

(1998) 12 GAU CK 0006
In the Gauhati High Court
Case No : Review Application No. 124 of 1997

Prafulla Chandra Gayan

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Constitution of India, 1950 — Article 215, 226
Limitation Act, 1963 — Section 5

Citation : (1998) 4 GLT 498

Hon'ble Judges : P.C. Phukan, J; D.N. Chowdhury, J

Bench : Division Bench

Advocate : A.R. Borthakur, A.K. Phookan and M. Bhuyan, for the Appellant; N. Dhar and P.B. Mazumdar, G.A., for the Respondent

Final Decision : Allowed

Judgement

D.N. Choudhury, J.—By this petition, the Petitioner has prayed for expunging and effacing certain remarks and observation of the Court airing aspersion on the conduct and reputation of the Petitioner, a practising Advocate of the Court in the judgment and order of the Court dated 17.9.97 in Writ Appeal No. 165 of 1997.

2. In the Writ Petition which was numbered as Civil Rule No. 291 of 1994, the applicant appeared as a Counsel representing the Government of Assam. By an order dated 9.3.95 the Writ Petition was allowed and against the said order a Writ Appeal was presented before this Court. Admittedly the said appeal was time barred. An application u/s 5 of the Limitation Act was filed praying for condonation of delay. This Court while desposing the above application made certain remarks and observations pertaining to the conduct of the Government Advocate more particularly in paragraphs 3, 4, 11 and 12. While the delay was condoned, cost of Rs. 2,000/- was awarded and the Court ordered that the said sum is also to be recovered from the Government Advocate who failed in discharge of his duties. A direction was also issued to the Chief Secretary to the Government of Assam to take appropriate action against the learned Government

Advocate.

3. Mr. A.K. Phookan, the learned senior Counsel appearing on behalf of the Petitioner has submitted that the observation so far made against the Petitioner is uncalled for, unwarranted on the facts and circumstances of the case. Mr. Phookan, submitted that while making those observations, the fundamental principles of natural justice was over looked and vituperative aspersion were made on the professional integrity of a counsel, that too behind his back. Mr. Phookan referring to the Assam Law Manual has pointed to the duties and functions of a panel Government Advocate who is to act only as per instructions of the Senior Government Advocate. Referring to the facts and circumstances of the case, the part played by the applicant as the counsel whose duty was to conduct the case in the Court, Mr. Phookan, the learned senior Counsel submitted that the opprobrious comments those made, were uncalled for and thereby made justice and fair play its casualty.

4. We have heard the learned Counsel at length perused the materials on record. We are not inclined to rake over the old ashes any more. We also refrain from reproducing the remarks of the Court. We are also not delving deep into the justification of the observation at length, however, we would like to confine ourselves only to one aspect of the matter i.e. the remark passed by the Court in the absence of the said person. A professional person lives mainly on reputation and before assaulting and denigrating upon the honour and dignity of the person, justice and fair play demands an opportunity to the concerned person. The principles of law were succinctly laid down by the Supreme Court in *The State of Uttar Pradesh Vs. Mohammad Naim*, wherein it has been stated that 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. The said principles are the accepted principles of law and consistently followed by the Supreme Court in the cases of *Jage Ram, Inspector of Police and Another Vs. Hans Raj Midha*, *R.K. Lakshmanan Vs. A.K. Srinivasan and Another*, *Niranjan Patnaik Vs. Sashibhusan Kar and Another*, *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, *A.M. Mathur Vs. Pramod Kumar Gupta*, and *Dr. Dilip Kumar Deka and Another Vs. State of Assam and Another*, In this context it is useful to recall the following observations of the Supreme Court from *A.M. Mathur Supra*-

... 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 coordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities failed 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.

The judges 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 principal 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 (See (i) R.K. Lakshman v. A.K. Srinivasan (ii) Niranjana Patnaik v. Sashibhusan Kar).

5. Admittedly, in the case in hand animadversions on the professional ability and conduct of the Petitioner were made in his absence. The evidence on record also did not provide any justification for making sweeping observations on the conduct of the Advocate. At any rate, the recording of the reprobation against the Petitioner was made without giving the Petitioner any opportunity of being heard and thus amounted to total deprivation of the fundamental principles of natural Justice. A member of legal profession is not a spokesman of his client. He is not to support or to accept anything at the bidding of his client. He is more an officer of the Court. A Government Advocate while discharging his duties has to act without any fear or favour, attuned to the highest tradition of the bar and the norms and guidelines formulated under the Advocates' Act. An advocate when he acts as a Government Advocate does not cease to be an Advocate whose conduct is regulated under the Advocates Act and the Rules and Regulations framed thereunder. As an Advocate the Government Advocate holds the brief for the Government like any other client. A Government Advocate is not subservient to the Government. The Government Advocate like any other Advocate is no doubt charged with the duty of presenting his client's case but essentially he owes a duty to justice and he has to act in terms of the demands of his duty. A democracy based on rule of law can not survive in the absence of an independent judiciary aided by a free and fearless members of the bar. On that situation, the direction given to the Chief Secretary to initiate action in this context is therefore unwarranted. We are no more inclined to rummage on the matter any further.

6. On overall consideration of the fact situation, in exercise of the power

conferred on us by Article 226 of the Constitution, as well as a superior Court of record as envisaged under Article 215 of the Constitution, we are of the view that the disparaging remarks made against the Petitioner requires to be affected and obliterated from the records. "Prima facie, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court" (Reminisced "Halsbury's laws of England" para 713 page 321 vol 10 (4th Edition) .

7. For the reasons stated above these observations personally in paragraphs 3, 4, 11 and 12 of the judgment aforementioned requires to be deleted and expunged and accordingly it is expunged and effaced. All disparaging remarks made against the Petitioner including the direction for recovery of the cost awarded so far against the Petitioner are set aside and quashed.

8. In the result, the application is allowed. No costs.