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

% ***Reserved on: 21.09.2022***
Pronounced on: 22.11.2022

\+ **W.P. (CRL.) 2236/2022**
AJIT KUMAR ..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with Mr. Vikas Arora, Ms. Radhika Arora, Mr. Sidharth Singh, Mr. Prabhav Ralli and Mr. Rohan Wadhwa, Advocates

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Ms. Rupali Bandhopadhya, ASC for the State with Mr. Akshay Kumar and Mr. Abhijeet Kumar, Advocates.
Mr. Sanjeev Bhandari, ASC for the State

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Akshay Kumar and Mr. Abhijeet Kumar, Advocates.
Mr. Sanjeev Bhandari, ASC for the State

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J

1. This judgment shall govern the disposal of W.P.(Crl.) Nos. 2236/2022 and 2237/2022 arising out of common set of facts, contentions and prayer.

2. The petitioner before this Court is a Station House Officer (SHO) who is currently posted at Police Station Greater Kailash-I. By way of the present writ petition, filed under Article 226/227 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks deletion of remarks made against him and setting aside the directions issued to the Commissioner of Police to get an inquiry conducted against him, in a

common order dated 06.09.2022 passed in Criminal Appeal No. 573/2019 and 574/2019, both titled as "*Amitabh Sanyal v. Siddharth Sharma*" by learned Additional Sessions Judge (South-East), Saket Courts, New Delhi.

FACTUAL MATRIX

3. The brief facts of the case of criminal appeals, in the trial of which directions have been passed against the petitioner, are as under:

i. Criminal Appeal Nos. 573/2019 and 574/2019 arising out of complaint case under Section 138 Negotiable Instruments Act, 1881 were pending before the concerned court of learned ASJ, Saket Courts, New Delhi. The appellant therein who had been convicted, was sought to be served through court process, for which Non-Bailable Warrants (NBW) and Notice to the surety were ordered to be issued, vide order dated 13.5.2022 returnable for 08.07.2022.

ii. These processes were received in P.S. Greater Kailash-I on 09.06.2022 and the Petitioner got sent these processes to In-charge Summon Pool, South District on the same day i.e., 09.06.2022 against their receipt.

iii. Copies of report of Non-Bailable Warrants against appellant and notice to his surety were received through WhatsApp by In-charge Summons Pool and the same were forwarded to the learned Trial Court.

iv. Vide order dated 08.07.2022, learned Trial Court issued a notice to the present Petitioner to appear in person along with original reports of Non-Bailable Warrants and notice to surety of appellant, along with a separate notice seeking explanation as to why action be not recommended against him for violation of Standing Order No. 200 and Circular No. 64/2012. The relevant portion of order dated 08.07.2022 is reproduced as under:

> *"...Reports of Warrant and notice to surety of appellant have been forwarded by I/C Summons Pool, South District. Case pertains to PS GK.*
> *Issue notice to SHO PS GK to appear in person with original reports of NBW and notice to surety of appellant on NDOH.*
> *Issue separate notice to SHO PS GK to explain as to why action be not recommended against him for violation of Standing Order No. 200 and Circular No. 64/2012 for NDOH..."*

v. On 06.09.2022, the petitioner had appeared and submitted his report/reply before the learned Trial Court wherein it was contended that Non-Bailable Warrants and notice to surety were got served through Summon Pool of South District, against proper receipt on 09.06.2022 for further necessary action, and that the said Non-Bailable Warrants/notice were got executed by staff of Summon Pool, South District.

REMARKS AGAINST PETITIONER

4. The entire controversy in the present petition arises from the observations made and directions issued by the learned Trial Court in

Criminal Appeal Nos. 573/2019 and 574/2019, in the impugned order dated 06.09.2022 with regard to the petitioner.

5. The learned Trial Court, after taking into account the reply dated 06.09.2022 filed by the petitioner in response to the notice issued against him, had observed that Non-Bailable Warrants against appellant and notice to his surety were ordered to be issued through SHO, P.S. Greater Kailash-I for 08.07.2022, by virtue of order dated 13.05.2022, but the SHO assigned process issued by Court to Summon Pool, South District.

6. Further, the Trial Court observed that although the original Non-Bailable Warrants and notice to surety issued by the Court was filed in the court by In-charge, Summon Pool, South District, however, there was no original report of service of Non-Bailable Warrants against appellant and notice to surety of appellant. In-charge, Summon Pool, South District had submitted before learned Trial Court that he had received report from concerned Process Servers on WhatsApp and that he will make efforts to find original reports of the said Non-Bailable Warrants and notice. It was also observed that SHO P.S. Greater Kailash-I has also not placed on record the original reports of service of Non-Bailable Warrants and notice.

7. The learned Trial Court in such a situation observed that the petitioner herein was merely trying to pass on his responsibility to the Summons Pool, South District and the same was also in violation of Standing Order No. 200 and Circular No. 64/2012. The observation of the Court in this regard is as under:

> *"SHO PS GK-I can not shrug off his responsibility by saying that as process issued by the Court were handed over by him to Summon Pool, South District, the responsibility lies with I/C, Summon Pool, South District. The responsibility of returning process issued by the Court remains to be that of SHO PS GK when noting to this effect was made on process issued by the Court and order dated 13.05.2022 says so.*
>
> ***
>
> *It is surprising that original reports of NBW against appellant and notice to surety of appellant despite issuing notice to SHO PS GK have not been produced before this Court. SHO PS GK does not appear to have bothered even to get traced original report of NBW against appellant and notice to surety of appellant.*
>
> *Earlier also, highly irresponsible conduct of SHO PS GK-I has been noted by this Court in FIR No. 201/2018, PS GK-I vide order dated 30.07.2022, in FIR No. 195/2019, PS GK-I vide order dated 31.03.2022 and in CR No. 271/2018 vide order dated 09.03.2022."*

8. In the light of aforesaid facts and circumstances, learned Trial Court passed certain remarks impeaching the credibility of the petitioner as a police officer, and even directed the Commissioner of Delhi Police to take corrective measures against him and place the report before the learned Trial Court. The observations made and the strictures passed in the impugned order dated 06.09.2022, the legality of which has been challenged before this court, are reproduced below:

> *"...From conduct of SHO PS GK-I, it appears that he has no sense of responsibility and devotion towards duty and he remains in different to directions of Court. Let copy of this order and orders as mentioned in last para be sent to CP, Delhi with direction to take corrective measures and*

take action against SHO PS GK-I for consistent default in performing his duties for 30.09.2022.Whether or not an officer like SHO PS GK-I is fit for performing duties as SHO is left on wisdom of CP, Delhi to take a call..."

(emphasis supplied)

SUBMISSIONS AT THE BAR

9. Mr. Vikas Pahwa, learned senior counsel for the petitioner submits that the petitioner who is presently serving as SHO at Police Station GK-I has an impeccable service record since his joining the services in 1997. It is argued that the learned Trial Court erred in holding that the act of petitioner was in violation of Standing Order No. 200 of 1988 and Circular No. 64/2012 because both these orders/circulars had already been superseded by Standing Order No. 200 of 2015, and this standing order also now stands superseded by the new 'Standing Order No Lic. & Legal/16/2022' dated 18.02.2022, and the process adopted by the petitioner was in accordance with the new standing order. Since the process issued by the Court were of outstation, there is no requirement in the outstation processes, that the report is required to be mandatorily signed by the SHO. Learned senior counsel further submits that since the District Summons Pool has been created under the new standing order, the incharge thereof is not under the control /supervision of the SHO, and as such they are required to submit their reports directly to the court without first submitting it to the concerned police station.

10. Mr. Pahwa also argued that though the learned Trial Court has also laid emphasis on highly irresponsible conduct of the petitioner on past three occasions, the said observation is misplaced since there

were only minor errors or delays in past which are bound to happen in due course and the same had duly been rectified on time.

11. Learned senior counsel, while placing reliance upon several judgments of Hon'ble Supreme Court and this Court, argued that directing the administrative authorities /superior police authorities to take legal /departmental action against the petitioner was neither mandated in law nor in practice, and same shall seriously affect the service career of the petitioner.

12. Ms. Rupali Bandhopadhya, learned Additional Standing Counsel for the State submits that state is also aggrieved by the aforesaid observations, remarks and directions of the Trial Court and seeks deletion of the same in view of the law laid down in this regard in catena of judgments.

13. Mr. Sanjeev Bhandari, learned ASC for the State, who was present in the Court during the hearing of present matter also assisted the Court. This Court appreciates the able assistance rendered by Mr. Bhandari.

ANALYSIS AND FINDINGS

14. There are two aspects in the present case. Firstly, as to whether there was any lapse on part of the petitioner in forwarding the processes issued by the court to the In-charge, District Summons Pool, and secondly, as to whether the remarks and directions passed against the petitioner by learned Trial Court are valid in the eyes of law or mandated in consonance with the alleged lapses on the part of the petitioner.

(i) Execution of warrants

15. As the controversy in the impugned order relates to service of warrants and notice by police officers, it would be appropriate to first refer to the relevant orders and circulars issued in this regard by the Police Department.

16. The impugned order mentions the conduct of petitioner to be in violation of Standing Order No. 200 and Circular No. 64/2012. The observation of Trial Court in this respect is as under:

> *"As per circular No. 64/2012 issued by DCP, Legal Cell, PHQ, all summons and warrants are to be executed expeditiously and returned to concerned Court with appropriate endorsement and signatures of SHO with date, at least one day before the date when the case is affixed.*
>
> *As per Standing Order No. 200 issued by CP, Delhi, SHOs / IOs in those cases the service of summons / warrants remain poor shall be considered as lacking in control and serious notice of this defect shall be taken against them at the time of assessment of their work."*

17. However, Standing Order No. 200 and Circular No. 64/2012 had already been superseded in the year 2015 *vide* Standing order No. 200/2015, relevant portion of which is as under:

> *"Speedy disposal of cases in the courts depend, to a great extent, on the effective service of summons and warrants. The SHOs/ TIs/Units Incharge have a pivotal role in supervising the V-B (PPR Register No.V-B) staff of their respective Police Stations. The following instructions shall be meticulously followed by the process server while serving summons and warrants:*

***

Supersession

This Standing Order supersedes previous Standing Order issued vide No.29393-600/C&T/AC-IV dated 21.10.1988 and all other circulars/instructions on the subject."

18. The latest standing order, i.e., 'Standing Order No Lic. & Legal/16/2022' dated 18.02.2022, specifically supersedes the Standing Order No. 200/15. The relevant portion of the new standing order, dealing with the execution of summons and warrants is reproduced as under:

"Speedy disposal of cases in the courts depend, to a great extent, on the effective service of summons and warrants. The SHOs/ TIs/Units Incharge have a pivotal role in supervising the V-B (PPR Register No.V-B) staff of their respective Police Stations/Units/Sections. The following instructions shall be meticulously followed by the process server while serving summons and warrants: ...

***

4. District Process Server Pool:- ***A District Process Server Pool shall be created in each District with sufficient staff. Incharge/District Process Server Pool shall be tasked to serve process issued from various courts outside Delhi. On receipt of processes related to outside Delhi, SHO will send the processes to I/C Distt. Process Server Pool for service in all such cases where time is beyond 15 days.*** *When summon is to be served at any place outside the local jurisdiction of a police station/Traffic Circle/Unit in Delhi. Such summon shall be got served through the V-B Staff of the Police Station/Traffic Circle/Unit, who will be responsible for ensuring service of summon well before due date and submit the report through the concerned SHO/TI/Unit. However, for summon to be served outside Delhi where the time is short i.e. less than 15 days or when the last opportunity notice has been received from the court, the*

concerned SHO/TI/Unit Incharge shall get such summon served even out-side Delhi through a special process server and in addition also send it by Fax or/and E-mail to the concerned SP/SSP through Distt./Unit DCP. Summons received from outstations shall also be served in the manner mentioned above. The SHO/TI/Unit Incharge/ Incharge V-B shall not send the summons/bailable warrants through post to out stations on their own...

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20. SUPERSESSION CLAUSE
This Standing Order supersedes previous Standing OrderNo.200/2015 issued vide No.1918-2280/Record Branch/PHQ dated 09.06.2015.

21. DISCLAIMER
It is made clear that this Standing Order is exclusively for internal smooth functioning of Police Department."

(emphasis supplied)

19. As regards the observation of learned Trial Court that the petitioner was in violation of Standing Order No. 200 and Circular No. 64/2012, it was argued before this Court that the Standing Order No. 200 as mentioned in the impugned order is of the year 1988 and the same had already been superseded by Standing Order No. 200 of 2015, which also now stands superseded by Standing Order No Lic. & Legal/16/2022. A perusal of this new standing order reveals that a District Process Server Pool has been created for effective service of summons and warrants, and it specifically mentions that on receipt of processes related to outside Delhi, SHO will send the processes to In-charge, District Process Server Pool for service in all such cases where time is beyond 15 days. Thus, in the present case, there appears to be no irregularity on the part of petitioner in getting the

processes issued through the In-charge, Summons Pool, South District.

20. It was further argued that no specific course has been mentioned in the new standing order with regard to forwarding the service reports of summons and warrants to the concerned courts, in view of which, it should be presumed that the said process is also to be carried out by the District Process Server Pool and the in-charge thereof. After perusing the latest standing order in this regard, and there being nothing on record which is contrary to the stand of petitioner, this Court is in agreement with the argument that the petitioner was not bound to forward the service reports of Non-Bailable Warrants and notice to surety to the learned Trial Court.

21. It will also be pertinent to note that Circular no. 64/2012 was issued in view of the directions contained in standing order no. 200 of 1988, and since the said standing order as well circulars/instructions issued on the subject had already been superseded by Standing Order No. 200/2015, the reference and reliance upon Circular no. 64/2012 by the learned Trial Court is also invalid and incorrect.

22. However, a perusal of reply dated 06.09.2022 filed by the petitioner before the learned Trial Court reveals that the new standing order i.e., Standing Order No Lic. & Legal/16/2022 was not placed before the learned Trial Court for its consideration. Rather, the petitioner in his reply had stated that he had instructed his staff to follow the guidelines laid down in Standing Order No. 200 and Circular No. 64/2012, therefore, the learned Trial Court could not have been in knowledge of the internal circular of the Delhi Police.

The petitioner himself does not seem to be aware of it and has not brought it to notice of the learned Trial Court, in his reply. The Disclaimer in this regard in the standing order made it clear "*that this Standing Order is exclusively for internal functioning of Police Department*", it was not in public domain, it was not brought therefore, to knowledge of Court by the petitioner himself. In case the same would have been brought to Court's notice, it might have been a different situation.

(ii) Remarks/Action against police officers

23. The second issue before this Court is that whether the learned Trial Court could have passed the remarks and directions against the petitioner in the impugned order. The law in this regard is discussed in the succeeding paras.

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

> *"6. Criticism on the conduct of Police and other officers—It is undesirable for Courts to make remarks censuring the action of police officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true.*

> *That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and everything against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary"s circular Letter No. 920-J-36/14753, dated the 15th April, 1936."*

25. In ***Dr. Dilip Kumar Deka and Anr. v. State of Assam and Anr., (1996) 6 SCC 234***, the Hon'ble Apex Court while dealing with the tests to be applied when dealing with question of deletion of disparaging remarks against authorities, held as under:

> *"6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a court of law in cases to be decided by it were succinctly laid down by this Court in State of U.P. v. Mohd. Naim [AIR 1964 SC 703 : (1964) 1 Cri LJ 549 : (1964) 2 SCR 363] . Those tests are:*
>
> *(a) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;*
> *(b) Whether there is evidence on record bearing on that conduct justifying the remarks; and*
> *(c) **Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.***
>
> ***

> *7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice."*
>
> *(emphasis supplied)*

26. The Hon'ble Supreme Court in the ***State of West Bengal v. Mir Mohammad Omar & Ors (2000) 8 SCC 382,*** has directed the courts to ordinarily desist from castigating the investigation even while ordering acquittal. The observation is as under:

> *"41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely fool proof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavory criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence*

> *in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above."*

27. In ***Pramod Kumar Jha v. State of Bihar, Crl. Appeal 1092/2002***, the Hon'ble Apex Court had ordered the deletion of the directions given for initiation of departmental proceedings against the investigating officer of the case while holding that directing proceedings against an officer virtually amounts to finding a person guilty, which is not a permissible course.

28. A Co-ordinate bench of this Court in ***Rakesh Chand v. State 2015 SCC OnLine Del 14193*** while dealing with similar facts at hand, after considering law laid down by Hon'ble Supreme Court of India held as under:

> *"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."*
>
> *(emphasis supplied)*

29. In an another similar case titled ***State v. Yogender Singh 2015 SCC OnLine Del 14203***, Co-ordinate bench of this Court while expunging the direction passed by trial court to the Commissioner of Police to take action against the concerned investigating officer, observed as under:

> *"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 government but has to be careful about not overstepping its jurisdiction. An order or a judgement is a privileged document and a judge has always to remind himself that the immunity which he enjoys in writing an order or a judgement 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 aptly done by the learned addl. Sessions Judge. What is not approved is his direction to send his order to 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 prejudged 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.*
>
> *17. The observations of the Court with regard to the failure of the investigating agency in taking prompt action is justified and is not being interfered with. What is unnecessary and unwarranted is the direction to the Commissioner of Police for taking action against erring police officials and submission of ATR in that regard. Such directions cannot be countenanced in the eyes of law."*

30. As observed by Hon'ble Supreme Court as well by this Court in catena of judgments, it is impermissible in law to pass such sweeping remarks against police officers, and direct higher authorities to take action against them. In case of any lapse or irregularity, the concerned court can record such lapse and indicate future course of action, but passing disparaging remarks affecting the career of a public servant must not be the course to be adopted.

31. It is pertinent to note that even clause 21 of the Standing Order No Lic. & Legal/16/2022 makes it clear that the same is meant exclusively for internal smooth functioning of Police Department. Standing Order No. 200 of 1988, which stands superseded, also mentions that serious notice of defects shall be taken against the officers, in cases where the service of summons/warrants remain poor, at the time of assessment of work. This, however, cannot be relied upon so as to direct the Commissioner of Police to take action against the petitioner and also submit the report on a specified date. It was purely an internal administrative prerogative of the concerned department to do so.

32. As observed, the facts in the present case point out that the petitioner had acted as per process laid down in Standing Order No Lic. & Legal/16/2022 for the service of summons and warrants issued by the Trial Court. However, learned Trial Court observed that the petitioner lacked sense of responsibility and devotion towards his duty, thus, unworthy of being an SHO, and direction was issued to Commissioner of Police Delhi to take action against the petitioner. This, in the opinion of this Court, was unwarranted as well as impermissible in law. The observations and directions in the impugned order were, in no way, relevant for deciding the matter which was before the learned Trial Court, especially in light of the fact that the learned Trial Court had issued proclamation under Section 82 Cr.P.C. against the appellant therein on the basis of copies of service reports produced before it. Further, the fact that instead of original reports of service, copies of the same were submitted before the court, not by petitioner himself but by In-charge, Summons Pool, cannot be the ground to hold the present petitioner guilty of irregularities to the extent of passing directions to Commissioner of Police to initiate action against the petitioner.

33. In such cases, the Courts have time and again come to the rescue of officers and public servants by ordering the deletion of such remarks and directions which are glaring examples of overstepping of jurisdiction by the Trial Courts.

34. In the light of given facts and circumstances, it is worthwhile to refer to the observations of Hon'ble Supreme Court in ***A.M.***

Mathur v. Pramod Kumar Gupta (1990) 2 SCC 533, which is as under:

> *"12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said:*
> *"First and foremost, humility and an understanding of the range of the problems and (one's) own inadequacy in dealing with them, disinterestedness ... and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law."*
>
> *13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process."*

35. This Court also, in ***Rakesh Chand (supra)***, had expressed similar views regarding restraint to be observed by the judges while passing comments on the conduct of officers/authorities. The observation is as under:

> *"2. While dealing with the task of administering justice, a Judge, no doubt has to be acting judicially and giving expression to his views but he ought to be circumspect while commenting on the conduct of some. The line of discretion is not to be overstepped. The calm and sangfroid of a Judge should be reflected in every judgment, every order; rather every part of any judgment or order. The immunity which is enjoyed by a judicial officer carries with it the duty of circumspection. A Judge ought to know that any statement against any authority of the Government or any organ of the Government or any person incharge of investigation or discharging executive functions can lacerate, slash and mutilate his reputation into tatters and cause irreparable harm. It may prejudicially affect the career of such persons. What is required to be taken care of is that nobody ought to be condemned without being heard. The prejudicial effect on somebody against whom a stricture is passed cannot be assessed only in terms of the immediate damage to him. It has the potential of eroding the confidence of public on such person or institution. A judge must be wary of such cascading effect of any statement/stricture made by him while delivering judgment."*

36. The Hon'ble Supreme Court in ***K.H. Siraj v. High Court of Kerala (2006) 6 SCC 395*** had pointed the following qualities of a good judicial officer:

> *"57. ...A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations…"*

37. Every word forming part of a judicial order forms permanent record. Use of denigrating remarks against anyone, especially against police officials impeaching their credibility and questioning their

sense of dedication towards duty, is not the best course adopted by a judicial officer, that too when the same is not required for the adjudication of the case before the Court. Such criticism may have a devastating effect on the professional career of an officer. It is also bound to have everlasting affect on the reputation of a person. This Court is conscious of the fact that police officers are expected to be at the desired place and desired time with utmost efficiency, both by the general public as well by the Courts. Though the police officers are duty bound to discharge their responsibilities with utmost conviction, the practical difficulties which are faced by them cannot be overlooked and disregarded by the Courts. At the same time, such regard by the courts can not by any stretch of imagination or interpretation be take to be lack of power of the court to pass order regarding the power to point out any irregularity omission or commission of any act as directed by the Court, or any disobedience to obey the directions of the Court. This Court rather vide this order wants to convey that judicial strictures against anyone need to be passed with utmost circumspection. The judicial power comes with utmost responsibility to exercise adjudicatory liberty to express oneself. Judicial strictures against a police officer to the extent as expressed in the present case are problematic though every disapproval expressed by exercise of adjudicatory liberty of expression may not fall in the realm of lack of judicial restraint.

38. The strictures as passed in the present case to the extent of observing that the officer in question has no sense of responsibility and devotion towards duty and further directing the Commissioner of

Police to take corrective measures and take action against the police official and further observing that the Commissioner of Police, Delhi may take a call as to whether the petitioner is fit for performing duties as SHO or not goes beyond the mandate of law, judicial precedents and discipline of judicial restraint. This does amount to over stepping adjudicatory liberty of expression exercised by a judge. Such observations have the effect of stigmatizing without conviction, sentencing without inquiry and affect career in future of an officer which had to be left to the internal administrative vigilance and disciplinary proceedings to be conducted by the parent department of the officer in question.

39. This Court makes it clear once again that this order in no way undermines the majesty of the Court or the fact that the judicial directions need to be obeyed by the police officials concerned and the power of the courts to pass orders pointing out their disobedience or point out any fault in investigation, etc, cannot be questioned, however, in this regard, Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" needs to be kept in mind and also the judicial precedents of the Hon'ble Apex Court and the High Court have to be kept in mind as guiding force while passing such remarks which amount to strictures.

40. The learned Trial Court could have forwarded the proceedings and the issue faced by the Court as well as the act of disobedience to the concerned Commissioner of Police Delhi to take action as per their departmental Standing Orders and the rules applicable to them.

In the relevant cases, recourse could have been taken to the Delhi Police Act and the relevant Sections under law under which the Court can issue notice and initiate appropriate action if so warranted in a particular case. However, to direct the authority concerned to initiate action as mentioned in the impugned order and thereafter, ask for compliance to be filed and pass remarks as in the impugned order was unwarranted in the facts and circumstances of the case.

41. Judgments and orders passed by the courts are often permanent in nature, so is at times the stigma attached to a person suffered by virtue of an uncalled for remark unwarranted in the facts and circumstances of a particular case. As adjudicatory force of the country, judicial restraint as warranted by law and judicial proceedings is one of the qualities of a judicial officer.

42. Undoubtedly and there can be no two views about this that judicial orders and directions passed to ensure rule of law in society have to be obeyed and respected to achieve cherished goal of independence of judiciary, however, undesirable judicial strictures that penalize without enquiry, stigmatize without relevant proceedings with remedy of only being expunged as we have hierarchical system of judiciary have to be avoided. Social memories that stigmatize a person in society or in one's department or social circles are often as permanent as the judgments and orders.

43. For the reasons stated hereinabove, the remarks passed and directions issued against the petitioner in the impugned order dated 06.09.2022, as reproduced in Para 8 of this judgment, do not appear to be in line with the facts of the present case and the position of law

in that regard. Thus, the same are hereby expunged/deleted from the impugned order dated 06.09.2022.

44. The petition stands allowed in above terms.

45. This Court itself being bound by the Hon'ble Apex Court's decisions and jurisprudence of strictures; while setting aside this order exercises that judicial discipline and restraint and only directs, circulation of this order for benefit of all the learned Judicial Officers and learned Director (Academics) Delhi Judicial Academy for taking note of its contents.

SWARANA KANTA SHARMA, J

NOVEMBER 22, 2022/ns