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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1771/2013

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Judgment dated 12.11.2013

STATE

..... Petitioner

Through: Mr.Pawan Sharma, Standing Counsel for
the State along with Mr.Sahil Monga, Adv.
Ins. Devendra Kumar, SHO, P.S. Nand Nagri.
S.I. Sonil Sharma, P.S. Nand Nagri.

versus

JAHID

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. By the present petition, petitioner seeks quashing of the order dated 13.9.2013 with respect to a direction initiating the departmental proceedings against three senior police officers for non-compliance of the orders dated 7.2.2013, 30.08.2013 and 7.9.2013 and a compliance report was directed to be submitted within six months. Trial court record has been summoned. As per the record of the trial court on 7.1.2013, the trial court had directed and observed:

“Perusal of the record shows that no investigations and effort has been done by the IO, the SHO or the ACP concerned, to trace the said co-accused. No efforts have been made by the Investigating Officers, even to recover the fire arms, which were allegedly used in the commission of the offence in the present case.

Perusal of the record further shows that the IO has mentioned in the charge-sheet that in case, co-accused Salim is traced and arrested, a supplementary chargesheet shall be filed before the Court in due course. But no efforts have been done by the IO or the concerned SHO to trace the said accused till date. It appears that the IO as well as the SHO concerned are deliberately and intentionally not taking any action against the co-accused and a faulty chargesheet has been filed in the present case.

A copy of this order be therefore, sent to the DCP concerned, for taking appropriate disciplinary action against the erring police officials. The DCP concerned shall also ensure that the supplementary chargesheet is filed by the concerned officials, against the co-accused Salim, at the earliest. A compliance report be submitted to this Court, on or before the next date of hearing.”

2. The subsequent order dated 7.2.2013 would show that a letter was received from the office of Additional DCP, North East District, wherein it was reported that the disciplinary action has been initiated against the I.O. S.I. Mohan Pratap and SHO, P.S. Nand Nagri for the lapses on their part and the ACP, Seema Puri has been directed to trace the co-accused Saleem and to file supplementary charge-sheet in court. Since no information was received from the ACP, he was summoned in court for the next date of hearing i.e. 30.3.2013. The ACP had informed the Court that he did not have information of the orders so passed.
3. Notice was issued to the DCP to file a complete report regarding compliance of order dated 7.2.2013. An explanation was rendered to the court on 13.9.2013. On 13.9.2013 from perusal of the record and written submissions of Addl. DCP-1, North East District, Sh.Ved Prakash Surya and the ACP Seemapuri, Sh. Veer Singh Tyagi, the court formed an opinion that order of 7.1.2013 was duly communicated to the DCP North East District. The court also formed an opinion that the order of the Court

had not been complied with and accordingly issued the following directions:

“In these circumstances, it would be appropriate that the disciplinary departmental proceedings are initiated against all the aforesaid three senior police officers for their wilful and deliberate dereliction of duties. Accordingly, the copies of the orders dated 07.01.2013, 07.02.2013, 30.08.2013, 07.09.2013 along with the copy of letter dated 06.02.2013 issued by the Addl. DCP, North-East District and the copy of this order and the report submitted by ACP V.S. Tyagi and ACP Ved Prakash Surya, be sent to the Office of The Commissioner of Police for initiating the disciplinary proceedings against all the aforesaid erring police officers.

A compliance report regarding the action taken, against the aforesaid officers be submitted to this Court, by The Commissioner of Police, New Delhi, within a period of six months from today.”

4. Aggrieved by the aforesaid directions, the present petition has been filed. The main thrust of the argument of counsel for the petitioner is that : firstly there was no non-compliance of the order of the trial Court and satisfactory explanation was rendered; and secondly if at all the court had formed an opinion that the order had not been complied with, the court could have at best asked the Commissioner of Police to initiate an enquiry, and in case upon enquiry it was found that there was non-compliance, disciplinary proceedings could have been ordered.
5. I have heard counsel for the petitioner and gone through the record. It would be useful to reproduce the observations of the Supreme Court in the case of **State of Maharashtra Vs. Public Concern for Governance Trust & Ors.** AIR 2007 SC 777, wherein the law on the subject was discussed:

“23. We shall now analyze and consider the rulings of this Court cited by learned Solicitor General.

1. Dr. Dilip Kumar Deka & Anr. vs. State of Assam & Anr., (1996) 6 SCC 234 (paras 6,7 & 8)

The above judgment relates to expunging adverse remarks. The above was a case of adverse remarks recorded by the High Court against the members of hospital allegedly for misleading the court and stalling process of the court by submitting manipulated report regarding condition of a person to justify his shifting from police remand to the hospital. The High Court made adverse remarks without giving any opportunity to the members of extending or defending themselves, without any evidence showing that their conduct justified such remarks and without any necessity of such remarks for the purpose of deciding the matter. This Court held on facts that adverse remarks were unwarranted and hence expunged. This Court also cautioned superior courts to use temperate and moderate language and also held that opportunity to be given to the affected party before recording of adverse remarks by the Court. This Court also held thus:

"6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a Court of law in cases to be decided by it were succinctly laid down by this Court in State of U.P. v. Mohd. Naim, AIR 1964 SC 703. Those tests are:

- (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 remarks; and
- (c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in Jage Ram v. Hans Raj Midha, (1972) 1 SCC 181, R.K. Lakshmanan v. A.K. Srinivasan, (1975) 2 SCC 466 and Niranjan Patnaik v. Sashibhusan Kar, (1986) 2 SCC 569.

7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice.

8. Judged in the context of the first test laid down in Mohd. Naim's case (supra) the above discussion of ours is sufficient to quash the impugned remarks, but we find that the remarks are vulnerable also to the second test laid down therein. On perusal of the order dismissing the revision petition we find that the remarks of the learned Judge are based solely upon the fact that the report of the medical Board consisting of four medical experts belied their report. Indeed, except the report of the Board we have also not found any other material on record from which the learned Judge could have legitimately and justifiably obtained satisfaction to pass the above remarks against the two appellants before us. We hasten to add that in making the above observation we have left out of our consideration the materials which prompted the learned Judge to make adverse comments against the IO."

6. In the case of *State of West Bengal v. Mir Mohammad Omar & Ors* (2000) 8 SCC 234 the Supreme Court directed the courts to ordinarily desist from castigating the investigation while ordering acquittal. It observed as under:

41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If

offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above.”

7. In the present case the trial court had summoned the Additional DCP and the ACP in court and directed them to file their reports and thereafter reached to a conclusion that a disciplinary proceeding be initiated. In my view having regard to the totality of the situation, the trial court should have directed the Commissioner of Police to initiate an enquiry himself or through a senior Police Officer not below the rank of Joint Commissioner and then to submit a report to the Commissioner of Police rather than passing a blanket order to take disciplinary action and have the report filed in court. While this court can appreciate the anxiety of the learned trial court, as according to the trial court directions were not being complied with, but disciplinary action can only be taken against a public servant after following the due process of law [initiating an enquiry, giving an opportunity of hearing to the concerned persons in accordance with law as prescribed by the rules of Natural Justice and based on the findings of the enquiry, disciplinary proceedings can be initiated].
8. Any observation made in this order would not tantamount to expressing an opinion on the merits of the case but it is expected that the

Commissioner of Police would instruct an officer not less than the rank of Joint Commissioner to hold an enquiry against the erring Police Officers and in case of any lapse found on their part for non-compliance of the orders of the learned trial court, suitable action would be taken, in accordance with law.

9. Petition stands disposed of, in above terms.
10. Trial court record be sent back.

G.S.SISTANI, J

NOVEMBER 12, 2013

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