

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1487 OF 2023

SUDHIRKUMAR SOHANLAL BAJ
VERSUS
SUBHASH MOHAN KATORE AND ANR.

Mr. A.Z. Gandhi, Advocate for the applicant.
Mr. V.Y. Bhide, Advocate for respondent No.1.
Mr. Y.G. Gujarati, APP for respondent/State.

CORAM : KISHORE C. SANT, J.
DATED : 28.04.2023

PC :-

01. Heard. This Criminal Application is only to the limited extent of expunging remarks made against an Advocate by the learned Additional Sessions Judge, Sangamner in judgment and order in Criminal Revision No.7 of 2013 dated 27.01.2021.

02. This Court has already heard substantive challenge to the said order in Criminal Writ Petition No.902 of 2021 in judgment dated 31.01.2022. The learned Advocate draws attention of this Court to the observations made in respect of Advocate appearing for the revision applicant in Revision No.7 of 2013. He relies upon judgment reported in 2022 (1) Mh.L.J. 185 in the case of Neeraj Garg Vs. Sarita Rani & Ors. He submits that these

observations/remarks are uncalled for and needs to be expunged from the judgment and order.

03. This Court finds that at various places in para Nos.19, 21, 22, 23, 24, 25 and 26, the Revisional Court has passed several remarks against Advocate Mr. Gandhi. This Court finds that those observations were totally uncalled for for the purpose of deciding the revision before the Court. The Revisional Court can make remarks regarding conduct of the parties while making observations. These observations have been made without issuing notice to the Advocate. Any uncalled remark against an Advocate certainly affects his reputation in the Court and such observations should be avoided. The Hon'ble Apex Court in the case of Neeraj Garg (Supra) has clearly observed in para 15 as under :-

“15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court.”

. In view of above, the Hon'ble Apex Court has directed that the unnecessary remarks as recorded by the learned Judge in that case should not have been recorded. It is also further observed that no opportunity was

provided to the Advocate to explain his conduct. In this case there is no question of conduct of the Advocate, still remarks are made. This Court, therefore, finds it proper in the interest of justice to expunge the following underlined remarks:-

Para 19 :- In the light of above reasons, the conduct of the applicant/accused for production of documents and further sending the documents for expert's opinion appears to be no more than standard methodology "of shrewd advocate" adopted to procrastinate the hearing of the complaint unduly to unpalatable level and kill time. In the present case, "the Ld. Advocate Shri Gandhi has succeeded to do so because" the case is pending with the court for last 18 years despite the mandate of law that such summons case are to be dispose-off within six months.

Para 21 :- "But, I am really put at my wits end by Ld. Advocate Gandhi for the applicant by raising rather inane contention to halt the progress of two decade old trial of a summons case. The Ld. Advocate Shri Gandhi even had dared to file written arguments running into twenty five pages to substantiate his contentions that this revision is tenable when well settled position of law is that revision against interlocutory order is not maintainable."

Para 22 – Whole para deleted.

Para 23 – It also needs to be elaborated here that after hearing lengthy arguments "of the Ld. Adv. Gandhi" forcing the court to consider it in detail and deal it elaborately was all at the cost of sheer waste of judicial time "by none other than a long standing practicing advocate behaving like a fresh law graduate."

Para 24 – "with the kindest help of this Ld. Advocate Gandhi has seriously" "is also a typical example of how with certain impish skills in criminal trial an advocate can stall progress of our already snail paced courts of criminal law with ulterior motive."

Para 25 – "an incompetent advocate can delay a trial for years.. a competent advocate can delay one even longer. So this matter needs to be address in that perspective". Some "cantankerous and unscrupulous" "If the Advocate do not make the provisions tools of greedy, selfish interests rather than paragons of virtue so as to fight for the rights of the disadvantaged seekers of justice, then certainly situation would improve"

Para 26 – “Needless to say that the Ld. Advocate Shri Gandhi by taking unwanted objection and requiring me to write such a lengthy order on that aspect, is nothing but to put a spoke in the swift progress of the trial with ulterior motives of which I need not speak much for it would be rather nauseous thing for me to do so. Still I would say Ld. Adv. Shri Gandhi having put in more than forty years in law field, he should see himself as a “counselor at law”.”

04. Thus the underlined portions stated above are expunged from the impugned judgment and order. It is needless to say that a Judge is equipped with sufficient provisions to deal with the cases filed before him.

05. The Criminal Application is accordingly allowed and disposed off.

[KISHORE C. SANT, J.]