



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

Reserved on : 08.08.2023

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Pronounced on : 19.12.2023

+ **W.P.(CRL) 816/2023 & CRL.M.A. 7476/2023**

YOGENDRA KUMAR & ORS.

..... Petitioners

Through: Mr. Vikas Arora, Ms. Radhika Arora
and Mr. Abhay Sachan, Advocates.
Petitioner no.1 and 5 in person.

versus

STATE & ORS.

..... Respondents

Through: Mr. Sanjeev Bhandari, ASC for the
State with Mr. Sushant Bali, Mr.
Kunal Mittal and Mr. Saurabh
Tanwar, Advocates.
SI Giriraj, P.S.Kamla Market.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition under Article 226 and 227 of the Constitution of India read with Section 482 Cr.P.C has been filed by the petitioners with the following prayers:-



"a) Expunge the remarks made against the petitioners in judgment dated 29.06.2022 passed in SC No. 28390/2016 titled as State vs Pran Kishore by Sh. Sanjay Sharma II, ASJ - 03, Central, Tis Hazari Courts, Delhi; while adjudicating FIR No. 0001/2010 PS Kamla Market;
b) Set aside the directions issued to the Commissioner of Police to initiate disciplinary inquiry against the petitioners;
c) Any further order or direction as this Hon'ble court may deem fit and proper may kindly also be passed in the facts and circumstances of the case."

2. In brief the facts of the case are that on 05.01.2010 at about 05.35 p.m., near Government School, Mata Sundri Road, DDU Marg, New Delhi, the accused persons/Respondent No. 2 & 3 had obstructed the police raiding team (Petitioners herein) and used criminal force against a public servant and the accused, namely, Pran Kishore fired at HC Yaad Ram and the accused, namely, Sanjay also attempted to fire at the police team. The accused persons were found to be in conscious possession of illegal arms and ammunition. Subsequently, FIR No. 01/2010, under Sections 186/307/353 IPC and 25/27/54/59 of Arms Act was got registered at PS Kamla Market.
3. On completion of investigation, the accused persons were chargesheeted under Sections 307/353/186/34 IPC and 25/27 of Arms Act. On appraisal of the material on record, the accused persons were charged for committing offences under Sections 186/353/307/34 IPC and 25/27 of Arms Act. During trial prosecution examined 13 witnesses including the present petitioners.



4. Vide the impugned judgment dated 29.6.2022, Ld. ASJ acquitted respondent no. 2 and 3 from offences under Section 186/34, 353/34 and 307/34 IPC and 25/27 of Arms Act and vide the same judgment made certain observations against the police raiding team and ultimately in para 35 issued the following directions:

“35. Accordingly, this Court direct the Commissioner of Police, Delhi to take disciplinary action against PW-4 SI Yogender Kumar and members of raiding team, whether they are in service or since retired. In case any one of them is since retired, the action shall be taken with regard to deduction / stoppage of their pension in accordance with service rules. The ground of limitation, if provided in service rules, will not operate as the inquiry is being conducted pursuant to direction of this Court. A copy of this judgment be sent to the Commissioner of Police, Delhi for initiating disciplinary action, as directed.”

5. I have heard the Ld. Counsel for the petitioners, Ld. ASC for the State and perused the records of the case.
6. Learned counsel for the petitioners submitted that the Ld. ASJ had failed to appreciate that in catena of judgments, the Hon'ble Apex Court and this Hon'ble court have held that no court has power to direct inquiry against the police officials but Ld. ASJ completely ignored the settled principle of law and without contemplating the serious effects of the observations made upon the career of the petitioners, passed such observations which seriously affect the service career of the petitioners. He further submitted that Ld. ASJ had failed to appreciate that even if some lapses are noticed by the court, the court may record such lapse and indicate that in future such lapses should not occur but straightaway



directing the administrative authorities/superior police authorities to take legal/ departmental action against the officer only means that the said officer is convicted and for the sentencing his case is being sent to superior police authorities. He further contended that this process is not mandated either by law or practice. He further submitted that even if there may be any lapses on part of a police officer, before any action is taken against him legally or departmentally, he is required to be given a notice for the same and is further required to be heard. And there is no ground whatsoever for passing such draconian remarks against the petitioners and also for passing such directions against the petitioners to affect their service career. He further submitted that Ld. ASJ seriously erred in concluding that the respondent No. 2 & 3 have been falsely implicated in the case and the same is based upon conjectures and surmises. He submitted that there is no material on record to substantiate false implication of the accused persons in the case and although the case of the respondents no.2 & 3 was that they were implicated in the case while sitting in the police station but they did not produce any witness to prove their defence. He further submitted that all the petitioners are presently in the Delhi Police and have an impeccable service record since their joining the services and they also have an excellent ACR and service record through-out their service career. Lastly, Counsel for the petitioners urged that these observations and directions issued against the petitioners vide the impugned order dated 29.6.2022 are absolutely uncalled for and are liable to be set aside.



7. Ld. counsel for the petitioners, in support of his contentions, has placed reliance on the following judgments:

- ***Rakesh Chand vs. State [WP(Crl) 207/2015]***
- ***State vs. Yogender Singh [WP(Crl) 139/2015]***
- ***Deputy Commissioner of Police vs. Badlu Paswan &Ors [W.P. (CRL) 3034/2015]***
- ***Ajit Kumar vs. State [WP (Crl) 2237/2022]***
- ***Chandra Shekhar & Anr. vs. State & Anr. [Crl. M.C. 962/2023]***
- ***Dr.Dilip Kumar Deka & Anr vs. State of Assam & Anr. [(1996) 6 SCC 234]***

8. It is urged by the Ld. ASC that the unnecessary adverse remarks have been passed against the Delhi Police officials are uncalled for comments which have been made on the functioning of Delhi Police and competence of Commissioner of Police without even giving them any opportunity to explain their stand, which is clear violation of principles of natural justice. He further urged that while passing the impugned directions the Ld. ASJ ignored the law on the subject and comments are made in ignorance of the law laid down in catena of judgments in this regard, and completely ignoring Section 6 in Volume III Chapter 1, part H (titled: "The Judgment") of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases". Ld. ASC has placed reliance on ***Yogendra Kr. & Ors. vs. State &Ors. [W.P (CRL.) 816 OF 2023]*** and ***Dr. Dilip Kr Deka & Ors. vs. State of Assam & Anr. [(1996) 6 SCC 234]***.



9. Section 6 in Volume III Chapter 1, part H (titled: "The Judgment") of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" reads as follows:

"6. Criticism on the conduct of Police and other officer:- 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- J36114753, dated the 15th April. 1936."

10. Further, Delhi High Court Rules, Chapter 1-H, paragraph 6 reads as follows:

"9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before them or those litigating for such causes. The parties before them and the counsel are considered to be devotees and pandits who perform



the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone either to please their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case."

11. In ***Ravinder Tyagi Vs. State [Crl. Writ Petition No. 264 of 2011]*** this Hon'ble Court observed and held as under:

"14. In the case of State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2011) 12 SCC 689 the Supreme Court observed as under:

13. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalisations defeat the very purpose for which they are made. Thus, 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.*

14. This view has been persistently approved and followed by this Court as is evident from the judgments in Jage



Ram, Inspector of Police & Anr. v. Hans Raj Midha, AIR 1972 SC1140; R.K. Lakshmanan v. A.K. Srinivasan & Anr., AIR 1975SC 1741; Niranjana Patnaik v. Sashibhusan Kar & Anr., AIR1986 SC 819; Major General I.P.S. Dewan v. Union of India & Ors., (1995) 3 SCC 383; Dr. Dilip Kumar Deka & Anr. v. State of Assam & Anr., (1996) 6 SCC 234; and State of Maharashtra. Public Concern for Governance Trust & Ors., AIR 2007 SC777.

15. Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.

15. In the case of State of West Bengal and Ors. v. Babu Chakroborty AIR 2004 SC 4324 the Supreme Court held:

".....In our view, the High Court was not justified and correct in passing observations/strictures against appellants 2 & 3 without affording an opportunity of being heard, and it is in violation of catena of pronouncements of this Court that harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case. Likewise, the directions issued by the High Court to the trial Court to lodge a complaint to the Magistrate having jurisdiction for prosecuting appellants 2 and 3 for having committed an offence under Section 58 of the Act read with Section 166 and 167 of the Indian Penal Code is not warranted. The observations made by the High Court are liable to be expunged and accordingly, we expunge the same including the direction to lodge a complaint against appellants 2 & 3. As rightly pointed out by Mr. Tapas Ray, the observations of the High Court in the impugned judgment passing strictures against the appellants have been made while against the record of the case and penalize the two police



officers who were discharging their official duties as per the law. The action taken by appellants 2 & 3 have been taken in the case of discharging of their official duties while discharging their duties, the official would have violated certain provisions. That does not, in our opinion, enables the Court to pass strictures against the officials and ordered compensation. There is no evidence or circumstance to show that there was any malafides on the part of these officers. Likewise, the direction issued by the High Court directing the State of West Bengal to pay compensation of Rs. 1 lakh to the respondent/accused giving liberty to the State to realize or to recover the whole of such compensation from appellant No. 2, Mr. K.L. Meena, a member of the Indian Police Service, is wholly unjustified. In our view, officers who are discharging their statutory duties cannot be blamed when the action taken by the State Government and the officials concerned are for implementing the objects behind the Act by resorting the check and to direct the raids etc. The High Court has further penalized the State Government and its officers for such an action. Since the strictures passed against them are wholly unjustified, we have no hesitation in expunging the remarks."

16. In the case of State of Maharashtra v. Public Concern for Governance Trust & Ors. AIR 2007 SC 777 the Supreme Court discussed the law on the subject as under:

23. We shall now analyze and consider the rulings of this Court cited by learned Solicitor General. 1. Dr. Dilip Kumar Deka & Anr. vs. State of Assam & Anr., (1996) 6 SCC 234 (paras 6, 7 & 8) The above judgment relates to expunging adverse remarks. The above was a case of adverse remarks recorded by the High Court against the members of hospital allegedly for misleading the court and stalling process of the court by submitting manipulated report regarding condition of a person to justify his shifting from police remand to the hospital. The High Court made adverse remarks without giving any opportunity to the members of extending or defending themselves, without any evidence showing that their conduct justified such remarks and without any necessity of such remarks for the purpose of



deciding the matter. This Court held on facts that adverse remarks were unwarranted and hence expunged. This Court also cautioned superior courts to use temperate and moderate language and also held that opportunity to be given to the affected party before recording of adverse remarks by the Court. This Court also held thus: "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 1964SC 703. 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.*

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in Jage Ram v. Hans RajMidha, (1972) 1 SCC 181, R.K. Lakshmanan v. A.K.Srinivasan, (1975) 2 SCC 466 and Niranjana Patnaik v. Sashibhusan Kar, (1986) 2 SCC 569.

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.

8. Judged in the context of the first test laid down in Mohd. Naim's case (supra) the above discussion of ours is sufficient to quash the impugned remarks, but we find that the remarks are vulnerable also to the second test laid down therein. On perusal



of the order dismissing the revision petition we find that the remarks of the learned Judge are based solely upon the fact that the report of the medical Board consisting of four medical experts belied their report. Indeed, except the report of the Board we have also not found any other material on record from which the learned Judge could have legitimately and justifiably obtained satisfaction to pass the above remarks against the two appellants before us. We hasten to add that in making the above observation we have left out of our consideration the materials which prompted the learned Judge to make adverse comments against the IO."

2. Rajiv Ranjan Singh 'Lalan' (VIII) & Anr. Vs. Union of India & Ors., (2006) 6 SCC 613 at 645 (para 57).

In the above case, Dr. AR. Lakshmanan, J. concurring with the opinion expressed by Hon. K.G.Balakrishnan, J. has observed that public interest litigation is meant for the benefit of the lost and the lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court and that PILs are not meant to advance the political gain and also to settle personal scores under the guise of PIL and to fight a legal battle. In para 57, it has been observed as follows:-

"57. Certain allegations have been made against CBDT and the Public Prosecutors, Members of the Income-tax Tribunal, etc. None of them were made parties before us. Therefore, the allegations made against them are one-sided and cannot be looked into at all. We cannot also say that all these authorities have acted in a mala fide manner."

5. A.K.K.Nambiar vs. Union of India & Ors., (1969) 3 SCC 864 at 867. This Court in paras 8 & 9 held thus:

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24. In the instant case, allegations have been made against the then Chief Minister, however, he was not made party before the Court. Therefore, the allegations made against him are onesided and do not merit any consideration.

25. We are surprised to find that inspite of catena of decisions of this Court, the High Court did not, give an opportunity to the



affected party, the then Chief Minister, before making remarks. It cannot be gainsaid that the nature of remarks made in this judgment will cast a serious aspersion on the Chief Minister affecting his reputation, career etc. Condemnation of the then Chief Minister without affording opportunity of being heard was a complete negation of the basic principles of natural justice.

17. In para 36 and 37 of the said judgment the Supreme Court observed :

"36. It is thus amply clear that one is entitled to have and preserve ones reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review.

37. For the aforesaid reasons, we hold that the observations/strictures and remarks made by the High Court against the appellant behind his back is totally uncalled for and not warranted. We, therefore, have no hesitation to order expunction of the remarks made in para Nos. 38,139, 140 and 141 of the impugned judgment. The civil appeal is allowed only to the above extent. We order no costs."

18. In the case of State of West Bengal v. Mir Mohammad Omar & Ors (2000) 8 SCC 234 the Supreme Court directed the courts to ordinarily desist from castigating the investigation while ordering acquittal. It observed 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 foolproof. The



function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury 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.”

12. In ***DCP Vs. Badlu Paswan & Ors. [W.P.(CrI.) No. 3034/2015]***, this Hon’ble Court observed and held as under:

"17. It has been held in various decisions by the Supreme Court that in case of lapse being found on the part of investigating agency, it can be recorded but directing departmental proceedings virtually amounts to holding person guilty which is not a permissible course.

18. In the case State of West Bengal and Ors vs. Babu Chakraborty, (2004) 12 SCC 201, the Supreme Court while dealing with the judgment of Calcutta High Court in a case relating to NDPS Act held as under:-

"31. As rightly pointed out by Mr Tapash Ray, the observations of the High Court in the impugned judgment passing strictures against the appellants have been made while against the record of the case and penalise the two police officers who were discharging their official duties as per the law. The action taken by Appellants 2 and 3 has been taken in the case of discharging of their official duties. While



discharging their duties, the official would have violated certain provisions. That does not, in our opinion, enable the court to pass strictures against the officials and order compensation. There is no evidence or circumstance to show that there were any mala fides on the part of these officers.

32. Likewise, the direction issued by the High Court directing the State of West Bengal to pay compensation of Rs 1 lakh to the respondent-accused giving liberty to the State to realise or to recover the whole of such compensation from Appellant 2 Mr K.L. Meena, a member of the Indian Police Service, is wholly unjustified.

33. In our view, officers who are discharging their statutory duties cannot be blamed when the action taken by the State Government and the officials concerned is for implementing the objects behind the Act by resorting the check (sic) and to direct the raids, etc. The High Court has further penalised the State Government and its officers for such an action. Since the strictures passed against them are wholly unjustified, we have no hesitation in expunging the remarks."

19. The learned ASJ by seeking action taken report in respect of the action against the Investigating Officer encroached upon the administrative power of the Disciplinary Authority. He not only started monitoring the disciplinary proceedings but also "re-investigation" which is not even permissible under the law."

13. In ***State Vs. Yogender Singh [WP (Crl.) No. 139/2015]*** and ***Rakesh Chand Vs. State of NCT of Delhi [WP (Crl.) No. 207/2015]***, this Hon'ble Court has held that adverse remarks against the police or its officers ought not to be passed unless these are absolutely necessary for deciding the case. Relevant part of ***Yogender Singh(supra)*** reads as under:

"9. While concluding, the Court directed a copy of the order to be sent to the Commissioner of Police with a direction to take appropriate action against erring police officials including the concerned SHO of P.S. Bhalswa Dairy within two weeks from the date of receipt of a copy of the order and to submit action taken report (ATR). The case was directed to be listed on a particular date before the same Court.



10. *The present petition seeks deletion of the aforesaid paragraph from the order rejecting the bail of the respondent Yogender Singh which contained the direction to send the copy of the order to the Commissioner of Police for taking action against erring police officials and to submit the ATR by the Commissioner of police before the same Court.*

11. *Learned counsel for the petitioner/State submitted that the Court below was perfectly justified in rejecting the prayer for bail but by directing the Commissioner of Police to take action against the erring police officials and submit an ATR, the Court has overstepped its jurisdiction.*

13. *A grievance was especially raised with respect to the direction to the Commissioner of Police to take action against the erring police officials and submit an ATR. Once a Court of law holds that a particular functionary of the State or a person has flouted any provision of law, it amounts to conviction. Times without number, the Supreme Court as well as the High Courts have cautioned that judicial orders are respected for the reason that those are couched in legal terms, and they take note of legal provisions and are in conformity with law. There can be no gainsaying the fact that one of the basic principles governing any action is that nobody can be condemned unheard. The officials of the concerned police station and the DCP North West were not afforded any opportunity of explaining cause as to why there was a delayed registration of the FIR. In a case where there is a dispute with regard to ownership and possession of property, police functionaries have to adopt a cautious approach. Unless, in the first instance, it is found out that a criminal case has been made out, there could be no hurried registration of the FIR. A preliminary enquiry, though with urgent dispatch, is required to be made. The Court below did not have the occasion to hear the view point of the investigating agency or the SHO of the concerned police station or the DCP, North West.*

14. *From the order passed by the Trial Court one can make out that the DCP, North West ordered for the registration of the FIR and also directed for sending in a report, fixing the responsibility on the erring police official at whose instance there was a delayed registration of the FIR. What happened there after was not known to the learned*



Addl. Sessions Judge for him to comment on the functioning of the DCP, North West.

15. While administering justice, a Judge is expected to be acting judicially without being deterred by any consideration. While doing so, he has the liberty of expressing his views about the conduct of the investigating agency or other organs of the Government but has to be careful about not overstepping its jurisdiction. An order or a judgment is a privileged document and a Judge has always to remind himself that the immunity which he enjoys in writing an order or a judgment carries with it the duty of circumspection.

16. If the learned Addl. Sessions Judge was not happy with the way in which the investigation was being carried out, it was enough to record his displeasure. That has been done aptly by the learned Addl. Sessions Judge. What is not approved of is his direction to send his order to the Commissioner of Police for taking action against the erring police officials and submission of action taken report to him. This cannot be taken kindly to on two scores. By saying so, the learned Judge has pre-judged the action/inaction of the investigating agency and other police officers without affording any opportunity to explain the circumstances for delayed lodging of the first information report; and the Court, by seeking action taken report has in a way, encroached upon the administrative functions of the police administration and thereby has begun monitoring not the investigation of the case but the process of taking disciplinary action against the police officials. The Commissioner of Police, is left with no choice, once a Court of law holds that law has been flouted and, therefore, action be taken against the concerned persons. The disciplinary enquiry, therefore, would only be on paper when the offence is held by the court to have been committed".

Relevant extract of **Rakesh Chand** (*supra*) reads as follows :

".....23. Even if there was a lapse on the part of the petitioners as police officers, what the Trial Court was required to do was to record such lapse and indicate that in future such lapses should not occur. Straightway directing the administrative authorities/superior police authorities to take legal/departmental action against the petitioners only meant that the petitioners were also convicted along with the accused persons in the present case and for proper sentencing, their



cases were sent to the superior police authorities. This procedure is not mandated either by law or practice."

14. The petitioners in the instant case, are aggrieved by the following observations of the Ld. A.S.J. which reads as follows:

"35. Accordingly, this Court direct the Commissioner of Police, Delhi to take disciplinary action against PW-4 SI Yogender Kumar and members of raiding team, whether they are in service or since retired. In case any one of them is since retired, the action shall be taken with regard to deduction /stoppage of their pension in accordance with service rules. The ground of limitation, if provided in service rules, will not operate as the inquiry is being conducted pursuant to direction of this Court. A copy of this judgment be sent to the Commissioner of Police, Delhi for initiating disciplinary action, as directed."

15. The judgments relied hereinabove and the Delhi High Court Rules, Chapter 1-H, paragraph 6 as well as Section 6 in Volume III Chapter 1, part H (titled: "The Judgment") of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" clearly lays down that the judges should refrain from making disparaging remarks against a person or authorities, unless and until the party whose conduct is in question is before the Court or has an opportunity of explaining or defending itself, whether there is any evidence on record bearing on that conduct justifying the remarks and whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

16. The Ld. A.S.J. while acquitting respondent no. 2 and 3 vide its judgment dated 29.6.2022 has observed that on assessment of evidence of members of raiding team, it can be concluded that their evidence does not



inspire confidence and is wholly unreliable. The Ld. Trial Court even went to the extent of observing in the judgment dated 29.6.2022 that not only the prosecution failed to bring home charges against the accused persons but this is a case of false implication of the accused persons. It was also observed that the officers of the State had played with the liberty of the accused persons and, in a way, experimented with it and furthermore, the Investigating agency had put its sense on the ventilator.

17. It is not understood as to on what basis and what was the material before the Ld. A.S.J. which persuaded him to pass such scathing remarks that the accused persons were being falsely implicated by the members of the raiding team. Such remarks made by the Ld. A.S.J. are totally unwarranted and he should have refrained himself from making such remarks against the police force of the capital without there being anything on record to show that police officers had any malafides.

18. Even if according to the Ld. A.S.J. there were material inconsistencies in depositions of members of the raiding team regarding sequence of events pertaining to firing and apprehension of the accused persons at the place of incident, the Ld. A.S.J. should have only brought the matter to the knowledge of the Commissioner of Police for taking action against the erring police officials and the matter should have been left to the department.

19. The Ld. A.S.J., has prejudged the entire matter and in a sense has passed the judgment of guilt against the Delhi Police without affording them any opportunity to be heard. And it seems in his eagerness to condemn Delhi



police, he forgot the cardinal principle of law "*audi alteram partem*" which a judicial officer should never forget. Ld. A.S.J. should have brought the matter to the knowledge of the Commissioner of Police for taking action and should have shown some patience instead of jumping to the conclusion with regard to the competence /incompetence, wiliness or unwillingness of the Delhi police to investigate the crime of such nature.

20. The Ld. A.S.J. has prejudged the actions/inactions of the investigating agency and police officials and no opportunity to be heard was given to them by the Ld. A.S.J. who went on to accuse them of falsely implicating accused persons in this case. The Ld. A.S.J. has in a sense encroached upon the administrative functions of the police administration and even if there was a lapse on the part of the police officials, the Ld. A.S.J., should have recorded such lapses and indicate that such lapses should not occur in future, instead of directing the Commissioner of Police to take disciplinary action against PW-4 SI Yogender Kumar and members of raiding team, whether they were in service or since retired. Ld. A.S.J further without any basis went to an extreme extent by directing that in case any one of them is since retired, action shall be taken with regard to deduction/ stoppage of their pension in accordance with service rules. The tone and tenor of the impugned directions reflects that the police officials have also been held to be suspects in the crime alongwith the accused persons.

21. I, therefore, for all the reasons stated above, expunge the following directions passed by the Ld. Addl. Sessions Judge-03, Central, Tis Hazari Courts, Delhi, vide impugned judgment dated 29.06.2022:-



"35. Accordingly, this Court direct the Commissioner of Police, Delhi to take disciplinary action against PW-4 SI Yogender Kumar and members of raiding team, whether they are in service or since retired. In case any one of them is since retired, the action shall be taken with regard to deduction / stoppage of their pension in accordance with service rules. The ground of limitation, if provided in service rules, will not operate as the inquiry is being conducted pursuant to direction of this Court. A copy of this judgment be sent to the Commissioner of Police, Delhi for initiating disciplinary action, as directed."

22. The petition is, accordingly, allowed and disposed of alongwith pending application in the above terms.

RAJNISH BHATNAGAR, J

DECEMBER 19, 2023/_p