

CONFIDENTIAL

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To,
Shri Abdul Kalam
President of India
Rashtrapati Bhavan
New Delhi

Subject: The proposed appointment of Justice Vijender Jain as Chief Justice of Punjab and Haryana High Court

Dear Rashtrapatiiji,

We had earlier written to you on the above subject pointing out that there was a serious complaint against Justice Vijender Jain that he had decided a case of a litigant Hari Ram whom he personally knew well enough to have his granddaughter married from his official residence. I had also sent you a copy of a letter to the Prime Minister in which I had pointed out that the recommendation to appoint Justice Jain as Chief Justice of Punjab and Haryana High Court has been made despite the fact that at least one member of the collegium of the Supreme Court had strongly opposed the proposal and two other judges of the Supreme Court who had been Chief Justices of the Delhi High Court and who had been consulted had also opposed his elevation as Chief Justice on the ground of his integrity.

I have subsequently learnt (which fact has been reported in the Times of India as well) that the CJI had said that he had examined the complaint against Justice Jain and he found no merit in it. This summary rejection of the complaint against Justice Jain just prior to the recommendation for his elevation is clearly unreasonable in the light of the fact that prior to this, the Supreme Court's Public information officer had informed the complainant Subhash Agarwal that his complaint had just been placed in the file of the relevant High Court, since the Supreme Court had no jurisdiction over judges of the High Courts in such matters. Moreover, though the Chief Justice has given no reason for rejecting the complaint of Subhash Agarwal against Justice Jain, I am told that the reason informally being given is that the litigant Hari Ram is the father in law of Justice Arun Kumar (former judge of the Supreme Court and Delhi High Court), who was a close personal friend of Justice Jain. It is being said that Justice Jain agreed to lend his

residence for the wedding of Hari Ram's granddaughter because she was the neice of Justice Arun Kumar, though Justice Jain did not know Hari Ram personally.

I would like to point out that this explanation does not exonerate Justice Jain at all. Obviously, whether he knew Hari Ram personally or not, Justice Jain could not have been oblivious to the fact that this Hari Ram is the father of Justice Arun Kumar and whose granddaughter's wedding was performed from Justice Jain's residence. Actually, this fact that Hari Ram is the father in law of Justice Jain's close personal friend and colleague, makes it even more untenable for him to have heard and decided Hari Ram's case. One of the elements of the Code of Conduct or "Restatement of Judicial Values" as it is called, adopted by the Full court unanimously in 1997 is that no judge shall hear and decide a case of his relative or friend. The object of this is that judges should not decide cases where they know the litigant well enough, so that they might not be objective. The test for this has been laid down by the Supreme Court in Capt Ranjit Thakur's case, where it has been said that the principles of Natural justice are violated where a litigant can have a reasonable apprehension of bias against a judge. In this case, there can be no manner of doubt that the opposite party would have had and did have a reasonable apprehension of bias against Justice Jain, in the light of the fact that Hari Ram was the father in law of Justice Arun Kumar, who was close enough to Justice Jain to have asked him to lend his official residence for his nieces (Hari Ram's daughter in law's) wedding.

In these circumstances, I would request you to call for the correspondence of Shri Subhash Agarwal with the Supreme Court on the above subject and examine it yourself to come to an independent conclusion of whether it is reasonable to conclude in these circumstances that there is no merit in the complaint against Justice Jain.

Some of us from the Committee on Judicial Accountablity would be happy to come and personally discuss this matter with you.

With warm regards,

Sincerely,

SD/-
(Shanti Bhushan)