From "the thinking of a bad man" to "the activity of a mischievous litigant":

Some Materials for the advent of a Post-modern Realist School of Law

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Now a day "Justice" has confined to the mere justification of the outcome of a legal proceeding. Whether that justification is compatible with the traditional concept of Justice or not, this is not the domain of the lowest layer of the Pyramid of the hierarchy of the Judicial System, particularly, in the prevailing state of affairs. The said compatibility can only be tested by the upmost layers of the Pyramid. The paradox is that 99.99 out of 100 have no pocket or energy to avail the ladder to approach that upmost layer. Thus the fate of those 99.99 is written by the lowest layers of the Pyramid though involuntarily in most of the cases in the name of justifying and bowing before the "hierarchical norms" of the "Big Pyramid" and also before some unwarranted but unavoidable circumstances.

In following lines there are illustrations of the working of the some of the principles evolved by the writings of the upper layers of the "Pyramid of the hierarchy of the Judicial System" and of an "environment" in which a judicial officer works. The quest of these illustrations is to have a re-thinking about the modus operandi of the Administration of Justice.

Illustration No.I – A lady files a complaint against her "Bhesur" (brother-in-law) alleging and narrating therein that at about 11 p.m. she was sleeping in her room of her in-law house along with her 3 years old daughter; Her Bhesur entered into that room by breaking the door thereof; the said Bhesur put aside her sari and opened her blouse; and when said bhesur was about to thrust HIS into HER she awoke and made protest; her daughter too made cry; after hearing the cry of said daughter the brother of the complainant who was sleeping in the veranda, rushed into the room; the Bhesur fled away by pushing down the said brother of the complainant.

During course of inquiry the said lady reiterated the version of complaint petition. Two independent inquiry witnesses were produced who deposed that at the time of occurrence they were passing through the place of occurrence. Those two witnesses narrated the whole story of the complaint petition from its beginning to the end. The brother of complainant did not turn up for examination. The plea was taken by the complainant that since that brother had been won over by the Bhesur thus she could not produce him as an inquiry witness.

In such backdrop of this case the Magistrate perused the material and thought on the lines that the complainant could not awake herself when the door of her room was broken by the Bhesur; The complainant could not awake herself when her sari was removed and her blouse was opened; she awoke when the Bhesur was about to thrust HIS into; the brother of the complainant sleeping in veranda, too could not awake herself when the door was broken by the Bhesur; the passer-byes are acquainted with whole episode; the brother of the complainant had been won over by the Bhesur.

The Magistrate had three alternatives. Either to dismiss the complaint as the same was entirely bogus or to summon the Bhesur for offence of attempt of rape or to summon the Bhesur for offence punishable under S.354 of Indian Penal Code as it might have been possible that some act done against moral decency by the Bhesur had been narrated exaggeratedly. The Magistrate thought fit to proceed against the Bhesur under S.354 of Indian Penal Code and accordingly he ordered for the issuance of summons on the Bhesur.

The complainant preferred a Revision against the said order of the Magistrate. This was observed in the Revision that if there is allegation that the accused had penetrated the complainant then why the Magistrate did not proceed against the Bhesur for the offence of rape punishable under S.376 of Indian Penal Code. This was also observed that the Magistrate has acted like a defence. After setting aside the order of the Magistrate the case was sent back to the Magistrate for reconsideration.

Here the current of the opinions of upper layer of the Pyramid is that once the Revisional Court has directed for reconsideration of the outcome of the criminal inquiry then Magistrate has no option but to summon the accused for the offence as suggested by the Revisional Court.

The observation of the Revisional Court that there had been the allegation of penetration of the complainant was neither having the support of the complaint petition nor of the examination of the complainant herself. Magistrate had to uphold the Justice and accordingly bowing before the direction of upper layer of Pyramid humbly and before the spirit of the observation of the Revisional Court he did not summon the Bhesur for the commission of offence of rape but he summoned the Bhesur for the offence of attempt of rape.

Whether the first order of the Magistrate was proper and justified or his second order was proper and justified? Both these questions were answered in the affirmative by the upper layer of the Pyramid after setting aside the order of the court of Revision. But alas despite of that the successive Magistrate committed the Case to the court of Sessions for trial of the offence of attempt of rape as he could not appreciate that the second order of the Magistrate was in the light of that particular order of the court of Revision which had been set aside by the upper layer of the Pyramid. If a base of anything is removed then that thing happens to be baseless.

Illustration No.II- A complaint was filed by a lady alleging therein that a village headman aged about 65 years, had assured her that she would be beneficiary of Indira Awas

Yojna. After lapse of some time when she asked about the money of said scheme she was told to come at 7.30 p.m. at the Panchayat Bhavan situated at the outskirts of the concerned village; when she went there at the appointed time she was trapped into a room by the village headman and a secretary of the Panchayat and she was raped there by those two persons; one inquiry witness had seen the whole incidence as he after noticing the screaming of the complainant had peeped into the room where the incident of rape was going on. To the court's question the complainant had responded that she had not discussed the matter of assurance of payment given by the village headman and about the appointment with said village headman, with her husband; the complainant deposed that at the time of incidence her husband was in field to harvest feed for the animals.

After the closure of inquiry evidence when the case was fixed for the pronouncement of the outcome of said inquiry a representation was filed on behalf of the accused; in the said representation it was contended on the basis of documentary evidences that the complainant is used implicate the persons in false cases of rape and to extract money in lieu of compromise in said cases; the example of more than three or four such cases was furthered before the Magistrate.

But alas the Magistrate was bound by the principle that "accused has no locus or a limited locus to participate only" during course of inquiry and as such the Magistrate had to proceed against the said Village headman and the secretary for the commission of the offence punishable under S.376 of the Indian Penal Code. In consequence of the said order of the Magistrate one accused succumbed to the after-effect of that order. Another accused secured bail after passing more than a month in jail.

A Judicial Magistrate is bound to put the criminal law in motion even if he is of a certain opinion that the case and allegations under inquiry are bogus and baseless. This is so because though the Magistrate is expected to write a reasoned order but he is not at liberty to analyse the materials surfaced during the course of Criminal Inquiry.

Illustration No.III- The plaintiff instituted a suit in the year 1964. The defendant appeared in the said suit and contested in the said suit. After conclusion of the hearing of the said suit the defendant died. The substituted defendant did not turn up to contest the said suit. The said suit was decreed in favour of the plaintiff in the year near about 1980. In 1983 the plaintiff brought an Execution Case. The judgment debtors appeared in the said Execution Case and secured the stay of the said Execution Case on the ground that they had instituted a Miscellaneous Case under O.9 R.13 of Civil Procedure Code to set aside the ex-parte decree under execution. In the year 2011 the decree-holder filed a petition contending therein that after securing stay in the Execution Case the judgment-debtors had not moved even an inch further in the Miscellaneous Case. The Execution Court found the contention of the decree-holder correct and vacated the stay order. The judgment-debtors approached the upper layer of the Pyramid. The judgment-debtors after realising that he would not succeed before the upper layer of the Pyramid withdrew the case but secured a liberty to apply for stay of execution proceeding in Miscellaneous Case. In the Miscellaneous Case the judgment-debtors failed to establish even a prima facie case in their favour and moreover this was found that the

very basis of the claim of the Judgment-debtors over the lands under execution, had already been wiped out by a pronouncement of upper layer of the Pyramid in a writ proceeding and that too in the year 1974. Further the decree under execution was not ex-party decree ab initio.

In view of the aforesaid facts and circumstance the Execution Court declined to stay the proceeding of the Execution Case and caused the delivery of possession of the property concerned in favour of the decree-holder.

But despite of that the task of Presiding Officer did not end there. He had to answer a bunch of frivolous and baseless petitions given by the judgment-debtors to the Higher Authorities, questioning the integrity and honesty of the said Presiding Officer. Even this was asked from the Administrative Side that why the Execution case was furthered if the Miscellaneous Case was still there. Again an exercise of cut & paste was made by the Presiding Officer to justify his stands. The time and energy invested for those explanations might have been utilised in disposal of many cases of simple nature. In this backdrop this was rightly suggested by the senior colleagues of the said Presiding Officer that one should not entertain those old cases in which the parties are mischievous otherwise the result would be like the above post-disposal proceedings.

But how and why a Judicial Officer would ignore a case pending since decades only due to the mischievous tricks of one of the parties? Moreover he has to give account of pendency of old cases and the reasons of pendency. Generally a presiding officer of a lower Court cannot dare to further the proceeding of such cases in which parties are too mischievous to assume.

There is a never ending chain of such illustrations. Thus *the prophesies of what a mischievous litigant can do in fact, and nothing more pretentious are what is mean by a Law.*

--- *MADHUKAR SINGH*