REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1406 OF 2012

Kishore Samrite **... Appellant**

Versus

State of U.P. & Ors. **... Respondents**

SUPREME COURT OF INDIA

J U D G M E N T

Swatanter Kumar, J.

1. Challenge in the present appeal is to the order dated 7th March, 2011 passed by a Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench). The operative part of the order reads as under :

JUDGMENT

> "In view of all the aforesaid and particularly for the reasons that the writ petition No.111 (H/C) of 2011 was filed on the instructions of Kishor Samrite (who has also sworn the affidavit in support of the writ petition) which contained wild allegations/insinuation against Shri Rahul Gandhi and questions the virtue and modesty of a young girl of 22 years Km. Kirti Singh, we dismiss this writ petition with a cost of Rs.50,00,000/- (Fifty

lacs). Out of the cost amount, Rs.25,00,000/- (Twenty five lacs) shall be paid to Km. Kirti Singh and Rs.20,00,000/- (Twenty lacs) to Shri Rahul Gandhi, opposite part no.6. The cost amount shall be deposited within a period of one month with the Registrar of this Court, failing which the Registrar shall take necessary action for recovery of the amount as land revenue.

We also record our special note of appreciation for Shri Karamveer Singh, Director General of police, U.P. (a highly decorated police officer), for producing the alleged detenues within the time frame as directed in the order. Thus, for all the promptness and sincerity shown, in themidst of serious law and order problems all over the State on account of some agitation in obeying and complying with the directions, we direct payment of Rs.5,00,000/- (five lacs) towards a reward to the DGP. We also record our appreciation for Shri Jyotindra Misra, learned Advocate General and the State Government for showing concern in this matter.

We also direct the Director, Central Bureau of Investigation, to register case against Kishor Samrite, the websites referred to in Writ Petition No.111 (H/C) of 2011 and all other persons who are found involved in the plot, if any, hatched in order to frame up Shri Rahul Gandhi, Member of Parliament from Amethi. We also appreciate Shri Gajendra Pal singh, author of Writ Petition No.125(H/C) of 2011 for approaching this Court in order to save the reputation of Shri Rahul Gandhi and the family of alleged detenues at the hands of vested interests responsible for filing Writ Petition No.111 (H/C) of 2011.

Till the investigation continues and the websites in question are not cleared by the

> CBI, their display in India shall remain banned. The Director, CBI, shall ensure compliance of this order forthwith. He shall also prepare a list of such other websites which are involved in display of scandalous informations about the functionaries holding high public offices and submit a report in respect thereof on the next date of hearing.
>
> Thus, writ petition No.125 (H/C) of 2011 is partly disposed of to the extent insofar as it relates to production of the alleged detenues. However, it shall remain pending in respect of notice issued to the Registrar General Allahabad High Court and for the submission of report by the CBI as directed hereinabove. The matter shall remain part heard.
>
> List the matter on 11.04.2011 for further hearing.
>
> The Registrar of this Court shall issue copy of this order to all the concerned parties including the Director, Central Bureau of Investigation, for immediate compliance."

2. Challenge to the above impugned order, *inter alia*, but primarily is on the following grounds :

(i) The Court could not have called for the records of Writ Petition No.111 of 2011. Consequently it lacked inherent jurisdiction to deal with and decide the said writ petition. Furthermore, no order was passed by the competent authority, i.e., the Chief Justice of the High Court

transferring that writ petition to the Bench dealing with Writ Petition No.125 of 2011.

(ii) The Bench showed undue haste and has not dealt with Writ Petition No.125 of 2011 in accordance with the prescribed procedure.

(iii) The order was passed without notice and grant of appropriate hearing to the present appellant.

(iv) The orders for imposition of cost and registration of a case against the appellant by the CBI are uncalled for and in any case are unjust and disproportionate as per the known canons of law.

3. Stands on merits is that Writ Petition No.125 of 2011 was, in fact and in law, not a petition for *habeas corpus* and, thus, could not have been entertained and dealt with by a Division Bench of that Court. The said petition primarily related to transfer of a petition though in the garb of a prayer for production of the corpus. It did not satisfy the pre-requisites of a petition of *habeas corpus*.

4. Writ Petition No.111 of 2011, even if not complete in its form, was maintainable and the same could not have been

dismissed by the Court as the prayer by the appellant in that writ petition for *habeas corpus* was maintainable in view of the right to life and liberty of the petitioners stated therein, as enshrined in Article 21 of the Constitution of India, was violated. The petition had been filed by the appellant as next friend and had not seen the alleged detenues since 4th January, 2007 when they were last seen in Amethi. According to the appellant the representations made to various authorities had failed to yield any results. Thus, that petition was not liable to be dismissed.

5. To the contra, it is contended on behalf of the State of Uttar Pradesh that :

(i) The Writ Petition No.111 of 2011 was an abuse of the process of Court. The appellant had not approached the Court with clean hands as the facts as were pleaded by him were not correct to the knowledge of the appellant.

(ii) The petition was *mala fide* and even the affidavit of the appellant was not in conformity with the prescribed procedure.

(iii) The averments made in the affidavit and in the other documents were contradictory in terms.

(iv) The appellant was neither the next friend of the stated petitioners (in Writ Petition No.111 of 2011) nor was he competent to institute such a petition. Moreover, the petition itself did not satisfy the basic ingredients of a petition for *habeas corpus*.

(v) In view of the dismissal of the Writ Petition No.3719 of 2009 by the same High Court and its non-mentioning by the petitioner in Writ Petition No.111 of 2011, besides being suppression of material facts was hit by the principles of *res judicata*.

(vi) Writ Petition No.111 of 2011 had been rightly transferred by the Division Bench and its dismissal and imposition of costs was in proper exercise of jurisdiction.

(vii) Lastly, it is contended that the next friend had given fictitious addresses of the petitioners which are different than the ones given in the present appeal.

6. On behalf of Respondent No.6, Shri Rahul Gandhi, it was contended that Writ Petition No.111 of 2011 is an abuse of the process of Court and, in fact, is a motivated petition primarily based on 'political mudslinging'. While supporting the stand of Respondent No. 1, the State of Uttar Pradesh, it is also contended

that the appellant, Shri Kishore Samrite, was a total stranger, had no knowledge of the facts and, therefore, had no right to file the petition as next friend. It was not a case of private detention and the petition filed by the appellant was not in conformity with the rules. The petition was primarily aimed at hurting the reputation and image of respondent No.6 out of ulterior motives and political vendetta.

7. According to Respondent No. 7, the Central Bureau of Investigation (for short "CBI"), it had investigated the matter and found that it was not a case of detention and, therefore, petition for *habeas corpus* was not maintainable. It had, in furtherance to the order of the Court, registered a case on 11th March, 2011 being RC No.219-2011-(E)2002 under Sections 120B, 181, 191, 211, 469, 499 and 500 of the Indian Penal Code, 1860 (IPC). The CBI could not complete the investigation because of the order of stay passed by this Court on 6th April, 2011. From the limited investigation which was conducted during that period and from the statement of Shri Balram Singh and other witnesses, it came to light that nothing had happened on 3rd December, 2006 as alleged by the appellant. In fact, the persons and the addresses given in the petition were found to be fictitious and non-existent. Shri Balram Singh had not supported the version advanced by

the appellant. On the contrary, he had belied the entire version and categorically denied the allegations and informed that the name of his wife and daughter were incorrectly mentioned as Smt. Sushila and Sukanya Devi. In regard to the website, CBI stated that the three suspected websites were posted outside the geographical limits of our country and the originating IP address could not be traced and further investigation had to be stopped.

It was specifically contended on behalf of the CBI that the appellant had made no enquiry, had no personal knowledge and that the litigation had been funded from sources other than appellant's own sources.

8. Lastly, Respondent No.8 in this appeal, Shri Gajendra Pal Singh, who was the petitioner in Writ Petition No.125 of 2011, has stated that he had filed that petition bona fidely while Writ Petition No.111 of 2011 was based upon a false affidavit, public justice system has been abused by the petitioner in that case and he has committed perjury. According to Respondent No.8, Writ Petition No.125 of 2011 was necessitated and he had the right to file the *habeas corpus* petition as next friend of the petitioners stated therein.

9. As is evident from the varied stand taken by the respective parties, they are not *ad idem* in regard to the factual matrix of the case. The facts as they emerge from the record before this Court can usefully be noticed as follows: -

10. The appellant, Shri Kishore Samrite, an ex-member of legislative assembly of Madhya Pradesh, elected on the ticket of Samajwadi Party from the legislative constituency of Tehsil Langi in District Balaghat, Madhya Pradesh, instituted a Writ Petition in the High Court of Judicature at Allahabad being Writ Petition No. 111/2011 acting as next friend of one Sukanya Devi, Balram Singh and Sumrita Devi. Address of all these three persons was given as 23-12, Medical Chowk, Sanjay Gandhi Marg, Chhatrapati Shahu Ji Mahraj Nagar, Uttar Pradesh. According to the appellant, these three persons were kept in illegal detention by the respondent no.6 and were incapacitated to file the writ petition. It was averred in the petition filed by him before the High Court that he came to know from certain websites viz., www.indybay.org, www.arizona.indymedia.org and www.intellibriefs.blogspot.com, which contained news items stating that on the night of 3rd December, 2006, while on a tour of his parliamentary constituency in Amethi, respondent no.6, along with six of his friends (two from Italy and four from Britain)

committed rape on Sukanya Devi, daughter of Balram Singh. The appellant placed the said news reports on record along with the writ petition.

11. The writ petition also contained the averment that Balram Singh is a congress worker in Amethi constituency and Sukanya Devi along with Sumitra Devi wanted to report the said incident but the concerned authorities did not lodge the complaint. They approached various other authorities but to no avail. The appellant specifically averred that he had not seen all the three persons in public for a long time, particularly since 4th January, 2007, when they were last seen in Amethi. He claims to have visited Amethi to verify these facts and also a couple of times thereafter. Lastly, on 12th December, 2010, he visited the place where all the three persons lived, but found the same locked. The incident was reported to various authorities, including the Chief Minister, the Home Minister, Chief Secretary of the State, Governor and the other authorities of the State. The only communication he received was from the office of the Governor wherein it was said that his application had been sent to the State Government for proper action. Invoking the right to life and liberty as enshrined under Article 21 of the Constitution of India on behalf of the three named petitioners in the writ petition and

alleging that respondent No.6 would influence any fruitful investigation, the appellant prayed for issuance of a writ of *habeas corpus* commanding the opposite party particularly respondent No.6 to produce the petitioners before the Court and for passing any other appropriate order or direction.

12. Before we refer to the events subsequent to the filing of the Writ Petition no.111/2011, it must be noticed that a person named Ram Prakash Shukla, a practising advocate at Lucknow, who claimed himself to be a human rights activist and a public spirited person had earlier instituted a writ petition on the same facts being Writ Petition No. 3719/2009 tilted as Ram Prakash Shukla v. Union of India and Ors. He also stated that he had got information from the internet website about the rape of Ms. Sukanya Devi in the evening of 3rd December, 2006 and no action was being taken on the basis of the said report. He further stated that congress men had threatened to kill both, Smt. Sumitra Devi and Sukanya Devi, if they raised the issue. According to him they had stayed at Delhi for over a fortnight to meet the authorities which they ultimately could not. It was stated that they are missing since then and were not traceable. On the basis of the news report, though an offence under Section 376 of the IPC was made out, yet no FIR was being registered by the authorities. In

that writ petition, Ram Prakash Shukla had made the following prayers: -

> "(i) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties nos. 1 to 4 to ensure the lodging of the F.I.R. and to refer it for investigation to independent agency like S.I.T or C.B.I.
>
> (ii) Issue a writ, order or direction in the nature of Habeas Corpus commanding the respondents nos. 1 to 4 to search and produce the Ms. Sukanya Devi, her mother Smt. Sumitra Devi, her father Balram Singh as well as Videographer Mr. Drupadh and the CNN-IBN Cameramen before this Hon'ble Court.
>
> (iii) Issue a writ, order or direction in the nature of Mandamus directing the respondents nos. 5 & 6 (the Human Right Commission) and the National Commission for Women) to submit the report of the investigation if any, done by them on the complaint lodged by Ms. Sukanya Devi.
>
> (iv) Issue any other order or directions which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case in favour of the petitioner in the interest of justice.
>
> (v) Allow the cost of the writ petition in favour of the petitioner."

13. This writ petition was heard by a Division Bench of the Allahabad High Court at Lucknow and was dismissed by a detailed judgement dated April 17th, 2009. The Court specifically noticed that before passing a direction for lodging of an FIR, the Court is required to see that the pleadings are absolutely clear,

specific and precise and that they make out a charge or criminal offence,, which *prima facie* is supported by cogent and reliable evidence and that the State machinery has failed to take appropriate action in accordance with law for no valid reason. In absence thereof, the Court cannot issue such a direction. The Court recorded its complete dissatisfaction about the correctness of the allegations made in the writ petition as they were not supported by any reliable or cogent evidence. The Court, while declining to grant the reliefs prayed for, dismissed the writ petition. The operative part of the judgment reads as under :

> "So far the petitioner's plea that the respondents may be required to inform the court, whether any such incident had taken place or not, suffice would be to mention that in the absence of clear and precise pleadings with no supporting evidence, the Court will not make any roving and fishing enquiry.
>
> The writ petition does not make any case for grant of the reliefs claimed.
>
> The writ Petition has not force, which is being dismissed."

14. It may be noticed that Writ Petition No. 3719 of 2009 itself was instituted in the year 2009 nearly three years after the alleged news and was dismissed vide order dated 17th April, 2009. It was in the beginning of the year 2011 that the present appellant instituted Writ Petition No.111 of 2011 in the Allahabad

High Court. The latter writ petition was filed by the appellant herein as next friend of the three petitioners, namely, Sukanya Devi, Balram Singh and Sumitra Devi, all residents of 23/12, Medical Chowk, Sanjay Gandhi Marg, Chhatrapati Shahu Ji Maharaj Nagar, Uttar Pradesh relying upon the website news relating to the alleged occurrence of 2006 and making the same allegations, including illegal detention of the petitioners by respondent No.6, and praying as follows :

> "WHEREFOR, it is most humbly prayed that this Hon'ble Court may be pleased to
>
> 1. Issue a writ of or writ, order or direction in the nature of *habeas corpus* commanding the opposite parties, particularly opposite party No.6, to produce the petitioners before this Hon'ble Court and set them at liberty.
>
> 2. Issue any other order or direction which it deems fit and proper in the present circumstances, in favour of the petitioners, in the interest of justice.
>
> 3. Award the cost of Petition to the petitioners."

15. This Writ petition was listed before a Single Judge of the Allahabad High Court who, vide order dated 1st March, 2011 directed issuance of notice to respondent No.6 to submit his reply. The matter was to be listed before the Court after service of

notice. During the pendency of this writ petition, respondent No. 8, Shri Gajendra Pal Singh, again acting as next friend of Sukanya Devi, Shri Balram Singh and Smt. Sumitra Devi @ Mohini Devi, all residents of Ward No.5, near Gurudwara, Town Area Amethi District, Chhatrapati Shahu Ji Maharaj Nagar, Uttar Pradesh filed Writ Petition No.125 of 2011 on 4th March, 2011 stating that a false writ petition No.111 of 2011 was filed by Shri Kishore Samrite as next friend and that it was politically motivated to harm the reputation of the opposite party. Further that Shri Kishore Samrite was neither the next friend of the petitioners in that petition nor had any interest in the liberty of those petitioners. Respondent No. 8, Shri Gajendra Pal Singh claimed to be a neighbour of Shri Balram Singh, father of Sukanya and husband of Smt. Sumitra @ Mohini Devi. According to him, when the three petitioners in Writ Petition No.125 of 2011 were not seen in their house for some time, he approached the Police Station, Amethi, to lodge a complaint but the police authorities refused to file/register the complaint on the ground that the petitioners were in custody of police as they had committed some wrong. Seeing that right to life and liberty of the petitioners was involved, he prayed for the following refliefs :

"Wherefor it is most respectfully prayed that this Hon'ble Court may kindly be pleased to :

a. Issue a writ or writ order or direction in the nature of *habeas corpus* commanding the opposite parties to produce the petitioner before this Hon'ble Court and set them at Liberty.

b. To call the record of Writ Petition No.111 H.C. of 2011 and connect with this present Writ Petition. The order passed in Writ Petition. The order passed in Writ Petition No.111 H.C. of 2011 be reviewed and recalled.

c. To order the investigation by the appropriate agency.

d. Issue any other order or direction which is deemed fit and proper in the present circumstances in favour of the petitioners, in the interest of justice.

e. Award the cost of the petition to the petitioner.

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT

16. This petition was taken up by a Division Bench of the Allahabad High Court and the Court passed the following order on 4th March, 2011 :

"In view of all the aforesaid, we direct that the records of Writ Petition No.111 (H/C) of 2011, said to be pending before a learned Single Judge, shall be connected with this writ petition. Besides, we also direct that the Director General of Police, U.P., shall produce the petitioners, in particular, Sukanya Devi, on the next date of hearing i.e. 7.3.2011. However, we make it clear that

> this direction to the Director General of Police, U.P., shall not be construed to mean that the detenu is in illegal custody of State authorities and the Director General of Police, U.P., in this case shall function only as an officer of the Court for the purpose of production of detenu."

17. The Court directed transfer of Writ Petition No.111 of 2011 and directed tagging of the same with Writ Petition No.125 of 2011, besides issuing notice to the Director General of Police, U.P. to produce the petitioners on 7th March, 2011. In Writ Petition No.125 of 2011, the Director General of Police filed a personal affidavit. According to him, the Superintendent of Police, Chhatrapati Shahu Ji Maharaj Nagar, while noticing the allegations made in both the writ petitions reported that the address mentioned in Writ Petition No.111 of 2011 was wrong and there was no such place in the town of Amethi with the name of Medical Chowk, Sanjay Gandhi Marg and the address mentioned in Writ Petition no.125 of 2011 was the correct address of Shri Balram Singh who lived there in the past. On 3rd December, 2007, Balram Singh had sold the plot, which was in the name of his wife, Smt. Sushila Singh, to one Smt. Rekha and, thereafter he himself shifted to village Hardoia, Police Station Kumar Ganj, District Faizabad. Even the house adjacent to the plot was sold off by Balram Singh to Dr. Vikas Shukla who was

residing at the said village with his entire family. It was stated that Balram Singh was living in Village Hardoia with his wife and four children, three daughters and one son. Name of their eldest daughter is Kumari Kirti Singh, aged about 21 years. She had passed her B.Sc. examination in the year 2009-2010. Balram Singh had stated to the police that he knew Gajendra Pal Singh but did not know Kishore Samrite. According to this affidavit, Balram Singh also informed the police that in the year 2006 some men claiming to be media persons had come to his house in Amethi and asked his wife after showing photograph of Sukanya Devi, if she was her daughter. Upon this, his wife produced their daughter before them and told them that the girl in the photograph was different than their daughter. Further, Balram Singh also stated to the police that they had never authorised any advocate or anybody else to institute any writ petition in the court. In this very affidavit, in regard to the incident of 3rd December, 2006, the DGP has referred to the following statement of Balram Singh :

> "It has also been stated by Sri Balram Singh that neither he nor his wife Sushila Singh nor daughter Kirti Singh has ever made any allegation either on 03.12.2006 or before or after that against Shri Rahul Gandhi or anybody else; nor any writ petition has been preferred in the Hon'ble High Court making

> any kind of allegations. He has never authorised any Advocate or anybody else to institute any writ petition.”

18. The Ration Card and Pan Card of Balram Singh was produced during investigation. It is also noticed that Sukanya and Kirti, the name mentioned in Writ Petition No.125 of 2011 partially matches the particulars of daughter of Balram Singh and they have no relation whatsoever to any of the next friend in either of the writ petition. Shri Balram Singh, Kumari Kirti Singh and Smt. Sushila Singh, all three were produced by the Director General of Police in Court.

19. When the Writ Petition No.125 of 2011 came up for hearing before the Court on 7th March, 2011, the Division Bench passed the detailed order impugned in the present appeal. Vide this order, Writ Petition No.111 of 2011 was disposed of while Writ Petition No.125 of 2011 was partly disposed of and, as afore-noticed, Director of CBI was directed to register a case against Shri Kishore Samrite and all other persons involved in the plot. The Court also imposed cost of Rs.50,00,000/- which was to be distributed as per the order. The contention raised was that the counsel appearing for the petitioner in Writ Petition No.111 of 2011 was not given the opportunity of hearing by the Bench

before passing the impugned order and, in fact, the counsel was standing in the Court when the order was being dictated.

20. At this stage, we may also notice that according to the appellant, he was not aware of Writ Petition No.3719 of 2009 having been filed or the orders passed by the Bench thereupon. The appellant has also stated that there was no urgency for taking up the matter on that very day and, in any case, Writ Petition No.111/11 could not have been transferred by that Bench. The appellant in the present appeal has even gone to the extent of saying that the girl Kumari Kirti Singh has been implanted in place of Sukanya Devi and even the name of the mother has been wrongly described. No notice is stated to have been given to the petitioner in Writ Petition No.111 of 2011. It is contended that the Writ Petition No.111 of 11 had been filed in consonance with the proviso to Rule 1(2) of Chapter XXI of the Allahabad High Court Rules, 1952 under which *habeas corpus* against a private person was maintainable and could be listed before a Single Judge. Allegations have been made in Writ Petition No.125 of 11 calling the present appellant, petitioner in Writ Petition No.111 of 2011, as mentally challenged. The Division Bench dealing with Writ Petition No. 125 of 2011 could not have dealt with Writ Petition No.111 of 2011 and could not

have exercised its appellate jurisdiction. The cost imposed upon the appellant is exorbitant and without any basis.

21. In the background of the above factual matrix and the stand taken by the respective parties, we shall now proceed to examine the contentions raised before the Court by the learned counsel appearing for the parties. For this purpose, we would deal with various aspects of the case under different heads.

(1) **Whether there was violation of Principles of Natural Justice and whether transfer of Writ Petition No. 111/2011 was in accordance with law** ?

22. It is contended that the impugned order dated 7th March, 2011 has been passed in violation of the principles of natural justice. No adequate opportunity was granted to the present appellant to put forward his case. The Writ Petition No. 111/2011 had been transferred to the Division Bench without even issuing notice to the appellant. The order dated 4th March, 2011 had not directed issuance of notice. It is only vide order dated 7th March, 2011 that the Registrar of the High Court was directed to issue copy of the order to all the concerned parties for immediate compliance. Absence of notice and non-grant of adequate hearing has caused serious prejudice to the appellant and the order is liable to be set aside on this sole ground. It is also contended that

the appellant's counsel was present only when the order was being dictated and had no notice of the hearing. On the contrary, the contention on behalf of Respondent No. 1, State of Uttar Pradesh, and other parties is that the counsel for the appellant was present and had due notice of hearing of the Writ Petitions No. 125/2011 and 111/2011 and as such there was neither any violation of the principles of natural justice nor has any prejudice been caused to the appellant.

23. Compliance with the principle of *audi alteram partem* and other allied principles of natural justice is the basic requirement of rule of law. In fact, it is the essence of judicial and quasi-judicial functioning, and particularly the Courts would not finally dispose of a matter without granting notice and adequate hearing to the parties to the *lis*. From the record, i.e. in the orders dated 4th March, 2011 as well as 7th March, 2011 it has not been specifically recorded nor is it implicitly clear that a notice was directed to the petitioners in Writ Petition No.111/2011 and they were given opportunity to address the Court. Lack of clarity in this behalf does raise a doubt in the mind of the Court that the appellant did not get a fair opportunity to put forward his case before the Division Bench. The fact that we have issued notice to all the concerned parties in both the Writ Petitions bearing

nos.125/2011 and 111/2011, have heard them at great length and propose to deal with and dispose of both these writ petitions in accordance with law, renders it unnecessary for this Court to examine this aspect of the matter in any further detail. Suffice it to note that we have heard the counsel appearing for the parties on all aspects including maintainability, jurisdiction as well as merits of both the petitions, which issues we shall shortly proceed to deal with hereinafter. Thus, this submission of the appellant need not detain us any further.

24. From the above narrated facts it is clear that a petition for *habeas corpus* (Writ Petition No. 111/2011) had been filed by the present appellant while referring to the news on the website in relation to the incident dated 3rd December, 2006 (in paragraphs 3 and 4) to the effect that since the petitioners, because of their illegal detention by private opposite party no.6 are incapacitated to file the instant writ petition and also that those petitioners were in illegal detention of the private opposite party no.6 and they have not been seen since 4th January, 2007. This writ petition was treated as private *habeas corpus* and was listed before a Single Judge of the Allahabad High Court. Rule 1 of Chapter XXI of the Allahabad High Court Rules provided that an application under Article 226 of the Constitution for a writ in the nature of

habeas corpus, except against private custody, if not sent by post or telegram, shall be made to the Division Bench appointed to receive applications or on any day on which no such Bench is sitting, to the Judge appointed to receive applications in civil matters. In the latter case, the Judge shall direct that the application be laid before a Division Bench for orders. In terms of proviso to this Rule, it is provided that an application under Article 226 of the Constitution in the nature of *habeas corpus* directed against private custody shall be made to the Single Judge appointed by the Chief Justice to receive such an application. The clear analysis of the above Rule shows that *habeas corpus* against a private custody has to be placed before a Single Judge while in the case of custody other than private custody, the matter has to be placed before a Division Bench. It appears that on the strength of this Rule, Writ Petition No. 111/2011 was listed before the Single Judge of Allahabad High Court. The roster and placing of cases before different Benches of the High Court is unquestionably the prerogative of the Chief Justice of that Court. In the High Courts, which have Principal and other Benches, there is a practice and as per rules, if framed, that the senior-most Judge at the Benches, other than the Principal Bench, is normally permitted to exercise powers of the Chief Justice, as may

be delegated to the senior most Judge. In absence of the Chief Justice, the senior most Judge would pass directions in regard to the roster of Judges and listing of cases. Primarily, it is the exclusive prerogative of the Chief Justice and does not admit any ambiguity or doubt in this regard. Usefully we can refer to some judgments of this Court where such position has been clearly stated by this Court. In the case of *State of Rajasthan v. Prakash Chand & Ors.,* (1998) 1 SCC 1, a three-Judge Bench of this Court was dealing with the requirement of constitution of Benches, issuance of daily cause list and the powers of the Chief Justice in terms of the Rajasthan High Court Ordinance, 1949 read with Article 225 of the Constitution of India. The Court held as under: -

> "10. A careful reading of the aforesaid provisions of the Ordinance and Rule 54 (*supra*) shows that the administrative control of the High Court vests in the Chief Justice of the High Court *alone* and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work *only* as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that

it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the "first amongst the equals", on the administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause list is to be prepared under the directions of the Chief Justice as is borne out from Rule 73, which reads thus:

> "73. *Daily Cause List*.—The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may be heard by the different Benches of the Court. The list shall also state the hour at which and the room in which each Bench shall sit. Such list shall be known as the Day's List."

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24...............The correctness of the order of the Chief Justice could only be tested in judicial proceedings in a manner known to

> law. No Single Judge was competent to find fault with it."

25. In view of the above discussion, the Court amongst others, stated the following conclusions: -

> "59. ......(*1*) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.
>
> (*2*) That the Chief Justice is the master of the roster. He *alone* has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.
>
> (*3*) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.
>
> (*4*) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice."

26. Similarly, in the case of *State of Uttar Pradesh & Ors. v. Neeraj Choubey and Ors.* (2010) 10 SCC 320, the Court had directed appearance of certain persons in the matter of selection to the post of Assistant Professor and treated the matter as a writ petition in the nature of Public Interest Litigation. The Court,

while passing widespread orders, in paragraph 10 of the judgment held as under: -

> "10. In case an application is filed and the Bench comes to the conclusion that it involves some issues relating to public interest, the Bench may not entertain it as a public interest litigation but the court has its option to convert it into a public interest litigation and ask the Registry to place it before a Bench which has jurisdiction to entertain the PIL as per the Rules, guidelines or by the roster fixed by the Chief Justice but the Bench cannot convert itself into a PIL and proceed with the matter itself."

27. Judicial discipline and propriety are the two significant facets of administration of justice. Every court is obliged to adhere to these principles to ensure hierarchical discipline on the one hand and proper dispensation of justice on the other. Settled canons of law prescribe adherence to the rule of law with due regard to the prescribed procedures. Violation thereof may not always result in invalidation of the judicial action but normally it may cast a shadow of improper exercise of judicial discretion. Where extraordinary jurisdiction, like the writ jurisdiction, is very vast in its scope and magnitude, there it imposes a greater obligation upon the courts to observe due caution while exercising such powers. This is to ensure that the principles of natural

justice are not violated and there is no occasion of impertinent exercise of judicial discretion.

28. In the present case there is no dispute to the fact that no order was passed by the Chief Justice of Allahabad High Court or even the senior-most Judge, administratively Incharge of the Lucknow Bench, transferring Writ Petition No. 111/2011 for hearing from a Single Judge before which it was pending, to the Division Bench of that Court. On basis of the allegations made in the Writ Petition No. 111/2011, that matter had been listed before the Single Judge. If this writ petition was improperly instituted before the Single Judge of the High Court then it was for the Registry of that Court or any of the contesting parties to that petition, to raise an objection in that behalf. The objection could relate to the maintainability and/or jurisdiction on the facts pleaded. If the Writ Petition No. 125 of 2011 was filed with a prayer for transfer of Writ Petition No. 111/2011 on the ground stated in the petition, this power fell within the exclusive domain of the Chief Justice or the Senior Judge Incharge for that purpose. It does not appear to be apt exercise of jurisdiction by the Division Bench to *suo moto* direct transfer of Writ Petition No. 111/2011 without leave of the Chief Justice of that Court as such action would *ex facie* amount to dealing with matters relating to

constitution and roster of Benches. We have already cited various judgments of this Court where matters relating to the roster and constitution of the Benches fall within the exclusive domain of the Chief Justice of the concerned High Courts. Transfer of a petition may not necessarily result in lack of inherent jurisdiction. It may be an administrative lapse but normally would not render the Division Bench or Court of competent jurisdiction as lacking inherent jurisdiction and its orders being invalid *ab initio.* Such an order may necessarily not be vitiated in law, particularly when the parties participate in the proceedings without any objection and protest. This, however, always will depend on the facts and circumstances of a given case. In the present case, suffices it to note that transfer of Writ Petition No. 111/2011 by the Division Bench to its own Board was an order lacking administrative judicial propriety and from the record it also appears that adequate hearing had not been provided to the writ petitioners before dismissal of the Writ Petition No. 111 of 2011 by the Division Bench.

<u>Abuse of the process of Court</u> :

29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011

are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

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(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in

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cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the *lis* well-justifies it.

[Refer : *Dalip Singh v. State of U.P. & Ors.* (2010) 2 SCC 114; *Amar Singh v. Union of India & Ors.* (2011) 7 SCC 69 and *State of Uttaranchal v Balwant Singh Chaufal & Ors.* (2010) 3 SCC 402].

30. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In *P.S.R. Sadhanantham v. Arunachalam & Anr.* (1980) 3 SCC 141, the Court held:

> "15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:
>
> > "The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured be a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic 'human-right' of a system which purports to guarantee legal rights."
>
> 16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition."

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31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of

the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "*full and true disclosure of facts".* (Refer : *Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.* [1969 (1) SCC 110]*; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.* [(2012) 6 SCC 430]; *Chandra Shashi v. Anil Kumar Verma* [(1995) SCC 1 421]; *Abhyudya Sanstha v. Union of India & Ors.* [(2011) 6 SCC 145]; *State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.* [(2011) 7 SCC 639]; *Kalyaneshwari v. Union of India & Anr.* [(2011) 3 SCC 287)].

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge *rule nisi* and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {*K.D. Sharma v. Steel Authority of India Ltd. & Ors.* [(2008) 12 SCC 481].

36. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (*Buddhi Kota Subbarao (Dr.) v. K. Parasaran*, (1996) 5 SCC 530).

37. In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court.

38. In this regard, first of all we may deal with the case of the appellant, Kishore Samrite:

39. Firstly, he filed Writ Petition No. 111/2011 on vague, uncertain and incomplete averments. In fact, he withheld the fact that the earlier Writ Petition No. 3719/2009 had been dismissed by a Division Bench of the Allahabad High Court as back as on 17th April, 2009, while he instituted Writ Petition No. 111/2011 in the year 2011. The excuse put forward by the appellant was that

he did not know about the dismissal of that case. This flimsy excuse is hardly available to the appellant as he claims to be a public person (ex-MLA), had allegedly verified the facts and incidents before instituting the petition and made the desired prayers therein. It is obvious that subject matter of Writ Petition No. 3719/2009 must have received great publicity before and at the time of the dismissal of the writ petition.

40. Secondly, without verification of any facts, the appellant made an irresponsible statement that the petitioners Sukanya Devi, Sh. Balram Singh and Smt. Sumitra Devi were in the illegal detention of Respondent no.6. The averments made in the writ petition were supported by an affidavit filed in the High Court stating that contents of paragraphs 1 and 3 to 15 were true, partly true to knowledge and partly based on record while paragraphs 2 and 16 were believed to be correct as per legal advice received. This stood falsified from the fact that the appellant did not even know the three petitioners, their correct addresses and identity.

41. Thirdly, in the Writ Petition in paragraph 10, it is stated that the petitioners were last seen on 4th January, 2007 in Amethi and the appellant had not seen them thereafter. The appellant also

claims in the same paragraph that the facts came to his knowledge when he, in order to personally verify the facts, visited Amethi a couple of times and also as late as in December, 2010. From this, the inference is that the petition was based upon the facts which the petitioner learnt and believed during these visits. On the contrary, when he filed an affidavit in this Court on 25th July, 2012, in paragraph 6 of the affidavit, he stated as under:

> "....The Petitioner has been the Member of Ruling Party in the State of M.P. and because of his standing in the Society, in 2007 he was called for by the Samajwadi Party Leadership, to contest Legislative Assembly Election from Constituency Lanji, Dist. Balaghat, Madhya Pradesh, he won the Bye-election and remained MLA, during 03.11.2007 to 08.12.2008. True Copy of the Identity Card is annexed herewith and marked as **ANNEXURE P-8.**
>
> That the Petitioner, from a young age since 1986 he has been involved in Social Activities, in State of Madhya Pradesh being a Social Activist, he has filed several Writ Petitions before Various High Courts, raising serious public and Social issues, and the issues concerning Corruption and Crime in Politics, and the courts have been pleased to entertain his writ petitions and grant reliefs in the several such writ Petitions filed by him. This List of Writ Petitions filed by the Petitioner is annexed herewith and marked as **ANNEXURE P-9**.
>
> That taking into account his standing and antecedent at behest of the leader of his political party the Petitioner was called to C-1/135, Pandara Park, New Delhi in

> 2010 to meet the other Senior Leaders, who were in Delhi as the Parliament was in Session, where he was appraised about the facts of the serious incident that had been reported from a village in U.P. and in view of the fact that he had taken up several public causes in the past he was requested to file a Writ Petition in the nature of a public interest litigation in the High Court of Judicature at Allahabad Lucknow Bench at Lucknow and thus the Writ Petition came to be filed. Notice was issued in the said Writ Petition."

42. Thus, there is definite contradiction and falsehood in the stand taken by the petitioner in the writ petition and in the affidavit filed before this court, as afore-noticed. This clearly indicates the falsehood in the averments made and the intention of the appellant to misguide the courts by filing such frivolous petitions. No details, whatsoever, have been furnished to state as to how he verified the alleged website news of the incident of 3rd December, 2006 and from whom. Strangely, he did not even know the petitioners and could not even identify them. The prayer in the writ petition was for issuance of a direction in the nature of *habeas corpus* to respondent no.6 to produce the petitioners. And lastly, the writ petition is full of irresponsible allegations which, as now appears, were not true to the knowledge of the petitioner, as he claimed to have acted as next friend of the petitioners while he was no relation, friend or even a person

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known to the petitioners. His acting as the next friend of the petitioners smacks of malice, ulterior motive and misuse of judicial process.

43. The alleged website provides that the girl was missing. It was not reported there that she and her parents were in illegal detention of the respondent no.6. So by no means, it could not be a case of *habeas corpus.*

44. Now, we would deal with Writ Petition No.125 of 2011 instituted by Sh. Gajender Pal Singh, respondent No.8 in this appeal, being next friend of petitioners Sukanya Devi, Sh. Balram Singh and Sh. Sumitra Devi. The glaring factors showing abuse of process of Court and attempt to circumvent the prescribed procedure can be highlighted, *inter alia*, but primarily from the following :

(a) Sh. Gajender Pal Singh also had no relationship, friendship or had not even known the three petitioners.

(b) In face of the statements made by the three petitioners before the Police and the CBI, stating that they had never approached, asked or even expected respondent No.8 to act as next friend, he had no authority to act as their next friend before the Court and pray for such relief.

(c) In the garb of petition for *habeas corpus*, he filed a petition asking for transfer of Writ Petition No.111 of 2011, to which he was neither a party nor had any interest.

(d) Respondent No.8 intentionally did not appear in writ petition No.111 of 2011 raising the question of jurisdiction or any other question but circumvented the process of Court by filing Writ Petition No.125 of 2011 with the prayers including investigation by an authority against the petitioner in writ petition No.111 of 2011. Respondent No.8, despite being a resident of that very area and town, Amethi, did not even care to mention about the dismissal of Writ Petition No.3719 of 2009.

(e) In the writ petition, he claimed to be a neighbour of the three petitioners but did not even know this much that the petitioners had, quite some time back, shifted to Village Hardoia in district Faizabad. He also stated in paragrah 5 of the writ petition that he was neighbour of the petitioners and having not seen them, had sought to lodge a police report, which the authorities refused to take on the ground that the petitioners were in custody of

the police as they had committed some wrong. This averment, to the knowledge of the petitioner, was false inasmuch as the Director General of Police, U.P. had stated in his affidavit that they were never detained or called to the police station. In fact, they had shifted their house to the aforestated Village. Respondent No.8 has, thus, for obvious and with ulterior motive abused the process of the court and filed a petition based on falsehood, came to the Court with unclean hands and even attempted to circumvent the process of law by making motivated and untenable prayers. This petitioner (respondent No.8) also made irresponsible allegations stating that Kishore Samrite, petitioner in Writ Petition No.111 of 2011, was a mentally challenged person.

45. From the above specific averments made in the writ petitions, it is clear that both these petitioners have approached the Court with falsehood, unclean hands and have misled the courts by showing urgency and exigencies in relation to an incident of 3rd December, 2006 which, in fact, according to the three petitioners and the police was false, have thus abused the process of the court and misused the judicial process. They maliciously and with ulterior motives encroached upon the

valuable time of the Court and wasted public money. It is a settled canon that no litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. The privilege of easy access to justice has been abused by these petitioners by filing frivolous and misconceived petitions. On the basis of incorrect and incomplete allegations, they had created urgency for expeditious hearing of the petitions, which never existed. Even this Court had to spend days to reach at the truth. *Prima facie* it is clear that both these petitioners have mis-stated facts, withheld true facts and even given false and incorrect affidavits. They well knew that Courts are going to rely upon their pleadings and affidavits while passing appropriate orders. The Director General of Police, U.P., was required to file an affidavit and CBI directed to conduct investigation. Truth being the basis of justice delivery system, it was important for this Court to reach at the truth, which we were able to reach at with the able assistance of all the counsel and have no hesitation in holding that the case of both the petitioners suffered from falsehood, was misconceived and was a patent misuse of judicial process. Abuse of the process of the Court and not approaching the Court with complete facts and clean hands, has compelled this Court to impose heavy and penal costs on the

persons acting as next friends in the writ petitions before the High Court. This Court cannot permit the judicial process to become an instrument of oppression or abuse or to subvert justice by unscrupulous litigants like the petitioners in the present case.

Locus Standi

46. Having discussed the abuse of process of Court and misuse of judicial process by both the petitioners, the issue of *locus standi* would obviously fall within a very narrow compass. The question of *locus standi* would normally be a question of fact and law both. The issue could be decided with reference to the given facts and not in isolation. We have stated the facts and the stand of the respective parties in some detail. Both, the appellant and respondent No.8, had filed their respective writ petitions before the Allahabad High Court as next friends of the three petitioners whose names have not been stated with complete correctness in both the writ petitions. There has been complete contradiction in the allegations made in the two writ petitions by the respective petitioners. According to the appellant, the three stated petitioners were illegally detained by the respondent no.6 while according to the respondent no.8 they were detained by the authorities. These contradictory and untrue allegations are the

very foundation of these writ petitions. It may also be noticed that in both the writ petitions, baseless allegations in regard to the alleged incident of 3rd December, 2006, involving the respondent no.6, had also been raised.

47. Ordinarily, the party aggrieved by any order has the right to seek relief by questioning the legality, validity or correctness of that order. There could be cases where a person is not directly affected but has some personal stake in the outcome of a petition. In such cases, he may move the Court as a guardian or next friend for and on behalf of the disabled aggrieved party. Normally, a total stranger would not act as next friend. In the case of *Simranjit Singh Mann* v. *Union of India* [(1992) 4 SCC 653], this Court held that a total stranger to the trial commenced against the convicts, cannot be permitted to question the correctness of the conviction recorded against some convicts unless an aggrieved party is under some disability recognised by law, othewise it would be unsafe or hazardous to allow a third party to question the decision against him. In the case of *S.P. Gupta* v. *Union of India* [AIR (1982) SC 149], the Court stated, “but we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique

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consideration. The court must not allow its process to be abused by politicians and others." Dealing with the question of the next friend bringing a petition under Article 32 of the Constitution, this Court in the case of *Karamjeet Singh* v. *Union of India* [(1992) 4 SCC 666], held as under :

> "We are afraid these observations do not permit a mere friend like the petitioner to initiate the proceedings of the present nature under Article 32 of the Constitution. The observations relied upon relate to a minor or an insane or one who is suffering from any other disability which the law recognises as sufficient to permit another person, e.g. next friend, to move the Court on his behalf; for example see : Sections 320(4)(*a*), 330(2) read with Section 335(1)(*b*) and 339 of the Code of Criminal Procedure. Admittedly, it is not the case of the petitioner that the two convicts are minors or insane persons but the learned counsel argued that since they were suffering from an acute obsession such obsession amounts to a legal disability which permits the next friend to initiate proceedings under Article 32 of the Constitution. We do not think that such a contention is tenable. The disability must be one which the law recognises."

48. Dealing with public interest litigation and the cases instituted by strangers or busybodies, this Court in the following cases cautioned the courts and even required that they be dismissed at the threshold:

I) ***Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305*, at page 347 :**

> "Sarkaria, J. in *Jasbhai Motibhai Desai* v. *Roshan Kumar* expressed his view that the application of the busybody should be rejected at the threshold in the following terms:
>
> > 'It will be seen that in the context of *locus standi* to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (*i*) 'person aggrieved'; (*ii*) 'stranger'; (*iii*) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold'."

II) ***R & M Trust v. Koramangala Residents Vigilance Group* (2005) 3 SCC 91]**

> "25. In this connection reference may be made to a recent decision given by this Court in the case of *Dattaraj Nathuji Thaware* v.

State of Maharashtra in which Hon'ble Pasayat, J. has also observed as follows:

> '*12.* Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta'."

49. On the analysis of the above principles, it is clear that a person who brings a petition even for invocation of a fundamental right must be a person having some direct or indirect interest in the outcome of the petition on his behalf or on behalf of some person under a disability and/or unable to have access to the justice system for patent reasons. Still, such a person must act *bonafidely* and without abusing the process of law. Where a person is a stranger/unknown to the parties and has no interest in the outcome of the litigation, he can hardly claim *locus standi* to file such petition. There could be cases where a public spirited person *bonafidely* brings petition in relation to violation of

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fundamental rights, particularly in *habeas corpus* petitions, but even in such cases, the person should have some demonstrable interest or relationship to the involved persons, personally or for the benefit of the public at large, in a PIL. But in all such cases, it is essential that the petitioner must exhibit bonafides, by truthful and cautious exercise of such right. The Courts would be expected to examine such requirement at the threshold of the litigation in order to prevent abuse of the process of court. In the present case, both the appellant and respondent No.8 are total strangers to the three mentioned petitioners. Appellant, in fact, is a resident of Madhya Pradesh, belonging to a political party and was elected in constituency Tehsil Lanji in District Balaghat at Madhya Pradesh. He has no roots in Amethi and, in fact, he was a stranger to that place. The appellant as well as respondent No.8 did not even know that the persons on whose behalf they have acted as next friend had shifted their residence in the year 2010 to Hardoia in District Faizabad. They have made false averments in the petition and have withheld true facts from the Court.

50. This Court, in the case of *Charanjit Lal Chowdhury* v. *The Union of India & Ors.* [AIR 1951 SC 41], while discussing the distinction between the rights and possibility of invocation of legal remedy of a company and a shareholder, expressed the view that

this follows logically from the rule of law that a corporation has a distinct legal personality of its own with rights and capacities, duties and obligations separate from those of its individual members. As the rights are different and inhere in different legal entities, it is not competent to one person to seek to enforce the right of another except where the law permits him to do so. A well known illustration of such exception is furnished by the procedure that is sanctioned in an application for a writ of *habeas corpus*. Not only the man who is imprisoned or detained in confinement but any person, provided he is not an absolute stranger, can institute proceedings to obtain a writ of *habeas corpus* for the purpose of liberating another from an illegal imprisonment. It is not a case of a mere third person moving the court simpliciter on behalf of persons under alleged detention. It is a case of definite impropprietory abuse of process of court, justice and is a motivated attempt based on falsehood to misguide the Court and primarily for publicity or political vendetta. More so, when the petitioners in the writ petitions have categorically stated that they made no complaint of the alleged incident of 3rd December, 2006 and never authorised, requested or approached either of the petitioners to move the court for redressal of any grievance. The question of filing *habeas corpus* petitions on their behalf would not arise

because they were living at their own house and enjoying all freedoms. According to them, they were detained by none at any point of time either by respondent No.6 or the Police authorities. In face of this definite stand taken by these persons, the question of *locus standi* has to be answered against both the petitioners. In fact, it is not only abuse of the process of the Court but also is a case of access to justice unauthorisedly and illegally. Their whole *modus operandi* would be unacceptable in law. Thus, we have no hesitation in holding on the facts of the present case that both the petitioners had no *locus standi* to approach the High Court of Allahabad in the manner and method in which they did. It was contended on behalf of the appellant as well as respondent No.8 that a petition for *habeas corpus* is not struck by the rule of *res judicata* or constructive *res judicata.* According to them, the decision of the Writ Petition No.3719 of 2009 was in no way an impediment for institution of the writ petition as in the case of *habeas corpus* every day would be a fresh and a continuing cause of action. For this purpose, reliance has been placed upon the judgment of this Court in the case of *Ghulam Sarwar* v. *Union of India* [AIR 1967 SC 1335] and *Kirti Kumar Chaman Lal Kundaliya* v. *Union of India* [AIR 1981 SC 1621]. We do not consider it necessary to decide this question as a question of law in the facts

and circumstances of the present case particularly in view of the findings recorded by us on other issues. Suffice it to note that the judgment of the Allahabad High Court dated 17th April, 2009 in Civil Writ Petition 3719 of 2009 had attained finality as the legality or correctness thereof was not challenged by any person. There can hardly be any doubt that upon pronouncement of this judgment this case squarely fell in the public domain and was obviously known to both the petitioners but they did not even consider it necessary to mention the same in their respective writ petitions. Another contention that has been raised on behalf of the appellant is that a petition of *habeas corpus* lies not only against the Executive Authority but also against private individual. Reliance is placed on the case of *In Re: Shri Sham Lal* [(1978) 2 SCC 479]. As a proposition of law, there is no dispute raised before us to this proposition. Thus, there is no occasion for this Court to deliberate on this issue in any further elaboration.

51. Having dealt with various aspects of this case, now we must revert to the essence of the present appeal on facts. The petitions instituted by the appellant and respondent No.8 were certainly an abuse of the process of Court. They have encroached upon the valuable time of the courts. The contradictory stands taken before the courts and their entire case being denied by the

petitioners themselves clearly show that they have misused the judicial process and have stated facts that are untrue to their knowledge. The alleged incident which, according to the petitioners, police and the CBI, never happened and illegal detention of the petitioners has been falsified by the petitioners themselves in the writ petitions. It is a matter of regret that the process of the court has been abused by unscrupulous litigants just to attain publicity and adversely affect the reputation of another politician, respondent No.6. One of the obvious reasons which can reasonably be inferred from the peculiar facts and circumstances of the case is the political rivalry. According to the counsel appearing for respondent No.6, it is a case of political mudslinging. He has rightly contended that the websites information was nothing but secondary evidence, as stated by this Court in *Samant N. Balkrishna & Anr.* v. *V. George Fernandez and Ors*. [(1969) 3 SCC 238] but not even an iota of evidence has been placed on record of the writ petitions before the High Court or even in the appeal before this Court, which could even show the remote possibility of happening of the alleged rape incident on 3rd December, 2006. There is an affidavit by the police and report by the CBI to show that this incident never occurred and the three petitioners have specifically disputed and denied any such

incident or making of any report in relation thereto or even in regard to the alleged illegal detention. Political rivalry can lead to such ill-founded litigation. In the case of *Gosu Jayarami Reddy & Anr.* v. *State of Andhra Pradesh* [(2011) 11 SCC 766], this Court observed that political rivalry at times degenerates into personal vendetta where principles and policies take a back seat and personal ambition and longing for power drive men to commit the foulest of deeds to avenge defeat and to settle scores. These observations aptly apply to the facts of the present case particularly the writ petition preferred by the appellant. At one place, he claims to have acted as a public figure with good conscience but has stated false facts. On the other hand, he takes a somersault and claims that he acted on the directives of the political figures. It is unworthy of a public figure to act in such a manner and demonstrate a behaviour which is impermissible in law. Appellant as well as respondent No.8 filed *Habeas corpus* petitions claiming it to be a petition for attainment of public confidence and right to life. In the garb of doctrines like the Right to Liberty and access to justice, these petitioners not only intended but actually filed improper and untenable petitions, primarily with the object of attaining publicity and causing injury to the reputation of others. The term 'person' includes not only

the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. 'Reputation' is an element of personal security and is protected by Constitution equally with the right to enjoyment of life, liberty and property. Although 'character' and 'reputation' are often used synonymously, but these terms are distinguishable. 'Character' is what a man is and 'reputation' is what he is supposed to be in what people say he is. 'Character' depends on attributes possessed and 'reputation' on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present. {Ref. *Smt. Kiran Bedi* v. *The Committee of Inquiry & Anr.* [(1989) 1 SCC 494] and *Nilgiris Bar Association* v. *T.K. Mahalingam & Anr.* [AIR 1998 SC 398]}. The methodology adopted by the next friends in the writ petitions before the High Court was opposed to political values and administration of justice. In the case of *Kusum Lata* v. *Union of India* [(2006) 6 SCC 180], this Court observed that when there is material to show that a petition

styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition should be dismissed by the Court. If such petitions are not properly regulated and abuse averted, it becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well.

52. In light of these legal principles, appellant and, in fact, to a great extent even respondent No.8 have made an attempt to hurt the reputation and image of respondent no.6 by stating incorrect facts, that too, by abusing the process of court.

53. Coming to the judgment of the High Court under appeal it has to be noticed that the appellant was deprived of adequate hearing by the High Court, but that defect stands cured inasmuch as we have heard of the concerned parties in both the writ petitions at length. The transfer of Writ Petition No. 111/2011 was not in consonance with the accepted canons of judicial administrative propriety. The imposition of such heavy costs upon the petitioner was not called for in the facts and circumstances of the case as the Court was not dealing with a suit for damages but with a petition for *habeas corpus*, even if the petition was not *bona fide*. Furthermore, we are unable to endorse our approval to the manner in which the costs imposed

were ordered to be disbursed to the different parties. Moreover, the question of paying rewards to the Director General of Police does not arise as the police and the Director General of Police were only performing their duties by producing the petitioners in the Court. They, in any case, were living in their own house without restriction or any kind of detention by anyone. In fact, the three petitioners have been compulsorily dragged to the court by the petitioner in Writ Petition No. 125/2011. They had made no complaint to any person and thus, the question of their illegal detention and consequential release would not arise. These three persons have been used by both the petitioners and it is, in fact, they are the ones whose reputation has suffered a serious setback and were exposed to inconvenience of being dragged to courts for no fault of their own. We hardly see any attributes of the Police except performance of their duties in the normal course so as to entitled them to exceptional rewards. Certainly, the reputation of respondent no.6 has also been damaged, factually and in law. Both these petitions are based on falsehood. The reputation of respondent no.6 is damaged and his public image diminished due to the undesirable acts of the appellant and respondent no.8.

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54. For these reasons, we are unable to sustain the order under appeal in its entirety and while modifying the judgments under appeal, we pass the following order: -

1. Writ petition No. 111/2011 was based upon falsehood, was abuse of the process of court and was driven by malice and political vendetta. Thus, while dismissing this petition, we impose exemplary costs of Rs. 5 lacs upon the next friend, costs being payable to respondent no.6.

2. The next friend in Writ Petition No. 125/2011 had approached the court with unclean hands, without disclosing complete facts and misusing the judicial process. In fact, he filed the petition without any proper authority, in fact and in law. Thus, this petition is also dismissed with exemplary costs of Rs. 5 lakhs for abuse of the process of the court and/or for such other offences that they are found to have committed, which shall be payable to the three petitioners produced before the High Court, i.e. Ms. Kirti Singh, Dr. Balram Singh and Ms. Sushila @ Mohini Devi.

3. On the basis of the affidavit filed by the Director General of Police, U.P., statement of the three petitioners in the

Writ Petition, CBI's stand before the Court, its report and the contradictory stand taken by the next friend in Writ Petition No.111/2011, we, *prima facie*, are of the view that the allegations against the respondent no.6 in regard to the alleged incident of rape on 3rd December, 2006 and the alleged detention of the petitioners, are without substance and there is not even an iota of evidence before the Court to validly form an opinion to the contrary. In fact, as per the petitioners (allegedly detained persons), they were never detained by any person at any point of time.

4. The CBI shall continue the investigation in furtherance to the direction of the High Court against petitioner in Writ Petition No. 111/2011 and all other persons responsible for the abuse of the process of Court, making false statement in pleadings, filing false affidavits and committing such other offences as the Investigating Agency may find during investigation. The CBI shall submit its report to the court of competent jurisdiction as expeditiously as possible and not later than six months from the date of passing of this order.

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5. These directions are without prejudice to the rights of the respective parties to take such legal remedy as may be available to them in accordance with law. We also make it clear that the Court of competent jurisdiction or the CBI would not in any way be influenced by the observations made in this judgment or even the judgment of the High Court. All the pleas and contentions which may be raised by the parties are left open.

55. The appeal is disposed of in the above terms.

.................................J.
(B.S. Chauhan)

.................................J.
(Swatanter Kumar)

New Delhi,
October 18, 2012

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ITEM NO.1A COURT NO.12 SECTION II
(For Judgment)

S U P R E M E   C O U R T   O F   I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 1406 OF 2012

KISHORE SAMRITE Appellant(s)

VERSUS

STATE OF U.P. & ORS. Respondent(s)

JUDGMENT

Date: 18/10/2012 This Appeal was called on for pronouncement of Judgment today.

For Petitioner(s) Ms. Kamini Jaiswal,Adv.

For Respondent(s)

Respondent No. 6   Mr. P.P. Rao, Sr. Adv.

Ms. Mahalakshmi Pavani, Adv.

Mr. G. Balaji, Adv.

CBI   Mr. Harin P.Raval, ASG

Mr. Rajiv Nanda, Adv.

Mr. P.K. Dey, Adv.

Mr. B.V. Balram Das,Adv.

Mr. Arvind Kumar Sharma ,Adv

State of U.P.

Mr. Rakesh Diwedi,Sr.Adv.

Mr. Gaurav Bhatia,AAG, U.P.

Mr. Gaurav Dhingra,Adv.

Mr. Avnish Pandey,Adv.

Mr. Gautam Talukdar,Adv.

Respondent Nos. 4 & 5

Mr. S.P. Singh, Sr. Adv.

Mr. V.K. Biju, Adv.

Ms. Sadhana Sandhu,Adv.

Ms. Sunita Sharma,Adv.

Mr. B.V. Balramdas, Adv.

Mrs. Anil Katiyar,Adv.

Respondent No.8   Mr. K.T.S. Tulsi,Sr.Adv.

Mr. Subramonium Prasad,Adv.

Mr. Raj Kamal,Adv.

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Mr. Kuber Boddh,Adv.

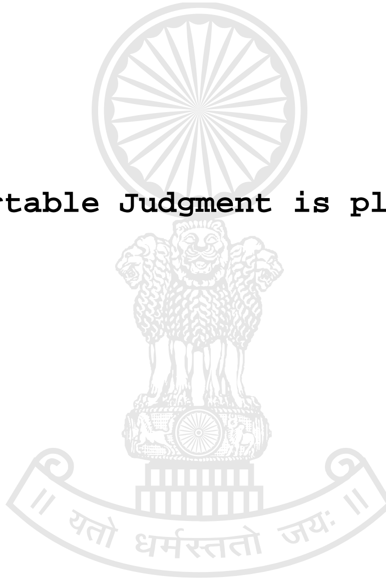
Hon'ble Mr. Justice Swatanter Kumar pronounced the judgment of the Bench comprising of Hon'ble Dr.Justice B.S. Chauhan and His Lordship.

The impugned judgment is modified and the appeal is disposed of in terms of the signed Judgment.

(A.S. BISHT) (INDU BALA KAPUR)

COURT MASTER COURT MASTER

(Signed reportable Judgment is placed on the file)



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