
(1992) 02 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Cr.M.P. (M) No. 52 of 1992

Prem Nath	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 28-02-1992

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 302, 306, 34

Citation : (1994) ShimLC 129 Supp

Hon'ble Judges : Lokeshwar Singh Pant, J

Bench : Single Bench

Advocate : Malkiat Singh Chandel and D.C. Jishtu, for the Appellant; M.S. Guleria, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Pant, J.—This is a petition by Prem Nath Deputy Superintendent of Police under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure praying for the expunction of certain remarks made against him by the learned Additional Sessions Judge (I) Shimla in her judgment dated 25-10-1988 in Session trial No. II-S/7 of 1988/107/2 of 1987, in which two persons Dev Raj and Jagan Nath were tried for offences under Sections 302/201 read with Section 34, I.P.C. They were alternatively charged u/s 306 read with Section 34 I.P.C. and were convicted u/s 306 read with Section 34, I.P.C. and sentenced to rigorous imprisonment for two years and a fine of Rs. 2,000. The Petitioner has further prayed for quashing and setting aside the Memorandum No. Home-D (B-3) 60/87 dated January 20, 1992 (Annexure A-4) issued by the Financial Commissioner-cum-Secretary (Home) to the Government of Himachal Pradesh, whereby an inquiry was proposed to be held against the Petitioner.

2. The case relates to an incident which took place on 4-11-1986 when the

Petitioner was posted as Inspector (S.H.O.) Police Station East, Shimla. He received a telephonic message at the police station to the effect that one Madan Lal had died at Khalini. This information was imparted by one unknown person. On having received this information he rushed to the spot and found that Madan Lal had died and about 100/130 persons including Mehar Chand, brother of the deceased, Chaman Lal and other relations of the deceased and Dev Raj and Jagan Nath both accused, were present on the spot. He started making enquiries from all those persons including the relations of the -accused persons. During the course of enquiry no suspicion of any kind was cast on any one and the Petitioner had made searching enquiries of all types at the spot to ascertain the cause of death of the deceased. He started the inquest proceedings in the facts and circumstances of the case as the death was natural and recorded the statements of Meruit Chand, brother of the deceased, accused and other persons who could throw some light on the cause of the death. These persons, including Mehar Chand, brother of the deceased, whom the Petitioner interrogated on the spot had disclosed that the deceased had pain in the stomach and had died on account of such pain. Statements to the above effect were signed by these witnesses and formed part of the inquest proceedings. Mehar Chand, brother of the deceased, had made an application in writing to the Sub-Divisional Magistrate, Shimla to the effect that his brother Madan Lal had died on account of pain in the stomach/heart failure and had no suspicion about the cause of his death and, therefore, he did not want the post-mortem examination of the dead-body conducted. The S.D.M. Shimla had sent the application to the Petitioner for his report. Mehar Chand brought the application dasti to the Petitioner and the Petitioner reported on the application that in order to locate the actual cause of death post-mortem was essential and without that the dead-body could not be returned to the relations. The application was handed over to Mehar Chand with the report and the same was taken by him to the S.D.M. After completing the inquest proceedings at the spot the Petitioner sent the dead-body of Madan Lal to the Indira Gandhi Medical College and Hospital for post-mortem examination. The post-mortem examination was conducted by the doctor on the next day and the report was made available to the Petitioner on 6-11-1986. The post-mortem examination reported indicated that the deceased had not died a natural death, as a legature mark was found around the neck. After receiving the post-mortem report a case F.I.R. No. 100 dated 6-11-1986 under Sections 302/201 read with Section 34, I.P.C. was registered against Dev Raj and Jagan Nath at Police Station Shimla (East). The Petitioner had taken up the necessary investigation and had found that the accused persons had committed an offence u/s 306, I.P.C. Consequently a final report under that section of the Penal Code was prepared by the Petitioner. On 11-6-1987 the Petitioner had a massive heart attack and was admitted to the hospital. Since the Petitioner could not attend to his duty and was on medical rest till 6-10-1987, in his absence the final report was further changed to Section 302/201 read with Section 34, I.P.C. and submitted to the court of competent jurisdiction.

3. During the course of trial the Petitioner was examined as PW 20 in the court of the learned Additional Sessions Judge (I) Shimla on 29-8-1988. The learned Additional Sessions Judge had convicted the accused u/s 306 read with Section 34 I.P.C. and sentenced them as aforesaid. The convicts Dev Raj and Jagan Nath had challenged the judgment of the learned Additional Sessions Judge before this Court and their appeal was accepted on 2-8-1991 by this Court and the judgment of the trial court was set aside.

4. The order of acquittal passed by this Court does not appear to have been challenged by the State and has become final.

5. In the course of discussion, the learned Additional Sessions Judge made the following observations adversely affecting the Petitioner:

(a) In para 21 of the judgment the learned trial Court has observed as under:

No doubt Dev Parkash was an important witness, but his non-examination is due to the fact that he was never cited as a witness. In the following paras I will be referring to the indifferent manner in which the case was handled and investigation conducted by Prem Nath S.H.O. It is only after his transfer and repeated complaints of widow of deceased as deposed by PW 16 Brij Lal (who subsequently happened to be posted as S.H.O. of Police Station Chhota Shimla), it is only at late stage complete and full statements of some of the important prosecution witnesses were recorded. As the investigation was conducted in piece meal and by different officers who seem to have failed to apply their mind to work out the various links in the case and to collect the evidence in that direction.

(b) In para 27 of the judgment it is observed as under:

The S.H.O. namely Prem Nath on his arrival at the spot had a talk with accused Dev Raj who told him that Madan Lal died due to heart attack and accused seems to have ever influenced the S.H.O. to such an extent that S.H.O. merely acted on that version and took it to be fool proof case of natural death and filled up the necessary forms writing down therein the same facts, although obtained signatures of PW Mehar Chand and accused Jagan Nath and recorded statement by styling it to be statement of Mehar Chand.

(c) In para 28 of the judgment it is observed as under:

The inquest report which is Ext. PS in its column No. 1 it has been written "complained pain in chest since last night" and in column No. 5 "took food at 11-30 A.M. and found dead by his brother Mehar Chand at 1 P.M." These facts are absolutely distorted.

(d) In para 30 of the judgment it is observed as under:

After registration of case on 6-11-1986 on receipt of postmortem report, the SHO of his own proceeded to the spot and in presence of two witnesses recovered the string (sutli) from the bushes where it was thrown by accused Dev

Raj as has come in evidence while the accused were away to the village in connection of cremation of deceased. Obviously, SHO knew the true facts i.e. death by hanging under suspicious circumstances pointing out involvement of accused in the case but the SHO despite that at the asking of the accused Dev. Raj tried to show death to be by "Heart Failure". Had the recovery of Sutli not been made by S.H.O. in the aforesaid manner, it was bound to be u/s 27 of Evidence Act at the instance of accused Dev Raj. Besides, the hampered manner of investigation and amount of indifference with which it was conducted by then SHO further supports aforementioned impression. No full and complete statement of Mehar Chand was recorded till August, 1987 when it was done for the first time by another Investigating Officer as in the meantime Prem Nath SHO was transferred from Police Station Chhota Shimla.

(e) In para 31 of the judgment it is observed as under:

On 5th November, 1986 when after autopsy the dead body was delivered to Mehar Chand for cremation and it was being carried on to the native village "Niar" in a truck in which there were also other relations of the deceased, the truck when reached at Ghanati was stopped till arrival of accused Dev Raj accompanied by SHO Prem Nath and others in the taxi, when the photographs of the dead body were taken and then Dev Raj accompanied the dead body in the truck for village.

(f) In para 33 of the judgment it is observed as under:

The SHO acting in a very indifferent manner under the influence of accused, haphazard manner and piecemeal investigation by then SHO Prem Nath and lateron by other police officials are self explanatory.

(g) In para 37 of the judgment the learned trial Judge has observed as under:

Moreover, in the instant case I have already discussed and pointed out that the investigation at the initial stages was partisan towards accused.

6. The Petitioner felt aggrieved by the observations of the learned trial Court quoted above and considered that they are bound to prove injurious to his future career, which is apparent from Annexure A-4 issued by the State Government. He has, therefore, filed this petition for the expunction of the above noted remarks and also for quashing the order of the State Government passed on the basis of such remarks.

7. I have heard the learned Counsel for the Petitioner and also the learned Deputy Advocate General for the State.

Shri M.S. Chandel, learned Counsel for the Petitioner, has urged the following points:

(a) That the learned trial Court has passed the remarks at the back of the Petitioner and did not afford any opportunity to him to defend himself against the said adverse remarks before the same were passed.

(b) That the above noted adverse remarks contained in the judgment of the trial Court are based on no evidence and the same were not relevant nor essential for the decision of the case.

(c) that the above noted adverse remarks have affected the career of the Petitioner. The Petitioner was enrolled as a constable in the police department and by dint of his hard work and unblemished record of 39 years of service he rose to the rank of a Deputy Superintendent of Police and is retiring on 29-2-1992. If these remarks are allowed to continue, they are bound to affect the service benefits of the Petitioner after retirement.

(d) That once the judgment of the trial Court has been set aside by this Court, the adverse remarks recorded in the said judgment should automatically be considered to be quashed, but the State Government has proceeded to hold departmental inquiry against the Petitioner on the basis of the above noted adverse remarks.

8. In support of his contentions he has relied upon the judgment of the Supreme Court in *The State of Uttar Pradesh Vs. Mohammad Naim, ; M.L. Ahuja and Others Vs. The State of Himachal Pradesh, ; S.P. Dubey Vs. Narsingh Bahadur, and Himachal Road Transport Corporation Vs. State of Himachal Pradesh,*

The tests to be applied in considering the expunction of disparaging remarks against persons or authorities whose conduct comes in for consideration before courts of law in cases to be decided by them, were. neatly summed up in *State of Uttar Pradesh v. Mohammad Naim (supra)* at page 564), thus:

(i) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(ii) Whether there is evidence on record bearing on that conduct justifying the remarks; and

(iii) 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.

9. Let me now apply these tests to the present case.

10. The Petitioner, as already stated, had appeared as PW 20 in the court of the learned Additional Sessions Judge Shimla and during the course of his examination he had stated all the relevant facts leading to the investigation of the case as an Investigating Officer. The Petitioner was not thereafter called by the trial Court to defend himself before the above noted adverse remarks were passed against him. The Petitioner had thus no adequate opportunity of explaining his conduct and defending the impugned action. The remarks in question were passed by the trial Court without affording him due opportunity to explain and defend his action.

11. As regards the observations in paras 21 and 27 of the judgment, it is significant to note that after receiving the information about the death of Madan Lal, the Petitioner had proceeded to the spot and started investigation of the case. He had questioned the persons including Mehar Chand, brother of the deceased, his relatives and the accused persons, besides others found present on the spot. This action of the Petitioner was essential as the death was sudden one and the cause of death and the names of the accused were not known to him. It Was necessary for the Petitioner as an Investigating Officer to contact every body in order to find out the cause of death of the deceased. Dev Raj and Iagan Nath were only found to be accused persons later on after thorough investigation by the Petitioner. Mehar Chand, brother of the deceased, and other relations of the deceased were examined and their statements were recorded which were signed by them during the course of inquest proceedings. During the course of investigation the witnesses had stated that the deceased had died on account of pain in his stomach. This fact was stated by the witnesses because the deceased had made a complaint to that effect to them earlier. The Petitioner had recorded" the statements of witnesses on the spot and Mehar Chand brother of the deceased had requested him that his brother had died natural death due to pain in his stomach and for that reason Mehar Chand did not want to perform the post-mortem examination on the dead body. Mehar Chand had also brought an application to the Petitioner through the S.D.M. Shimla for handing over the dead body to him without post-mortem examination. The Petitioner had clearly written therein that the post-mortem examination was essential in order to ascertain the real cause of death "and the dead body could not be handed over till the post-mortem examination was conducted. The Petitioner had sent the dead body to the hospital for conducting post-mortem examination. In view of these facts and circumstances it is unreasonable and improper to assert that the investigation was not conducted properly. The observations that the investigation was conducted in piecemeal manner and by different officers who seem to have failed to apply their mind to work out the various links and to collect the evidence in that direction, are completely vague. The trial Court had not pointed out as to what links of the case were not worked out by the investigating Officer. In fact, the Petitioner had examined the witnesses on the spot to the best of his knowledge, and ability. There is no material on record to show that the Petitioner had not recorded the full statements on all points. As regards the non-examination of Dev Parkash, from the material it is not known as to who had disclosed the name of Dev Parkash during the course of investigation. During the course of illness of the Petitioner for more than four months the case was further investigated by Brij Lal who remained posted S.H.O. in the absence of the Petitioner. Brij Lal had also not recorded the statement of Dev Parkash, probably for the same reason that the name of this witness was not disclosed by anybody, otherwise his name would have certainly been mentioned in the final report prepared by Brij Lal.

12. The observations in para 28 of the judgment quoted above, are also not

justified. The Petitioner had prepared the inquest report on the basis of the evidence recorded by him during the course of inquest " proceedings. That evidence also included the statements of Mehar Chand brother of the deceased and other relations which were also signed by them.

13. The observations made in para 30 of the judgment of the trial Court are also unwarranted and uncalled for. The Petitioner had received the post-mortem report on 6-11-1986 which indicated that there was a legature mark on the neck of the dead-body and a fibre of sutli (string) had also been found on the dead body. On the basis of this post-mortem report the Petitioner concluded this to be a case of murder and got the same registered under Sections 302/201/34, I.P.C. and proceeded to the spot without further delaying the investigation. On reaching the spot the Petitioner prepared the site plan, search for the Sutli (string), fibre of which had been located on the dead-body, in the house of the deceased and outside. During the course of investigation Sutli (string) was found lying in the bushes which was seized by the Petitioner in the presence of the witnesses. There is absolutely no evidence on record to show that the Petitioner knew the true facts, i.e., the death by hanging, pointing out involvement of the accused in the case, but on the asking of accused Dev Raj the Petitioner tried to show that to be a heart failure. The Sutli (string) was recovered during the course of search by the Petitioner in the bushes and the same was not found kept in a concealed manner. This recovery could not be termed to be a recovery u/s 27 of the Indian Evidence Act. The Petitioner had recorded the comprehensive statement of Mehar Ghand brother of the deceased during the course of investigation It is not referred by the trial Court as to on what point the statement of Mehar Chand was left incomplete by the Petitioner.

14. The observations of the learned trial Court in para 31 of the judgment are also absolutely unfounded. The dead body of the deceased was released on 5-11-1986 after the post-mortem examination in the presence of Mehar Chand brother of the deceased and many other persons. The photographs of the dead-body were taken in the hospital and the dead-body was handed over to Mehar Chand against receipt. The observations that the Petitioner had accompanied the accused persons at Ganahatti are not borne out from the record.

15. The observations of the learned trial Court in paras 33 and 37 of the judgment are also uncalled for and contrary to the material on record. There is nothing on record to show that the Petitioner had any soft corner for the accused persons and he had investigated the case in a haphazard manner under the influence of the accused. The Petitioner could have avoided sending the dead-body for post-mortem when Mehar Chand, real brother of the deceased, was insisting that there was no need for sending the dead-body for post-mortem as the deceased had died a natural death due to pain in his stomach and that he and his relations had no suspicion on anybody. The very fact that the Petitioner opposed this move of Mehar Chand indicates that the Petitioner throughout worked sincerely to ascertain the real cause of death of Madan Lal, and the same

was discovered on the receipt of the post-mortem examination report. It is also pertinent to point out that the learned trial Court had specifically mentioned in the judgment that on 4-11-1986 a chit was recovered from the pocket of the deceased wherein it had been written by the deceased that he himself was committing suicide. This chit remained with Mehar Chand from 4-11-1986 to 11-11-1986 and the same was withheld from the Petitioner by Mehar Chand. In the facts and circumstances of the case it is apparent that Mehar Chand, brother of the deceased, and his relations were not co-operative with the Petitioner during the course of investigation about the cause of death of Madan Lal. It was only on the receipt of the post-mortem report that the real cause of death of the deceased was known to the Petitioner. The conduct of the Petitioner, in these circumstances, could not be commented upon adversely by the trial Court.

16. This Court in *Dr. M.L. Ahuja and Ors. v. The State of Himachal Pradesh (supra)*, has held thus:

A trial Court is expected to give only such remarks which are necessary to sustain a judicial finding. Only such remarks need be made in the judgment which are in furtherance of justice and not to fulfil any other object except deciding the case in a correct perspective to that appropriate, finding is given. Further, the remarks should be borne out from evidence and must not be pure surmises and conjectures made by the Court.

If the intention is to harm any public servant or the remarks made as such as are reckless and are likely to jeopardise the interest of public service and endanger the prospect of a public servant or even injure his reputation or harm his official career, such remarks require to be expunged.

In *Niranjan Patnaik Vs. Sashibhusan Kar and Another*, the Supreme Court has held (at page 824) as under:

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

17. In view of the above discussion and the settled law, the result is that this petition is allowed. I direct that the offending remarks against the Petitioner, which have been quoted above, may be expunged from the body of the judgment of the trial Court. Consequently, the Memorandum No. Home-D (B-3) 60/87 dated 20-1-1992 (Annexure A-4) issued on the basis of the judgment of the trial Court, is also quashed and set aside. The petition is accordingly disposed off.