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Court No. - 29

Case :- APPLICATION U/S 482 No. - 16 of 2016

Applicant :- Balaram Chari Dubey
Opposite Party :- State Of U.P. Thru. Secy. Home Civil Sectt. Lucknow
Counsel for Applicant :- Mahendra Pratap Singh
Counsel for Opposite Party :- Govt. Advocate

Hon'ble Shree Prakash Singh,J.

1. Heard Sri Mahendra Pratap Singh, learned counsel for the applicant, Sri Nirmal Kumar Pandey, learned A.G.A. for the State.

2. The instant application under section 482 of Cr.P.C. has been filed assailing the impugned direction issued by the learned Special Judge, S.C./S.T. Act, Barabanki in Judgment and Order dated 27-10-2015 passed in Sessions Trial No. 9472 of 2014, arising out of Case Crime No. 143 of 2014, under sections 376/323/504/506 of the I.P.C., section 3(2) (V) of the S.C./S.T. Act and section 4 of Protection of Children from Sexual Offences Act, 2012, Police Station-Jaidpur,

District-Barabanki., whereby the learned trial court has directed the State-authorities to take action against the applicant under section 4 of the S.C./S.T. Act, for committing negligence in conducting investigation of the case.

3. The factual matrix of the case is that the first informant, Sitaram S/o Ram Sanehi, R/o Akbar Dhanethi, Police Station-Jaidpur, district-Barabanki, lodged the first information report against the accused, Tufail S/o Mohd. Hanif alleging therein that on 03-04-2014, the accused, Tufail committed rape on his daughter, Km. Renu and upon such Tahrir, the first information report was registered as Case Crime No. 143 of 2014, under the abovementioned charges.

4. After the first information report was lodged, the present applicant was inducted as Investigating Officer, who conducted the investigation and after collecting the evidence, filed the chargesheet against the accused persons.

5. After filing of the chargesheet, learned Magistrate committed the case to the sessions court and the trial commenced, whereupon the witnesses, P.W.-1, Sita Ram, P.W.-2, Dr. Shushma Verma, P.W.-3, the victim, Km. Renu, P.W.-4, the present applicant and P.W.-5, Constable Priya Kumar Tewari, were examined and all the prosecution witnesses constantly supported the prosecution version.

6. While deposing the testimony by the victim, it is stated that *"सी0ओ0 साहब ने उसके माता पिता को बुलाया था और एक कागज पर हस्ताक्षर करा लिया था और कागज संख्या अ–8 प्रदर्श क–6 वही कागज है जिस पर सी0ओ0साहब ने उसका हस्ताक्षर बनवाया था।".*

7. It is alleged that the statement of the victim under section 164 of the Cr.P.C. was not got recorded before the Magistrate and even the statement of the doctor was also not recorded by the Investigating Officer/applicant.

8. The learned trial court, considering the abovesaid, a wilful negligence, has made adversarial remarks against the applicant. Being aggrieved, the present application is filed challenging the aforesaid part of the adverse remark in the Judgment and Order dated 27-10-2015. The adverse remark reads in virbtum as follows :-

"विवेचक बी0सी0 दूबे अपर पुलिस अधीक्षक हरदोई के विरूद्ध धारा 4 अनुसूचित जाति/अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम के अन्तर्गत आपराधिक वाद पंजीकृत करने एवं उन्हें अभियोजित करने के लिए निर्णय की प्रति गृह सचिव उत्तर प्रदेश को भेजी जाय तथा इस निर्णय की प्रति विवेचक की सर्विस बुक पर रखने के लिए पुलिस महानिदेशक को भेजी जाय।"

9. It is contended by the learned counsel for the applicant that the learned trial court without affording opportunity of hearing, has held the applicant liable for negligence in conducting the investigation, while recommending the action against him under the provision of section 4 of the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act,1989 (hereinafter referred to as 'Act, 1989). Section 4 of the Act, 1989 reads as under :-

"4. Punishment for neglect of duties.-(1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

(2) The duties of public servant referred to in sub-section (1) shall include-

(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;

(c) to furnish a copy of the information so recorded forthwith to the in formant;

(d) to record the statement of the victims or witnesses;

(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;

(f) to correctly prepare, frame and translate any document or electronic record;

(g) to perform any other duty specified in this Act or the rules made thereunder:

Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.

(3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant.]

10. He submits that the applicant has committed no fault in conducting the investigation rather, he after concluding the investigation, filed the chargesheet

against the accused person, in a fair and proper manner and there is no wilful negligence on his part. He further submits that the applicant has not been afforded the opportunity of hearing by the learned trial court, which vitiates the Judgment and Order dated 27-10-2015. Adding his arguments, he submits that the conduct and behaviour of the applicant was always above board and unblemished, therefore, submission is that the Judgment and Order dated 27-10-2015 to the extent of adversarial remarks, may be quashed.

11. On the other hand, learned A.G.A. appearing for the State submits that after concluding the investigation, the chargesheet was submitted by the applicant and the applicant has also appeared before the trial court and deposed his testimony, though, from perusal of the Counter Affidavit, it transpires that there is no denial of the pleadings made in the application by the applicant, rather, to some extent, those have been admitted by the State.

12. Having heard learned counsels for the parties and after perusal of the records, it transpires that the impugned Judgment and Order dated 27-10-2015, is evident that the learned trial court has recorded the statement of the victim/P.W.-1, who stated that the applicant/Investigating Officer had called her father and got signature done and rectified that the Exhibit K-8 & K-6 are the same papers, whereupon she had signed. The statement of the applicant was also recorded

during the course of trial, though, no opportunity of hearing was afforded to him, prior making the adverse remarks, in the order. In catena of Judgments of Hon'ble Apex Court, it is held that the learned courts should refrain in making adverse remarks against the public officers without affording any opportunity of hearing, if such remarks are not necessary for pronouncement of the Judgment/Order.

13. It is discernible from the provision of section 4 of the Act,1989 that the negligence should be wilful and therefore, it is incumbent upon the authority, who is proceeding while invoking the aforesaid provision to come to a conclusion that the act of such public servant performing the required duties, are done with a wilful negligence. The meaning of 'Wilful Negligence' means any act done with intention and knowledge.

14. In this regard, I may refer the Judgment of the Hon'ble Apex Court reported in ***AIR 1964 SC 703, The State of Uttar Pradesh Versus Mohammad Naim*** and the paragraph no.10 of the abovesaid Judgment, reads as under :-

"10) The last question is, is the present case a case of an exceptional nature in which the learned Judge should have exercised his in herent jurisdiction under S. 561-A Cr. P. C. in respect of the observations complained of by the State Government? If there is one princi ple of cardinal importance in the administration of justice, it is this the proper freedom and in-dependence of Judges and Magistrates must be maintained and they must be allowed to per-form theif functions freely and fearlessly and without undue interference by anybody, even by this court. At the same time it is equally. necessary that in expressing their opinions Judges and Magistrates must be guided by con-siderations of justice, fair-play and restraint. It is

not infrequent that sweeping generalisations defeat the very purpose for which they are made. 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 op-portunity 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."

15. It has been said in so many words by the Hon'ble Supreme Court that in expressing the opinions, Judges and Magistrates, must be guided by consideration of justice, fair play and restraint and frequent and sweeping remarks shall hit the purpose for which they are made.

16. In the aforementioned Judgment and Order, three guidelines emerges; (I) The party whose conduct is in question has afforded opportunty of explaining or defending himself; (II) There is evidence on record bearing on the conduct justifying the remarks and ; (III) Is it necessary for the decision of a case.

17. He has again placed reliance on a Judgment reported in ***(2021) 9 SCC,92, Neeraj Garg Vs Sarita Rani and Others*** and has placed reliance on paragprah nos. 9 to 18 of the Judgment, which are quoted as follows :-

9. To press home the argument that the offending remarks against the counsel are unmerited, and do not meet the required parameters, the learned Senior Counsel has cited State of U.P. v. Mohd. Naim where S.K. Das, J. laid down the following tests

to be applied while dealing with the question of expunction of disparaging remarks against a person whose conduct comes in for consideration before a court of law. Those tests are: (AIR p. 707, para 10)

10. ... (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.

10. In Alok Kumar Roy v. S.N. Sarma, in the opinion written by C.K. Wanchoo. J. for a five-Judge Bench, this Court had emphasised that even in cases of justified criticism, the language employed must be of utmost restraint. The use of carping language to disapprove of the conduct of the counsel would not be an act of sobriety, moderation or restraint.

11. The judgment of this Court in A.M. Mathur v. Pramod Kumar Gupta, delivered by K. Jagannatha Shetty, J., elaborates on the need to avoid even the appearance of bitterness. The Court observed that: (SCC pp. 538-39, para 13)

"13. 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 be better called judicial respect, that is, respect by the judiciary."

12. The importance of avoiding unsavoury remarks in judicial orders as per established norms of judicial propriety has also been succinctly noted in Abani Kanta Ray v. State of Orissa by J.S. Verma, J. in the following words: (SCC p. 178. para 15)

"15.... Use of intemperate language or making disparaging remarks against anyone unless that be the requirement for deciding the case, is inconsistent with judicial behaviour. Written words in judicial orders are for permanent record which make it even more necessary to practice self-restraint in exercise of judicial power while making written orders.".

13. The principles laid down as above, have been quoted with approval and applied by this Court in several subsequent judgments, including for a three-Judge Bench in Samya Sett v. Shambhu Sarkar10, In this case C.K. Thakker. J. writing for the Court opined that the adverse remarks recorded were neither necessary for deciding the controversy raised before the Court nor an integral part of the judgment, and accordingly directed deletion of those remarks.

14. The proposition of law laid down by S.K. Das, J. on behalf of the four-Judge Bench in Mohd. Naim on recording of adverse remarks has been approved in a catena of decisions since 1964.

It was also cited by the Supreme Court of Sri Lanka in A.N. Perera v. D.L.H. Pererall where Abdul Kadir, J. speaking for the Bench approved of the tests laid down by this Court and concluded that the Judge's comments against the petitioner in that case were a thoroughly unwarranted under each of those tests.

15. While it is of fundamental importance in the realm of administration of justice to allow the Judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the Judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before b the court.

16. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before recording the adverse comments, give any opportunity to the c appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the counsel, without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments.

17. The tenor of the remarks recorded against the appellant will not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the comments remain unexpunged in the Court judgments, it will be a cross that the appellant will have to bear, all his life. To allow him to suffer thus, would in our view be prejudicial and unjust.

18. In view of the foregoing, we are of the considered opinion that the offending remarks recorded by the learned Judge against the appellant should not have been recorded in the manner it was done. The appellant whose professional conduct was questioned, was not provided any opportunity to explain his conduct or defend himself. The comments were also unnecessary for the decision of the Court. It is accordingly held that the offending remarks should be recalled to avoid any future harm to the appellant's reputation or his work as a member of the Bar. We therefore order expunction of the extracted remarks in paras 4, 5, 6 and 7 of this judgment. The appeals are accordingly disposed of with this order."

18. The remarks recorded against the public authority will not only demean his image, but, would also adversely impact his professional career and therefore, without affording the opportuntiy of hearing, in a well

guarded manner, such remarks would be highly prejudicial and unjust.

19. In the case of ***State of Orissa and Others Vs Mohammad Illiyas*** *reported in* ***(2006) 1 SCC 275***, it is held that so far as the meaning and intent of wilful negligence, as provided under section 4 of the Act,1989, is concerned, the same is manifest that the first condition is that some duty is casted under the Act, 1989 to be performed and then only, it could be examined that whether there is any intentional negligence on the part of such public officer. For ready reference, paragraph nos. 9,10 & 11 of the Judgment are quoted hereinunder :-

"9. At this juncture it is desirable to consider the true import of the word "willul". An act is said to be "wilful" if it is intentional, conscious and deliberate. (See Rakapralli Raja Rama Gopalu Ruo v. Nuraguni Govinda Sehararavy

10. The expression "wilful" excludes casual, accidental, bona fide or unintentional acts or genuine inability. It is to be noted that a wilful act does not encompass accidental, involuntary, or negligent. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences lowing therefrom. The expression "wilful" means an act done with a bad purpose, with an evil motive.

11. "Wilful" is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally. as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent. (Per Bowen, L.J. in Yoong and Harston's Contract, Res.) It does not necessarily connote blame. although the word is more commonly used for bad conduct than of good. (See Wheeler v. New Merton Board Mills.) Whatever is intentional is wilful. (Per Day. J. in Gayford v. Chouler.) As observed by Russel, C.J. in R. v. a Seniors "wilfully" means deliberately and intentionally."

20. When this court examines this matter on the aforesaid parameter, it is apparent from the fact of this case that it is not the case that the present applicant being the Investigating Officer, has committed any wilful negligence, as he conducted the investigation and recorded the statement of the victim and filed the chargesheet against the accused person. There may be some lacunas in filing of the chargesheet and in conducting the investigation, but, that would not suffice the purpose to come to a conclusion that the same has been done with some knowledge or intention as ultimately, the chargesheet has been filed and therefore, no benefit is accorded to the accused person. Further the victim herself has stated that the Exhibit K-6 is signed by her, which prima-facie, shows that the statement,which is mentioned on Exhibit K-6, is of the victim, unless it is proved contrary, though, there is no such discussion or finding in the impugned Judgment and Order, which could substantiate that the victim has succeeded to prove it that the same is not the statement of the victim.

21. It is also noticed that the applicant, B.C.Dubey, being the Investigating Officer, produced himself before the court and deposed his testimony while stating that since the victim was ill and she had requested that her statement under section 164 of Cr.P.C., should not be got recorded, though, at the time of the statement before the learned trial court, the victim has denied this fact, but, there is no evidence that the victim had ever

made any complaint against the applicant/Investigating Officer for not getting recorded her statement before the Magistrate under section 164 of the Cr.P.C.

22. I may also refer the law rendered in the case of ***Ananda Pangala Vs. T.R. Jagannath*** reported in ***2003 Cr.L.J.3215***, wherein paragraph no. 6, it has been held by the Karnataka High Court that in order to proceed under section 4 of the Act,1989 against the Investigating Officer, there should be necessary and proper averments of the facts to the effect that such Investigating Officer has 'wilfully neglected' his duties by not properly investigating the offence. Paragraph no. 6 of the abovesaid Judgment reads as under :-

"6. It is the contention of the petitioner that the investigation has not been conducted by the respondents in Cri. P. Nos. 2312 and 2313 of 2002 in a proper manner. There is sufficient material to disclose that the accused have committed the offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and deliberately the said offence has not been included. In that regard, a private complaint has been filed. After carefully going through the statement of the petitioner in Cri. P. No. 2312 of 2002, who is cited as C.W. 2 in S.C. No. 500f 1999 and averments made in the private complaint, they do not disclose any material to enable invoking of provisions of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the FIR in S.C. No. 50 of 1999 and the statements of C.Ws. 1 and 2, who are the petitioners herein, nowhere it is stated that the deceased was murdered with an animus that she belongs to Scheduled Caste. The motive offered by the petitioners, only indicate that the murder has been committed for gain. The gold jewellery worn by the deceased is alleged to have been robbed by the accused in S.C. No. 50 of 1999. Of course, the prosecution has placed material to show discovery of the said articles at the voluntary instance of the accused, it is very preposterous on the part of the petitioners to contend that the Police Officers have committed offence in this regard. The provisions of Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, fasten criminal liability on the public servants, who wilfully neglect their duties required to be performed by them under the Act and

make punishable for imprisonment for a term not less than six months and may extend upto one year. In order to invoke Section 4 of the Act against the Investigation Officers, there should necessary and proper averments of facts to the effect that they have wilfully neglected their duties by not properly investigating the offence covered by sections of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In what manner there is a failure to take steps on the pan of the Investigation Officers is to be clearly stated. In the context of provision of Section 4 of the Act, if the averments made in the private complaint in S.C. No. 50 of 1999 is read, it does not suggest that necessary material showing ingredients of Section 4 has been made out to proceed against the Police Officers under the complaint in P.C.R. No. 251 of 2000. Therefore, I find that the Sessions Judge was justified in setting aside the order as against the respondents in Cri. P. Nos. 2312 and 2313 of 2002. The said impugned order does not call for interference."

23. Similarly, in the case of ***Ram Pal Vs State of Rajasthan,*** reported in ***1998 Cr.L.J. 3261,*** it has been held that the purpose of section 4 is very clear that the offences, which are punished under this section, must have been committed in respect of some duty to be performed under the Act,1989 and if it's not so, the provision of section 4 of the Act,1989, would not attract. Paragraph nos. 8 & 9 of the said Judgment are reproduced hereinunder :-

"8. The first question to be decided is whether an offence under Section 4 of the Scheduled Castes end Scheduled Tribes (Prevention of Atrocities) Act, 1989 was committed.

Section 4 reads:-

Punishment for neglect of duties - Whoever, being a public servant bút not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extent to one year.

A bare reading of Section 4 shows that the offences, which are punishable under this section, must.. have been committed in respect of some duty to be performed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989. If any duty is to be performed under any other Act (including the Code of Criminal Procedure), then the provisions of Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not apply.

The crucial question is whether the investigation was conducted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and whether the submission of final report was in respect of any duty prescribed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. If answer be in the affirmative, it will be said that the offence under Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 may be committed. But, if the answer be in the negative, then it will have to be said that nooffence under Section 4 of the Schedu led Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be said to have been committed, if any public servant wilfully neglects his duties prescribed by any other law.
In the instant case, the complaint was sent to the police for investigation under Sub-section (3) of Section 156, Cr.P.C. The case was registered by the police in exercise of the powers given by the Code of Criminal Procedure. The investigation was conducted by the petitioner under Section 157 and other provisions of the Code of Criminal Procedure, 1973 and the final report, which the petitioner has submitted was in discharge of the duty prescribed by Section 173 Code of Criminal Procedure. 1973. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 does not provide any particular procedure for the investigation of the cases and therefore, in view of Section 4(2) the offence are required to be investigated, enquired into, tried or otherwise dealt with according to the provisions of Code of Criminal Procedure except to the extent the general provisions contained in the Code of Criminal Procedure are superseded by any special provision contained in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In view of this position of law, the submission of final report under Section 173 Code of Criminal Procedure, 1973 cannot be said to be an act done in exercise of the duty prescribed by or under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Consequently, I have no hesitation in coming to the conclusion that even if any neglect of duty in the conduct of investigation is committed by the Investigating Officer while purporting to act in exercise of the powers conferred by the Code of Criminal Procedure, 1973, the provisions of Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 would not be attracted unless it can be established that the wifal neglect of duty was committed by the Investigating Officer in relation to a duty prescribed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The learned judicial Magistrate does not appear to have considered the provisions of Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It would not be out of place to point out that prosecution and punishment for an alleged crime is a very serious matter and certain important constitutional safeguards are provided in Part III of the Constitution. Clause (1) of Article 20 of the Constitution provides that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inilicted under the law in force at the time of the commission of the offence.

In order the fundamental right guaranteed by Article 20(1) of the Constitution may not be violated, it is necessary that the authorities, who feel called upon to initiate any action against any person for committing any offence should satisfy themselves whether the alleged offence in respect of which an action against any person is required to be taken is an offence under any law for the time being in force. It is, therefore, necessary that the provisions of law which declare an act to be an offence must be carefully read and interpreted before cognizance is taken and process is issued against any

For the reasons mentioned above, in the instant case, no offence under Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 could be said to have been committed by the petitioner as wel a as by the Superintendent of Police, Chura, because the submission of the final report under Section 173. Cr.P.C. is in performance of the duty prescribed by the Code of Criminal Procedure and not by any provision of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
A bare reading of Section 4 shows that before an offence under Section 4 may be committed, it must be shown that a public servant has wilfully neglected his duties. A bona fide action, even though it may be erroneous, cannot be branded as wilful neglect of duty. In his order dated 16th March, 96 the learned Judicial Magis trate has himself observed :-

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blds vykok ftyit iqfyl vi/k(kd] pq:

dksj teg i koyh vkns kkFkZ Hksth rks J-ih-pq: us Hkh iskoyh ij miyC/k Ikexzh ij fopkj ugha djs Fiksa dh vuns[kh dh gS tks,d mPpki/kdkjh dh thu&ew> dj dh xih ykjokgh gS tks yksd&lsod ds dr70; ikyu da nkSjku fd, s, dh ifjf/k esa ugha vkrk gSa A The most charitable view which can be taken in the case is that the learned Judicial Magistrate was of the opinion that the Superintendent of Police, Churu neglected the performance of

his duty, but a mere neglect: is not punishable under Section of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

It has been observed by this Court in several cases that issue of process against any person on the allegation thal he has committed an offence is serious matter. It deprives the person of his personal hberty guaranteed by Article 21 of the Constitution. Therefore, before issue of process, it must be inquired into whether the ingredients of the offence are prirna facie established by the evidence produced before the officer of the Court.

Suluuission of a final report under Section 173, Cr.P.C. by the petitioner Rampal was obviously an art performed in discharge of his public duties as an Investigating Officer conducting investigation unalet the Code of Criminal Procedure, 1973. By no stretch of imaginatión it can be said that the sulunission of final report was not a part of his public duty. In these circuiristances, prima facie, the petitioner as well as the Superintendent of Police, Churu both were entitled to protection of Section 197, Cr.P.C. and no cognizance of offence could be taken against them without proper sanction. The view taken by the learned Judicial Magistrate that the petitioner is not entitled to protection of Section 197, Cr.P.C. is erroneous and cannot be maintained.

So far as role of Superintendent of Police, Churu is concerned, it is necessary to consider whether in the instant case the Superintendent of Police, Churu was required to perform any duty under the Code of Criminal Procedure in the matter of submission of the report under Section 173. Cr.P.C. Under Section 156, Cr.P.C. the powers to investigate the ease have been conferred upon the Officer Incharge of the Police Station. Section 157, Cr.P.C. the Officer Incharge of the Police Station may himself proceed to the spot for investigation or he may depute one of his subordinate officers not being below such rank as the State Government may by general or special order, prescribe in this behall. Under Section 173, Cr.P.C. the report, after the completion of the investigation, is to be forwarded to a Magistrate empowered to take cognizance of the of fence by the Officer Incharge of the Police Station. These provisions clearly show that whatever duties have been prescribed by the Code of Criminal Procedure, 1973 so far as the submission of the report under Section 173, Cr.P.C. is concerned, the duties have been prescribed for the Officer Incharge of the Police Station. The Superintendent of Police or other senior officers are not required to perform any duty unless of course they exercise the powers of the Officer Incharge of the Police Station in the case, either on account of their being as Officer Incharge of the Police Station or under Section 36, Cr.P.C. A perusal of the final report prepared by subordinate officer of the Superintendent of Police is in the capacity of an administrative senior officer and not as Officer

Incharge of the Police Station. The learned Judicial Magistrate does not appear to have considered the legal provision in this behalf before passing the impugned order dated 16th March, 96."

24. It is also noticeable that in the case of ***Anujaram Parhi Vs State of Orissa,*** reported in ***1989 Cr.L.J.,447,*** it has been held that the inherent powers under section 482 of the Cr.P.C., can be invoked for expunction of remarks made by the learned trial court, particulaly, when such remarks were not necessary for decison of a case. Paragraph no. 3 of the aforesaid Judgment is reproduced hereinunder :-

"3. Before the decision of the Supreme Court in the case of State of Uttar Pradesh v. Mohammad Naim, AIR 1964 Supreme Court 703: (1964 (1) Cri.L.J. 549), there was conflict of opinion as to the jurisdiction of the High Court to expunge objectionable matter from the judgement of an inferior court. One view was that the High Court had no jurisdiction to expunge passages from the judgement of an inferior court which had not been brought before it in revision. The other view was that the Iligh Court had inherent power to expunge ubjectionalile it in regular appeal or passages from a judgement elther delivered in itself or by a subordinate court which are either relevant or inadmissible or which adversely affect the character of a person before the Court. The controversy, however, remains res integral in view of the decision of the supreme Court, referred to supra. It has been authoritatively held in the aforesaid case by the supreme Court that the High Court can, in exercise of its inherent jurisdiction, expunge remarks made by it or by a lower court if be necessary to do so to prevent aluse of the precious of the Cours or otherwise to secure the ends of justice although the matter has not been a brought before it in regular appeal or revision. While saying so, the Supreme Court has also stated a word of caution that the power of expunction is of an Atraordinary nature and has to be exercised with great care and caution. Courts of justice, no doubt, in the interest of the proper administration of justice should be allowed to perform their functions freely and fearlessly and to comment upon the statement of a witness when relevant to the case and there should not be undue interference by the High Court in this regard. But where there is no foundation fon the remark in question nor is it necessary for a court to make the remark for a just decision of the case and such remark adversely affects the person against whom it is made, the courts of justice should refrain from making such remark. It is always the settled principle that a court should bear

in mind while weighing the evidence and arriving at a conclusion on questions of fact that the court should not be harsh and should exercise great reserve and moderation. It is not in the interest of administration of justice that courts should make sweeping aspersion or use intemperate language which is unduly harsh particularly when the person disparaged has hardly any opportunity of explaining or defending himself. If the conduct of a witness appears to the judge to be suspicious on otherwise not above board, he has the right and duty to test his evidence by putting questions to him. But before the court is justified in commenting adversely upon the evidence, it must establish the particular fact warranting such criticism and remarks cannot be made on conjectures. It has been laid down by the Supreme Court in the case of Dr. Raghubir Saran v. State of Bihar, AIR 1964 Supreme Court 1: (1964 (1) Cri.L.). 11), that if an unjustifiable attack is made on a person who had no opportunity of being heard in his own defence, and the remark is irrelevant and separable, it should be expunged. In the other Supreme Court case, referred to earlier Alk 1964 Supreme Court 703: (1964 (1) Cri.L.J. 549) it has been held that the power to expunge can be exercised to delete passages in a judgement which though based on evidence, damage the character of a person, are wholly irrelevant to any point in issue and which the court has unnecessarily gone out of its way to include in the judgement.

It is in this context a Special Bench of the Lahore High Court in the case of Philip William Ravanshawe Hardless v. Gladys Isabel Hardless, AIR 1940 Lahore 82, has observed that a remark which is not necessary for the conclusion reached by the court nor even necessary to its argument and is likely to militate seriously against the party's earning a living or his future career, has to be expunged from the judgement. In fact, in a recent case of Sri Niranjan Patnaik v. Sri Sashibhusan Kar a case from this Court, reported in (1986) 61 Cut LT 523: (1986 Cri.L.J. 911) (SC), the Supreme Court considered certain remarks made against a witness and observed:-

"If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of judges and magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody. At the same time it is equally necessary that in expressing their opinions judges and magistrates must be guided by considerations of justice, fair play and restraint, it is not intrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities where conduct comes into consideration before Courts of law in cases to be decided by them, it to 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 can record bearing on there conduct justifying 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's and reserve."

(quoted from the headnote)
Bearing in mind the aforesaid principles of law and examining the impugned judgement, 1 cannot but hold that the learned Sessions judge was wholly unjustified in making observation against P.W. 6, the doctor which was not at all necessary for the just decision of the ease. In this view of the matter, this is as fit case where this Court should expunge that portion of the judgement from the judgement in Sessions Trial No. 19 of 1985. I would accordingly direct that the last sentence in para 17 of the judgement of the learned Sessions Judge in Sessions Trial No. 19 of 1985 be expunged.

This application is accordingly allowed. Petition allowed."

25. Now, summarising the issue, it is apparent that the statements of the victim as well as the Investigating Officer/applicant have been recorded by the learned trial court for deciding the criminal case, but, the question aries that whether prior to making the adverse remarks, as per the settled proposition of law, the basic principle of natural justice has been followed or not. From perusal of the remarks, it transpires that the same must cast prejudice to the applicant and the settled proposition is that if the court is making some adverse remarks, which is necessary for pronouncement of the Judgment and Order, without affording opportunity of hearing, the same would not stand, in the eyes of law.

26. As discussed hereinabove, the Hon'ble Apex Court in the case of **Neeraj Garg (Supra) a**nd **Mohammad**

Naim (Supra), has said in so many words that unbriddled, sweeping and frequent remarks, would defeat the purpose unless the same is not guided by following the settled laws. In fact before such adversarial remarks is made, the opportunity of explaining or defendng must be accorded.

27. So long as the present case is concerned, from perusal of the impugned Judgment and Order dated 27-10-2015, the opportuniy of hearing is not afforded to the applicant and the learned trial court in a sweeping manner, has made the adverse remarks in the form of a direction so as to lodge the criminal case against the applicant and to prosecute him, under section 4 of the Act,1989, which apparently, shall cause prejudice to the applicant. In fact, the statements of the applicant and the victim, are recorded by the learned trial court in normal course of trial proceeding, but, as soon the court reaches to the conclusion that some wilful negligence is committed by the Investigating Officer with respect to the duty casted upon him under the Act, 1989, he should have been given an opportunity of hearing, calling the explanation of the applicant, but, it reveals from the impugned Judgment and Order dated 27-10-2015 that no such opportunity of hearing was given to the applicant.

28. Thus, I am of the considered opinion that the learned trial court while making the adverse remarks/direction against the applicant in the

impugned Judgment and Order, has ignored the settled principle of law in the case of **Mohammad Naim(Supra)** and **Neeraj Garg(Supra)** and further, the purpose of the invocation of section 4 of the Act,1989, has also been defeated, as the learned trial court without reaching to the conclusion that there is 'wilful negligence' in conducting the investigation, has made adverse remarks.

29. In view of the aforesaid submissions and discussions, this court finds merits, in the instant application and thus, the application under section 482 Cr.P.C. is hereby **allowed.**

30. Consequently, the adverse remarks in the Judgment and Order dated 27-10-2015, quoted in paragraph no. 8 of this order, is hereby set aside.

31. Consequences to follow.

32. Consigned to record.

Order Date :-29-05-2025

AKS