
(2016) 07 RAJ CK 0089

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 254 of 2014

Sumit Kumar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 4 CriLR 1767 : (2016) 4 Crimes 101 : (2017) 1 RajCriC 417 : (2017) 1 RLW 733 : (2017) 1 RLW 94 : (2016) 4 WLC 429

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

Bench : Single Bench

Advocate : Dr. Sachin Acharya, Advocate, for the Petitioner; Mr. Vikram Singh Rajpurohit, Public Prosecutor, for the State

Final Decision : Allowed

Judgement

Mr. P.K. Lohra, J.—This Criminal Misc. Petition under Section 482 Cr.P.C. depicts an unsavoury tale of a police officer who suffered severe strictures handed down by Sessions Judge, Rajsamand at the threshold of his service journey. The learned Sessions Judge, while passing the verdict of acquittal in Sessions Case No. 19/2012 on 6th of January 2014, has indicted the petitioner for his alleged lackadaisical approach in investigation of homicidal death, wherein victim was an old lady Ms. Nani Bai. For expurgation of dispersing remarks in the judgment, the petitioner has invoked inherent powers of this Court.

2. Succinctly stated, the facts of the case are that the petitioner, after completing his training in Rajasthan Police Services at the threshold joined his duties at Police Station Railmagra, District Rajsamand on 12th of February 2012. On 13th of February 2012, an FIR came to be lodged by one Shankerlal s/o Modaji Gadari for offence under Sections 460, 302 and 380 IPC. It is reported by the first informant that in the morning, when he was going to Gogathala from his residence, he saw doors of Ms. Nani Bai's house closed and few children standing there. According to the complainant, he suspected some mishap with

Ms. Nani Bai as she was living alone so an attempt was made by him to call her but of no avail. Thereafter, the first informant asked another villager Bhagga to go inside the Guwadi. When Bhagga entered inside the Guwadi, he found Nani Bai lying on a coat and blood was oozing out from the injuries on her legs and the ornaments which she was wearing were also found missing.

3. On receipt of report, FIR No. 46 of 2012 was registered and investigation commenced. After completing investigation, charge sheet was filed against two accused persons, namely, Jagdish s/o Ganeshlal and Udai s/o Mangilal. During investigation, it was unearthed that accused Jagdish is closely related to the deceased being her maternal grandson, who happened to be in financial disarray, has conspired in commission of offence of burglary and murder. According to the petitioner, despite his inexperience being fresh recruit, sincere endeavour was made by him to investigate the matter thoroughly with precision to facilitate submission of challan against accused persons.

4. The witnesses examined during investigation and listed in the charge sheet were either close relatives of the deceased or accused or neighbours of the accused, therefore, during trial independent witnesses retracted from their earlier statements and turned hostile to cast shadow on the entire prosecution story. The petitioner also appeared in the witness box as PW17. On conclusion of the trial, learned Sessions Judge proceeded to acquit the accused persons for the offences attributed to them by judgment dated 06.01.2014. While passing the judgment of acquittal against the accused persons, the learned Sessions Judge noticed discrepancies in the testimony of the petitioner and thereupon castigated him for committing serious infirmities during investigation. Therefore, the learned Sessions Judge, in the judgment, passed strictures against the petitioner and issued a direction to initiate appropriate proceedings as per Rule 66 of General Rules (Criminal) 1980 against him. It is in that background petitioner has approached this Court for obliterating dispersing remarks against him in the judgment.

5. For absolving him from the uncharitable remarks, the petitioner in the petition has highlighted some of the factual infirmities in the judgment of learned Sessions Judge, which are reproduced as infra:

(i) That Smt. Mangi PW-1 though has not supported the prosecution story, however, has admitted that the ornaments recovered are of her mother and, therefore, it is clear that accused Jagdish has committed crime.

(ii) That the possibility of prosecution witnesses taking a U-turn because of the fact that the accused Jagdish was very close relative cannot be ruled out. This fact ought to have considered by the learned Sessions Judge before directing harsh action against the petitioner.

(iii) That the fact that the complaint in the Human Rights Commission was made is unnecessary given credence by the learned Sessions Judge, whereas the fact remains that the recovery was made on 2.3.2012 whereas the complaint was

filed after a considerable delay of 17 days for which no plausible explanation was putforth.

(iv) That much emphasis is given by the learned Sessions Judge regarding the recovery being made at an information which is alleged to be given twice under Section 27 of the Indian Evidence Act. Suffice it to submit that on the first occasion the information by Jagdish was given on 29.2.2012 at 3.15 pm as has been recorded. Similarly, the other accused Udailal gave information on the very same day at around 3.30 pm. The Rojnamcha entries show that after information was given by the two accused persons, the petitioner reached to Court at around 4.30 pm, sought PC and, thereafter has undertaken usual procedure. The accused was taken to the place of incident on 1.3.2012, the very next day of disclosure (Feb., being 29 days month). However, the accused refused to let any recovery being made on the pretext that his grand mother died in the meantime. This fact can be fortified from Rojnamcha entry No. 18 dated 1.3.2012.

(v) Similarly, the recovery was not made from the information provided by the other accused person Udailal because when the petitioner reached the house of Udailal in village Mediya then at that time, the physically handicapped mother of Udai Lal was available, whereas, his father has gone to some other place while locking the room from which recovery was to be made. This fact is also fortified from Rojnamcha entry. Thereafter, the recovery was made on the subsequent date and thus it cannot be said that there was any infirmity.

(vi) That the infirmities found in the dates of Fard is of no credence for the simple reason that except in Ex.P/10, 11 and 12 in other Fard, dates are appropriate. In these Fard, the dates are written on the front page. However, on the back side only month and year is written which do not in any manner adverse effect the prosecution case.

6. Responding to the petition, on behalf of State, though written submissions are not made but for setting the record straight enquiry report of the Additional Superintendent of Police under Rule 66 of the Rules of 1980 is placed on record. The enquiry officer in the report has found that there is no deliberate attempt made by the petitioner to adopt any erroneous practise during investigation of the case and further no grave irregularity has occurred in the process warranting action against him. While dilating on the alleged omissions of the petitioner, enquiry officer has recorded a definite finding that these are bona fide human errors and consequently in the final outcome no negligence is attributed to the petitioner. The operative part of the enquiry report in vernacular is reproduced as under:

"vr% lEiq.kZ tkap ls ;g ik;k x;k fd QnZ tCrh izn"kZ 9 esa xokg ekaxh vfHk;qDr Jh txnh"kpUn dh ekSlh gksus ls i{kznksgh gqbZ o izn"kZ 10 esa ekuoh; Hkqyoa"k ls vuqla/kku vf/kdkjh ds gLrk{kj ds uhps fnukad vafdr djuk jg xbZ gS] izn"kZ 11 esa Hkh fnukad dk vadu ekuoh; Hkqyoa"k ls gks x;k gS ,oa izn"kZ 12 esa vuqla/kkukf/kdkjh ds gLrk{kj ds uhps fnukad dk vadu ekuoh; Hkqyoa"k ls ckdh jg x;k

gS ,oa izn"kZ 28 esa vksoj jkbZfVax 8 ds vad ij nks ckj isu ?kqekus ls ,slk izrhr gksrk gS fd vksoj jkbZfVax dh xbZ gS tcfd ,slk ugha gqvk gSA pwafd bldh QnZ ds eqrkfcd jkstukepk vke] dsl Mk;jh esa fnukad 28-02-2012 gh vafdr gS ,oe~ izn"kZ 29 esa Hkh fnukad esa eghus dk vadu ekuoh; Hkqyoa"k ls gks tkuk ik;k x;k gSA rRdkyhu Fkkukf/kdkjh Jh lqfer dqekj vkj0ih0,l0@ih0 Fkkuk jsyexjk ds } kjk mDr izdj.k ds }kj k mDr izdj.k ds vuqla/kku esa dksbZ ykijokgh ugha cjr gSA vr% tkap fjiksVZ e; Li"Vhdj.k e; jkstukepk vke] dsl Mk;jh] ofdZax Mk;jh ds layXu dj voyksdukFkZ ,oa vkns"kkFkZ lknj izsf"kr gSA"

7. Learned counsel for the petitioner, Dr. Sachin Acharya, while assailing the caustic remarks attributed to the petitioner in the judgment dated 6th of January 2014, submits that the remarks are wholly uncalled for and unwarranted inasmuch as there is no finding worth the name in the judgment that alleged omissions of the petitioner as investigating officer has adversely affected the prosecution case. Learned counsel for the petitioner would contend that before passing disparaging remarks against the petitioner, the learned Sessions Judge has not afforded any opportunity of being heard to the petitioner, therefore, per se the adverse remarks are vitiated in law. Learned counsel for the petitioner has urged that principles of audi alteram partem are imbibed in Article 14 of the Constitution of India and as such adverse remarks against the petitioner in the judgment dated 6th of January 2014 are in clear negation of Article 14 of the Constitution. Lastly, learned counsel has argued that the entire edifice of adverse remarks is unfounded on factual infirmities highlighted in the petition making out a clear case of abuse of process of the Court warranting interference in exercise of inherent powers of this Court.

8. E Converso, learned public prosecutor, in general, has not joined issues with the petitioner on credibility of the strictures passed against him. While relying on the enquiry report, learned Public Prosecutor submits that if the Court feels inclined to grant indulgence to the petitioner then it may be clarified that outcome of this petition may not prejudice the cause of the State in pursuing criminal leave to appeal against the judgment of acquittal passed by the learned Sessions Judge.

9. I have heard learned counsel for the parties, perused the materials available on record and thoroughly examined the enquiry report submitted by the learned Public Prosecutor.

10. Before switching to examine the legality and propriety of the strictures passed against the petitioner by the learned Sessions Judge in its judgment dated 06.01.2014, 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 adverse remarks 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 facts of the case and the legal precedents on which reliance is placed by the learned counsel for petitioner.

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 *pari-materia* 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 lower court 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 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 .

(emphasis supplied)

11. 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.

12. 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."

13. In *State of Karnataka v. The Registrar General*, High Court of Karnataka (2000) 7 SCC 333, Supreme Court has disapproved the practise of Judges for giving vent to their general apathy towards the present system of administration of justice. Further, the Court underplayed the practise of the Court for exercising any redundancy in the judgment. The Court held:

"Judicial disposition is definitely different from a paper presented for seminar discussion. Nor can it be equated with a dissertation. Judicial decorum requires that judgments and orders should confine to the facts and legal points involved in the particular cases which Judges deal with. May be, sometimes Judges would, perhaps wittingly or even unwittingly, jut outside the contours of the litigation, but even such overlapping should be within bounds of propriety and sobriety. But there is no justification for traversing so far beyond the canvass as was done by the High Court in this case or to cover areas which are grossly extraneous to the subject matter of the case. If the subordinate courts are also to be tempted and encouraged to follow suit by travelling far outside the scope of the lis the consequences would be far too many. Demoralisation of departments would badly erode the already impaired efficiency of our forces. It is time to remind ourselves once again that judgment should confine to the scope of the case."

14. 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."

15. In case of *A Judicial Officer v. Registrar General High Court of Andhra Pradesh* (2010) 11 SCC 722 Supreme Court has held that while examining the judicial order of subordinate Court, the High Court is not expected to make disparaging remarks against judicial officer which may adversely affect the image of the officer in the eyes of public.

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.

16. Now switching on to the afflictions of the petitioner for which he has sought redressal from this Court, suffice it to observe that learned Sessions Judge has passed the verdict of acquittal against the accused persons precisely for the reason that there was no ocular witness to support the prosecution 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 Sessions Judge, 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. As per the verdict of the learned Sessions Judge, even recovery of articles is under serious clouds and it is difficult to draw an inference that these articles belonged to deceased Nani Bai. Finding recorded by the learned Sessions Judge also reveals that medical evidence has also not supported the prosecution case and therefore in that background the learned Sessions Judge, while examining the prosecution case on the anvil of circumstantial evidence also found that the same is lacking requisite sting to bring home guilt against the accused persons. As a matter of fact, the learned Sessions Judge has concluded in clear and unequivocal terms that circumstantial evidence also nowhere indicates the involvement of accused persons in commission of offence. In spite of such a finding, learned Sessions Judge has, on some minor omissions by the petitioner, made following disparaging remarks against the petitioner in the judgment.

" ,sls xaHkhj izdj.k esa iqfyl vf/kdkjh dk ;g vkpj.k vR;ar xaHkhj dqVjpuk fd;s tkus dh ijhf/k esa vkrk gSA lkFk gh vuqla/kku dh fo"oluh;rk xaHkhj :i ls lafnX/k gks tkrh gSA vuqla/kku vf/kdkjh dk ;g vkpj.k fuanuh; gSA"

17. In the latter part of the judgment, while considering over-writing of the petitioner on arrest memo Ex.P/29, the learned Sessions Judge has made following caustic remarks against conduct of the petitioner as Investigating Officer.

" ;g folaxr Hkh ,slh gS fd tks u dsoy vuqla/kku vf/kdkjh dh fo"oluh;rk ij iz"u fpUg vafdr djrh gS vfirq mldh fu"i{krk o dk;Zdq"kyrk dks Hkh izfrdqy :i ls izHkkfor djrh gSA"

Finally, while passing the order of acquittal against accused persons, in the last paragraph of the judgment, learned Sessions Judge has issued directions against the petitioner for conducting enquiry under Rule 66 of the Rules of 1980. The order reads as under:

"bl izdj.k ds vuqla/kku ds nkSjku Jh lqfer dqekj ih0M0 17 }kjk xyr vkpkj ,oa xaHkhj vfu;ferrk fd;k tkuk le{k vkrk gS tSlk fd mij foospu fd;k gS] vr% lk/kkj.k fu;e nkf.Md] 1980 ds fu;e 66 ds rgr mlds fo:) leqfpr dk;Zokgh fd;s tkus gsrq bl fu.kZ; dh izfr e; ckenxh izn"kZ ih0 09] 11] 12] 20 QnZ fxjQ~rkjh vfHk;qDr txnh"k izn"kZ ih0 28] QnZ fxjQ~rkjh vfHk;qDr mn;yky izn"k ih0 29 ,oa Jh lqfer dqekj ih0M0 17 }kjk U;k;ky; esa fn;s x;s c;ku dh IR;kfir izfr;ksa ds egkfujh{k d] iqfyl] jktLFkku ljdkj] jSat mn;iqj dks Hksth tkosA"

18. At the outset, it may be observed that in the entire judgment there is no finding worth the name by the learned Sessions Judge that how and in what manner the alleged omissions of the petitioner has adversely affected the prosecution case or the conduct of the petitioner during investigation had otherwise any ramification on the outcome of the verdict. A newly recruited police officer who has also very candidly answered to a Court question that these omissions are bona fide is completely eschewed by the learned Sessions Judge while coming down heavily against him in passing strictures. Sustainability of the aforementioned disparaging remarks is also seriously questionable in view of the fact that before passing these caustic remarks no opportunity of being heard was afforded to the petitioner. Even if these remarks are tested on the touchstone of some of the factual aspects, which are narrated in the petition, I am afraid, these remarks cannot satisfy the test of judicial propriety. Apparently, there is no inkling in the judgment rendered by the learned Sessions Judge that these demeaning remarks and observations against the petitioner are necessary for disposal of the case.

19. 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, disparaging remarks passed against the petitioner by the learned Sessions Judge in the judgment dated 6th of January 2016 cannot be sustained. The enquiry

which was conducted against petitioner under Rule 66 of the Rules of 1980 also recorded a clear and unequivocal finding whereby petitioner has been exonerated is yet another mitigating factor which has persuaded this Court 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. Legal position is no more *res integra* 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. Thus, 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 petitioner merit annulment.

20. Before parting, it may be observed that the observations made by the Court in the order for expunging remarks against the petitioner shall in no way adversely affect the rights of the State to pursue criminal leave to appeal against the judgment of acquittal passed by the learned Sessions Judge.

21. The upshot of the above discussion is that instant criminal misc. petition is allowed and the disparaging remarks and strictures passed against petitioner by the learned Sessions Judge, Rajsamand in Sessions Case No. 19/2012 vide judgment dated 6th of January 2014 are hereby expunged and set at naught.