

Justice D. V. Shylendra Kumar

HIGH COURT OF KARNATAKA
BANGALORE - 560 001.



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Email: justdvskumar@gmail.com

Open Letter/Appeal to the Chief Justice,
High Court of Karnataka, Bangalore

8th March, 2010

Respected Chief Justice,

Brother, you may kindly recollect the last time I had met you and had some interaction during the first week of November 2009, when I came to your chamber with a request/appeal.

I had made a three-fold request, firstly that you should not sit on the bench, secondly you should also put in your papers, tender resignation and leave this institution and thirdly to retain only such of those properties which you own/possess as of now, which, according to your conscience, are properties acquired in a legal and proper manner and rest of the properties should be surrendered to the state, so that they are distributed amongst the needy and poor people, which can definitely subserve the cause of social justice, which you have indicated is very close to your heart.

You may also remember that I had given two small write-ups as reading material, one a small booklet by Justice D M Chandrashekar on *Basaveswara's* life and his philosophy containing 3 or 4 pages and a newspaper/internet news clipping on

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one Mr Reny George, a life convict, who was serving sentence in jail, a drug addict who in the frenzy for making money for his next shot, had killed an old couple. He was serving life sentence in the prison and his conduct even while in the jail had not improved and his outrageous manner had continued unabated in the jail also.

The write-up had highlighted as to how such a person on listening to a priest, who had visited the jail as part of the reformatory measures, ushered in by the jail authorities to reform the prisoners, and whose preaching had so vastly impressed Mr George, that he became a totally changed person, turning a new leaf in his life and even while in jail for the remainder portion of the life sentence period, had started earning to support children of prisoners, who had none to take care of and spending his earnings for educating them.

This service of Mr George continued even after release from jail. He had later started an orphanage for such children and also started a school for them and had himself become a priest in a church, which he is taking care of now.

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I had urged upon you to emulate Mr Reny George in the background of philosophy of *Basaveswara*, who had preached 'work is worship', who had propagated universal brotherhood, who had discarded caste, colour and religion and had proclaimed that the entire world population belongs to the human community and is one, who had for the first time propagated gender equality and had preached and practised socialism of the highest order based on the principle that every person should earn his/her livelihood; that no one should be a dependent on others; that even in the earnings, one should retain only that much as he/she is needed and the rest should be distributed amongst others.

I had indicated that you will definitely become Jesus Christ-II, if you should follow this course of action and had urged upon you to take cue from such examples.

Of course, while your reaction into this unexpected, unusual request was a muted silence for a while, it was our colleagues Justice Mohan Shantanagoudar, your partner on the Bench for the day and Justice L Narayanaswamy, my partner on the Bench for the day, who had filed *vakalath* for you and had questioned me

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as to why I should request the chief justice to resign, particularly when the committee set up by the Supreme Court was seized of the task of holding an enquiry into the truth or otherwise of the allegations that had been levelled against you by certain senior advocates in the Chennai Bar and which had hit the headlines in the newspapers during the second week of September, 2009.

Of course, you did not only regain your composure thereafter, but also defended yourself saying that your conscious was clear and that you had all documents to prove that you never had any ill-gotten acquisitions; that all your assets had been well accounted and supported by documentary proof etc.

When I said that while I was not aware nor was interested in knowing the truth or otherwise of the allegations levelled against you through media, but was more interested in safeguarding the reputation of the institution where we serve viz., High Court of Karnataka and the reputation having taken a thorough beating in the wake of such developments, in my opinion, would, to some extent, redeem itself and regain trust and confidence of the litigant public, if you should resort to such a course of action, you did join

A handwritten signature in black ink, appearing to be a stylized 'S' or similar character, followed by a horizontal line.

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issue saying that it was not your conduct which had caused the reputation of the High Court of Karnataka to suffer, but my conduct of not adhering to the judicial norms and decorum and in having gone to press with an article etc.,

May I refresh your memory that I did reiterate my appeal and request to you saying that if you should have such an opinion of me, that is your personal view and I would respect it, but my intention was not to find out as to who was to be blamed and if that had to be ascertained, may be a debate should take place for such a purpose, but definitely not within the four walls of your chamber, but an open debate outside, to the glare of litigant public and with media also, if they chose to be present, but my purpose remained to make a request to you to consider my appeal and thereafter for you to act according to your conscience and that the decision in this regard was left to you.

Saying so, I left your chamber, wishing you a good day, as both of us were to proceed to our respective courts.

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Of course, you did not heed to my request and appeal, but to some extent that was achieved when you stopped exercising judicial functions from 17.12.2009 onwards in terms of the Notification No. HCBB - 300/2009 and I do not know whether it was due to my earlier request or due to mounting public pressure and in the wake of certain steps being taken by the advocates' community and a resolution passed by the Advocates Association, Bangalore or even may be due to the advice or guidance of some well-wishers whom you respect and whose advice you have implemented.

While at this, I would like to clarify one aspect viz., I have been wrongly given credit for the developments leading to the present impasse and particularly for the revelation in the press about your conduct earlier, while functioning as a judge of the Madras High Court.

I confess that I am neither privy to such information nor had I any hand in the news item that appeared in the press and came to know about it only through the press like any other person.

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Be that as it may, the point I would like to make now is that while you stopped attending judicial work from 17.12.2009 onwards, and I was deputed to work at Gulbarga Circuit Bench from 16th November, 2009, the news item that had appeared concerning you and which I read at Gulbarga one day before I left Gulbarga after completion of my stint at Gulbarga, did cause a little concern for me and my colleagues at Gulbarga Bench, as we realized that you had continued to wield administrative powers of a chief justice even while not discharging duties on the judicial side.

It was in the wake of this information that I had requested a meeting of all our colleagues to be arranged at Bangalore on Saturday, the 19th December, 2009, to discuss about the topic the *'desirability of a Chief Justice of the High Court who is not discharging functions on the judicial side, nevertheless continuing to exercise power and authority on the Administrative side and particularly when the Chief Justice himself is under a cloud, scrutiny and investigation'* so that on a meaningful debate on this question, if we should arrive at a conclusion, based on that, we can make a

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request/appeal to you, even with regard to the exercise of administrative powers.

Of course, you did not permit the intended meeting of the judges to take place and you vetoed against it.

I had requested my colleagues to discuss the issue as an academic question at an informal meeting of the judges, which also did not make much headway, as only five of us could make to this meeting and the majority of our colleagues could not attend this 'study circle meeting' due to one reason or the other.

Of course, you continued to exercise administrative powers and you have continued to do so even till date.

This action is a very disturbing development and in my earnest humble opinion you should definitely desist from exercising even administrative functions, as the chief justice of a high court exercises administrative powers if he is a normal chief justice performing judicial functions. Unfortunately, in your case, you are not only not performing on the judicial side, but also facing an impeachment move set in motion by the support of the requisite

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number of members of the Rajya Sabha and in the wake of these developments, etiquette, propriety and norms require you should not perform any of the duties of a chief justice either on the judicial side or on the administrative side and though propriety and morality demands that you should not draw full salary and should not enjoy facilities extended to a regular chief justice of a high court, that again being a matter of self-discipline and moral standards which one has to set for oneself, I leave it to you, but you should not definitely exercise administrative powers of the Chief Justice of High Court of Karnataka and I strongly urge upon you to refrain from exercising or wielding the administrative powers of a chief justice, so long as you are not performing on the judicial side.

While this is a basic principle of service law and with which you are very familiar, the fact that you are holding a constitutional post of a judge and the chief justice of a high court, should not make much difference to the principle of a suspended employee being prevented from exercising any functions of the post which he otherwise holds.

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I am also very concerned, as the administrative powers of chief justice of a high court includes many *ex officio* positions and particularly one of presiding over the collegium of the high court, which selects names for being recommended to be appointed as judges of the high court. This is a very important, onerous responsibility of a chief justice and I am of the definite opinion that you should, in your present position, not perform this function, particularly, of recommending names for being appointed as judges of the High Court of Karnataka and also the function of fixing the roster for judges i.e. allotment of work to different benches of the high court.

The present cause for making this earnest appeal is firstly a news item I read yesterday morning in *The Hindu* English daily about a report having been submitted by a three-member team from the Survey of India to the Government of India, pursuant to their visit to Kaverirajapuram village in Thiruvallur district of Tamilnadu and after holding enquiry into the allegations of land grabbing levelled against you and members of your family and

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secondly a copy of the statement of disposal of cases by judges sitting in the principal bench of the high court and the circuit benches at Dharwad and Gulbarga for the month of February 2010, which I received on Saturday, the 6th February, 2010 and wherein against your name in the corresponding column of number of cases disposed, it is indicated that the Chief Justice 'has taken up only administrative work', and this again was a matter of considerable concern for me, as being part of the institution of High Court of Karnataka, I very strongly feel that it is part of my duty to point out any irregularities or illegalities taking place even within the administrative set up of the high court and whether I am able to succeed or not, to prevent it, at least I must express myself and share my views with other colleagues and seek their response/reaction and ultimately, to go by the consensus that may be evolved in this regard.

I assure you this has nothing personal, you remain my brother, I have no ill-feeling towards you, and do expect to receive the affectionate brotherly guidance that you have provided to me on all earlier occasions in future also. I wish you well wherever you

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are and I am sure you will be able to render good social service/justice even outside the institution of the high court.

I once again appeal to you not only to heed to my oral request made earlier, but also to this written appeal.

Thanking you,

With utmost regards,

Sincerely,

Hon'ble Mr Justice P D Dinakaran
Chief Justice
High Court of Karnataka
BANGALORE

Copy to all my colleagues in the High Court of Karnataka