AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.276 of 2015

Lambodar Patel, S/o. Shree Thahe Ram Patel, aged about 41 years, posted as Police Inspector in the CG Police Department, R/o. KB-A-3, Behind AJK Thana, Kalibadi, Raipur, Tahsil and District Raipur (Chhattisgarh).

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Home Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh).
2. Inspector General of Police, Bilaspur Range, IG Office, Bilaspur, District Bilaspur (Chhattisgarh).
3. Superintendent of Police, Janjgir-Champa, Janjgir, District Janjgir-Champa (Chhattisgarh).
4. Sub Divisional Officer (Police), Sakti, Revenue and Civil District Janjgir-Champa (Chhattisgarh).

---- Respondents

For Petitioner : Mr. Mahendra Dubey, Advocate.

For Respondents/State : Mr. Dhiraj K. Wankhede, Govt. Advocate

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Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/03/2016

1. Seeking expunction of certain offending/objectionable remarks in the judgment delivered on 09.12.2014 by learned Second Additional Sessions Judge, Sakti, District Janjgir-Champa (Chhattisgarh) in Sessions Trial No.

21/2014 in the matter of State of Chhattisgarh v. Gangaram Bareth and others, the petitioner herein has filed this writ petition on the following factual backdrop:-

1.2 The petitioner herein is holding substantive post of Town Inspector in the Department of Home. While he was posted as Station House Officer, Police Station-Sakti, he investigated Crime No. 363/13 for the offences under Sections 294, 506 Part-II, 307/34, 323 and 323/34 and related offences and ultimately, the accused persons were charge-sheeted and thereafter tried for said offences before the Second Additional Sessions Judge, Sakti being S.T.No.21/2014. Learned Additional Sessions Judge delivered its judgment on 09.12.2014 and convicted three accused persons therein for the offence punishable under Section 307/34 of the IPC. Learned Additional Sessions Judge in his judgment has made certain remarks, which are said to be disparaging and undeserving against the petitioner holding that the petitioner has not made just, fair and proper investigation to the said offences and made an attempt to save the accused therein from clutches of the law and also came to categorical conclusion that enquiry and subsequent action against the petitioner is absolutely necessary. Thereafter the Sub Divisional Officer (Police), Sakti by its memo dated 16.09.2015, relying upon certain

observations made by learned Additional Sessions Judge in its judgment, issued show-cause to the petitioner as to why appropriate action should not be taken pursuant to the observation made by the Second Additional Sessions Judge, Sakti against him.

1.3 Feeling aggrieved against the adverse remarks/observation made by learned Sessions Judge, Sakti and consequent notice issued by the Sub-Divisional Officer (Police), Sakti for initiating departmental action, the instant writ petition has been filed stating *inter-alia* that the petitioner has made investigation thoroughly and fairly to the said crime and in consequence thereof accused persons were brought to book for justice and thereafter, accused persons have also been convicted for the above stated offence. It was also averred that no opportunity of hearing was granted to him before making such adverse remarks/comments by learned Additional Sessions Judge, Sakti and such adverse remarks were not at all necessary for just and proper disposal of the criminal trial and such undeserving remarks were made in breach of principles of natural justice. It was further pleaded that on the basis of adverse remarks, departmental action is proposed against the petitioner, therefore, impugned adverse remarks made in the judgment rendered by learned Additional Sessions

Judge be expunged and show-cause notice of the Sub Divisional Officer (Police), Sakti directing initiation of departmental enquiry also deserves to be quashed by allowing the writ petition.

2. Mr. Mahendra Dubey, learned counsel appearing for the petitioner, would submit that judgment of the learned Additional Sessions Judge making castigating remarks against the petitioner without affording opportunity of hearing, affecting his reputation, integrity and conduct is wholly unsustainable and bad in law. He would further submit that such adverse remarks were absolutely unnecessary for proper adjudication of the trial and such adverse remarks have caused serious prejudice to the petitioner and it will affect his future career, which is apparent from the fact that show-cause notice has been issued for initiating departmental action by the Sub-Divisional Officer (Police), therefore, the afore-stated remarks deserve to be expunged and impugned notice issued for initiating departmental action be quashed and writ petition be allowed with cost(s).

3. On the other hand, learned Government Advocate appearing for the respondents/State, would submit that such adverse remarks were clearly warranted in the facts of the case because the petitioner has negligently investigated

the offence in question, as the investigation was not just, fair and proper and no interference is required, as such, the writ petition deserves to be dismissed with cost(s).

4. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.

5. In order to decide the dispute raised by the petitioner at the bar, it would be appropriate to notice the relevant paragraphs, which are said to be adverse and further said to have been adversely affected the petitioner in the judgment rendered by learned Additional Sessions Judge. It states as under:-

> "**32**. प्रकरण में आरोपी गंगाराम का मेमोरेण्डम प्रदर्श पी. 11, जग्गू राम का मेमोरेण्डम प्रदर्श पी.12 एवं तीरीथ का मेमोरेण्डम प्रदर्श पी.13 के अवलोकन से दर्शित होता है कि आरोपी गंगाराम का मेमोरेण्डम में दिनॉक, समय एवं स्थान लेने मेमो को बाद में भरा गया और हस्ताक्षर भी बाद में किया गया, इसी तरह आरोपी तीरीथ का मेमोरेण्डम के दिनॉक, स्थान एवं समय लेने मेमोरेण्डम में पी.एस. सक्ती तथा हस्ताक्षर बाद में किया जाना स्पष्ट दर्शित होता है तथा जग्गू के मेमोरेण्डम के समय में कांटछांट है, इस तरह तीनों मेमोरेण्डम को एक समय, एक ही स्थान पर तैयार नहीं किया जाना दर्शित होता है और अपनी सुविधानुसार उसके दिनॉक, समय एवं स्थान को निरी. पटेल द्व ारा भरा जाना दर्शित होता है। इस तरह प्रकरण में आये साक्ष्य से यही प्रमाणित होता है कि निरीक्षक पटेल द्वारा आरोपीगण को बचाने के लिये उनके मेमोरेण्डम कथन तैया कर उनसे ऐसे सामानों की जप्ती दिखायी जिससे उनके द्वारा अपराध करना ही नहीं बताया गया, जो यही दर्शित करता है कि वे प्रकरण में अन्वेषण के दौरान मेमोरेण्डम एवं जप्ती आरोपीगण को बचाने के लिये अपने मन से बना लिये।
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> **35**. प्रकरण में गिरफ्तारी पंचनामा प्रदर्श पी. 18,19 एवं 20 के माध्यम से निरी. पटेल द्वारा तीनों आरोपियों को गिरफ्तार किया जाना बताया गया है, तीनों आरोपियों के गिरफ्तारी का दिनॉक एवं समय एक ही है, जो दिनॉक 23.10.2013 को 15:30 बजे है, एक साथ तीनों आरोपी को किस तरह गिरफ्तार किया गया यह भी उनके द्वारा की गई दूषित कार्यवाही का परिचायक है। प्रकरण में निरी. पटेल द्वारा नजरी नक्शा

प्रदर्श पी. 29 कृपाराम के बताने पर बनाना बताया है, परन्तु प्रकरण में कृपाराम को गवाही नहीं बनाया गया है, उसे गवाह नहीं बनाने का कोई कारण दर्शित नहीं किया गया है। प्रकरण में की गई रिपोर्ट के अनुसार तेरसराम की मां बुन्दरीबाई को तेरसराम द्वारा उनके घर खाना खाने के लिये कहने पर बुन्दरीबाई आरोपी जग्गू के घर गई जिसे बाद आरोपीगण अपने घर से आकर तेरसराम के साथ मारपीट किये, प्रकरण में निरी. पटेल द्वारा बुन्दरीबाई के विरूद्ध भी काई कार्यवाही नहीं की।

37. यह कहा गया है कि यदि घर का चिराग ही घर को जलाया गया तो ऐसे घर को कोई नहीं बचा सकता, वर्तमान प्रकरण में उपरोक्तानुसार निरी. पटेल द्वारा प्रकरण में जो अन्वेषण की कार्यवाही की गई है उससे यह स्पष्ट रूप से परिलक्षित होता है कि वह प्रकरण में प्रारंभ से ही इस आधार पर अन्वेषण किये कि आरोपियों को कैसे बचाया जाये और इस तरह प्रकरण में निरी. पटेल के द्वारा अन्वेषण के दूषित कार्यवाही की और आरोपीगण को बचाने के लिये ऐसे मेमोरेण्डम और जप्ती पत्र तैयार किये जिससे प्रकरण में आरोपीगण को उनके द्व ारा किये गये अपराध से बचाया गया सके, इसलिये उनके विरूद्ध जांच किया जाकर कार्यवाही किया जाना उचित है।"

6. A careful perusal of the afore-stated extracts of the judgment would show that learned Additional Sessions Judge in its judgment not only criticized the conduct of the petitioner for not making just and fair investigation by making sweeping remarks against him, but also recommended further action against him and upon enquiry and relying upon the said observation/finding, the Sub-Divisional Officer (Police) has issued show-cause notice to the petitioner for initiating departmental/disciplinary action which has given cause of action to the petitioner to file the instant writ petition claiming expunction of above-stated adverse remarks and seeking quashment of impugned notice proposing to take action against the petitioner.

7. The short question that falls for consideration is with regard to inherent power and jurisdiction of this Court to expunge

the adverse remarks made by a subordinate Court and considerations involved in expunging those remarks. In order to resolve the controversy, relevant judgments of the Supreme Court laying down the tests for expunction of adverse remarks may be profitably and usefully noticed herein below:-

7.1 Way back in the year 1964, in the matter of **The State U.P. v. Mohammad Naim**[1], the Supreme Court (Constitution Bench) has held that the High Court can in exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice and observed as under:-

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

Their Lordships have also laid- down the test in considering the expunction of disparaging remarks made against persons or authorities whose conduct comes for

1 . AIR 1964 SC 703

consideration before the Court of law to be decided by them by summing up as under:-

> "(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself.
>
> (b) whether there is evidence on record bearing on that conduct justifying the remarks; and
>
> (c) whether it is necessary for the decision of the case as an integral part thereof, to animadvert on that conduct. It has also been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

7.2 Similarly, in the matter of **Dr. Raghubir Saran v. State of Bihar and another**[2], the Supreme Court has held that the High Court has inherent power to expunge objectionable remarks in judgment and order of the subordinate court against stranger, after it has become final and culled out the principles as under:-

> "**7-8**. From the aforesaid discussion the following principles emerge:
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> (1) A judgment of a criminal Court is final; it can be set aside or modified only in the manner prescribed by law.
>
> (2) Every Judge, whatever may be his rank in the hierarchy, must have an unrestricted right to

2 . AIR 1964 SC 1

express his views in any matter before him without fear or favour.

(3) There is a correlative and self-imposed duty in a Judge not to make irrelevant remarks or observations without any foundation, especially in the case of witnesses or parties not before him, affecting their character or reputation.

(4) An appellate Court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it.

29. When the question arises before the High Court in any specific case whether to resort to such undefined power it is essential for it to exercise great caution and circumspection. Thus when it is moved by an aggrieved party to expunge any passage from the order or judgment of a subordinate Court it must be fully satisfied that the passage complained of is wholly irrelevant and unjustifiable, that its retention on the records will cause serious harm to the person to whom it refers and that its expunction will not affect the reasons for the judgment or order."

7.3 Likewise, in the matter of **Niranjan Patnaik v. Sashibhusan Kar and another**[3], Their Lordships of the Supreme Court have held that harsh or disparaging remarks are not to be made against persons and authorities

3 . (1986) 2 SCC 569

whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case and followed the decision of the Supreme Court in the matter of **Mohammad Naim**(supra) and observed as under:-

> "24. It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. We hold that the adverse remarks made against the appellant were neither justified nor called for."

7.4 Similar is the proposition laid down in the matter of **R. K. Lakshmanan v. A. K. Srinivasan and another**[4], in which the Supreme Court has followed the tests laid down for expunction of adverse remarks in **Mohammad Naim** (supra).

7.5 In the matter of **A. M. Mathur v. Pramod Kumar Gupta and others**[5], Their Lordships of the Supreme Court have emphasized the need for judicial restraint and held that judicial restraint and discipline are necessary to the orderly administration of justice and observed as under:-

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4 . (1975) 2 SCC 566
5 . (1990) 2 SCC 533

> "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."

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

> "14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own

conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct."

7.6 In the matter of **Manish Dixit and others v. State of Rajasthan**[6], it has been held by the Supreme Court that castigating remarks against any person should not be made and the Court is required to give opportunity of being heard in the matter in respect of the proposed remarks or strictures and the same is basic requirement, otherwise offending remarks would be in violation of the principles of natural justice and held as under:-

"43. Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the Court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this

6 . AIR 2001 SC 93

case such an opportunity was not given to PW 30 (Devendra Kumar Sharma)."

7.7 In the matter of **Prakash Singh Teji v. Northern India Goods Transport Co. Pvt. Ltd. & another**[7], it has been held by the Supreme Court that adverse remarks should not be made unless it is necessary for decision of case and opportunity to give his explanation should be afforded to the concerned officer and observed as under:-

"13. In the light of the above principles and in view of the explanation as stated by the appellant for commenting the conduct of the plaintiff, we are satisfied that those observations and directions are not warranted. It is settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case as an integral part thereof. The direction of the High Court placing copy of their order on the personal/service record of the appellant and a further direction for placing copy of the order before the Inspecting Judge of the officer for perusal that too without giving him an opportunity would, undoubtedly, affect his career. Based on the above direction, there is every possibility of taking adverse decision about the performance of the appellant. We hold that the adverse remarks

7 . 2009 AIR SCW 3078

made against the appellant was neither justified nor called for."

The principle of law laid down in above-stated judgments have been followed with approval by Supreme Court recently in the matters of **Amar Pal Singh v. State of Uttar Pradesh and another**[8], **State of Gujarat and another v. Justice R. A. Mehta (Retired and others**[9], **Om Prakashs Chautala v. Kanwar Bhan and others**[10] and **State of Uttar Pradesh and others v. Anil Kumar Sharma and another**[11].

8. A conspectus of the judgment mentioned hereinabove would show that though judge has unrestricted right to express his views in any matter before him but there is corresponding duty in a judge not to make unmerited and undeserving remarks specially in case of witnesses or the parties who are not before him affecting their character and reputation unless it is absolutely necessary for just and proper decision of the case and that too after affording an opportunity of explaining or defending that witness or the party as the case may be, judicial decisions must be judicial in nature and it must show judicial respect to the litigant/party, witnesses who come before the court for their cause. It is also well settled that this Court in exercise of inherent or extraordinary jurisdiction can expunge those

8 . (2012) 6 SCC 491
9 . (2013) 3 SCC 1
10 . (2014) 5 SCC 417
11 . (2015) 6 SCC 716

remarks made by subordinate court following the three tests laid down in **Mohammad Naim** (supra), if it is really necessary to do so or prevent abuse of the process of the court or to secure the ends of the justice in exceptional cases, where those remarks would cause irreparable injury to the witness or party not before the court holding that retention of those undeserving remarks will cause harm to the person referred and the expunction will not affect the judgment rendered by the court.

9. After having briefly noticed the test(s) laid down for expunging the offending remarks and power and jurisdiction of this Court to expunge them, would bring me to the factual backdrop of the case. The petitioner as a investigating officer has investigated the offence in question and charge-sheeted the accused persons and they were tried for the charge-sheeted offences and eventually they were convicted by the judgment rendered by learned Sessions Judge. Certain discrepancies have been pointed out by learned Sessions Judge in the investigation while delivering the judgment and reached to the conclusion that the petitioner tried to save the accused persons and further held that the counter case to S.T. No.21/2014 was also investigated by the petitioner, whereas, it ought to have been investigated by other police officer and on that basis

learned Additional Sessions Judge made offending and adverse remarks against the petitioner and also recorded that the inquiry be conducted against the petitioner and thereafter further action be taken against him. Thereafter relying upon the observation made by the Additional Sessions Judge, show cause notice for initiating departmental enquiry against the petitioner has been issued which has been challenged in this writ petition, if the tests laid down by their Lordships of the Supreme Court in the matter of **Mohammad Naim** (supra) is applied to the facts of the present case it would appear that the petitioner did not have an opportunity to explain the said adverse circumstances noticed by the learned Additional Sessions Judge, as it is not the case of respondents/State that petitioner was afforded an opportunity to explain those circumstances. Likewise, such an adverse remarks were neither necessary nor justifiable for the just decision of the case as the accused persons therein stood convicted for the offences charged. Thus, the offending remarks made by learned Additional Sessions Judge in his judgment are in breach of the tests laid down in **Mohammad Naim** (supra), and such an offending remarks are in teeth of judgment of Supreme Court in matter of **A. M. Mathur** (supra) and as such retention of those remarks would cause legal harm

and injury to the petitioner as he is proposed to be charge-sheeted, on one hand and on the other hand expunction of adverse remarks will not affect the validity or otherwise of the judgment rendered by learned Additional Sessions Judge. As such the offending remarks made by learned Additional Sessions Judge in above-stated paragraphs in judgment being unmerited and undeserving deserves to be expunged in the ends of justice.

10. As a fall out and consequence of the above-stated discussion, the writ petition is allowed and adverse remarks made by the learned Second Additional Sessions Judge, Sakti, in S.T.No.21/2014 (State of Chhattisgarh v. Gangaram Bareth and others) in paragraphs 32, 35 and 37 against the petitioner are hereby expunged and as a necessary corollary, show-cause notice dated 16.09.2015 (Annexure P/1) issued by the Sub-Divisional Officer (Police), Sakti, District Janjgir-Champa and subsequent proceedings (if any) against the petitioner are hereby quashed.

11. The writ petition is allowed to the extent mentioned hereinabove, but without imposition of cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.276 of 2015

PETITIONER : Lambodar Patel

Versus

RESPONDENTS : State of Chhattisgarh and others

HEAD-NOTE

(English)

The courts should not make adverse remarks agianst party/litigant unless really necessary for just decision of the case and opportunity of hearing should be afforded before making such remarks.

(हिन्दी)

न्यायालयों को पक्षकार/वादी के विरूद्ध कोई प्रतिकुल टिप्पणी नहीं करनी चाहिए जब तक कि मामले के उचित निर्णय हेतु वास्तव में आवश्यक न हो तथा ऐसी टिप्पणी करने से पूर्व सुनवाई का अवसर प्रदान किया जाना चाहिए।