

AFR

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 15459 of 2022

Petitioner :- Ravi Kumar

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- In Person

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Rahul Chaturvedi,J.

1. Heard Shri Ravi Kumar, the petitioner, appearing in person before us to plead his own case; learned AGA for the State of UP and perused the pleadings of aforesaid writ petition and the prayer sought by the petitioner.

2. At the outset we were shocked and stunned to see the array of the respondent parties, whereby, Smt. Mahima Jain, a serving judicial officer, presently posted as Civil Judge (J.D.)/F.T.C.-2, Gautam Budh Nagar is arrayed as respondent no.2 and Smt. Kusumlata Daksh, Bench Secretary (Peshkar) attached to the Court of Civil Judge (J.D.)/F.T.C.-2, Gautam Budh Nagar as respondent no.3. This Court records its strongest exception to such type of loose and irresponsible drafting of the petition; whereby every man on road (the petitioner) assumes a right to use any number of castic innuendos and pungent remarks upon judicial officer's integrity. Though, this issue would be dealt at the later part of the judgment in more befitting way, but, at this juncture we record our grave concern to such type of practices.

3. Now coming to next issue, whereby Mr. Ravi Kumar, the petitioner himself has drafted the petition in Hindi and sought following prayers. At this stage we may clarify that we have got no hesitation in admitting and entertaining the writ petition drafted in Hindi but it must carry some substance in it. The prayers sought by the petitioner are :

“अ – उपर्युक्त याचिका में उत्प्रेषणात्मक प्रकृति का आदेश या निर्देश जारी करते विपक्षी सं० 2 व

3 के विरुद्ध मुकदमा चलाने की अनुमति प्रदान करने की कृपा करें।

ब- उपर्युक्त याचिका में उत्प्रेषणात्मक प्रकृति का आदेश या निर्देश जारी करते हुए विपक्षी सं० 2 व 3 के विरुद्ध विभागीय जाँच के आदेश पारित करने की कृपा करें।

स- उपर्युक्त याचिका में तथ्यों एवं परिस्थितियों के आधार पर माननीय न्यायालय उपर्युक्त प्रकृति का आदेश या निर्देश जारी करने की कृपा करें।

द- उपर्युक्त याचिका में याची के हक में सव्यय आदेश या निर्देश जारी करने की कृपा करें। "

4. Thus, from above it is clear that the petitioner sought “उत्प्रेषणात्मक प्रकृति का आदेश” which, if translated in English means “Writ of Certiorari” was sought from us to initiate prosecution against respondent nos.2 and 3 and second (ii) Writ of certiorari is sought to initiate the departmental inquiry against respondent nos.2 and 3.

5. Without appreciating the nature and scope of writ of certiorari, the aforesaid two prayers were sought by Mr. Ravi Kumar, the petitioner, in person. Writ of Certiorari could be issued in cases, “Whenever any body of persons having legal authority to determine questions affecting rights of subjects and having the duty to act judicially but have acted in excess of their legal authority.” The essential features and conditions under which ‘writ of certiorari’ could be issued have been pointed out by Hon’ble Apex Court in ***Province of Bombay vs Khushaldas (AIR 1950 SC 222); T.C. Basappa vs T. Nagappa (AIR 1954 SC 440)*** and ***Hari Vishnu Kamath vs. ahmad Ishaque (AIR 1955 SC 233)*** and other most of the cases. Assessing the guidelines laid down in above judgments and the prayer sought by Mr. Ravi Kumar, the petitioner, we are afraid that we can not grant the prayer i.e. to initiate the prosecution against the respondent nos.2 and 3, nor we can grant relief to initiate the disciplinary/departmental proceeding against them.

FACTS & CIRCUMSTANCES OF INSTANT CASE:-

6. Mr. Ravi Kumar, the petitioner is a chargesheeted accused of Case No.191 of 2018, arising out of Case Crime No.130 of 2016, u/s 498A, 323, 506, 342, 354 I.P.C. & ¾ of D.P.Act, P.S. Mahila Thana,

District Gautam Budh Nagar, pending in the Court of Civil Judge (S.D.)/F.T.C., Gautam Budh Nagar. The aforesaid petitioner, through his counsel, has filed an Application u/s 482 Cr.P.C. No.13544 of 2018 (Smt. Satveeri and 4 others vs State of U.P.) assailing the legality and validity of the charge sheet as well as summoning order dated 12.3.2018. A Bench of this Court on 20.4.2018 referred the matter before Allahabad High Court Mediation & Conciliation Centre to enable the parties to settle down their differences and discord with the aid and help of Mediator. While passing the order, the Bench without entering into the merit of the case, keeping in view the nature of accusation made thought it proper to refer the matter for mediation, directing the Mediation Centre to conclude the mediation process within two months and furnish its report. The Court had also stayed the proceedings of the Case No.191 of 2018 for the period of two months or till next date of listing. Relevant excerpts of the order dated 20.4.2018 are quoted below for the easy reference :-

“Without going into the merits of the applicants' case at this stage, since the matter is a matrimonial dispute between applicant no. 5 and opposite party no.2, who are husband and wife, it is desirable that the parties be required to attempt a re-conciliation of their differences with the assistance of Allahabad High Court Mediation and Conciliation Centre.

Learned counsel for the applicants is in agreement with the aforesaid course of action.

It is directed that petitioners shall deposit a sum of Rs. 15,000/- within three weeks from today with the Mediation Centre of which Rs. 12,000/- would be paid to the opposite party no. 2 for appearance before the Mediation Centre.

Upon deposit aforesaid being made good, the Mediation Centre will issue notice to both the parties fixing an early date for appearance and further proceedings before the Centre.

The Mediation Centre will submit their report within two months from the date parties are required to first appear before the Centre. Thereafter the case shall be listed before appropriate Bench.

Till the next date of listing, the further proceedings in Case No. 191 of 2018, arising out of case crime no. 130 of 2016, under Sections 498A, 323, 506, 342, 354 IPC and 3/4 of D.P. Act, P.S. Mahila Thana, District Gautam Buddh Nagar, pending in the court of learned Civil Judge (S.D.)/F.T.C., Gautam Budh Nagar shall remain stayed.”

Its the own admission by Mr. Ravi Kumar that the process of mediation got aborted and no result has come out of the same.

7. The Court has occasion to summon the parent records of aforesaid Application u/s 482 No.13544 of 2018. Curiously enough, the matter was referred to the mediation process way back on 20.4.2018 and as per information rendered by the petitioner Mr. Ravi Kumar, the mediation failed in the year 2018 itself but there is no report available to this effect on the record. This is the most disgusting feature of the case. It is now a normal practice that such type of lapses often occur, where the reports, pleadings are never placed on record within the reasonable time. The Registrar General, Allahabad High Court is hereby directed to hold an inquiry to its logical end and fix the responsibility of erring employees and thereafter suitable departmental proceedings shall be initiated against them for not sending the report from Mediation Centre to the second concerned, so that the report may be placed on original records of the case at first opportunity.

8. Now coming back to the facts of the case, it is born out from the order-sheet of Application u/s 482 No.13544 of 2018 that during the period of last four years, since 20.4.2018 to till date, only on two occasions i.e. in the year 2022, following orders were passed :

(i) Order dated : 31.5.2022-

(On the application)

List in the week commencing 4.7.2022.

Interim order, if any, shall continue till next date of listing.

(ii) Order dated : 4.7.2022-

List after one month.

Interim order, if any, is extended till next date of listing.”

9. Except the aforesaid two orders of 31.5.2022 and 4.7.2022 there were no orders of extending the interim order during last four years. As mentioned above, while referring the matter to A.H.C.M.C.C., in order to facilitate the contesting parties, the Court in its own wisdom while passing the parent interim order has put a cap of two months only. From October, 2018 till 31.5.2022 there was no orders as to extending the stay order.

10. Learned A.G.A. has drawn attention of the Court to the judgment of Hon’ble Apex Court, In re : *Asian Resurfacing of Road Agency Pvt. Ltd. and other Vs. Central Bureau of Investigation*, CrI. Appeal No.1375-1376 of 2010 decided on 28.03.2018, wherein the Hon’ble Apex Court has opined:-

"Situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy was required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings were held up. At times, proceedings were adjourned sine die on account of stay. Even after stay was vacated, intimation was not received and proceedings were not taken up. It was directed that in all pending cases where stay against proceedings of civil or criminal trial was operating, the same would come to end on expiry of six months from today unless in exceptional case by speaking order such stay was extended. In cases where stay was granted in future, same would end on expiry of six months from date of such order unless similar extension was granted by speaking order."

11. Thus, it is contended by the learned A.G.A. that the interim order dated 20.4.2018 was effective only up to six months. The petitioner never bothered to get the interim order extended during this period and he wants to enjoy the interim order for unlimited period on certain unfounded presumption and taking legal advice.

12. On the other hand, before the Magistrate, an application was

moved on 7.11.2020/20.4.2022 along with the computer generated status report of the case, requesting the court to issue summons in the light of intervening developments.

13. Attention was also drawn to Annexure-5 of the writ petition, which is incomplete order-sheet starting from 01.12.2021 to 14.7.2022. From the perusal of this incomplete order-sheet it is evident that on 19.3.2021, N.B.W. was issued by the court to ensure his personal presence and on 20.9.2021, time was sought by the counsel for the petitioner to furnish relevant documents on the record. But it seems that no reference of those documents were ever furnished, which were supposed to be furnished by the applicant/now the petitioner herein. When the accused appeared in the Court and apprised that the aforesaid proceeding is still pending before this Court by means of 482 proceeding.

14. Now coming to the real crux of issue, relying over which the petitioner has used all sorts of canards and unfounded insinuations against the Presiding Officer.

15. Orders of two dates are relevant i.e. 11.8.2021 and 20.9.2021. We have keenly perused both these orders. On 11.8.2021, it has been mentioned that P.O. is on leave, accused were absent, let N.B.W. be issued fixing 24.9.2021. However, later on, on the same date in the presence of advocate of the accused he was directed to file certified copy of the order-sheet of Hon'ble High Court by 20.9.2021 (though later it was 24.9.2021), with the additional rider that accused shall remain present in the court. It was clarified, if there is no stay order from this Court, the accused have to appear on 20.9.2021 and apply for bail. On the next date fixed i.e. 20.9.2021 the P.O. was on leave, however, those documents were taken on record.

16. The petitioner Ravi Kumar has taken a strong exception of preponing of the date from 24.9.2021 to 20.9.2021 which was in the

presence and knowledge of his counsel and despite of our repeated warnings not to use harsh expression against the Presiding officer, he keep on using those uncalled for expressions against the learned Presiding Officer. Not only this in his pleadings in the writ petition, he states that :-

“8- यह की परिवाद संख्या 191/2018 शिवानी बनाम रवि कुमार आदि में दिनांक 11/08/2021 को अग्रिम नियत दिनांक 24/9/2021 नियत की गयी और बिना पक्षकारों को सूचित किये बिना उचित कानूनी प्रक्रिया अपनाए बिना विपक्षी संख्या 02 व 03 की मिलीभगत (षडयंत्र) के चलते परिवाद संख्या 191/2018 शिवानी बनाम रवि कुमार आदि की ऑर्डरशीट में जालसाजी करके दी0 24/09/21 की जगह दी0 01/09/2021 नियत कर दिया गयी. जो कि कानून का स्पष्ट रूप से उल्लंघन किया गया है जिससे प्रार्थी व अन्य के विरुद्ध धोखे से 82, 83 की कार्यवाही की जा सके. और जिससे याचिकर्ता पर नाजायज दबाव बनाकर जमानत करने के लिए विवश किया जा सके और याचिकर्ता की 482 संख्या 13544/18 महत्वहीन की जा सके.”

17. This is nothing but a deliberate and intentional attempt on the part of Ravi Kumar, the petitioner to browbeat a judicial officer and kneel down him by casting absolute canard and venom vomiting against him. There is nothing on record to establish any nexus between the concern presiding officer and the informant, petitioner’s opponent. This is nothing but a stinking attempt on the part of petitioner to put a question mark on the integrity of the Presiding Judge, which has to be handled with iron hands by the superior courts. All these developments as culled out from the order sheet, was in front of petitioner’s counsel. The court has unable to gather any conspiracy theory between the Presiding officer and petitioner’s opponents, as alleged in para 8 of the writ petition. At the cost of repetition, we have tried to persuade the petitioner Mr. Ravi Kumar not to do so but stubborn petitioner keep on hammering his arguments and wasting the time of the Court. The allegations made are scandalous and are capable of shaking the very edifice of the judicial administration and also shaking the faith of common man in the administration of justice.

LEGAL DISCUSSION :

18. In this regard, at this juncture it is imperative to spell out the view taken by the Hon'ble Supreme Court in **Suo Motu Contempt Petition (Crl.) No.1 OF 2020 IN RE : Prashant Bhushan and another**, whereby the Hon'ble Apex Court categorically expressed its concern and observed thus :

“34. Though there is a Freedom of Speech, freedom is never absolute because the makers of the Constitution have imposed certain restrictions upon it. Particularly when such Freedom of Speech is sought to be abused and it has the effect of scandalising the institution as a whole and the persons who are part of the said institution and cannot defend themselves publicly, the same cannot be permitted in law. Though a fair criticism of judgment is permissible in law, a person cannot exceed the right under Article 19(1)(a) of the Constitution to scandalize the institution.

*35. It is apparent that the contemnor is involved in making allegations against the retired and sitting Judges. On one hand, our attention was attracted by Shri Dushyant Dave, learned senior counsel, towards the norms of judicial conduct which also provide that Judges cannot express an opinion in the public. The Judges have to express their opinion by their judgments, and they cannot enter into public debate or go to press. It is very easy to make any allegation against the Judges in the newspaper and media. Judges have to be the silent sufferer of such allegations, and they cannot counter such allegations publicly by going on public platforms, newspapers or media. Nor can they write anything about the correctness of the various wild allegations made, except when they are dealing with the matter. Retired Judges do have the prestige that they have earned by dint of hard work and dedication to this institution. They are also not supposed to be answering each and every allegation made and enter into public debate. Thus, it is necessary that when they cannot speak out, they cannot be made to suffer the loss of their reputation and prestige, which is essential part of the right to live with dignity. The Bar is supposed to be the spokesperson for the protection of the judicial system. They are an integral part of the system. The Bar and Bench are part of the same system i.e. the judicial system, and enjoy equal reputation. If a scathing attack is made on the judges, it would become difficult for them to work fearlessly and with the objectivity of approach to the issues. The judgment can be criticized. However, motives to the Judges need not be attributed, as it brings the administration of justice into disrepute. In **Halsbury's Laws of England, Fourth Edition, Volume 9**, in para 27, it is observed that the punish-*

ment is inflicted, not for the purpose of protecting either the Court as a whole or the individual Judges of the Court from repetition of the attack but for protecting the public and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the Tribunal is undermined or impaired. Hostile criticism of the judges or judiciary is definitely an act of scandalizing the Court. Defamatory publication concerning the Judge or institution brings impediment to justice."

19. At this juncture it would be useful to refer the decision of The Himanchal High Court in "***Court on its own Motion vs Coram***" decided on 24th August, 2018, whereby the Himanchal High Court while thrashing the several judgment has held that :

"17. It has to be remembered that the subordinate judiciary forms the very backbone of the administration of justice and the higher court would come down with a heavy hand for preventing the judges of the subordinate judiciary from being subjected to scurrilous and indecent attacks, which scandalize or have the tendency to scandalize, or lower or have the tendency to lower the authority of any court as also all such actions which interfere or tend to interfere with the due course of any judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner.

18. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants or lawyers. The protection is necessary for the courts to enable them to discharge their judicial functions without fear. (Ajay Kumar Pandey, Advocate, (1998) 7 SCC 248).

19. It is well settled that litigant or for that matter even a lawyer cannot be permitted to browbeat the court or terrorize or intimidate the Judges as held by the Hon'ble Supreme Court in [Chetak Construction Ltd. v. Om Prakash](#) (1998) 4 SCC 577:

"16. Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and the rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be permitted to 'terrorise' or 'intimidate' Judges with a view to 'secure' orders which they want. This is basic and fundamental and no civilized system of administration of justice can permit it."

20. These observations were subsequently, reiterated in *Radha Mohan Lal v. Rajasthan High Court* (2003) 3 SCC 427.

21. Reverting back to the facts, it would be noticed that the genesis of the entire episode appears to be the application filed by respondent/contemnor for release of the vehicle. In case the respondent/contemnor felt that the same was not being decided expeditiously or the decision rendered by the Magistrate was in any way wrong or erroneous, he could have resorted to lawful remedies but could not have resorted to Judge bashing and using derogatory and contemptuous language against Judges.

22. No Judge is infallible and the order passed by him/her may or may not be correct, but that would not give a litigant much less a lawyer to indulge in Judge bashing. The Hon'ble Supreme Court in *Haridas Das vs. Usha Rani Banik (Smt.) and others APU Banik* (2007) 14 SCC 1 has rightly observed as under:

"1. "Judge bashing" and using derogatory and contemptuous language against Judges has become a favourite pastime of some people. These statements tend to scandalize and lower the authority of the Courts and can not be permitted because, for functioning of democracy, an independent judiciary to dispense justice without fear and favour is paramount. Its strength is the faith and confidence of the people in that institution. That cannot be permitted to be undermined because that will be against the public interest.

2. Judiciary should not be reduced to the position of flies in the hands of wanton boys. Judge bashing is not and cannot be a substitute for constructive criticism.

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12. There is guarantee of the Constitution of India that there will be freedom of speech and writing, but reasonable restriction can be imposed. It will be of relevance to compare the various suggestions as prevalent in America and India. It is worthwhile to note that all utterances against a Judge or concerning a pending case do not in America amount to contempt of Court. In Article 19 the expression "reasonable restrictions" is used which is almost at par with the American phraseology "inherent tendency" or "reasonable tendency". The Supreme Court of America in *Bridges v California* (1911) 86 Law Ed. 192 said:

"What finally emerges from the clear and present danger cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely serious and the degree of imminence extremely high before utterances can be punished."

20. The Hon'ble Supreme Court in *Vishram Singh Raghubanshi*

Vs. State of Uttar Pradesh (2011) 7 SCC 776. has noted the dangerous trend of making false allegations against judicial officers and observed as under:

"18. The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse. The Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. "Liberty of free expression is not to be confounded or confused with license to make unfounded allegations against any institution, much less the Judiciary". A lawyer cannot associate himself with his client maligning the reputation of judicial officers merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system, would cause a very serious damage to the Institution of judiciary. An Advocate in a profession should be diligent and his conduct should also be diligent and conform to the requirements of the law by which an Advocate plays a vital role in the preservation of society and justice system. Any violation of the principles of professional ethics by an Advocate is unfortunate and unacceptable. (Vide: O.P. Sharma & Ors. v. High Court of Punjab & Haryana, (2011) 5 SCALE 518)."

21. We are now-a-days living in a democracy in its ugliest form; where nobody has got any regard for any institution. This is unholy and dangerous sign that all and sundry are making unfounded and unsubstantiated allegations against judiciary in an irresponsible manner. Making irresponsible insinuations upon the judiciary or its officers has now become a fashion. This unholy practice has to be whole-heartedly discouraged and deplored by every responsible person of the society. Judiciary is one of the strongest pillars of any healthy democracy. This fact receives more significance when recently we have celebrated our 75th Independence Day. In order to strengthen the foremost pillars of democracy, there should be mutual regard. The subjects of that democracy too are expected to not become liberal and irresponsible in their expression. The Superior Courts are bound to protect their subordinate courts.

22. This Court records its strongest anguish and concern that the people at large are now making unwarranted and unsubstantiated and canards against the judicial officers relying upon their whims and capricious and making irresponsible allegations of dishonesty. The higher courts are duty bound to save the dignity and honour of the system in general and the individual judicial officer as well that no person is permitted to make a sweeping and wild allegations regarding the integrity and character of any judicial officer.

23. The apprehension of the petitioner solely springs from the uncalled for preponing the date as has been described hereinbefore, which according to the petitioner is tantamount to a conspiracy of the judge and his predilection towards prosecution side. The unsubstantiated paranoia of an ultra-conscious litigant and his illegitimate apprehensions cannot make us to believe on them and also cannot constitute a legitimate ground to allow the prayer sought in the petition. The Judges are also the parts of the society just as everybody else is and they do not live in ivory towers. The upsurge of particular type of social crimes causes concern of the judges also who in an important way have also to deal with such crimes in their judicial capacity, therefore, if at some stage some judge ventilates his exasperation at commission of certain crimes which may sometimes appear to be revolting against the collective consents of humanity of which the judge himself is an integral part. Such expressions must not be mistaken to be any abdication of judicious independent thinking. Nor should it be interpreted as an indication that such presiding officer shall not adhere to the shorn duties as a Judge.

24. If there is some such order passed by the trial court with which the petitioner feels aggrieved, the right course is to challenge the same in judicial capacity in the higher courts. The propriety or correctness of any step or order taken or adopted by any judicial

officer is amenable to jurisdiction of the superior court. So far as the allegation that the presiding officer is hand in glove with the opposite party is concerned, our judicial institutions are robust enough not to be swayed by any such parochial considerations. It is very easy to make insinuation against the presiding officer like this. We do not find any substantial record on the basis of which it may hold that either presiding officer has been approached or the petitioner has been nurtured holds water. The allegation as has been fastened by the petitioner against the presiding officer is too vague and conjectural and perhaps even irrelevant and simply cannot persuade us.

25. Submission as has been raised by the petitioner in order to seek direction to institute an inquiry against the concerned judicial officer is very vague and bald. There is absolutely no material to substantiate the same. It is very difficult to accept such kind of unsubstantiated insinuations to become a legitimate ground to initiate any inquiry. The apprehensions as have been made by the petitioner seems to be wholly unfounded and such kind of ultra sensitiveness cannot constitute any legitimate ground to allow the prayer sought in the petition.

26. We conclude that this is not a fit case where this court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India and as we have noted that the present petition is filed levelling unsubstantiated allegations against the presiding officer based on unfounded apprehensions and petitioner has wasted precious time of the Court by filing frivolous litigation, under circumstances, the present writ petition stands dismissed with costs of Rs.50,000/- to be paid to the State Exchequer.

27. The petitioner shall deposit the cost of Rs.50,000/- with the

Registrar General of this Court within a period of five months from today. On deposit of such cost, it shall be transmitted to the account of Allahabad High Court Mediation & Conciliation Centre. If the petitioner fails to deposit the cost of Rs.50,000/- (Rs. Fifty thousand), the Registrar General of this Court shall inform the District Magistrate/Collector, Gautam Budh Nagar for recovery of the said amount as arrears of land revenue, who shall after recovering the same amount from the petitioner, transmit it to the Registrar General of this Court for depositing in the account of Allahabad High Court Mediation & Conciliation Centre within a further period of three months.

28. Let a copy of this judgment be communicated to the learned District & Sessions Judge, Gautam Budh Nagar as well as to Ms. Mahima Jain, Judicial Officer/Civil Judge (J.D.)/F.T.C.-2, Gautam Budh Nagar by the Registrar (Compliance) of this Court forthwith.

29. Let the copy of this order be circulated to every sessions division by Registrar General of this Court.

Order Date :- 18.10.2022
M. Kumar/Sumit S