2023:PHHC:117832

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

258 **CWP-7511-2022**
Date of Decision: 04.09.2023

KRISHAN KUMAR RAO

... Petitioner

VERSUS

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Jai Vir Yadav, Sr. Advocate with
Mr. Rohit Kumar Rana, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G., Haryana.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the disparaging remarks made against the petitioner in impugned order dated 14.02.2022 (Annexure P-2) passed by the Additional Sessions Judge, Gurugram while deciding the anticipatory bail application of an accused Dheeraj Kumar Setia, IPS in case FIR No.309 dated 21.08.2021 registered under Section 454, 457, 380, 381, 382, 120-B, 411, 201 of the IPC, 1860; Section 25(1B) (a) of the Arms Act, 1959 and Sections 7/8 of the Prevention of Corruption Act, 1988 at Police Station Kherki Dhaula, Gurugram.

Learned counsel for the petitioner contends that one Dheeraj Setia, IPS was an accused in the above case and had preferred a bail application under Section 438 of the Cr.P.C. for seeking anticipatory bail and stay against his arrest. While dealing with the aforesaid bail application filed by Dheeraj Setia,

the following observations were recorded by the Addl. Sessions Judge, Gurugram:

> *19. The plight of a common man may not be even imagined if an IPS officer like petitioner starts hushing up the criminal cases by way receiving gratification. The hopes of such a common man of getting justice had gone to the dust of unknown storms immediately at the moment when the petitioner had received the bag of Rs. 2.50 Crore from the mastermind of a big burglary. He was having a commanding and dominative position to rein in his subordinates and only due to having such position, he had been paid by Dr Suchender Jain Nawal for his such services which he had assured to provide in Crime branch Gurugram. The extent of influence exercised by him over his subordinates to hush up the case may not be scaled unless the petitioner is interrogated. Whether this whole illegal exercise had been done by the petitioner with the concurrence of the then Commissioner of Police, Gurugram who was his immediate senior at Gurugram or the other higher police authorities, the same may also not be ascertained unless the petitioner is questioned into custody. Even the then Commissioner of Police, Gurugram had passed the office order dated 18.8.2021 through which the additional charge of DCP (Crime) had been devolved upon the petitioner. What kind of competency and integrity of the petitioner was checked by the then Commissioner of Police Gurugram before handing over the dual charge to him, that is also a question of fact. Whether the Commissioner of Police had passed that order 18.8.2021 in routine or purposely, the same is also yet to investigated and that is possible only upon the interrogation of the petitioner. To the more surprise, the office of Commissioner of Police, Gurugram lies in the same building where the DCP (Crime) and DCP (South) are also having their office. How it is possible, the gangsters and kingpins of burglary are visiting the office of DCP (Crime), having bags of Rs.2.50 Crores and the then Commissioner of Police, having an adjacent office, was unaware of that. When the petitioner was having a bag*

> *of Rs.2.50 Crore on 4.10.2021 in his chamber lying besides Commissioner's office, what the then Commissioner of Police Gurugram was doing at that time and for what purpose the Commissioner had been posted there by the Government. Rather, it appears at the first look that the petitioner had been left open to bat on front foot in the lap of the then Commissioner of Police, Gurugram. All this is still a matter of investigation. If the gangsters and the dacoits visit the office and residence of DCP with bags having Rs 2.50 Crores to get hushed up the case, then the poor man of this country should certainly go to the some deity to pray for his survival.*

He contends that the aforesaid order records disparaging remarks against the petitioner and his functioning, even though, petitioner had no concern with the abovesaid petition and that as a matter of fact, the aforesaid case had been registered against an the accused-police officer during the time when the petitioner was posted as Commissioner of Police, Gurugram. The disparaging remarks were uncalled for at that stage and that the same were even not necessary for adjudication of the anticipatory bail petition. The expunction of the aforesaid remarks would have no bearing on the final outcome of the case. He submits that the Hon'ble Supreme Court in the matter of ***'State of U.P. Versus Mohammad Naim'*** reported as ***AIR 1964 SC 703*** has held as under:

> *"10. The last question is, is the present case a case of an exceptional nature in which the learned judge should have exercised his inherent jurisdiction under s. 561-A Cr.P.C. in respect of the observations complained of by the State Government? If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this*

court. At the same time it is equally necessary that in expressing their opinions judges and Magistrates must be guided by considerations of justice, fairplay and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (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. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

Emphasis supplied

He further refers to the judgment of Hon'ble Supreme Court in the matter of ***"State of U.P. and another Versus Ram Ashrey and another"*** reported as ***(2012) 12 SCC 219*** wherein it has been held as under:

"9. Mr. Dash, learned senior counsel for the appellants 1 and 2 has pointed out that in the impugned order the conduct of appellant No.2 was severely criticized by the High Court. It was observed that appellant No.2 had written a letter dated 6th May, 2005 ignoring the consideration that such a letter would play havoc with the liberty and character of the person who is otherwise not involved in the crime. The High Court also observed:

> *"The conduct of such officer should be taken into consideration by the Court as reckless, unmindful and being without jurisdiction and also with a view to harass the innocent citizens/petitioners under his authority of high rank. The higher officer the more responsibility lies on the*

shoulder of the said officer and he should not act casually, but with a sense of deep responsibility."

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11. The High Court further observed as follows:

"Therefore, in the circumstances of the case and with a view to curb such incidents, so that such letters may not be written in future and also that people may be certain in their mind as to what is the proper forum to approach and in order to reduce the administrative chaos, it is necessary that a censure entry be recorded in the character roll of the officer for writing such letter without authority of law. The Court, therefore, directs the Chief Secretary to record a censure entry in the character roll of the officer."

12. XXXX XXXX XXXX

13. We are of the considered opinion that in the facts and circumstances of this case, the High Court was not justified in recording such scathing remarks about the action taken by appellant No.2 on the complaint made by respondent No.2. It must be remembered that the petition under Section 482 of the Code of Criminal Procedure is still pending before the High Court. In our opinion, the High Court unnecessarily proceeded to record a conclusion that the respondent No.1 is an innocent person not involved in any crime. Such a finding could not have been recorded at an interim stage. The petition under Section 482 was yet to be heard on merits, and was listed for hearing on 2nd April, 2010."

The Hon'ble Supreme Court also held in the matter of ***'Parkash Singh Teji Versus North Indian Goods Transport Co. Pvt. Ltd. and another'*** reported as ***(2009) 12 SCC 577*** that remarks/observations or strictures are to be avoided if the officer has no occasion to put forth his reasonings. Further, such

remarks should be recorded only if it is really necessary for decision of case. The relevant extract of the same is reproduced hereinafter below:

> *10) In the light of the explanation, we also perused those relevant materials. As rightly highlighted and pointed out by Mr. P.S. Patwalia, learned senior counsel for the appellant, in the facts and circumstances and the materials available, we are satisfied that the remarks/observations and the directions made in para 10 of the order dated 06.07.2006 are not warranted. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectives of the army. As observed in A.M. Mathur vs. Pramod Kumar Gupta and Others, (1990) 2 SCC 533, the duty of a restraint, humility 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.*
>
> *11) We are not undermining the ultimate decision of the High Court in remitting the matter to the trial Court for fresh disposal. However, we are constrained to observe that the higher Courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. Our legal system acknowledges the fallibility of the Judges, hence it provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity, however, sometimes is likely to err. It has to be noted that the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure. They do not have the benefits which are available in the higher courts. In those circumstances, remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put forth his reasonings.*
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> *12) XXXX XXXX XXXX*
>
> *13) In the light of the above principles and in view of the explanation as stated by the appellant for commenting the conduct of the plaintiff, we are satisfied that those observations and directions are not warranted. It is settled law that harsh or*

> *disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case as an integral part thereof. The direction of the High Court placing copy of their order on the personal/service record of the appellant and a further direction for placing copy of the order before the Inspecting Judge of the officer for perusal that too without giving him an opportunity would, undoubtedly, affect his career. Based on the above direction, there is every possibility of taking adverse decision about the performance of the appellant. We hold that the adverse remarks made against the appellant was neither justified nor called for.*
>
> *14) In the interest of justice and fairness, we expunge the offending remarks made against the appellant in para 10 of the impugned order of the High Court of Delhi, dated 06.07.2006. Since these appeals are confined only to expunging of the adverse remarks, the same are allowed. No costs.*

Relying on the abovesaid precedent judgments of Hon'ble the Supreme Court, Learned counsel for the petitioner contends that the circumstances in the present case did not call out for recording of disparaging remarks as the work and conduct of the petitioner was not in question before the Addl. Sessions Judge, Gurugram nor any opportunity of explaining or defending himself was afforded. Further, there was insufficient material available before the Court below in order to justify the recording of such remarks and that the abovesaid observation was not integral for final adjudication of the controversy in question.

Learned State Counsel does not raise any serious objection.

I have heard the learned counsel for the respective parties and have gone through the impugned disparaging remarks as well as the judgments relied upon by the learned counsel for the petitioner.

Taking into consideration the facts of the case, the remarks recorded by the Addl. Sessions Judge, Gurugram as well as the law laid down by Hon'ble the Supreme Court, I find myself in agreement with the submissions advanced by the counsel for the petitioner. The remarks extracted above were not integral for the final adjudication of the anticipatory bail application filed by accused–Dheeraj Kumar Setia, IPS. There was further no opportunity granted to the petitioner and also there was no material available on record so as to substantiate and/or justify the recording of the said disparaging remarks.

The present petition is accordingly allowed.

The disparaging remarks as recorded by the Addl. Sessions Judge, Gurugram in the order dated 14.02.2022 passed in Bail Application No.43 of 08.02.2022 in case titled as "Dheeraj Kumar Setia Vs. State of Haryana" are hereby expunged to the extent extracted above.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 04, 2023
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No