

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 493/2021
CrlM No. 1606/2021

Reserved on: 26.04.2022
Pronounced on: 04.07.2022

Sunny Gupta :

Petitioner(s)

Through:- Mr. Sunil Sethi, Sr. Advocate with
Mr. Lawanya Sharma, Advocate.

Versus

1. Union Territory of J&K through Principal Secretary,
Home Department Civil Secretariat Jammu;
2. Inspector General of Police Jammu Zone Jammu;
3. Station House Officer/Incharge Police Station Dachhan. **Respondent(s)**
Through:- Mr. Suneel Malhotra, GA.

Coram: HON'BLE MR. JUSTICE MOHNA LAL, JUDGE

J U D G M E N T
04 – 07 – 2022

1. Petitioner has invoked the jurisdiction of this Court in terms of Section 482 of Code of Criminal Procedure with the prayer for calling the record of Criminal Challan/FIR No. 25-Sessions titled State of J&K Vs. Bashir Ahmed and ors. from the Court of 3rd Additional Sessions Judge Jammu (Special Judge u/ss22 of NIA Act) and for expunging the adverse remarks, observations and directions made by the Ld. Judge in order dated 02.06.2021 against the petitioner at page No. 15, 16 & 17 of the order dated 02-06-2021 and for quashing/setting aside the impugned adverse remarks and observations made against the petitioner on the following grounds:-

- (i) that the petitioner is a citizen of India and permanent resident of UT of Jammu and Kashmir and fully entitled to invoke the inherent criminal jurisdiction of this Court for protection of his fundamental rights guaranteed to him under the Constitution of India, and is aggrieved of the order dated 02.06.2012 passed by the Court of Ld. 3rd Additional Sessions Judge Jammu in criminal challan/file No. 25/Sessions titled State through SHO P/S Dachhan Vs. Bashir Ahmed and others arising out of FIR No. 01/2020 registered with Police Station Dachhan Kishtwar for offences u/ss 13/18/19/38/39 of Unlawful Activities Prevention Act r/w offences u/ss 3/25 & 7/25 Arms Acts, whereby, Ld. Trial Court while adjudicating the issue of framing of charges against the accused persons, passed certain uncalled for strictures, observations and directions against the petitioner who was the

Investigating Officer (I/O) in the said FIR No. 01/2020, the impugned observations are aimed at causing grave and serious prejudice to the service career and rights of the petitioner;

- (ii) that the petitioner is a direct recruit in J&K Police and has been appointed to the post of Dy. Superintendent of Police and was posted as Dy. Superintendent of Police (HQ) Kishtwar, and while serving as Dy. SP (HQ) Kishtwar, the petitioner was assigned the investigations in case **FIR No. 268 of 2019** of Police Station Kishtwar for offences u/ss 13/18/19/20/38/39 of Unlawful Activities Prevention Act r/w Sections 3/25, 7/25 & 7/27 of Arms Act and case **FIR No. 01/2020** registered with Police Station Dachhan Kishtwar for offences u/ss 13/18/19/38/39 of Unlawful Activities Prevention Act r/w sections 3/25 & 7/25 Arms Acts;
- (iii) that **in case FIR No. 268/2019** of Police Station Kishtwar, an information was received on 02.12.2019 from reliable source that a militant namely Tariq Hussain S/o Mohd. Amin Wani R/o Sounder Dachhan had joined a band militant organization and had made a hideout near Ikhala Forest where he has kept arms and ammunition with the intention to disrupt the peaceful environment of Kishtwar and to secede the Union Territory of J&K from India, the accused persons always remained in lurk to attack the integrity and threatening the sovereignty of the Nation, on this report, the aforesaid FIR was registered and investigation was assigned to the petitioner;
- (iv) that **in case FIR No. 01/2020** of Police Station Dachhan, the brief facts are, that on 02.01.2020 it was reliably learnt at Police Station Dachhan that as many as 10 accused persons namely (i) Mohd. Hassan s/o Dulla Gujjar R/O Gujjar Kothan Dachhan, (ii) Saddam Hussain Wani S/O Mohd Amin Wani R/O Suid Dachhan, (iii) Ghulam Nabi Chopan S/O Abdul Aziz Chopan R/O Trungaie Dachhan, (iv) Bashir Ahmed Mangnoo S/O Lal Din Mangnoo R/O Khripakhnoo Dachhan, (v) Wali Mohd. Sheikh S/O Ghulam Mohd Sheikh R/O Sewarbatti Dachhan, (vi) Mohd. Ramzan Sheikh S/O Mit Zaman Sheikh R/O Sewarbatti Dachhan, (vii) Yasir Hussain S/O Gul Mohd Dar R/O Sewarbatti Dachhan, (viii) Khazer Mohd. Sheikh S/O Habib Sheikh R/O Sewarbatti Dachhan, (ix) Bashir Ahmed Sheikh S/O Abdul Gani Sheikh R/O Sewarbatti Dachhan & (x) Zahoor Ahmed Butt S/O Sannaullah Butt R/O Lorna Dachhan through underground network are associated with banned organization Hizbul Muzahideen (HM) and the said persons are harboring and providing transportation and other logistic aid to the militants, the said persons are managing meetings with active militants namely Mohd Amin @ Jahangir S/o Mohd. Anwar R/o Saroor Kishtwar, Mudassar Ahmed S/o Tariq Hussain Gianoo R/o Tander Dachhan and Riaz Ahmed S/o Mohd. Ramzan R/o Renie Marwah for carrying out terrorist activities in the area by plotting conspiracies, the said persons were also providing information with regard to the security forces to the militants for carrying out attacks with intention to hurt the integrity of the country, the said persons were also arranging funds to active militant Mohd. Amin @ Jagangir, and on this information FIR No. 01/2020 for the commission of offence u/ss 13/18/19/38/39 Unlawful Activities

Prevention Act was registered at Police Station Dachhan and investigation entrusted to the petitioner;

- (v) that both the FIRs were serious in nature involving the offences under Unlawful Activities Prevention Act, the terrorist Mohd. Hussain S/o Mohd. Amin Wani Ro Sounder Dachhan is the prima accused who is categorized terrorist of HM militant organization since 13.11.2019 whereas, other three terrorists viz. Mohd. Amin @ Jahangir, Mudassir Hussain, & Riaz Ahmed are the prime accused in FIR No. 01/2020 of Police Station Dachhan who have been declared as categorized militant and operating in District Kishtwar particularly in Marwah/Dachhan areas, Mohd. Amin Butt @ Jahangir is an active terrorist is categorized as A++ and designated as Divisional Commander of banned HM outfit since 1992 and is the longest surviving militant in Jammu & Kashmir which speaks volume about his reliable network of OGWs/UGs which is maintaining the highest level of secrecy and they are intentionally and willfully providing him all logistic supports like food, clothing, information to commit the terrorist acts and carry on their illegal unlawful activities against the State;
- (vi) that the petitioner as I/O of both the said FIRs has been instrumental in successfully breaking down the terrorist network in the area, and it is only during investigation and sustained interrogation that these co-accused/ abettors were nominated and even recoveries were affected from two accused namely Khazir Mohd. (12 Bore) and Mohd. Hassan (25 Live rounds of Insas) upon their disclosures in case FIR No. 01/2020 of Police Station Dachhan, petitioner being I/O of the aforesaid cases without caring for his life acted in a most professional manner and on interrogation of the accused persons succeeded to break down the network of these abettors/harbors and supporters, as painstakingly identified, prepared & produced the local independent witnesses for their statement u/ss164 Cr.PC before the Judicial Magistrate, accused Yassir Hussain is accused No. 6 in criminal challan titled State of J&K Vs. Bashir Ahmed and ors. in FIR No. 01/2020 and has been arraigned as accused on the basis of evidence that he has been providing food to the longest surviving terrorist Mohd. Amin @ Jahangir;
- (vii) that on completion of investigation in FIR No. 01/2020 criminal challan titled State Vs. Bashir Ahmed and ors was presented which was committed to the Court of Ld. 3rd Additional Sessions Judge Jammu, and the Ld. trial Court after hearing the arguments of ld. counsel for the parties as well as Ld. Additional Public Prosecutor on the issue of framing of charges has passed the impugned order dated 02.06.2021 regarding framing of charge where against accused No. 1 Bashir Ahmed, accused No. 2 Wali Mohd, accused No. 3, Khazar Mohd, accused No. 7 Ghulam Nabi, accused No. 8 Mohd. Hassan, accused No. 9 Mohd. Ramzan, and accused No. 10 Saddam Hussain charges for the commission of offences u/ss 13/18/19/23/39 of Unlawful Activities Prevention Act & 3/25 Arms Act have been framed, while accused No. 4 Zahoor Ahmed, accused No. 5 Bashir Ahmed, accused No. 6 Yassir Hussain have been discharged, whereas, remaining three accused viz. accused Nos. 11, 12 & 13 could not be apprehended

during investigation till the presentation of charge-sheet as such proceedings u/ss299 Cr.pc were initiated against them and general warrants of arrest were issued against the accused persons;

- (viii) that in the order impugned of framing of charges dated 02.06.2021 the Ld. Trial Court proceeded to record his observation and dissatisfaction against the I/O/petitioner whereby the trial Court at **page No. 15 of the impugned order**, has recorded that investigation of the case has been conducted in very perfunctory and unprofessional manner, number of persons have been roped in the present case but during investigation I/O/petitioner has conducted the investigation in a lethargic and sluggish manner and has not taken even a little pain to search for the evidence in the present case, much better investigation could be conducted by even a Head Constable in comparison to I/O; on Page 16 of the impugned order, Ld. Trial Court has further recorded that the I/o has not bothered to seize the mobile phones of any of the accused persons as well has not taken any pain to collect the CDRs of their mobile phones and their connectivity with the categorized terrorists, besides, thus, learned trial Court has further observed that how the petitioner has qualified the administrative examination of the State and became Dy. S.P in the police department, petitioner/I/O has arrayed accused Mohd. Ramzan as one of the accused in the present case but the said accused was in judicial custody in another case FIR No. 268/2019 at the time when FIR No. 01/2020 was registered, trial Court has further proceeded to hold the I/O while conducting the investigation in FIR No. 268/2019 acted in the same manner and has demolished the said case, due to sheer incompetency and negligence, the Court was forced to discharged some of the accused persons in FIR No. 268/2019, by the impugned order dated 02.06.2021 the ld. trial Court proceeded to recommend that a departmental enquiry should be initiated against the petitioner whereby he should be asked that why and under what circumstances he has not collected the real evidence in the case and left over the important aspects, the trial Court has further ordered that the petitioner should be asked that how and under what circumstances he had implicated and charge sheeted the accused Zahoor Ahmed against whom no evidence was available with him even at the time of registration of FIR as well as at the time when the charge sheet against him was framed and other co accused were presented, whereby, the Inspector General of Police Jammu Zone has been directed to conduct a departmental enquiry against the petitioner;
- (ix) that from the bare perusal of the impugned findings, observations and disparaging remarks made by the Ld. trial Court whereby the trial Court has said that the petitioner has not taken any pains to collect CDRs of their mobile phones and their connectivity with the categorized terrorist, the trial Court has made disparaging remarks against the petitioner are hypothetical and not practical with regard to not seizing of the mobile phones of the accused and non-analysis of CDRs while performing his duties as Investigating Officer, the impugned findings, observations, remarks and directions against the petitioner recorded by the trial Court in its

order dated 02.06.2021 are totally illegal and contrary to the factual and legal position;

- (x) that the UT of J&K has also felt aggrieved of the order impugned dated 02.06.2021 regarding framing of charges to the extent that the trial Court has discharged three accused persons from the charge-sheet titled State Vs. Bashir Ahmed and ors and the Government in the Department of Law, Justice and Parliamentary Affairs has already granted necessary sanction vide Government order No. 4200-JK (LD) of 2021 dated 05.08.2021 for filing of appeal against the said order passed by the learned trial Court;
- (xi) that the disparaging remarks made by the Ld. Trial Court against the petitioner have the potential to demoralize the police officers who by putting their lives to great and grave risks are bursting the militants/terrorists network and are investigating the cases under Unlawful Activities Prevention Act, besides this, personal remarks casting of aspersions on the selection of the petitioner through the prestigious constitutional body i.e. Public Service Commission are totally unwarranted and uncalled for and could not have been made by the Ld. Trial Court, the vide media publicity of the antecedents of the petitioner in print and electronic media in reference to the order dated 06.02.2021 has invited unnecessary and avoidable attention of the general public and anti-national elements which may expose the petitioner including his family to the threats by anti national elements and militants;
- (xii) that the impugned findings/observations and disparaging remarks by the trial Court against the petitioner are nothing but abuse of process of law, illegal and contrary to settled position of law, therefore, the same deserve to be expunged. Prayer has been made for expunging of adverse disparaging remarks/observations and directions passed by the learned trial Court in its order dated 02.06.2021 of framing of charges against the accused at page 15, 16 & 17.

2. Respondents have opposed the petition by filing objections, wherein, they have contended, that the petitioner was deputed as I/O in FIR No. 01/2020 of Police Station Dachan, therefore, the duty was caste upon him to collect the evidence admissible in accordance with law against the accused persons, that as per the investigation disclosure memo, seizure memo, categorization certificate and statements of witnesses U/S 161/164 Cr.PC and circumstances offences U/s 3/25,7/25 I.A. Act 20 ULA Act were incorporated, detail of offences proved against the accused into the instant investigation depicts, that offences U/S 13/18/20/38 ULA (P) Act have been proved against terrorist namely (1) Mohd Amin@Jahangir Saroori S/O Mohd Anwar Butt R/O Bhadat Saroor, (2) Mudassir Ahmed S/O Tariq Hussain Gianoo R/O Tander Dachan and (3)Reyaz Ahmed S/O Mohd Ramzan R/O Renaie Marwah; Offences u/ss 13/18/19/39 ULA Act have been proved against (1) Bashir Ahmed S/O Lal Din Mingnoo R/O

Kripakhnoo (2) Wali Mohd S/O Ghulam Mohd R/O Dangduru (3) Bashir Ahmed S/O Abdul Gani Sheikh R/O Dangduru (4) Zahoor Ahmed S/O Sana Ulla Butt R/O Loharna (5) Yassir Hussain S/O Ghulam Mohd Dar R/O Danduru (6) Ghulam Nabi Chupan S/O Abdul Aziz Chupan R/O Trungaie (7) Mohd Ramzan S/O Mir Zaman Sheikh R/O Dangduru (8) Sadam Hussain S/O Mohd Amin Wani R/O Suid Dachan; offences U/S 3/25 IA Act 13/18/19/39 ULA (P) Act have been proved against accused (9) Khazar Mohd S/O Habib Sheikh R/O Dangduru Dachan, offences U/S 7/ 25 I A Act 13/18/19/39 ULA (P) Act have been proved against accused person namely (10) Mohd Hassan S/O Dulla Gujjar R/O Gujjar Kothan Dachan for providing harbor/lood and shelter and other logistic support to militants namely (1) Mohd Amin @ Jahngir Saroori S/O Mohd Anwar Butt R/O Bhadat Saroor (2) Mudassir Ahmed s/o Tariq Hussain Gianoo R/O Tander Dachan and (3) Reyaz Ahmed S/ Mohd kRamzan R/O Renaie Marwah; the accused also managed transportation for the said militants who committed terrorist attacks in Kishtwar town; accused Namely (1)Bashir Ahmed S/O Lal Din Mingnoo R/O Kripakhnoo (2)Wali Mohd S/o Ghulam Mohd R/O Dangduru (3) Khazar Mohd S/O Habib sheikh R/O Dangduru (4) Bashir Ahmed s/O Abdul Gani Sheikh R/O Dangduru (5) Zahoor Ahmed S/O Sana Ulla Butt R/o Loharna (6) Yassir Hussain S/O Ghulam Mohd Dar R/O Danduru and (7) Ghulam Nabi Chupan S/O Abdul Aziz Chupan R/O Trungaie (8) Mohd Hassan S/O Dulla Gujjar R/O Gujjar Kothan Dachan and all the arrested accused persons are lodged in District Jail Amphalla Jammu, (9) Mohd Ramzan S/O Mir Zaman Sheikh R/O Dangdoru Dachhan is already arrested in Case FIR No 268/20199 U/S 3/25, 7/25, 7/27 1.A.Act, 7/25, 7/27 I.A. Act, 13/18/19/20/23/38/39 ULA (P) Act of P/S Kishtwar and is lodged in Central Jail Kot Balwal Jammu and (10) accused namely Sadam Hussain S/O Mohd Amin R/O Suid Dachan is absconding since the logging of FIR, against whom warrant u/s 299 Cr.pc against terrorists accused (1) Mohd Amin @ Jahngir Saroori S/O Mohd Anwar Butt R/O Bhadat Saroor (2) Mudassir Ahmed S/O Tariq Hussain Gianoo R/O Tander, Dacha (3) Reyaz Ahmed S/O Mohd Ramzan R/O Renaie Marwah, the above said challan has been presented before the Court of 3rd Addl. District Judge, Jammu vide challan no. 02/2020 dated 27/06/2020. It is contended, that on presentation of challan, Id. 3rd Additional Sessions Judge Jammu vide order dated 02.06.2021 while framing charges against the accused persons,

discharged A-1, A2, A3 namely Bashir Ahmed, Wali Mohd. & Khazar Mohd for commission of offences u/ss 18/19/39 of UAPA Act; A-4 Zahoor Ahmed, A-5 Bashir Ahmed & A-6 Yassir Hussain were also discharged from the charge sheet; A-7 Ghulam Nabi was discharged from Section 18 of UAPA Act, A-8 was partly discharged from the charge sheet, while A-9 Mohd. Ramzan & A10 Saddam Hussain were charged for commission of offence u/ss 13/19 & 39 of UAPA Act, while A-12 & A-13 could not be apprehended during investigation till presentation of the charge sheet, wherein they have been proceeded u/ss299 Cr.PC and general warrants of arrest have been initiated against them. It is contended, that the petitioner/I/O has failed to investigate the case in a manner as required under law against the accused herein by collecting necessary evidence admissible under law, therefore, the Court below in its order dated 02.06.2021 recorded that the investigation has been conducted in a very perfunctory and in an unprofessional manner, whereby, the ld. trial Court has directed IGP Jammu to conduct the departmental enquiry against the petitioner and such a direction passed by the Ld. Trial Court is in accordance with law and does not suffers from any illegality.

3. Mr. Sunil Sethi Ld. Sr. Counsel for petitioner while strongly laying emphasis for expunging the adverse/derogatory remarks and observations made by the Ld. Trial Court against the petitioner has vehemently argued, that though it is right of the courts to make free and fearless comments and observations on the one hand, but there is corresponding need for maintaining sobriety, moderation and restraint regarding the character, conduct, integrity, credibility etc. of parties or witnesses or others concerned, moreso, the Judges and Magistrates must be guided by considerations of justice, fair play and restraint and it is not infrequent that sweeping generalization defeat the very purpose. It is argued, that in the case in hand, the derogatory and uncalled for remarks made by the Ld. Trial Court against the petitioner who is Dy. SP in police department **viz**; that the petitioner (I/O) has conducted investigation in a lethargic and sluggish manner, much better investigation could be conducted by a head constable, how the petitioner has qualified the administrative examination of state and has become Dy. SP in Police Department, during investigation of the case in FIR No. 268/2019 of P/S Kishtwar petitioner/I/O has acted in a manner which has demolished the case due to his sheer incompetency and

negligence, are harsh/disparaging which should not have been made by the trial court which was only dealing with a question of charge/discharge of accused, moreso, higher the forum and greater the powers, the greater is the need for restraint and the more mellowed the reproach should be. Reliance has been placed on (i) AIR1986 Supreme Court 819 [Niranjan Patnaik, Appellant **Versus** Shashibhusan Kar and another, Respondents], (ii) AIR 1990 Supreme Court 1737 [A.M. Mathur, Appellant **Versus** Pramod Kumar Gupta, Respondent] & (iii) 1995 Supreme (SC) 1019 [Abani Kanta Ray **Versus** State of Orissa].

4. Mr. Suneel Malhotra Ld. GA for the respondents, has strenuously argued, that petitioner as I/O has failed to investigate the case in a manner required under law against the accused persons, therefore, court below in its order dated 02-06-2021 has correctly recorded that investigation has been conducted in a very perfunctory and unprofessional manner, whereby, IGP Jammu has been directed by the trial court to conduct departmental enquiry against the petitioner, the impugned order is in accordance with law and does not suffer from any illegality.
5. Heard and considered. I have gone through the contents of the petition, status report filed by the respondents and perused the relevant law on the subject matter. I have also meticulously scanned the ratios of the judgments relied by Ld. Counsel for the petitioner.

Hon'ble Supreme Court of India in a case law titled **Niranjan Patnaik VS. Sashibhusan Kar and anr.** [AIR1986 Supreme Court 819] relied by Ld. Counsel for petitioner, while expunging several highly derogative remarks made against prosecution witness (PW-8 Niranjan Patnaik) by the Ld. Judge of High Court of Orissa in paras 19, 20, 23, 24 & 25 held as under:-

19. We may now refer to certain earlier decisions where the right of courts to make free and fearless comments and observations on the one hand and the corresponding need for maintaining sobriety, moderation and restraint regarding the character, conduct integrity, credibility etc. of parties, witnesses and others are concerned.

20. In *The State of Uttar Pradesh v. Mohammad Naim*, ((1964) 2 S.C.R. 363) it was held as follows :

"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 recognized 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 recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

23. It is, therefore, 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 to animadvert on that conduct. We hold that the adverse remarks made against the appellant were neither justified nor called for.

24. Having regard to the limited controversy in the appeal to the High Court and the hearsay nature of evidence of the appellant it was not at all necessary for the Appellate Judge to have animadverted on the conduct of the appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal the remarks of the learned Appellate Judge should be in conformity with the settled practice of courts to observe sobriety, moderation and reserve. We need only remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be.

25. As we find merit in the contentions of the appellant, for the aforesaid reasons, we allow the appeal and direct the derogatory remarks made against the appellant set out earlier to stand expunged from the judgment under appeal.

In AIR 1990 Supreme Court 1737 [A.M. Mathur, Appellant Versus Pramod Kumar Gupta, Respondent], relied by Ld. Counsel for the petitioner, Hon'ble Supreme Court of India while expunging certain derogatory remarks made by Mr. B.M. Lal Judge of Madhya Pradesh High Court against Mr. A.M. Mathur Sr. Advocate and also Ex-Advocate General

of the State of Madhya Pradesh, in paragraphs 13, 14 & 16 of the judgment observed as under:-

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 a 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 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. **The Judges Bench is a seat of power.** Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallengeable control of the Court domain. **But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses.** We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. (See (i) R. K. Lakshmanan v. A. K. Srinivasan, (1976) 1 SCR 204; (ii) Niranjan Patnaik v. Sashibhushan Kar, (1986) 2 SCR 569 at p 576.

16. We, therefore, allow the appeal and expunge all the remarks made by B.M. Lal Judge against appellant in the impugned order.

In 1995 Supreme (SC) 1019 [Abani Kanta Ray Versus State of Orissa], relied by Ld. Counsel for the petitioner, Hon'ble Supreme Court of India while expunging the unwarranted remarks made by the Division Bench of the Orissa Administrative Tribunal against appellant Chairman of Orissa Administrative Tribunal, in an application made by respondent No.3 Dandanirodha Mishra for cancellation of his transfer held, that the use of intemperate language, making disparaging remarks against anyone unless that be the requirement for deciding the case is inconsistent with judicial behaviour.

Ratios of the judgments (Supra) of “Niranjan Patnaik”, “A.M. Mathur” & “Abani Kanta Ray” Cases relied by Ld. Counsel for petitioner, make the legal proposition abundantly clear, “that in expressing their opinions, Judges and Magistrates must be guided by consideration of justice, fair play and restraint, and it is not infrequent that sweeping generalizations defeat the very purpose for which they are made, in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before the Courts of law in cases to be decided by them, the judges should not normally depart from sobriety, moderation and reserve and harsh or disparaging remarks are not to be made against the parties or authorities unless it is really necessary for the decision of the case as integral part thereof”. Ratio of the judgments (Supra) squarely applies to the facts of the case in hand. In the case in hand, the vide impugned order dated 02.06.2021 rendered by the Court of 3rd Additional Sessions Judge Jammu (Special Judge u/ss22 of NIA Act) at the stage of charge/discharge of accused personal, the role of as many as 10 accused persons have come into play, whereby, in the impugned order of framing charges against the accused persons A-1 Bashir Ahmed has been charged for commission of offences u/ss 13/19/30 of UAPA Act while he has been discharged u/s 18 of the said Act; A-2 Wali Mohd. has been discharged u/s 18 of UAPA Act whereas he has been charged for the commission of offences u/ss 18/19/39 of the Act; A-3 Khazer Mohd. has been discharged for offences u/ss18/19/39 of UAPA Act while he has been found prima-facie indicted for commission of offences u/ss 13/23 of UAPA Act & 3/25 Arms Act; A-4 Zahoor Ahmed has been discharged; A-5 Bashir Ahmed has been discharged from the charge-sheet; A-6 Yassir Hussain has been ordered to be discharged from the charge-sheet; A-7 Ghulam Nabi has been prima-facie indicted for commission of offences u/ss 13/19/39 of UAPA Act while he has been discharged from offence u/s 18 of the UAPA Act; A-8 Mohd. Hussain has been prima-facie found involved u/ss13/18/19/23/39 of UAPA Act; A-9 Mohd. Ramzan has been found prima-facie indicted for commission of offences u/ss 13/19/39 of the UAPA Act, while A-10 Saddam Hussain has been prima-facie found involved in the commission of offence u/ss13/19/39 of the UAPA Act. In the impugned order of charge/discharge dated 02-06-2021 as many as three (03) accused namely, A-4 Zahoor Ahmed, A-5 Bashir Ahmed and A-6 Yassir Hussain have been discharged from the commission

of offences leveled against them in the charge sheet. It is noteworthy to reiterate here, that while passing the impugned order of charge/discharge, the Ld. Trial Court has recorded derogatory remarks against petitioner at pages 15, 16 & 17 in paras 8 & 9 which for the sake of convenience are referred below:-

“8. Before parting away I would like to register my reservations and dissatisfaction about the conduct of investigating officer of the present case who appeared to have conducted the investigation in the present case in a very perfunctory and unprofessional manner. The quality of the investigation does no where speaks about the fact that the investigation in the present case has been conducted by a Gazetted officer with the Rank of Dy. SP. From the perusal of the file, it reveals that initially at the time of registration of the FIR, number of persons have been roped in the present case, but during the investigation, the Investigating officer namely Mr. Sunny Gupta, Dy. SP (HQ) Kishtwar has conducted the investigation in such a lethargic and sluggish manner that he had not taken even a little pain to search for the evidence in the present case. These kind of sensitive cases which are connected with the sovereignty and unity of the nation have been assigned to Senior Police officers not below the Rank of Dy. SP, so that a better investigation can be expected from them. But when we look into the investigation in the present case, we find that a much better investigation could be conducted by even a Head Constable in comparison to the investigation conducted in the present case by Mr. Sunny Gupta, Dy. SP. At the time of registration of FIR, there was a clear allegation against all these persons who were arrayed as accused persons that they used to provide, hide outs and harbour the categorized militants of HM terrorists Organization namely Mohd. Amin @ Jahangir Saroori Mudassir Ahmed and Riaz Ahmed. It was also alleged that these persons used to provide weapons to the aforesaid terrorists and also to other terrorists of HM Terrorists Organization. Despite the arrest of all the said accused persons, the investigating officer in the present case has not bothered to seize the mobile phones of any of the accused persons and he has not appeared to have taken any pain to collect the CDRs of their mobile phones and their connectivity or links with the categorized terrorists. The investigating officer in the present case has only acted as spectator and had only got the statements of the some of the witnesses recorded either u/s 161 or u/s 164 Cr.PC. Besides this, he had not moved even an inch in the investigation of the case. I am quite surprise that how Mr. Sunny Gupta, Dy. SP has qualified the administrative examination of the state and become Dy. SP in the police department, as I have not been able to find him suitable to the basic intellect of an ordinary person. From the perusal of the file, I find that he has also arrayed Mohd. Ramzan as one of the accused in the

present case. But the accused Mohd. Ramzan was already in judicial custody in another case vide FIR 268/2019 of P/S Kishtwar at the time when the present FIR was registered. It is also interesting to note that the investigation in the said case i.e. FIR No 268/2019 was also conducted by the same officer i.e. Mr. Sunny Gupta, Dy. SP and as such, he was well aware about the custody of the accused Mohd. Ramzan in FIR No 268/2019. But the investigating officer has not taken the custody of accused Mohd. Ramzan in the present case as an accused and no kind of remand either police or judicial was ever obtained in the present case. This kind of lapse on the part of investigating officer is highly depreciable and should not be tolerated. Similarly, while investigation in FIR No 268/2019, the same officer i.e. Mr. Sunny Gupta, Dy. SP has acted in the same like manner and he had also demolish the said case as he has demolish the present case. Due to sheer his incompetency and negligence, this court was forced to discharged some of the accused persons in the earlier case vide FIR No 268/2019 entitled State V/S Tariq Hussain & Ors and in the present case also this court is forced to discharged three accused persons from the present charge sheet.

9. Hence, I strongly recommend that a departmental enquiry should be initiated against the said police officer i.e. Mr. Sunny Gupta, Dy. SP where he should be asked that why and under what circumstances he had not collected the real evidence in the said cases and left over the important aspects of the cases. He should also be asked that how and under what circumstances he had implicated and charge sheeted the accused Zahoor Ahmed, against whom no evidence was available with him even at the time of registration of FIR as well as at the time when the charge sheet was presented against him and other accused persons. Therefore, Inspector General of Police Jammu Zone is hereby directed to conduct a departmental enquiry either himself or by his subordinate officer not below the rank of SSP against the aforesaid delinquent police officer namely Mr. Sunny Gupta, Dy. SP who has not done his job in a honest and abled manner. Office is directed to communicate this order to IGP Jammu through APP of this court for its compliance”.

6. It is apt to mention here, that the limited controversy before the Ld. Trial Court was to pass an order regarding the charge/discharge of the accused persons on the strength of the material collected by the investigating agency during investigation. The petitioner as I/O of the case, in his best wisdom, has collected all the material/evidence during the investigation conducted by him and has placed all the relevant evidence before the Trial Court in the form of charge sheet. It was the duty of the Trial Court to evaluate/assess the entire evidence on the record and to prima-facie come to conclusion whether accused persons can be prima-facie charged/discharged for commission of

offences indicted against them in the charge sheet. Having regard to the limited controversy of passing an order regarding charge/discharge of accused persons in the case in hand, it was not at all necessary for the trial Court to have passed/recorded such harsh/disparaging remarks against the petitioner (being I/O of the case) in his impugned order dated 02-06-2021 in paras 8&9 of the order and even the trial court has not afforded opportunity of explaining or defending the petitioner himself. As discussed above, law is no longer res-integra that the harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before the courts unless heard. It is the settled practice of the courts to observe sobriety, moderation and reserve. It is reminded that the higher the forum and greater the powers, the greater is the need for restraint and the more mellowed the reproach should be. Judicial restraint and discipline are as necessary to the orderly administration of justice. The duty of restraint is humility of function and should be a constant theme of our Judges. The judicial restraint might better be called judicial respect. The Judge's Bench is a seat of power and has absolute and unchallengeable control of the court domain, but they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. It is the general principle of highest importance to the proper administration of justice that derogatory remarks are not to be made against persons unless absolutely necessary for decision of the case to animadvert on their conduct. In the case in hand, the trial judge was to pass/record an order on the charge/discharge of the accused persons, and it was not absolutely necessary for him that the conduct of petitioner was necessary for the decision of charge/discharge of accused.

7. As I find merit in the contentions of the petitioner and arguments of his counsel, for the aforesaid reasons, I allow the petition and direct the derogatory remarks made/recorded against the petitioner set out at pages 15, 16 & 17 & in paras 8 & 9 to stand expunged from impugned order dated 02.06.2021 under challenge.
8. Disposed of accordingly.

Jammu
04 07.2022
Tarun

(Mohan Lal)
Judge