

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

+ **W.P.(CRL) 207/2015**

Reserved on: 07.12.2015

Date of Decision: 18.12.2015

RAKESH CHAND

..... Petitioner

Through: Mr.Vikas Pahwa, Sr. Advocate
with Mr.B.Badrinath, Advocate.
versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms.Kamna Vohra, ASC.
SI Manoj Kumar PS Bhalwa
Dairy.

+ **W.P.(CRL) 209/2015**

RAJINDER SINGH

..... Petitioner

Through: Mr.Vikas Pahwa, Sr. Advocate
with Mr.B.Badrinath, Advocate.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Richa Kapoor, ASC with
Mr. Rohit Kaul and Mr. Ashish
Negi, Advocates.
SI Manoj Kumar PS Bhalwa
Dairy.

+ **W.P.(CRL) 122/2015**

STATE

..... Petitioner

Through: Mr. Ashish Aggarwal, ASC.
SI Manoj Kumar PS Bhalwa
Dairy.

versus

RAJU

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. Anthony M.Keneddy in his book “Judicial Ethics and Rule of Law” describes the qualities of a judgment in the following manner:-

“The power of a Court, the prestige of a Court, the primacy of a Court stand or fall by one measure and one measure alone; the respect accorded to its judgment. How does the Court earn respect for its judgment from year to year and from generation to generation? The question refers us to the full scope of law, the study of lifetime. Respect for a judgment depends upon its coherence, its logic, its intellectual force, its fairness, its common sense, its root in ancient principles of law and justice and its continued vitality in a world of change. These conventional standards for assessing the wisdom of a Court decree are quite irrelevant, however, if the Court which issues the judgment is not recognized as an institution governed by a strict ethical code. A Court’s judgment will be given no serious consideration, no examination at all, if the public is not confident that its judges remain committed to neutral principles and rules for the conduct of their office.”

2. While dealing with the task of administering justice, a Judge, no doubt has to be acting judicially and giving expression to his views but he ought to be circumspect while commenting on the conduct of some. The line of discretion is not to be overstepped. The calm and sangfroid of a Judge should be reflected in every judgment, every order; rather every part of any judgment or order. The immunity which is enjoyed by a judicial officer carries with it the duty of circumspection. A Judge ought to know that any statement against any authority of the

Government or any organ of the Government or any person incharge of investigation or discharging executive functions can lacerate, slash and mutilate his reputation into tatters and cause irreparable harm. It may prejudicially affect the career of such persons. What is required to be taken care of is that nobody ought to be condemned without being heard. The prejudicial effect on somebody against whom a stricture is passed cannot be assessed only in terms of the immediate damage to him. It has the potential of eroding the confidence of public on such person or institution. A judge must be wary of such cascading effect of any statement/stricture made by him while delivering judgment.

“A Judge is not free, like a loose cannon to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity”

“Stump vs. Sparkman”, 435 US 349, 1978 (Per Steward Judge)”

3. The petitioners Rakesh Chand (petitioner in W.P(Crl.) No.207/2015) and Rajinder Singh (petitioner in W.P(Crl.) No.209/2015) were the then SHO of Police Station Bhalswa Dairy and investigating officer of FIR No.165/2010 respectively. Both the petitioners are presently working with Delhi Police. Both of them are aggrieved by the observation/direction of the Trial Court in judgment and order dated 15.05.2014/29.05.2014 passed in Sessions Case No.105/2013 in connection with FIR No.165/2010 (P.S.Bhalswa Dairy).

4. The State is also aggrieved by the aforesaid observation and direction of the Trial Court and seeks deletion of the observations and

directions given in para 152 of the Trial Court judgment.

5. Para 152 of the judgment reads as hereunder:-

“Before ending, in view of my observations made with regard to the statutory non compliance of the provisions of the Code of Criminal Procedure (Section 46(4) Cr.P.C) while arresting the lady accused Renu at 12.40 AM (midnight) confirming her detention/confinement to be illegal, an offence under the Indian Penal Code, I direct that appropriate action both legal and departmental in accordance with law be initiated against the erring officers i.e. SI Rajender Singh and the then SHO Police Station Bhalswa Dairy Inspector Rakesh Chand for the same. Copy of this judgment be placed before the Ld.CMM concerned. Commissioner of police, Delhi and GNCT of Delhi (Home Department) through the Director of Prosecution, Delhi for compliance under intimation to this Court.”

6. It has been submitted on behalf of the petitioners that without hearing their point of view or appreciating the circumstances under which a particular accused person was arrested, they have been condemned. The Trial Court has directed for a legal and departmental action in accordance with law as against the petitioners. They did not have any opportunity to explain away their conduct or to offer any defence.

7. Learned senior counsel appearing for the petitioners submitted that the aforesaid observation/direction of the Trial Court is highly unwarranted, not in keeping with the legal provisions, does not take into account the factual matrix and is largely, *lapsus linguae*.

8. Now to the facts of the case of FIR No.165/2010, in the trial of which case, such directions came forth from the Trial Judge.

9. On 21.12.2010, one Smt.Renu wife of Shankar lodged a missing

report with respect to her husband, leading to registration of DD No.20A at police station Bhalswa Dairy. At about the same time, father of the husband of Renu also lodged a missing report in the same police station expressing suspicion over his daughter-in-law (Smt.Renu). The suspicion was based on an impression in the mind of the father-in-law of Smt.Renu that she was having illicit relationship with one Raju, a person staying in the neighbourhood. The report lodged by the father-in-law of Smt.Renu led to the lodging of FIR No.165/2010 dated 22.12.2010 under Section 365/34 of the IPC. The investigation of the case was taken up by petitioner Rajinder Singh, the IO of the case.

10. During the course of investigation, Smt.Renu was interrogated at her residence in the presence of a lady police officer namely Constable Munni. During interrogation Smt.Renu admitting of having committed the murder of her husband Shankar, in collusion with her paramour, Raju. She further disclosed during interrogation that the dead body of her husband was thrown in jungles of Village Bharota in the District of Sonapat, Haryana, falling under the territorial jurisdiction of police station Kundli. Consequently, Smt.Renu was arrested in the presence of that lady police constable Munni and the mother-in-law of Smt.Renu. After the arrest, a disclosure was made by Smt.Renu that she was having illicit relationship with Raju and both had conspired to eliminate Shankar. Shankar was killed in the night intervening between 20 & 21.12.2010. The dead body was taken in a vehicle by her and Raju to the place where it was thrown. Raju was also arrested at the instance of Smt.Renu.

11. After the investigation in the case was complete, the case was committed to the Court of Sessions where charges were framed against Smt.Renu and Raju. After examining 19 witnesses on behalf of the prosecution and recording the statement of the accused persons under Section 313 of the Code of Criminal Procedure, the Trial Court held Smt.Renu guilty for offence under Section 201 read with Section 34 of the IPC and Raju for the offences under Sections 302/201 and 34 of the IPC by judgment dated 15.05.2014. By order dated 29.05.2014, Smt.Renu was sentenced to RI for four years, fine of Rs.2000/- and in default of payment of fine, SI for one week for the offence under Section 201 of the IPC, and Raju to RI for life, fine of Rs.1 lakh and in default of payment of fine, SI for six months for the offence under Section 302 IPC. Raju was also sentenced for the offence under Section 201 of the IPC for four years RI, fine of Rs.2000/- and in default of payment of fine SI for a period of one week. The sentences, however, were ordered to run concurrently.

12. It has been submitted on behalf of the petitioners that the Trial Court did not consider at all that Smt.Renu was arrested only in the presence of a female constable and that such arrest was made under compelling circumstances. Had Smt.Renu not been arrested in the late hours, it would have been difficult to apprehend her.

13. Apart from the factual position, it has been urged at the bar, that the learned Trial Judge became functus officio after concluding the trial and there was no special conferment of any jurisdiction on a Trial Judge for taking direct administrative action against the SHO of the concerned police station and the investigating officer of the concerned

case.

14. Sub clause (4) of Section 46 Cr.P.C was inserted in the Code by Act 25 of 2005, w.e.f 23.06.2006.

“Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.”

15. Normally, arrest of a woman is not to be effected after sunset and before sunrise except under exceptional circumstances. Even in those exceptional circumstances, if a woman is to be arrested between sunset and sunrise, a written permission is to be obtained from the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

16. Though there is a statutory requirement of obtaining written permission from a Judicial Magistrate in case a woman is to be arrested between sunset and sunrise but it cannot be said that under no circumstance can such requirement be waived. The exigencies of the situation have to be taken into account. There could be a lapse on the part of the arresting officer in that regard but, even then, before any action is taken against him legally or departmentally, he is required to be given a notice for the same and is further required to be heard. The aforesaid principles of fair play and action, be it civil or criminal action, can never be waived, forgotten or disregarded.

17. In ***Pramod Kumar Jha vs. State of Bihar & Anr.*** (Crl.Appeal

No.1092/2002), the Supreme Court deleted the direction given for initiation of departmental proceedings against the IO of the case and other directions in the judgment. The Supreme Court was of the view that the Court below, if at all felt that there was a lapse on the part of the investigating officer, he should have recorded that fact. Directing departmental proceedings virtually finds a person guilty and such is not the normal/permissible course.

18. Similarly in *State of West Bengal and Ors vs. Babu Chakraborty, (2004) 12 SCC 201*, the Supreme Court while dealing with the judgment of Calcutta High Court in a case relating to NDPS Act held as under:-

“31. As rightly pointed out by Mr Tapash Ray, the observations of the High Court in the impugned judgment passing strictures against the appellants have been made while against the record of the case and penalise the two police officers who were discharging their official duties as per the law. The action taken by Appellants 2 and 3 has been taken in the case of discharging of their official duties. While discharging their duties, the official would have violated certain provisions. That does not, in our opinion, enable the court to pass strictures against the officials and order compensation. There is no evidence or circumstance to show that there were any mala fides on the part of these officers.

32. Likewise, the direction issued by the High Court directing the State of West Bengal to pay compensation of Rs 1 lakh to the respondent-accused giving liberty to the State to realise or to recover the whole of such compensation from Appellant 2 Mr K.L. Meena, a member of the Indian Police Service, is wholly unjustified.

33. In our view, officers who are discharging their statutory

duties cannot be blamed when the action taken by the State Government and the officials concerned is for implementing the objects behind the Act by resorting the check (sic) and to direct the raids, etc. The High Court has further penalised the State Government and its officers for such an action. Since the strictures passed against them are wholly unjustified, we have no hesitation in expunging the remarks.”

19. The Supreme Court, as far back as in the year 1963, in the case of ***Ishwari Prasad Misra vs. Mohd. Isa***, AIR 1963 SC 1728, while dealing with strictures passed by the High Court against one of its subordinate judicial officers, emphasised the need to adopt utmost judicial restraint in using strong language and imputation of corrupt motives against lower judiciary for the reason that the Judge against whom imputations were made had no remedy in law to vindicate his position. Though the aforesaid restraint was with respect to passing strictures against judicial officers nonetheless the principles of self restraint, caution and circumspection is applicable in cases of others also whose conduct is commented upon; the sole reason behind such a caution being that no person should be condemned unheard. Similar principle was adopted by the Supreme Court in ***Testa Setalvad and Anr vs. State of Gujarat and Ors***, (2004) 10 SCC 88. The Supreme Court in para 9 of the aforesaid judgment stated thus:-

“9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before them or those litigating for such causes. The

parties before them and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone, either to please their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case."

20. The Supreme Court in ***Testa Setalvad and Another (Supra)*** has stated that the principles of self restraint apply with equal force to all who are not present before the Court.

21. In ***State of Maharashtra vs. Christian Community Welfare Council of India and Anr, (2003) 8 SCC 546***, the Supreme Court appreciated and agreed with the object behind prohibiting arrest of a lady after sunset and before sunrise but was of the opinion that a strict compliance with such restrictions, in a given circumstance, could cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused. The Supreme Court went on to say that it was necessary to protect the female sought to be arrested by the police from police misdeeds but it may not be always possible and practical to have the presence of a lady constable when the necessity for such arrest arises. Of course, such observations of the Court were prior to the amendments made in

Section 46 of the Code of Criminal Procedure. However, what cannot be lost sight of is the practical and genuine difficulties in enforcing and effecting the arrest of an accused of a case.

22. In the present case, nothing appears to have been alleged against the petitioners by Smt.Renu.

23. Even if there was a lapse on the part of the petitioners as police officers, what the Trial Court was required to do was to record such lapse and indicate that in future such lapses should not occur. Straightway directing the administrative authorities/superior police authorities to take legal/departmental action against the petitioners only meant that the petitioners were also convicted along with the accused persons in the present case and for proper sentencing, their cases were sent to the superior police authorities. This procedure is not mandated either by law or practice.

24. Section 6 in part H of the Delhi High Court rules states as follows:-

“6. Criticism on the conduct of Police and other officers - It is undesirable for Courts to make remarks censuring the action of police officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of illusage is readily accepted as true. That such allegations may sometimes be true it is impossible to

deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and everything against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary's circular Letter No. 920-J-36/14753, dated the 15th April, 1936"

25. In any view of the matter, the observations/directions made in para 152 of the judgment which is sought to be expunged in the present petition is held to be not in consonance with the factual matrix of the case, practice and procedure and is, therefore, unwarranted.

26. The same is, therefore, deleted from the judgment. Thus para 152 of the judgment stands expunged and deleted.

27. The petitions are allowed but without cost.

Crl.M.A Nos.1406/2015, 1433/2015 & 696/2015

1. In view of the main petition having been allowed, these applications have become infructuous.

2. Applications are disposed of accordingly.

(ASHUTOSH KUMAR)
Judge

DECEMBER 18, 2015

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