

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

% Order delivered on: 18th March, 2015

+ **CRL.M.C. 174/2015**

N GNANASAMBANDAN Petitioner
Through Mr.Siddharth Luthra, Sr. Adv. with
Mr.Rajiv Mohan and Mr.Nitin
Saluja, Advs.

versus

STATE OF NCT OF DELHI & ANR Respondents
Through Mr.M.N.Dudeja, APP for the State
along with SI Vijay Kumar.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of orders dated 21st August, 2014, 23rd August, 2014, 28th August, 2014, 3rd September, 2014 and 4th September, 2014 passed by the Additional Sessions Judge, Rohini Courts, Delhi, arising out of Anticipatory Bail Application No.6313 and 6210, titled as *State vs. Neelam & Abhinav*.

2. The FIR was registered on the basis of the complaint filed by Sh. Swatantra Bhushan Sharma before DCP/EOW. It was alleged in the complaint that accused Neelam deceived the complainant by misrepresenting that she can get the niece of complainant admitted in medical college in Delhi. For this purpose she introduced co-accused

Sanju, friend of her son Abhinav, by saying that he is nephew of a Member of Parliament. After making this deception, the accused persons dishonestly induced the complainant to hand over Rs. 10,70,000/- to the accused persons. After receiving the amount the accused persons continued to give assurance to the complainant that his ward will be admitted in MBBS. Later on, when the complainant came to know that these accused persons are in no way related to any admission process he demanded his money back. The accused persons first continued to avoid the payment and at last they extended threat to the complainant and refused to give any money back to the complainant.

3. After registration of case at P.S. Prashant Vihar, investigation was taken over by P.S. EOW. During the course of investigation incriminating material was collected.

4. The investigation of this case was first conducted by SI Sher Singh of EOW and later on it was assigned to SI Anil Jindal and then to SI Vishal No.D-3956 of EOW. On conclusion of the investigation SI Vishal who was at that time posted in EOW prepared the charge sheet on 31st January, 2013 and forwarded the same to In-Charge of the Anti-Forgery Section Inspector Rajesh Kumar.

5. On 7th February, 2014, SI Vishal was transferred from EOW and was posted in North West District at P.S. Ashok Vihar. After his transfer SI Vishal did not remain associated with the investigation of this case which was being conducted at Police Station EOW.

6. The charge sheet was filed on 14th March, 2014 against the accused persons namely (1) Neelam W/o K.B. Kaushik R/o 22-D, AP Block, Pitampura, Delhi (2) Abhinav Kaushik S/o K.B. Kaushik R/o 22-D, AP Block, Pitampura, Delhi (3) Pradeep Aggarwal S/o K.I. Aggarwal R/o C-2 Parwana Vihar, Sector-9, Plot No.52, Rohini, Delhi (4) Shahnawaj Alam S/o Nayaz Ahmad R/o Hasun, Distt. Siwan, Bihar was filed in the court of Sh. Ashish Aggarwal, Chief Metropolitan Magistrate, Rohini Courts who after taking the cognizance issued summons to all the accused for their appearance vide order dated 25th March, 2014.

7. Accused Smt. Neelam Kaushik and her son Abhinav Kaushik filed an anticipatory bail application before the Court of Sessions Judge, Rohini. The application came up for hearing before Additional Sessions Judge III North, Rohini Courts, Delhi. The Court issued direction for appearance of SI Vishal for 8th August, 2014. On 8th August, 2014, SI Vishal was also required to appear before this Court in connection with case FIR No.247/12 P.S. Bharat Nagar and he sent a request for his exemption to Additional Sessions Judge, Rohini Courts, Delhi.

8. On 20th August, 2014, SI Vishal again received notice regarding his appearance in the Court of Additional Sessions Judge on 21st August, 2014. On 21st August, 2014, SI Vishal was attending a bail matter in the Court of Additional Sessions Judge, Rohini Courts in connection with case FIR No.264/14 under Section 302/201/34 IPC of P.S. Bharat Nagar. SI Vishal visited the Court of Additional Sessions

Judge and informed to this effect to SI Bhagat Ram of EOW present there but Additional Sessions Judge, Rohini Courts issued notice to the petitioner who was posted as DCP/North-West to appear in person with following directions :-

“DCP concerned (North-West) to appear in person to explain as to why IO is reluctant to appear before the court despite being instructed by ACP.”

9. Many adverse remarks are made against the petitioner by the Additional Sessions Judge in orders dated 21st August, 2014, 23rd August, 2014, 28th August, 2014, 3rd September, 2014 and 4th September, 2014 passed in connection with Bail Application No.6313 and 6210 titled as State vs. Neelam & Ors. which have been challenged by the petitioner.

10. Mr.Siddharth Luthra, learned Senior counsel appearing for petitioner has submitted that the petitioner was having no intention or occasion to challenge the order passed regarding the declining of the anticipatory bail to both these accused persons. It is submitted that inadvertently in the prayer of this petition it was mentioned that this Court may quash all the orders as mentioned passed by Additional Sessions Judge. The affidavit in this regard is filed by restricting the prayer of the petition to quash only that part of these orders which relates to the adverse remarks passed against the petitioner.

11. It is submitted by Mr. Luthra, learned Senior counsel that the investigation of FIR No. 853/05 was initially entrusted to SI Sher Singh, EOW and was later handed over to SI Vishal No. D-3956, who prepared the charge sheet on 3^{1st} January, 2013 and forwarded it to

Insp. Rajesh Kumar, who was In-Charge of the Anti-Forgery Section EOW at that time. Chargesheet in the FIR No.835/05 under Section 420/120-B IPC was filed by the PS- EOW on 1^{4th} March, 2014 against 1) Neelam 2) Abhinav Kaushik 3) Pradeep Aggarwal and Shahnawaz Alam.

12. The petitioner's role in the proceeding is limited to the fact that investigation officer SI Vishal of PS-EOW, who had initially investigated the matter, was subsequently transferred from PS-EOW to PS Ashok Vihar on 7th February, 2014, which falls within North-West District of Delhi Police, where the petitioner is posted as Deputy Commissioner. The investigation was overseen and monitored by DCP, EOW and who had appeared through his subordinate officer and subsequently in person before the Additional Sessions Judge on 28th August, 2014.

13. It is submitted that an enquiry was initiated against the SI Vishal for non-appearance and on the basis of the enquiry report dated 26th August, 2014 of Mohd Iqbal, Assistant Commissioner of Police ("ACP") departmental actions were initiated against SI Vishal and the Additional Sessions Judge was apprised about this fact in the personal exemption application filed by the petitioner on 22nd August, 2014, still the Additional Sessions Judge passed adverse remarks against the petitioner.

14. The petitioner had also issued show cause notice of censure to SI Vishal on 1st September, 2014 on the basis of enquiry report of ACP, Ashok Vihar with respect to non - appearance before the Additional Sessions Judge on 8th August, 2014 and 21st August, 2014. The

Additional Sessions Judge in the impugned order dated 4th September, 2014 while disposing of bail application was more concerned about the criticism of the petitioner than the merits of the case.

15. It is true that the observations should not be made by the Court against the person or authorities unless they are necessary for the decision of the case. The principal duty of a Court is to enforce discipline and to decide the controversy after hearing the parties. Harsh remarks are not necessary unless the same are required to be made for the decision of the case.

16. The law is well settled on the issue of disparaging remarks, few decisions are referred as under :

- i) In ***State of U.P vs. Mohd. Naim*** (1964) 2SCR 363 [Para 11], it was held that in the matter of making disparaging remarks against the person or authorities whose conduct come into consideration before courts of law in cases decided by them, it is relevant to consider a) whether the party whose conduct is in question is before the court or has opportunity of explaining or defending himself; b) whether there is evidence on record bearing on that conduct, justifying the remarks c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.
- ii) In ***Niranjan Patnaik vs. Shashi Bhushan Kar and Another*** (1986) 2 SCC 569 [Para 24], it was held that that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before the

Courts of law unless it is necessary for the decision of the case, as an integral part thereof to animadvert on that conduct.

- iii) In the case of ***Dr. Raghubir Saran vs. State of Bihar and Anr.***, AIR 1964 SC 1, the Supreme Court held as under :

“Whatever may be the degree of impact, the result of expunging remarks from a judgment is that it derogates from its finality. A judgment of a lower court may be wrong; it may even be perverse. The proper way to attack that judgment is by bringing it under the scrutiny of the superior court and getting the judgment of the lower court judicially corrected. The inherent power that the High Court possesses is, in proper case, even though no appeal or revision may be preferred to the High Court, to judicially correct the observations of the lower court by pointing out that the observations made by the Magistrate were not justified or were without any foundation or were not justified or were wholly wrong or improper. The contrary view infringes the fundamental principle of jurisprudence that a judgment made by a court; however inferior it may be in the hierarchy, is final and it can only be modified in the manner prescribed by the law governing such procedure. AIR 1954 Bom 65 (66) (FB), Approved.

Every judicial officer must be free to express his mind in the matter of the appreciation of evidence before him. The phraseology used by a particular judge depends upon his inherent reaction to falsehood, his comparative command of the English language and his felicity of expression. There is nothing more deleterious to the discharge of judicial functions than to create in the mind of a judge that he should conform to a particular pattern which may, or may not be, to the liking of the appellate Court. Sometimes he may overstep the mark. When public interests conflict, the lesser should yield to the larger one. An unmerited and undeserved insult to a witness may have to be tolerated in the general interests of preserving the independence of the judiciary. Even so, a duty

is cast upon the judicial officer not to deflect himself from the even course of justice by making disparaging and undeserving remarks on persons that appear before him as witnesses or otherwise. Moderation in expression lends dignity to his office and imparts greater respect for judiciary. But occasions do arise when a particular judge, without any justification, may cast aspersions on a witness or any other person not before him affecting the character of such witness or person. Such remarks may affect the reputation or even the career of such person. In my experience I find such cases are very rare. But if it happens, I agree with the Full Bench of the Bombay High Court that the appellate Court in a suitable case may judicially correct the observations of the lower Court by pointing out that the observations made by that Court were not justified or were without any foundation were wholly wrong or improper. This can be done under its inherent power preserved under s. 561-A of the Code of Criminal Procedure. But that power must be exercised only in exceptional cases where the interest of the Party concerned would irrevocably suffer.”

17. It appears from the facts of the present case that the petitioner after receiving the notice immediately ordered an enquiry about non-appearance of SI Vishal who was posted in North West District. The enquiry was ordered to be conducted through ACP/Ashok Vihar, Sh. Mohammad Iqbal and report to this effect was submitted on 26th August, 2014, in which departmental action were directed against SI Vishal for non-appearance before Additional Sessions Judge on 8th August, 2014 and 21st August, 2014. On the basis of this report show cause notice dated 1st September, 2014 of censure was issued to the SI Vishal by the petitioner who set out reasons for his non-appearance before the Court below and informed the Court that enquiry is being directed against SI Vishal for non-appearance and

sought exemption from his personal appearance on 23rd August, 2014 because of official exigencies.

18. It is also evident from the record that on 23rd August, 2014 SI Vishal appeared before the Court of Additional Sessions Judge along with the SHO but on this date, despite personal exemption being moved by the petitioner, Additional Sessions Judge again issued show cause notice to the petitioner to explain why he did not appear before the court on 23rd August, 2014 and the petitioner was called again on 28th August, 2014. On 27th August, 2014 the petitioner tendered his explanation and again informed that an enquiry has been initiated against SI Vishal for non-appearance and requested the Court to consider his application for personal exemption for 28th August, 2014.

19. On 28th August, 2014, the Court ignored the personal exemption moved by the petitioner and expressed displeasure about non-appearance and directed the petitioner to appear on 3rd September, 2014.

20. On 2nd September, 2014, the petitioner prayed for personal exemption. On 3rd September, 2014 the matter was put up for bail application as well as for consideration of request of exemption of the petitioner on 4th September, 2014. However, by impugned order dated 4th September, 2014, Additional Sessions Judge passed certain adverse remarks against the petitioner, which may injure him in future and which were unnecessary and could have been separated from, the main order of the Judge on deciding the issue of Bail.

21. Pursuant to passing these adverse remarks, the Additional Sessions Judge issued bailable warrants against the petitioner for 8th

September, 2014. The Additional Sessions Judge also issued notice under Section 60/122 Delhi Police Act with directions to send the copy of the order to Home Secretary Govt. of India and requested to consider the matter to take appropriate action against the petitioner. The copy of this order was also sent to the Commissioner of Police, PHQ and also Joint C.P. Northern Range for appropriate action against the petitioner.

22. No doubt at the same time, however, it cannot be overlooked that judicial restraints and discipline are necessary to orderly administration of justice. One must always keep in view golden advice given by S.K. Das, J. in ***State of U.P. v. Mohd. Naim***, (supra). The same reads as under :

"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 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 restraint. It is not infrequent that sweeping generalizations defeat the very purpose for which they are made. It has been judicially recognized 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 recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

23. Mr. Luthra, learned Senior counsel appearing on behalf of petitioner submits that the petitioner have a great respect to the Court's order and he had no intention at any occasions to ignore the direction and orders passed by any Court and even if in future, he would take special care about it.

24. It appears from the said orders that the trial courts has shown its anguish due to non-cooperation of IO and progress of matter in hand, which is rightly so. In such situation if it happens, doubt creates in the mind of judicial officer as to why these things are happening in a particular matter again and again.

25. However, at the same time, it was not necessary to pass harsh remarks and observations when the explanations are available, these are uncalled for and was not necessary in view of material available. Therefore, the remarks only with regard to the petitioner passed by the Additional Sessions Judge, Rohini Courts, Delhi, in orders dated 21st August, 2014, 23rd August, 2014, 28th August, 2014, 3rd September, 2014 and 4th September, 2014 are quashed. The remaining parts of the said orders be read as it is. It is however made clear that nothing stated herein shall tantamount to an expression of opinion on merit of the case.

26. The petition is only confined to quashing of parts relating to the adverse remarks passed against the petitioner.

27. No costs. Dasti.

(MANMOHAN SINGH)
JUDGE

MARCH 18, 2015