

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.11 of 2015

Birendra Kumar Lakara, S/o Shri S. Lakara, aged about 45 years, R/o at present at Irrigation Colony, Pali, Tehsil, Post & Police Station Pali, District Korba (C.G.) Permanent Address Shanti Nagar, Ring Road No.2, P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Meman, S/o Yunus Meman, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)
7. Ramfal Suryavanshi, S/o Jivrakhan, aged about 40 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)

---- Respondents

Writ Petition (Cr.) No.6 of 2015

Ashok Kumar Marbal, S/o Shri P.R. Marbal, aged about 45 years, R/o Block Colony, Katghora, Tehsil, Post & Police Station Katghora, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-Charge of Police Station Masturi, Distt. Bilaspur (C.G.)

4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, Distt. Bilaspur (C.G.) (Accused)
5. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, Distt. Bilaspur (C.G.) (Accused)
6. Mool Chand Khanday, S/o Late Devcharan Khanday, aged about 47 years, R/o Om Nagar, Jharhabhata, Police Station Civil Lines, Bilaspur, Distt. Bilaspur (C.G.) (Accused)

---- Respondents

Writ Petition (Cr.) No.9 of 2015

Birendra Kumar Lakara, S/o Shri S. Lakara, aged about 45 years, R/o at present at Irrigation Colony, Pali, Tehsil, Post & Police Station Pali, District Korba (C.G.) Permanent Address Shanti Nagar, Ring Road No.2, P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Memon, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)

---- Respondents

Writ Petition (Cr.) No.12 of 2015

Birendra Kumar Lakara, S/o Shri S. Lakara, aged about 45 years, R/o at present at Irrigation Colony, Pali, Tehsil, Post & Police Station Pali, District Korba (C.G.) Permanent Address Shanti Nagar, Ring Road No.2, P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Memon, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)
7. Vinod Singh, S/o Pawan Singh, aged about 40 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.)

---- Respondents

Writ Petition (Cr.) No.18 of 2015

Birendra Kumar Lakara, S/o Shri S. Lakara, aged about 45 years, R/o at present at Irrigation Colony, Pali, Tehsil, Post & Police Station Pali, District Korba (C.G.) Permanent Address Shanti Nagar, Ring Road No.2, P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Memon, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)
7. Mohan Das, S/o Tulsidas, aged about 22 years, R/o Village Sargawan, P.S. Masturi, District Bilaspur (C.G.) (Accused)

8. Bhagwat Suryawanshi, S/o Mahettar Suryawanshi, aged about 82 years, R/o Village Sargawan, P.S. Masturi, District Bilaspur, (C.G.) (Accused)

---- Respondents

Writ Petition (Cr.) No.17 of 2015

Birendra Kumar Lakara, S/o Shri S. Lakara, aged about 45 years, R/o at present at Irrigation Colony, Pali, Tehsil, Post & Police Station Pali, District Korba (C.G.) Permanent Address Shanti Nagar, Ring Road No.2, P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Meman, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)

---- Respondents

Writ Petition (Cr.) No.36 of 2015

Ashok Kumar Marbal, S/o Shri P.R. Marbal, aged about 45 years, R/o Block Colony, Katghora, Tehsil, Post & Police Station Katghora, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City

Kotwali, District Bilaspur (C.G.) (Accused)

5. Firoz Memon, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)
----- Respondents

Writ Petition (Cr.) No.71 of 2015

Birendra Kumar Lakara, S/o Shri S. Lakara, aged about 45 years, R/o at present at Irrigation Colony, Pali, Tehsil, Post & Police Station Pali, District Korba (C.G.) Permanent Address Shanti Nagar, Ring Road No.2, P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)

----- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Memon, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)
----- Respondents

Writ Petition (Cr.) No.66 of 2015

Birendra Kumar Lakara, S/o Shri S. Lakara, aged about 45 years, R/o at present at Irrigation Colony, Pali, Tehsil, Post & Police Station Pali, District Korba (C.G.) Permanent Address Shanti Nagar, Ring Road No.2, P.S. Civil Lines, Bilaspur, District Bilaspur (C.G.)

----- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)

2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-Charge of Police Station Masturi, Distt. Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, Distt. Bilaspur (C.G.) (Accused)
5. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, Distt. Bilaspur (C.G.) (Accused)
6. Mool Chand Khanday, S/o Late Devcharan Khanday, aged about 47 years, R/o Om Nagar, Jharhabhata, Police Station Civil Lines, Bilaspur, Distt. Bilaspur (C.G.) (Accused)

---- Respondents

Writ Petition (Cr.) No.199 of 2014

Ashok Kumar Marbal, S/o Shri P.R. Marbal, aged about 45 years, R/o Block Colony, Katghora, Tehsil, Post & Police Station Katghora, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Memon, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)

---- Respondents

Writ Petition (Cr.) No.200 of 2014

Ashok Kumar Marbal, S/o Shri P.R. Marbal, aged about 45 years, R/o Block Colony, Katghora, Tehsil, Post & Police Station Katghora, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Memon, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)
7. Mohan Das, S/o Tulsidas, aged about 22 years, R/o Village Sargawan, P.S. Masturi, District Bilaspur (C.G.) (Accused)
8. Bhagwat Suryawanshi, S/o Mahettar Suryawanshi, aged about 82 years, R/o Village Sargawan, P.S. Masturi, District Bilaspur, (C.G.) (Accused)

---- Respondents

Writ Petition (Cr.) No.201 of 2014

Ashok Kumar Marbal, S/o Shri P.R. Marbal, aged about 45 years, R/o Block Colony, Katghora, Tehsil, Post & Police Station Katghora, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Memon, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)

7. Vinod Singh, S/o Pawan Singh, aged about 40 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.)

---- Respondents

Writ Petition (Cr.) No.205 of 2014

Ashok Kumar Marbal, S/o Shri P.R. Marbal, aged about 45 years, R/o Block Colony, Katghora, Tehsil, Post & Police Station Katghora, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)
4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Meman, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)
7. Ramfal Suryavanshi, S/o Jivrakhan, aged about 40 years, R/o Village Bhadora, P.S. Masturi, District Bilaspur (C.G.) (Accused)

---- Respondents

AND

Writ Petition (Cr.) No.234 of 2014

Ashok Kumar Marbal, S/o Shri P.R. Marbal, aged about 45 years, R/o Block Colony, Katghora, Tehsil, Post & Police Station Katghora, District Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Naya Raipur, Mantralaya, Raipur (C.G.)
2. The Superintendent of Police, Bilaspur (C.G.)
3. Officer In-charge of Police Station Masturi, District Bilaspur (C.G.)

4. Rafeek Mohammad, S/o Haji Mahboob Ilahi, aged about 32 years, R/o Gahdhi Square, Near City Dispensary, Police Station City Kotwali, District Bilaspur (C.G.) (Accused)
5. Firoz Meman, S/o Yunus Memon, aged about 36 years, R/o Urtum, Police Station Sarkanda, District Bilaspur (C.G.) (Accused)
6. Narendra Singh @ Kallu, S/o Rain Singh, aged about 36 years, R/o Village Bhadhora, P.S. Masturi, District Bilaspur (C.G.) (Accused)
---- Respondents

For Petitioners: Mr. Anand Mohan Tiwari, Advocate.

For State/Respondents No.1 to 3: -
Mr. P.K. Bhaduri, Government Advocate.

For Respondent No.7 in W.P.(Cr.)No.205/2014: -
Mr. Durgesh Goyal, Advocate on behalf of
Mr. S.C. Verma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/04/2017

1. Since all the above writ petitions involve common question of fact and law, they are being disposed of by this common order.
2. Questioning certain directions as well as the objectionable remarks made in the judgment delivered on 21-10-2014 by the Judicial First Class, Bilaspur in Criminal Case Nos.453/2013, 454/2013, 456/2013, 452/2013, 458/2013, 455/2013 and 457/2013, in the case of State of Chhattisgarh v. Rafique Mohammad and others, against the two petitioners herein, they have filed this batch of writ petitions seeking quashing of these direction(s) and expunging of those adverse remarks.
3. Essential facts requisite to judge the correctness of the plea raised at the Bar are as under: -

4. Petitioners Birendra Kumar Lakara and Ashok Kumar Marbal were holding substantive post of Sub Registrar in the Office of the Registrar, Bilaspur, at the relevant point of time. They have admitted for registration certain sale deeds and thereafter, above-mentioned criminal cases were registered by the police against certain accused persons named in the judgment for offences under Sections 120-B, 420, 467, 468, 471, 419 and 201 of the IPC. The learned trial Magistrate by its judgment dated 21-10-2014 convicted those accused persons named therein and also sentenced them and while considering the question of sentence, finding the role of the present petitioners objectionable directed in paragraph 44 of the said judgment for arrest of the petitioners herein and for recording their memorandum statement under Section 27 of the Indian Evidence Act, 1872. Feeling aggrieved and offended against the direction made by the learned trial Magistrate in paragraphs 22, 32 to 36, 41, 42, 43 and 44 of the judgment for expunging and setting aside of that portion, these writ petitions under Article 226 of the Constitution of India have been filed by the petitioners.
5. The State Government has also filed its return and the return filed in W.P.(Cr.)No.184/2014 has been adopted. The main submission of the State is that the trial Court has acted in its judicial capacity in discharge of pious function of dispensation of criminal justice delivery system and the trial Court was fully justified in observing against the petitioners. It has also been submitted that the

observation made against the petitioners is based on sound facts. The trial Judge has considered pros and cons of the conduct of the petitioners and as such, no interference is called for in exercise of jurisdiction vested under Article 226 of the Constitution of India.

6. Mr. Anand Mohan Tiwari, learned counsel for the petitioners in the batch of the writ petitions, opening his argument, would submit that the petitioners in the capacity of Sub Registrar admitted certain sale deeds for registration in accordance with the provisions of the Indian Registration Act and the Registration Act, thereafter, the police has registered certain offences under the aforesaid Sections against the accused persons for criminal conspiracy, cheating etc., and that has been tried and they have been convicted and sentenced, by the impugned judgment, the learned trial Court has made serious offending observations against the petitioners, even directed for arrest of the petitioners in the proceeding in which neither the petitioners were party nor after conclusion of judgment notice to explain the facts has been given to them and, therefore, they have been deprived of an opportunity of hearing against the impugned observation / direction as such, the direction for arrest that too in a proceeding in which they are not party and there is no allegation or charge-sheet against them, is totally unsustainable and bad in law. He would rely upon a decision of this Court in the matter of **Lambodar Patel v. State of Chhattisgarh and others**¹.

7. Mr. P.K. Bhaduri, learned Government Advocate appearing for the

¹ W.P.(Cr.)No.276/2015, decided on 4-3-2016

State/respondents No.1 to 3, would submit that the judgment passed by the learned trial Magistrate is a judicial order, the trial Court has acted in judicial capacity and therefore the State has nothing to say in this regard, it is based on sound facts and the learned trial Court has considered the matter and conduct of the officers and has made observation and passed direction for arrest of the petitioners.

8. I have heard learned counsel for the parties and also considered the rival submissions made therein and gone through the record with utmost circumspection.
9. It is not in dispute that the petitioners are Sub Registrars working in the Office of the Registrar and in the criminal cases in which the impugned observations and directions have been given, the petitioners were not charge-sheeted and they were not party to it as accused. The accused persons therein were tried and convicted by the trial Court after hearing. So far as Criminal Case No.453/2013 (State of Chhattisgarh v. Rafique Mohammad and three others) is concerned, only Rafique Mohammad, Firoz Memon, Narendra Singh @ Kallu and Ramfal Suryavanshi were party accused after having been charge-sheeted. It is also not in dispute that no notices / opportunity of hearing was given to the present petitioners except to one R.P. Tiwari who was investigating officer and to whom notices were given and he has been heard by the trial Magistrate. Thus, by the impugned judgment, direction for arrest was issued against the present petitioners and even their

conduct has been severely criticized in paragraphs 22, 32 to 36, 41, 42, 43 and 44 of the judgment.

10. The short question that falls for consideration is inherent power and jurisdiction of this Court to expunge the adverse remarks made by a subordinate Court and what are the considerations involved in expunging those remarks. In order to resolve the said question, relevant judgments of the Supreme Court may be profitably and usefully noticed herein below:-

10.1) Way back, in the matter of **The State of U.P. v. Mohoammad Naim**², the Supreme Court (Constitution Bench) has held that the High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice and observed as under:-

“9. ... We think that the High Court of Bombay is correct and the High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only.”

Their Lordships have also laid-down tests in considering the expunction of disparaging remarks made against persons or authorities whose conduct comes for consideration before the Courts of law to be decided by them by summing up as under:-

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or

² AIR 1964 SC 703

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.

10.2) Similarly, in the matter of **Dr.Raghubir Saran v. State of Bihar and another**³, the Supreme Court has held that the High Court has inherent power to expunge objectionable remarks in judgment and order of the subordinate court against stranger, after it has become final and laid-down as under:-

“7-8. From the aforesaid discussion the following principles emerge: (1) A judgment of a criminal Court is final; it can be set aside or modified only in the manner prescribed by law. (2) Every judge, whatever may be his rank in the hierarchy, must have an unrestricted right to express his views in any matter before him without fear or favour. (3) There is a correlative and self-imposed duty in a Judge not to make irrelevant remarks or observations without any foundation, especially in the case of witnesses or parties not before him, affecting their character or reputation. (4) An appellate Court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it.

29. When the question arises before the High Court in any specific case whether to resort to such undefined power it is essential for it to exercise great caution and circumspection. Thus when it is moved by an aggrieved party to expunge any passage from the order or judgment of a subordinate Court it must be fully satisfied that the passage complained of it wholly irrelevant and unjustifiable, that its retention on the records will cause serious harm to the person to whom it refers and that its expunction will not affect the reasons for the judgment or order.”

3 AIR 1964 SC 1

10.3) In the matter of **Niranjan Patnaik v. Sashibhusan Kar and another**⁴, Their Lordships of the Supreme Court have held that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case and followed the decision of the Supreme Court in the matter of **Mohammad Naim** (supra) and observed as under:-

“24. It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. We hold that the adverse remarks made against the appellant were neither justified nor called for.”

10.4) Likewise, in the matter of **R.K.Lakshmanan v. A.K. Srinivasan and another**⁵, the Supreme Court has followed the case of **Mohammad Naim** (supra) with approval.

10.5) In the matter of **A.M. Mathur v. Pramod Kumar Gupta and others**⁶, Their Lordships of the Supreme Court have held that the Court has emphasized the need for judicial restraint and held that judicial restraint and discipline are as necessary to the orderly administration of justice and observed as under:-

“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

4 (1986) 2 SCC 569

5 (1975) 2 SCC 466

6 (1990) 2 SCC 533

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 neither good for the judge nor for the judicial process.”

Their Lordships have further concluded that intemperate comments should not be made by the Judges and observed as under:-

“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.”

10.6) In the matter of **Manish Dixit and others v. State of Rajasthan**⁷, it has been held by the Supreme Court that castigating remarks against any person should not be made and the Court is required to give opportunity of being heard in the matter in respect of the proposed remarks or strictures and the same is basic requirement, otherwise offending remarks would be in violation of the principles of natural justice and held as under:-

“43. Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the Court against any person, particularly when such remarks could ensue serious

⁷ AIR 2001 SC 93

consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW 30 (Devendra Kumar Sharma).”

10.7) In the matter of **Prakash Singh Teji v. Northern India Goods Transport Co.Pvt. Ltd. & Anr.**⁸, it has been held by the Supreme Court that adverse remarks should not be made unless it is necessary for decision of case and opportunity to give his reasons should be afforded to the concerned officer and observed as under:-

“13. In the light of the above principles and in view of the explanation as stated by the appellant for commenting the conduct of the plaintiff, we are satisfied that those observations and directions are not warranted. It is settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case as an integral part thereof. The direction of the High Court placing copy of their order on the personal/service record of the appellant and a further direction for placing copy of the order before the Inspecting Judge of the officer for perusal that too without giving him an opportunity would, undoubtedly, affect his carrier. Based on the above direction there is every possibility of taking adverse decision about the performance of the appellant. We hold that the adverse remarks made against the appellant was neither justified nor called for.”

11. The afore-stated principle has been followed with approval in the matters of **State of Gujarat and another v. Justice R.A.Mehta (Retired) and others**⁹, **Om Prakash Chautala v. Kanwar Bhan**

8 2009 AIR SCW 3078

9 (2013) 3 SCC 1

and others¹⁰, State of Uttar Pradesh and others v. Anil Kumar Sharma and another¹¹ and Amar Pal Singh v. State of Uttar Pradesh and another¹².

12. Aforesaid determination leads me to advert to the factual matrix of the case. In the case in hand, apparently no opportunity of hearing was afforded to the petitioners before making the aforesaid adverse remarks against them. Aforesaid remarks were not called for and were not necessary for just and proper disposal of criminal trial and it is likely to affect service career of the petitioners. Therefore, it is held that such adverse remarks against the petitioners by the learned Judicial Magistrate First Class is clearly uncalled for and unwarranted.
13. Issuance of direction / order for addition of a person as an accused is an extremely serious matter. It should be directed by the Court only in exceptional and most appropriate case. The Constitution Bench of the Supreme Court in the matter of **Hardeep Singh v. State of Punjab and others**¹³ while considering the scope and ambit of Section 319 of the CrPC has held that power under Section 319 of the CrPC is a discretionary and an extraordinary power, it is to be exercised sparingly and it is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person is also guilty of offence. Paragraphs 105 and 106 of the report state as under: -

10 (2014) 5 SCC 417

11 (2015) 6 SCC 716

12 (2012) 6 SCC 491

13 (2014) 3 SCC 92

“105. Power under [Section 319](#) CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319](#) CrPC. In [Section 319 CrPC](#) the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the Court acting under [Section 319](#) CrPC to form any opinion as to the guilt of the accused.”

14. The direction to arrest the petitioners herein and put to trial is also absolutely without jurisdiction and without authority of law, as the learned Judicial Magistrate First Class while sentencing the accused persons therein directed for arrest and recording of the statements of the petitioners herein under Section 27 of the Indian Evidence Act, 1872, merely on the basis of some strong observations which have no legs to stand.
15. After having noticed the test laid down and power and jurisdiction to expunge the adverse remarks, it would be appropriate to refer to

Rule 239 of the Rules and Orders for the Guidance of Criminal Courts. Rule 239 of the said Rules prescribes the procedure and stipulates that the judgments should be temperately worded. It states as under: -

“239. Judgments should be temperately worded. If a presiding officer finds it necessary to criticise the conduct of an official of another department in a Judgment the criticism must be worded with the utmost care having regard to the fact that in many cases the official has had no opportunity to refuse criticism or explain the action criticised. Personal imputation should not be made. A copy of the Judgment should be supplied to the official superior of the official criticised.”

16. A focused study of Rule 239 of the Rules and Orders (Criminal) would show that the presiding officer if feels absolutely necessary to criticise the conduct of an officer whose conduct came for consideration before the said Court, he has to take utmost care and caution as that officer against whom the observation is to be made has no opportunity to explain the action criticised. It also states clearly that personal imputation should not be made. The Rule further prescribes that a copy of the judgment should be supplied to the official superior of the official criticised.
17. Applying the principles of law laid down in the aforesaid judgments (supra) read with Rule 239 of the Rules and Orders (Criminal), it would appear that the present petitioners have admitted the sale deeds for registration in accordance with the provisions of the Indian Registration Act and it was duly registered as per law. The jurisdictional police has also investigated and only filed charge-

sheet against the accused persons named therein other than the petitioners herein in which they were tried and were sentenced also appropriately, but while sentencing them, the trial Court found certain irregularities / illegalities in registering the sale deeds and has straightway directed for arrest of the present petitioners as well as recording their memorandum under Section 27 of the Indian Evidence Act, 1872. Such course is clearly impermissible. If the test laid down by Their Lordships of the Supreme Court in **Mohammad Naim's** case (supra) is applied to the facts and circumstances of the present case, it would appear that the petitioners even did not have the bare opportunity to explain the said adverse circumstances noticed by the learned trial Magistrate, as it is not the case of the respondents / State that the petitioners were afforded opportunity to explain those circumstances. Likewise, such adverse remarks were neither necessary nor justifiable for the just decision of the case, as the persons accused who were charge-sheeted for the alleged commission of offence were stood convicted for the alleged offences. Thus, the offending remarks made and directions issued for arrest of the petitioners by the learned Judicial Magistrate First Class are in breach of the tests laid down by the Supreme Court in **Mohammad Naim's** case (supra) and such offending remarks are in teeth of the judgment of the Supreme Court in the matter of **A.M. Mathur** (supra), as such, retention of those remarks would cause legal harm and injury to the petitioners as they are holding substantive post of Sub Registrar.

Therefore, the offending remarks made by the learned trial Magistrate in the above-stated paragraphs of the judgment being unmerited and undeserving, deserve to be expunged in the ends of justice.

18. As a fall out and consequence of the above-stated discussion, the writ petitions are allowed and the adverse remarks made by the Judicial Magistrate First Class, Bilaspur in paragraphs 22, 32 to 36, 41, 42, 43 and 44 of the judgment dated 21-10-2014 passed in Criminal Case Nos.453/2013, 454/2013, 456/2013, 452/2013, 458/2013, 455/2013 and 457/2013 are hereby expunged and consequently, the direction for arrest of the petitioners is also set aside, however, without imposition of cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge