NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(CR) No. 425 of 2021

Ms. Purnima Lama, S/o. Shri L.B. Lama, Aged About 48 Years, Presently Posted as Inspector, Dial 112, Civil Lines, Raipur, Chhattisgarh, R/o. NGO 1, Police Colony, Civil Lines, Raipur, District Raipur, Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Home Affairs, Mahanadi Bhavan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. Director General Of Police (D.G.P.), Police Head Quarter (P.H.Q.), Near Mantralaya, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
3. Inspector General Of Police, Raipur Range, District Raipur, Chhattisgarh.
4. Deputy Inspector General Of Police And Senior Superintendent Of Police (S.S.P.) Raipur, District Raipur, Chhattisgarh.
5. Additional Superintendent Of Police (Rural) Raipur, District Raipur, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Mr. Dhiraj Kumar Wankhede, Advocate
For State/Respondents	:	Mr. Soumya Rai, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Hon'ble Shri Justice Rakesh Mohan Pandey

Order On Board
(13.01.2023)

Sanjay K. Agrawal, J.

1. The petitioner Ms. Purnima Lama was involved in the investigation for the offence under Section 124-A of I.P.C. and Section 3, 4 of the Police (Incitement to Disaffection) Act, 1922 registered at Police Station- Khamtarai, Raipur, and accused

Rakesh Yadav was charge-sheeted before the Judicial Magistrate First Class, Raipur in Crime No.347/2018. Accordingly, the trial was conducted in the Court of Second Additional Sessions Judge, Raipur and ultimately by judgment dated 26.11.2018, the accused Rakesh Yadav was acquitted from the aforesaid offences extending benefit of doubt. However, in para 34, 35 & 36 of the judgment, the learned trial Court has made certain adverse remarks against the petitioner, pursuant to which, a departmental enquiry vide Annexure P-2 was initiated against her for defective investigation, which is sought to be challenged by way of this writ petition.

2. Reply has been filed opposing the writ petition stating that the observations made are strictly in accordance with law.

3. Mr. Dhiraj Kumar Wankhede, learned counsel appearing for the petitioner would submit that the learned trial Court was not justified in making adverse remarks against the petitioner holding that she was negligent while performing her duties and that too no opportunity of hearing was afforded before making adverse remarks against her. He relied upon the decision of the Supreme Court in ***State (NCT Of Delhi) V. Pankaj Chaudhary And Others***[1] and submit that adverse remarks against the petitioner in para 34, 35 & 36 of the impugned judgment deserve to be expunged since departmental enquiry has been initiated against the petitioner vide Annexure P-2.

4. Mr. Soumya Rai, learned State counsel would submit that the

1 (2019) 11 SCC 575

finding recorded by the learned trial Court that the petitioner was negligent in performing her duties is a correct finding of fact, therefore, no relief can be granted to the petitioner.

5. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

6. It is not in dispute that the petitioner was involved in the investigation of Crime No.347/2018 from time to time and the accused Rakesh Yadav was charge-sheeted and the learned trial Court while acquitting him made comments in para 34, 35 & 36 that the petitioner was negligent and he has not been vigilant in conducting the investigation. Para 34, 35 & 36 is quoted as under :

> *"34. The investigation in the matter, if it may be called so, is rather blissfully confined to the mere recovery of 13 photocopies of Facebook posts allegedly authored by the accused and that has been the end of it all. There is no inkling about how and from which device these copies have been taken and how they are going to withstand the test of admissibility of evidence. The vagueness and farcicality of the FIR seem to have permeated through the whole so called investigation. In FIR there is an assertion that on 15.06.2018 the accused came to Raipur and met with his acquaintances and asked them to get others joined in his efforts of removal of tyrannical Government. But all the witnesses, whose statements under Sec. 161 Cr.P.C. are recorded and attached with the Charge sheet,*

are blissfully silent as to who were those persons with whom the accused met and tried to incite or provoke. Clearly, these witnesses do not claim to have either met the accused or having been incited or influenced by him.

35. Hence there is complete failure on the part of investigation agency to even single out a solitary poor soul who could claim to have been incited, influenced or provoked by the accused. There is no murmur about the so called accomplices of the accused. The charge sheet also does not reflect as to whether any other person has been found to be involved in the alleged offence or the police intend to investigate the role of other persons separately. The inadequacy and incompetence of the investigating officer is so to the fore and palpable that he/she could well be forgiven for not having given thought to the aspect of obtaining prior sanction for prosecution for an offence under Sec. 124-A I.P.C. as there appears to be a real possibility that he/she might not have even been aware of such necessity.

36. In view of such humongously and monumentally abject and wretched nature of investigation and whole prosecution effort in the case on hand, it would be extremely necessary and beneficial to harp on the concern shown and corrective measures suggested by the Hon'ble Supreme Court in the matter of ***State of Gujarat v. Kishanbhai Etc. Criminal Appeal No.1485 of 2008.*** *Coming down heavily on the lackadaisical and wilfully defective investigation and inept prosecution, Hon'ble Supreme Court has stressed on the need of identification of such*

> *errant officials and fixing of their responsibility. Requisite mechanisms as well as various guidelines have also been outlined to be put in place to ensure that investigation and prosecution are purposeful and decisive. Unfortunately, in spite of such broad and elaborate directives of Hon'ble Supreme Court very little seems to have changed on the ground. The courts, as a matter of course, continue to get inundated and are constantly being made to put up with shoddy and absurd pieces of investigation, a prime example of which is the case on hand."*

7. Way back in the year 1964, in the matter of ***The State U.P. v. Mohammad Naim***[2], the Supreme Court (Constitution Bench) has held that the High Court can in exercise of its inherent jurisdiction expunge remarks made by it or by a Lower Court if it be necessary to do so to prevent abuse of the process of the court or otherwise, to secure the ends of justice and observed as under:-

> "9. We think that the High Court of Bombay is correct and the High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only."

8. Their Lordships have also laid- down the test in considering the expunction of disparaging remarks made against persons or

2 AIR 1964 SC 703

authorities whose conduct comes for consideration before the Court of law to be decided by them by summing up as under:-

> "(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
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> (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."

9. Similarly, in the matter of ***Dr. Raghubir Saran v. State of Bihar***[3], the Supreme Court has held that the High Court has inherent power to expunge objectionable remarks in judgment and order of the subordinate court against stranger, after it has become final and culled out the principles as under:-

> "7-8. From the aforesaid discussion the following principles emerge:
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> (1) A judgment of a criminal Court is final; it can be set aside or modified only in the manner prescribed by law.
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> (2) Every Judge, whatever may be his rank in the hierarchy, must have an unrestricted right to express his views in any matter before him without fear or favour.
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> (3) There is a correlative and self-imposed duty in a Judge not to make irrelevant remarks or observations without any foundation, especially in

3 AIR 1964 SC 1

> the case of witnesses or parties not before him, affecting their character or reputation.
>
> (4) An appellate Court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it.
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> 29. When the question arises before the High Court in any specific case whether to resort to such undefined power it is essential for it to exercise great caution and circumspection. Thus when it is moved by an aggrieved party to expunge any passage from the order or judgment of a subordinate Court it must be fully satisfied that the passage complained of is wholly irrelevant and unjustifiable, that its retention on the records will cause serious harm to the person to whom it refers and that its expunction will not affect the reasons for the judgment or order."

10. Likewise, in the matter of ***Niranjan Patnaik v. Sashibhusan Kar***[4], their Lordships of the Supreme Court have held 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 and followed the decision of the Supreme Court in the matter of *Mohammad Naim (supra)* and observed as under:-

> "24. It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes

4 (1986) 2 SCC 569

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."

11. Similar is the proposition laid down in the matter of ***R. K. Lakshmanan v. A. K. Srinivasan***[5], in which the Supreme Court has followed the tests laid down for expunction of adverse remarks in Mohammad Naim (supra).

12. In the matter of ***A.M. Mathur v. Pramod Kumar Gupta***[6], their Lordships of the Supreme Court have emphasized the need for judicial restraint and held that judicial restraint and discipline are necessary to the orderly administration of justice and 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 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 coordinate 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

5 (1974) 2 SCC 566
6 (1990) 2 SCC 533

> failed in these qualities, it will be neither good for the judge nor for the judicial process."

13. Their Lordships have further concluded that intemperate comments should not be made by the Judges and observed as under:-

> "14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, 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."

14. In the matter of ***Monish Dixit v. State of Rajasthan***[7], it has been held by the Supreme Court that castigating remarks against any person should not be made and the Court is required to give opportunity of being heard in the matter in respect of the proposed remarks or strictures and the same is basic requirement, otherwise offending remarks would be in violation of the principles of natural justice and held as under:-

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7 AIR 2001 SC 93

> "43. Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the Court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW 30 (Devendra Kumar Sharma)."

15. In the matter of ***Prakash Singh Teji v. Northern India Goods Transport Co. Pvt. Ltd.***[8] it has been held by the Supreme Court that adverse remarks should not be made unless it is necessary for decision of case and opportunity to give his explanation should be afforded to the concerned officer and observed as under:-

> "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

8 2009 AIR SCW 3078

> 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."

16. The principle of law laid down in above-stated judgments have been followed with approval by Supreme Court recently in the matters of ***Amar Pal Singh v. State of Uttar Pradesh***[9], ***State of Gujarat v. Justice R.A.Mehta (Retired)***[10], ***Om Prakash Chautala v. Kanwar Bhan***[11] ***and State of Uttar Pradesh v. Anil Kumar Sharma***[12].

17. The Supreme Court in the matter of ***Pankaj Chaudhary*** (supra) their Lordships has clearly held that in case of defective / illegal investigation disparaging remarks/ direction to initiate prosecution should not be passed against the police officials without affording them opportunity of hearing. It was held as under : -

> "42.While passing disparaging remarks against the police officials and directing prosecution against them, in our considered view, the High Court has failed to bear in mind the well settled principles of law that should govern the courts before making disparaging remarks. Any disparaging remarks and direction to initiate departmental action/ prosecution against the

9 (2012) 6 SCC 491
10 (2013) 3 SCC 1
11 (2014) 5 SCC 417
12 (2015) 6 SCC 716

> persons whose conduct comes into consideration before the court would have serious impact in their official career.
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> 45. Since the High Court has passed strictures against the police officials who were involved in the investigation in FIR No.559 of 1997 without affording an opportunity of hearing to them, the disparaging remarks are liable to be set aside."

18. A conspectus of the judgment mentioned hereinabove would show that though judge has unrestricted right to express his views in any matter before him but there is corresponding duty in a judge not to make unmerited and undeserving remarks specially in case of witnesses or the parties who are not before him affecting their character and reputation unless it is absolutely necessary for just and proper decision of the case and that too after affording an opportunity of explaining or defending that witness or the party as the case may be, judicial decisions must be judicial in nature and it must show judicial respect to the litigant/party, witnesses who come before the court for their cause. It is also well settled that this Court in exercise of inherent or extraordinary jurisdiction can expunge those remarks made by subordinate court following the three tests laid down in ***Mohammad Naim*** (supra), if it is really necessary to do so or prevent abuse of the process of the court or to secure the ends of the justice in exceptional cases, where those remarks would cause irreparable injury to the witness or party not before the court holding that retention of those undeserving remarks will cause harm to the person referred

and the expunction will not affect the judgment rendered by the court.

19. Reverting to the facts of this case in the light of the aforesaid principles laid down by the Supreme Court, the adverse remarks passed by learned trial Court is absolutely contrary to the well settled principles of law. The learned trial Court ought to have given a reasonable opportunity of hearing to the petitioner herein before passing any adverse comments for discrepancies in the investigation.

20. Particularly, it is not the case of respondents/State that petitioners were afforded an opportunity to explain those circumstances and similarly such adverse remarks were neither necessary nor justifiable for the just decision of the case. Thus the offending remarks made by the trial Court in its judgment are in breach of the judgments rendered by their Lordships of the Supreme Court in ***Mohammad Naim*** and ***Pankaj Chaudhary*** (supra), and as such, retention of those remarks would cause legal harm and demonstrating consequence in service career of the petitioner herein and accordingly the adverse remarks being unreasonable deserve to be expunged in the ends of justice.

21. Following the aforesaid principles laid down by the Supreme Court, we are inclined to allow this writ petition. Consequently, the adverse remarks made by the trial Court in para 34, 35 & 36 in the matter of *State of Chhattisgarh v. Rakesh Yadav* decided on 26.11.2018 are hereby expunged. The initiation of

departmental enquiry vide Annexure P-2 and consequent proceedings are hereby quashed.

22. Accordingly, the writ petition is allowed to the extent indicated herein above.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Rakesh Mohan Pandey)
Judge

Aks