

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

Reserved on : 26.08.2019
Pronounced on : 01.10.2019
%
+ **CRL.M.C. 4176/2019**

STATE OF NCT OF DELHI

..... Petitioner

Through Mr. Rahul Mehra, Standing Counsel
with Mr. Rajesh Mahajan, Additional
Standing Counsel, Ms. Jyoti Babbar
Adv., ACP Naresh Kumar-OPS
Central, Inspector Rajeev Gunwant-
SHO-PS IP Estate, Inspector Ashok
Kumar-IO/Inspector Narcotics.

Versus

MUKESH KUMAR

.... Respondents

Through

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

CRL.M.C. 4176/2019 & CRL. M.A. No. 34227/2019

1. The petitioner has filed the present petition with the prayer to set aside the directions passed by Additional Session Judge-03, Central District, Tis Hazari Court Delhi vide order dated 14.08.2019 in case FIR No. 22/2019 U/s 420/467/468/471 and 120-B IPC registered at P.S. IP Estate.

2. The facts relevant are that on 18.09.2015 a complaint was filed by Dr. Y.K. Sarin, Medical Superintendent, Lok Nayak Hospital, Delhi. On 30.01.2019, FIR bearing No. 22/2019 U/s 420/467/468/471 and 120-B IPC was registered at PS IP Estate. As per the complaint a Special Audit of accounts of Lok Nayak Hospital was conducted for the period 01.04.2012 to 31.08.2014 by the Directorate of Audit which submitted its report on 01.04.2015. In the said audit report, it was pointed out that a substantial amount of money was transferred through Electronic Clearing System (ECS) from the salary head account of Lok Nayak Hospital, Delhi to 10 bank accounts of unknown persons. As per the report a total sum of Rs. 1,29,47,603/- was transferred in the accounts of 10 unknown persons by one Rajesh Dahiya, LDC of the hospital who was posted in accounts branch of Lok Nayak Hospital and was looking after the work of preparation of salary bills of junior residents / senior residents in the account branch. Thereafter, accused Mukesh Kumar moved an application for anticipatory bail which came up for hearing on 30.07.2019 before the Addl. Sessions Judge-03, Central District, Tis Hazari Court, Delhi.

3. During the course of hearing of this bail application, the Ld. A.S.J. observed that there was delay of more than 3 years in the registration of the FIR and also observed that not only the police officers holding the enquiry/investigation in the complaint but their superiors officers who allowed the matter to be suppressed are responsible and culpably accountable for this delay. The Ld. A.S.J. further observed that the probe has been botched up which gives an impression that the accused persons enjoyed the patronage of police officers who in turn were shielded by their

superiors, thereby forming a cartel. After observing this and relying on ***Lalita Kumari Vs. Govt. of U.P.***, CrI. MP No. 5029 of 2014 in WP (CrI.) No. 68 of 2008 and ***Kanwar Sain Gupta Vs. NCT of Delhi***, CrI. MC No. 2621/2012 dated 21.07.2016 of the High Court of Delhi, issued the following directions :

"The Commissioner of Police is directed to look into the matter and to take action against the erring police officers, under intimation to this Court, and to order for registration of FIR against the said police officers, after examining whether they were in contact with the offenders at the time of their inaction."

4. However, the Ld. A.S.J. did not deal with the bail application of accused persons and the entire focus of the Ld. A.S.J. was on the delayed registration of FIR and role of the police officers from top to bottom. The bail application was then fixed for arguments on 14.08.2019. But again on 14.08.2019 no decision with regard to the grant or dismissal of the anticipatory bail application was taken and the Ld. A.S.J. passed the following order :

"The order was sent to the Commissioner of Police. No report or even intimation of initiation of action has been received from the office of Commissioner of Police."

On the contrary, apparently the Commissioner of Police has earmarked the complaint to the Deputy Commissioner of Police, Central District to investigate the role of his superiors, among others. So eager was the Commissioner of Police to suppress the breach that he did not even care to assign the enquiry to a competent person who is higher in rank to the persons who are under the scanner."

A cryptic report is being submitted today on behalf of DCP (Central District) which reads as follows:

"With reference to above mentioned order, it is submitted that an enquiry into the matter is being conducted and the same is in progress. Time is required to file report into the matter. It is, therefore, requested that more time may please be given to file report in the matter. SHO/I.P. Estate has been directed to attend the Hon'ble Court on 14.08.2019 and apprise all the facts.

The report shows that the Commissioner of Police passed the buck on to the Deputy Commissioner of Police, who in turn slid out by further delegating the responsibility to the SHO of PS I.P. Estate, who in turn absented himself. The facts which the Deputy Commissioner of Police intended to be brought to the notice of the Court (mentioned in his report) therefore never saw the light of the day. The extreme apathy, indifference and insensitivity on the part of the police department is writ large. It exhibits a persistent and incorrigible approach of sweeping the matter under the carpet, rather than trying to take corrective measures.

Owing to such conscious and studied inaction, no purpose would be served by again trying to solicit the attention of the Commissioner of Police. This Court is therefore constrained to bring the matter to the notice of the Home Secretary, Government of India. The Home Secretary shall examine whether Delhi Police, under the stewardship of the incumbent Commissioner of Police, is fit, in terms of willingness, capability and probity, to investigate crimes of this nature where there has been loss to the state Exchequer. If the Home Secretary finds Delhi Police to be wanting in the aforesaid yardsticks, he may transfer the investigation to the Central Bureau of Investigation or any other competent law enforcement agency. The latter agency may invoke the provisions of Prevention of Corruption Act and shall examine the role played by accused persons as well as the police officers.

Nobody is present on behalf of Lok Nayak Hospital. The file has not been produced before this Court by the medical Superintendent of the

said hospital. Let bailable warrants in the sum of Rs. 5,000/- be issued against the Medical Superintendent of the said hospital."

5. I have heard the Ld. Standing Counsel for the petitioner and perused the records of the case.

6. It is urged by the Ld. Standing Counsel that pursuant to the order dated 30.07.2019 a short reply was filed by the Deputy Commissioner of Police on behalf of Commissioner of Police, informing the Court that inquiry in the matter was being conducted and was in progress and further time was sought on 14.08.2019 as the report could not be finalized in view of the sensitive security situation in the capital pursuant to the independence day arrangement and the perceived threats in Delhi due to the prevailing situation in Jammu & Kashmir. But instead of giving time to the petitioner/police, to file the report in terms of the order dated 30.07.2019, the Ld. Trial Court passed the impugned directions vide order dated 14.08.2019. He further urged that an enquiry has been conducted in the matter but due to pre-occupation in security arrangements and as the matter was listed just one day before the Independence day, the same could not be placed before the Ld. A.S.J. and the Ld. A.S.J. has failed to appreciate that the investigation in the related matter being FIR No. 377/2014 U/s 420/468/471 IPC registered at P.S. IP Estate stood completed and charge sheet has been filed. He further urged that the Ld. ASJ has not dealt with the anticipatory bail application, rather issued the impugned directions which were uncalled for. He further urged that un-necessary adverse remarks have been passed against the Delhi Police officials and uncalled for comments have been made on the functioning of Delhi Police and

competence of Commissioner of Police without even waiting for the report and without giving them any opportunity to explain their stand, which is clear violation of principles of natural justice.

7. It is further urged by the Ld. Standing Counsel that while passing the impugned directions the Ld. A.S.J. ignored the law on the subject and comments are made in ignorance of the law laid down in catena of judgments in this regard, and completely ignored the Delhi High Court Rules, particularly Chapter 1-H, paragraph 6, so the impugned directions are liable to be quashed and set aside.

8. Delhi High Court Rules, Chapter 1-H, paragraph 6 reads as follows :

"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."

9. The Ld. Standing Counsel further relied upon the judgment passed by this Court in the case titled as **Ravinder Tyagi Vs. State**, Crl. Writ Petition No. 264 of 2011 wherein it was categorically held as under :

"14. In the case of State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2011) 12 SCC 689 the Supreme Court observed as under:

13. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalisations defeat the very purpose for which they are made. Thus, 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.

14. This view has been persistently approved and followed by this Court as is evident from the judgments in [Jage Ram, Inspector of Police & Anr. v. Hans Raj Midha](#), AIR 1972 SC 1140; [R.K. Lakshmanan v. A.K. Srinivasan & Anr.](#), AIR 1975 SC 1741; [Niranjan Patnaik v. Sashibhusan Kar & Anr.](#), AIR 1986 SC 819; [Major General I.P.S. Dewan v. Union of India & Ors.](#), (1995) 3 SCC 383; [Dr. Dilip Kumar Deka & Anr. v. State of Assam & Anr.](#), (1996) 6 SCC 234; and [State of Maharashtra v. Public Concern for Governance Trust & Ors.](#), AIR 2007 SC 777.

15. Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.

15. In the case of [State of West Bengal and Ors.v.Babu Chakroborty](#) AIR 2004 SC 4324 the Supreme Court held:

".....In our view, the High Court was not justified and correct in passing observations/strictures against appellants 2 & 3 without affording an opportunity of being heard, and it is in violation of catena of pronouncements of this Court that

harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case. Likewise, the directions issued by the High Court to the trial Court to lodge a complaint to the Magistrate having jurisdiction for prosecuting appellants 2 and 3 for having committed an offence under [Section 58](#) of the Act read with Section 166 and 167 [of the Indian Penal Code](#) is not warranted. The observations made by the High Court are liable to be expunged and accordingly, we expunge the same including the direction to lodge a complaint against appellants 2 & 3.

As rightly pointed out by Mr. Tapas 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 penalize the two police officers who were discharging their official duties as per the law. The action taken by appellants 2 & 3 have 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, enables the Court to pass strictures against the officials and ordered compensation. There is no evidence or circumstance to show that there was any malafides on the part of these officers.

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 realize or to recover the whole of such compensation from appellant No. 2, Mr. K.L. Meena, a member of the Indian Police Service, is wholly unjustified.

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 are for implementing the objects behind the Act by resorting the check and to direct the raids etc. The High Court has further penalized 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."

16. In the case of [State of Maharashtra v. Public Concern for Governance Trust & Ors.](#) AIR 2007 SC 777 the Supreme Court discussed the law on the subject as under:

23. We shall now analyze and consider the rulings of this Court cited by learned Solicitor General.

1. [Dr. Dilip Kumar Deka & Anr. vs. State of Assam & Anr.](#), (1996) 6 SCC 234 (paras 6,7 & 8) The above judgment relates to expunging adverse remarks. The above was a case of adverse remarks recorded by the High Court against the members

of hospital allegedly for misleading the court and stalling process of the court by submitting manipulated report regarding condition of a person to justify his shifting from police remand to the hospital. The High Court made adverse remarks without giving any opportunity to the members of extending or defending themselves, without any evidence showing that their conduct justified such remarks and without any necessity of such remarks for the purpose of deciding the matter. This Court held on facts that adverse remarks were unwarranted and hence expunged. This Court also cautioned superior courts to use temperate and moderate language and also held that opportunity to be given to the affected party before recording of adverse remarks by the Court. This Court also held thus: "6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a Court of law in cases to be decided by it were succinctly laid down by this Court in [State of U.P. v. Mohd. Naim](#), AIR 1964 SC 703. Those tests are:

- (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.*

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in [Jage Ram v. Hans Raj Midha](#), (1972) 1 SCC 181, [R.K. Lakshmanan v. A.K. Srinivasan](#), (1975) 2 SCC 466 and [Niranjan Patnaik v. Sashibhusan Kar](#), (1986) 2 SCC 569.

7. *We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice.*

8. *Judged in the context of the first test laid down in Mohd. Naim's case (supra) the above discussion of ours is sufficient to quash the impugned remarks, but we find that the remarks are vulnerable also to the second test laid down therein. On perusal of the order dismissing the revision petition we find that the remarks of the learned Judge are based solely upon the fact*

that the report of the medical Board consisting of four medical experts belied their report. Indeed, except the report of the Board we have also not found any other material on record from which the learned Judge could have legitimately and justifiably obtained satisfaction to pass the above remarks against the two appellants before us. We hasten to add that in making the above observation we have left out of our consideration the materials which prompted the learned Judge to make adverse comments against the IO."

2. Rajiv Ranjan Singh 'Lalan' (VIII) & Anr. Vs. Union of India & Ors., (2006) 6 SCC 613 at 645 (para 57).

In the above case, Dr. AR. Lakshmanan, J. concurring with the opinion expressed by Hon. K.G.Balakrishnan, J. has observed that public interest litigation is meant for the benefit of the lost and the lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court and that PILs are not meant to advance the political gain and also to settle personal scores under the guise of PIL and to fight a legal battle. In para 57, it has been observed as follows:-

"57. Certain allegations have been made against CBDT and the Public Prosecutors, Members of the Income-tax Tribunal, etc. None of them were made parties before us. Therefore, the allegations made against them are one-sided and cannot be

looked into at all. We cannot also say that all these authorities have acted in a mala fide manner."

5. [A.K.K.Nambiar vs. Union of India & Ors.](#), (1969) 3 SCC 864 at 867. This Court in paras 8 & 9 held thus:

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24. *In the instant case, allegations have been made against the then Chief Minister, however, he was not made party before the Court. Therefore, the allegations made against him are one-sided and do not merit any consideration.*

25. *We are surprised to find that inspite of catena of decisions of this Court, the High Court did not, give an opportunity to the affected party, the then Chief Minister, before making remarks. It cannot be gainsaid that the nature of remarks made in this judgment will cast a serious aspersion on the Chief Minister affecting his reputation, career etc. Condemnation of the then Chief Minister without affording opportunity of being heard was a complete negation of the basic principles of natural justice.*

17. *In para 36 and 37 of the said judgment the Supreme Court observed :*

"36. It is thus amply clear that one is entitled to have and preserve ones reputation and one also has a right to protect it.

In case any authority in discharge of its duties fastened upon it

under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review.

37. For the aforesaid reasons, we hold that the observations/strictures and remarks made by the High Court against the appellant behind his back is totally uncalled for and not warranted. We, therefore, have no hesitation to order expunction of the remarks made in para Nos. 38,139, 140 and 141 of the impugned judgment. The civil appeal is allowed only to the above extent. We order no costs."

18. In the case of [State of West Bengal v. Mir Mohammad Omar & Ors](#) (2000) 8 SCC 234 the Supreme Court directed the courts to ordinarily desist from castigating the investigation while ordering acquittal. It observed as under:

41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was

conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above.

10. Ld. Standing Counsel also relied on **DCP Vs. Badlu Paswan & Ors.** W.P.(CrI.) No. 3034/2015 in which it has been held as under:

"17. It has been held in various decisions by the Supreme Court that in case of lapse being found on the part of investigating agency, it can be recorded but directing departmental proceedings virtually amounts to holding person guilty which is not a permissible course.

18. In the case [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 learned ASJ by seeking action taken report in respect of the action against the Investigating Officer encroached upon the administrative power of the Disciplinary Authority. He not only started monitoring the disciplinary proceedings but also "re-investigation" which is not even permissible under the law.

11. The Ld. Standing Counsel further urged that this Hon'ble Court vide judgment dated 18.12.2015, passed in the case of **State Vs. Yogender Singh** WP (CrI.) No. 139/2015 and in the case of **Rakesh Chand Vs. State of NCT of Delhi** WP (CrI.) No. 207/2015 has held that the adverse remarks against the police or its officers ought not to be passed unless these are absolutely necessary for deciding the case. Relevant part of *Yogender Singh* (*supra*) reads as under :

"9. While concluding, the Court directed a copy of the order to be sent to the Commissioner of Police with a direction to take appropriate action against erring police officials including the concerned SHO of P.S.Bhalswa Dairy within two weeks from the date of receipt of a copy of the order and to submit action taken report (ATR). The case was directed to be listed on a particular date before the same Court.

10. The present petition seeks deletion of the aforesaid paragraph from the order rejecting the bail of the respondent Yogender Singh which contained the direction to send the copy of the order to the Commissioner of Police for taking action against erring police officials and to submit the ATR by the Commissioner of police before the same Court.

11. Learned counsel for the petitioner/State submitted that the Court below was perfectly justified in rejecting the prayer for bail but by directing the Commissioner of Police to take action against the erring police officials and submit an ATR, the Court has overstepped its jurisdiction.

13. A grievance was especially raised with respect to the direction to the Commissioner of Police to take action against the erring police officials and submit an ATR. Once a Court of law holds that a particular functionary of the State or a person has flouted any provision of law, it amounts to

conviction. Times without number, the Supreme Court as well as the High Courts have cautioned that judicial orders are respected for the reason that those are couched in legal terms, and they take note of legal provisions and are in conformity with law. There can be no gainsaying the fact that one of the basic principles governing any action is that nobody can be condemned unheard. The officials of the concerned police station and the DCP North West were not afforded any opportunity of explaining cause as to why there was a delayed registration of the FIR. In a case where there is a dispute with regard to ownership and possession of property, police functionaries have to adopt a cautious approach. Unless, in the first instance, it is found out that a criminal case has been made out, there could be no hurried registration of the FIR. A preliminary enquiry, though with urgent dispatch, is required to be made. The Court below did not have the occasion to hear the view point of the investigating agency or the SHO of the concerned police station or the DCP, North West.

14. From the order passed by the Trial Court one can make out that the DCP, North West ordered for the registration of the FIR and also directed for sending in a report, fixing the responsibility on the erring police official at whose instance there was a delayed registration of the FIR. What happened thereafter was not known to the learned Addl. Sessions Judge

for him to comment on the functioning of the DCP, North West.

15. While administering justice, a Judge is expected to be acting judicially without being deterred by any consideration. While doing so, he has the liberty of expressing his views about the conduct of the investigating agency or other organs of the Government but has to be careful about not overstepping its jurisdiction. An order or a judgment is a privileged document and a Judge has always to remind himself that the immunity which he enjoys in writing an order or a judgment carries with it the duty of circumspection.

16. If the learned Addl. Sessions Judge was not happy with the way in which the investigation was being carried out, it was enough to record his displeasure. That has been done aptly by the learned Addl. Sessions Judge. What is not approved of is his direction to send his order to the Commissioner of Police for taking action against the erring police officials and submission of action taken report to him. This cannot be taken kindly to on two scores. By saying so, the learned Judge has pre-judged the action/inaction of the investigating agency and other police officers without affording any opportunity to explain the circumstances for delayed lodging of the first information report; and the Court, by seeking action taken report has in a way, encroached upon the administrative

functions of the police administration and thereby has begun monitoring not the investigation of the case but the process of taking disciplinary action against the police officials. The Commissioner of Police, is left with no choice, once a Court of law holds that law has been flouted and, therefore, action be taken against the concerned persons. The disciplinary enquiry, therefore, would only be on paper when the offence is held by the court to have been committed".

Relevant extract of Rakesh Chand (supra) reads as follows :

".....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."

12. The petitioner in the instant case, is aggrieved by the following observations of the Ld. A.S.J. which reads as follows:

"This Court is therefore constrained to bring the matter to the notice of the Home Secretary, Government of India. The Home Secretary shall examine whether Delhi Police, under the stewardship of the incumbent Commissioner of Police, is fit, in terms of willingness, capability and probity, to investigate crimes of this nature where there has been loss to the state Exchequer. If the Home Secretary finds Delhi Police to be wanting in the aforesaid yardsticks, he may transfer the investigation to the Central Bureau of Investigation or any other competent law enforcement agency. The latter agency may invoke the provisions of Prevention of Corruption Act and shall examine the role played by accused persons as well as the police officers."

13. The judgments relied hereinabove and the Delhi High Court Rules, Chapter 1-H, paragraph 6, clearly lay down that the judges should refrain from making disparaging remarks against a person or authorities, unless and until the party whose conduct is in question is before the Court or has an opportunity of explaining or defending itself, whether there is any evidence on record bearing on that conduct justifying the remarks and whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

14. The Ld. A.S.J. while dealing with the anticipatory bail application vide its order dated 30.07.2019 observed that the matter regarding fraudulent transfer of funds was reported to the police vide letter dated 18.09.2015 which was made by a Government hospital and supported by audit report, but the FIR was not registered till 30.01.2019. Since the FIR was not registered for more than 3 years, the Ld. Trial Court came to the conclusion that it was clear that the FIR was not registered for 3 years with a view to

provide benefit to the accused persons. The Ld. Trial Court even went to the extent of observing in the order dated 30.07.2019 that not only the police officers holding the inquiry/investigation in the matter but their superior officers who allowed the matter to be suppressed are responsible and culpably accountable for this and the probe has been botched up giving an impression that the accused persons enjoyed the patronage of police officers who in turn were shielded by their superiors, thereby forming a cartel.

15. It is not understood as to on what basis and what was the material before the Ld. A.S.J. which persuaded him to pass such scathing remarks that the probe has been botched up and the police officers, their superiors and the accused have formed a cartel. Such remarks made by the Ld. A.S.J. are totally unwarranted and he should have refrained himself from making such remarks against the police force of the capital without there being anything on record to show that police officers and their superiors had any malafides.

16. No doubt, there was a delay in registration of the FIR but even if there was a delay in the registration of the FIR, the Ld. A.S.J. should have only brought the matter to the knowledge of the Commissioner of Police for taking action against the erring police officials. The matter should have been left to the department and the Ld. A.S.J. should not have made such sweeping comments regarding the functioning of the Delhi Police. Not only this, the Ld. A.S.J. has even singled out the Commissioner of Police and doubted his capability to run the Delhi Police under his command. These observations of the Ld. A.S.J. against the Commissioner of Police are

totally unwarranted as there is no material on record to invite such comments that too without affording him any opportunity to put forth his point of view.

17. The Ld. A.S.J., has prejudged the entire matter and in a sense has passed the judgment of guilt against the Delhi Police without affording them any opportunity to be heard. And it seems in his eagerness to condemn Delhi police, he forgot the cardinal principle of law "*audi alteram partem*" which a judicial officer should never forget. The order dated 14.08.2019, notes that the Commissioner of Police has earmarked the complaint to the Deputy Commissioner of Police to investigate the role of his superiors. Now, I would pause here for a moment and would say as to how the superiors of the DCP have botched up the investigation or they have formed a cartel. It seems, since the FIR was delayed and the report was not filed on 14.08.2019, the Ld. A.S.J. came to the said conclusion. These observations are only a figment of imagination of the Ld. A.S.J. in the absence of any material on record in this regard. It is also pertinent to mention here that it is not for the Commissioner of Police to examine complaints himself. The complaints are marked to different police officers for appropriate action.

18. In the instant case, the Commissioner of Police had marked the complaint to D.C.P. for further action. I am really surprised, to see the observations made by the Ld. A.S.J. in the order dated 14.08.2019, where he further goes on to say that the Commissioner of Police was so eager to suppress the breach that he did not assign the enquiry to a competent person who is higher in rank to the persons who are under the scanner. I am at loss

to find from where the Ld. A.S.J. has drawn the conclusion regarding the eagerness of the Commissioner of Police to suppress the breach and how he can comment on the competence or incompetence of the DCP to whom the complaint was marked by the Commissioner of Police. It is the prerogative of the Commissioner of Police to mark the complaint addressed to him to any of his officer and in this case, the Commissioner of Police has marked the complaint to an officer of DCP rank who is a very senior officer.

19. What seems to have irked the Ld. A.S.J. is that the Commissioner of Police had deputed Deputy Commissioner of Police to enquire into the matter, who had sent the following report to the Court :

"With reference to above mentioned order, it is submitted that an enquiry into the matter is being conducted and the same is in progress. Time is required to file report into the matter. It is, therefore, requested that more time may please be given to file report in the matter. SHO/I.P. Estate has been directed to attend the Hon'ble Court on 14.08.2019 and apprise all the facts.

20. The said report was sent through the SHO which did not augur well with the Ld. A.S.J. As per the report more time was sought by the police to file the report. The Ld. Standing Counsel has argued that further time was sought on 14.08.2019 as the report could not be finalized in view of the sensitive security situation in the capital pursuant to the independence day

arrangements and the perceived threats in Delhi due to the prevailing situation in Jammu & Kashmir.

21. The report further reveals that SHO, PS IP Estate was directed to attend the Court on 14.08.2019 and to apprise the Ld. A.S.J. about the steps taken by the police in regard to the directions given by him. But the SHO, P.S. IP Estate did not appear in the Court, however, the record shows that it was communicated to the Ld. A.S.J. that more time was required as the inquiry was being conducted. No doubt, the SHO, PS IP Estate had not appeared but in any case it was informed to the Ld. A.S.J. that the inquiry in the matter was being conducted. In these circumstances, the Ld. A.S.J., should have shown some patience and waited for the enquiry report to be filed by the police and should not have jumped to the conclusion with regard to the competence /incompetence, wiliness or unwillingness of the Delhi police to investigate the crime of such nature.

22. It was not fair on the part of the Ld. A.S.J. to write off the competence of Delhi Police with one stroke of pen without taking the complete inquiry report on record and giving an opportunity to the Delhi police of being heard in this regard.

23. A letter dated 22.08.2019 of the Office of the Addl. Commissioner of Police, Vigilance, Delhi, addressed to the Joint Commissioner of Police, headquarter, Delhi has been brought on record by the petitioner, which shows that action has already been initiated against the erring police officers and a joint Departmental Inquiry has been directed to be initiated against SI (Exe.) Devender Kaushik, Insp. (Exe.) Yashpal Singh, Insp. (Exe.)

Ravinder Kumar, SI (Exe.) M.K. Manoj. Had the Ld. A.S.J. exhibited some patience, he would have come to know about the action taken by the petitioner against the erring police officials, but the Ld. A.S.J. without affording proper opportunity to the Delhi Police and without waiting for the enquiry report, issued the impugned directions, heavens would not have fallen, if the Ld. ASJ, waited for the final report. The Ld. A.S.J. has prejudged the actions/inactions of the investigating agency and police officials and no opportunity was given to them to file a complete inquiry report and without waiting for the same, the Ld. A.S.J. commented on its functioning and without there being any inquiry report, he went on to issue the impugned directions. The Ld. A.S.J. has in a sense encroached upon the administrative functions of the police administration and even if there was a lapse on the part of the police officials, the Ld. A.S.J., should have recorded such lapses and indicate that such lapses should not occur in future, instead of directing the superior authorities to take legal action against the police officials which only meant that the Commissioner of Police alongwith other police officials have also been held to be suspects in the crime alongwith the accused persons.

24. I, therefore, for all the reasons stated above, expunge the following directions passed by the Ld. Addl. Sessions Judge-3, Central District, Tis Hazari Courts, Delhi vide impugned order dated 14.08.2019 :-

"This Court is therefore constrained to bring the matter to the notice of the Home Secretary, Government of India. The Home Secretary shall examine whether Delhi Police, under the stewardship of the incumbent Commissioner of Police, is fit, in terms of

willingness, capability and probity, to investigate crimes of this nature where there has been loss to the state Exchequer. If the Home Secretary finds Delhi Police to be wanting in the aforesaid yardsticks, he may transfer the investigation to the Central Bureau of Investigation or any other competent law enforcement agency. The latter agency may invoke the provisions of Prevention of Corruption Act and shall examine the role played by accused persons as well as the police officers."

25. The Ld. A.S.J. is well advised to concentrate on his judicial work and should not open parallel proceedings in the matter and should not dawn upon himself the role of disciplinary authority over Delhi Police. The Commissioner of Police is seized of the matter and is competent enough to take appropriate action against erring police officers.

26. The petition is, accordingly, allowed and disposed of in the above terms.

RAJNISH BHATNAGAR, J

OCTOBER 01, 2019

Sumant