REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8950 OF 2011

KRISHNA PRASAD VERMA (D) THR. LRS. APPELLANT(S)

VERSUS

STATE OF BIHAR & ORS. RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J. (oral)

In a country, which follows the Rule of Law, independence of the judiciary is sacrosanct. There can be no Rule of Law, there can be no democracy unless there is a strong, fearless and independent judiciary. This independence and fearlessness is not only expected at the level of the Superior Courts but also from the District judiciary.

2. Most litigants only come in contact with the District judiciary. They cannot afford to come to the High Court or the Supreme Court. For them the last word is the word of the Magistrate or at best the Sessions Judge. Therefore, it is equally important, if not more

important, that the judiciary at the District Level and at the Taluka level is absolutely honest, fearless and free from any pressure and is able to decide cases only on the basis of the facts on file, uninfluenced by any pressure from any quarters whatsoever.

3. Article 235 of the Constitution of India vests control of the subordinate Courts upon the High Courts. The High Courts exercise disciplinary powers over the subordinate Courts. In a series of judgments, this Court has held that the High Courts are also the protectors and guardians of the judges falling within their administrative control. Time and time again, this Court has laid down the criteria on which actions should be taken against judicial officers. Repeatedly, this Court has cautioned the High Courts that action should not be taken against judicial officers only because wrong orders are passed. To err is human and not one of us, who has held judicial office, can claim that we have never passed a wrong order.

4. No doubt, there has to be zero tolerance for corruption and if there are allegations of corruption, misconduct or of acts unbecoming a judicial officer, these must be dealt with strictly. However, if wrong orders are passed that should not lead to disciplinary action unless there is evidence that the wrong orders

have been passed for extraneous reasons and not because of the reasons on the file.

5. We do not want to refer to too many judgments because this position has been laid down in a large number of cases but it would be pertinent to refer to the observations of this Court in Ishwar Chand Jain Vs. High Court of Punjab & Haryana and another[1], wherein this Court held as follows:

> **"14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case we have no doubt in our mind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Shri Mehlawat and others were motivated which did not deserve any credit. Even the vigilance Judge after holding enquiry did not record any finding that the**

1 (1988) 3 SCC 370

appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments."

6. Thereafter, following the dicta laid down in Union of India & Ors. Vs. A.N. Saxena[2] and Union of India & Ors. Vs. K.K. Dhawan[3], this Court in P.C. Joshi Vs. State of U.P. & Ors.[4] held as follows:

> **"7. In the present case, though elaborate enquiry has been conducted by the enquiry officer, there is hardly any material worth the name forthcoming except to scrutinize each one of the orders made by the appellant on the judicial side to arrive at a different conclusion. That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The enquiry officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive. At best he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently or fearlessly. Indeed the words of caution are given in *K.K. Dhawan case* and *A.N. Saxena case* that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate**

2 (1992) 3 SCC 124
3(1993) 2 SCC 56
4(2001) 6 SCC 491

disciplinary proceedings against the appellant in this case."

7. In Ramesh Chander Singh Vs. High Court of Allahabad & Anr.[5], a three-judge Bench of this Court, after considering the entire law on the subject, including the authorities referred to above, clearly disapproved the practice of initiating disciplinary proceedings against the officers of the district judiciary merely because the judgment/orders passed by them are wrong. It was held thus:-

> **"12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, The High Court must take extra care and caution."**
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> **xxx xxx xxx**
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> **"17. In *Zunjarrao Bhikaji Nagarkar* v. *Union of India* this Court held that wrong exercise of jurisdiction by a quasi judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the judicial officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed**

5 (2007) 4 SCC 247

> an order actuated by corrupt motive, the High Court by virtue of its power under Article 235 of the Constitution may exercise its supervisory jurisdiction. Nevertheless, under such circumstances it should be kept in mind that the Judges at all levels have to administer justice without fear or favour. Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial officers and subjecting them to severe disciplinary proceedings would ultimately harm the judicial system at the grassroot level."

8. No doubt, if any judicial officer conducts proceedings in a manner which would reflect on his reputation or integrity or there is prima facie material to show reckless misconduct on his part while discharging his duties, the High Court would be entitled to initiate disciplinary cases but such material should be evident from the orders and should also be placed on record during the course of disciplinary proceedings.

9. Coming to the facts of this case there are two charges against the appellant, who was a judicial officer. The charges are as follows:

CHARGE-1

> "You, Sri Krishna Prasad Verma while functioning as Additional Distt. & Sessions Judge, Chapra granted bail to M/s Bishwanath Rai, Sheo Nath Rai and Pradeep Rai on 11.7.2002 in S.T. No.514 of 2001 arising out of Chapra (M) Khatra P.S. Case No.453/2000 registered U/s 302/34 I.P.C. notwithstanding the fact that the bail petitions of Bishwanath Rai was earlier rejected by this Hon'ble Court vide order dated 27.3.2001 and 4.7.2001 passed

in Cr. Misc. No.34144/2000 and 15626/2001 respectively, that of Sheo Nath Rai vide order 13.2.2001 and 26.11.2001 passed in Cr. Misc. No.3387/2001 and Cr. Misc. No.30563/2001 respectively and that of Pradeep Rai vide order dated 28.2.2001 passed in Cr.Misc. No.3599/2001.

The aforesaid act on your part is indicative of some extraneous consideration which tantamounts to gross judicial impropriety, judicial indiscipline, lack of integrity, gross misconduct and an act unbecoming of a Judicial Officer.

CHARGE-2

You, Sri Krishna Prasad Verma while functioning as Additional District and Sessions Judge, Chapra with an intent to acquit Raju Mistry, the main accused in N.D.P.S. Case No.15/2000 arising out of Revealganj P.S. Case No.137/2000 (G.R. No.1569 of 2000) registered under sections 22, 23 and 24 of the Narcotic Drugs and Psychotropic Substances Act, 1985 closed the proceeding in great haste resulting in acquittal of Raju Mistry, who was charged of driving a Jeep bearing No.W.B.C.4049 carrying 90 Kg. Charas, without exhausting all coercive methods to record the statement of the Investigating Oficer of the case as there is no proof on the record to show that the non-bailable warrant issued against the said Investigating Officer was ever served on him.

The aforesaid act of yours is indicative of some extraneous considerations which tantamounts to gross judicial impropriety, judicial indiscipline, lack of integrity, gross misconduct and an act of unbecoming of a Judicial Officer."

10. As far as the first charge is concerned, a major fact, which was not considered by the enquiry officer, the disciplinary authority as well as the High Court was that the Additional Public Prosecutor, who had appeared

on behalf of the State had not opposed the prayer of the accused for grant of bail. In case, the public prosecutor does not oppose the bail, then normally any Judge would grant bail.

11. The main ground to hold the appellant guilty of the first charge is that the appellant did not take notice of the orders of the High Court whereby the High Court had rejected the bail application of one of the accused vide order dated 26.11.2001. It would be pertinent to mention that the High Court itself observed that after framing of charges, if the non-official witnesses are not examined, the prayer for bail could be removed, but after moving the Lower Court first. The officer may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. It would be pertinent to mention that the enquiry officer has not found that there was any extraneous reason for granting bail. The enquiry officer virtually sat as a court of appeal picking holes in the order granting bail.

12. It would be important to mention that it seems that later it was brought to the notice of the appellant that he had not taken note of the order of the High Court while granting bail on 11.07.2002. Thereafter, he issued

notice to all the three accused on 23.08.2002 i.e. within less than two months and cancelled the bail granted to all the three accused on 11.07.2002. If he had made the mistake of not seeing the whole file, on that being brought to his notice, he corrected the mistake. After the appellant cancelled the bail and the accused were again arrested, they again applied for bail and this bail application was rejected by the appellant on 18.12.2002.

13. After rejection of the bail application of the accused, two out of three accused moved the High Court. The High Court granted bail to one of the accused and the bail application of the other was rejected, not on merits but on the ground that he did not disclose the fact that he had earlier moved the High Court for grant of bail. This itself is clear indicator of the fact that probably even the order passed by the appellant is not an incorrect one.

14. Coming to the second charge, which is under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS". On 18.07.2002 the appellant, a Special Judge, closed the evidence of the prosecution which resulted in material witnesses not being examined and consequently the accused was acquitted. As far as this allegation is concerned, the enquiry officer on the basis of the statements of two

clerks of the Court has made lengthy observations that the appellant did not send any communication to the Superintendent of Police, the District Magistrate and other authorities to ensure the production of the witnesses. According to the enquiry officer, this being a serious matter, the evidence should not have been closed and the appellant should have made efforts to approach the senior officials to get the witnesses produced. The Code of Criminal Procedure or the NDPS Act do not provide for any such procedure. It is the duty of the prosecution to produce the witnesses. Even in this case, interestingly, the Public Prosecutor had made a note on the side of the daily order-sheet that he is unable to produce the witnesses so the evidences may be closed. We fail to understand how the appellant has been hanged whereas no action has been taken or recommended against the Public Prosecutor concerned. We are constrained to note that the enquiry officer, while conducting the enquiry, has noted, while considering the arguments of the delinquent official, that he had raised a plea that he closed the evidence because the Public Prosecutor had made the statement, but while holding the appellant guilty of misconduct no reference has been made to the statement of the Public Prosecutor.

15. We may also note that the case of the appellant is that he had given 18 adjournments for production of the

witnesses to the prosecution in the NDPS case. Such a judicial officer is between the devil and the deep sea. If he keeps on granting adjournments then the High Court will take action against him on the ground that he does not dispose of his cases efficiently and if he closes the evidence then the High Court will take action on the ground that he has let the accused go scot-free. That is not the purpose of Article 235 of the Constitution of India. That is why we again repeat that one of the responsibilities of the High Court on the administrative side is to ensure that the independence of the District judiciary is maintained and the High Court acts as a guardian and protector of the District judiciary.

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.

17. In view of the above discussion, we allow the appeal, set aside the judgment of the High Court and quash all the orders passed against the delinquent officer. He is directed to be given all consequential benefits on or before 31.12.2019. The appeal is allowed with costs of Rs.25,000/-.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi
September 26, 2019

ITEM NO.103 COURT NO.13 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).8950/2011

KRISHNA PRASAD VERMA (D) THR. LRS. Appellant(s)

VERSUS

STATE OF BIHAR & ORS. Respondent(s)

Date : 26-09-2019 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s)
Mr. Braj Kishore Mishra, Adv.
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Mr. Abhishek Yadav, Adv.

For Respondent(s)
Mr. Sanjay Jain, ASG
Mr. Yogesh Pachauri, Adv.
Ms. Binu Tamta, Adv.
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Mr. Kshatrshal Raj, Adv
Mr. Nikhil Ramdev, Adv.
Ms. Tanya Chaudhry, Adv.
Ms. Pratyusha Priyadarshi, Adv.
M/S. Parekh & Co., AOR

Mr. Gopal Singh, AOR
Mr. Srikaanth S., Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT) (RENU KAPOOR)
COURT MASTER (SH) BRANCH OFFICER
(signed reportable judgment is placed on the file)