
(2016) 09 RAJ CK 0040

In the Rajasthan High Court

Case No : Cr. Misc. (Pet.) (CrImp) No. 1305 of 2012

Narpat Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 4 CriLR 1717

Hon'ble Judges : P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. D.S. Udawat, Advocate, for the Petitioners; Mr. V.S. Rajpurohit, Public Prosecutor, for the State

Final Decision : Allowed

Judgement

P.K. Lohra, J.—By the instant misc. petition, under Section 482 Cr.P.C., the present petitioners have assailed the judgment & order dated 25.04.2012 passed by Special Judge, SC/ST (Prevention of Atrocities) Cases, Bhilwara in Sessions Case No.69 of 2006 to the extent they have been castigated by remarks along with one other person named Jagdish Mordiya and the direction issued for registering a case against them under Section 250 Cr.P.C. and issuing show cause notices.

2. Succinctly stated, the facts of the case are that complainant Devilal Nayak on 24.11.2005 lodged a criminal complaint in the Court and averred inter-alia that he is serving as Labour/Artisan for Jagdishchanda on his mines and therefore being his reliable person one plot in his name was purchased from Smt. Lali. Later on as per complainant boundaries got constructed, however, he has no ownership rights over that plot and in this connection documentations were made in favour of Jagdishji Mordiya. It was also alleged that as good quality stone was found and excavated in the said plot the accused persons fraudulently and with dishonest intention in order to harm Jagdish Mordiya prepared number of forged documents by hatching conspiracy with others and by impersonating

him got the said plot transferred again in their names. In order to show offences committed by the accused persons, it is inter alia pleaded in the complaint that when he raised objection accused persons abused him and threatened of dire consequences. The said complaint was sent to the police station Bijolia under Section 156(3) Cr.P.C. where upon FIR No.194/2005 for offence under Sections 467, 468, 471, 420 and 120B IPC and Section 3(i) (iv)(v)(ix) and (x) of the SC/ST (Prevention of Atrocities) Act was registered. At the relevant time petitioner No.2 was SHO of Police Station Bijolia but as the matter related to SC/ST Act, investigation was handed over to petitioner No.1, who was then Dy. S.P., Mandalgarh Circle.

3. After investigation, charge sheet was filed against accused persons Smt. Lali, Amarsingh and Devilal Nayak for the aforesaid offences on 11.10.2006 in the Court of Judicial Magistrate. The case was later on committed to the Court of Special Judge, SC/ST Act Cases, Bhilwara (learned Court below) where charges against accused persons were framed and on denial the Court proceeded with trial. The prosecution in support of its case produced number of witnesses including the present petitioner No.1 Narpat Singh Rajput as PW15. On conclusion of trial, the Court below found that the prosecution has miserably failed to prove its case and the accused persons are therefore acquitted for all the offences. In the judgment, the Court below observed that Jagdish Mordiya in connivance with the petitioners got the case registered through his servant and challan was got filed in a false and concocted case resulting in suffering accusation without any reasonable cause to all the accused persons for six years. With this finding the learned court below ordered that they are to be compensated by Jagdish Mordiya, Chaina Ram Beda and Narpat Singh. The observations in vernacular read as under:

"geus lHkh xokgksa ds c;kuksa dks ,d lHk ns[kk gSA ;g ekeyk txnh" k eksjfn;k ds IykWV dks ysdj gSA xkSjryc gS fd ftlds IykWV dks QthZ rjhds ls csps tkus dh dk;Zokgh dh xbZ mldks bl ekeysa esa xokg ugha j[kk vkSj u gh og xokg nsus gh vk;k gSA bl ekeys esa ,0oh0tkslQ Hkh egRoiw.kZ xokg Fkk] mldks Hkh vfHk;kstu i{k is" k djus esa vlQy jgk gSA lHkh xokgksa ds c;kuksa ls ,d ckr lkeus vkrh gS fd bl ekeys esa ifjoknh nsohyky dk bl ekeysa ls dksbZ ysuk&nsuk ugha gSA cfYd ;g ekeyk txnh" k eksjfn;k dk gSA txnh" k eksjfn;k ifjoknh dk ekfyd gS vkSj nsohyky fiNys 20 o" kZ ls mldk ukSdj gS] [kku ds Bsdsnkj txnh" k eksjfn;k us pSukjke] rRdkyhu Fkkukf/kdkjh fctkSfy;ka o ujirflag rRdkyhu o` Rrkf/kdkjh] ek.Myx<+ ls feydj ;g eqdnek ntZ djok;k] blesa pkyku djok;k] ;g ekeyk >wBk vkSj cscqfu;kn gSaA lPpkbZ dh dlkSVh ij fdlh Hkh izdkj ls [kjk ugha mrjk gSaA bl izdkj fcuk fdlh mfpr dkj.k ds cscqfu;kn vkSj fujk/kkj vfHk;kstu dk lkeuk eqfYteku fiNys N% lky ls dj jgs gSa] ftlds fy;s mudks txnh" k eksjfn;k] pSukjke csM+k vkSj ujirflag ls {kfriwfrZ fnyok;k tkuk mfpr o U;k;laxr izrhr gksrk gSA txnh" k eksjfn;k] pSukjke vkSj ujirflag ds f[kykQ /kkjk 250 lh0vkj0ih0lh0 dh dk;Zokgh dh tkosa"

4. The Court below finally acquitted the accused persons of the offences giving them benefit of doubt by the impugned judgment. That apart, learned Court

below in the operative part of judgment also passed disparaging remarks against petitioners and Jagdish Mordiya and further ordered for registering a case against them and issuing show cause notices as aforesaid. It is in these circumstances, the petitioners have ventilated their grievances by the present petition. The relevant excerpt of the order dated 25.04.2012 reads as under:

"txnh" k eksjfn; k] pSukjke o ih0MCY; w0 15 ujirflag us fey dj eqfYteku ds f[kykQ ; g cscqfu; kn vkSj fujk/kkj vfHk; kstu pyok; k ftldk lkeuk eqfYteku us N% o" kZ rd fd; k gS] fygk tk bu rhuksa ds f[kykQ /kkjk 250 lh0vkj0ih0lh0 esa izdj. k vyx ls ntZ fd; k tkos vkSj budks dkj. k crkvksa uksfVI fn; k tkosA"

5. Learned counsel for the petitioners submits that the petitioners acted bona fide in discharge of their duties on the basis of complaint received from the Court and accordingly after registering FIR investigation was carried out in the matter and there was no fault on their part in investigating the case fairly. Learned counsel would contend that the court below has viewed the case on entirely erroneous angle for reaching to a conclusion that the petitioners in collusion with some other persons without any reasonable cause dragged the accused persons to face trial. It is also pleaded that the complainant himself has retracted from his earlier statements given under Section 161 Cr.P.C. and in such a situation the Court below ought to have proceeded against him in this regard instead of proceeding against the petitioners. The learned counsel submits that complaint was prima facie examined by the Court and then resorting to Section 156(3) Cr.P.C, directed police for registering the case and to investigate into the matter which is complied by the petitioners treating the same as lawful order. He therefore submits that the petitioners have acted bona fide in discharge of their duties cannot be castigated for slapping accusation against the accused petitioners without reasonable cause under Section 250 Cr.P.C. and therefore issuance of the notice thereof is wholly uncalled for and unwarranted. Learned counsel would contend that before passing order with demeaning remarks and ordering proceedings against the petitioners, the learned Court below has not afforded any opportunity of being heard to the petitioners, therefore, per-se the order to that extent is vitiated in law. Learned counsel for the petitioners has urged that principles of audi alteram partem are imbibed in Article 14 of the Constitution of India and as such remarks against the petitioners and direction to initiate proceedings under Section 250 Cr.P.C. as well as for issuing show cause notice is in clear negation of Article 14 of the Constitution and same is liable to be set at naught. Lastly, learned counsel has argued that the present one is a clear case of abuse of process of the Court warranting interference in exercise of inherent powers of this Court.

6. Per contra, learned Public Prosecutor has supported the order passed by Court below.

7. I have heard learned counsel for the parties and perused the materials available on record.

8. Before switching to examine the legality and propriety of the remarks and order made against the petitioners by Court below in its judgment, the twin questions of great significance have cropped up for judicial scrutiny, i.e., (i) Whether inherent powers can be exercised by this Court for expunging the remarks and order made against an individual including a police officer?, and (ii) Under what circumstances such power of judicial review can be exercised? For eliciting answer to both the questions, I feel inclined to examine them in the light of legal precedents.

9. The extraordinary jurisdiction conferred on this Court under Section 482 Cr.P.C. is in the nature of inherent powers and such power can be exercised to prevent abuse of the process of any Court or to otherwise secure the ends of justice. The issue concerning scope and object of Section 561-A Cr.P.C. (1898), which is *parimateria* to Section 482 Cr.P.C. (1973), came up for consideration before the Constitution Bench of Supreme Court in case of *State of Uttar Pradesh v. Mohd. Naim* (AIR 1964 SC 703), more particularly with reference to exercise of inherent powers for obliterating adverse remarks against an individual in the judgment. Speaking for the Court, Justice S.K. Das, while answering the question in affirmative, held:

"The second point for consideration is this, has the High Court inherent power to expunge remarks made by itself or by a Court below to prevent abuse of the process of any court or otherwise to secure the ends of justice? There was at one time some conflict of judicial opinion on this question. The position as to case-law now seems to be that except for a somewhat restricted view taken by the Bombay High Court, the other High Courts have taken the view that though the jurisdiction is of an exceptional nature and is to be exercised in most exceptional cases only, it is undoubtedly open to the High Court to expunge remarks from a judgment in order to secure the ends of justice and prevent abuse of the process of the court (see *Emperor v. Ch. Mohd. Hassan*, A.I.R. (1943) Lah. 298; *State v. Chhotay Lal*, 1955 A.L.J. 240; *Lalit Kumar v. S. S. Bose*, A.I.R. (1957) All. 398; *S. Lal Singh v. State*, AIR 1959 Punj. 211; *Ram Sagar Singh v. Chandrika Singh*, AIR 1961 Pat 364 and *In re, Ramaswami*, AIR 1958 Mad 305). The view taken in the Bombay High Court is that the High Court has no jurisdiction to expunge passages from the judgment of an inferior court which has not been brought before it in regular appeal or revision; but an application under section 561-A Cr. P.C. is maintainable and in a proper case the High Court has inherent jurisdiction, even though no appeal or revision is preferred to it, to correct judicially the observations made by pointing out that they were not justified, or were without foundation, or were wholly wrong or improper [see *State v. Nilkanth Shripad Bhawe*, AIR 1954 Bom 65. In *State of U.P. v. J. N. Bagga* (Judgment in Cr. A. 122/1959 of this court decided on January 16, 1961.), this court made an order expunging certain remarks made against the State Government by a learned Judge of the High Court of Allahabad. The order was made in an appeal brought to this court from the appellate judgment and order of the Allahabad High Court. In *State of U.P. v. Ibrar Hussain* (Judgment of this court in Cr. As. 148/1957 and

4 of 1958 decided on April 28, 1959.), this court observed that it was not necessary to make certain remarks which the High Court made in its judgment. Here again the observation was made in an appeal from the judgment and order of the High Court. We think that the view taken in the High Courts other than 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 Court below 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 .

(emphasis supplied)

10. In *Naranjan Patnaik v. Sashibhusan Kar and Anr.*, (1986) 2 SCC 569, Supreme Court, while following the verdict of Constitution Bench in *Mohd. Naim's case* (supra), further elaborated 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.

11. In *S.K. Viswambaran v. E. Koyakunju* (1987) 2 SCC 109, Supreme Court had occasion to examine adverse remarks against an individual in violation of rule of natural justice. The Court, while recognising principles of natural justice as great humanizing principles, clarified that in making adverse remarks against an authority or a person, rule of natural justice shall be strictly followed. The Court held:

"We have also to point out a grievous procedural error committed by the High Court. Even assuming for argument's sake that for expunging the remarks against respondents 2 and 3 the conduct of the appellant required scrutiny and merited adverse comment, the principles of natural justice required the High Court to have issued notice to the appellant and heard him before passing adverse remarks against him if it was considered necessary. By its failure the High Court has failed to render elementary justice to the appellant."

12. In *Manish Dixit & Ors. v. State of Rajasthan* (2001) 1 SCC 596, Supreme Court further clarified that castigating remarks to ensue serious consequences on future career may not be made without giving opportunity of being heard to the incumbent. The Court held:

"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."

13. Thus, answer to the first question is in affirmative but subject to certain

restrictions. As regards second question suffice it to say that power of judicial review under Section 482 Cr.P.C. in such cases can be exercised in the event of violation of principles of natural justice; non-essentiality of such disparaging remarks for disposal of the case or otherwise in the wake of such conduct of an individual having no ramification on the final outcome of the case.

14. Now switching on to the afflictions of the petitioners for which they have sought redressal from this Court, suffice it to observe that learned Court below has passed the verdict of acquittal against the accused persons precisely for the reason that prosecution has miserably failed to prove its case. It is also noteworthy that most of the material witnesses have retracted from earlier statements by turning hostile for obvious reason and that has substantially diminished the chances of recording finding of guilt against the accused persons. Learned Court below, in this behalf, has noticed serious loopholes in the prosecution evidence while recording its finding that prosecution has miserably failed to prove accusation against the accused persons beyond reasonable doubt by applying sound principle of criminal jurisprudence based on *ei incumbit probatio qui dicit*. However, the learned Court below while bashing the petitioners without any basis has held them responsible for initiating false proceedings against the accused persons and ordered initiation of proceedings against them under Section 250 Cr.P.C.

15. Therefore, following the verdict of Supreme Court in *Mohd. Naim* (supra) and subsequent judgments discussed herein above dilating on scope of judicial review of this Court under Section 482 Cr.P.C., in my considered opinion, remarks passed against the petitioners by the learned Court below in the order impugned cannot be sustained and this Court feels persuaded to interfere in the matter by exercising inherent powers to prevent abuse of the process of the Court or otherwise to secure ends of justice. It is trite that every Court has inherent power to act *ex debito justitiae* ? to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. Therefore, by applying the principle embodied in Section 482 Cr.P.C. founded upon the maxim *Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*, i.e. when the law gives anything to anyone, it also gives all those things without which the things itself would be unavailable, in the present case, impugned directions and demeaning remarks/strictures against the petitioners merit annulment.

16. Sustainability of disparaging remarks and impugned directions contained in para 37 of the judgment of the learned Court below also deserves judicial scrutiny on some other grounds. As a matter of fact attributing uncharitable remarks and initiation of proceedings under Section 250 Cr.P.C against the petitioners are in gross violation of principles of natural justice. Therefore, the impugned action is *per se* vulnerable on this count also. It is also noteworthy that registration of case against the accused persons by the petitioners and thereafter carrying out investigation was pursuant to an order of the Court under

Section 156(3) Cr.P.C is a significant factor to absolve the petitioners for their alleged omission for accusation against someone without reasonable cause. Lastly, upon thoroughly examining the judgment of learned Court below, I am afraid impugned adverse remarks and the directions contained in para 37 of the judgment cannot satisfy the test of their essentiality for deciding the case. Thus, on this ground also impugned remarks and directions merit quashment.

17. The upshot of the above discussion is that instant criminal misc. petition is allowed. The adverse remarks attributed to the petitioners in the judgment & order of the learned Court below dated 25th of April, 2012 are expunged; the directions issued for registration of a case against them under Section 250 Cr.P.C. and issuance of show-cause notice thereto contained in para 37 of the judgment are also hereby quashed and set aside.