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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 08th February, 2024

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W.P.(CRL) 522/2022 & CRL.M.A. 4516/2022

SI MAYA DEVI

..... Petitioner

Through: Mr. Dhananjay Sehrawat, Advocate.

versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Sanjeev Bhandari, ASC (Crl.) for State with Mr. Sushant Bali, Mr. Kunal Mittal, Ms. Anvita Bhandari and Ms. Rishika, Advocates, with SI Manoj Kumar, PS Nihal Vihar.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been filed on behalf of the Petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. assailing orders dated 30.11.2021, 21.12.2021 and 14.01.2022 passed by learned Additional Sessions Judge/Special Judge (POCSO), West District, Tis Hazari Courts, Delhi, in SC No. 56498/2016 as well as for quashing the inquiry initiated by Respondent No. 2.
2. Factual matrix to the extent necessary and relevant as emerging from the petition is that Petitioner joined the Delhi Police as a Constable and is stated to have served for 35 years in the department. At the relevant time, Petitioner was posted as Sub-Inspector in PS: Nihal Vihar, Delhi and was assigned investigation in case FIR No. 104/2014. Petitioner carried out the



investigation and filed the Charge Sheet before the Competent Court. Genesis of the FIR was an information received in the Police Station on 22.02.2014, pursuant to which Petitioner reached Sparsh Hospital, Mianwali Nagar, Rohtak Road, Peeragarhi, New Delhi and met SI Ashish and Constable Rakesh and the victim, who was hospitalized due to consumption of some poisonous substance. Victim was taken to Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi for medical examination, where she gave a statement implicating accused Pankaj for having forcibly entered her house and committing rape on her. While narrating the incident of sexual assault, the victim informed that her age was 15 years, in the presence of her mother. After taking the consent of the victim and her mother, internal examination was carried out and blood samples and other samples from nails, swabs, genitals, clothes etc. were collected, sealed and taken into police custody.

3. Statement of the victim was thereafter recorded under Section 164 Cr.P.C., wherein she reiterated the allegations but stated that she did not want any action against the accused as she was assured by his relatives that the accused would marry her. Accused was arrested and medically examined. He was declared potent after a potency test and the blood samples were taken for DNA profiling etc. Upon completion of investigation, Charge Sheet was filed. FSL result opined that DNA profiles of the samples of the accused matched with DNA profiles of the samples collected from the victim, which further established sexual intercourse between them. Petitioner thereafter collected school admission register and other forms such as birth certificate issued by the Registrar, Birth & Death, West Zone, MCD, for verification of the age of the victim and it was found that on the date of the incident i.e. 22.02.2014, her age was 16 years 04 months and 29



days. Learned Sessions Court took cognizance of the offence and the trial commenced. 15 witnesses were examined by the prosecution. During the pendency of the trial, Complainant married the accused and 01 daughter and 01 son were born out of the wedlock. The Court returned a finding in the judgment that sexual intercourse between accused and victim was established, however, on account of the requirements of the Juvenile Justice (Care and Protection) Rules, 2007 ('Rules 2007') regarding age proof of the prosecutrix not being fulfilled, accused was acquitted. The Court was of the view that the IO i.e. Petitioner, the then SHO and ACP were responsible for not carrying out the investigation properly and taking the matter seriously, leading to acquittal of the accused for lack of required documents of victim's age proof.

4. After pronouncing the judgment on 30.11.2021 acquitting the Accused, learned Sessions Court passed a separate order on the same date observing that the Accused has been acquitted as neither the IO inquired into the document relied upon to secure admission in the school first attended by the victim as per the Scheme in Rule 12 of Rules 2007 nor the then SHO and ACP were vigilant for determination of age of the prosecutrix and forwarded the Charge Sheet in a mechanical manner. Noting this, Sessions Court called for an explanation from the Police officials for apparent negligence in performance of official duties. Reply was called for from the Petitioner, the then SHO and ACP. On 21.12.2021, when the matter was listed for reply to the show cause notice, the Court expressed its dissatisfaction on the explanation given and directed the Commissioner of Police, Delhi to take appropriate disciplinary action and file a report before the Court on 14.01.2022. When the matter came up before the Court on 14.01.2022,



taking note of the reply from the office of Commissioner of Police, Delhi, the Court expressed that filing of a mere reply was total non-compliance of order dated 21.12.2021 and directed the Commissioner of Police, Delhi, to file compliance of the order on 15.03.2022 under his signatures. Aggrieved by the three orders, present writ petition was filed by the Petitioner and by order dated 09.03.2022, the Court stayed the operation of the impugned orders.

5. Learned counsel for the Petitioner submits that the direction given by the Sessions Court in the impugned orders dated 21.12.2021 and 14.01.2022 to the Commissioner of Police to take disciplinary action against the Petitioner and file a report was wholly illegal, unwarranted and an overreach of the Court besides being without jurisdiction. By this act amounting to judicial overreach, the learned Court has intruded into the domain of the disciplinary authorities, which is impermissible as it is only the power and prerogative of a disciplinary authority of the employee to initiate disciplinary action. The impugned direction violates the Separation of Powers, which is the basic feature of the Constitution of India. No provision exists in the Cr.P.C. or any other law which conferred power on the Sessions Court to direct departmental inquiry against the Petitioner. The impugned observations and direction to initiate disciplinary action, have adversely affected the career and reputation of the Petitioner.

6. It is further argued that the direction in the impugned order is a mandate to the Commissioner of Police to instruct the disciplinary authority of the Petitioner to initiate disciplinary action and is not mere suggestion/ recommendation and amounts to usurping administrative functions of the Executive. The direction also contravenes Section 6 of Chapter I, Part H of



the Delhi High Court Rules for ‘Practice in the Trial of Criminal Cases’ which pertain to criticism on the conduct of police and other officers and warns against such an action by the Courts. It is further urged that the Sessions Court has completely overlooked the binding observations of the Supreme Court in ***Pramod Kumar Jha v. State of Bihar and Anr., CRL. A. 1092/2002***, decided on 18.06.2008, where the Supreme Court held that if the Court feels that there is lapse on the part of the investigating officer, it could record that fact but going further and directing initiation of disciplinary proceedings and rendering findings which virtually finds him guilty, is not a permissible course.

7. Learned counsel further contends that consequent to the directions of the Supreme Court in ***State of Gujarat v. Kishanbai and Ors., (2014) 5 SCC 108***, a Committee has been formed to look into the judgments acquitting the accused and if the Committee observes that the acquittal is on account of lapse on the part of the IO, appropriate directions would be passed, but a parallel mechanism could not be adopted by the Sessions Court.

8. Mr. Sanjeev Bhandari, learned ASC for the State, supports the case of the Petitioner and states that the Sessions Court appears to have overstepped its jurisdiction in making observations against the Petitioner and directing the Commissioner to initiate disciplinary proceedings against the Petitioner.

9. I have heard learned counsels for the parties and examined their respective contentions.

10. Before embarking on the journey to examine the contentions of the Petitioner, it would be relevant and necessary to refer to some of the relevant provisions and judicial precedents directly concerning the issue arising before this Court. The first milestone in this journey is Section 6 in Chapter



I, Part H of the Delhi High Court Rules for ‘Practice in the Trial of Criminal Cases’ which reads as follows:

“6. Criticism on the conduct of Police and other officers—It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and every thing against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary’s circular Letter No. 920-J-36/14753, dated the 15th April, 1936.”

11. In ***Dr. Dilip Kumar Deka v. State of Assam & Anr., (1996) 6 SCC 234***, the Supreme Court delved into the issue of the tests to be applied for deciding the question of expunction of disparaging remarks against authorities and observed that nature of remarks made by a learned Judge casts a serious aspersion on the person commented on affecting his character and reputation and may ultimately impact his career. Relevant passages from the judgment are as follows:-

“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 : (1964) 1 Cri LJ 549 : (1964) 2 SCR 363] . 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 : 1972 SCC (Cri) 118 : AIR 1972 SC 1140], R.K. Lakshmanan v. A.K. Srinivasan [(1975) 2 SCC 466 : 1975 SCC (Cri) 654 : AIR 1975 SC 1741] and Niranjan Patnaik v. Sashibhusan Kar [(1986) 2 SCC 569 : 1986 SCC (Cri) 196 : AIR 1986 SC 819]

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.

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10. If the learned Judge's reasoning to make the impugned remarks is taken to its logical conclusion, it would mean that whenever a superior court sets aside a finding of a lower court, which is patently wrong, the former gets a charter to make vituperative remarks against the latter simply because it had recorded such a finding. Before drawing any conclusion that an inferior body or court has recorded a wrong finding with an ulterior motive or for an oblique purpose the superior body or court, as the case may be, must demonstrate that there are materials — other than the patently wrong finding — which impels it to so conclude. Else, the conclusion would be presumptuous and justice and fair play would be casualties."

12. In ***State of W.B. v. Mir Mohammad Omar and Others***, (2000) 8 SCC 382, the Supreme Court observed that Courts should ordinarily resist from castigating investigation even while ordering acquittal and relevant paragraph is as follows:-



“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 the 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, 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.”

13. In **A.M. Mathur v. Pramod Kumar Gupta and Others, (1990) 2 SCC 533**, the Supreme Court emphasized and highlighted the importance of exercising judicial restraint as under:-

“12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said: [The Judiciary and Constitutional Politics — Views from the Bench, Mark W. Cannon and David M.O.'s Brien p. 27]

“First and foremost, humility and an understanding of the range of the problems and (one's) own inadequacy in dealing with them, disinterestedness ... and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law.”



13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process."

14. In ***Pramod Kumar Jha (supra)***, the Supreme Court set aside the direction given in the impugned order for initiation of departmental proceedings against the IO of the case and held that if there was any lapse on the part of the investigating officer, the Court should have only recorded that as a fact but could not have adopted a course of directing departmental action and after finding a person guilty. Relevant passage from the order is as under:-

"We feel that the direction given for initiation of the Departmental Proceedings and other directions should not have been given in the judgment.

All that the Court could have done if it felt that there was lapse on the part of the Investigating Officer, to record this fact.

But going further and directing that the Departmental Proceedings should be initiated and further findings which virtually finds him guilty are certainly not the permissible course.

The appeal is allowed to that extent. We direct deletion of the directions given by the trial court as upheld by the High Court."

15. As far back as in 1963, the Supreme Court in the case of ***Pandit Ishwari Prasad Misra v. Mohammad Isa, 1962 SCC OnLine SC 88***, while dealing with strictures passed by the High Court against one of the subordinate judicial officers, emphasized the need to adopt judicial restraint



in using strong language and imputing corrupt motives for the reason that the judge against whom imputations are made has no remedy in law to vindicate his position.

16. A Co-ordinate Bench of this Court in ***Rakesh Chand v. State of NCT of Delhi, 2015 SCC OnLine Del 14193***, while dealing with the similar situation observed as follows:-

“2. While dealing with the task of administering justice, a Judge, no doubt has to be acting judicially and giving expression to his views but he ought to be circumspect while commenting on the conduct of some. The line of discretion is not to be overstepped. The calm and sangfroid of a Judge should be reflected in every judgment, every order; rather every part of any judgment or order. The immunity which is enjoyed by a judicial officer carries with it the duty of circumspection. A Judge ought to know that any statement against any authority of the Government or any organ of the Government or any person incharge of investigation or discharging executive functions can lacerate, slash and mutilate his reputation into tatters and cause irreparable harm. It may prejudicially affect the career of such persons. What is required to be taken care of is that nobody ought to be condemned without being heard. The prejudicial effect on somebody against whom a stricture is passed cannot be assessed only in terms of the immediate damage to him. It has the potential of eroding the confidence of public on such person or institution. A judge must be wary of such cascading effect of any statement/stricture made by him while delivering judgment.

“A Judge is not free, like a loose cannon to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity”

“Stump v. Sparkman”, 435 US 349, 1978 (Per Steward Judge)”

3. The petitioners Rakesh Chand (petitioner in W.P.(Crl.) No. 207/2015) and Rajinder Singh (petitioner in W.P.(Crl.) No. 209/2015) were the then SHO of Police Station Bhalswa Dairy and investigating officer of FIR No. 165/2010 respectively. Both the petitioners are presently working with Delhi Police. Both of them are aggrieved by the observation/direction of the Trial Court in judgment and order dated 15.05.2014/29.05.2014 passed in Sessions Case No. 105/2013 in connection with FIR No. 165/2010 (P.S. Bhalswa Dairy).



4. The State is also aggrieved by the aforesaid observation and direction of the Trial Court and seeks deletion of the observations and directions given in para 152 of the Trial Court judgment.

5. Para 152 of the judgment reads as hereunder:-

“Before ending, in view of my observations made with regard to the statutory non compliance of the provisions of the Code of Criminal Procedure (Section 46(4) Cr.P.C) while arresting the lady accused Renu at 12.40 AM (midnight) confirming her detention/confinement to be illegal, an offence under the Penal Code, 1860, I direct that appropriate action both legal and departmental in accordance with law be initiated against the erring officers i.e. SI Rajender Singh and the then SHO Police Station Bhalswa Dairy Inspector Rakesh Chand for the same. Copy of this judgment be placed before the Ld.CMM concerned. Commissioner of police, Delhi and GNCT of Delhi (Home Department) through the Director of Prosecution, Delhi for compliance under intimation to this Court.”

6. It has been submitted on behalf of the petitioners that without hearing their point of view or appreciating the circumstances under which a particular accused person was arrested, they have been condemned. The Trial Court has directed for a legal and departmental action in accordance with law as against the petitioners. They did not have any opportunity to explain away their conduct or to offer any defence.

7. Learned senior counsel appearing for the petitioners submitted that the aforesaid observation/direction of the Trial Court is highly unwarranted, not in keeping with the legal provisions, does not take into account the factual matrix and is largely, lapsus linguae.

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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.

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25. In any view of the matter, the observations/directions made in para 152 of the judgment which is sought to be expunged in the present petition is held to be not in consonance with the factual matrix of the



case, practice and procedure and is, therefore, unwarranted.

26. The same is, therefore, deleted from the judgment. Thus para 152 of the judgment stands expunged and deleted.”

17. In ***State v. Yogender Singh, 2015 SCC OnLine Del 14203***, this Court was again called upon to decide a challenge to an order of the Trial Court directing the Commissioner of Police to take action against the concerned IO and while directing expunction of the direction, the Court observed as follows:-

“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.

17. The observations of the Court with regard to the failure of the investigating agency in taking prompt action is justified and is not being interfered with. What is unnecessary and unwarranted is the direction to the Commissioner of Police for taking action against erring police



officials and submission of ATR in that regard. Such directions cannot be countenanced in the eyes of law.”

18. It would be useful to allude to another judgment of the Co-ordinate Bench of this Court in ***Ajit Kumar v. State (NCT of Delhi), 2022 SCC OnLine Del 3945***, where the Trial Court made strong observations against the concerned SHO and passed strictures, so much so observing that the SHO had no sense of responsibility and devotion towards duty etc. and directed the Commissioner of Police to take corrective measures and action against the SHO. After referring to the various judgments on the issue, the Court observed that the remarks and directions were unwarranted and impermissible in law and not even relevant for deciding the matter in question. Relevant passages from the judgment are as under:-

“36. The Hon'ble Supreme Court in K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395 had pointed the following qualities of a good judicial officer:

“57. ...A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations...”

37. Every word forming part of a judicial order forms permanent record. Use of denigrating remarks against anyone, especially against police officials impeaching their credibility and questioning their sense of dedication towards duty, is not the best course adopted by a judicial officer, that too when the same is not required for the adjudication of the case before the Court. Such criticism may have a devastating effect on the professional career of an officer. It is also bound to have everlasting affect on the reputation of a person. This Court is conscious of the fact that police officers are expected to be at the desired place and desired time with utmost efficiency, both by the general public as well by the Courts. Though the police officers are duty bound to discharge their responsibilities with utmost conviction, the practical difficulties which are faced by them cannot be overlooked and disregarded by the Courts. At the same time, such regard by the courts can not by any stretch of imagination or interpretation be take to be lack of power of the court to pass order regarding the power to point out any irregularity omission or



commission of any act as directed by the Court, or any disobedience to obey the directions of the Court. This Court rather vide this order wants to convey that judicial strictures against anyone need to be passed with utmost circumspection. The judicial power comes with utmost responsibility to exercise adjudicatory liberty to express oneself. Judicial strictures against a police officer to the extent as expressed in the present case are problematic though every disapproval expressed by exercise of adjudicatory liberty of expression may not fall in the realm of lack of judicial restraint.

38. The strictures as passed in the present case to the extent of observing that the officer in question has no sense of responsibility and devotion towards duty and further directing the Commissioner of Police to take corrective measures and take action against the police official and further observing that the Commissioner of Police, Delhi may take a call as to whether the petitioner is fit for performing duties as SHO or not goes beyond the mandate of law, judicial precedents and discipline of judicial restraint. This does amount to over stepping adjudicatory liberty of expression exercised by a judge. Such observations have the effect of stigmatizing without conviction, sentencing without inquiry and affect career in future of an officer which had to be left to the internal administrative vigilance and disciplinary proceedings to be conducted by the parent department of the officer in question.

39. This Court makes it clear once again that this order in no way undermines the majesty of the Court or the fact that the judicial directions need to be obeyed by the police officials concerned and the power of the courts to pass orders pointing out their disobedience or point out any fault in investigation, etc, cannot be questioned, however, in this regard, Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" needs to be kept in mind and also the judicial precedents of the Hon'ble Apex Court and the High Court have to be kept in mind as guiding force while passing such remarks which amount to strictures.

40. The learned Trial Court could have forwarded the proceedings and the issue faced by the Court as well as the act of disobedience to the concerned Commissioner of Police Delhi to take action as per their departmental Standing Orders and the rules applicable to them. In the relevant cases, recourse could have been taken to the Delhi Police Act and the relevant Sections under law under which the Court can issue notice and initiate appropriate action if so warranted in a particular case. However, to direct the authority concerned to initiate action as mentioned in the impugned order and thereafter, ask for compliance to be filed and pass remarks as in the impugned order was unwarranted in the facts and circumstances of the case.



41. Judgments and orders passed by the courts are often permanent in nature, so is at times the stigma attached to a person suffered by virtue of an uncalled for remark unwarranted in the facts and circumstances of a particular case. As adjudicatory force of the country, judicial restraint as warranted by law and judicial proceedings is one of the qualities of a judicial officer.”

19. The same Bench in a subsequent judgment in ***Sanjay Kumar Sain v. State of NCT of Delhi, 2023 SCC OnLine Del 1260***, under similar circumstances observed as under:-

“38. Although the Courts must ensure that trials are conducted swiftly, fairly, and impartially, they must take into account the ground realities and position of law. Whenever the judicial officers are inclined to use harsh language against the investigating authorities and police officers on their professional capabilities and devotion towards their duty, more control and caution must be exercised, since passing such comments may impair a person's confidence, in addition to having a negative impact on his work and reputation. The loss of reputation suffered by an officer may not get restored even if the remarks are expunged by a higher court. Therefore, a thin wall that exists between the adjudicatory liberty to point out the flaws in an investigation or on part of authorities and the obligation to exhibit judicial restraint must be kept in mind and perspective.

39. Judicial utterances in the form of strictures are disapproval and dissent in certain cases. At times, the strictures stigmatize the concerned person without conviction. A recipient of stricture will have no option other than to seek expunction of stricture by way of either a judicial review or under the writ jurisdiction. Though no restriction can be imposed upon judicial functioning except guidelines on judicial strictures and judicial precedents, since doing so will be against the independence of judiciary, however, a recipient of judicial stricture also cannot remain devoid of any remedies of redressal. It is the self regulation amongst the judges that maintains the institutional integrity of the judiciary. Undoubtedly, judicial utterances on many occasions have the power to meaningfully bring about social and procedural changes for the welfare and betterment of the system. The judicial officers, however, have to note the difference between judicial findings and passing of strictures. While there can be no doubt about the importance of judicial free speech, it being the hallmark of a free and fair judiciary, judicial self-restraint is an obligation that judiciary recognizes as created by and for themselves. The strictures have been passed against an officer, as in the present case a police officer who has been visited with judicial displeasure for want of



carrying out burden of good governance of justice by ensuring speedy trial to the accused persons in judicial custody. The judicial officer had to remain conscious of the fact that passion for the same solely should not have guided him to pass such strictures to express judicial discontent more so since the delay in filing FSL was beyond his control.

40. This Court is also of the view that in this case, the strictures may be negligent but are not mala fide in nature. It is not to be forgotten by courts that though the remedy of expunction of strictures is available to recipient of strictures, many a times, the strictures live on not only in public memory but also the memory of the recipient itself. Social memories tend to stigmatize the recipient, though the person passing strictures will enjoy judicial immunity due to his adjudicatory freedom of expression. In the present case, the learned Trial Court displeased due to delay in trial, had passed the orders impugned before this Court without realizing that the cause behind the delay was not the recipient of the strictures herein but the reasons beyond his control.

41. The Indian judiciary has always followed the self-imposed judicial civility codes and have, through the judgments of Hon'ble Apex Court as well as High Courts, flagged the issue of unwarranted judicial strictures which stigmatize and at times even penalize the recipient of strictures.

42. This Court should not be held to be trying to bring down the majesty and power of the Court, as also observed by this Court in the case of *Ajit Kumar v. State (NCT) of Delhi* (supra). This Court remains conscious of the fact that the judicial words, utterances, decisions help, ensure a society which follows rule of law. However, at times, unwarranted judicial utterances can wound and at times adversely affect or destroy the career and confidence of the recipient of strictures.

43. It is also made clear that by way of this Judgment, this Court is not holding or laying down, as earlier expressed in case of *Ajit Kumar v. State (NCT) of Delhi* (supra), that the courts are powerless to point out disobedience of orders passed by the courts, but the judicial utterances or orders passed regarding the conduct of police officers have to be inconsonance with the misconduct, if any, after carefully analyzing that such misconduct is, solely and without any doubt, attributable to them. Nevertheless, Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" provides guidance to the Trial Courts as to what can be the appropriate procedure in cases where a Court is dissatisfied with the manner in which investigation has been done by concerned authorities and agencies. If the circumstances so warrant, the Courts can also take recourse to the Delhi Police Act and relevant provisions under appropriate laws and can issue notice and initiate appropriate action. The Courts are not powerless to indicate any lapse or omission on part of



investigating agencies, or any disobedience of the directions of the Court. The courts have to take recourse to the judicial precedents and the High Court Rules instead of taking into their own hands the duty of conducting enquiries, etc., and have to leave the same to the parent department and disciplinary authority of the police officers concerned.

44. As also earlier directed in Ajit Kumar v. State (NCT of Delhi) (supra), this Court once again, by way of abundant caution, directs all the learned Judicial Officers to exercise utmost restraint and judicial discipline while deciding the cases before them and refrain from judging the credibility of police officers and passing scathing and disparaging remarks against them, when the same are not required for the adjudication of matters before them."

20. Coming to the facts of the present case, a conjoint reading of the orders dated 30.11.2021, 21.12.2021 and 14.01.2022 shows that according to the Sessions Court, the acquittal of the accused was on account of a lapse in the investigation by the Petitioner, who was the IO and the then SHO and ACP concerned. Accused was acquitted on the ground that applicable rules for determination of the age of the prosecutrix were not followed and therefore, there was doubt on her being a minor. As per Rule 12 of the Rules 2007, since the prosecutrix had not studied upto matriculation, the next preferential document in support of her age proof was the document showing the 'school first attended' by her. However, instead of unearthing this document, school leaving certificate was filed which could not be equated with 'school first attended' certificate and even if relied upon showed that the prosecutrix would have been admitted in the school from IIIrd standard, which was not legally permissible/possible. This according to the Sessions Court reflected a casual investigation by the IO and other officers and hence after issuing a show cause notice, by a detailed order, the Court directed the Commissioner of Police, Delhi, to take appropriate disciplinary action and file a report.



21. In the opinion of this Court, the direction to initiate disciplinary action against the Petitioner was not only unwarranted but impermissible in law. In the various judicial pronouncements, referred to above, the Courts are categorical in their disapproval of this kind of overreach by the judicial officers beyond their judicial functions. As observed by the Courts from time to time, not only are these kinds of remarks and/or directions unnecessary but also have serious implications on the careers of public servants. In ***Rakesh Chand (supra)***, the Court observed that while dealing with task of administering justice, a Judge, no doubt, has to act judicially and express his views but he ought to be circumspect while commenting on the conduct of others and the line of discretion should not be overstepped. What is most important is that by these observations and/or directions, not only is the career of people at stake but this approach also overlooks the settled principle of *audi alteram partem* i.e. nobody should be condemned unheard. There can be no doubt that judicial orders and directions have to be obeyed and in no way any person can be permitted to undermine the majesty of the Court. However, it must also be kept in mind that the Constitution of India recognizes the Separation of Powers and resort to disciplinary action of a public servant falls within the domain and jurisdiction of his Disciplinary Authority under the respective service rules. If the Sessions Court was of the view that there was any lapse on the part of the Petitioner, which was a contributory factor or the singular reason for acquittal of the accused, the Court was well within its right to bring the fact to the notice of the Commissioner of Police, Delhi, but the decision on whether to initiate disciplinary action or not, ought to have been left to the competent Disciplinary Authority of the Petitioner, under the applicable service rules.



Power of a Court to point out defects in the investigation and/or misdemeanor etc. of a police officer is unquestionable but cannot be stretched to issuing a direction to the Commissioner of Police to initiate disciplinary proceedings, which is the sole prerogative and power of the Executive. In this context, I may refer to a passage authored by Anthony M. Kennedy in his book ‘Judicial Ethics and Rule of Law’ wherein qualities of a judgment have been described as follows:-

“The power of a Court, the prestige of a Court, the primacy of a Court stand or fall by one measure and one measure alone; the respect accorded to its judgment. How does the Court earn respect for its judgment from year to year and from generation to generation? The question refers us to the full scope of law, the study of lifetime. Respect for a judgment depends upon its coherence, its logic, its intellectual force, its fairness, its common sense, its root in ancient principles of law and justice and its continued vitality in a world of change. These conventional standards for assessing the wisdom of a Court decree are quite irrelevant, however, if the Court which issues the judgment is not recognized as an institution governed by a strict ethical code. A Court's judgment will be given no serious consideration, no examination at all, if the public is not confident that its judges remain committed to neutral principles and rules for the conduct of their office.”

22. There is thus merit in the contention of the Petitioner that the Sessions Court erred in directing the Police Commissioner to direct disciplinary action. This was unwarranted, legally impermissible and a judicial overreach. Law on the contours of powers to be exercised by a Court viz-a-viz the Executive/Disciplinary Authorities is no longer *res integra* and is premised on the two pillars of judicial restraint and Separation of Powers. In ***Divisional Manager, Aravali Golf Club & Anr. v. Chander Hass & Anr., (2008) 1 SCC 683***, the Supreme Court elucidated on the aspect of essence of judicial powers referring to Montesquieu’s The Spirit of law as follows:-

“21. The theory of separation of powers first propounded by the French



thinker Montesquieu (in his book *The Spirit of Laws*) broadly holds the field in India too. In Chapter XI of his book *The Spirit of Laws* Montesquieu writes:

“When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”

(emphasis supplied)

...”

23. In view of the aforesaid judgments, the impugned orders to the extent, show cause notice was issued to the Petitioner and thereafter directions were issued for initiation of disciplinary proceedings, cannot be sustained in law and are accordingly set aside. All observations and directions in the impugned orders relating to issuance of show cause notice including the direction to conduct the disciplinary inquiry shall be treated as expunged and deleted from the impugned orders.

24. Petition is allowed and disposed of in the aforesaid terms. Pending application also stands disposed of.

JYOTI SINGH, J

FEBRUARY 08, 2024/akc/shivam