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

+ CRL.REV.P. 57/2017

C B I

..... Petitioner

Through: Mr. Sanjay Jain, Senior Advocate and Sr. Special Public Prosecutor & Ms. Sonia Mathur, Sr. Adv. with Mr. Ripu Daman Singh Bhardwaj, Mr. Rishiraj, Ms. Ashima Gupta and Ms. Noor Rampal, Advs.

versus

SHYAMAL GHOSH & ORS

..... Respondents

Through: Mr. Karl P. Rustomkhan, Adv. for R-1.

Mr. Siddharth Aggarwal. Sr. Advocate with Mr. Kamal Shankar, Mr. Atul, Ms. Nivedita Mukhija and Ms. Rudrali Patil, Advs. For R-2

Mr. Mahesh Agarwal and Ms. Madhavi Agrawal, Advs. For R-3 and 4

Mr. Balaji Subramanian and Mr. Akash Kundu, Advs. for R-7.

Mr. Sudarshan Rajan, Mr. Hitain Bajaj, Mr. Rohit Bhardwaj & Mr. Arun Pandiyan S, Advs. for R-8, 10 & 14.

Ms. Tarannum Cheema, Mr. Akshay Nagarajan and Mr. Akash Singh, Adv. for R-9.

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Date of Decision: 28.08.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA



J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

The present petition has been filed under Section 397 read with 401 along with 482 Cr.P.C. for expunction of certain remarks made by learned Special Judge (CBI-4), 2G spectrum cases C.C NO. 01/2012 and RC NO. RC-DAI-2011-A-0024, titled *C.B.I. VS Shyamal Ghosh & Others* vide order dated 15.10.2015 whereby the Respondents were discharged. The Petition has been filed with the following prayer:

(i) *“The adverse and disparaging remarks against CBI, in general, and the concerned officers in particular in the impugned order and Judgment dated 15.10.2015 passed by Shri O.P. Saini, Ld. Special Judge (CBI-4), 2G Spectrum Cases, Patiala House Courts, New Delhi, in 2G Spectrum case CC No.01/2012 arising out of RC-DAI-2011-A-0024, titled as C.B.I. Vs Shyamal Ghosh may be expunged.*

Shri Sanjay Jain, learned Special Public Prosecutor has invited the attention of the Court to certain observations made by the learned special Judge in paragraphs 277, 278 and 279, which has been reproduced as under:

277 Many documents, such as TRAI reports, principle of level playing field etc., as already noted above, have not been taken note of in the charge sheet and even do not find mention in the statements of witnesses. Many relevant documents have either not been produced before the Court or were kept away from the attention of the Court by



initially dubbing them as unrelieved upon and an attempt was made to mislead the Court

278...An attempt has been made to create an impression in the charge sheet that everything was done on a single day in the dark hours of the evening of 31.01.2002. There is no doubt that the charge sheet has been filed for extraneous reasons.

“279. Since the charge sheet has been found to be full of distorted and fabricated facts and an attempt has also been made to mislead the Court, Director, CBI, is directed to conduct an inquiry against the erring officials and take action against them as per law.”

Shri Sanjay Jain, has further submitted that paragraph 279 is liable to be deleted out rightly as the learned special Judge has without giving an opportunity of being heard, directed the CBI to conduct an inquiry against the erring officials and take action against them as per law.

Shri Siddharth Aggarwal, learned senior counsel has appeared for Respondent No.2 and states on instructions that he has no objection if the particular remarks are expunged as mentioned by Shri Sanjay Jain, learned Senior Special Counsel.

Similarly, Shri Mahesh Aggarwal, learned senior Counsel appearing for Respondent Nos. 3 and 4 also submits that he has no objection if the remarks are expunged as mentioned by Shri Sanjay Jain, learned Senior Special Counsel.



Shri V.K. Patra, learned counsel for the Respondent No.1 has also stated that he has no objection thereto.

Shri Sanjay Jain, learned senior special counsel has submitted that the CBI has not challenged the order of discharge on merits and they are only aggrieved of certain remarks made by the learned Special Judge while discharging the Respondents.

It is pertinent to mention here that the other respondents have also not opposed the prayer made by the learned counsel for the petitioner.

Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" relating to criticism on the conduct of Police and other officers and warns against such an action by the Courts. The same is reproduced as under:

"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 everything 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."

Dr. Dilip Kumar Deka and Anr. v. State of Assam and Anr.
(1996) 6 SCC 234, while dealing with the tests to be applied for deciding the question of expunction of disparaging remarks against authorities, observed as under:

"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.

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.”

State of West Bengal v. Mir Mohammad Omar & Ors (2000) 8 SCC 382, the Hon^{ble} Apex Court had directed the Courts to ordinarily desist from castigating the investigation even while ordering acquittal. The relevant observations read 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 fool proof. 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.”



A.M. Mathur v. Pramod Kumar Gupta (1990) 2 SCC 533, had observed 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:

“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.”

Rakesh Chand v. State 2015 SCC OnLine Del 14193 (Delhi High Court), had expressed its views regarding restraint to be observed by the judges while passing comments on the conduct of officers/authorities. The relevant observations are as under:

“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.”

In Ajit Kumar v. State (NCT of Delhi) 2022 SCC OnLine Del 3945, while dealing with a similar case, had issued directions for exercise of judicial restraint and observed that judicial officers should refrain from passing denigrating remarks against police officials. A direction was also issued for the circulation of the copy of judgment for the benefit of all Judicial Officers. Some of the relevant portion of said judgment is reproduced as under:

“...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.

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

The law as discussed above makes it clear that the function assigned to investigating agency is very sensitive in nature. It is also pertinent to note that the CBI is the premier investigating agency of this country and any observation or remarks which does not have substantive basis, demoralise the entire agency itself. It is also matter of record that before making such remarks, no opportunity was given to the CBI officers to defend themselves.

In any case the order of discharge has not been challenged by the CBI as recorded by the learned Special Judge. However, the remarks which have been pointed out by learned senior special counsel can certainly harm the concerned officials. Any prejudice caused to the person without giving any an opportunity of being defended or extremely substantive in cogent reason cannot be sustained in the eyes of law.

In the circumstances, I consider that the present petition is entitled to be allowed and therefore, the adverse and disparaging remarks against CBI



in general and the concerned officer in particular in the impugned order and judgment dated 15.10.2015 titled C.B.I. VS Shyamal Ghosh and others as contained in para 277 to 279 are expunged.

With the aforesaid directions, the present petition is disposed of.

DINESH KUMAR SHARMA, J

AUGUST 28, 2023/rk