

# Best bakery case

[Law](#), [Common Law](#)



INTRODUCTION Zahira's case is the landmark judgment of the Hon'ble Supreme Court of India on law relating to the Contempt of Court. The case is commonly referred as the Best Bakery Case. The incident involved the burning down of the Best Bakery, a small outlet in the Hanuman Tekri area of Vadodara as a part of communal riots on March 1, 2002. Twelve Muslims and two others were burnt alive in the premises of the bakery, "allegedly by a Hindu mob". Zahira H. Sheikh, a 19-year-old during the incident, was a key and notable witness. She stated that she saw her family members burn to death. On March 23, however, 37 of the 73 witnesses, including Sheikh, turned hostile, saying they had seen nothing on the night of the attack. Hence, all accused were acquitted for the lack of evidence. On July 11, 2003, Zaheera testified before the National Human Rights Commission that she was forced to change her statement. On August 1 the same year, the NHRC filed a petition in the Supreme Court asking for a retrial in a Court outside Gujarat. The Supreme Court directed a re-trial in Maharashtra. Again statements were changed by Zahira. She stated that the judgment passed by the Gujarat Court was correct. The prosecution declared Zahira Sheikh to be a hostile witness. Also a tape by Tehelka was released which claimed that Zahira had been bribed by an MLA. Masjlis-e-Shura, an apex decision-making body of Muslims, consequently declared Sheikh a 'dissembler', effectively ousting her from the Muslim community. The organization gave as its reason that Zaheera was "tarnishing (the community's) image by making false statements." The Supreme Court held her guilty of perjury and was punished with both fine and imprisonment. The case has been regarded as country's one of the most controversial and high profile trials. SUPREME COURT OF

INDIA Before:- Arijit Pasayat & H. K. Sema, JJ. Criminal Appeal No. s 446-449 of 2004. D/d 8. 3. 2006 Zahira Habibullah Sheikh & Anr. Appellants Versus State of Gujarat & Ors. Respondents Criminal Misc. Petition Nos. 6658-6661 of 2004 in Criminal Appeal Nos. 446-449 of 2004 For the Appellant:- Mr. Dinesh Kumar Garg, Mr. Manzolor Ali Khan, Mr. Pavit Singh, Ms. Aparna Bhat, Mr. P. Ramesh Kumar, Ms. Afreen Siddiqui and Ms. Madhulika Mohta, Advocates, For the Respondent:- Ms. Hemantika Wahi, Dr. Kailash Chand, Mr. A. P. Mayee, Mr. V. N. Raghupathy, Mr. Sanjay Jain, Mr. S. Muralidhar, Mr. Manoj Goel, Mr. Shuvodeep Roy, Mr. Wajith Shafiq, Mr. Brij Bhushan, Mr. Abha R. Sharma and Mr. H. A. Raichura, Advocates. CASES REFERRED: 1. Zahira Habibullah Sheikh v. State of Gujarat, 2004(2) RCR (criminal) 836: 2004 (3) Apex Criminal 46: [(2004) 4 SCC 158] 2. Sukhdev Singh Sodhi v. Chief Justice and judges of the PEPSU High Court, [AIR 1954 SC 186] 3. Supreme Court Bar Association v. Union of India and Another, [AIR 1998 SC 1895] 4. Metropolitan Properties Ltd. v. Lannon, (1968) 3 All ER 304 (CA). 5. Lesson v. General Council of Medical Education, (1890) 43 Ch. D. 366. 6. Jennison v. Bacjker. [1972 (1) All ER 1006] 7. Jagat Rai v. State of Maharashtra, [AIR 1968 SC 178] 8. Dhanraj Singh @ Shera v. State of Punjab, [JT 2004(3) SC 380] 9. Karnel Singh v. State of M. P., 1995 (3) RCR (Criminal) 526: [1995 (5) SCC 518] 10. Paras Yadav v. State of Bihar, 1999 (1) RCR (Criminal) 627: [1999 (2) SCC 126] 11. Ram Bihari Yadav v. State of Bihar, 1998 (2) RCR (Criminal) 403: [1998 (4) SCC 517] 12. Amar Singh v. Balwinder Singh, 2003 (1) RCR (Criminal) 701: [2003 (2) SCC 518] LAW APPLICABLE IN THE CASE Articles- 129, 142(2) of the Constitution of India. Section 15 of the Contempt of Courts Act, 1971 Sections- 156, 311 of the

Code of Criminal Procedure, 1973 FACTS OF THE CASE 1. That in the present case appeals were filed by: Zahira Habibullah hereinafter referred to as 'Zahira and Another namely, Teesta Setelwad' and another appeal was filed by the State of Gujarat. The main focus in the appeals filed before the Supreme Court, was the absence of an atmosphere conducive to fair trial. Zahira who was the star witness in the present case made an objection that she was intimidated, threatened and coerced to depart from the truth and to make statement in Court which did not reflect the reality. The trial Court on the basis of the statements made by the witnesses in Court directed acquittal of the accused persons. Before the Gujarat High Court an application under Section 391 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed. The basis was the statement made by Zahira. The High Court did not accept the prayer and subsequently the appeals were filed in Supreme Court. By Judgment dated 12th April, 2004 in Zahira Habibullah Sheikh & Anr. v. State of Gujarat and Ors., the Court gave directions of re-trial by a Court under the jurisdiction of the Bombay High Court. The Chief Justice of the said High Court was requested to fix up a Court of competent jurisdiction. The Director General of Police, Gujarat was directed to monitor re-investigation, if any, to be taken up with the urgency and utmost sincerity, as the circumstances warrant. 2. The State of Gujarat filed a review petition (Zahira' Habibulla H. Sheikh and Anr. v. State of Gujarat and Ors.) which was disposed of by order dated 7th May, 2004. 3. While the trial was going on before a Court in Maharashtra pursuant to the Supreme Court's direction, Zahira gave a press statement in the presence of some government officials that what she had stated before the trial Court in

Gujarat earlier was correct. A petition was filed before the Supreme Court alleging that Zahira's statement was contempt of the Court. At a press conference dated 3. 11. 2004 few days before the scheduled appearance of the witnesses in the trial, she changed her version, disowned the statements made in the Court, and before various bodies like National Human Rights Commission. Considering the petition filed, orders were passed on 10. 1. 2005 and subsequently on 21. 2. 2005 in which the Court laid down the directions that an inquiry shall be conducted to as to which version of Zahira Habibullah Sheikh is a truthful version. Allegations were made by Mr. P. N. Lekhi, learned senior counsel appearing for Zahira Habibullah Sheikh that she was being threatened, coerced, induced and/or lured by Teesta Setelwad. On the contrary, learned counsel appearing for Teesta Setelwad submitted that she was being threatened, coerced, lured or induced by others to make statements or adopt stands contrary to what she had stated/adopted earlier. The Court further ordered that it should be indicated in the report (a) if Zahira was in any manner threatened, coerced, induced and/or in any manner pressurised to depose/make statement(s) in any particular way, by any person or persons, and (b) if the answer to (a) is in the affirmation, who the person/persons is (or) are. 4. A Criminal Miscellaneous Petition Nos. 6658-6661 of 2004 was filed directing Zahira to file an affidavit indicating details of her bank accounts, advances, other deposits, amounts invested in movable or immovable properties and advances or security deposits along with the affidavit to be filed before the Registrar General of the Apex Court. She was further asked to indicate the sources of the aforesaid deposits, advances and investments, as the case may be; and

indicate the details of such deposits, advances and investments, if any, in respect of her family members and the source thereof. 5. On completion of the inquiry, the Inquiry Officer submitted his report which revealed: \* That Zahira had changed her stand at different stages and departed from her statements before the Supreme Court. \* That as regards the question of whether she was threatened, coerced, lured, induced and/or in any manner pressurized to make statements in a particular way by any person or persons, Zahira had not been able to explain the assets in her possession in spite of several opportunities granted to her. \* Further, reference was made to the transcript of conversations purported to have been made between a representative of " Tehlaka" and Shri Tushar Vyas, Shri Nisar Bapu and Shri Chandrakant Ramcharan Srivastava @ Bhattoo Srivastava, Shri Madhu Srivastava, and Shri Shailesh Patel. Opportunity was also given to these people to explain their stance as the transcript of the Video Compact Disc produced by Tehlaka. com clearly indicated that money was paid to Zahira to change her stand. \* The Inquiry Officer found that Zahira and her family members could not explain various receipts of money received by her and deposits made in their bank accounts; hence it was found unacceptable. The amount involved was nearly rupees five lakhs. \* Also when Zahira and her brother H. Nasitullah were asked about the names and addresses of purchasers of scrap and further details, the same were not supplied to the Officer. \* The Inquiry Officer recorded that money was exchanged and that was the main inducement responsible which made Ms. Zahira to state in a particular way in trial Court, Vadodara. 6. In addition to the abovementioned conclusions the Inquiry Officer also recorded that after a particular point of

time contemporaneous to when Zahira started changing her stand, a society called Jan Adhikar Samiti came to the picture. The statements of functionaries of Jan Adhikar Samiti showed that substantial amount was spent for meeting the expenses of Zahira and her family members. But the Inquiry Officer found that even though materials do exist to show that money played a vital role in the change of stand yet it could not be directly linked to Madhu Srivastava and Bhattoo Srivastava. **ISSUE AT LAW** On the basis of the facts and circumstances of the present case, the main issue before the Honourable Supreme Court was whether Zahira had committed the contempt of the Supreme Court. **STAND TAKEN BY BOTH THE PARTIES** Considering the main issue there were many other questions which the Court answered. Zahira objected to acceptance of the Inquiry report. The ground on which objections were raised were: 1. that the Inquiry Officer made deliberate omissions and distortion of facts. 2. that no cross examination of the witnesses whom the Inquiry Officer has examined was permitted. 3. that there was no transparent procedure adopted and the agreed procedure was never followed. 4. that there was lack of fair objective and reasonable approach. The pre-requisites of an objective enquiry were missing. There was no intelligent appreciation of facts. 5. that the Inquiry Officer appeared to be guided by Teesta Setelwad. The conclusion that Zahira had approached this Court for a fresh trial is wrong. 6. that the request for examining the Chairman, NHRC was not accepted without indicating any reason. 7. that Zahira was not only the person who had made departure from her stand purportedly recorded during investigation. There were others but no effort was made to take any action against them. 8. that the petition filed before

this Court was not in fact signed by Zahira but was signed by Teesta and the mere fact that she had filed a Vakalatnama would not make her responsible for the statements made in the affidavit. 9. that up to the point of time of the Press Conference Zahira was a mere puppet in Teesta's hands and was controlled by her. Hence, whatever statement was purportedly made by Zahira was in fact made by Teesta. She had spent lot of money taking advantage of the helplessness of Zahira and was tutored to make statements on different occasions. Teesta has given different versions as to when she has come in contact with Zahira and decided to take up her issues. The State of Gujarat adopted a peculiar stand stating that in view of conclusions of the Inquiry Officer it is not in a position to simpliciter accept or deny the report. So far as the criticism levelled by the Inquiry Officer against the conduct of some of the officers it was pointed out that the State has shown its anxiety to see that justice is done and nothing is wrong in deputing officers and merely because Shri S. N. Sinha who had been transferred appeared in the proceedings before the Inquiry Officer, that cannot show that the State of Gujarat was adopting any particular stand. It was submitted by Mrs. Teesta that report deserves to be accepted. Further enquiry as to the role of Madhu Srivastava and the sources of money which were in the possession of Zahira were to be further proved. The Inquiry Officer clearly indicated the roles played by Madhu Srivastava and his cousin Chandrakant in intimidating/coercing witnesses like Zahira and family members. Assistance was given by Sudhir Sinha, Commissioner of Police, Surat to Zahira to hold the press conference on 3. 11. 2004 just a day before her testimony was to be recorded in Mumbai. Similar assistance was given by



Shri Bhagyesh Jha, Collector, Vadodara to Zahira. The directions by the Home Secretary Shri S. C. Murmu, to Shri Sudhir Sinha, Commissioner of Police, to attend the proceedings before the Inquiry Committee clearly show the partisan approach. The role of the State of Gujarat in lodging Zahira and her family members at Silver Oak Club, Gandhi Nagar for a period of 10 days raises big question mark as to who met the expenses. These clearly show that sinister roles were played by State of Gujarat's functionaries. It was submitted that Teesta is being targeted for exposing the evil deeds of the aforesaid persons. CONSIDERATION OF THE SUPREME COURT To find the answer as to whether there was contempt of Court committed by Zahira the Court took into consideration the stand of both the parties. The observation of the Court in the present case was as follows: Issue that the Inquiry Officer had Tailored Facts: The Court was of the opinion that allegation against Inquiry Officer acting with some pre- conceived ideas and/or report based on presumptions was not correct. The conclusions drawn by the Inquiry Officer had their foundation on materials which were elaborately discussed by the Inquiry Officer. Much has been made of the fact that original affidavit was not filed. The Inquiry Officer dealt with the question in detail and undisputedly original affidavit has been brought on record. Issue that No Cross-Examination was Allowed: Grievance was made by Zahira that scope for " cross examination" was not given. The Supreme Court believed that it was really of no consequence. What questions in " cross examination" by learned counsel could have been put, were asked by the Inquiry Officer whenever any suggestion was made in that regard. If a party did not suggest any question to be put to a witness by the Inquiry Officer, it wasn't open for

him or her to say that opportunity for "cross examination" was not given.

**Issue Relating to a Fair Trial and Transparency of the Procedure:** Zahira objected that the procedure adopted during enquiry has been characterized to be unfair and not fair and transparent procedure. The Court observed that on a bare perusal of the proceedings of the enquiry, it is clear that the procedure adopted was quite transparent. The proceedings were conducted in the presence of learned counsel for the parties and/or the parties themselves. After the questions were asked by the Inquiry Officer, learned counsel and the parties were asked if any further questions were to be asked and as the records revealed whenever any question was suggested that was asked. **Issue that Request for Examining NHRC Chairman was not**

**Entertained:** A further grievance is made that request to call the Chairman, NHRC was turned down without reasons. This according to the Court was a plea which needed to be rejected. The statement of Zahira was recorded by NHRC in the presence of the Chairman (a retired Chief Justice of this Court) and several members which included a retired Judge of this Court). The allegation that it was not properly recorded or that somebody else's statement was recorded and Zahira was asked to put the signatures, is clearly untenable. In Court's opinion such a plea should not have been raised as it reflects on the credibility of functionaries of a body like NHRC. **Issue that Witnesses Changed their Statements Frequently:** Serious questions arose as to the role played by witnesses who changed their versions more frequently than chameleons. Zahira's role in the whole case was an eye-opener for all concerned with the administration of criminal justice. The Court observed that at the threshold the criminal justice system is likely to be affected if

persons like Zahira are to be left unpunished. Not only the role of Zahira but also of others whose conduct and approach before the Inquiry Officer has been highlighted needs to be noted. The Inquiry Officer found that Zahira could not explain her assets and the explanations given by her in respect of the sources of bank deposits etc. held to be unacceptable. Issue that the Petition was not filed by Zahira and the mere Fact that she filed Vakalatnama would not make her Responsible for the Statements made in the Affidavit: The Court observed that stand that mere filing of a vakalatnama without an affidavit by the concerned person cannot constitute a statement by the person who has filed the vakalatnama is clearly unacceptable. The appeal undisputedly was filed by Zahira and it has been candidly admitted that she has filed the vakalatnama for filing the appeal. She cannot turn around and say that she was not a party in the appeal. Above being the position, there is no reason to discard the report given by the Inquiry Officer which is accordingly accepted. Further, in Court's opinion what remains to be done is what is the consequence of Zahira having made such conflicting statements and the effect for changing her stand from the statements made at different stages, particularly in this Court. Issue that Whether Zahira was Threatened by Teesta: It was for Zahira to explain whether she was either telling the truth or making false statement. Merely stating that she was acting as a puppet in the hands of Teesta is not sufficient. Much has been made by learned counsel for Zahira about some observations made by Inquiry Officer in his report. A bare reading of the observations makes it clear that what is being submitted by learned counsel for Zahira is by reading observations out of context. The Court was of the opinion that these pleas which have been

enumerated above do not in any way affect credibility or acceptability of the report. During the course of hearing, the Court asked the learned counsel appearing for Zahira as to whether they would like to be heard on the question of the consequential order, if any, if the report is accepted and Zahira is found to have committed contempt or to have deflected the course of justice by unacceptable methods. Learned counsel for Zahira stated that they would not like to make statements in that regard and would only stress on the report being not accepted. JUDGMENT OF THE COURT On the basis of the facts and circumstances of the case and considerations taken thereupon, the Supreme Court held that Zahira had committed contempt of this Court. The Court gave the following direction: 1. “ Zahira is sentenced to undergo simple imprisonment for one year and to pay cost of Rs. 50, 000/- and in case of default of payment within two months, she shall suffer further imprisonment of one year; 2. Her assets including bank deposits shall remain attached for a period of three months. The Income Tax Authorities are directed to initiate proceedings requiring her to explain the sources of acquisition of various assets and the expenses met by her during the period from 1. 1. 2002 till today. The Court further made clear that any observation made about her having not satisfactorily explained the aforesaid aspects would not be treated as conclusive. The proceedings shall be conducted in accordance with law. The Chief Commissioner, Vadodara was directed to take immediate steps for initiation of appropriate proceedings. It shall be open to Income Tax authorities to direct continuance of the attachment in accordance with law. If so advised, the Income Tax Authorities shall also require Madhu Srivastava and Bhattoo Srivastava to explain as to why the

claim as made in the VCD of paying money shall not be further enquired into and if any tangible material comes to surface, appropriate action under the Income Tax Law shall be taken notwithstanding the findings recorded by the Inquiry Officer that there is no acceptable material to show that they had paid money, as claimed, to Zahira. The Court left the matter to the Income Tax Authorities to take a decision and directed the Trial Court to decide the matter before it without being influenced by any finding/observation made by the Inquiry Officer or by the fact that it had accepted the report and directed consequential action. " The Supreme Court gave punishment on the contemner de hors the provisions of the Contempt of Courts Act, 1971 and relied upon the inherent and constitutional jurisdiction under Article 129.

OBITER DICTA Application of Law Relating to Contempt of Court Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2) of the Constitution of India, 1950. Since, no such law has been enacted by Parliament, the nature of punishment prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes procedural mode for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in Sukhdev Singh Sodhi v. Chief Justice

and Judges of the PEPSU High Court as regards the extent of " maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not the Supreme Court in that behalf. In Supreme Court Bar Association v. Union of India and Anr., this Court expressed no final opinion on that question since that issue, strictly speaking, did not arise for decision in that case. It was observed that the question regarding the restriction or limitation on the extent of punishment, which the Court may award while exercising its contempt jurisdiction, may be decided in a proper case, when so raised. If the Court acts contrary to the role it is expected to play, it will be destruction of the fundamental edifice on which justice delivery system stands. People for whose benefit the Court exists will doubt the efficacy of the system. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking that " the Judge was biased". The perception may be wrong about the Judge's bias, but the Judge concerned must be careful to see that no such impression gains ground. Judges like Ceaser's wife should be above suspicion. It was significantly said that law, to be just and fair has to be seen devoid of flaw. It has to keep promise to justice and it cannot stay petrified and sit non-challantly. The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection loose hope. The Court quoted Diogenes Laertius who in " Lives of the Philosophers" wrote that laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away". Jonathan Swift, in his " Essay on the Faculties of the Mind" said in similar lines. Interpretation of Section 311 of the Code of

Criminal Procedure Making reference to Section 311 of the Code, the Court observed that the object underlying this Section is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The Section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The Section is a general Section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. The object of the Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by Court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a Court arises not under the provision of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross-examination to the complainant. Principle of Fair Trial and Witness Protection Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair

trial permeate the common law in both civil and criminal contexts. Application of these principles involve a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences. The principle of fair trial informs and energizes many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation - peculiar at times and related to the nature of crime, persons involved - directly or operating behind, social impart and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. "Witnesses" as Bentham said: are the eyes and ears of justice. Hence, it is important for the quality of trial process. The witness should not be incapacitated at any time of the trial. This incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Hence, there is a need for protecting the witness. In Court's opinion the time has come when serious thoughts must to be



bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to a mockery. Role of Investigating Agencies Doubts are raised about the roles of investigating agencies. Consequences of defective investigation have been elaborated in *Dhanraj Singh @ Shera and Ors. v. State of Punjab*. It was observed as follows: 5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. 6. In *Paras Yadav and Ors. v. State of Bihar* it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. 7. As was observed in *Ram Bihari Yadav v. State of Bihar and Ors.* if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v. Balwinder Singh and Ors.*" The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and

truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he had deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the "TADA Act") have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies.

**SUPREME COURT ON CONTEMPT FOR MAKING FALSE STATEMENT** A false or a misleading or a wrong statement deliberately and wilfully made by party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. The Court in *Dhananjay's* case held that swearing of false affidavit or making false statement on oath in judicial proceedings which has the tendency of interfering with the administration of justice or the due course of judicial proceedings amounted to criminal contempt. In this case the respondents Police officers falsely denied in their affidavit that the detenu and a taxi driver had been detained illegally in their custody. The apologies of the contemner respondents were rejected and the contemner respondents were sentenced to imprisonment and fine. Similarly, the Punjab and Haryana High Court took the view that a false statement and a false verification in pleadings will amount to contempt of Court apart from attracting section 191 of the Indian Penal Code. A strong view was taken by the Supreme Court regarding making a false statement in

an affidavit filed in Court proceedings in *Murray & Co. v. Ashok Kumar Newatia*, where it held that a positive assertion made with definitive intent to pass off a falsity and if possible to gain an advantage amounted to interference with the administration of justice and was not a fit case for accepting even the unconditional apology tendered by the contemner.

Where a party to a proceeding in the Court discloses certain facts either in support of his claim or defence, and those facts, the same would render the party making false statements liable for contempt. The Supreme Court has drawn a distinction between deliberate false statements pertaining to facts and the inference drawn from such statements. It has held that a verification which is specific and deliberately false will be a ground for proceeding in contempt. But if the facts leading to a claim or defence are set out and inferences drawn thereby stating that the stand of the plaintiff or the defendant is one way or the other will not amount to contempt unless such facts as pleaded are themselves false. In view of the above decisions the Supreme Court in *Zahira* also held her to be guilty of contempt because of her disowning statements made by her at an earlier stage and on the basis of which the Supreme Court had directed the case to be transferred to Bombay High Court.

**SIGNIFICANCE OF THE JUDGMENT** The Court in this case highlighted one of the most dominant aspects of the criminal justice system i. e. the overall lack of witness protection. It has been observed that if the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets perished and paralyzed. Apex Court was emphatic on the role of the State to play in protecting the witnesses. It has been observed that as a protector of its citizens, the State has to ensure that during the trial in the

Court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Supreme Court reminded the State that it has a constitutional obligation and duty to protect the life and liberty of the citizen. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like, caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation. The rationale of the judgment against Zahira can be explained as: " Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interest of the individual accused." The sentence of Zahira- a witness, cum complainant cum aggrieved, cum turned hostile, on 8th March, 2006 is classic example where evidences were tampered with and witnesses were won over. Thus, witness protection was another area of concern taken into consideration before the Court. The hostility of the witnesses on the same charges in two different High Courts of the country was a mockery of the judicial independence of a person and shows how one can easily be fooled and that the voice of a person does not hold any value. It was the Supreme Court which to its best ability and knowledge delivered a landmark judgement. It tackled all the issues in an

intelligible way and paved way for future legislations.

----- [ 2 ]. Under Section 391 of the Code an Appellate Court may take further evidence or direct it to be taken in case, such evidence is necessary. [ 3 ]. (2004) 4 SCC 158. [ 4 ]. ¶ 75, Zahira Habibullah Sheikh & Anr. v. State of Gujarat and Ors, (2004) 4 SCC 158. [ 5 ]. Ibid., ¶ 78. [ 6 ]. 2004 (5) SCC 353. [ 7 ]. ASIM PANDYA, THE CONTEMPT OF COURTS ACT, 1971: LAW AND PROCEDURE 52 (2nd Ed. 2010) [ 8 ].

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