

(2016) 08 MP CK 0055
In the Madhya Pradesh High Court
Case No : M. Cr.C. No. 11178 of 2016

Virendra Bahadur Singh

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2017) 1 MPLJ 599

Hon'ble Judges : S.K. Palo, J.

Bench : Single Bench

Advocate : Shri Brijesh Chandra Choubey, learned Counsel, for the Petitioner;
Shri A.R.S. Chouhan, Learned Panel Lawyer, for the Respondents

Final Decision : Allowed

Judgement

S.K. Palo, J.—Shri Brijesh Chandra Choubey, learned counsel for the petitioner.

Shri A.R.S. Chouhan, learned Panel Lawyer for the respondent

2. This petition under Section 482 of Cr.P.C. has been filed to invoke the extra ordinary jurisdiction of this Court to expunge the adverse remarks passed by CJM, Tikamgarh in Criminal Case No.1128/2011 against the petitioner vide judgment dated 21/07/2015.

3. On behalf of the petitioner, it is contended that the petitioner was Sub Inspector at Police Station, Baldeogarh, District Tikamgarh at the relevant time. He had investigated the crime under Section 41(1-4) of Cr.P.C. read with Section 379 of IPC. While deciding the criminal case, learned CJM, Tikamgarh in judgment dated 21/07/2015, acquitted the accused for offence under Section 403 of IPC and passed the adverse remarks at Para 29 of the judgment which states as under:

"izdj.k esa mifufj{kd ohjsUnz cgknqj flag foospuk vf/kdkjh }kjk vR;/kd ykijokgh

dh xbZ gS] ftl dkj.k vfHk;qDr dks nks"keqDr fd;k x;k gSA vr% fu.kZ; dh ,d izfr iqfyl v/kh{kd Vhdex<+ dks muds fo:) vko";d dk;Zokgh fd, tkus gsrq Hksth tkosA"

4. On perusal of the judgment, it is observed that the petitioner has not been given any opportunity to explain himself.

5. The Criminal Courts have full power and authority to pass adverse remarks against the Investigating Agency and witnesses and also has power for issuing direction to the concerned authority to take necessary action in accordance with law, but while doing so, the Criminal Courts are required to follow the three norms as laid down by the Supreme Court in the case of State of U.P. v. Mohammad Naiem reported as AIR 1964 SC 703. The guidelines are:-

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.

6. No show cause notice was issued to the petitioner before passing adverse remarks and issuing the direction to the authority. In K.P. Singh Kushwaha v. State of M.P. reported as 2005 (2) MPHT 423, in which it is held that:

Code of Criminal Procedure (2 of 1974), Section 482—Applicant was SDO (Police) who had conducted investigation of a criminal case— Trial Court while acquitting the accused, made adverse remarks in the judgment against the conduct of applicant in investigation— Trial Court also gave directions to Police Authority for initiation of Departmental Enquiry and to punish him— Hence, applicant filed this petition for expungement of adverse remarks and directions made against him— Held - No show-cause notice was issued to the applicant before passing adverse remarks and issuing directions to authority - Such action of the Trial Court is just contrary to the guidelines by the Supreme Court in State of U.P. v. Mohammad Naiem reported as AIR 1964 SC 703—Further held— Trial Court has no jurisdiction to direct the authority for initiation of DE and to punish the applicant— Trial Court could have directed the superior authority to take necessary action in accordance with law— Hence, adverse remarks and direction for holding DE against applicant and to punish him set aside— Petition allowed.

7. In a similar case of Joseph D. Bhosle v. State of M.P. reported as 2007 (II) MPJR 452, a Division Bench of this Court has held as under:

"Criminal Practise - Recording of remarks against police officers; and Criminal Procedure Code, 1973- Section 482- Unwarranted and disparaging remarks made against petitioner while deciding a criminal case- No notice issued to the

petitioner nor opportunity of hearing given- Remarks expunged."

8. In the light of above legal and factual analysis, this petition is, therefore, allowed under Section 482 of Cr.P.C.

9. It is to be observed that no such remarks should have been made unless the petitioner was given an opportunity of hearing. Therefore, adverse remarks made at Paragraph 29 of judgment dated 21/07/2015 passed by the learned CJM, Tikamgarh to the extent mentioned herein above is expunged.