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

+ **W.P(CRL) 243/2016**

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Date of Decision: 18.07.2017

BABITA PUNIYA

..... Petitioner

Through

Mr.Mohit Mathur, Sr. Adv.
with Mr.D.K. Pandey, Adv.

versus

THE DISTRICT & SESSION JUDGE

..... Respondent

Through

Mr.R.S. Kundu, ASC with
Mr.Peeyush Bhatia, Adv. for
State.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J (ORAL)

1. The petitioner, a Metropolitan Magistrate in Delhi, has prayed for expunging the remarks passed by the learned ASJ-03 East, Karkardooma Courts in his order dated 06.06.2015 passed in connection with FIR No.140/2011 which was instituted for the offence under Sections 302/395/396/412 and 34 of the IPC under Gandhi Nagar police station (State vs. Jaheer Paeek etc).

2. The impugned order, in which certain comments have been made on the understanding of law of the Magistrate reveals that the cases of some of the accused persons were committed to the Court of Sessions despite their having been declared proclaimed offenders. It was in this context that it was recorded that the learned Magistrate

does not have the knowledge of basic law namely that an accused cannot be committed to Court of Sessions unless he is present before the learned Magistrate physically.

3. Brief facts of the aforesaid case is required to be noted.

4. Chargesheet was submitted in FIR No.140/2011 on 30.08.2011 against two accused persons namely Basir Ansari and Raisud Mian. On 09.09.2011, the case was committed to the Court of Sessions as the offences were exclusively sessions triable. On 30.10.2013 both the accused persons, who were sent up for trial, were convicted by the Trial Court. The aforesaid accused persons were ultimately acquitted by the High Court on 23.09.2014.

5. On 26.07.2014 chargesheet in another FIR No.356/2014 instituted for the offence under Section 307 of the IPC was filed before the Court of the petitioner, against four named accused persons. The aforesaid case was committed to the Court of Sessions for trial by order dated 04.08.2014. On 26.02.2015 a supplementary chargesheet in the aforesaid FIR was filed. Since the main chargesheet was pending trial before the learned Sessions Judge, the supplementary chargesheet was also sent to the same Sessions Court for appropriate orders. The supplementary chargesheet was later transferred to the Court of the learned ASJ-03, East, Karkardooma Courts, Delhi. The learned ASJ-03, East returned the supplementary chargesheet on the ground that the accused could not have been committed as he was a proclaimed offender.

6. Later, on 05.06.2015, a supplementary chargesheet against some of the accused persons was filed in FIR No.140/2011 which has

been referred to above. Since the other accused persons were tried and convicted by the Trial Court but acquitted by the High Court, the supplementary chargesheet was also sent to the learned District and Sessions Judge again by the petitioner. This file also was assigned to the same learned Additional Sessions Judge namely ASJ-03, East, Karkardooma Courts, Delhi. For the second time, when the supplementary chargesheet in another case was sent before the Court where the accused was a P.O., the impugned strictures regarding the knowledge/understanding of law of the petitioner and her not paying heed to the advice of the superior courts, was passed.

7. It has been submitted on behalf of the petitioner that commitment is only of the case and not of the accused persons. It would be necessary to extract the provisions of Section 209 of the Code of Criminal Procedure:-

“209. Commitment of case to Court of Session when offence is triable exclusively by it.- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.”

8. Thus what is committed is the case and not the accused persons.
9. Section 273 of the Code of Criminal Procedure mandates that the evidence in the case of trial or other proceedings shall only be taken in presence of the accused or when his personal attendance is dispensed with in the presence of his pleaders. However, Section 299 permits recording of evidence in the absence of accused under certain circumstances.

“299. Record of evidence in absence of accused.

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try², or commit for trial] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in

evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.”

10. Thus, in cases where the accused has been declared P.O, evidence can be recorded in his absence.

11. The comment made on the petitioner, therefore does not appear to be warranted and requires to be expunged.

12. Even assuming that some erroneous order was passed by a learned Magistrate, that would not, on the drop of the hat, entail a comment especially on the wisdom and understanding of the Magistrate. This is so because in a hierarchal system of Courts, superior Courts i.e. the appellate or revisional Courts have the powers of setting aside or revising the orders passed by the Magistrates. If a Magistrate commits a mistake or an error, even if those mistakes or errors are not such kind which could be tolerated, it should not attract condemnation unless there are some compelling reasons for the same, that also in exceptional circumstances.

13. Every Judge working under the system of law is required to be protected to the same degree as is normally afforded to Judges of superior Courts. They are to be protected from the liability to damages when they are acting judicially. A wrong appreciation of law or fact can always be corrected and comment, injurious to such Judges, ought to be avoided as the Judge concerned only reflects his own opinion about the facts of the case or his understanding of law.

14. In ***Braj Kishore Thakur vs. Union of India, (1997) 4 SCC 65***, the Supreme Court has held as under:-

“11. No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher courts publicly express lack of faith in the Subordinate Judges. It has been said, time and again, that respect for judiciary is not in hands by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a judicial officer against whom aspersions are made in the judgment could not appear before the higher court to defend his order. Judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary.”

15. As far back as in 1954, Chagla, C.J in ***State vs. Nilkanth Shripad***, AIR 1954 Bom.65 observed as follows:-

“8. ... It is very necessary, in order to maintain the independence of the judiciary, that every Magistrate, however junior, should feel that he can fearlessly give expression to his own opinion in the judgment which he delivers. If our Magistrates feel that they cannot frankly and fearlessly deal with matters that come before them and that the High Court is likely to interfere with their opinions, the independence of the judiciary might be seriously undermined.”

16. In ***Raghubir Saran (Dr.) vs. State of Bihar***, AIR 1964 SC 1, the principle was further reiterated :-

“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 cases, 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 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.”

17. Similar refrain was suggested in **Anjani K.Verma vs. State of Bihar, (2004) 11 SCC 188** wherein the same principle was reiterated that while passing strictures against a member of the subordinate judiciary, utmost care and caution is required to be taken.

18. In **V.K.Jain vs. High Court of Delhi through Registrar General and Ors, (2008) 17 SCC 538**, the Supreme Court after analyzing the law on the aforesaid aspect of judgment writing listed the following principles of law:-

- I. *Erosion of credibility of the judiciary in the public mind, for whatever reason, is the greatest threat to the independence of judiciary.*
- II. *Judicial discipline and restraint are imperative for the orderly administration of justice.*
- III. *Judicial decorum makes it imperative that the courts' judgments and orders must be confined to the facts and the legal position involved in the cases and the courts should not deviate from propriety, moderation and sobriety.*

- IV. *Majesty of the court is not displayed solely in cracking the whip on mistakes, inadvertent errors or lapses, but by persuasive reasoning so that the similar errors and mistakes are not repeated by the judicial officers.*
- V. *Majesty of the court would be enhanced by practicing discipline and self-restraint in discharging of all judicial functions. All actions of a Judge must be judicious in character.*
- VI. *The role of superior courts is like a friend, philosopher and guide of the judiciary subordinate to it. The judicial officers have to be treated with parental care and affection.*
- VII. *The approach of the superior courts ought to be correctional and not to be intended to harm or ruining the judicial career of the officers.*
- VIII. *The superior courts should always bear in mind that the judicial officer is not before it and should ordinarily refrain from passing strictures, derogatory remarks and scathing criticism. The passing of such an order without affording a hearing to the judicial officer is clearly violative of the principles of natural justice.*
- IX. *The superior courts should always keep in mind that disparaging and derogatory remarks against the judicial officer would cause incalculable harm of a permanent character having the potentiality of spoiling the judicial career of the officer concerned. Even if those remarks are expunged, it would not completely retribute and restore the harmed Judge from the loss of dignity and honour suffered by him.*
- X. *The superior courts should convey its messages to the judicial officers concerned through a process of reasoning, highlighting the correct provisions of law, precedents and proper analysis of evidence and material on record, but rarely by passing*

harsh and derogatory remarks.

- XI. *The superior courts must always keep in mind that it is a Herculean task for the judicial officer to get the derogatory remarks expunged by the superior court. He is compelled to take assistance from lawyers and such a practitioner may be appearing before him. It is embarrassing, humiliating, time-consuming and an expensive exercise.*
- XII. *The superior courts must always keep in mind that the much cherished judicial independence must not be presented only from outside but from within, by those who form the integral part of the judicial system. Damage from within has much larger and greater potential for harm than danger from outside. We alone in the judicial family can take care of it.*
- XIII. *The superior courts should not use strong, derogatory, disparaging and carping language while criticising the judicial officers. They must always keep in mind that, like all other human beings, the judicial officers are also not infallible. Any remarks passed against them may result in incalculable harm resulting in grave injustice.*
- XIV. *The superior courts' Judges should not be, like a loose cannon, ready to inflict indiscriminate damages whenever they function in judicial capacity.*
- XV. *The superior courts' should keep in mind that infliction of uncalled for, unmerited and undeserved remarks clearly amount to abuse of the process of the court.*
- XVI. *The superior courts should not allow themselves even momentarily the latitude of ignoring judicial precaution and propriety.*
- XVII. *It must be remembered that the subordinate judicial officers at times work under charged atmosphere and are constantly under psychological pressure with all the contestants and*

*their lawyers almost breathing down their necks
and more correctly up to their nostrils.”*

19. Taking into account the aforesaid facts and analyzing the law in that regard, it appears to this Court that certain lines in the order dated 06.06.2005 ought not to be allowed to remain on record. Since the specific sentences which are in the nature of strictures cannot be separated from the order, it is directed that any comment on the knowledge and wisdom of the learned Magistrate and his/her recalcitrance in not listening to the counsel offered to her on an earlier occasion, be expunged and deleted.

20. The petition stands allowed to the extent indicated above.

ASHUTOSH KUMAR, J

JULY 18, 2017

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