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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2386/2021 & CRL.M.A. 19301/2021**

SURENDER KUMAR Petitioner
Through: **Mr Dhananjay Singh Sehrawat,**
Advocate

versus

STATE OF NCT OF DELHI Respondent
Through: **Mr Ranbir S Kundu, ASC for State**
with Mr Mukul Dagar, Ms Pooja and
Mr Naresh Dagar, Advs.
Inspector Kanwar, Crime

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
05.04.2022

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1. This is a petition seeking setting aside/modifying the judgment dated 25.10.2021 passed by learned ASJ-02, North-East District, Karkardooma Courts, Delhi and further to expunge the remarks made against the petitioner and to set aside the direction of initiating inquiry against the petitioner.

2. The petitioner in the present case is the Investigating Officer who had conducted investigation in FIR No. 428/2011, Police Station - New Usmanpur, under Section 302 IPC. The learned ASJ in his order dated 25.10.2021 set aside the order dated 17.10.2019 passed by the Court of learned Metropolitan Magistrate, and while doing so, the learned ASJ in para 17 of the order observed as under:

“17. Before parting with this revision petition, it is necessary

to notice the conduct of IO, Inspector Surender Kumar, Crime Branch, Delhi. IO was well aware about the status of the case which had already been committed to this court and also used to attend the proceedings before this court. Even he was well aware about the factum that application of accused u/s 307 Cr.P.C had already been dismissed by the Ld. Predecessor of this court vide order dated 03/09/2019, but instead of getting challenged the dismissal order before the Higher Court, he assisted and connived with accused to invoke the wrong jurisdiction of the Court of Ld. CMM/MM by not disclosing the correct facts and compelled to invoke the jurisdiction which was not vested with them and procured the desired order through Forum-Shopping. He did everything deliberately and his conduct amounts to Contempt of Court besides dereliction in his official duties. This deliberate misconduct of IO, Inspector Surender Kumar, Crime Branch, Delhi is liable to be brought into the notice of the Commissioner of Police, Delhi, who shall initiate a time bound inquiry against this IO, Insp. Surender Kumar and shall file an Action Taken Report within the period of 8 weeks positively.”

3. It is stated by the petitioner that the observations of the learned Sessions Court is not only contrary to law but also have been passed behind his back and without giving him any opportunity of explaining his conduct and the steps undertaken in the inquiry.

4. Mr Kundu, learned ASC appearing for the State fairly submits that no opportunity was given to the petitioner to explain his conduct or

investigation undertaken before adverse comments have been made against him.

5. Mr Sehrawat learned counsel for the petitioner has placed reliance on the order of the Supreme Court in *Pramod Kumar Jha v. State of Bihar & Anr.*, Criminal Appeal No (s). 1092/2002 dated 18.06.2008 which reads 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.”

6. He has also relied on *Mohd. Mehendi Shah v. State*, CRL.M.C. 2802/2021 of the Delhi High Court dated 11.11.2021 and more particularly on para 4 to 9 contained therein which is reproduced below:

“4. In the instant case, the Additional Sessions Judge, while passing the impugned order has made observations with regard to the conduct of investigating officer and lapses in the investigation.

5. In light of the facts and circumstances of the case, it is pertinent to peruse the position of law laid down in this

context.

6. Section 6 in Chapter 1, part H (titled 'The Judgment') of the Delhi High Court Rules for "**Practice in the Trial of Criminal Cases**" states 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."

7. *In State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2011) 12 SCC 689, the Hon'ble Supreme Court observed as under:*

"13. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalizations defeat the very purpose for which they are made. Thus, 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

8. *While in the instant case, the application before the Court below was only for granting bail, the Hon'ble Supreme Court in the **State of West Bengal v. Mir Mohammad Omar & Ors (2000) 8 SCC 382**, has directed the courts to ordinarily desist from castigating the investigation even while ordering acquittal. It observed as under:*

“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 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 unsavory 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, the 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.”

9. Similarly, in ***Teesta Setalvad and Anr. v. State of Gujarat***, (2004) 10 SCC 88, the Hon'ble Supreme Court held that:

“9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. 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. 10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone, either to please their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case.”

7. A bare perusal of the observations in para 17 of the order dated 25.10.2021 passed by the learned ASJ clearly show that the petitioner against whom observations have been made was not present before the Sessions Court. Making such sweeping and castigating remarks against him without even giving an opportunity to him to explain his conduct, is incorrect. It is further undesirable for Courts to make remarks censuring the action of police officers unless such remarks are strictly relevant for the case.

8. For the reasons stated above and relying on the observations of the Supreme Court and Coordinate bench of this Court as noted above, the

remarks against the petitioner at para 17 in the order dated 25.10.2021 passed by Additional Sessions Judge-02, NE, Karkardooma Delhi in Case No. Cr. Rev. No. 09/21 titled as *Virender Kumar v. State* are hereby expunged.

9. Petition is disposed of.

JASMEET SINGH, J

APRIL 5, 2022

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Click here to check corrigendum, if any