2024 INSC 888

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 388-389 OF 2024

SONU AGNIHOTRI **...APPELLANT**

VERSUS

CHANDRA SHEKHAR & ORS. **...RESPONDENTS**

J U D G M E N T

ABHAY S. OKA, J.

1. The appellant is serving as an Additional District and Sessions Judge in Delhi judicial service. The appellant has preferred these appeals for expunging adverse findings/remarks recorded against him in paragraphs 13 and 14 of the first impugned order dated 2nd March 2023 by the Delhi High Court. The appellant moved an application before the Delhi High Court for expunging the remarks in paragraphs 11 to 14 of the first impugned order dated 2nd March 2023. By an order dated 9th May 2023, the said application was rejected by the High Court. This is the second impugned order.

FACTUAL ASPECTS

2. The appellant was dealing with an application for anticipatory bail filed by one Vikas Gulati @ Vicky in FIR No.221/2022 registered for the offences punishable under Sections 380 and 411 read with Section 34 of the Indian Penal Code (for short, 'the IPC') with Defence Colony Police Station. The appellant had earlier rejected another application for anticipatory bail made by co-accused Sunita and Raj Bala on 2nd January 2023. The anticipatory bail application of Vikas Gulati came up before the appellant on 21st January 2023. By a detailed order, the appellant rejected the said application. While rejecting the application, the appellant made certain adverse observations about the conduct of the police officers and issued certain directions. The following are the observations made by the appellant in the order:

> " Perusal of police file shows that after case diary of 23.12.2022, the next day on which case diary was written by IO is of date 04.01.2023. IO has not written any case diary for date 02.01.2023 on which date, anticipatory bail applications of co-accused Sunita and Raj Bala were dismissed. IO has written in case diary of 04.01.2023 that notices U/sec 41 A Cr. P. C were issued to co-accused Sunita and Raj Bala and all this was apprised to SHO PS Defence Colony.

> It is surprising that despite opposing anticipatory bail applications of co-accused Sunita and Raj Bala and submitting before court that their custody is required for recovery of stolen sarees, IO instead of arresting them made them join investigation after serving notices U/sec 41A Cr. P. C. There was no need to oppose anticipatory bail applications of co-accused Sunita and Raj Bala in case, their custody was not required by IO. When police has opposed anticipatory bail applications of co-accused Sunita and Raj Bala before court but made them join investigation by serving notice U/sec 41A Cr. P.C, **it appears that there is something fishy on part of police.**
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> ……."
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> (emphasis added)

After making the above observations, the appellant dealt with the merits of the bail application and concluded that the accused before him was not entitled to the relief of anticipatory bail. Thereafter, the appellant observed thus:

> **"**From conduct of IO, it appears that **he is not carrying out investigation in a proper manner and there is something more written on wall than visible."**
>
> (emphasis added)

3. The appellant observed that despite so many orders passed by the court, the updated status of cases pending

against the accused had not been mentioned in the previous involvement report of the accused filed, along with a reply to the anticipatory bail application. Thereafter, the appellant issued the following directions:

> **"** Issue show cause notice to SHO PS Defence Colony and IO HC Raj Kumar U/sec 177 IPC for furnishing false information to this court through DCP, South for 31.01.2023.
>
> **Let copy of order be sent to DCP, South to inquire about role of IO as well as SHO PS Defence Colony in investigation of present case in view of observations of this court as have come in this order with direction to file Action Taken Report against the erring officials and file report in this regard before this court on 31.01.2023.**
>
> Let explanation be sought from CP, Delhi as to why SCRB record is not being updated till date despite direction of this court way back about one and half years ago in FIR No. 16/2018, PS Govind Puri for 31.01.2023 with direction to fix responsibility of concerned official for failure to comply with the same. It is notable that once, punishment of censure has already been awarded to defaulting SHOs and advisory has been issued to all defaulting ACPs as per explanation earlier called from CP, Delhi and reports furnished by DCP, South and DCP, South-East on behalf of CP, Delhi in another matter but still, there is no improvement which practically shows that

> even higher hierarchy in police has failed to instill discipline in Delhi Police.
>
> Let copy of order be sent to CP, Delhi for information and compliance.
>
> Let copy of order be sent to SHO PS Defence Colony for reference and compliance.**"**
>
> (emphasis added)

4. Further order was passed by the appellant on 31st January 2023 in which it was observed that though the appellant had asked DCP (Deputy Commissioner of Police), South to hold an inquiry about the role of Investigating Officer (IO) as well as Station House Officer (SHO) of Defence Colony Police Station, only show cause notices of censure have been issued to the officers. The appellant observed that the report of DCP, South, was silent about the observation made in the earlier order that there was something fishy in the investigation. Therefore, the appellant observed that the order dated 21st January 2023 has not been taken into consideration by the DCP, South. Hence, the appellant directed the Commissioner of Police, Delhi, to conduct a vigilance inquiry against the IO and SHO of Defence Colony Police Station. However, the appellant dropped the show cause notice issued to IO and SHO under the order dated 21st January 2023 for showing

cause why they should not be prosecuted under Section 177 of the IPC.

5. The IO and SHO filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') for expunging the remarks made against them in the orders dated 21st January 2023 and 31st January 2023. A prayer was also made to set aside the direction issued to the Commissioner of Police, Delhi to hold vigilance inquiry against them. By the first impugned order, the learned Single Judge of the High Court directed that all remarks made against the IO and SHO in the orders dated 21st January 2023 and 31st January 2023 shall stand expunged. Even the directions issued by the appellant against the Commissioner of Police and the Deputy Commissioner of Police were ordered to be deleted.

6. As seen from the grounds taken in the appeals and written submissions dated 30th September 2024, the appellant's grievance is about remarks recorded against him in paragraphs 13 and 14 of the first impugned order. The said remarks are as follows:

> **"13.** Not only are such remarks unnecessary but also could have serious implications on the careers of public servants, particularly for what seems in the facts and circumstances as perfunctory issues which have no huge negative impact on the actual

> administration of the criminal justice process. **As discussed above, the Ld. ASJ ought not to have embarked on an inexorable quest when his original concern had been suitably addressed. The remarks and the phraseology used by the Ld. ASJ is summary in nature, penal in its scope, stigmatizing in its tone and tenor and as already motioned, beyond the ken of expected judicial conduct.** In these facts and circumstances it is directed that all remarks against the petitioners in orders dated 21st January, 2023 and 31st January, 2023 passed by Ld., Additional Sessions judge, South East, Saket Courts, New Delhi in Bail Appl. No. 202/2023 shall be expunged and all directions for conducting enquiries and explanations by the DCP or the Commissioner of Police shall be recalled and stand deleted from the said orders.
> **14**.....
> It is expected therefore that **the Ld. ASJ would be circumspect and exercise care and caution in future before embarking on these judicial misadventures."**

7. We must note here that the appellant applied for impleading the High Court of Delhi as a party through its Registrar General. The said application was allowed. A short reply was filed on behalf of the High Court by O.S.D. (Rules and Litigation) in which reliance was placed on Rule 6, Part H, Chapter I of Volume III of the High Court Rules and Orders. Rule 6 provided that it is undesirable for courts to make remarks censuring the action of police

officers unless such remarks are strictly relevant to the case. It also provided that there should not be any over-alacrity on the part of Judicial Officers to believe anything and everything against the police. Prima facie, we were of the view that this Rule interferes with the discretion available to the judges. It is unnecessary for us now to deal with Rule 6 as a document has been placed on record by the learned ASG appearing for the High Court that the Rule Committee of the High Court has approved the deletion of Rule 6 and the approval of the Hon'ble Governor has been sought for the deletion.

SUBMISSIONS

8. Learned counsel appearing for the appellant has invited our attention to factual aspects of the case dealt with by the appellant, which warranted the appellant to pass strict orders against the Police Officers and issue directions referred to above. He pointed out that the appellant did not take forward the show cause notice issued to the IO and SHO, calling upon them to show cause as to why criminal law should not be set in motion against them for the offence punishable under Section 177 of the IPC. He pointed out that all that the appellant did was point out flaws in the investigation and the failure to update SCRB data. He submitted that there was non-compliance with the standard operating procedure dated 29th January 2021 issued by the Office of Commissioner of Police of

Delhi, through Deputy Commissioner of Police, on this behalf. He submitted that nothing is wrong if the appellant criticises the IO for not properly maintaining the case diary.

9. Coming to the remarks made in the first impugned order, he relied upon decisions of this Court in the case of ***V.K. Jain v. High Court of Delhi through Registrar General and Ors.***[1], ***K.P. Tiwari v. State of M.P.***[2] and ***in Re: 'K', A Judicial Officer***[3]. He submits that the remarks against the appellant in paragraphs 13 and 14 of the first impugned order deserve to be expunged. He submitted that in the first impugned order, the High Court relied upon its own decision in the case of ***Ajit Kumar v. State (NCT of Delhi)***[4], which in turn relies upon Rule 6, which has been now deleted.

10. He submitted that due to the adverse remarks against the appellant in the first impugned order, the unblemished career of the appellant as a Judicial Officer is likely to be adversely affected. He also invited our attention to observations made by this Court in the case of ***Dayal Singh and Ors. v. State of Uttaranchal***[5]**.**

[1] (2008) 17 SCC 538
[2] 1994 Supp (1) SCC 540
[3] (2001) 3 SCC 54
[4] 2022 SCC OnLine Del 3945
[5] (2012) 8 SCC 263

11. The learned counsel representing the State has assisted the Court by pointing out the law on this aspect.

CONSIDERATION OF SUBMISSIONS

12. There are two parts of the first impugned order. The first part concerns expunging the observations and findings recorded by the appellant against the IO and SHO and setting aside the direction issued by the appellant to the Commissioner of Police for holding an inquiry. The second part concerns the adverse observations/remarks made in paragraphs 13 and 14. As far as the first part is concerned, the appellant cannot make any grievance. The appellant's grievance must be confined only to the second part.

13. In the case of ***State of U.P. v. Mohd. Naim***[6]**,** in paragraph 11 this Court held thus:

> **"**11. The last question is, is the present case a case of an exceptional nature in which the learned Judge should have exercised his inherent jurisdiction under Section 561-A CrPC in respect of the observations complained of by the State Government? If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of judges and Magistrates must be maintained and they must be

[6] 1963 SCC OnLine SC 22

> allowed to perform their functions freely and fearlessly and without undue interference by any body, even by this Court. **At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. it is not infrequent that sweeping generalisations defeat the very purpose for which they are made.** It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, 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. **It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."**
>
> (emphasis added)

These observations must be borne in mind by every Judge.

14. In the case of ***in Re: 'K', A Judicial Officer***[3], in paragraphs 7 and 8, this court observed thus:

> **"7. A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four-corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not meet approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge.**
>
> **8.** The primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it. A Judge is not expected to drift away from pronouncing upon the controversy, to sitting in judgment over the conduct of the judicial and quasi-judicial authorities whose decisions or orders are put in issue before him, and indulge in criticising and commenting thereon unless the conduct of an authority or subordinate functionary or anyone else than the parties comes of necessity under review and expression of opinion thereon going to the extent of commenting or criticising becomes

> necessary as a part of reasoning requisite for arriving at a conclusion necessary for deciding the main controversy or it becomes necessary to have animadverted thereon for the purpose of arriving at a decision on an issue involved in the litigation. This applies with added force when the superior court is hearing an appeal or revision against an order of a subordinate judicial officer and feels inclined to animadvert on him. The wisdom of a Superior Judge itching for making observations on a Subordinate Judge before ventilating into expression must pause for a moment and read the counsel of Cardozo—
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> > *"Write an opinion, and read it a few years later when it is dissected in the briefs of counsel. You will learn for the first time the limitations of the power of speech, or, if not those of speech in general, at all events your own. All sorts of gaps and obstacles and impediments will obtrude themselves before your gaze, as pitilessly manifest as the hazards on a golf course. Sometimes you will know that the fault is truly yours, in which event you can only smite your breast, and pray for deliverance thereafter."*

In paragraph 15, this Court specifically dealt with the legality of observations made by the High Court against a Judicial Officer who was a serving member of the judiciary. Paragraphs 15 to 17 are material, which read thus:

15. In the case at hand we are concerned with the observations made by the High Court against a judicial officer who is a serving member of subordinate judiciary. Under the constitutional scheme control over the district courts and courts subordinate thereto has been vested in the High Courts. The control so vested is administrative, judicial and disciplinary. **The role of High Court is also of a friend, philosopher and guide of judiciary subordinate to it. The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition if committed once innocently or unwittingly.** "Pardon the error but not its repetition". The power to control is not to be exercised solely by wielding a teacher's cane; the members of subordinate judiciary look up to the High Court for the power to control to be exercised with parent-like care and affection. The exercise of statutory jurisdiction, appellate or revisional and the exercise of constitutional power to control and supervise the functioning of the district courts and courts subordinate thereto empowers the High Court to formulate an opinion and place it on record not only on the judicial working but also on the conduct of the judicial officers. **The existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders cannot be denied, however, the High Courts have to remember that**

criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their own mischievous infirmities. Firstly, the judicial officer is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal natural justice so as to shield against being condemned unheard. Secondly, the harm caused by such criticism or observation may be incapable of being undone. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in open and therefore becomes public. The same Judge who found himself persuaded, sitting on judicial side, to make observations guided by the facts of a single case against a Subordinate Judge may, sitting on administrative side and apprised of overall meritorious performance of the Subordinate Judge, may irretrievably regret his having made those observations on judicial side, the harming effect whereof even he himself cannot remove on administrative side. Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge.

Fourthly, seeking expunging of the observations by a judicial officer by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court — a situation not very happy from the point of view of the functioning of the judicial system. May be for the purpose of pleading his cause he has to take the assistance of a legal practitioner and such legal practitioner may be one practising before him. Look at the embarrassment involved. And last but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous Judge being caught unawares in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralising effect not only on him but also on his colleagues. If all this is avoidable why should it not be avoided?

16. We must not be understood as meaning that any conduct of a subordinate judicial officer unbecoming of him and demanding a rebuff should be simply overlooked. But there is an alternate safer and advisable course available to choose. **The conduct of a judicial officer, unworthy of him, having come to the notice of a Judge of the High Court hearing a matter on the judicial side, the lis may be disposed of by pronouncing upon the merits thereof as found by him but avoiding in the judicial pronouncement criticism of, or observations on the "conduct" of the**

subordinate judicial officer who had decided the case under scrutiny. Simultaneously, but separately, in-office proceedings may be drawn up inviting attention of Hon'ble Chief Justice to the facts describing the conduct of the Subordinate Judge concerned by sending a confidential letter or note to the Chief Justice. It will thereafter be open to the Chief Justice to deal with the subordinate judicial officer either at his own level or through the Inspecting Judge or by placing the matter before the full court for its consideration. The action so taken would all be on the administrative side. The Subordinate Judge concerned would have an opportunity of clarifying his position or putting forth the circumstances under which he acted. He would not be condemned unheard and if the decision be adverse to him, it being on administrative side, he would have some remedy available to him under the law. He would not be rendered remediless.

17. The remarks made in a judicial order of the High Court against a member of subordinate judiciary even if expunged would not completely restitute and restore the harmed Judge from the loss of dignity and honour suffered by him. In *Judges* by David Pannick (Oxford University Press Publication, 1987) a wholesome practise finds a mention suggesting an appropriate course to be followed in such situations:

> *"Lord Hailsham explained that in a number of cases, although I seldom told the complainant that I had done so, I*

> *showed the complaint to the Judge concerned. I thought it good for him both to see what was being said about him from the other side of the court, and how perhaps a lapse of manners or a momentary impatience could undermine confidence in his decision."*
>
> (emphasis added)

15. The Courts higher in the judicial hierarchy are invested with appellate or revisional jurisdiction to correct the errors committed by the courts that are judicially subordinate to it. The High Court has jurisdiction under Article 227 of the Constitution of India and Section 482 of the CrPC to correct the errors committed by the courts which are judicially subordinate to it. We must hasten to add that no court can be called a "subordinate court". Here, we refer to "subordinate" courts only in the context of appellate, revisional or supervisory jurisdiction. The superior courts exercising such powers can set aside erroneous orders and expunge uncalled and unwarranted observations. While doing so, the superior courts can legitimately criticise the orders passed by the Trial Courts or the Appellate Courts by giving reasons. There can be criticism of the errors committed, in some cases, by using strong language. However, such observations must always be in the context of errors in the impugned orders. While doing so, the courts have to show restraint, and adverse comments on the personal conduct and calibre of

the Judicial Officer should be avoided. There is a difference between criticising erroneous orders and criticising a Judicial Officer. The first part is permissible. The second category of criticism should best be avoided. The reasons are already explained by this Court ***in Re: 'K', A Judicial Officer***[3]**.** There are five reasons given in paragraph 15 of the decision why judicial officers should not be condemned unheard. As observed in the decision, the High Court Judges, after noticing improper conduct on the part of the Judicial Officer, can always invite the attention of the Chief Justice on the administrative side to such conduct. Whenever action is proposed against a judicial officer on the administrative side, he gets the full opportunity to clarify and explain his position. But if such personal adverse observations are made in a judgment, the Judicial Officer's career gets adversely affected.

16. The Judges are human beings. All human beings are prone to committing mistakes. To err is human. Almost all courts in our country are overburdened. In the year 2002, in the case of ***"All India Judges' Association (3) and Ors. v. Union of India and Ors.***[7], this Court passed an order directing that within five years, an endeavour should be made to increase the judge-to-population ratio in our trial judiciary to 50 per million. However, till the year 2024, we

[7] (2002) 4 SCC 247

have not even reached the ratio of 25 per million. Meanwhile, the population and litigation have substantially increased. The Judges have to work under stress. As stated earlier, every Judge, irrespective of his post and status, is likely to commit errors. In a given case, after writing several sound judgments, a judge may commit an error in one judgment due to the pressure of work or otherwise. As stated earlier, the higher court can always correct the error. However, while doing so, if strictures are passed personally against a Judicial Officer, it causes prejudice to the Judicial Officer, apart from the embarrassment involved. We must remember that when we sit in constitutional courts, even we are prone to making mistakes. Therefore, personal criticism of Judges or recording findings on the conduct of Judges in judgments must be avoided.

17. We have already referred to the observations made in paragraphs 13 and 14 of the first impugned order. In paragraph 13, it is observed that the appellant 'embarked on an inexorable quest'. This ought to have been avoided by the High Court. Paragraph 14 contains advice to the appellant to be circumspect and to exercise care and caution in future. The High Court could not have used a judgment on the judicial side to advise individual Judicial Officers. That can only be done on the administrative side in an appropriate case. Describing the appellant's

approach as a 'judicial misadventure' in paragraph 14 was also improper. Therefore, the prayer made by the appellant for expunging remarks in paragraphs 13 and 14, which we have quoted in paragraph no.6 above, will have to be acceded to. We make it clear that the direction to expunge the remarks made against the appellant will not bind the administrative side of the High Court.

18. Accordingly, the appeals are allowed. Adverse remarks against the appellant in paragraphs 13 and 14 of the first impugned order, which we have quoted in paragraph no.6 above, are hereby expunged.

.....J.
(Abhay S. Oka)

.....J.
(Ahsanuddin Amanullah)

.....J.
(Augustine George Masih)

New Delhi;
November 22, 2024.