AFR

Court No. - 29

Case :- U/S 482/378/407 No. - 2389 of 2020

Applicant :- Alka Pandey
Opposite Party :- State Of U.P. & Others
Counsel for Applicant :- Pradeep Kumar Rai,Devansh Mishra,Prakarsh Pandey,Praveen Kumar Shukla,Priyansu Singh
Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur,J.

1. Heard Sri Pradeep Kumar Rai, learned counsel for the applicant assisted by Sri Prakarsh Pandey, Advocate as well as learned Additional Government Advocate for the State of U.P. and Sri Gaurav Mehrotra, Advocate who has put in appearance on behalf of opposite party no. 2.

2. The present application under section 482 Cr.P.C. has been filed by a judicial officer whose judgment in Criminal Case No. 909/2019 convicting the accused under Section 406 and 411 IPC , was set aside in appeal by the Sessions Judge, who has also commented adversely on the applicant and therefore being aggrieved by the same, prayer has been made to quash/expunge the said remarks.

3. The facts in brief are that the applicant while posted as Additional Chief Judicial Magistrate, Court No. 01, Hardoi heard and decided Criminal Case No. 909/2019 (State Vs. Yamohan Singh). The accused therein, was alleged to have appeared in an examination on 20/04/1999, and during the said examination when the investigator had accompanied one other student outside the hall, the accused left the examination along with the question paper and the answer sheet. It is stated that he was subsequently apprehended and found to be in

possession of the answer sheet and was therefore charged under Section 406 and 411 of the IPC. The applicant decided the said case on 17/08/2019 and found the accused guilty and sentenced him to 2 years simple imprisonment and a fine of Rs. 5000/- failing which he was to undergo six months further imprisonment. The order of trial Court was subjected to appeal before the Sessions Judge, Hardoi.

4. The Sessions Judge, Hardoi allowed the Criminal Appeal No. 47/2019, filed by the accused against the order passed by the applicant. The Sessions Judge held that there was no eyewitness of the fact that the accused had ever participated in the said examination nor did anyone see him leaving the said examination hall along with the question paper. He also returned a finding that the Investigating Officer was not examined and therefore the recovery of the question paper itself was doubtful and therefore held that none of the charges could be proved by the prosecution and consequently allowed the said appeal. He also made the following remarks against the applicant:-

> *"विद्वान मजिस्ट्रेट ने बिना साक्ष्य का विश्लेषण किये हुए अपीलार्थी/अभियुक्त के विरूद्ध आरोप सिद्ध होने का जो निष्कर्ष निकाला है वह त्रुटिपूर्ण है। यहाँ यह उल्लेखनीय है कि विद्वान मजिस्ट्रेट के द्वारा जो निर्णय लिखा गया है, उसमें अभियोजन केस के उपरान्त उस साक्ष्य का वर्णय किया गया है जो अभियोजन ने प्रस्तुत किया है, जिसमें सभी साक्षियों की मुख्य परीक्षा व प्रतिपरीक्षा के बयान उसी रूप में उतार लिये गये हैं और फिर उसके बाद बिना साक्ष्य का कोई विश्लेषण किये हुए विद्वान मजिस्ट्रेट सीधे निष्कर्ष पर आ गये हैं और यह निष्कर्ष दे दिया है कि अभियोजन साक्ष्य से अभियुक्त के विरूद्ध धारा 406, 411 भा0दं0सं0 के आरोप सिद्ध हो रहे हैं। अपर मुख्य मजिस्ट्रेट स्तर के न्यायिक अधिकारी से ऐसे निर्णय की अपेक्षा*

नहीं की जा सकती। विद्वान मजिस्ट्रेट से निर्णय लेखन में सुधार अपेक्षित है।"

5. Aggrieved by the comments and observations made by the judgment passed in the criminal appeal, the Judicial Magistrate, who authored the trial Court's judgment, has approached this Court by means of present application under Section 482 Cr.P.C.

6. In the instant application we are not called upon to examine the correctness of the order passed by the Sessions Judge with regard to the findings recorded on merits of the case as sitting in appeal, but examine the impugned judgment only with regard to the aforesaid comments/observations made against the applicant who was discharging the duties of the presiding judge.

7. The question which arises for determination in the present application is whether it was appropriate or was there any justification for the Sessions Judge in his capacity as an appellate Court to pass any comments regarding the dexterity, knowledge or intelligence or manner of dealing with a case by the trial Judge. Numerous judgments have been placed before us passed by the Hon'ble Supreme Court as well as by this Court which have unequivocally discouraged the practice by the superior Courts from commenting upon the capabilities or in any manner reflecting upon the persona of the Judge of the subordinate Court while hearing an appeal or revision where such judgment is under challenge or even otherwise where such a judgment is placed for consideration before the higher Court.

8. We also heard Sri Gaurav Mehrotra, Advocate appearing on behalf of the High Court, who has submitted the written instructions. He has also informed that the remarks of the District and Sessions Judge are only advisory in nature and not condemnatory. He further

informed this Court that on the basis of the said remark no action has been taken against the applicant nor is there any proposal of the same.

9. The jurisdiction of this Court under section 482 Cr.P.C. to expunge the remarks made in the order of subordinate Court was duly considered and answered in affirmative by the Hon'ble Supreme Court in the case of **State of U.P. Vs. Mohd. Naim, (1964) 1 CrLJ 549**. The Hon'ble Apex Court duly considered the power of the High Court under section 482 Cr.P.C. and observed that it has inherent powers to expunge the remarks made by itself or by subordinate Court to prevent abuse of process of Court or otherwise secure the ends of justice. It was further observed in the said judgment that if there is one principle of cardinal importance in the administration of justice, it is :

> "*the proper freedom and independence of judges and magistrates will be maintained and they must be allowed to perform the functions freely and fearlessly and without undue interference by anybody, even by this Court, at the same time it is equally necessary that in expressing their opinions judges and magistrates must be guided by considerations of justice, fair play and restrain.*"

10. It is not infrequent that sweeping generalisation defeat the very purpose for which they are made to stop it has been traditionally recognised that the matter of making disparaging remarks against person/authority who’s conduct comes into consideration before the Courts of law in the cases to be decided by them. It is relevant to consider (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself, (b) whether there is evidence on record bearing on that conduct justifying the remark, (c) whether it is necessary for decision of the

case, as an integral part thereof, to advert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from some petty moderation and reserve.

11. The Sessions Judge while hearing the appeal had full powers and jurisdiction at his command to re-appreciate the evidence to disagree and come to a different conclusion that of the trial Court, but his jurisdiction fell short of commenting upon the shortcomings of the applicant while discharging the duties of trial Court dealing with the said case. It was not expected from him to remonstrate that applicant while discharging the duties of a trial judge had not written the judgment as expected from a judicial officer. The said comment starkly reflects upon the persona of the judicial officer, and while deciding the said appeal the Sessions Judge was expected to judge the case which were before him, and had no jurisdiction to judge the judicial officer who was the author of the judgment. Undeniably the District and Sessions Judge has administrative control over the judicial officers subordinate to him, but the administrative control cannot be equated to power of superintendence which is vested only with the High Courts. The Hon'ble Supreme Court in this regard has also even cautioned the High Courts to refrain from making observations extending to criticism of the subordinate judicial officer in as much as the said judicial officer is condemned unheard which is violative of principles of natural justice, and it should not be forgotten that the subordinate judiciary itself is dispensing justice and it gives chance to the litigating party to have a sense of victory not only over his opponent but also over the judge who decided the case against him. This is subversive of the judicial authority of the deciding judge and such an unsavory situation leads to the judicial officer filing a petition which reduces his status to a litigant and this is clearly not

conducive of judicial functioning. In the case of **In the Matter of "K" A Judicial Officer (2001) 3 SCC 54** it was observed:-

> "*Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our Judges. This quality in decision-making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other coordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the Judge has failed in these qualities, it will be neither good for the Judges nor for the judicial process."*

12. It should also be remembered that the conduct of the subordinate judicial officer unbecoming of himself and requiring corrective action should not be overlooked, but there is an alternative safe and advisable course available to choose from which is to intimate the Hon'ble the Chief Justice or the Administrative Judge along with the copy of the judgement for further action, rather than taking up the matter on the judicial side. The advantage of this course of action would be, that the subordinate judge concerned would have an opportunity to clarify his position and shall not be condemned unheard.

13. In the case of **Amar Pal Singh vs State of Uttar Pradesh and Another, (2012) 6 SCC 491** the Apex Court observed as follows :

"27. A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on use of dignified language and sustained restraint, moderation and sobriety. It is not to be forgotten that independence of judiciary has an insegregable and inseparable link with its credibility. Unwarranted comments on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law. The sanctity of decision making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the part of the superior Courts to take recourse to correctional measures. A reformative method can be taken recourse to on the administrative side.

28. It is condign to state it should be paramount in the mind of a Judge of superior Court that a Judicial officer projects the face of the judicial system and the independence of judiciary at the ground reality level and derogatory remarks against a judicial officer would cause immense harm to him individually (as the expunction of the remarks later on may not completely resuscitate his reputation) but also affects the credibility of the institution and corrodes the sacrosanctity of its zealously cherished philosophy. A judge of a superior Court however strongly he may feel about the unmerited and fallacious order passed by an officer, but is required to maintain sobriety, calmness, dispassionate reasoning

and poised restraint. The concept of loco parentis has to take a foremost place in the mind to keep at bay any uncalled for any unwarranted remarks.

29. Every judge has to remind himself about the aforesaid principles and religiously adhere to them. In this regard it would not be out of place to sit in the time machine and dwell upon the sagacious saying of an eminent author who has said that there is a distinction between a man who has command over 'Shastras' and the other who knows it and puts into practice. He who practises them can alone be called a 'vidvan'. Though it was told in a different context yet the said principle can be taken recourse to, for one may know or be aware of that use of intemperate language should be avoided in judgments but while penning the same the control over the language is forgotten and acquired knowledge is not applied to the arena of practice. Or to put it differently the knowledge stands still and not verbalised into action. Therefore, a committed comprehensive endeavour has to be made to put the concept to practice so that it is concretised and fructified and the litigations of the present nature are avoided.

30. Coming to the case at hand in our considered opinion the observations, the comment and the eventual direction were wholly unwarranted and uncalled for. The learned Chief Judicial Magistrate had felt that the due to delay and other ancillary factors there was no justification to exercise the power under Section 156 (3) of the Code. The learned Single Judge, as is manifest, had a different perception of the whole scenario. Perceptions of fact and

> *application of law may be erroneous but that never warrants such kind of observations and directions. Regard being had to the aforesaid we unhesitatingly expunge the remarks and the direction which have been reproduced in paragraph three of our judgment. If the said remarks have been entered into the annual confidential roll of the judicial officer the same shall stand expunged. That apart a copy of the order be sent by the Registrar of this Court to the Registrar General of the High Court of Allahabad to be placed on the personal file of the concerned judicial officer.*"

14. Considering the dictum of the Hon'ble Supreme Court and applying it to the facts of the present case it is apparent that even though in his decision, the Sessions Judge has given adequate reasons for coming to a different conclusion in the criminal appeal, and setting aside the judgment of the trial Court, there was no occasion for him to observe that it was not expected of the judicial magistrate to write such a judgment and further that there is further scope of improvement. Though these comments on the face of it do not seem to be adverse but they clearly convey the dissatisfaction and displeasure of the District and Sessions Judge towards the applicant. It has repeatedly been observed by the Supreme Court as well as by this Court that criticism and observations touching upon the judicial officer incorporated in judicial pronouncements have their own infirmities for not only the judicial officers are condemned unheard of the harm caused by such criticism or observations also incapable of being undone. Sobriety, moderation and reserve are the greatest qualities of a judicial officer and he/she should never be divorced from them.

15. In the present case the Sessions Judge has re-examined the entire evidence and came to a contrary finding and has therefore allowed the criminal appeal. There was absolutely no occasion or any need to make any comments upon the applicant and in case he felt strongly about the shortcomings of the applicant, then it was always open for him to inform his Administrative Judge or Hon'ble the Chief Justice.

16. Therefore for the reasons stated above, I have no hesitation in deleting the following observations made in the judgment and order dated 19.10.2019, passed by the Sessions Judge, Hardoi in Criminal Appeal No. 47/2019 - Yamoham Singh Vs. State of U.P. :-

> *"विद्वान मजिस्ट्रेट ने बिना साक्ष्य का विश्लेषण किये हुए अपीलार्थी/अभियुक्त के विरूद्ध आरोप सिद्ध होने का जो निष्कर्ष निकाला है वह त्रुटिपूर्ण है। यहाँ यह उल्लेखनीय है कि विद्वान मजिस्ट्रेट के द्वारा जो निर्णय लिखा गया है, उसमें अभियोजन केस के उपरान्त उस साक्ष्य का वर्णय किया गया है जो अभियोजन ने प्रस्तुत किया है, जिसमें सभी साक्षियों की मुख्य परीक्षा व प्रतिपरीक्षा के बयान उसी रूप में उतार लिये गये हैं और फिर उसके बाद बिना साक्ष्य का कोई विश्लेषण किये हुए विद्वान मजिस्ट्रेट सीधे निष्कर्ष पर आ गये हैं और यह निष्कर्ष दे दिया है कि अभियोजन साक्ष्य से अभियुक्त के विरूद्ध धारा 406, 411 भा0दं0सं0 के आरोप सिद्ध हो रहे हैं। अपर मुख्य मजिस्ट्रेट स्तर के न्यायिक अधिकारी से ऐसे निर्णय की अपेक्षा नहीं की जा सकती। विद्वान मजिस्ट्रेट से निर्णय लेखन में सुधार अपेक्षित है।"*

17. The application is accordingly **allowed**.

Order Date :- 15.12.2020
A. Verma

(Alok Mathur, J.)