribed under Kerala Police Act."

32. Axiomatically, this Court has to now weigh the rectitude in the afore two affidavits filed by the first respondent and then evaluate whether an unconditional and contrite apology was made by the said respondent at the first instance. This is the essential *sine qua non*, as postulated by the Hon'ble Supreme

Court in **Balwantbhai Somabhai Bhandari** (*supra*), to decide whether the apology should be accepted; and if so, whether it can be a factor for mitigation, while considering the consequences of the admitted conduct.

33. Without requirement for any further restatement, the apology, for this Court to act upon, must be at the first instance and reflecting genuine penitence and regret; and when one reckons the afore two affidavits of the first respondent, it becomes apodictic that, initially, though he offered an unconditional apology; it was without admission of guilt; but then, he proceeded to do so within a few days through the second affidavit, which this Court can take partly to be because he was aware that he would have to stand trial and face the statutory consequences.

34. That said, however, since the second affidavit of the first respondent exhibits contriteness and an unqualified undertaking to behave well in future, I am certainly persuaded that it should be accepted, though not to purge the contempt, but as a mitigating circumstance, as has been authorised by the Hon'ble Supreme Court in **Balwantbhai Somabhai Bhandari**

(*supra*)

35. The afore being said, however, I cannot find the charge against the second respondent to be tenable and therefore, propose to discharge him from the case.

36. In the afore circumstances, I order this Contempt of Court Case, sentencing the first respondent to two months of simple imprisonment under the provisions of Contempt of Court Act; however, suspending the same for a period of one year. Should he be not involved in any analogous charge during this period, the said sentence would lapse after the said period.

The rule of contempt against the second respondent is hereby discharged.

Sd/- DEVAN RAMACHANDRAN

JUDGE

stu

APPENDIX OF CON.CASE(C) 175/2024

PETITIONER ANNEXURES

Annexure P1	**COPY OF JUDGMENT IN ANIL J S VS STATE OF KERALA & OTRS (W.P (C) 11880 OF 2021) REPORTED IN 2021:KER:32853**
Annexure P2	**A COPY OF THE POLICE DEPARTMENT CIRCULAR NO.25/2021 DATED 10 SEPTEMBER 2021 ISSUED BY THE STATE POLICE CHIEF**
Annexure P3	**AUDIO VIDEO RECORDING**
Annexure P4	**A COPY OF THE CMP FILED BEFORE THE JMFC ALATHUR**

RESPONDENT ANNEXURES

Annexure R1(a)	**THE TRUE COPY OF THE WARNING MEMO OF THE DISTRICT POLICE CHIEF DT .17.1.2024**
Annexure R1(b)	**THE TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT POLICE CHIEF DT 8.1.2024**
Annexure R2(a)	**TRUE COPY OF THE DAILY DEPLOYMENT DETAILS OF THE STATION FOR 02/01/2024 TO 04/01/2024**

PETITIONER ANNEXURES

Annexure P5	**COPY OF AUDIO VIDEO RECORDING**
Annexure P6	**The true copy of the complaint dated 20-08-2023**