NOTICE OF MOTION

FOR PRESENTING AN ADDRESS TO THE PRESIDENT OF INDIA FOR THE **REMOVAL OF JUSTICE M.M.PUNCHHI OF THE SUPREME COURT OF INDIA UNDER ARTICLE 124(4) OF THE CONSTITUTION OF INDIA**

This house resolves that an address be presented to the president for the removal from office of Justice M.M. Punchhi of the Supreme Court of India for his following acts of misbehaviour.

CHARGE NO 1

That as a Judge of the Supreme Court, while deciding an appeal of Shri KN Tapuria against a judgement of Bombay High Court dated 10.12.93 by which he was sentenced to two years rigorous imprisonment, J Punchhi allowed the appeal and acquitted Shri Tapuria on the basis of a purported compromise entered into between Shri Tapuria and the alleged representative of Ms Turber Morrisson & Co and thereby remitted his prison sentence. This was done despite the fact that the offence of criminal breach of trust for which Shri Tapuria has been convicted cannot be compounded in law and thus could not have been allowed to be compromised by the complainant. In fact, the order acquitting Shri Tapuria Dated 25.4.95 passed by justice Punchhi was on extraneous consideration.

EXPLANATION

Bombay High Court sentenced Shri T.N.Tapuria to two years rigorous imprisonment and imposed a fine of Rs 70 lacs on the charge of Criminal breach of trust under Section 406 IPC on 10.12.93.

It was proved that the Director of said company had threatened his employee and used his bank details for the commission of offence. The offence was executed in a manner where the Director would have gone scot-free.

The Court charged him under Section 406 of IPC and imposed a fine of Rs 70 lacs. The accused Shri T.N.Tapuria filed an SLP against the HC order which came before J Punchhi, who granted him exemption in the first hearing, which itself is unusual in an SLP against conviction. In 1995, J Puchhi passed a brief order of acquittal of the Shri T.N.Tapuria on the basis of the purported compromise entered between the accused, State and the company. Though none of the documents have been signed by any of the advocates-on-record.

Shri N.S.Hoon filed a writ in Supreme Court against the judgement of acquittal. He also informed the court that the father-in-law of Shri Tapuria had paid Rs 35 lacs to J Punchhi in presence of his son-law, who took the bribe money with him to Chandigarh.

Even though the affidavit of Shri Hoon is hearsay, the circumstances an the illegal manner in which the acquittal of Shri Tapuria has been done certainly lends credibility to the statement of Shri Hoon.

CHARGE NO.2

That as a Judge of Punjab and Haryana High Court (P&H HC), J Punchhi heard and dismissed a Writ petition of Vice Chancellor of Rohtak University, Dr Ram Gopal containing serious allegations of malafides against the then Chief Minister of Haryana, Shri Bajan Lal. That while he decided this case dismissing allegations against Shri Bhajan Lal, two of his unmarried daughters residing with him, Ms Madhu and Ms Priya, applied for allotment of two valuable plots in Gurgoan from the discretionary quota of the Chief Minister, Shri Bhajan Lal. The Plots were allotted on 1.5.86, the same day J Punchhi dismissed Shri Ram Gopal's writ petition against Shri Bhajan Lal. The Judgement of J Punchhi dismissing the Writ Petition was obviously given on extraneous considerations.

EXPLANATION

The case was of the VC of the Maharishi Dayanand University, Rohtak who was suspended by the orders of the then CM Shri Bhajan Lal, as the VC ordered probe on the tampering of examination result by his predecessor Shri Hardwari Lal. Three member bench heard the case and two dismissed the case while on judge gave a 76 page order for the case for admission.

SLP was filed against it, the Supreme Court granted leave, set aside the order and directed the High Court to hear the petition expeditiously.

The point of extraneous considerations come when two house plots were allotted to J Puchhi's daughters in Gurgoan from Shri Bhajan Lal's discretionary quota. A detailed report about these allotments were published by the then Editor of Chandigarh edition of Indian Express, mr.Rahul Singh in an article titled, " A profile of corruption". But no comtempt notice was issued by J Punchhi against the author. This is clearly show the judicial misconduct of J Punchhi.

Charge No. 3

That as Inspecting Judge of P&H HC, J Punchhi made an adverse inspection report questioning his integrity, against Shri K.S. Bhullar, Sub-Judge-cum-Judicial Magistrate of Punjab, for the reason that Shri Bhullar had refused to decide a case before him involving J Punchhi's co-brother in his favour.

EXPLANATION

Shri Bhullar pointed out that, "J Punchhi in the report had not quoted any instance wherein he acted dishonestly, partially or with the corrupt motive and seems to have placed his report on the basis of Shri B.S. Nehra's report for the reasons explained in his representation". Some of the significant facts are as follows:

1. The remarks pertained to cases of previous years which, if justified, could have been stated by Shri Nehra in his report of earlier year.
2. That after these cases mentioned by Shri.Nehra have been heard and decided by Shri.Bhullar there has been two inspections carried out by the then Chief Justice SS Sandhawalia and nothing adverse was said against Shri.Bhullar.
3. That Shri.B.S.Nehra chose to make allegations against Shri Bhullar only in August 1984 when J Punchhi had happened to be inspecting judge.

Shri.Bhullar stated that when he was deciding a case involving Shri.Kulwant Rai (J Puncchi's co brother), Shri. Nehra called Shri Bhullar and asked him to decide the case in favour of Shri.Kulwant Rai.

The case was decided against Shri Kulwant Rai immediately thereafter J Punchhi became the inspecting judge for Chandigarh in August 1983. Shri.Bhullar was transferred out in midterm from Chandigarh to Jalandhar in September 1983.

The manner and circumstances in which J Punchhi had made his adverse remarks against Shri Bhullar do suggest the above inference. If J Punchhi had conveyed to Shri Bhullar through Mr Nehra that he should decide remaining a Judge of Supreme Court. Even if J Punchhi had written such strong adverse report against Shri Bhullar merely at the instance of Shr B.S.Nehra without enquiring into the matter or applying his own mind, he is still guilty of serious impropriety which should also disentitle him from remaining a Judge of the Supreme Court.

Charge No.4

That as Judge of S, J Punchhi attempted to hear and decide a case involving the validity of Section 8 (a) of the capital of Punjab (Development and Regulation) Act 1952 though he was personally interested in the outcome of the case.

EXPLANATION

In 1993, an SLP against the an order dated 27.1.1993 of Punjab & Haryana High Court dismissing the petitoner's writ against the Estate Officer's order rejecting the for re-transfer of the petitioner's house on grounds of misuse of Section 8 A

of the Capital of Punjab (Development and Regulation) Act 1952. Later the petitioner filed a writ for the restoration of property under Rule 11 D of the Chandigarh Sale of Sites and Building rules 1960, which was dismissed by the high court and later filed an SLP.

This SLP came up before J Punchhi and Jeevan Reddy and J Punchhi gave a dissenting opinion holding that Section 8A could not be construed to allow forfeiture. According to Kamini Jaiswal, who was appearing for the Chandigarh Administration in the matter, J Punchhi then asked the petitioner to file a writ Petition to Challenge the validity of Section 8 A of the Act. In 1995, the matter came up for a regular hearing before J Punchhi. The counsel for the Chandigarh Administration, Kamini Jaiswal objected to J Punchhi hearing the matter since the writ petition was directed against the order to which he was a party.

However, he continued to hear the matter, and there was difference of opinion and the matter was referred to 3 judges.

In the first place, it is rather unusual for a judge to be so helpful to a litigant in such a hopeless case. It is even more unusual for a judge to get a writ petition filed against an order of the high Court judgement to which he is party, have it listed before himself and proceed to hear it himself. What, however, is more damaging is the unknown background to this section to this which reveals J Punchhi's unusual interest in this matter.

In late 1994, it appears, J Punchhi's daughter and her husband negotiated the purchase of a large triple storied house situated in Sector 18 –B of Chandigarh which is supposed to be very posh. The owner of the property rented the place to St Peters Secondary School. The house was resumed by Chandigarh Administration for misuser in 1988 under Section 8A of the Chandigarh Act of 1952. The owner's appeal was dismissed but the school's petition was stayed by the High Court. Later the owner filed an eviction suit against the school which was dismissed by the Rent Controller.

In 1995, daughter of J Puncchi purchased the house for a declared consideration of Rs 9 Lakhs as against a market value of Rs 1 Crore. And they got the sale deed registered in Delhi. J Punchhi's son-in-law called the school and told them that J Punchhi will help him get a plot in Panchkula and vacate the house. But the school declined the favour. Later J Punchhi's daughter and son-in-law filed a separate petition on the ground of bonafide need to move in the house.

It is clear that J Punchhi had interest in getting the validity of Section 8A, thus entertained the writ petition by Babu Singh Bains. It is another matter that a 3 Judge bench thereafter, upheld the validity of Section 8A.

Charge No 5

That J Punchhi attempted to browbeat officials of the Registry of the P&H HC when they came to take inventory of items of furniture at the

residence of J V.Ramaswami. He ordered them to mention in the inventory report that all items had been found in order even when these had not been verified and this was not true. Thereafter, when this matter became subject of the impeachment proceedings against Justice V. Ramaswami and the validity of the impeachment proceedings was put in Writ Petitions filed in Supreme Court, J Puchhi attempted to hear and decide that case, though in view of his role in the matter, he was clearly disentitled from doing so.

EXPLANATION

In 1992, Shri Krishnaswamy filed a writ petition in the Supreme Court challenging the enquiry committee appointed to enquire into the charges contained in the impeachment motion against J Ramaswami. This petition sought to scuttle the entire impeachment proceedings against J Ramaswami and had obviously been st up by J Ramaswami himself which is clear from a number of facts and circumstances. It is the same Shri Krishnaswamy who had also intervened in the actual impeachment proceedings and had subjected the witnesses to search cross examination of a nature and manner which could only have been at the instance of J Ramaswami. This petition was referred to a Constitution bench by an order dated 27.2.92.

It is learnt that J Punchhi requested the Chief Justice of India M.H.Kania that he be included in the Constitution bench and also sat on the bench in the next hearing of this petition on 10.3.92. Meanwhile, sicne the proceedings were going on before the enquiry committee, evidence came before the committee of some witnesses to the effect that J Punchhi had played some role in the matter which gave rise to the impeachment proceedings. In particular, two witnesses viz. the then joint registrar, Shri Narinder Nath and the Special secretary (establishment) of the High Court, Shri R.K.Soni, had stated before the committee that when a team of officers from the Registry of the High Court had gone to take inventory of the items of furniture present at the officials made an endorsement in the inventory report to that the effect 'items found in order'. In the words of Shri Soni, " I would tell the entire sequence of events that took place when I entered the drawing room at about 12.30 am on 17th Feb 1990. First of all, I was asked by J Punchhi to sign the handing –taking over papers along with others who had already signed the papers and I flatly refused to sign since I was not associated with the process of handing over. J Punchhi asked me second time that I should at least sign the list which I had handed over to J Ramaswami earlier in the morning. That I did. Thereafter, J Punchhi asked Shri R.K.Nehru and Shri Narinder Nath to write that everything was found in order. To that effect, Shri Narinder Nath refused to do. This was the only discussion in my presence when I was there."

This statement was confirmed by Shri Narinder Nath and stated, ' …we were making the list of articles from room to room and the typed list was signed by Shri Nehru, by myself, the court officers, while the note was typed by J Ramaswami's Private Secretary which we signed also. The papers were then

handed over to J Ramaswami, who asked J Punchhi whether the papers were in order. J Punchhi scanned the papers and suggested that it would be better if words to the effect that 'everything is found in order' are added. Shri Soni refused to do so. Then J Punchhi signaled it to me and I said 'no', then he signaled to Shri Narendra Nath who added the said words in his own handwriting.

It may be stated that the Inquiry Committee in its report had also referred in detail to the said notes and had reached the finding that though the words were purportedly intended to convey that the quantity and the quality of articles present in the official residence of J Ramaswami had been checked and were found in order, this did not represent the true state of affairs.

It is significant that after the Committee on judicial accountability filed counter affidavit (dated 27.3.92) in tha said writ petition of Shri Krishnaswamy, annexing copies of depositions of some of the witnesses who had mentioned J Punchhi's role in the matter, that J Punchhi withdrew from the bench and thereafter he did not form part of the Constitutional bench which heard and decided that case.

In first place, it was improper for J Punchhi to have told the Registry officials to add the line on the inventory of items prepared by J Ramswami's official residence. These lines were used by J Ramaswami to suggest that no item was missing and that everything was intact. Apart from this, J Punchhi's presence in the Constitution bench hearing the matter relating to validity of J Ramaswami's impeachment was totally improper in these circumstances. And if, as seems to be the case, J Puchhi came on that bench by himself requesting to be placed on it, it is even more improper and shows a total lack of judicial rectitude on his part.

Charge no 6

That as Judge of Supreme Court, J Puchhi, kept pending with him a matrimonial proceeding involving one Ashok and Rupa Hurra from Gujarat, even after it had become infructuous. The Matter was kept pending in order that a fresh petition to be filed by the husband also come before him. These proceedings were finally decided by him for extraneous considerations in a manner which was contrary to law.

EXPLANATION

This relates to a matrimonial proceeding between one Ashok Hura and his wife Rupa Hura. The husband Ashok Hura had filed SLP against an interim order of a single judge of Gujarat High Court who rejected the plea of divorce, because the wife had withdrawn her consent to the proceedings before the second motion was passed.

Notice to the respondent was issued by a bench of Supreme Court on condition that the husband deposited a sum of Rs 10,000 towards costs for the wife. The matter was adjourned by a bench of Honble J Punchhi and K Jayachandra Reddy for a possible compromise.

In the next hearing before a bench of Hon'ble J MM Punchhi and J Sujata Manohar, J Manohar observed that no legal ground for any divorce was made out by the plaintiff. But the bench adjourned the matter for mooting a possible settlement. Though it was mentioned in the court that there is no possibility of compromise as there is no communication between the parties, and on the contrary there were threatening calls made by present wife of the husband.

Later an order was passed requesting the learned single judge to pronounce the order, and the Single judge allowed the appeal and granted divorce to the parties. Thereafter, the wife filed a LPA before the Divisional Bench of Gujarat High Court, which set aside the decree of divorce.

Their lordships have further declared that all proceedings particularly proceedings under Section 494 IPC initiated by the Wife, against the husband for having married on Sonia, who is also a lawyer, during the pendency of the proceedings even before the 2nd petition for divorce by mutual consent was moved. The court directed the Husband to pay the wife a sum of Rs 10 lakhs as alimony as against the claim of about Rs 62 lakhs as payments made by the Wife on behalf of the Husband's income tax arrears and Rs 40 lakhs as amount towards maintenance and residence.

It may be seen from the above facts that there was an unusual interest shown by J Punchhi to retain this case with him. He even retained the SLP even after it had become infructuous and waited for the second SLP filed by Ashok Hura challenging the decision of the High Court in the LPA. Not only this, his final order itself is very unusual inasmuch as it allows divorce in the teeth of the statue, again the law declared by Supreme Court in an earlier case and even squashes the pending criminal proceedings initiated by the wife against the Husband for bigamy, even though that matter was before the court and could not have been so quashed. Though the final judgement has been ostensibly been written by J Paripoornan, it is clear that it was J Punchhi who was throughout the common factor in this case and had controlled the proceedings.