

BEFORE HIS EXCELLENCY THE PRESIDENT OF INDIA

PRESIDENTIAL SUI GENERIS JURISDICTION

PETITION UNDER ARTICLE 72
OF THE CONSTITUTION OF INDIA

[Being aggrieved by the impugned order and notice dated 08/02/2107 passed by Hon'ble Supreme Court of India culminating in the order dated 9th May, 2017 convicting the petitioner for criminal contempt of court and sentencing him to undergo imprisonment for six months, the instant writ petition is preferred by the petitioner through his counsel]

Justice C.S. Karnan

... PETITIONER

IN THE MATTER OF

SUO MOTU CONMT.PET.(C)NO.1 OF 2017

BETWEEN

Supreme Court of India
on its own motion

... Suo Moto

Versus

Justice C.S. Karnan
Contemnor/Respondent

... Original

Alleged

P A P E R - B O O K

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I N D E X

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To

His Excellency Shri. Pranab Kumar Mukherjee,
President of India,
Rashtrapati Bhavan,
Raisina Hill, New Delhi, 110 004.

MAY IT PLEASE YOUR EXCELLENCY

**MEMORANDUM/REPRESENTATION UNDER ARTICLE 72 OF THE
CONSTITUTION OF INDIA BY HON'BLE SHRI JUSTICE C.S. KARNAN, JUDGE,
HIGH COURT OF JUDICATURE AT CALCUTTA SEEKING SUSPENSION/STAY OF
HIS SENTENCE OF SIX MONTHS IMPOSED ON HIM BY A SEVEN-JUDGE BENCH
OF THE SUPREME COURT, PREFERRED THROUGH HIS COUNSELS, SHRI
MATHEWS J. NEDUMPARA AND A.C. PHILIP.**

Re: IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
SUO MOTU CONTEMPT PETITION(C) NO.1 OF 2017
In Re: Sri Justice C.S. Karnan.

The instant Petitioner, Shri Justice C.S. Karnan, a Sitting Judge of the High Court of Judicature at Calcutta, is constrained to invoke the jurisdiction of Your Excellency, the President of India, under Article 72 of the Constitution of India since he stands removed from his office as a Judge of the High Court by virtue of order dated 08th February, 2017 of the Supreme Court by which he was divested of judicial and administrative powers vested in him as a Judge of the High Court of Calcutta and by order dated 9th May, 2017 he was convicted and sentenced to undergo imprisonment for six months and

the Director General of Police, West Bengal, was directed to arrest him forthwith in execution of the said order, though the reasoned judgment, which should in law precede the sentence, is yet to be delivered.

2 A Seven-Judge Bench of the Supreme Court of India presided over by Hon'ble Shri justice J.S. Khehar, Chief Justice of India (CJI), was pleased to issue a notice dated 08th February, 2017 to the Petitioner to show cause as to why proceedings under The Contempt of Courts Act, 1971 (the Act, for short) should not be initiated against him as he chose to address a letter dated 23rd January, 2017 to the Hon'ble Prime Minister of India pointing out that certain Judges named in the said letter have indulged in corruption. A copy of the letter dated 23rd January, 2017 is annexed as **Annexure "A"**. A copy of the notice dated 8th February, 2017 issued by the Supreme Court, which is a short one containing 7 sentences, by which the Petitioner was literally removed from his office because by the said notice/order the Petitioner was restrained from exercising his judicial and administrative powers, is produced as **Annexure "B"**. By the said order the Petitioner was also directed to return to the Registrar General of the High Court all judicial and administrative files in his possession.

3 In furtherance of the notice/order dated 8th February, 2017, the Petitioner appeared before the Seven-Judge Bench of the Supreme Court and expressed his regret for anything said or done by him which is unbecoming of the high constitutional office which he occupies. He brought to the notice of

the Hon'ble Bench that he as a sitting Judge of the High Court is not administratively subordinate to the Supreme Court and if any action or words on his part amounts to "proved misconduct" within the meaning of Article 124(4) of the Constitution, then it is for the Parliament and the parliament alone which can proceed against him and that the Hon'ble President in furtherance of an impeachment motion which has received the support of majority of members of the House; so too 2/3rd of the members who partake in the voting could remove him and that the Supreme Court is not invested with any jurisdiction to proceed against him even assuming that his words or action in complaining of corruption in judiciary amounts to misconduct. The Petitioner pointed out that he did not commit any contempt of Court and in bringing to the notice of the Hon'ble Prime Minister about corruption at the hands of his Brother Judges he has only discharged his fundamental duty as a citizen – bringing to the notice of the appropriate authority the corruption and malpractices which could destroy the very foundation of the justice delivery system, one of the most important pillars of the State. The Petitioner contended that he did nothing which is blameworthy and the Supreme Court erred in divesting him of his judicial and administrative powers which amounts to his impeachment without authority of law; that what is required to be done is not to invoke contempt of Court proceedings against him which amounts to great ridicule and humiliation, but what is required is to conduct an inquiry into the corrupt practices alleged by him against his Brother Judges. He further requested the Hon'ble Bench to restore his judicial and

administrative powers, allow him to resume work as a Judge and pointed out further that its orders have caused great mental agony, pain and injustice which no words could adequately describe/explain.

4 The Hon'ble Bench, particularly the Hon'ble CJI, instead of being empathetic to the Petitioner for the injustice and pain which he had to undergo as a consequence of issuance of the issuance of contempt of Court notice to him and restore his dignity and bring an end to his pain and agony, ordered that he be examined by a medical board and certify whether or not he is a mentally fit person. Copy of the order dated 01st May,2017 directing such medical examination of the Petitioner is produced as **Annexure "C"**. Since the Petitioner did not appear before the Supreme Court on 10th March,2017, on which date the case was listed for hearing, the said Bench, by order even dated, issued a bailable warrant against him and directed the police to serve the same on him. A copy of the order dated 10th March,2017 is produced as **Annexure "D"**.

5 The Petitioner took the aforesaid orders directing him to be subjected to medical examination and issuing a bailable warrant against him as one without jurisdiction and in violation of law and thus a nullity, incapable of commanding observance. On the contrary, the Petitioner found the said orders as trenching into the jurisdiction of the Parliament, which is too naked and manifest and as clear as daylight, and as violation of Articles 124 and 217

of the Constitution. Therefore, the Petitioner did not appear before the Seven-Judge Bench on 01st May, 2017 to which date the case stood adjourned.

6 On 9th May, 2017, the Court, as it appears from the order of even date, heard *“Mr. Rakesh Dwivedi, learned senior counsel representing the State of West Bengal, with reference to the medical examination of Sri Justice C.S. Karnan, as also, Mr. Maninder Singh, learned Additional Solicitor General of India, Mr. K.K. Venugopal, learned senior counsel representing the Registrar General, High Court of Judicature at Madras, and Mr. Rupinder Singh Suri, Senior Advocate, in his capacity as the President of the Supreme Court Bar Association, and, without any discussion whatsoever at all on the merits of the case or what was argued by them, came to the conclusion that the Petitioner “has committed contempt of the judiciary. His actions constitute contempt of this Court, and of the judiciary of the gravest nature. Having found him guilty of committing contempt, we convict him accordingly. We are satisfied to punish him by sentencing him to imprisonment for six months. As a consequence, the contemnor shall not perform any administrative or judicial functions. Detailed order to follow.”* A copy of the order dated 9th May, 2017 is produced as **Annexure “E”**. As is manifest from the order dated 9th May, 2017, the Supreme Court has barred the Petitioner from performing any of his administrative or judicial function, which has meant his removal from the office of the Judge of the High Court, which a power is not invested in the Supreme Court at all.

7 When the instant petitioner appeared before the Supreme Court on 31st March, 2017 upon notice, he brought to the notice of the Hon'ble Court that divesting him of his judicial and administrative powers amounts to removing him from his office, which is in the exclusive domain of the President of India upon a motion of impeachment which has received the assent of the Parliament; that the Supreme Court has no jurisdiction to impeach him, which its orders have meant, which, to repeat, is in the exclusive domain of the Parliament, for, Parliament includes the President. On 9th May, 2017 and on the earlier dates on which the contempt of Court case was listed for hearing, there was no discussion whatsoever on the very jurisdiction of the Supreme Court to invoke contempt of Court proceeding against a Sitting Judge of a High Court and remove him from office, which is in the exclusive domain of the Parliament, and to imprison him.

8 The Petitioner instituted a substantive Writ Petition under Article 32 of the Constitution seeking a declaration that the entire proceeding at the hands of the Seven-Judge Bench of the Supreme Court culminating in the order dated 9th May, 2017 is unconstitutional and void because it amounted to usurpation of the jurisdiction of the Parliament to remove him from office; akin to re-enactment of the manner in which the power of appointment of Judges to the higher judiciary, which the Founding Fathers of the Constitution had vested in the executive, was usurped by the judiciary by reviving the collegiums system by recourse to judicial legislation. A copy of the Writ Petition in which the constitutional validity of the Act is challenged; so too

seeking a declaration that the order dated 9th May, 2017 is unconstitutional is produced as Annexure "F".

9 The Petitioner also filed an application seeking recall of the order dated 9th May, 2017; so too suspension/stay thereof, pointing out that the said order is one rendered void ab initio, for want of jurisdiction and against the principle of *nemo iudex in sua causa* or *nemo debet esse iudex in propria causa* - no one can be judge in his own cause. It was pleaded that the Petitioner was not told what exactly is the charge against him; what the legal provision under which he is charged; what are the allegations constituting the charge; what is the material and evidence on which the allegations are founded; what is the punishment likely to be imposed on him, not to speak of not affording him an opportunity to contradict the evidence, if any, against him In the said application and the Writ Petition the Petitioner further pleaded that even assuming that the Act is constitutional, then also the elementary principles of criminal jurisprudence founded on the principles of natural justice, like, presumption of innocence, burden of proof is on the prosecution, that nobody shall be compelled to be a witness against himself, that an accused is entitled to be defended by a counsel, that there could be no sentence without a judgment, that it cannot be that a reasoned judgment can follow after the conviction but, on the contrary, there can be no sentence without there in existence a reasoned judgment etc., ought to be observed. A copy of the application to recall the order dated 9th May, 2017 is produced as Annexure "G".

10 The order dated 9th May, 2017 was dictated in the open Court. It was uploaded on the website of the Supreme Court late in the night of the same day. The undersigned, counsel for the Petitioner, who was in Cochin, Kerala, booked the first flight to Chennai, discussed the case with the Petitioner, prepared the Writ Petition and the application to recall the order dated 9th May, 2017 and sought to institute them in the Supreme Court on 11th May, 2017. Registration of cases in the Supreme Court, to an extent, is computerized. There are only two provisions for registration of cases in terms of the software in vogue, namely, (a) through an Advocate on Record (AOR) and (b) by Party in Person. The undersigned; so too his associate Shri A.C. Philip, approached not less than 30 AORs. However, none of them was forthcoming to be an AOR on behalf of the Petitioner. Many of them confided in the undersigned that they are scared of displeasing the Hon'ble CJI; that AORs and the senior counsel practicing in the Supreme Court, unlike the ordinary lawyers who appear in the High Courts and subordinate Courts, do not enjoy the kind of freedom and independence which lawyers as a class, the sentinels of civil liberties and freedoms, ought to enjoy and profess to enjoy. They were too frank to admit that orders of the Supreme Court are extremely discretionary; that more than 80% of the petitions filed under Articles 136 and 32 of the Constitution, which constitute 95% of the work of the supreme Court, are absolutely discretionary and no AOR or a senior counsel could afford to invite the slightest of displeasure of the Hon'ble Judges.

11 Faced with the aforesaid scenario, the undersigned tendered the Petitioner's Writ Petition and the application to recall the order dated 9th May, 2017 in the open Court before the Hon'ble CJI at 4.00 p.m. on 11th May, 2017. On being submitted that the AORs whom the undersigned had approached have refused to act as an AOR for the Petitioner, the Hon'ble CJI was gracious enough to accept the Writ Petition and the application to recall the order dated 9th May, 2017, which were tendered across the Bar. The undersigned realized that through oversight what he tendered across the Bar on 11th May, 2017 was a copy of the Writ Petition and not the original, though the application seeking recall of the order dated 9th May, 2017 was original, which was perused by the Hon'ble CJI, and directed the Registry to accept the original of the Writ Petition. However, the Registry refused to accept the same, whereupon the undersigned approached the Registrar General, who too refused to accept the same. Accordingly, the undersigned mentioned the matter before the Hon'ble CJI who directed the undersigned to deliver the same to the Registrar. Since the said direction remained to be communicated, the Registrar refused to accept the Writ Petition which compelled the undersigned to mention the matter once again at 2.00 p.m. The Hon'ble CJI showed his displeasure on the matter being mentioned for the third time and directed the undersigned to present the petition in the Registry, which accepted the same readily upon instructions being received from the Court Associate of the Hon'ble CJI.

12 Since the order dated 9th May, 2017 has directed the police to take the Petitioner into custody forthwith, being faced with the threat of imminent arrest the undersigned was forced to mention the matter seeking emergent constitution of an appropriate Bench, the Supreme Court being on Summer Vacation. The undersigned sought to mention the matter at 4.00 p.m. on 12th May, 2017, which also failed since the Hon'ble CJI did not lend his ears and retired to his Chamber. The undersigned accordingly met the Registrar (Judicial) who promised to obtain instructions from the Hon'ble CJI. When contacted subsequently, he was kind enough to indicate that constitution of a Bench and listing of the case is beyond his powers and asked the undersigned to mention the matter before the Hon'ble CJI. Accordingly, the undersigned mentioned the matter before the Hon'ble CJI at 10.30 a.m. on 11th May, 2017 seeking constitution of a Bench on emergent basis, pointing out that the order dated 9th May, 2017 meant the Petitioner being impeached in a manner unknown to the Constitution, as a High Court Judge could only be removed from office by the Parliament; that the Petitioner was convicted without a charge, without a trial, without even a judgment; that in terms of the proviso to Section 12 of the Act a contemnor is liable to be discharged even after his conviction if he tenders an apology, even a conditional one, provided that it is bona fide. It was further pointed out that such an opportunity of discharge, even after conviction, which is embedded in the Act, which opportunity was extended to Shri Vijay Mallya who too was convicted on the same day under the Act, was denied to the Petitioner and, therefore, it

is imperative that the case be listed by constituting an appropriate Bench. The undersigned believes that the submissions made by him as aforesaid, which he did in the discharge of his sacred duty which he owed towards his client, the Petitioner, for reasons difficult to be fathomed, incensed the Hon'ble CJI. To the repeated pleas of the undersigned, the reply of the Hon'ble CJI was "Go to the press". The undersigned thereafter met the Registrar General who expressed his helplessness in the matter. The undersigned is reminded of the words of Mr. Brougham, the Attorney-General of the Queen, in his defence of Queen Caroline before the House of Lords:-

"I once before took leave to remind your lordships — which was unnecessary, but there are many whom it may be needful to remind — that an advocate, by the sacred duty of his connection with his client, knows, in the discharge of that office, but one person in the world, that client and none other. To save that client by all expedient means — to protect that client at all hazards and costs to all others, and among others to himself — is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction, which he may bring upon any other; nay, separating even the duties of a patriot from those of an advocate, he must go on reckless of the consequences, if his fate it should unhappily be, to involve his country in confusion for his client's protection."

And of Lord Denning:

"An advocate is a minister of justice equally with a judge", who is bound to protect the interest of his client, fearless of the Judge, unmindful of the client who may stab him from behind, unmindful of the society which may not be kind to him."

Mustering courage, the undersigned went to the Hon'ble CJI once again at 2.00 p.m. on 15th May, 2017 and requested that an appropriate Bench be constituted and the case be listed. The undersigned received a couple of calls on his mobile from the officers of the Registry saying that the Petitioner's case

will never be listed and that it has been “lodged”. The undersigned was also told that a communication by email to that effect has been sent to him, which is yet to be received.

Ⓕ Though the Supreme Court has convicted the Petitioner under the Act, he in all humility begs to submit that he did not commit any contempt of Court. What is the contempt he has committed? He addressed a letter to the Hon'ble Prime Minister alleging that some of his brother Judges had sold their conscience and indulged in corrupt practices. A Court and a Judge are not one and the same. Both are different, though there could be no Court without a Judge. A Judge is not a Court. The allegation of corruption made by the Petitioner is against individual Judges. If the allegations made by him are untrue, it will entail in an action, both civil and criminal, at the hands of the Judges concerned against the Petitioner. Initiation of contempt of Court proceeding against the Petitioner has meant that nobody in this country could ever dare to be a whistleblower in so far as corruption in judiciary is concerned. In its judgment in *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, 1995 SCC (5) 457 JT 1995 (6) 339, 1995 SCALE (5)142, the Supreme Court has held that no First Information Report (FIR) could be registered against members of the higher judiciary without the prior consent of the CJI, which meant impunity for a Judge from investigation even in heinous crimes, without meaning the least that Judges indulge in such crimes. The contempt of Court proceedings against Shri Justice Katju and the Petitioner has meant that whoever speak about corruption or criticize the Judges in higher

judiciary, no matter it is a settled principle that judgments could be criticized and nobody is above law and even if a Judge indulges in corruption he will be subject to the criminal laws of the land, will be proceeded against for contempt of Court and will be convicted and sentenced and even the media will be restrained from reporting the truth. The Petitioner's case is no longer the case of an individual who has been convicted and sentenced to imprisonment without a chargesheet, without a trial, without even a judgment, but by a sentence where a reasoned judgment is yet to be delivered, but one concerning the very right of freedom of speech and expression, transparency and accountability in higher judiciary.

14 In the name of independence of judiciary, by the judgments in Judges-2, Judges-3 and the NJAC cases, the power of selection and appointments of Judges to the higher judiciary, which the Founding Fathers of the Constitution had vested in the executive, has been usurped by the judiciary/Supreme Court. With the order dated 9th May, 2017 (Annexure "E"), even the power to remove a Judge of a High Court has been assumed to itself by it by recourse to the provisions of the Contempt of Courts Act, 1971 even without any discussion as to whether or not any such jurisdiction is vested in the Supreme Court.

15 The nation is at crossroads. Independence of judiciary is of paramount importance and that is achieved when Judges are appointed by open selection, inviting applications from all eligible candidates and

references from all stakeholders, in an open and transparent manner; so too by introducing a mechanism to deal with complaints and grievances against Judges of the higher judiciary without in any manner impinging their independence. Video-recording of Court proceedings, repealing of the Contempt of Courts Act, abolition of the system of designation of lawyers as Senior Advocates; so too Advocates on Record are all measures without which the dream of a judiciary which is transparent, efficient and accountable to the people will remain a mirage.

16 The Petitioner's effort to get undone the injustice caused to him by instituting a Writ Petition under Article 32 of the Constitution and an application seeking recall of the order dated 9th May, 2017, as aforesaid, has failed. The undersigned, as counsel for the Petitioner, is in complete darkness. The undersigned is afraid to say that the Hon'ble CJI is not so kind to him. His very plea to constitute an appropriate Bench has made the Hon'ble CJI losing his temper. Getting the aforesaid Writ Petition listed, for the moment, is a near impossibility.

17 The Petitioner is denied justice. The concept of justice is divine; it is his birth right and when justice is denied to him by the highest Court of the land, the only authority which the Petitioner could think of to seek justice is Your Excellency, the President of India, the symbol of "We, the People of India", the sovereign. Article 72 of the Constitution undoubtedly invests in Your Excellency the power to grant pardons, reprieves, respites or remissions

of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. It is only appropriate to quote Article 72 and the undersigned begs to do so as infra:-

“72. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence —

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.”

Hence, the instant memorandum/representation on behalf of the Petitioner.

PRAYER

For the reasons stated hereinabove, it is most respectfully prayed that Your Excellency, the President of India, be pleased to exercise the jurisdiction invested in Your Excellency under Article 72 of the Constitution and suspend or stay the operation of the order dated 9th May, 2017 passed by the Supreme Court convicting and sentencing the Petitioner Shri Justice C.S. Karnan.

Dated this 17th day of May, 2017.

[MATHEWS J. NEDUMPARA]

AND

[A.C. PHILIP]

Advocates for the Petitioner

P.S. Since the President of India means His Excellency acting on the advice of the Council of Ministers, a copy of the instant memo/representation along with a covering letter is sent to the Hon'ble Prime Minister, Hon'ble Finance Minister and the Hon'ble Law Minister.