

R.O.C.No.73131-A/2016/F2

OFFICIAL MEMORANDUM

Sub: Bar Council of Tamil Nadu and Puducherry,
Chennai – Action taken against 7 Advocates –
Order received - communicated – reg.

Ref: Letter in R.O.C.No.3953/2016 dated
18.10.2016 alongwith order of Bar Council of
Tamil Nadu and Puducherry, Chennai, in
D.C.C.No.58 of 2015, dated 15.10.2016,
received from the Secretary, Bar Council of
Tamilnadu & Puducherry, Chennai:

A copy of the letter alongwith enclosure received from
the Bar Council of Tamilnadu & Puducherry under reference
cited is enclosed herewith for information and necessary
action.

All the Principal District Judges / District Judges / Head
of Units are hereby required to communicate the same to all
the Courts or Units under their control.

High Court, Madras.
Dated : 21.10.2016

N. Aravind
21/10/16
REGISTRAR GENERAL

To:

- 1.All the Principal District Judges /District Judges/Head of
Units in Tamil Nadu (w.e).
- 2.The Chief Judge, Puducherry (w.e)
- 3.The Principal Judge, City Civil Court, Chennai-104(w.e)
4. The Chief Judge, Court of Small Causes, Chennai (w.e)
5. The Chief Metropolitan Magistrate, Egmore at Allikulam
Complex,(w.e)

2363
24-10-2016



THE BAR COUNCIL OF TAMILNADU & PUDUCHERRY

V. DAKSHANAMOORTHY,
SECRETARY

High Court Campus,
Chennai - 600 104.
Phone No.: 2534 2739, 2535 2595
E-mail : tnbarcouncil@yahoo.com
www.barcounciloftamilnadupuducherry.com

R.O.C.No. 3953 of 2016

Dated 18.10.2016

To

The Registrar General,
High Court,
Chennai.

Sir,

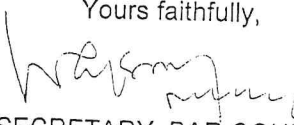
Sub: Order passed in D.C.C.No.58 of 2015 – Copy forwarded – Reg.

73/31/A
The Disciplinary Committee IV of the Bar Council of Tamil Nadu and

Puducherry had passed an order in D.C.C.No.58 of 2015 on 15.10.2016. The
copy of the said is enclosed herewith for your kind information.

3974
Thanking you,

Yours faithfully,


SECRETARY, BAR COUNCIL.



BEFORE THE DISCIPLINARY COMMITTEE IV OF THE BAR COUNCIL OF
TAMIL NADU AND PUDUCHERRY, CHENNAI

PRESENT : THIRU R.ARUNACHALAM, CHAIRMAN
THIRU K.K.S.JAYARAMAN, MEMBER
THIRU R.AJAY KUMAR, MEMBER

D.C.C.No. 58 of 2015

Dated, the 15th day of October 2016

Suo Motu Complaint

.. Complainant

Vs.

1. S.Jimraj Milton
2. Mr.S.Parthasarathy
3. Mr.S.Mahendran
4. Mr.S.Mahaveer Shivaji
5. Mr.D.Vincent Prabakar
6. Mr.P.Umashankar
7. Mr.K.Kesavan

.. Respondents

This petition is coming up for final hearing on 21.09.2016 before this Committee in the presence of complainant, counsel for Complainant, the Respondents and Counsel for the respondents, upon hearing the arguments of both the parties and on perusal of the documents, this Committee passes the following:-

ORDER

1) The Bar Council of Tamil Nadu and Puducherry has received a mail from the learned Registrar General enclosing a list of advocates, who raised slogans and attempted to barge into Court hall No.4, which heard the suo motu contempt petition No.1592 of 2015 on 16.09.2015 against two Madurai advocates. Since the list of advocates does not contain the initial of advocates, the Bar Council wrote a letter dated 16.10.2015 requesting the learned Registrar General to furnish full particulars regarding the advocates so as to enable the Bar Council to take action. For that letter, the learned Registrar General replied through a

letter dated 16.09.2015 by enclosing a compact disc to enable the Bar Council to identify the advocates. Thereafter, the Bar Council has initiated suo motu action against the Respondents and passed a prohibitory order against the Respondents prohibiting them from practising in all courts, tribunals etc. by its order dated 23.11.2015, pending disposal of disciplinary proceedings and constituted the present Committee to go into the allegation.

2) After receipt of the notice given by this Committee, all the Respondents have submitted their written explanation as follows :-

The first Respondent by way of defense stated that the resolution of the Complainant dated 16.11.2015 and the communication dated 23.11.2015 does not mention any specific allegation against the first Respondent. The first Respondent further claimed that on 16.09.2015 that the suo motu contempt petition No.1592/2015 against two Madurai advocates was listed in Court Hall No.4 and the same was to be heard at 2.15 p.m., large number of advocates gathered to witness the hearing on their own. The court proceeding on 16.10.2015 was declared to be open, but the police prevented them entering the court hall No.4, this annoyed the advocates and the advocates outside the court hall was provocative and created chaos among the advocates as it was unexpected. The first Respondent also challenged the power of the Bar Council to initiate action against him.

The 2nd Respondent by way of explanation has stated that on 16.09.2015 at 2.15 p.m. large number of advocates gathered to witness the hearing on their own. The police prevented the advocates from entering into the court hall No.4 while permitting few other advocates inside the court hall. He has also challenged the competence of the Bar Council to take action against them.

The 3rd Respondent in his counter has stated that he was standing near the court hall no.4 on 16.09.2015, which was hearing the suo motu contempt proceeding against the Madurai Advocates. He went there in order to meet Mr.Paul Kanagaraj, President of M.H.A.A., who was engaged by the 3rd

Respondent to appear in one of his case and he went to Court hall No.4 to discuss with Mr.Paul Kanagaraj about the filing of an appeal in CrI.R.C No. 1125 of 2015 and there, a group of lawyers attempted to barge into court hall No.4 and he was jostled in the crowd and at that time, Mr.Paul Kanagaraj requested the 3rd Respondent to control and pacify the advocates, who raised slogans.

The 4th Respondent in his defence statement stated that the complaint against him is totally false, issue of lies, abuse of process of law and against all principles of natural justice, afterthought, on 16.09.2015 he happened to be near the court hall No.4, because he was one of the counsel assisting for Mr.Paul Kanagaraj, who was appearing for one of the contemnor. The 4th Respondent waiting near the court hall No.4 with the intention to assist Mr.Paul Kanagaraj, Mr.Vincent Prabakar, the 5th Respondent met him and gave a dispense with petition, which was passed on through a police to Mr.Paul Kanagaraj. The police prevented the 4th Respondent from entering the court hall No.4 and so, he was screening the same to his colleagues and informed Mr.Paul Kanagaraj that he was standing outside the court hall No.4.

The 5th Respondent in his counter stated that on 16.09.2015 he was informed by Mr.Paul Kanagaraj to assist him in typing a condone absence petition for one of the contemnor and he was one of the assisting counsel Mr.Paul Kanagaraj. The 5th Respondent tried to pass on the petition and he was screening to the 4th Respondent to inform Mr.Paul Kanagaraj that he came with the petition. The petition was handed over to the 4th Respondent and he in turn handed over to one police official.

The 7th Respondent in his explanation has stated that on verification of the video footage, it was seen that a number of advocates assembled and raised slogans and among those assembled, the 7th Respondent is one among them. There is no specific allegation against 7th Respondent. On 16.09.2015 large number of advocates assembled near the court hall No.4. The police prevented

the advocates from entering into the court hall No.4, this annoyed the advocates. The 7th Respondent challenged the authority of the Bar Council to initiate action against him.

3) After receipt of written explanation from the Respondents, this Committee had framed the following charges :-

"That on 16.09.2015 at about 2.15 p.m., when the contempt proceedings in *Suo Motu Cont.Petr. No.1592/2015* against advocates Mr.A.K.Ramasamy and another was likely to be heard in the High Court Hall No.4 and at that time, all of you along with other advocates assembled with an intention to barge into the court hall No.4 in order to disturb the said court proceedings. In furtherance of the above intention, all of you have demonstrated near the Court Hall No.4 and raised unnecessary slogans against Presiding Judges and also made unsavory and derogatory remarks against the judiciary, thereby disturbing the court proceedings and thereby committed professional misconduct, punishable under Sec.35(1) of the Advocates Act, 1961. What do you say?

Except, the 6th Respondent, all the Respondents have denied the charges. Since the 6th Respondent has admitted the charge, this Committee has split up the case in D.C.C.No. 2 of 2016 and passed the order separately. Since all the Respondents except 6th Respondent denied the charges, this Committee has directed the Complainant to produce the witnesses in order to prove the charges framed against the Respondents.

4) On the side of the Complainant, totally five witnesses have been examined and the documents Ex.C1 to Ex.C6 are marked. On the side of the Respondents, they have marked Ex.R1 to R4 are marked through the Complainant side witnesses. On the side of the Respondents, they have not examined any witness before this Committee.

5) Now, the Committee has to see whether the Complainant has proved the charges against the Respondents.

The Senior Counsel appearing on behalf of the Complainant has strenuously argued before this Committee on the following grounds :-

- a) The Respondents cannot challenge the competence of the Bar Council to take disciplinary action against the Respondent. Under Sec.35 of the Advocates Act is clear and empower the Bar Council to take action against the erring lawyers.
- b) Whereas there is ample evidence to prove the charges against the Respondents.
- c) The Complainant has proved the charges through oral and documentary evidence. Ex.C4 is proved as per Sec.65-B of Indian Evidence Act.
- d) The allegations made by the Respondents about Ex.C4-M.O.1 is tampered, edited etc. is not correct and M.O.1 is a valid document to prove the charges against the Respondent in view of Sec.39 of Evidence Act. There is no need to examine the Complainant, since the action is taken suo motu, the Complainant has proved all the charges beyond reasonable doubt against the Respondents.
- e) The Respondents have not produced any evidence to disprove the allegations made against the Respondents.

6) Per contra, the advocates appearing on behalf of the Respondents have mainly argued on the following grounds :-

- a) The Bar Council cannot take suo motu action against them because they do not have any power under Sec.35 of Advocates Act.
- b) The notification of Honourable High Court dated. 15.10.2015 is withdrawn as per Ex.R4 and hence, it is only the police created the situation not allowing the advocates to watch the court proceedings and blaming the advocates.

- c) The coinage of the word that the Respondents barged into the court is curious and smacks of prejudice and bias.
 - d) Ex.C4 cannot be relied on because it is edited. The 1st Respondent had submitted a representation dated 25.10.2016. Ex.R1 pointing out that the video footage in Ex.C4 - M.O.1 is incomplete requesting the unedited copy. The unedited video was never produced and hence, Ex.C4 cannot be relied upon.
 - e) The evidence of C.W.1 to C.W.5 cannot be relied upon.
 - f) The certificate Ex.C5 is not proved as per law.
 - g) Why and in what manner, the Respondents are targeted is not explained.
 - h) Mere assembling and shouting slogans near the court is not an offence.
 - i) The charge is vague and the Respondents are unnecessarily implicated in this case.
 - j) If at all the Respondents have raised any slogans near the court hall No.4, it is for the court to take action against the Respondents and not by the Bar Council of Tamil Nadu and Puducherry.
- 7) After hearing the arguments of the Counsel appearing for both sides, the Committee has to see whether the Complainant has proved the charges against the Respondents beyond any reasonable doubt.

The learned senior counsel for the complainant submitted that the complainant has proved that the incident has taken place on 16.09.2015 by oral as well as documentary evidence where by the charges are proved. The learned senior counsel took us through the evidence of C.W.1 Mr. Anand, Private Secretary to the learned Registrar General, High Court, Madras has stated that he has sent a mail which is marked as Ex.C-1 and he is the person who has also despatched Ex.C-3 and Ex.C-4 to the complainant. The Ex.C4 was played and he identified the 1st and 5th respondents. C.W.2 is G. Manikandan who is working as a Constable and he is one of the persons deputed to do security work near court

hall No.4. C.W.2 is an eye witness to the incident. C.W.2 says that on 16.09.2015 he came for work at 2.05 p.m. and he has been instructed by his higher officials to allow particular advocates inside the court hall and not others. About 100 advocates assembled there and all of them wanted to go inside and they created problem. When the presiding judges of the court namely the Hon'ble Mr. Justice Tamilvanan and the Hon'ble Mr. Justice C.T. Selvam came they raised slogans against them asking them not to enter the court hall and he also says that the police has protected the judges and made them enter into the court hall. He also admits that he knew the names of some advocates. In the cross by the counsel for the 3rd respondent, he admits that the advocates who have assembled have raised slogans. In the chief examination, C.W.2 says as follows :-

'அங்கு 100 பேருக்கு மேலான வழக்கறிஞர்கள் கூடியிருந்தனர். அவர்கள் எல்லோரும் உள்ளே போக வேண்டுமென்று தகராறு செய்தார்கள். எனவே, நாங்கள் அவர்களை உள்ளே செல்ல அனுமதிக்கவில்லை. 4வது கோர்ட்டிலிருந்து நீதிபதி தமிழ்வாணன் மற்றும் சி.டி.செல்வம் வந்தார்கள். அவர்களை பாதுகாப்பாக நீதிமன்றத்தினுள் அனுப்பி வைத்தோம்.' அதனால் சில வழக்கறிஞர்களின் பெயர்கள் மட்டும் தான் எனக்கு தெரியும். அவர்களை பார்த்தால் என்னால் சொல்லமுடியும். நீதிபதிகளை பற்றி தவறாக பேசினார்கள். மேலும், கோஷம் போட்டார்கள். நீதிபதிகள் ஒழிக என்று கோஷம் போட்டார்கள்.'

C.W.3 is Vardarajan who is a police constable involved in the security team of the Hon'ble High Court, Madras on 16.09.2015. He admits in his evidence that about 100 advocates assembled there and when the judges approached court hall No.4, there was jostling and slogans were raised. He revealed the names of respondents 1 and 2 among the persons who have raised slogans.

'நூறு பேர் கொண்ட வழக்கறிஞர்கள் அங்கு கோஷம் போட்டுக்கொண்டே அங்கு வந்தார்கள். தள்ளுமுள்ளு ஏற்பட்டதால் என்ன கோஷம் என்று கேட்கவில்லை. ஆனால், நீதிபதிகள் பற்றிய கோஷம் என்று தெரியும். கோஷம் போட்டவர்களில் 2-3 பேர் பெயர் தெரியும். திரு.மில்டன் சார், திரு.பார்த்தசாரதி சார் இருந்தார்கள். அவர்களை நேரடியாக பார்த்தால் தெரியும். 2.15 மணி முதல் 3.30 மணி வரை பணியில் இருந்தோம். சில பேர்களின் பெயர்கள் தெரியும் என்று கூற முடியுமா என்றால் எனக்கு தெரியாது. திரு.பார்த்தசாரதி மைக்கில் பேசினார் மற்றும் திரு.மில்டன் அவர்கள் எங்கள் மேலே விழுந்தார் என்பதால் எனக்கு தெரியும்.'

8) C.W.4 is Mr. Kannan, Assistant Commissioner of Police, High Court range between 17.03.2015 and 01.03.2016, in his chief examination, he has narrated about the incident that happened on 16.09.2015 and from paras 7 to 12 he narrates what the respondents have done individually on 16.09.2015. In the cross examination he has identified the 4th respondent by playing Ex.C-4. He states that he heard the slogans raised against the judiciary and the judges. In the cross examination of C.W4. by the 2nd respondent on 28.08.2016 he has stated that

'இந்த வழக்கில் குறியீடு செய்யப்பட்ட சிடியை போட்டுக் காண்பிக்கும் பட்சத்தில் எதிர்மனுதாரர்களை என்னால் அடையாளம் காட்டமுடியுமா என்றால் முடியும். என் பிரமாண வாக்குமூலம் பத்தி 7-ல் சொல்லப்பட்டுள்ள சங்கதிகள் குறித்து சி4-சிடியை பார்த்தால் சொல்லமுடியும். தற்போது சாட்சியிடம் விசாரணை மன்றத்தில் மடிக்கணிணி மூலமாக எம்.ஓ.1 போட்டுக் காட்டப்பட்டது. அதில் சாட்சி பார்த்தசாரதியை அடையாளம் காட்டினார். திரு.பார்த்தசாரதி போலீசுடன் தள்ளுமுள்ளு செய்து நீதிமன்றத்தில் நுழைய முயற்சி செய்ததாகவும், நீதிமன்றங்களை அவதூறாக பேசினாரா என்று

கேட்டபோது திரு.பார்த்தசாரதி போலீசுடன் தள்ளுமுள்ளு செய்து நீதிபதிகளை அவதூறாக பேசியும் நீதிமன்ற நடவடிக்கைகளில் குறுக்கீடு செய்ததாகவும் கூறினார். நான் சொல்லுவது சரியல்ல என்றும், நான் சிடியை பார்த்ததே இல்லை என்றும் நான் எனக்கு சொல்லி கொடுத்த மாதிரியே சொல்கிறேன் என்றால் சரியல்ல'

In the cross examination by the 4th respondent he further added that

'Ex.C4-ல் உள்ள பதிவுகளில் இந்த விசாரணை எதிர்மனுதாரர்கள் தவிர மற்றும் சில வழக்கறிஞர்கள் கோஷம் போட்டது பதிவாகி உள்ளது.'

The evidence of C.W.4 as a whole categorically proves the charges against the respondents that on 16.09.2015 they assembled in front of court hall No.4 with the common intention of barging into the court hall no4 and were raising slogans against the judges and the judiciary where by committed professional misconduct.

9) C.W.5, Mr.S.Subramaniam in his evidence has stated that the Bar Council has received documents from the Registrar General, High Court and on the basis of the letter and CD sent by the Registrar General, the Bar Council has taken suo motu complaint against the Respondents.

10) The Learned Senior counsel for complainant relied on decision rendered by the Hon'ble High Court, Madras in C.A.No.110 of 2015 in R.T.No.1 of 2015 dated 27.01.2016 K. Ramajayam @ Appu vs. Inspector of Police, T-4, Maduraivoyal Police Station, Chennai and pointed out Paras 34 and 35 of the Judgment are relevant. Paras 34 and 35 of the judgment are extracted hereunder for reference -

"34. The question of copy as it is normally understood in physical data may not be applicable for electronic data. While retrieving the data from a huge server it would suffice if certification under Sec.65B is obtained from the person, who is incharge of the Server. After so obtaining the information in a USD drive or CD or any other gadget, the expert can feed

the data into the computer and take printouts in tangible form with the certification stating as to how he had collected the data from the Server and fed them into his computer and produced the outputs. These two certifications, in our opinion, will satisfy the requirements of Sec.65B of the Indian Evidence Act, 1872 in all fours.

35. We are aware that in many public and private offices, though computers are operated by their staff, yet manning and maintenance of servers where the data is actually stored is outsourced to private suppliers like TCS, WIPRO etc. Under those circumstances, it would suffice if Sec.65-B certificate is obtained from the person, who is incharge of the server albeit the fact that he is not staff of parent organization, Sec.65-B does not require certification by a public authority unlike cases of issuance of certified copy of public document under Sec.76 of Indian Evidence Act, 1872. It is not necessary in every case to examine the person, who had given the 65-B certificate as witness the Trial Court unless the court suspects the integrity of the electronic record that is prohibited as evidence. One should bear in mind that a digital image cannot be manipulated easily. Every digital image has a meta data stored in it. The meta data are stored as coded data, which case every image its own character. It should be remembered that the certification under Sec.65-B is not for the truthfulness of the content of the computer generated record, but is essentially related to the working condition of the computer from where the stored record is produced in a tangible form for the court to inspect.

The defence will always complain of manipulation, but courts can reject fanciful objections bearing in mind the pre-underlined in Sec.114 of Indian Evidence Act, 1872. De Omni bus dubitandum (doubt everything) philosophy may be wrote to scientific discoveries, but not for the judicial enquiries, where preferred proof is utopian. The celebrated Jurist late Nani Palkhivala commented. "Our legal system is made life too easy for criminals and too difficult for law abiding citizens. A touch here and push there and Indian may become ungovernable under the present constitutional set up."

- 11) There is also two more decisions, which are relied on by the learned senior counsel in support of the document Ex.C-4. The said decision is reported in 2015 SCC (on line) 1242 Samsheer Singh Verma vs. State of Haryana and AIR 2015 SC P.180, Anvar P.V. Basheer and others. Taking into consideration the

three judgments, the Committee comes to the conclusion that the evidentiary value of the electronic document namely Ex.C-4 and the Certificate Ex.C-5 are valid in law. Ex.C-5 is marked through a responsible officer C.W.4 who is the Assistant Commissioner of Police and he certifies that the document is not edited or morphed and it is he who downloaded the contents in the compact disk from the computer and stored in two folders. The Ex. C5 is certified by another responsible officer who is the Inspector of police B4 High court police station.

12) While dealing with the factual aspect about the admissibility of Ex. C4 we have to take into consideration some of the admission found in the written statements/counters filed by the respondents regarding the charges. In the arguments the respondents have taken serious objection as to the admissibility of Ex.C-4. The defence stated in the written statement/counter is contrary to the arguments advanced by the respondents. The statement culled out from the explanation/counter amounts to an admission of the authenticity of Ex.C-4. The 1st respondent in para 16 claims as follows:-

"Further, the C.D. containing the video footage supplied to the 1st respondent contained only an edited version focusing few advocates. Hence by letter dated 12.01.2016 the 1st respondent requested the State Bar Council to for unedited video footage of the incident."

The Bar Council in its reply dated 21.01.2016 stated that

"the Registrar General of High Court forwarded the video footage to take action against lawyers and the Bar Council supplied the same to the advocates and they have not edited any video footage forwarded by the Registrar General".

13) The Learned Senior counsel argued that the Committee should read the following sections together namely sections 39, 65(b) and 85(b) of the Indian Evidence Act for the proposition that the entire electronic records need not be produced and it is enough to produce the part of the same, which is necessary for proving the case for the satisfaction of the Hon'ble Committee. Section 85(b) is relied on to assert that presumption always lies in favour of the person who

produces electronic records in the absence of any contrary evidence produced by the side of the defence. Here the respondents claim that Ex.C4 was edited and the original video is for one hour. To prove the same the respondent has not let in any evidence. The Learned Senior counsel also pointed out that the entire episode need not be videographed by the police and even if so as per section 39 relevant portion can be marked. It is only the respondents who claim that the incident went on for one hour and there was recording for one hour and the entire recording was not handed over to them. To prove the same there was no evidence let in by the respondents. In fine, when there is no contrary evidence, the arguments advanced by the respondents cannot hold water and we hold that the document Ex.C4 stands proved.

14) The credibility of C.W.4 who has produced Ex.C-5, cannot be doubted for the reason that the counsel for the 4th respondent played Ex.C4 and he identified the 4th respondent. He also in the cross examination admitted that he is the person who has downloaded the compact disc Ex.C-4 and also testified that he has created two folders without any motive, he has identified some of the respondents and hence the competence of C.W.4 to produce Ex.R-5 cannot be doubted. He has also asserted that the content of Ex.C4 was videographed by the intelligence wing and the source cannot be identified. As per the decision of the apex court in AIR 2015 SC 180 it is enough to produce the certificate vouched by another responsible officer in this case the Inspector of police B4 police station and there is no need to examine the person who has given the certificate and so the non examination of the person who certified EX C 5 cannot invalidate the Ex. C5. As per the cross-examination by the first Respondent counsel, C.W. 4 stated as follows :-

'வீடியோவை யார் எடுத்தார்கள் என்றால் நுண்ணறிவு பிரிவு காவலர்கள் எடுத்தார்கள். அவர்களின் பெயரை சொல்ல எனக்கு அனுமதி இல்லை. வீடியோ பதிவு எவ்வளவு நேரம் எடுக்கப்பட்டது என்ற விவரம் எனக்கு தெரியாது.'

He further added that

'வீடியோகிராபர் என்னிடம் வீடியோ பதிவை கொடுத்தார். அதை ஒரு போல்டரில் இரண்டு பைல்களாக உருவாக்கினேன். ஏன் இரண்டு பைல்களாக உண்டாக்கப்பட்டது என்று தனிப்பட்ட காரணம் கிடையாது. அந்த நேரத்தில் அவ்வாறு செய்தேன். அவ்வாறு இரண்டு பைல்களை ஆல்டர் செய்ய எனக்கு யாரும் உத்தரவிடவில்லை.'

15) Ex.C-1 contains list of 32 persons of which action was taken against only 7 persons. It is the contention of the Learned Senior Counsel that the complainant has gone into the materials before them and they have come to the conclusion that only the 7 respondents are the cause for the incident that has taken place on 16.09.2015 and they have taken action against all the 7 respondents. The satisfaction of the Bar Council cannot be brushed aside lightly. The respondents have not alleged anything against the decision of the Bar Council Members. In the explanation, the respondents 1, 2 and 7 even have gone to the extent of quoting the letters written by the Bar Council members namely Mr. M. Varadhan and Mr.V. Karthikeyan, Advocates dated 21.11.2015 and 24.11.2015. This reliance and the view expressed by the Members of the Bar Council will clearly reveal that the Bar Council has exercised its discretion correctly and taken action against the respondents herein and so we are not able to accept the contention of the respondents that they have been wrongly chosen by the Bar Council without any reason.

16) Apart from that, the respondents in their written statement admitted the incident on 16.09.2015 and also the gravity of the situation created around the court hall No.4. The respondents are taking a contrary view than the one stated in their counter, for e.g., the 3rd respondent has stated in para 3 of the counter as follows:

“When I was there, a group of lawyers attempted to barge in court hall No.4, raising slogans. I was jostled in the crowd. At that time Mr. R.C. Paul Kanagaraj, President, Madras High Court Advocates' Association,

requested me to come and pacify the advocates who raised slogans. Hence, I stood upon a nearby table and attempted to pacify them but in vain."

The 4th respondent in para 4 of his defence statement admits that he was near court hall No.4 but claims that he was assisting Mr. R.C. Paul Kanagaraj and also admits that then he was waiting near court hall No.4 with an intention to assist Mr. R.C.Paul Kanagaraj, President, Madras High Court Advocates' Association. By that time the police personnel refused entry of advocates into court hall No.4. There is a large gathering of advocates. So he was stranded in front of court in the midst of crowd. During such time the 5th respondent came there with a petition to pass it on to Mr. R.C. Paul Kanagaraj but could not do so because of the prevalent total confusion in the corridor. We wanted to rely upon the words 'total confusion in the corridor' and gathering of large number of advocates near court hall No.4.'which is an admission of the incident.

17) In para 7 of the defence statement, the 4th respondent says that he is screaming out to some of his colleagues to inform Mr. R.C.Paul Kanagaraj, President, Madras High Court Advocates' Association that the 4th respondent was standing outside the court hall but all efforts ended in vain. He also further added

"while such being the situation, Mr.N.G.R. Prasad who was the counsel on record and Mr. Sankara Subbu stood over a bench and demonstrated near court hall No.4 and addressed a gathering there. The advocate, who has actually created commotion near court hall No.4 were let off where as innocent person like the 4th respondent has been wrongly and malafidely impleaded in the above incident causes inconceivable hardship, loss and damages."

This is clear admission as to the incident that happened on 16.09.2015 and the attempt on the part of the respondents to barge into court hall No.4 and raising slogans.

18) The 4th respondent even in para 7 further adds that he was screaming out to some of his colleagues to inform Mr. R.C Paul Kanagaraj the usage of the word 'screaming' portrait that the respondents along with the others raised slogans denouncing the judges as stated by the complainant and jostling was prevalent when the respondent attempted barge into the court hall no4.

19) The 5th respondent in the counter affidavit filed by him which is also on a similar line as that of the 4th respondent admits that he was informed by Mr.R.C.Paul Kanagaraj that he should assist him in typing the condone absence petition for Mr. Dharmaraj one of the contemnors to be filed in Cont. Petn. No.1592 of 2015. In para 7 of the counter the 5th respondent says,

"The 5th respondent submits that the respondent admitting that he is present before the court hall No.4". He also further adds in para 8 that he was not a counsel on record for the contemnor but only assisting the counsel for contemnor. He further adds in para 9 "The 5th respondent further submits that the respondent was trying to pass a petition to the counsel and the respondent was screaming out to one Mr. Mahaveer Sivaji (4th respondent) who is assisting the counsel to inform Mr. R.C.Paul Kanagaraj that the respondent came with a petition. Finally the petition was handed over to Mr.Mahaveer Sivaji who in turn handed it over to one police official who in turn handed it over to Mr. R.C. Paul Kanagaraj."

This is an admission on the part of the 5th respondent about the incident on 16.09.2015, which relates to the charge. The other respondents namely respondents 1, 2 and 7 also admit the incident and take up a defence that since the hearing before court is open hearing, they are entitled to enter the court hall but they are prevented by the police. Hence, there was a commotion. All these factors can be taken up as admission of the charges by the respondents.

20) The 2nd respondent in his explanation in para 18 has taken an identical stand as that of the 1st respondent. The 2nd respondent also took shelter under the letter dated 12.01.2016 alleged to have been sent by the 1st respondent to the State Bar Council for unedited video footage of the incident. The 7th respondent also took an identical stand taken by the respondents 1 and 2, in para 18 of the explanation. The 7th respondent has also taken shelter under the letter dated 12.01.2016 alleged to have been sent by the 1st respondent to the State Bar Council for unedited video footage. As contended by the learned Senior Counsel for the complainant, this portion of the explanation unequivocally proves that these respondents have seen the video. Ex.C-4 before filing their reply and the thrust of the argument of the respondents 1,2, and 7 that the video footage is edited. The respondents 1, 2 and 7 alone claim that the C.D. contains only edited version. The 1st respondent alone has sent the letter to the learned Registrar General, High Court which is marked as Ex.R-1. The explanation of the first respondent is that he has sent a letter dated 12.01.2016 to the learned Registrar General. But Ex R1 is dated 25.01.2016. The first respondent has not chosen to mark the letter dated 12.01.2016 which is referred in the explanation of the first respondent. The first respondent suppressed this letter dated 12.01.2016 before the committee which makes us to come to the conclusion the allegation that EX C4 is edited is an afterthought. If really such a letter is sent the first respondent ought to have marked the document and proved the follow up action taken by him regarding the claim made by him. So it is a clear proof that the claim of first respondent is not correct. Since the respondents 2 & 7 also take a similar claim the finding is applicable to them as well. If these respondents claim that the video is edited the burden is on them to prove that they are edited. This allegation is also vague for the reason that they have not explained where and what portion was edited and they have not stated on what basis they have come to this conclusion. In the counter filed by the 3rd respondent regarding the C.D. in para 4 he has stated as follows:

"Even in the video footage taken on 16.09.2015 it can be very clearly seen that I did not raise any slogan instead I had pacified the crowd" which means that the 3rd respondent has not got any doubt about the authenticity of the video Ex.C-4"

21) In the defence statement of the 4th respondent regarding the C.D. in para 10 the 4th respondent claims as follows:-

"The respondent submits that the C.D. does not disclose any proof that I have raised any slogan or indulged in any other misconduct as alleged by the Chairman. Further, physical presence near the court hall for justifiable reason is well explained here as stated above shall not amount to any professional misconduct".

22) In para 10 of the counter filed by the 5th respondent states as follows:-

" With regard to the video, the 5th respondent states that video coverage of the proceedings outside the court hall No.4 has been served to the 5th respondent. The said video shows that the 5th respondent who is standing there speaks with his mobile phone only for a few minutes. After passing the petition to Mr. R.C. Paul Kanagaraj the 5th respondent left the court hall. The video coverage shows that at no point of time the 5th respondent raised any voice or slogan as against the judiciary as alleged in the impugned notice. The said video reveals that the 5th respondent was only for a few minutes speaking with his phone."

This claim of the respondents 3, 4 and 5 prove that they never suspected the video but take a defence placing reliance on Ex.C-4. It is quiet strange that one set of respondents claim that Ex C4 is edited and other set of respondents place reliance on the same exhibit. This claim of contrary view by the respondents make us come to the conclusion the Ex.C4 is authentic. Apart from this the Ex.C-4 equivalent to M.O. 1 is proved by the complainant.

23) One of the main objections taken by the respondents mainly respondents 1,2,7 is that Ex.C-4 M.O.1 is edited. The 1st respondent has stated that the electronic record is edited. The entire incident as per first respondent had happened for more than one hour is recorded and the entire incident that had taken place for one hour is not supplied to the 1st respondent. The 1st

respondent even sent a letter to the learned Registrar General, High Court, Madras which is marked as Ex.R-1.

24) First of all when the respondents take a defence it is incumbent on the respondents to prove the same. The 1st respondent claims that the entire incident that had happened for one hour had been recorded and only edited version is given to the 1st respondent for giving his reply to the charges. The burden is on the 1st respondent to prove that there is a video which had been taken run for one hour and then edited. The counsels for the respondents 1, 2 and 7 categorically asserted that the video is for one hour and only the edited version is marked as Ex.C-4. The said respondents are making bald statement as if there was a video run for more than an hour and that was edited and they have failed to prove that video was edited. The first respondent has marked Ex R1. The said letters proceeds on the basis that the copy of the footage supplied by the complainant is incomplete and ends with a request to furnish unedited copy of the said video footage. The stand of the first respondent is a make belief affair as in the explanation he referred about a letter dated 12.12.2016 but the Ex.R1 contains a different date. The earlier letter alleged to have been sent is not marked. The learned counsel for the first has not explained why he stopped writing a few letters without following it up further. So we have naturally to take into consideration section 39 of The Indian Evidence Act which is relied on by the Learned Senior counsel for the complainant. Even a careful reading of section 39 of Indian Evidence Act will reveal that the entire contents of the compact disc need not be disclosed. Section 39 of the Indian Evidence Act reads as follows:-

“ When any statement of which evidence is given forms part of a larger statement, or of a conversation or part of an isolated document or is contained in a document which forms part of a book or is contained in or for an electronic record or of a connected series of letters or papers and evidence shall be given of so much and no more to the statement, conversation, document, electronic record, book or series of letters or papers has to be considered in that particular case to the full

understanding, nature and effect of the statement and the circumstances under which it was made”.

So, as per section 39 of the Evidence Act it can be accepted that the argument of the learned Senior Counsel is correct and the document Ex.C-4 is legally proved.

25) Another limb of the argument of the respondents claiming that Ex.C-4 is not proved as per law and the claim that the Certificate Ex.C-5 document is not proved as per law is to be seen now. This limb of the argument is divided by us in two parts, one dealing with legal aspect and the other dealing with the factual aspect of this case. First we deal with the legal aspect. The Learned counsel for the respondents relied on judgment reported in AIR 2015 S.C. p.180 Anvar P.V vs. P.K. Basheer and others. This judgment is relied on by both the complainant and the respondents. The Learned Senior Counsel appearing for the complainant has stated that as far as Ex.C-5 is concerned, it is drawn as per section 65(B) of The Indian Evidence Act and he relies on paras 22 to 24 of the aforesaid judgment and says that the certificate Ex C-5 is as per the compliance of section 65(B). The Learned Senior Counsel pointed out that it is enough to produce the certificate given by a responsible officer and the responsible officer needs to be examined. The respondent claims that the person who gave the certificate must have been examined on the other the learned senior counsel for the complainant asserted that it is not necessary to examine the person who has given the certificate. He pointed out that as per section 65(B) of Indian Evidence Act it is enough to produce the certificate given by a responsible officer and there is no necessity to examine the person who has given the certificate. The contention of the Learned Senior counsel found support in the decision reported in Anvar Vs. Basheer case and section 65(B) of The Indian Evidence Act.

26) The learned counsel for the respondents pointed out that it is their right to enter into the Court Halls on 16.09.2015. The respondents marked through C.W.1 Ex.R-4 the Cause List of the Hon'ble High Court dated 16.09.2015

containing notification of the learned Registrar General. Ex.R-4 states as follows:-

"In partial modification to the notification No.365/2015 dated 14.09.2015 the proceedings in Suo motu Contempt Petition No.1592 of 2015 and Sub Application No.775 of 2015 will not be held in camera but under the surveillance camera."

The respondents are taking shelter under Ex.R-4 and they claim that the earlier notification that the proceedings will be held in camera was withdrawn and so all the advocate can enter into the court hall No.4 without any hindrance. Whether such argument is right or not is to be decided here. The Learned Senior counsel pointed out that such an interpretation of the Ex.R-4 cannot be given. On the face of Ex.R-4, it says that the proceedings on 16.09.2015 will not be held in camera but under the surveillance camera which means that entry to court hall No.4 is restricted and not unrestricted. The respondents claim that nobody can prevent the advocates from entering into the court hall. Since the police people prevented them from entering into the court hall No.4, the advocates are forced to react, and therefore advocates cannot be found fault with. Such arguments cannot be acceptable to us for the reason that in Ex.C-6, judgment dated 30.09.2015 passed in Suo Motu Cont. Petn. No.1592 of 2015, the Division Bench in para 17 found as follows:-

"We informed that on 16.09.2015, persons had been brought from Madurai to disturb illegally the contempt proceedings before this Bench by entering into the court hall. However, the same was prevented by taking appropriate precautionary measures by this court." We lay emphasis on the words 'precautionary measures'. So it means that the entry is not free as claimed by the respondents. The Division Bench of the Hon'ble High Court clearly found that the entire incident on 16.09.2015 was prevented due to precautionary measures taken by the Hon'ble High Court. Hence the respondents cannot rely on Ex.R-4 and claim that they have free

access to the court hall, and since the police have prevented them that resulted in jostling of judges and raising of slogans by the advocates. Not only that in the same order dated 30.09.2015 the learned Division Bench in para 32(c), found that

“On 30.09.2015 to conduct the contempt proceedings properly without any untoward incident the entry was restricted. Accordingly contemnors and their counsel should assist by another advocate each part from the advocates who were permitted to assist the court, court officials and police officials deployed for security arrangement were alone permitted inside the court hall”.

The finding of this nature clearly proves the contention of the complainant that the claim of the respondents that the entry was free on 16.09.2015 is incorrect. The sequence of events as narrated in the order dated 30.09.2015 one can come to the conclusion that in view of the attitude of the respondents the Hon'ble High Court has passed a stringent order on 30.09.2015 Ex.C 6 rejecting the entry of advocates to the hearing on 30.09.2015 but on the other hand, the respondents claim while arguing that nothing has happened on 30.09.2015 and the proceedings went on peacefully.

27) The Learned Division Bench of the Hon'ble High Court, Madras in Ex. C-6 in para 36 says as under -

“The report of the Commissioner of Police, Madurai and the video coverage and photos relating to Madurai and the video coverage taken on 16.09.2015 nearby to this court (court hall No.4) shall be sent to the Bar Council of Tamil Nadu and Puducherry, Chennai for taking appropriate action based on the gravity of the illegal activities of raising slogans, by some advocates against the judges and the judiciary.”

The above said finding vouchsafes the authenticity of Ex.C-4. The Learned Judge also observed that there was shouting slogans against the judges and the judiciary and this observation of the Hon'ble Division Bench alone is enough to hold charges against respondents as proved.

28) The respondents counsels argued that C.W.4 has deliberately taken the judges in the route where the advocates are assembled instead of taking them in a different route via Muthusamy Iyer statue; from there to the Court hall No.5 and from the Court hall No.5 to the Court hall No.4. Such a plea of the respondents cannot be accepted. This argument has been advanced forgetting the duty of advocates. The respondents wanted to dictate and the court should be conducted as they think. The solution in terms of the respondent is to preventing judges from entering the court hall No.4. raising slogans against them and even gone to the extent of suggesting an alternate route. This sort of attitude amounts to professional misconduct as stated in the charge..

29) In the argument of the respondents counsels much reliance is placed on Ex.R-4 marked through C.W.1. The respondents claim that there were other cases in the same court hall and they cannot be prevented from entering the court. A cursory reading of Ex.R-4 reveals that the regular sitting of the learned judges the Hon'ble Mr. Justice Tamilvanan and the Hon'ble Mr. Justice C.T. Selvam was at court hall No.34 and only Suo motu Contempt Petition was listed at court hall No.4 at 02.15 p.m. and that was the only case listed at court hall No.4 and hence we come to the conclusion that (1) the respondents assembled at court hall No.4 with the common intention of disturbing court proceedings and raising slogans against the judges and the court,(2) the court proceeding is not open as claimed by the respondents because only one item was listed at 2.15 at court hall no 4 and the regular sitting is in another court. If the sitting open the learned judges ought to have conducted the proceeding at court hall No 34.

C.W. 4 in the cross examination by the Counsel for 1st Respondent states as follows :-

'அன்றைய தினம் நீதிமன்ற அவமதிப்பு வழக்கு மட்டும் நடைபெற்றது. அன்றைய தினம் மதியம் 2.15 மணிக்கு முன்பு பட்டியல்படி நீதிமன்ற அவமதிப்பு வழக்கு மட்டும் நடைபெற்றது.'

In the written arguments as well as in the counter statement there are certain admissions which are extracted herein to prove that there was common intention to barge into the court hall No.4. The counters of the respondents 1, 2 and 7 are identical in nature. All the three of them claim that in view of Ex.R-4 there was open proceedings and since the police prevented the advocates from entering the court hall there was commotion. Even if the police personnel have prevented them from entering into the court hall, the remedy is not raising slogans against the judges. But, there are some other remedies available to them by approaching concerned authorities including Registrar General. We have already come to the conclusion the proceeding is not open. But the claim of the respondent that the court proceedings on 16.10.2015 was declared to be held as open court proceedings, many advocates those who had cases in court hall No.4 and other advocates who wanted to watch the contempt proceedings in the usual course came near the court hall No.4 . Unfortunately, to the shock and surprise of the advocates huge number of police personnel were deployed outside the court hall No.4. The police personnel prevented the advocates from entering in court hall while permitting a few other advocates inside the court hall then the annoyed advocates with a kind of incident that never occurred in the history of the High Court of Madras it is noticeable that under Sec.327 of Cr.P.C. the court proceedings is open and accessible to the general public. In para 6, the 1st respondent admits that,

"while so, the action of the police officials stopping the advocates outside the court hall was provocative and creating chaos among the advocates and as it was unexpected"

whereby there is a clear admission of the incident that happened on 16.09.2015 near court hall No.4 warranting charges against the respondents. The other set of the respondents namely respondents 3, 4 and 5 uniformly claim that they were assisting Mr. R.C. Paul Kanagaraj, President, Madras High Court Advocates Association who was appearing for one of the contemnors, but the respondents 3, 4 and 5 have failed to produce any evidence to show that they are assisting Mr. R.C. Paul Kanagaraj who was appearing for one of the contemnors. The 3rd respondent claims that he went near the court hall No.4 to discuss about the filing of an appeal in the case of the 3rd respondent in CrI.R.C.No.1125 of 2014. It is an unbelievable story that in such a situation the 3rd respondent claims that he went near the court hall No.4 for discussing about the filing of an appeal. In this context it is useful to extract his counter.

"When I was there, a group of lawyers attempted to barge into court hall No.4, raising slogans. I was jostled in the crowd".

So, the defence taken by the 3rd respondent is not true. The 4th respondent also makes a similar claim that he was one of the assisting counsels for Mr. R.C. Paul Kanagaraj who was appearing for one of the contemnors. The 4th respondent admits the presence of the 5th respondent. The 5th respondent also takes up a similar defence that he is an assisting counsel and he admits the presence of the 4th respondent. All these respondents 3, 4 and 5 have not let in any evidence to show that they were assisting Mr. R.C. Paul Kanagaraj. When such a defence is taken, the burden is on those respondents to prove that they were assisting Mr.R.C. Paul Kanagaraj who was the counsel for one of the contemnors. It is only a make belief story to hide the charges under the carpet. The story of these respondents cannot be believed and we come to the conclusion that these respondents admittedly went to court hall No.4 and attempted to barge into court hall No.4.

30) Apart from this, the learned counsel appearing for the 3rd Respondent has pointed that in the order passed by the Honourable High Court in Ex.R5, in para 4, the counsel appearing for 5th Respondent has admitted that the 3rd Respondent was present before the court, who does not appear to be raised any slogans. The said argument cannot be accepted in view of the fact that the Honourable High Court has decided the case of the 3rd Respondent only for revocation of interim suspension. On perusal of Ex.C4, it is seen that the third Respondent was present in the court and he was standing on the table in colour dress and giving some direction to the advocates, who were present to sit down and agitate and even on close perusal of his activities, he has also raised slogans along with other persons. The suo motu action taken by the Complainant is also maintainable as per Sec.35(1) of the Advocates Act, which says that "on receipt of a complaint or otherwise a State Bar Council can take action against its members on roll", which means that suo motu action is maintainable.

31) Therefore, the contentions raised by the counsel for 3rd Respondent stating that he was present only to meet Mr.R.C.Paul Kanagaraj to engage him in a criminal case is unbelievable and not acceptable one. Further, even on a working day, he was not in the dress as prescribed by the Bar Council of India Rules inside the court campus. Hence, it is very clear that he has participated along with group of unruly advocates in order to indulge in illegal activities inside the court hall. So, some punishment should be imposed to the 3rd Respondent in order to curtail this type of activities in future.

32) In view of the said discussions and on the basis of evidences produced by both sides, this Committee has come to the conclusion that the charges framed against the Respondents are proved beyond reasonable doubt and the Respondents are liable to be punished. Further, the punishment must be an example for other lawyers, who create disturbances to the court proceedings. The advocates must maintain the decorum inside the court campus. If anybody

violates the same, it amounts to interference of the administration of justice. Every advocate owes duty to safeguard the interest of the court.

33) In respect of quantum of punishment is concerned, this Committee has taken note of the active participation of the 1st and 2nd Respondents and raising slogans against Judges and they have also created all chaos among the advocates near the court hall No.4. They are aware that they are practising in the Honourable High Court and they should have acted in accordance with the Advocates Act and the Bar Council of India Rules is extracted hereunder :-

"An advocate shall at all times, comport himself in a manner befitting the status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and a moral for a person, who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate."

Further, Part VI Chapter II, Sec.1-(2) of the Bar Council of India Rules says that :-

"An advocate shall maintain towards the Courts a respectful attitude bearing in mind that the dignity of the judicial office is essential for the survival of a free community."

On perusal of Ex.C4, the intention of the Respondents 1 and 2 are to create some problems near the court hall No.4. Even during the arguments also, the Respondents 1 and 2 have not realised their guilt and they reiterated that they have not committed any offence by raising slogans near the Court hall No.4 and it is their fundamental right. Therefore, this Committee has viewed the activities of 1st and 2nd Respondents very seriously and decided to award severe punishment to them. Accordingly, the Respondents 1 and 2 are removed from the rolls of the Bar Council of Tamil Nadu and Puducherry.

34) In respect of 3rd Respondent is concerned, this Committee decided to suspend him for a period of three years from the rolls of the Bar Council of Tamil Nadu and Puducherry under Sec.35(3)(c) of the Advocates Act, 1961. He is not entitled to practice as an advocate before any court/s or tribunal/s or any quasi judicial authority/s for the above mentioned extent from the date of this order.

35) In respect of Respondents 4, 5 and 7 are concerned, they were present and even though they have admitted their presence and stated that they were present only for the purpose of meeting Mr.R.C.Paul Kanagaraj and to hand over the copy of petitions and since they have not indulged in raising slogans like the other Respondents and on scrutinising Ex.C4, this Committee has taken a lenient view against them. The Respondents 4, 5 and 7 are under suspension from 23.11.2015 and they have been debarred from practice before any court of law or any authority in India from 23.11.2015 to till date and they have suffered for more than ten months. Hence, this Committee feels that the ends of justice would be met, if the period of suspension from 23.11.2015 to till date is treated as punishment for the Respondents 4, 5 and 7. Therefore, this Committee decides to treat the suspension period as punishment period for the misconduct committed by the Respondent advocates 4, 5 and 7.

In fine, the 1st Respondent Mr.S.Jimraj Milton (Roll No.Ms.904/2007) and the 2nd Respondent Mr. S.Parthasarathy (Roll No.Ms.169/2005) are removed from the rolls of the Bar Council of Tamil Nadu and Puducherry. The 3rd Respondent Mr.S.Mahendran (Roll No.Ms.1104/2008) is suspended for the period of three years from the rolls of the Bar Council of Tamil Nadu and Puducherry. The 4th Respondent Mr.S.Mahaveer Shivaji (Roll No.Ms.2435/2006), the 5th Respondent Mr.D.Vincent Prabakar (Roll No.Ms.1382/2005) and the 7th Respondent Mr.K.Kesavan (Roll No.Ms.1266/2004) are under suspension from 23.11.2015 and they have been debarred from practice before any court of law or any authority in India from 23.11.2015 and that the period of suspension from 23.11.2015 to till date is to be treated as punishment for the misconduct committed by them and ordered accordingly. No cost.


Sd/-xxxxx

(R.ARUNACHALAM)
CHAIRMAN

Sd/-xxxxx

(K.K.S.JAYARAMAN)
MEMBER

Sd/-xxxxx

(R.AJAY KUMAR)
MEMBER**CERTIFIED AS TRUE COPY**

 SECRETARY
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