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IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CRL. A. No. 124 of 2017 & CRL. M.A. 13242/2015

Between:-

**STATE
THROUGH SECRETARY
GNCT OF DELHI**

.....APPELLANT

(Through Shri Pradeep Gahlot, Additional Public Prosecutor for the State)

AND

**BABU KHAN
S/O SH. LIYAKAT ALI
R/O VILL. BHAISANI,
ISLAMPUR, PS BHAWAN,
DISTT. MUZAFAR NAGAR,
U.P.**

.....RESPONDENT NO. 1

**SHOKEEN ALI
S/O. SH. MAJID ALI
R/O VILL. BHAISANI,
ISLAMPUR, PS BHAWAN,
DISTT. MUZAFAR NAGAR,
U.P.**

.....RESPONDENT NO. 2

**SHEHZAD ALI
S/O SH. AZAM ALI
R/O VILL. BHAISANI,
ISLAMPUR, PS BHAWAN,
DISTT. MUZAFAR NAGAR,
U.P.**

.....RESPONDENT NO. 3



**MOHD. LIYAKAT ALI
S/O SH. YAKUB ALI
R/O VILL. BHAISANI,
ISLAMPUR, PS BHAWAN,
DISTT. MUZAFAR NAGAR,
U.P.**

.....RESPONDENT NO. 4

(Through: Shri Imran Khan, Advocate)

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Pronounced on : 20.01.2023

J U D G M E N T

1. This appeal under Section 378 of the Code of Criminal Procedure (in short, "Cr.P.C.") is directed against the impugned judgement of acquittal dated 12.12.2014, passed by learned Special Judge (NDPS), Additional Sessions Judge, (North-East), Karkardooma Courts, Delhi in Sessions Case No.151 of 2007 arising out of FIR No. 09/2007 of Police Station Narcotics Branch registered under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act").
2. Learned APP for the appellant/State submits that the impugned judgment of acquittal is illegal and improper and the same has been passed in ignorance of material evidence against the respondents. He, therefore, submits that the learned trial court has erred in acquitting the respondents.
3. Learned counsel appearing on behalf of the respondents, on the other hand, opposed the prayer and submitted that the learned trial court has rightly come to the conclusion that the prosecution has failed to prove the case beyond a reasonable doubt. According to him, the reasoning given by the learned trial court for acquittal of the respondents is based on the sound legal principle that the accused cannot be convicted unless the prosecution proves the case beyond



a reasonable doubt. According to him, the impugned judgment of acquittal does not call for any interference.

4. I have heard the learned counsel appearing for the parties and perused the record.

5. The case of the prosecution, in brief, is that on 24.01.2007 at about 01:45 PM, Sub Inspector Sunil Jain (PW-6) received a secret information that Babu Khan, Shokeen Ali, Liyakat Ali and Shehzad Ali, R/o Muzaffar Nagar, U.P. (hereinafter collectively referred to as “respondents”), are likely to supply *charas* to a person, namely, Sahur near Railway Reservation Office, Thandi Sarak, Anand Vihar, Near Karkardooma Court in a Bolero car. Thereafter, at about 2.15 PM, SI Sunil Jain (PW-6) reduced the secret information into writing in the *rojnamcha* register *vide* DD No. 12-A Ex.PW4/A and submitted a copy thereof to Inspector Iqbal Singh as required under Section 42 of the NDPS Act. On the basis of the secret information received and after appropriate approval from the higher authorities, a raid was conducted. The raiding party reached in front of the Railway Reservation Office, Thandi Sarak *via* Vikas Marg and under Karkari Flyover. At about 3:35 PM, one silver grey colour Bolero No. UP 12 L 3670 came from the side of Karkardooma Courts and stopped 10 meters before the gate of the Railway Reservation Office. The secret informer identified the driver of the said car as Babu Khan and the person sitting on his adjacent seat as Shehzad Ali. He identified the person, who alighted from the rear door of the driver's side with a blue and grey colour bag in his right hand, as Shokeen Ali and the second person, who alighted from the rear door on the left side with a blue and grey colour bag on his right hand, as Liyakat.

6. Thereafter, the raiding party on a signal of PW-6 SI Sunil Jain apprehended the respondents/accused. PW-6 SI Sunil Jain informed respondents/accused about their legal right that, if they so desired, they could be

produced before any Gazetted Officer or Magistrate for conducting their search. He explained the meaning of the Gazetted Officer and the Magistrate to them. He served carbon copies of notice under Section 50 of the NDPS Act to each of them and read over and explained the contents of the said notice to them. All four accused persons understood their legal rights, however, refused to exercise their legal rights. PW-6 SI Sunil Jain recorded their refusal as the accused persons claimed themselves illiterate.

7. PW-6 SI Sunil Jain conducted a cursory search of accused Babu Khan, Shokeen Ali, Shehzad Ali and Liyakat Ali. On the search of Babu Khan, a blue and grey colour bag was found. The said bag was containing twelve packets and each packet was wrapped in olive colour tape having transparent polythene under it. He removed the tapes and there was a substance which looked like a black colour candle. He checked the said substance with the help of the field testing kit. It was found to be *charas*. He weighed each packet with the help of an electronic weighing scale. Each packet was found to be 500 grams (gross total 6-kilogram *charas*). He had given serial Nos. 1 to 12 to the said packets. He had taken out a small portion of *charas* from each packet and drawn two samples of 100 grams each and the said samples were kept in two polythene bags and converted into cloth parcels which were given marks A1 and A2. The remaining 5.800 Kilogram of *charas* was also converted into a cloth parcel which was given mark A. The grey-blue colour bag was also converted into a cloth parcel and given mark Y. He filled out the FSL form and all four parcels were sealed having the impression '5C PS NB DELHI' and the seal after use was handed over to PW- 5 SI Avinash Singh. He seized the said four sealed cloth parcels and form FSL vide seizure memo EX.PW3/J.

7.1. On search of Shokeen Ali, a blue and grey colour bag was found from his right hand. The said bag was containing 12 packets and each packet was wrapped in olive colour tape having transparent polythene under it. He removed

the tapes. It was a substance which looked like a black colour candle. He checked the said substance with the help of the field testing kit. It was found to be *charas*. He weighed each packet with the help of an electronic weighing scale. Each packet was found to be 500 grams (gross total 5-kilogram *charas*). He had given serial no. 13 to 22 to the said packets. He had taken out a small portion of *charas* from each packet and drawn two samples of 100 grams each and the said samples were kept in two polythene bags and converted into cloth parcels which were given marks B1 and B2. The remaining 4.800-kilogram *charas* was also converted into a cloth parcel which was given mark B. The grey-blue colour bag was also converted into a cloth parcel and given mark Z. He filled the FSL form and all four parcels were sealed with the seal having the impression '5C PS NB DELHI' and the seal after use was handed over to PW- 5 SI Avinash Singh. He seized the said four sealed cloth parcels and form FSL *vide* seizure memo Ex.PW3/K.

7.2. On search of Shehzad Ali, 2 packets were recovered which were concealed underneath the belt of his trouser. He opened the packets which were wrapped in polythene in olive colour tape. He removed the tapes. It was a black colour candle substance. He checked the said substance with the help of the field testing kit. It was found to be *charas*. He weighed each packet with the help of an electronic weighing scale. Each packet was found to be 500 grams (gross total 1-kilogram *charas*). He had given serial No. 23 to 24 to the said packets. He had taken out a small portion of *charas* from each packet and drawn two samples of 100 grams each and the said samples were kept in two polythene bags and converted into cloth parcels which were given marks C1 and C2. The remaining 800-gram *charas* was also converted into a cloth parcel which was given mark C. He filled form FSL and all the three parcels were sealed with the seal having the impression '5C PS NB DELHI' and the seal after use was

handed over to PW-5 SI Avinash Singh. He seized the said three sealed cloth parcels and form FSL *vide* seizure memo Ex.PW3/L.

7.3. On a personal search of Liyakat Ali, nothing incriminating was recovered from his possession. PW-6 SI Sunil Jain prepared a no-recovery memo Ex.PW3/M.

8. After other necessary formalities, the case property was deposited in the *malkhana* and site plans etc. were prepared. The accused/respondents were arrested and after the completion of the investigation, a chargesheet was filed before the competent court and charge under Section 20(C) of the NDPS Act was framed against Babu Khan and Shaukeen Ali and charges under Section 20(B) & Section 29 of the NDPS Act were framed against Shehzad Ali and Liyakat Ali, respectively. The accused/respondents pleaded not guilty and claimed trial. The prosecution has examined eight witnesses to prove its case. After the closure of the prosecution evidence, the statement of the accused/respondents under Section 313 of Cr.P.C. was recorded. The accused/respondents denied all the allegations. The list of prosecution witnesses is mentioned below: -

SR. NO.	WITNESS	ROLE OF WITNESS
1	PW-1 ASI GHASI RAM	DUTY OFFICER, PS NARCOTICS CELL
2	PW-2 HC ISHWAR SINGH	MALKHANA, IN-CHARGE
3	PW-3 HC RABIR SINGH	RECOVERY WITNESS
4	PW-4 HC OM PRAKASH	READER TO ACP, NARCOTICS CELL, SHAKARPUR, DELHI.
5	PW-5 SI AVINASH SINGH	RECOVER WITNESS
6	PW-6 SI SUNIL JAIN	IN-CHARGE, RAIDING TEAM

7	PW-7 SI SATISH RANA	INVESTIGATING OFFICER
8	PW-8 HC VIJAY PAL SINGH	SAMPLE DEPOSITOR
9	PW-9 CT. DALBIR SINGH	CONSTABLE
10	PW-10 HC JAIBIR	HEAD CONSTABLE

9. The learned Special Judge after considering the entire material available on record acquitted the respondents.

10. Learned counsel appearing on behalf of the appellant/State submits that the provisions of Section 50 of the NDPS Act, were duly followed whereas, learned counsel for the respondents submits that the same was not duly adhered to. This court finds it appropriate to consider a few relevant decisions with regards to Section 50 of the NDPS Act.

11. The Hon'ble Supreme Court in the case of *K. Mohanan v. State of Kerala*¹, had an occasion to consider the scope and ambit of Section 50 of the NDPS Act as to whether the accused is to be necessarily informed of his right to be searched in the presence of Magistrate or whether there can be an option given to him for his search being conducted in the presence of a Gazetted Officer or a Magistrate. In that case, the Hon'ble Supreme Court was dealing with the issue of whether the mandatory requirement of Section 50 of the NDPS Act was complied with or not. The appellant, in that case, was asked whether he was required to be produced before Gazetted Officer or a Magistrate for the purpose of search and the appellant therein answered in negative. The Hon'ble Supreme Court in order to ascertain the authenticity of the submission called for the original record and found that the recital is substantially correct. It is thus seen that in that case the appellant therein was asked whether he wanted to be produced before a Gazetted Officer or Magistrate to which his answer was 'no'.

¹ (2000) 10 SCC 222

12. The Hon'ble Supreme Court while placing reliance on its earlier pronouncement in the case of *State of Punjab v. Baldev Singh*², has held that if the accused, who was subjected to search, was merely asked whether he was required to be searched in the presence of Gazetted Officer or a Magistrate, the same cannot be treated as communicating to him that he had a right under law to be searched so. In view of the aforesaid fact, the Hon'ble Supreme Court concluded that there was non-compliance with Section 50 of the NDPS Act and consequently, in the absence of any other independent evidence to show that the appellant was in possession of the contraband article, he was acquitted.

13. In another decision of the Hon'ble Supreme Court in *S.K. Raju @ Abdul Haque @ Jagga v. State of West Bengal*³, wherein, the Hon'ble Supreme Court was dealing with the issue as to whether Section 50(1) of the NDPS Act was required to be complied with when *charas* was recovered only from the bag of the appellant/accused therein and no *charas* was found on his personal search. In paragraph No. 22 of the said decision, it was noted that PW-2 conducted a search of the bag of the appellant in as well as of the appellant's trouser. It was found that the search was not only of the bag which the appellant was carrying but also of the appellant's person. Since the search of the appellant was also involved, therefore, the Hon'ble Supreme Court has held that Section 50 of the NDPS Act would be attracted in that case. It has been held that as soon as a search of a person takes place, the requirement of mandatory compliance with Section 50 of the NDPS Act is attracted irrespective of whether contraband has been recovered from the possession of the detainee or not. It has been held that it was imperative for the officer who had undertaken the search to inform the appellant of his legal right to be searched in the presence of either a Gazetted Officer or a Magistrate.

² (1999) 6 SCC 172

³ (2018) 9 SCC 708

14. The Hon'ble Supreme Court in the case of ***Vijay Singh Chandubha Jadeja v. State of Gujarat***⁴ has held that Section 50 of the NDPS Act gives an option to the empowered officer to take such person (suspect) either before the nearest Gazetted Officer or the Magistrate but, in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be made to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man as compared to any other officer. It would not only add legitimacy to the search proceedings but it may also verily strengthen the prosecution as well.

15. The Hon'ble Supreme Court in the case of ***Arif Khan @ Agha Khan v. The State of Uttarakhand***⁵, while considering various other pronouncements including the decision in the cases of ***Ashok Kumar Sharma v. State of Rajasthan***⁶ and ***Narcotics Control Bureau v. Sukh Dev Raj Sodhi***⁷ has held that the suspects may or may not choose to exercise the right provided to them under Section 50 of the NDPS Act but so far as the officer is concerned, an obligation is cast upon him under Section 50 of the NDPS Act to apprise the suspect of his right to be searched before a Gazetted Officer or a Magistrate.

16. The Hon'ble Supreme Court in the case of ***Sanjeev v. State of Himachal Pradesh***⁸ was considering an appeal at the instance of the convict against the judgment of a High Court reversing the acquittal rendered in favour of the appellant by the trial court. One of the reasons by which the trial court acquitted the appellant, in that case, was that the police did not give any option to the appellant to be searched before a Magistrate or a competent Gazetted Officer. In paragraph No.10 of the said decision, the Hon'ble Supreme Court has noted that the arrest memo or other documents do not reflect that any option or choice was

⁴ (2011) 1 SCC 609

⁵ (2018) 18 SCC 380

⁶ (2013) 2 SCC 67

⁷ (2011) 6 SCC 392

⁸ (2022) 6 SCC 294

given to the accused before their personal search. It has been held in that case that the personal search did not result in the recovery of any contraband material but the non-compliance of the requirement of affording an option was one of the reasons which weighed with the trial court in disbelieving the case of the prosecution. In that case, the bag was carried to the vehicle. It is stated in paragraph No. 3 of that decision that when the police party had searched the other side of the Rora bridge, they found the appellant therein sitting by the side of the *bone fire* and the bag was lying on the ground near them. As the police put a searchlight towards the direction of the appellants, they tried to run away. The police party followed them and after having crossed a distance of about 100 metres, they were nabbed. Thereafter, a bag was also retrieved which was found to contain *charas* weighing about 1.5 kg and the procedure for taking a personal search of the accused was followed. Under the aforesaid circumstances, the Hon'ble Supreme Court came to the conclusion that despite the personal search not resulting in recovery of any contraband material, there was non-compliance with the requirement of Section 50 of the NDPS Act. Hence, the order of conviction and sentence by the High Court was set aside and the order of acquittal recorded by the trial court was restored.

17. This court in the decision of *Kamruddin v. State (NCT of Delhi)*⁹, wherein, the appellant was searched but no recovery therefrom was found but the recovery from the bag which he was holding in his hand has been affected. The appellant was not informed about his legal right to be searched in the presence of a Gazetted Officer or a Magistrate. What was informed to him, was that as if he desires, he can be taken to a Gazetted Officer or a Magistrate. Non-compliance with provisions under Section 50 of the NDPS Act was observed and the accused were acquitted.

18. In the present case, personal search of the accused Liyakat Ali, Shehzad Ali, Babu Khan and Shaukeen Ali was conducted. In this regard PW-6 SI Sunil Jain who was the In-charge of the raiding team deposed as under:

“I told them that if they want their search can be conducted in the presence of a Gazetted Officer or a Magistrate, I also offered the search of all the police team members and also search of the official vehicle, prior to his search but all the accused refused all the offers. I also explained to them the meaning of Gazetted Officer and Magistrate....”

PW-5 SI Avinash Singh who was a member of the raiding team deposed as under:

“.... He told him that their search has to be conducted and if they want their search can be conducted in the presence of Gazetted Officer or Magistrate. He also offered his search and search of the raiding team members prior to their search. They were also told about the meaning of the Gazetted Officer and Magistrate....”

PW-3 Head Constable Rajbir who was also a member of the raiding team deposed as under:

“....SI Sunil Jain also told the accused persons that their search is to be conducted and if they wanted they could take search of the members of the raiding party and the official vehicle prior to their own search and further if they wanted they could get their search conducted in the presence of a Gazetted Officer or a Magistrate....”

19. The Hon’ble Supreme Court in the decision of ***Myla Venkateswarlu v. State of A.P.***¹⁰, acquitted the appellant for breach of Section 50 of the NDPS Act. In the said case, the police had prior information about the illegal sale of *ganja* at a particular place and thereafter, the police team apprehended the accused and recovered contraband from their pockets. During the trial, members of the police team deposed as under: -

15. PW 1 PC Shaik Khasim, who was, at the relevant time, attached to Tenali-III Town Police Station had apprehended the appellant, A-1 and A-2 on 5-1-2001. He stated that on 5-1-2001 at 6.15 p.m., Circle Inspector of Police took him in a jeep along with other police

personnel to Chenchupeta Railway overbridge. They saw three persons sitting under the bridge. On seeing them, the said three persons started running away. They apprehended them and brought them to the Circle Inspector of Police. According to him, the appellant, A-1 and A-2 confessed that they were having ganja packets in their pockets. He has further stated that the Circle Inspector of Police asked them whether they wanted any other gazetted officer for their search and seizure in addition to him to which they replied that they did not want any other gazetted officer and the checking by the Circle Inspector of Police was sufficient for them. Thereafter, the Circle Inspector of Police checked their pockets and recovered ganja packets.

16. *PW 2 SI Nageswara Rao was, at the relevant time, working as the Sub-Inspector of Police at Tenali-III Town Police Station. He was in the police party which apprehended the appellant, A-1 and A-2. He has corroborated PW 1 PC Shaik Khasim as regards the apprehension of the appellant, A-1 and A-2. He has stated that before conducting the search, the Circle Inspector of Police asked the appellant, A-1 and A-2 “about the intention to have another gazetted officer and they replied that they do not want any other gazetted officer for their search and seizure”. According to this witness, thereafter, the search was conducted and ganja packets were recovered from their possession.*

The Apex court held that from the testimonies of PW-1 and PW-2, it was clear that appellants were not communicated their right to have a search conducted in the presence of a Magistrate or a Gazetted Officer.

20. It is further evident from a perusal of the notice under Section 50 of the NDPS Act marked as Ex. PW3/A, Ex. PW3/C, Ex. PW3/E and Ex. PW3/G given to accused Liyakat Ali, Shehzad Ali, Babu Khan and Shaukeen Ali, that the accused/respondents had not been told that they may be brought before the nearest Gazetted Officer or Magistrate. It is indeed evident that the accused were arrested at about 3:45 PM. It is also evident that they were arrested from a spot near the Karkardooma Courts. In the Karkardooma Courts and the ACP's office in Krishna Nagar, a Gazetted Officer or Magistrate was available. Nonetheless, no attempt was made to bring the accused/respondents before any Gazetted Officer or Magistrate despite the availability of a Gazetted Officer or

Magistrate. In this regard, statement of PW-6 SI Sunil Jain who was In-charge of the raiding team and PW-5 SI Avinash Singh who was member of the raiding team is reproduced hereinunder: -

PW-6 SI Sunil Jain In-charge of Raiding Team

“.... I had not called any Gazetted Officer to the spot, despite knowing this fact. The accused were not produced before any Gazetted Officer....”

PW-5 SI Avinash Singh member of the raiding team

“.... No Gazetted Officer or Magistrate were called by SI Sunil Jain. It is correct that no effort was made by SI Sunil Jain to produce the accused persons before a Gazetted Officer or a Magistrate....”

21. From the aforesaid deposition, and from the perusal of notice under Section 50 of the NDPS Act, it can be seen that the accused/respondents were not informed about their legal right to be searched before a Gazetted Officer or a Magistrate, what was merely informed to them, was that, if they desire, they can be taken to a Gazetted Officer or a Magistrate. It is obvious then that there is a difference between the communication of a legal right and that of an opportunity. What the officers did in the present case was the presentation of an opportunity to the respondents, an opportunity not necessarily having legal sanction. What was required, however, was the explanation of a legal right, that the respondents had a statutory right to enjoy.

22. On the basis of various pronouncements of the Hon'ble Supreme Court, and taking into consideration the observation of learned ASJ, this court finds that there is non-compliance of the provisions of Section 50 of the NDPS Act. The observations of learned ASJ in this regard are reproduced hereunder:

“55. accused.....were not informed that they could be taken to the nearest Gazetted Officer or the nearest Magistrate. It is evident that the time of apprehension of the accused persons was at about 3.45 p.m. It is further evident that they were apprehended from a spot just adjacent to the Karkardooma Courts. Gazetted Officer or Magistrate was available

in the Karkardooma Courts and in the office of ACP at Krishna Nagar. However, no effort was made to produce the accused persons before any Gazetted Officer or Magistrate. No effort was made to seek presence of any Gazetted Officer or Magistrate at the time of search of the accused persons despite availability.

59. Therefore, there is a violation of a mandatory provision of section 50 of the NDPS Act. Accused persons were not apprised about their legal right to be searched in the presence of a Gazetted Officer or a Magistrate. They were not taken to any Gazetted Officer or Magistrate for conducting their search. Such recovery cannot be made on the basis of conviction."

23. The Hon'ble Supreme Court in the matter of ***State of Maharashtra v. Sujay Mangesh Poyarelar***¹¹ while considering its earlier pronouncements including the decision in the case of ***Chandrappa & Ors. v. State of Karnataka***¹² has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is relied and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate court. It has also been held that nonetheless it is not correct to say that unless the appellate court in an appeal against acquittal under challenge is convinced, that the finding of acquittal recorded by the trial court is 'perverse', it cannot interfere. If the appellate court on re-appreciation of evidence and keeping in view the well established principles, comes to a contrary conclusion and records a conviction, such conviction cannot be said to be contrary to law.

24. The Hon'ble Supreme Court in the matter of ***Hakeem Khan & Ors. v. State of M.P.***¹³ has again considered the powers of the appellate court for inference in cases where acquittal is recorded by the trial court. In the said

¹¹ 2008 9SCC475

¹² (2007)4 SCC415

¹³ (2017) 5 SCC 715

decision, it has been held that if the ‘possible view’ of the trial court is not agreeable to the High Court, even then such ‘possible view’ recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court.

25. In view of the aforesaid discussion, it is found that in the present case, the personal search of the accused/respondents was conducted but no recovery therefrom was found. The recovery from the bags which they were holding in their hands has been effected and there is non-compliance of the provisions of Section 50 of the NDPS Act.

26. Learned Additional Session Judge while passing the impugned judgement has made observations in paragraph No. 92 with regard to the conduct of the investigation officer and lapse in the investigation. In light of the fact and circumstances of the present case, it is pertinent to peruse the position of the law in this regard.

26.1. In the decision of *State of West Bengal v. Mir Mohammad Omar & Ors.*¹⁴ whereby, the Hon’ble Supreme Court has directed the courts to ordinarily desist from castigating the investigation even while ordering acquittal.

26.2. In the decision of *Testa Setalvad v. State of Gujarat*¹⁵ whereby, the Hon’ble Supreme Court in paragraph No. 9 has observed that the courts should not make remarks against individuals or authorities unless they are absolutely required for the matter to be decided. paragraph No.9 of the aforesaid is reproduced here below:

“9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case.

¹⁴ (2011) 12 SCC 689

¹⁵ (2004) 10 SCC 88

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.”

27. For the reasons stated above and relying on the observation of the Hon’ble Supreme Court, the remark against the investigation agency at paragraph No.92 of the impugned judgement dated 12.12.2014 passed by the learned Additional Session Judge are not necessary and are hereby expunged.

28. Accordingly, this court is not inclined to take a different view other than the view which has already been taken by the court below. Hence, the appeal is dismissed along with pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 20, 2023
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