

Date : May 3, 2014

To

Hon'ble Justice Mr R M Lodha

The Hon'ble Chief Justice of India

Supreme Court of India

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Respected Your Lordship

1. I express my best wishes to your lordship for having been elevated as Chief Justice of India.
2. Your Lordship, I beg your pardon for this untimely intrusion in your busy schedule but I felt it necessary to bring into your kind attention a recent judgment dated 12.04.2014 delivered by Justice Mr Atul Kumar Jain of Jodhpur bench of the Rajasthan High Court in the matter of Saint Shri AsharamJi Babu Vs State of Rajasthan.

3. I'm enclosing the judgment as taken from the website of the Rajasthan High Court for your perusal. I do not comment on that part of the judgment which adjudicates the issue raised before it. I'm reproducing relevant portion of the judgment.

Hon'ble the Supreme Court in Rajveer@Raju and anr. v. State of Haryana, 2011 AIR SC 568 has mandated as follows:-

“We further direct all the trial courts in India to ordinarily add Section 302 to the charge of Section 304B, so that death sentences can be imposed in such heinous and barbaric crimes against women. Copy of this order be sent to Registrar Generals/Registrars of all High Courts, which will circulate it to all trial courts.”

..... The hon'ble apex court has mandated that in cases of section 304 B IPC a charge of section 302 IPC should also be framed against the accused and on the same logic, this court hereby directs all the trial courts in Rajasthan that in all cases of attempt to commit rape a charge for the offence of rape should also be framed against the accused so that at the stage of conclusion of the trial, the court may not have to undertake the tedious process of amendment of charges and recalling the

witnesses causing serious prejudice to the cause of justice in such cases.

4. I'd like to say that the single Judge bench of the Rajasthan High Court has construed the direction given by the Supreme Court in **Rajbir @ Raju Vs State of Haryana** in letter and not in spirit. Moreover the single Judge bench of the Rajasthan High Court has drawn an analogy from the apex court's instruction as given in **Rajbir's** case in a mechanical manner and has directed all trial courts in the state of Rajasthan, through the judgment under consideration in this letter, to frame charge of rape in all cases of attempt to commit rape.

5. In this regard I'd like to underline the Hon'ble Supreme Court judgment, delivered subsequent to **Rajbir's** case, in **Jasvinder Saini & Ors Vs State of NCT of Delhi** on 02.07.2013 wherein the apex court dealt with a situation that had arose due to adherence to the direction given by the apex court in **Rajbir's** case. In **Jasvinder Saini's** case the trial court of Delhi solely on the basis of the direction of the apex court as given in **Rajbir's** case had framed charge under section 302 IPC against Jasvinder Saini and others in addition to the already framed charge under 304B IPC. The Delhi High Court upheld the trial court order of additionally framing charge under section 302 IPC due to inter alia the apex court's direction

as given in **Rajbir's** case. The matter came up before the hon'ble Supreme Court and while dropping the additional charge framed under section 302 IPC it observed that

Be that as it may the common thread running through both the orders is that this Court had in **Rajbir's** case (supra) directed the addition of a charge under Section 302 IPC to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court.

.....The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in **Rajbir's** case (supra).

6. With my little legal prudence I understand that the direction given in the order in **Rajbir**'s case can't be acted upon universally in all cases of 304B IPC as elucidated by the apex court itself in **Jasvinder Saini**'s case. Therefore the blanket direction given by the single Judge bench of the Rajasthan High Court in its judgment to all the trial courts in Rajasthan to frame a charge against accused for commission of rape too in all cases of attempt to rape does not hold good particularly when such direction, as mentioned in the judgment, is said to be based on the apex court's direction in **Rajbir**'s case, which has already been advised not to be followed mechanically by the apex court itself subsequently but much before the pronouncement of the judgment by the Rajasthan High Court.
7. The other portion of the judgment which I'm reproducing below either raises question over the impartiality of the judiciary or suggests non-adherence to the high importance principle of judicial restraint and discipline.

The present criminal revisions relate to the famous case of the infamous Asharam@Ashumal and others.

.....Had the girl started sucking his organ, it would have been argued that it was her consensual act.

8. I fail to understand how it was necessary to use the derogatory word 'infamous' for the purpose of adjudicating the matter which came before the Judge of the Rajasthan High Court. Use of intemperate words by the high office of a High Court Judge for the Hindu Saint or for any other person whose matter is sub-judice will, in my view, prejudice the minds of the readers of the judgment against that person, more so when the judgment is reportable.
9. The above referred uncalled for and unmerited remarks in the judgment of the Rajasthan High Court is not in agreement with the principle of judicial restraint and discipline which is imperative for the orderly administration of justice and has time and again been explained and emphasized by the hon'ble Supreme Court in its various judgments like **V K Jain Vs High Court of Delhi through R G & Ors, A M Mathur Vs Pramod Kuma Gupta, In the matter of 'K' A Judicial Officer, Ishwari Prasad Mishra Vs Mohammad Isa, Niranjan Patnaik Vs Sashibhusan Kar & Anr.**
10. Having seen the above referred portion of the High Court Judgment wherein disparaging words have been used; aspersions have been cast against one of the parties of the case with no judicial objectivity, I've become apprehensive if such acts continue it will erode the credibility of the judiciary in the eyes of the public, justice-seekers and in turn will threaten the very purpose of judiciary's existence.

11. Your lordship, by this letter I do not intend at all to cast any aspersion on anyone. The very purpose of writing this letter is to bring the two wrongs done at the hands of the single Judge bench of the Rajasthan High Court in your kind notice and I'm hopeful of your lordship that this letter will not be taken as contempt of court.

12. I pray to your lordship that suo motu action kindly be taken so as to

- a. Issue further direction to all the trial courts to follow the direction of the apex court given in **Rajbir's** case only in light of the explanation given to the **Rajbir's** direction by the apex court itself in **Jasvinder Saini's** case
- b. correct the direction given by the single Judge bench of the Rajasthan High Court to all trial courts in Rajasthan to frame charge for commission of rape too against accused in all cases of attempt to rape
- c. direct all high courts and subordinate courts in the country to adhere to the use of sober, moderated and proper language in their judgments

Thank you

Regards

Sd/-