

**14 SCOB [2020] HCD**

**HIGH COURT DIVISION**

Suo-Motu Contempt Rule No. 26263 OF 2017.

**State**

**.....Petitioner**

-Versus-

**Advocate Noor-E-Alam Uzzal and others**

**.....Contemnors.**

Mr. Gazi Md. Mamunur Rashid, A.A.G

with

Mr. Md. Asaduzzaman, A.A.G

**..... For the Peitioner.**

Mr. Yusuf Hossen Humayun, Advocate,

Mr. Zainal Abedin, Advocate,

Mr. A.M Mahbub Uddin, Advocate,

Mr. S.M Rezaul Karim, Advocate,

Mr. Bashir Ahmed, Advocate,

Mr. A.M. Amin Uddin, Advocate,

Mr. Md. Badruddoza Badal, Advocate,

Mr. Md. Ozi Ullah, Advocate,

Mr. S.M. Abul Hosen, Advocate,

Mr. Azhar Ullah Bhuiyan, Advocate

**..... For the Contemnors.**

Mr. Abdul Baset Majumder, Advocate

with

**Present:**

**Justice Md. Nazrul Islam Talukder**

**And**

**Justice Khizir Ahmed Choudhury**

Heard on the 2<sup>nd</sup>, 10<sup>th</sup> & 20<sup>th</sup> of July, 2017

Judgment on: the 20<sup>th</sup> of July, 2017

**Contempt of Court;**

**Whether the conduct, behavior and activities like shouting, assaulting the Bench Officer and ransacking the case records, fall within the purview of contempt of court. Contempt may be constituted by any conduct that brings authority of the court into disrespect, disregard and/or disrepute or undermines the dignity and prestige of the court. By the aforesaid act of the Advocates, the administration of the justice and the court proceedings had been seriously interfered with and the course of justice had also been obstructed. The behavior and the conduct of the Advocates by beating and assaulting the Bench Officer is insulting, disrespectful and threatening to the administration of justice.**

**... (Para 37)**

**Editor's Note:**

**However, the contemnors prayed for unconditional apology and the Court has accepted it as an exception but not as a rule. Accordingly the Rule was disposed of with cautions and strictures upon the contemnors.**

**JUDGMENT**

**Md. Nazrul Islam Talukder, J:**

1. This Suo-Motu Contempt Rule was issued calling upon the contemnors namely (1) Advocate Noor-E-Alam Uzzal, (2) Advocate Billal Hossen Lizen Patwary, (3) Advocate B.M. Sultan Mahmud, (4) Advocate Mati Lal Bepari and (5) Advocate Mohammad Ali, to show cause as to why they shall not be proceeded against for committing contempt of this Court and punished suitably and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. The facts leading up to issuance of the contempt Rule against the contemnors are as follows:-

The Hon'ble Chief Justice of Bangladesh in exercise of his authority under Article 107(3) of the Constitution of the People's Republic of Bangladesh constituted a vacation bench comprising their lordships mentioned above in order to perform judicial functions in the vacation bench. In view of the above, the learned Judges of the aforesaid bench started performing their judicial functions in the vacation bench sitting in Court No. 24 (annex) from 11.06.2017. The Hon'ble Judges of the vacation bench performed their legal duties with great endeavor and utmost sincerity by dispensing justice to the litigant people. On 19.06.2017, the Hon'ble Judges of the vacation bench performed their judicial functions till 2.00 p.m considering the large number of the cases pending before the court, though the Court hour was up to 1.00 p.m. When the court was functioning, a number of Advocates made different prayers particularly in respect of hearing of their listed and unlisted motions and prayed to have their matters heard before rising of the Court as a result of which a hue and cry was started for which the functions of the Court were obstructed. It is to be mentioned here that on that day, the listed motions alongwith some unlisted motions at the prayer of the learned Advocates were heard and necessary orders were passed after hearing the same. At one stage, the learned Judges rose from the Court. Immediately after rising from the Court, a number of Advocates namely (1) Advocate Noor E Alam Uzzal, (2) Advocate Billal Hossen Lizen Patwary, (3) Advocate B.M. Sultan Mahmud, (4) Advocate Mati Lal Bapari and (5) Advocate Mohammad Ali came in front of the Bench Officer namely Md. Rafiqul Islam, fell upon him, assaulted him by inflicting blows upon his head and different parts of the body and ransacked the case record remained in the Court on the plea that their listed as well unlisted motions were not heard in spite of their repeated demand and endeavour. Besides, Advocate Mohammad Ali and some others Advocates standing besides the dias of the court room instigated the aggressive Advocates mentioned above to beat and kill the said Bench Officer and they also started throwing case records from the table. By this way, the contemnors had shown breathtaking arrogance by making enormous outburst in the court room. The court rooms descended into chaos when breathtakingly arrogant Advocates and the Bench Officer became embroiled in conflicts with bad tempered hot talks with each other and at one stage, the contemnors assaulted the bench officer. The conduct of the arrogant Advocates had been rude and discourteous to the court staff. By this way, the behaviors and conducts of the contemnors undermined the dignity, honour, respect, majesty and status of the court, which hindered the administration of justice and also degraded the court in the estimation of the public. Such conducts of the aforesaid Advocates are tantamount to contempt of court, which are punishable under the law. Under the circumstances, this court was inclined to issue a contempt Rule upon the contemnors to show cause as to why they shall not be proceeded against for committing contempt of this court and punished suitably and/or pass such other order/orders as to this court may seem fit and proper.

3. It may be noted that we, by the order dated 19.06.2017, directed the contemnors to appear before this court in person on 02.07.2017 at 10.30 a.m. positively.

4. Pursuant to our order dated 19.06.2017, all the contemnors appeared before this court in person and of them, contemnor Nos. 1 and 2 submitted applications for exoneration of their personal appearance and also prayed for time for submitting affidavit-in-opposition/affidavit against the Rule. On the other hand, contemnor Nos. 3-5 prayed for acceptance of their appearance and also prayed for time for submitting affidavit-in-opposition/affidavit against the Rule. This Court, on the prayer of the contemnors and in

consideration of the submissions of their learned Advocates, accepted the appearance of all the contemnors and directed them to submit their explanation in black and white by way of affidavit-in opposition/affidavit on 10.07.2017.

5. On 10.07.2017, contemnor Nos. 1 and 2 submitted two applications offering unconditional apology with a prayer for accepting unconditional apology and exonerating them from the charge of contempt of Court. On that day, contemnor No. 3 submitted an affidavit praying for exoneration from the contempt proceeding stating therein as under:-

“That after receiving the copy of suo moto rule I became surprised to see my involvement in inflicting blows upon the bench officer Md. Rafiqul Islam and I ignore my involvement in any kind of subversive activities occurred that day. I was not present at that time in the concerned court but it is true that I protested in writing against the immoral financial transaction in making the daily cause list done by the said bench officer of the concerned court; that as an advocate of Supreme Court I believe in independence of the judiciary, supremacy of the constitution and upholding the prestige of the courts. I think that somebody misguided the Hon’ble Court to include my name in issuing of the said suo-moto rule; that I am denying all the allegations brought against me, I was not involved in the occurrence that day, at that time I was out of the court, so I cannot be involved in such kind of occurrence, I personally ashamed of the incident; that as I was not present on the place of occurrence, I pray for exoneration from personal appearance before the court.”

6. However, contemnor No. 3 in the midst of hearing changed his mind and prayed for unconditional apology by adding a new paragraph striking off his defence plea.

7. Contemnor No. 4 submitted an affidavit of compliance and stated therein as follow:-

“That on the last 19<sup>th</sup> June of 2017 I proceeded for one case, item No. 48 before your lordships and then I left the court premises and I started for Barisal, 19<sup>th</sup> June at the time of occurrence. I was not present in the court room, which allegation is brought against me is absolutely not truth; that your excellencies and Highness I have great respect to the court, I did not cause to pain to others in the court and did not make any hindrance and trouble to anybody in the court room; I am fervently praying that under the circumstances come what may I want to say may kindly be accepted my honest and sincere explanation which is shortly explained which facts and circumstances your highness be exonerated me from the charge of committing contempt Rule of this court for the ends of justice.”

8. However, contemnor No. 4 during hearing of the case could not stand on his defence plea and ultimately, he changed his mind and prayed for unconditional apology by striking off his defence plea.

9. Contemnor No. 5 also submitted an affidavit of compliance and disclosed therein as follows:-

“That on 19<sup>th</sup> June 2017 I conducted a case before your lordships at serial No. 86 and I had no other commitment before your lordships, hence, I left the court room immediate after my item was heard. At the relevant time I was not present in the court room. Thus I no way could shout as has been alleged against me and as such, allegation brought against me could be under an impression, which is not true and correct; My lords I am always respectful to the Hon’ble court and I will never indulge any disturb in any court room in any manner.”

10. However, this contemnor also could not stick to his defence plea, and thereby he changed his mind in the midst of hearing and prayed for unconditional apology by striking off his defence case.

11. Mr. Abdul Baset Majumder, learned Advocate alongwith Mr. Yusuf Hossen Humayun, Mr. Zainul Abedin, Mr. S.M Rezaul Karim, Mr. A.M. Amin Uddin, Mr. Bashir Ahmed, Mr. Md. Badruddoza Badal, Mr. A.M. Mahbub Uddin, Mr. Md. Ozi Ullah, Mr. Azhar Ullah Bhuiyan, learned Advocates, appearing on behalf of the contemnors, submits that after the commission of contempt of court, the contemnors have realized that they committed wrong making outburst in the courtroom assaulting the Bench Officer and ransacking the case records and for these reasons, they at the initial stage have surrendered to the jurisdiction of the court by offering unconditional apology and as such, all the contemnors may be exonerated from the charge of contempt of court.

12. He next submits that the contemnors shall not indulge in this kind of atrocities which amount to contempt of court in future and as such, for this reason also, the contemnors may be exonerated from the charge of contempt.

13. He candidly submits that with a view to keeping congenial atmosphere in the court premises and making harmony and good relationships between the Bench and the Bar, the exoneration prayer of the contemnors from the charge of contempt of court may kindly be accepted and they may be let off thereby from the charge of contempt of court.

14. He lastly submits that since the contemnors have committed this kind of contempt of court for the first time, they may be exonerated from the charge of contempt of court. Mr. Gazi Md.Mamunur Rashid, learned A.A.G with Mr. Md. Asaduzzaman, A.A.G appearing for the State, submits that since all the contemnors have offered and prayed for unconditional apology, and Vice-chairman of Bangladesh Bar Council, President and Secretary of Supreme Court Bar Association alongwith other learned Advocates have approached this court for the exoneration of the contemnors, it is up to the court to decide what orders are required to be passed by their lordships for ends of justice.

15. Before coming to a decision in this Rule, we would like to make some highlights on the profession of Advocates and on their professional duties, conducts and etiquettes. In so many legal decisions of this Sub-continent, the Advocacy has been regarded as a noble profession and the learned Advocates are the most accountable, privileged and erudite persons of the society. The good acts of the learned Advocates are the role model for the society. The professional misconduct is the behaviour outside the bounds what are considered unacceptable or unworthy of its membership by the governing body of profession. The professional misconduct refers to disgraceful and dishonourable conducts which are not befitting for an Advocate. Generally, legal profession is not a trade or business. It is a gracious, noble and decontaminated profession of the society. The members belonging to these professions should not encourage deceitfulness and corruption but they have to strive to secure justice to their clients. The credibility and reputation of the profession depend upon the manner in which the members of the profession conduct themselves. The measured and disciplined conduct is a symbol of healthy relationship between the bench and the bar. The credibility and reputation of the profession comes under a clout on account of acts, omissions and commissions by any member of the profession. It is different from other types of jobs. It requires skills in learning laws and in handling the cases in accordance with law. The necessary skills of an Advocate are supposed to be improved with the experience following

the passage of time on the profession. There is no short-cut way to become a good Advocate save and except hard working and intuition to learn more and more for becoming a good lawyer.

16. Misconduct, according to Oxford dictionary means a wrongful, improper, or unlawful conduct motivated by premeditated act. The behavior of an Advocate not conforming to prevailing laws and rules of land is not proper behavior of an Advocate who is entrusted or engaged to act on behalf of his clients or litigant public. The expression professional misconduct in the simple sense means improper conduct. In law profession, misconduct means an act done willfully with a wrong intention by the people engaged in the profession. It means any activity or behaviour of an advocate in violation of professional ethics for his selfish ends. If an act creates disrespect to his profession and makes him unworthy of being in the profession, it amounts to professional misconduct. In other word, an act which disqualifies an advocate to continue in legal profession is professional misconduct.

17. By many celebrated judgments, the following activities are termed to be the professional misconducts of an Advocate:-

1. An Advocate is said to have indulged in professional misconducts when he is found to have accepted money in the name of a Judge;
2. When an Advocate is found to have tampered with the court record or court order;
3. When an Advocate browbeats or abuses a Judge or judicial officer;
4. When an Advocate is found to have sent or spread unfounded and unsubstantiated allegations or petitions against judicial officer or a Judge of the superior court;
5. When an Advocate actively participates in a procession and involves in any programme which is against the interest of the court and a Judge or judicial officer;
6. When an Advocate appears in the court under influence of liquor;
7. When an Advocate enters the chamber of a Judge or judicial officer with mala-fide intention keeping his client outside the chamber in order to show to his client that he has good relationship with a Judge or judicial officer giving a thought to his client that he can do something favorable for his client;
8. When an Advocate meets a Judge or judicial officer with oblique motives immediately before moving his case before a Judge or judicial officer;
9. When an Advocate enters the chamber of a Judge or judicial officer with a view to making tadbir/tadbirs in the matter of case or cases pending or supposed to be pending before a Judge or judicial officer;
10. When an Advocate violates ethics and etiquettes as well as rules and decorums of the court as prescribed by laws;
11. When an Advocate is found in commission of dereliction of duty, professional negligence, misappropriation of money and properties, changing sides, contempt of court and improper behavior before a court, furnishing false information, giving improper advice, misleading the clients in court, non speaking the truth, disowning allegiance to court, moving application without informing that a similar application has been rejected by another court/authority, suggesting to bribe the court officials, forcing the prosecution witness not to tell the truth.

18. In India, when an Advocate commits professional misconduct, generally the Bar Council of India deals with the matter in order to combat the allegations against the Advocates in accordance with its law and rules. But on the face of rampant allegation against the Advocates, the Bar Council of India was very ineffective in dealing with erring Advocates. Under the circumstances, the Madras High Court came forward and took up the

issue in its own shoulder to redress the same. The Madras High Court in many judgments took upon itself the power to debar an Advocate from professional misconducts though this power vests with the Bar Council of India. As per decisions of Madras High Court, if any misconduct is committed by an Advocate before the High Court, the High Court shall have power to initiate action against the Advocate concerned and debar him from appearing before High Court and all subordinate courts, and if the misconduct is committed before the court of District Judge, the District Judge shall have the power to initiate action against the Advocate concerned and debar him from appearing before any court within such district. The subordinate courts have also been conferred power to recommend to the District Judge for debarring a delinquent Advocate.

The essence of the aforesaid findings are found from the cases of Daroga Singh and Others vs. B.K Pandey, (2004)5 SCC 26, R.D Saxena vs. Balram Prasad Sharma, (2000)7 SCC 264, Mahabir Prasad Singh vs. Jacks Aviation Pvt. Ltd., (1999)1 SCC 37, Ajay Kumar Pandey, Advocate, In Re: (1998) 7 SCC 248, Chetak Construction Ltd. vs. Om Prakash & Ors. , (1998)4 SCC 577, Radha Mohan Lal vs. Rajasthan High Court, (2003) 3 SCC 427, M.B & Sanghi, Advocate vs. High Court of Punjab & Haryana, (1991) 3 SCC 600, L.D Jaikwal V. State of Uttar Pradesh, (1984)3 SCC 405, Lalit Mohan Das vs. Advocate General, Orissa & Another, AIR(1957)SC 250, Shamsher Singh Bedi vs. High Court of Punjab & Haryana, (1996) 7 SCC 99 and M.B Sanghi, Advocate vs. High Court of Punjab & Haryana & ors, State of Punjab V. Ram Singh, AIR (1992) Supreme Court 2188, Sambhu Ram Yadav V. Hanuman Das Khatri (2001) 6 SCC 165, Noratanmal Courasia V. M.R. Murali (2004) AIR 2440, N. G. Dastance V. Shrikant S. Shinde AIR (2001) SC 2028, Bar Council of Maharashtra v. M.V. Dahbolkar AIR (1976) SC 242, B.M. Verma v. Uttrakhand Regulatory Commission. Appeal No. 156 of 2007, Court of Its Own Motion V. State 151 (2008) DLT 695 (Del., DB), SC Bar Association v. Union of India (1998)4 SCC 409, Anil Kumar Sarkar v. Hirak Ghosh (2002) 4 SCC 21, R.K. Ananad V. Registrar of Delhi HC (2009) 8 SCC 106, Hikmat Ali Khan V. Ishwar Prasad arya and ors. (1997) RD-SC 87, Vinay Chandra Mishra, in re,(1995) 2 SCC 584, Ex-capt. Harish Uppal V. Union of India 2003(1) ALLMR(SC)1169, Lieutenant Colonel S.J. Chaudhary V. State (Delhi Administration (1984) CriLJ 340, K. John Koshy and Ors. V. Dr. Tarakeshwar Prasad Shaw (1998) 8 SCC 624, India Council of Legal Aid and Advice V. Bar Council of India (1995)1 SCR 304, In Re: Sanjeev Datta (1995) CriLJ 2910, Rajendra V. Pai V. Alex Fernandes and Ors, AIR(2002) SC 1808, Harish Chandra Tiwari V. Baiju (2002)AIR SC 548.

19. The code of conduct of the Bar of England and Wales prescribes the following core duties to be maintained by the Barristers and the learned Advocates:-

- Code No.1- he/she must observe his/her duty to the court in the administration of justice;
- Code No. 2- he/she must act in the best interest of each client;
- Code No.3- he/she must act with honesty and integrity;
- Code No. 4- he/she must maintain his/her independence;
- Code No.5- he/she must not behave in a way to diminish the trust and confidence which the public places in his/her or in the profession;
- Code No.6- he/she must keep the affairs of each client confidential;
- Code No. 7- he/she must provide a competent standard of work and service to each client;
- Code No. 8- he/she must not discriminate unlawfully against any person;
- Code No. 9- he/she must be open and co-operative with their regulators;
- Code No. 10- he/she must take reasonable steps to manage his/her practice, or carry out his/her role within his/her practice competently and in such a way so as to achieve compliance with his/her legal and regulatory obligations.

20. The Bangladesh Bar Council has approved and adopted the Canons of Professional Conduct and Etiquette for the Advocates with regard to their duties and responsibilities towards their clients, the courts and the public in general.

21. In chapter I of Bangladesh Bar Council Canons of Professional Conduct and Etiquette, it has been stated in clause 1 as under:-

1. It is the duty of every Advocate to uphold at all times the dignity and high standing of his profession, as well as his own dignity and high standing as a member thereof.

In chapter 3 of Bangladesh Bar Council Canons of Professional Conduct and Etiquette, it has been stated in clause 1 as follows:-

1. It is the duty of an Advocate to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judge not being wholly free to defend themselves are peculiarly entitled to receive the support of the Bar against unjust criticism and clamour. At the same time whenever there is proper ground for complaint against a judicial officer, it is the right and duty of an Advocate to ventilate such grievances and seek redress thereof legally and to protect the complainant and persons affected.

22. The Supreme Court of India in so many cases delivered judgments giving a new dimension to the contempt of court law. The court spelt out that if an Advocate is found guilty of contempt of court, he cannot practice till he is cleared by the court itself. Merely serving the sentence would not entitle him to resume practice. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of its genuineness, accepts the apology, then it could be said that the contemnor has purged himself of the guilt. Generally contempt of court may be classified into three categories, namely (1) disobedience of court orders and breach of undertakings given to the court, (2) scandalization of the court and (3) interference with the administration of justice. The first category is termed as civil contempt where the other two categories are contempts of a criminal nature. The civil contempt as stated above is the willful disobedience of the court orders including breach of an undertaking given to the court but criminal contempt includes an act which tends to scandalize or lower the authority of the court or tends to interfere with or obstruct the course of judicial proceedings.

23. In the case of Moazzem Hossain, Deputy-Attorney General vs. The State, reported in 3BLD(AD)(1983)251, it was held in paragraph No. 36 as follows:-

“Contempt’ may be constituted by any conduct that brings authority of the Court into disrespect or disregard or undermines its dignity and prestige. Scandalizing the Court is a worst kind of contempt. Making imputations touching the impartiality and integrity of a Judge or making sarcastic remarks about his judicial competence is also contempt. Conduct or action causing obstruction or interfering with the course of justice is a contempt. To prejudice the general public against a party to an action before it is heard is another form of contempt.”

24. In the case of The State Vs. Mr. Swadesh Roy reported in 12ADC(2015)932, it was observed in paragraph No. 3 as under:-

“This Court has power to draw a contempt proceeding if any person undermines the authority or lowers the dignity of the Court, or if any person scandalizes the Court or any Judge or interferes with the administration of justice, or if any person makes

comments calculated to undermine public confidence in the Judges and the justice delivery system.”

25. In the case of Advocate Riaz Uddin Khan and others vs. Mahmudur Rahman and others reported in 63DLR(AD)(2011)29, it was spelt out in paragraph No. 94 as follows:-

“This Court has a duty of protecting the interest of public in due administration of justice and to protect the dignity of the Court against insult and injury. This Court did not hesitate to use its arm of contempt of court where the use of such arm is necessary in order to protect and vindicate the right of the public. It has been argued that “It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage. The law should not be seen to sit by limply; while those who defy it go free, and those who seek its protection lose hope”. So we approach the question not from dignity was vindicated, but from the point of view of the public who have entrusted us the task of due administration of justice. We think that a contumacious disregard of all decencies that exhibited by the contemnor in this case can only lead to a serious disturbance of the system of administration of justice, unless duly repaired at once by inflicting an appropriate punishment on the contemnor which must be to send him to jail alone for his misconduct.”

26. It was further opined in paragraph No. 95 as follows:-

“It should be remembered that the arms of law are long enough to reach a contemnor who acts in severe contumacious disregard of the dignity of the highest Court of the country. For the judiciary to perform its duties effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the Courts have to be respected, we find this is a fit case in which exemplary punishment should be awarded to the contemnor.”

27. In the case of **Supreme Court Bar Association V. Union of India and another,(1984)4 SCC 409**, it was observed as follows:

“The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law.....This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of Justice from being maligned. In the general interest of community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of Justice.....It is exercised in a summary manner in aid of the administration of Justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of Justice.”

28. Now, we want to speak something about Rule of law which is very important to keep the society in order from chaos and disorder. The concept of Rule of law is of old origin and is an ancient ideal. It was initially discussed by ancient Greek philosophers such as Plato and Aristotle around 350 BC. The Rule of law is one of the basic principles of the English Constitution and the doctrine is accepted in the constitution of USA and India as well. Sir Edward Coke, the Chief Justice of King James I’s reign was also the originator of this



concept. He maintained that the King should be under God and the law and he established the supremacy of the law against the executive and that there is nothing higher than law. Later, Albert Venn Dicey, a British jurist and constitutional theorist, developed this concept in his book 'The Law of the Constitution' in 1885. As per Rule of law, no man is above law and no man is punishable except for a distinct breach of law established in an ordinary legal manner before ordinary courts. The government/any authority/any person cannot punish anyone merely by its own fiat. Persons in authority do not enjoy wide, arbitrary or discretionary powers. Every man, whatever his rank or condition, is subject to the ordinary law and jurisdiction of the ordinary courts. No person should be made to suffer in body or deprived of his property except for a breach of law established in the ordinary legal manner before the ordinary courts of the land. The very basic human right to life and personal liberty has also been enshrined under Article 32 of our constitution. As per Article 32 of the Constitution of the People's Republic of Bangladesh, no person shall be deprived of life or personal liberty save in accordance with law. Article 39(1) of the Constitution guarantees the freedom of thought and conscience and of speech subject to reasonable restriction imposed by law. No person can be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence is also very well recognized in Article 35 of the Constitution. In this regard, we may refer to a decision in the case of the State Vs. Adv. Md. Qamrul Islam. M.P. & Others, reported in 25BLT(AD)(2017)83, wherein it was observed as follows:-

“Rule of law is the basic rule of governance of any civilized democratic policy. Our constitutional scheme is based upon the concept of “Rule of Law” which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of law. Whoever the person may be, however high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be. Even the Supreme Court is subordinate to the law and not above the law. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the Courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs. The only weapon of protecting itself from onslaught to the institution is the long hand of contempt of court left in the armoury of judicial repository which, when needed, can reach any neck howsoever or far away it may be. Judiciary is central pillar of democracy.”

29. In the case of Bangladesh vs. Idrisur Rahman, reported in 15BLC(AD)(2010)49, wherein it was observed in paragraph No. 204 as under:-

“The expression of rule of law has a number of different meanings and corollaries. Its primary meaning is that everything must be done in accordance with law, in other words, it speaks of rule of law and not of men and everybody is under the law and nobody is above the law. The other meaning of the rule of law is that Government should be conducted within a framework of recognized rules and principles which restrict discretionary power and our Constitution is the embodiment of the supreme will of the people setting forth the rules and principles. But the most important meaning of rule of law is that the disputes as to the legality of the acts of the Government are to be decided by Judges who are independent of the executive”.

30. Hence, it can be concluded by saying that everyone, how high so ever he or she may be, must abide by the law of the land. The law of the land includes all under the law as

defined and accepted as law by the Constitution. Every citizen is obliged to follow and obey the provisions of the Constitution which is the manifestation of the will of the people. There are multitudes of rights given by the Constitution to the citizen, but those are subject to restrictions imposed by law. However, the Constitution has provided for the citizen an independent judiciary which will establish the rule of law.

31. It was held in the case of Bangladesh Vs. Idrisur Rahman cited above in paragraph No. 170, as follows:-

“The judiciary is a cornerstone of our Constitution, playing a vital role in upholding the rule of law.”

32. Now, we can refer some incidents from which we can easily understand about the necessity of establishment of Rule of law in the society.

33. In 1999, a federal Judge of U.S.A held President Bill Clinton in contempt of court for giving intentionally false testimony about his relationship with Monica S. Lewinsky in the Paula Jons lawsuit and fined him \$ 90,686 for lying in paula Jones case.

34. The learned Judge Susan Webber Wright delivered her judgment observing, inter-alia, that Clinton gave false, misleading and evasive answer that were designed to obstruct the judicial process. The learned Judge further observes that no court had ever taken an action against a President but it was important to act to protect the integrity of the judicial process and therefore sanction must be imposed, not only to redress the president’s misconduct, but to deter others who might themselves consider emulating the president of the United States by engaging in misconduct that undermines the integrity of the judicial system.

35. Recently, the Supreme Court of India sentenced a sitting High Court Judge of Calcutta High Court to 6 months in prison on charge of contempt of court for his unbecoming conduct and behaviour. The Court opined that Contempt is contempt, it has no color and whether you are a common man or a judge, it does not matter.

36. From the cases mentioned above, we find that the Supreme Court as well as different High Courts of India imposed punishment on the Advocates who were found guilty for contempt of court for their unbecoming conducts and behaviors in the court room as well as in the court premises. Furthermore, some of them were debarred from practicing before the court for a certain time.

37. In view of the above facts and circumstances of the case, and the proposition of law discussed above, now we want to come to a decision as to whether the conduct, behavior and activities like shouting, assaulting the Bench Officer and ransacking the case records, fall within the purview of contempt of court. We have stated earlier that contempt may be constituted by any conduct that brings authority of the court into disrespect, disregard and/or disrepute or undermines the dignity and prestige of the court. By the aforesaid act of the Advocates, the administration of the justice and the court proceedings had been seriously interfered with and the course of justice had also been obstructed following the aforesaid acts of the Advocates. The behavior and the conduct of the Advocates by beating and assaulting the Bench Officer is insulting, disrespectful and threatening to the administration of justice. The conducts of the Advocates are bound to infect the other members of the bar of the country. In order to stop this kind of activities exemplary punishment is required to be meted out to them. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the

court in the minds of the public. In essence, the law of contempt is the protector of the seat of justice more than a person or judge sitting in that seat and it is not for the personal protection. The court has a duty to protect interest of the public in the due administration of justice. It is hence entrusted with the powers to punish for contempt of court, not only to protect the rights of the public but also to protect dignity of the court against any insult and injury. It is to be mentioned here that punishment must be resultant effect of the acts complained of. The punishment must be commensurate with the offences. The more serious is the violation, the more severe is the punishment and that has been the accepted norm in the matters though however within the prescribed limits.

38. Contemnor No. 1 and 2 prayed for unconditional apology to the court for their professional misconduct as well as contempt of this court. Contemnor 3 filed an application for exoneration alleging, inter-alia, that he was not involved in inflicting blows upon the Bench Officer and at the time of occurrence he was out of the court. This contemnor during hearing of the case changed his mind and then prayed for unconditional apology by striking off his defence case. Contemnor No. 4 and 5 also filed affidavits-in-opposition stating therein that they were not involved in the alleged contempt of court and were not present at the place of occurrence. The aforesaid contemnors also in the hearing of the case in the 2<sup>nd</sup> thought changed their mind and prayed for unconditional apology by striking off their defence cases.

39. Mr. Abdul Baset Majumder, learned Advocate alongwith Mr. Yusuf Hossen Humayun, learned Advocate, Mr. Zainul Abedin, learned Advocate, Mr. S.M Rezaul Karim, learned Advocate, Mr. Bashir Ahmed, learned Advocate, Mr. Md. Badruddoza Badal, learned Advocate, Mr. A.M Mahbub Uddin, learned Advocate, Mr. Md. Ozi Ullah, learned Advocate, Mr. Azhar Ullah Bhuiyan, learned Advocate have appeared before this Court and submitted for acceptance of unconditional apology offered by all the contemnors.

40. As for the acceptance of an apology from the contemnors, we would like to refer a decision in the case of L.D Jaikwal V. State of Uttar Pradesh, (1984) 3 SCC 405, wherein the Supreme Court of India opined as under:-

“We do not think that merely because the appellant has tendered his apology, we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a license to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per of his conscience on account of the fear of being scandalized and prosecuted by an Advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, Advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the Advocates who are mindful of professional ethics and believe in maintaining the decorum of courts.”

41. We are at one with the aforesaid decision delivered by the Supreme Court of India. We are of the view that if any person commits any contempt of court and then we the Judges of this court frequently accept the unconditional apology offered by the contemnors, it means

that we are virtually issuing a license to the contemnor to commit further contempt of court with impunity.

42. Accordingly, we have accepted the unconditional apology of the contemnors as an exception but not as a Rule.

43. However, before coming to the conclusion and decision, we want to make some observations regarding the lawyer's duty and responsibility to their clients to the court and to the society while performing their professional duties and activities.

The role of the lawyers in the society is of great importance. They being part of the system of delivering justice holds great reverence and respect in the society. Each individual has a well defined code of conduct which needs to be followed by the person living in the society. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, particularly when there are conflicting claims in the issue. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court, a lawyer is at liberty to put forth a proposition and canvass to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client and the society. The Advocate, as an officer of the Court, also has the responsibility to render services of sound quality. Lapses in services like remaining absence in court when the matters are called out for hearing, the filing of cases, motions and applications with illegible, incomplete and inaccurate information without proper check and verification, the non-payment of court fees and process fees, the failure to take proper legal steps to serve the parties are not merely professional omissions, they amount to positive disservices to the litigants and create embarrassing situation in the court leading to unavoidable unpleasantness and delay in the disposal of matters, and detrimentally affects the entire judicial system causing huge backlogs of cases. Furthermore, as the officers of the court, the lawyers are required to uphold the dignity of the judicial office and maintain a respectful attitude towards the court. This is because the Bar and the Bench form a noble and dynamic partnership with each other in order to gear up our great social goal for establishment of rule of law, administration of justice in the society and independence of judiciary and the mutual respect of the Bar and the Bench in a bid to do the same is essential for maintaining cordial relations between the two. It is the duty of an advocate to uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute, and ensure that at no point of time, he oversteps the limits of propriety.

45. An Advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her Advocate is underlined by utmost trust. An Advocate is expected to act with utmost sincerity and respect. In all professional functions, an Advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an Advocate plays a vital role in the preservation of society and justice system. An Advocate is under an obligation to uphold the rule of law and ensure that the justice delivery system is enabled to function at its full potential. Any violation of the principles of professional ethics by an Advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the justice delivery system. An Advocate should be dignified in his dealings to the court, to this fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An Advocate has a duty to enlighten and encourage the juniors in the profession. Most importantly, he should

faithfully abide by the standards of professional canons, conduct and etiquette prescribed by the Bangladesh Bar Council in chapter Nos. I-IV of Bangladesh Bar Council Canons of Professional Conduct and Etiquette under the Bangladesh Legal practitioners and Bar Council Order and Rules, 1972. An Advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and actions rather than being adamant on an unwarranted and uncalled for issue. It is expected that the entire legal fraternity would set an example for other professionals by adhering to all the above-mentioned principles.

46. Charles Evan Hughes (11 April 1862- 27 August 1948) was a republican politician and jurist who served as Governor of New York, United States, Secretary of State, Associate Justice and Chief Justice of the United States, who warned and cautioned the people of the United States saying as under:-

“The peril of this Nation is not in any foreign foe. We, the people, are its power, its peril, and its hope.”

47. Considering the facts and circumstances of the case and the submissions advanced by the learned Advocates for the contemnors, the Rule against the contemnors is disposed of with cautions and strictures upon the contemnors with some observations and findings to be followed by the contemnors.

48. Accordingly, the contemnors are let off the charge of contempt of Court.

However, the contemnors are hereby cautioned with strictures not to repeat this sort of practice in future failing which serious legal action within the ambit of law would be taken if circumstances demand so. The allegation against the bench officer is that he resorted to some corruptions in the matter of making the case-item up and down which, if found true, is very much unwanted and undesirable. It is to be mentioned that no clappings are made by one hand, and it needs two hands to make clappings.

49. Anyway, this Court will show zero tolerance to all corruption and is against all types of corruption. Under the circumstances, Registrar, High Court Division of the Supreme Court of Bangladesh is directed to make enquiry into the matter of corruption as alleged, by himself or by a probe committee and to take necessary legal actions against the bench officer and any other persons whosoever if prima-facie allegation of corruption is found against them. The Bangladesh Bar Council and Supreme Court Bar Association are also directed to arrange training programs for the new Advocates so that they can learn something on the canons of professional conduct and etiquette and on the rules and decorums of the court.

50. Let a copy of this judgment be communicated to the Secretary, Bangladesh Bar Council, the Secretary, Supreme Court Bar Association, Registrar General, Supreme Court of Bangladesh and Registrar, Supreme Court of Bangladesh, High Court Division forthwith for their information and necessary action.

51. Let a copy of this judgment also be transmitted to each of the contemnors for their information and rectification.