

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 75 of 2021****Order reserved on 04/03/2021****Order delivered on 08/03/2021**

Vijay Patel S/o Late Shri Khushiram Patel, Aged about 43 years, Posted as Station House Officer, Police Station Pushpal, District Sukma, Chhattisgarh.

---Petitioner**Versus**

- 1.State of Chhattisgarh, Through the Secretary, Department of Home Affairs, Mahanadi Bhawan, Mantralaya, Atal Nagar, New Raipur, Chhattisgarh.
- 2.Director General of Police, Police Head Quarters, Near Mantralaya, Atal Nagar, Nava Raipur, Chhattisgarh.
- 3.Inspector General of Police, Bastar Range, Bastar, Chhattisgarh.
- 4.Superintendent of Police, Sukma, Distt. Sukma, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. Dhiraj Kumar Wankhede, Advocate
For State :- Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

- 1.Petitioner, being an Investigating Officer, investigated the offence under Section 376 of

IPC read with Section 6 of Protection of Children from Sexual Offences Act, 2012 registered against the accused which was the subject matter of Special Session Trial No. 10/2019 wherein by impugned judgment dated 20/10/2020, the accused has been acquitted from the aforesaid charges, but while recording the conclusion, learned Session Judge has also recorded in paragraph 18 that on account of the ineffective and negligent conduct of the petitioner in performing his duty of conducting the investigation of aforesaid offence, the guilt of the accused could not be established and accordingly, relied upon the decision rendered by the Supreme Court in the matter of **State of Gujarat v. Kishanbhai**¹ and directed the Director General of Police to initiate appropriate action against the petitioner for the negligent investigation conducted by him.

2. Calling in question the legality, validity and correctness of the impugned judgment passed by learned Session Judge directing appropriate action to be taken against the petitioner for his negligent conduct, he has preferred this writ petition particularly on the ground that

¹ 2014 SCC Online SC 21

learned Session Judge could not have made any observation about his official conduct without affording him an opportunity of hearing before directing appropriate action to be taken against him for his negligent action in the investigation conducted by him as it is violative of principles of natural justice as laid down by the Supreme Court in a number of decisions from time to time including in the matter of State (Govt. of NCT of Delhi) v. Pankaj Chaudhary².

3. Return has been filed by the State opposing the averment made in this writ petition and justifying the initiation of action against the petitioner for the negligent performance of his duty.

4. Mr. Dhiraj Kumar Wankhede, learned counsel for the petitioner, would submit that learned Session Judge is absolutely unjustified in making adverse remarks about the petitioner holding that petitioner has been negligent while performing his duty by making a defective investigation, that too, without affording him an opportunity of hearing before making such adverse remarks about him. He would rely upon

the decision of the Supreme Court in Pankaj Chaudhary (supra) and submit that the adverse remarks made about the petitioner in paragraphs 16 and 18 of the impugned judgment passed by learned Session Judge deserves to be expunged.

5. Mr. Jitendra Pali, learned Deputy Advocate General, would submit that the finding recorded by learned Session Judge that petitioner was negligent in performing his duty of investigating the offence in a right manner is a correct finding and it has rightly been directed that appropriate action be taken against him which is strictly in accordance with law and no relief can be granted to the petitioner.

6. I have heard learned counsel for the parties, considered their rival contentions put forth and perused the records with utmost circumspection.

7. It is not in dispute that on 02/06/2019, FIR was registered against the accused person under Section 376 of IPC and Section 6 of POSCO Act in Police Station Tongpal, Distt. Sukma by the petitioner and said offences were investigated and accused persons were charge-sheeted by the petitioner and on conclusion of trial, the accused person was acquitted by extending

benefit of doubt, however, learned Session Judge passed adverse remarks against the petitioner in paragraphs 16 to 18 of the impugned judgment of acquittal dated 20/01/2020 holding that petitioner did not conduct proper investigation and it was a defective investigation which was conducted by him on account of which the accused was acquitted. The said remarks made by learned Session Judge have been sought to be challenged by the petitioner on the ground that the remarks made against him are completely disparaging and undeserving, and that too, without affording minimum opportunity of hearing to the petitioner before passing of such adverse remarks which is absolutely in violation of principles of natural justice.

8. In the matter of Pankaj Chaudhary (supra) also, the accused was convicted for offence under Section 376(2)(g) of IPC by the trial Court whereas the High Court, while acquitting the accused, made certain disparaging remarks about the Investigating Officer and the matter was challenged by the said Officer before the Supreme Court wherein their Lordships of the Supreme Court, further taking note of the

decisions rendered in the matters of State of U.P. v. Mohd. Naim³, S.K. Viswambaran v. E. Koyakunju⁴, Manish Dixit v. State of Rajasthan⁵, R.K. Lakshmanan v. A.K. Srinivasan⁶, Niranjan Patnaik v. Sashibhusan Kar⁷, Jage Ram v. Hans Raj Midha⁸ and State of Karnataka v. High Court of Karnataka⁹ clearly held that since the strictures were passed by the High Court without affording an opportunity of hearing, the disparaging remarks could not have been made and it was set aside by holding in paragraphs 42 and 45 as under :-

"42. While passing disparaging remarks against the police officials and directing prosecution against them, in our considered view, the High Court has failed to bear in mind the well settled principles of law that should govern the courts before making disparaging remarks. Any disparaging remarks and direction to initiate departmental action/prosecution against the persons whose conduct comes into consideration before the court would have serious impact on their official career.

45. Since the High Court has passed strictures against the police officials who were involved in the investigation of FIR No. 559 of 1997 without affording an opportunity of hearing to them, the disparaging remarks are liable to be set aside."

3 AIR 1964 SC 703

4 (1987) 2 SCC 109

5 (2001) 1 SCC 596

6 (1975) 2 SCC 466

7 (1986) 2 SCC 569

8 (1972) 1 SCC 181

9 (2000) 7 SCC 333

9. Reverting to the facts of the present case, learned Session Judge, while acquitting the accused therein found the petitioner guilty of defective/illegal investigation and made disparaging remarks/direction to initiate appropriate action against him for the negligent investigation conducted by him without affording an opportunity of hearing to him. As such, the principle of law laid down by their Lordships of the Supreme Court in Pankaj Choudhary (supra) squarely applies to the facts of the present case and the disparaging and undeserving remarks made by learned Session Judge against the petitioner is in teeth of the judgment of Pankaj Choudhary (supra) and it is liable to be expunged. However, the objection of learned State counsel that in the matter of Kishanbhai (supra) the Supreme Court has issued certain directions to the Home Department of all the States with regard to orders of acquittal, but the fact remains that in the instant case, disparaging and undeserving remarks have been made by learned Session Judge against the petitioner, that too, without affording him an opportunity of hearing despite several pronouncements and directions issued by their

Lordships of the Supreme Court including Pankaj Choudhary (supra). As such, the disparaging and undeserving remarks made by learned Session Judge against the petitioner in paragraphs 16 to 18 of the impugned judgment of acquittal dated 20/01/2020 are hereby expunged and the consequential proceeding initiated against the petitioner by the A.S.P. on 12/10/2020 (Annexure P/8) pursuant to the impugned judgment is also quashed. However, State is at liberty to proceed in accordance with law.

10. Accordingly, the instant writ petition stands allowed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet