

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:3882

Court No. - 27

Case :- APPLICATION U/S 482 No. - 12791 of 2023

Applicant :- Anshu Gaur

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3

Others

Counsel for Applicant :- Amit Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Amit Kumar Singh, the learned counsel for the applicant, Sri Anant Pratap Singh, the learned AGA for the State and perused the records.
2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has prayed to expunge the remarks/ observation made against him in paras 105 & 106 of the judgment and order dated 10.11.2021 passed by the learned Special Judge, M.P., M.L.A./ Additional Sessions Judge, Court No. 19, Lucknow in Session Trial No. 460/2017 arising out of Case Crime No. 29/2017, under Sections 376D, 354A-1, 504, 506, 509 IPC & Section 5g/6 POCSO Act, Police Station Gautam Palli, District Lucknow, casting aspersions on the conduct of the applicant.
3. The aforesaid case alleged commission of offences by 7 accused persons, including a minister. It was alleged that the Minister and another accused person had administered some intoxicating substance to the informant and had raped her. They had prepared obscene photographs of the informant and by misusing those photos, all the accused persons repetitively raped the informant. However, when they

tried to rape her 17 years old daughter, the informant resisted them and she filed the F.I.R.

4. A perusal of the judgment indicates that after completion of the prosecution evidence and recording of statements of the accused persons under Section 313 Cr.P.C. and also after recording of their statements under Section 313(5) Cr.P.C., the applicant had filed Crl. Misc. Writ Petition No. 21263 of 2020 for recording of his evidence and thereafter he was examined on 16.09.2021 as PW-17. He stated that in October, 2016, the informant, whom he referred to as her 'Muh Boli Bahan' had told her that she was being harassed by persons of the minister and soon she would call the applicant for her help. Thereafter the informant had called the applicant and he came to Lucknow and while the applicant was sitting in a car with the informant and the later was telling him about the offences committed against her, the applicant was attacked, but somehow he remained unhurt. The applicant further stated that for getting justice for the informant and her daughter, he had talked to an advocate of the Hon'ble Supreme Court and thereafter the advocate had filed a writ petition and the applicant was personally present in the Court at the time of hearing of the writ petition. The informant did not have money and, therefore, the applicant and some other persons had contributed money and had given the same to the informant. During that period, the informant came to know that the Investigating Officer wanted to record statement of the informant and she stated that she would give statement at New Delhi in presence of her advocate. Thereafter, statement of the informant's daughter was recorded under Section 164 Cr.P.C. in Tees Hazari Court.
5. It is also mentioned in the trial court's judgment that the Investigating Officer had made repetitive phone calls to the advocate for recording statement of the informant under Section 164 Cr.P.C., whereupon the

applicant and the informant came to Lucknow through a flight and got her statement recorded under Section 164 Cr.P.C. in the Court and thereafter they returned to Delhi through flight on the same day.

6. After recording of statement of the applicant as PW-17, the additional statement of the accused person were recorded wherein the accused Minister stated that the applicant had taken the informant under his influence and has given false evidence due to political animosity. Another accused person stated that the applicant is a criminal who had been externed from the district and he had levelled false allegations with the object of extracting money.
7. In paragraphs 105 and 106 of the judgment, the trial court has stated that the applicant and another person Ram Singh Rajpoot have acted as directors in the matter. After taking note of the facts stated in the preceding paragraphs of this order, the trial court noted that the applicant had got a writ petition filed before the Hon'ble Supreme Court after concealing the fact that the informant had already filed an FIR with the same allegations in October, 2016. The trial court has observed that the applicant and Ram Singh Rajpoot had documents regarding the case available with them since the year 2017 but they did not make the same available to the Investigating Officer in spite of attempts made by him and they concealed the documents, from which it appears that they were waiting for some deal to be struck out which might benefit them. Summons were issued to the applicant on as many as 17 occasions but still he did not appear and when the opportunity of his evidence was closed, he filed a writ petition for getting his statement recorded. Even after passing of the order by this Court, he caused undue delay in recording of the statement and dragged the statement for several dates. After conclusion of the cross-examination, the applicant filed several documentary evidences regarding which he

admitted that those were available with him since the year 2017 but he did not give the same to the Investigating Officer.

8. The Court observed that the person who can go to the Supreme Court and file a writ petition, could certainly have brought the documents on record. When an order was passed on 27.10.2021 that the documents were not admissible for want of a certificate under Section 65B of the Indian Evidence Act, the applicant filed another application for proving the documents. The explanation for delay in producing the documents given by the applicant was that he was afraid of the Minister whereas the minister was lodged in district jail since the year 2017 and he was not related to the ruling party.
9. After noting the aforesaid facts, the court observed that the aforesaid acts of the applicant and the two other persons shake the conscience of the court and it amounts to an abuse of the process of law and that the persons who misuse the judicial process and keep on changing their stand to achieve their objects, need to be punished after proper investigation. Accordingly, the court ordered registration of a case against the applicant and some other persons, and investigate the same.
10. The learned counsel for the applicant has submitted that no opportunity of hearing has been accorded to the applicant before making the aforesaid observations.
11. In support of the aforesaid submissions, the learned court has relied upon the judgment of the Hon'ble Supreme Court in the cases of **State of U.P. v. Mohammad Naim**: AIR 1964 SC 703, **A. M. Mathur v. Promod Kumar Gupta & Ors.**: (1990) 2 SCC 533, **Neeraj Garg v. Sarita Rani & Ors.**: (2021) 9 SCC 92.
12. In the case of **Mohammad Naim** (supra) the Judge had made the following remarks against the entire police force:-

“(a) If I had felt that with my lone efforts I could have cleaned this Augean stable, which is the police force, I would not have hesitated to wage this war single handed.”

(b) That there is not a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force.

(c) Where every fish barring perhaps a few stinks, it is idle to pick out one or two and say that it stinks.”

13. In the aforesaid context, the Hon’ble Supreme Court held that: -

“If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, 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 restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in 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 remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.”

14. In the present case, no sweeping remarks have been made against any officer or authority or the system. The observations have been made against the conduct of a witness, after taking into note in detail the witness’s statement and his conduct. Therefore, the ratio of **Mohammad Naim** (supra) will not apply with the facts of the present case.

15. In **A. M. Mathur** (Supra), Writ Petitions filed challenging a policy decision of the State Government of Madhya Pradesh with regard to construction of new distilleries, were allowed by a Division Bench. The appellant A. M. Mathur had appeared in those Writ Petitions on behalf of the State Government as the Advocate General of the State. The learned Acting Chief Justice had delivered the main judgment in the writ petitions invalidating the decision of the government on the ground that it violated Article 14 of the Constitution. The other Judge, Justice B.M. Lal had delivered a separate concurring opinion in which he had made highly disparaging remarks attributing mala fides and underhand dealing to the State Government. The Hon'ble Supreme Court had allowed appeal preferred by the State and the judgment of the High Court was set aside and the strictures made by Justice B. M. Lal had been disapproved strongly by stating that *"the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made."*
16. An advocate who had no connection whatsoever with the earlier litigation, filed a review petition before the High Court after a delay of 738 days, inter alia alleging that the State Government had procured the judgment from the Supreme Court by committing fraud. The matter was listed for admission before a bench consisting of Hon'ble Mr. Justice C.P. Sen and Hon'ble Mr. Justice B.M. Lal on 29.20.1988. After arguments, C. P. Sen, J. seems to have dictated his order in the open court dismissing the review petition. He expressed the view that the petitioner had no locus standi to file the review petition and the economically well-to-do parties to the writ petitions who lost their case before this Court did not choose to file any review petition. He also held that the petition for review was not maintainable before the High Court since the decision of the High Court had been reversed by the Hon'ble Supreme Court. The petition was also held to be

hopelessly barred by limitation and there was no sufficient cause for condoning the inordinate delay.

17. However, B.M. Lal, J. did not pass any order on 29.10.1988 and he pronounced his order on 06.02.1989. Mr Mathur had tendered his resignation as Advocate General on 25.01.1989. Mr Gupta filed an application dated 25.01.1989 requesting the court to take judicial notice of some extract of the Vidhan Sabha proceedings and to pass appropriate strictures against the appellant. That application was not served on the appellant nor did the court give him any opportunity to file his counter. On 06.02.1989, the said application was taken on record and on the same day B.M. Lal, J. pronounced his order dismissing the review petition and he made disparaging remarks against the appellant, who by then was a former Advocate General. Allowing the appeal, the Hon'ble Supreme Court held that: -

“15. Learned Judge having held that the High Court has no jurisdiction to entertain the review petition ought not to have commented on the professional conduct of the appellant and that too without an opportunity for him. We regret to note that the observations made and aspersions cast on the professional conduct of the appellant are not only without jurisdiction, but also they are wholly and utterly unjustified and unwarranted.”

18. In the aforesaid factual background, the Hon'ble Supreme Court had further observed that: -

“13. 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 co-ordinate 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 judge nor for the judicial process.

14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct."

19. The aforesaid observations made in light of the peculiar facts of the case where the appellant had appeared in the Writ Petitions as Advocate General of the State, the Acting Chief Justice had delivered the main judgment allowing the writ petitions but the other Judge, Justice B.M. Lal had delivered a separate concurring judgment in which he had made highly disparaging remarks against the State Government, the Hon'ble Supreme Court had allowed appeal preferred by the State, set aside the judgment and had strongly disapproved the strictures made by Justice B. M. Lal, thereafter an advocate who had no connection with the earlier litigation, had filed a highly belated review petition before the High Court and the presiding Judge of the Bench had dismissed the review in open Court on 29.20.1988 on the grounds that the petitioner has no locus standi and the review petition was not maintainable since the decision of the High Court had been reversed by the Supreme Court and the petition was hopelessly barred by limitation and there was no sufficient cause for condoning the inordinate delay. Justice B. M. Lal did not pronounce his order. The appellant had resigned from the office of Advocate General on 25.01.1989. On 16.02.1989 the petitioner filed an application requesting the court to pass strictures against the appellant, without serving its copy on the appellant and B. M. Lal, J.

passed an order on the same day dismissing the review petition and he made disparaging remarks against the appellant.

20. Lastly in **Neeraj Garg v. Sarita Rani**, (2021) 9 SCC 92, severe adverse remarks were made against the Appellant Counsel in four orders passed by an Hon'ble Judge in four different cases, i.e. W.P. (M/S) No. 2216 of 2017 and W.P. (M/S) No. 2208 of 2017 titled *Vira Wali Manga v. Sarita Rani* 2017 SCC OnLine Utt 1946, Second Appeal No. 190 of 2019 titled *Landour Community Hospital v. Sandeep Bishnoi*, Second Appeal No. 190 of 2019, decided on 22-11-2019, Second Appeal No. 182 of 2019 titled *Vinod Kumar v. Mandir Laxmi Narayan*, 2020 SCC OnLine Utt 1199, WP (M/S) No. 519 of 2019 titled *Parul Prakash v. Anil Prakash*, 2021 SCC OnLine Utt 924. It was *inter alia* submitted before the Hon'ble Supreme Court that the appellant, with an otherwise unblemished professional record, had no occasion to suffer such adverse remarks from any other Judge of the High Court. Before his elevation to the Bench on 19-5-2017, the Judge concerned was a member of the same Bar as the appellant and both were rival counsel in several contested matters and the comments may have emanated from personal prejudice and may not be otherwise warranted. It is argued that the appellant should not be made to suffer adverse comments on his conduct as a lawyer only because the Judge concerned may not appreciate the efforts made by the counsel, on behalf of his client.
21. Allowing the appeal of the Advocate, the Hon'ble Supreme Court held that: -

“16. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before recording the adverse comments, give any opportunity to the appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the counsel,

without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments.

17. The tenor of the remarks recorded against the appellant will not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the comments remain unexpunged in the Court judgments, it will be a cross that the appellant will have to bear, all his life. To allow him to suffer thus, would in our view be prejudicial and unjust.”

22. While considering the applicability of the observations made in the precedents cited by the learned Counsel for the applicant, this Court has to take into consideration the following well established principle of the law of precedents reiterated in **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.**, (2003) 2 SCC 111:-

“A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

23. Again, in **Escorts Ltd. v. Commissioner of Central Excise, New Delhi**, (2004) 8 SCC 335 and in **Bharat Petroleum Corporation Ltd. v. N. R. Vairamani**, (2004) 8 SCC 579, the Hon'ble Supreme Court held that:-

“8. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes.”

24. Therefore, the observations made in the judgments cited by the learned Counsel for the applicant will have to be read in the context of the peculiar factual background in those cases, which are in no way similar to the facts of the present case. In the present case, the

observations have been made against a witness after recording of his statement in his examination-in-chief and the cross-examination and after discussing the applicant's statements and the other circumstances showing his conduct in detail. After noting the aforesaid facts, the court observed that the acts of the applicant and the two other persons shake the conscience of the court and it amounts to an abuse of the process of law. The persons who misuse the judicial process and keep on changing their stand to achieve their objects, need to be punished after proper investigation. Accordingly, the court ordered registration of a case against the applicant and some other persons, and investigate the same.

25. It is correct that the Courts should not normally make observations against Judges, parties to litigation, advocates and witnesses which may have an adverse impact on their reputation or their future prospects, but it is not that the Court cannot make observations about the conduct of a litigant or a witness even in an exceptional case where the witness appears to have acted as a director of the litigation and to have abused the process of law. From the facts of the case narrated above, the present case appears to be an exceptional cases and it appears that the trial Court has made the observations keeping in view the exceptional circumstances of the case arising out of the conduct of the applicant.
26. Moreover, while making the observations, the trial Court has not recorded by conclusive finding and the Court has merely directed that a case should be registered against the applicant and it should be investigated. Therefore, the mere order of registration of a case and investigation passed after detailed analysis of the statements of the applicant and of his conduct, appears not to be suffering from any illegality warranting interference in exercise of power of this Court under Section 482 Cr.P.C.

27. Section 482 Cr.P.C. recognizes the inherent powers of this Court to pass orders necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It appears that the learned trial Court has made the observations under challenge to prevent abuse of the process of the Court and to secure the ends of justice and no interference is warranted in the observations in exercise of this Court's jurisdiction under Section 482 Cr.P.C.
28. Accordingly, the application lacks merit and the same is *rejected*.

Order Date :- 12.1.2024

Pradeep/-