



-----Respondent

For Petitioner(s) : Mr. C.S. Kotwani alongwith
Ms. Swati Shekhar.

HON'BLE DR. JUSTICE NUPUR BHATI

Order

Reportable

05/02/2024

1. Though the matter was listed in 'Fresh' category, the matter was heard finally today itself.
2. This writ petition has been filed under Articles 226 & 227 of the Constitution of India claiming the following reliefs:

“(i) The record of the case may kindly be called for;
(ii) The order dated 04.11.2023 may kindly be ordered to be quashed and set aside and service upon the respondents may kindly be treated sufficient and it is further prayed that in the alternative, the matter may kindly be ordered to be transferred from District Judge, Jalore to some other place, so as to prevent abuse of the process of the law as well as of the Court.
(iii) The respondents may kindly be restrained from undertaking any activities in the management of the temple anymore.
(iv) Cost of litigation and damages may also be allowed in favour of the petitioner.
(v) Any other appropriate writ or order or direction which is favorable to the petitioner in the facts and circumstances of the case may kindly be granted to the petitioner.”



3. Brief facts of the case are that the petitioners have filed a suit for permanent and mandatory injunction against the respondents, in order to maintain the old structures of the temples and that, the so-called Self Style Guru Jairatan Sureshwar Ji, who had taken over the entire management of the trust in the absence of any elections being conducted for the trust which has been created by defendants in the name of Shri Vardhamaan Rajinder Jain Bhadavji Trust in 2018, be removed from his post. The petitioners also prayed for the rendition of the account along with the entire property of trust in supervision of the person appointed by learned trial court and further prayed for conducting elections for the trust. It is also pertinent to mention that Respondents no. 12 to 27 are the trustees of this trust.

4. With regards to the response to the suit as well as the temporary injunction application, learned Presiding Officer issued notices on 30.01.2023 and 04.11.2023 (Annexure 3 & 4) wherein it was observed that the service of the summons to Respondent/Defendant no. 2 to 11, 13 to 27 was not complete.

5. Petitioners, being aggrieved of the order dated 04.11.2023, have preferred this writ petition.

6. Learned counsel for the petitioners submits that the service of summons is complete in accordance to Order V Rule 9 of the Code of Civil Procedure, 1908 since the service of summons was made to the Shri Jairatan Sureshwarji as well as the Manager, in their personal capacity, thus the summons can be said to be duly served upon the respondents/defendants. The relevant provision has been reproduced as under:-



"13. Service on agent by whom defendant carries on business— (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer."

7. Learned counsel for petitioners further submits that the power of attorney on behalf of respondent no. 1 to 12 has been submitted by Mr. Rajender Kachhawa who is alleged of having connivance with the Presiding Officer. Learned counsel for the petitioners also submits that a complaint with regard to this has been submitted before the Chief Justice of this Hon'ble Court.

8. Moreover, learned counsel for the petitioners submits that the Presiding Officer has granted bail to one, Mohd. Parvez in Criminal Miscellaneous (Bail) Case 98/2023 under the Narcotic Drugs and Pyschotropic Substances Act, 1985 vide order dated 27.03.2023 (Annexure-6), despite the fact that the contraband recovered from the accused was more than the permissible commercial quantity. She further submits that such kind of order dated 27.03.2023 (Annexure-6), has been passed by the Presiding Officer despite the fact that this Hon'ble Court refuses to grant indulgence in such kinds of matters. She also submits that upon the perusal of the said order dated 27.03.2023 (Annexure-6), it is writ large that the counsel Shri Rajinder Kachhawa who appeared for the accused, also appears for the respondents/defendants no. 1 to 12 in the instant case, thus the Presiding Officer, being in



connivance with the counsel for the accused, granted bail to the accused.

9. Learned counsel for the petitioners further submits that despite the service of summons, the Presiding Officer, being in connivance with counsel, Shri Rajinder Kachhawa, is not treating the service to be complete upon the concerned or his family members. She also submits that thus, in the wake of these circumstances, the inaction of the learned court below would make the situation chaotic and would cause irreparable loss to the heritage of the properties and the accounts of the temple in question.

Heard learned counsel for the petitioner, perused material available on record as well as the judgment cited at Bar.

10. It is seen that the learned District and Sessions Judge has observed in its order dated 04.11.2023 (Annexure-4) that the petitioners have not made Shri Jairatan Sureshwarji and the Manager of Shri Vardhamaan Rajender Jain Bhadvaji Trust, Bhadavpur, parties to the case through the Trust, rather, they have been made parties in their personal capacity and therefore, since the respondents/defendants no. 2 to 11 and 13 to 27 are personally served, the application has been rejected.

11. This court finds that the learned Trial Court has observed that as per the report of the Office in respect to respondents no. 2 to 11 and 13 to 27, one Shri Jairatan Sureshwarji and the Manager of the Trust were present on the address mentioned for the respondents no. 2 to 11 and 13 to 27, who informed that these respondents were residing at Peshawar and they were asked



to accept notices but they refused to accept the notice and also did not allow to affix the notice. Learned Trial Court also observed that as these respondents have been impleaded as party respondent in their own capacity and not been impleaded through the President/Manager of the Trust, therefore, the request of learned counsel for the petitioners that such service upon respondents no. 2 to 11 and 12 to 27 be treated as served, was required to be rejected. It has further been observed by the learned Trial Court that as per the provisions laid down under Order V Rule 9 as the respondents 2 to 11 and 13 to 27 have been impleaded in their personal capacity and not through any agent who is empowered to accept the service of the summons, thus it cannot be declared that the summons have been duly served upon the respondents. Thus, the learned Trial Court has rightly observed that as the respondents No.2 to 11 & 12 to 27 have been impleaded in their personal capacity, it cannot be declared that the service is complete and thus no indulgence is required in the order dated 04.11.2023 passed by learned Trial Court.

12. This Court further finds that the petitioner has casted allegations against the Presiding Officer. The apprehension of the petitioners solely springs from the request made with respect to treating the service of the summons as complete, being denied by the Presiding Officer in Rajkot. If there is such order passed by the Trial Court and if the petitioners are aggrieved of the same, they have the right to challenge the same in judicial capacity before the Higher Court. The propriety or correctness of any step or order taken adopted by any judicial officer is amenable to jurisdiction of



the Superior Court. In the case in hand the petitioner has alleged that the Presiding Officer is hand in glove with the opposite Counsel. It is also pertinent to note that the petitioner has also pleaded in the writ petition that a complaint has been filed by the Jalore Bar while alleging that the presiding officer is in hand in glove with the counsel and the same is pending before the Hon'ble Chief Justice of Rajasthan. If there is any complaint being filed and is pending before the Hon'ble Chief Justice of the Rajasthan High Court then the rights of the Bar and the individual lawyers cannot become a ground for pleading on judicial side. A lawyer is required to maintain all the restraint not to make allegations against a Presiding Office but is required to avail the order in the particular facts and provisions. Casting aspersions on the Judicial Officers is a practice which is required to be severely depreciated particularly when the judicial orders are challenged. Critical analysis of a judgment in right perspective has to be appreciated but casting allegations upon a Judge if allowed would hit at the root of the system of justice. The allegations made by the Petitioner, in the pleadings are reproduced as under:-

6. That it is further pertinent to mention here that in the instant matter, one Rajender Kachhawa has submitted its power on behalf of respondent No.1 & 12, who is having connivance with the presiding officer concerned and in this regard, Bar at Jalore have submitted a complaint before the Chief Justice of Rajasthan. A copy of the complaint so submitted by members of the Bar to Hon'ble Chief Justice of Rajasthan with regard to conduct of the presiding officer is being submitted herewith for ready reference and marked as **Annexure-05**.

7. That it is further pertinent to mention here that in the instant matter, Presiding Officer has granted Bail to one Mohd. Parvez in a NDPS case, wherein, recovered contraband from the



person was more than that of commercial quantity and in a case, wherein, in these kind of cases, this Hon'ble Court also refrain from granting bails to the accused and in that matter also, Sh. Rajender Kachhawa was also lawyer for the accused. A copy of the order dated 27.03.2023 and A/d documents is being submitted herewith for ready reference and marked as **Annexure-06**.

8. That from bare perusal of the complaint so submitted by members of the Bar as well as the order Annex.5, it becomes abundantly clear that Presiding Officer- Sh. Haroon is having connivance with the Lawyer Sh. Rajender Kachhawaha and on account of that, he is not treating the urgency of the matter in question and has deferred the matter for the want of service of summons and a bare peursal of this report on summons would make it abundantly clear that it has been served upon the concerned or his family member, who were adult and as per the General Rule (Civil), any service effect upon any adult member of the Family can be treated as sufficient service and while not treating the service sufficient, learned court below is proceeding the matter without considering its urgency and on the other hand, respondents herein are trying to overtake entire things from the temple concerned. Under these circumstances, being aggrieved by the inaction on the part of learned Court below, humble petitioners having left with no alternate and efficacious remedy that to approach this Hon'ble Court for either transferring the case to some other Court or for passing appropriate interim order in the instant matter on the following grounds amongst other without prejudice to each other.

13. This court further finds that Hon'ble Apex Court in **Krishna Prasad Verma versus state of Bihar**, reported in **AIR 2019 SC 4852**, has categorically held that if any judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative



side and place it on the service record of the judicial officer concerned. The relevant para is reproduced as under:-

“16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the concerned judicial officer. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect.”

14. This court also finds that in another case of **Prof. Abdul Gani Bhat v. Mr. Malik Shabir Ahmed**, [561-A No. 236/2012 decided on 21.12.2017], the Hon'ble Jammu and Kashmir High Court, Srinagar bench has observed that:

“18. It is fundamental that if rule of law is to have any meaning and content, the authority of the Court or a statutory authority and the confidence of the public in them should not be allowed to be shaken, diluted and undermined. The Courts of justice and all Tribunals, exercising judicial functions from the highest to the lowest, are, by their constitution, entrusted with functions directly connected with the administration of justice. It is that expectation and confidence of all those, who have or are likely to have business in that Court or Tribunal, which should be maintained so that the Court/Tribunal can perform all their functions on a higher level of rectitude and without fear, favour, affection or ill-will. Casting defamatory aspersions upon the character, ability or integrity of the judge/judicial





officer/authority undermines the dignity of the Court/authority and tends to create distrust in the popular mind and impedes the confidence of people in the Courts/Tribunals, which is of prime importance to the litigants in the protection of their rights and liberties. The protection of judges/judicial officer/authority is not personal, but accorded to protect the institution of the judiciary from undermining the public confidence in the efficacy of judicial process. The protection, therefore, is for fearless crucial process. Any scurrilous, offensive, intimidatory or malicious attack on the judicial officer/authority beyond condonable limits, amounts to scandalizing the Court/Tribunal, amenable to not only conviction for its contempt, but also liable to libel or defamation and damages personally or group libel. Maintenance of dignity of the Court/judicial officer or quasi-judicial authority is, therefore, one of the cardinal principles of rule of law embedded in judicial review. Any uncalled for statement or allegation against the judicial officer/statutory authorities, casting aspersions of Court's integrity, would justify initiation of appropriate action for scandalizing the Court or Tribunal or vindication of authority or majesty of the Court/Tribunal. The unfounded accusation by litigant against judicial officer(s) undermines their authority and rudely shakes the public confidence in proper dispensation of justice. It is of necessity to protect the dignity or authority of the judicial officer to maintain the stream of justice, pure and unobstructed. The judicial officer/authority needs protection against such intimidating attacks. Therefore, making wild allegations against the presiding officer amounts to scandalizing the Court/statutory authority.

19. In my opinion, right approach has been adopted by both the learned Magistrates in dealing with the cases of the petitioner and the orders passed by the learned Magistrates, of course, fall within the ambit of "acts judicial in nature", therefore, there is no question at all to proceed against them in any manner on the basis of any complaint of the petitioner."

15. This court further finds that in the case of **Anupam Ghosh & Anr. v. Faiz Mohammed and Ors. reported in (2022) 0 (SC) 1609**, the Hon'ble Apex Court has held that merely because some orders had been passed on judicial side against the petitioners, it cannot be said that the Court, which had passed



that order, was influenced. The relevant para of the said judgment is reproduced as under: -

"3. One of the grounds on which the proceedings are sought to be transferred is that the petitioners believe that they are not getting a fair trial and the respondents being local bigwigs are able to influence the local Court. We deprecate such a stand and the ground on which the proceedings are sought to be transferred. Merely because some Orders are passed on judicial side (in the present case in the execution proceedings) which may be against the petitioners, it cannot be said that the Court, which passed the order was influenced. If the petitioners are aggrieved by any judicial order, the proper remedy would be to challenge the same before higher forum. But merely because some Orders adverse to them are passed by the Court, it cannot be said that the Orders on judicial side are passed under influence. Nowadays, there is a tendency to make such allegations against the judicial Officers whenever the orders are passed against a litigant and the orders are not liked by the concerned litigant. We deprecate such a practice. If such a practice is continued, it will ultimately demoralize the judicial officer. In fact, such an allegation can be said to be obstructing the administration of justice."

16. Moreover, this court also finds that Section 1 of the Judicial Officers Protection Act, 1850 provides inter alia, as under:-

"1. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.— No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; xxx"

This court observes that this Section contains the common law rule of immunity of judges based on the principle that a person holding office should be in a position to discharge his functions with complete independence and what is more important, without there being, in his mind, fear of consequences.





The petitioners have made alternate prayer that the matter may be transferred from District Judge, Jalore to some other place while casting aspersions upon the Presiding Officer. Such practice is deprecated and in case the judicial order passed by the learned District Judge is not acceptable to the petitioners, then it is open for them to challenge the same on judicial side. It is expected from the lawyers to maintain all the restraint and not make allegations against a Presiding Officer.

17. As an upshot of the above discussion read with the findings of the learned court below, no interference is called for in the impugned order dated 04.11.2023 (Annexure-4), and thus, the instant writ petition, being devoid of any merit, is dismissed with cost. Stay application as well as all other pending applications, if any, also stands dismissed.

18. The petitioner is directed to deposit the cost of Rs.10,000/- before the Rajasthan State Legal Services Authority, Jodhpur.

(DR. NUPUR BHATI),J

28-Surabhi-DJ/-