

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).1250/2006
(From the judgement and order dated 25/11/2004 in CRLOP No.
35807/2004 of The HIGH COURT OF MADRAS)

S. PALANISAMY

Petitioner(s)

VERSUS

P.R. SENNIAPPAN & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP,exemption from filing
O.T.,stay,exemption from filing c/c of the impugned order and office report)

Date: 25/11/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. K.K. Mani,Adv.
Mr. C.K.R. Lenin Sikar, Adv.
Mr. Mayur R. Shah, Adv.

For Respondent(s) Mr.V. Ramasubramaniam, Adv.
Mr. V. Balachandran,Adv.

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order.

[Meenu Sethi]
A.R.-cum -P.S.

[Pushap Lata Bhardwaj]
Court Master

Signed order is placed on the file
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1918 OF 2008
(Arising out of S.L.P. (Crl) No.1250/2008)

S.Palanisamy ...Appellant

Versus

P.R.Senniappan & Ors. ...Respondents

O R D E R

Delay condoned.

Leave granted.

Having heard learned counsel for the parties,we are
of the opinion that although, the High Court was correct in observing
that the appellant before us has exceeded his jurisdiction conferred on
him under Section 107 of the Code of Criminal Procedure, in view of

the fact that neither any malafide was attributed nor any finding having been arrived at that his action was accentuated by any extraneous consideration, we are of the opinion that it committed a serious error in directing the Government of Tamil Nadu to initiate a departmental proceeding against him. For the self same reasons, we are of the opinion that the observations made against the appellant in paras 6,7 and 8 of the impugned order were not warranted. The appellant committed a mistake while exercising his jurisdiction. It is

an error of judgment on his part but it must be borne in mind that the standard expected of a judicial officer, in our opinion, may not be expected from an Executive Magistrate. Furthermore, he was not heard before the impugned observations were made.

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In V.Sujatha vs. State of Kerala and Ors, 1994 Suppl. 3 SCC 436, this Court has observed as under:

"26. These appeals by Mrs. V Sujatha need a neat and formal disposal. We have allowed criminal appeals arising out of SLP(Crl.) No. 180 of 1989 and Criminal Appeal No. 625 of 1988. In both the upset judgments of Padnamabhan, J. adverse remarks have been made against Mrs. V Sujatha, the appellant herein. Those judgments of the High Court do not remain operative and the judgments and orders passed by her in both cases have been restored. The adverse remarks in a sense are no longer legally tenable or existing, but they do stay written in court records all the same. In the special leave petitions before us, certain new facts have been sought to be introduced by Smt. V. Sujatha vis-a vis Padmanabhan, J. We do not, for cause of propriety, since Padmanabhan, J, is not a party before us, wish to make mention thereof in these proceedings, except to state that it is suggestive that at one point of time, apparently cordial relations existed between the two. We are told at the Bar that both of them have since retired. It has been lamented by learned counsel for Mrs. V Sujatha that her career was spoiled by such adverse remarks, which remarks the Press blew up beyond proportions to tarnish her image and name. Be that as it may, this will not prompt us to do the exercise of culling out and reproducing herein, the adverse remarks, from the upset judgments of Padmanabhan, J. or to reproduce herein her grievances in the special leave petitions and record them in this judgment, again for the sake of propriety, for we must bury and bury deep the harsh and unnecessary provocative language employed in these documents.

But before we do that, we do need to say what already has been said by this Court time and again, for Judges to employ

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mellow and temperate language in their judgments, when referring to members of the judicial family. Some of these cases are as

follows :

(i) Ishwari Prasad Mishra v. Mohammad Isa.
(SCR at pp.746-47)

"In the present case, the High Court has used intemperate language and has even gone to the length of suggesting a corrupt motive against the judge who decided the suit in favour of the appellant. In our opinion, the use of such intemperate language may, in some cases, tend to show either a lack of experience in judicial matters or an absence of judicial poise and balance..No doubt, if it is shown that the decision of the trial court in a given case is the result of a corrupt motive, the High Court must condemn it and take further steps in the matter. But the use of strong language and imputation of corrupt motives should not be made light-heartedly because the judge against whom the imputations are made has no remedy in law to vindicate his position."

(ii) H. Lyngdoh v. Cromlyn Lyngdoh. (SCC p.757, para 5)

"Before we part with the case, we were distressed to note certain personal remarks made by the learned Chief Justice against one of the Hon'ble Judges of that Court. To us these remarks do not appear to be either proper or just. By making these remarks the learned Chief Justice has let down his office as well as his court. In the objective discharge of judicial functions there is little justification, nay, none-at-all to assume any attitude other than of judicial restraint or to use a language while referring to one's colleagues other than that which has been hitherto adopted by long usage."

(iii) Such restraint was due even for parties, or their witnesses as seen in A.M. Mathur v. Pramod Kumar Gupta,

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referring to the decision of this Court in State of M.P. v. Nandlal Jaiswal where Bhagwati, C.J., speaking for the Court had observed: (SCC p.615, para 43)

" We may observe in conclusion that judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognize that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice."

Cases need not be multiplied on the point.

27. Therefore, one of the main principles is that a judge should take special care in making disparaging remarks against a judge of a subordinate court or against a person or authority whose conduct comes in for consideration before him in cases to be decided by him. Making uncalled for remarks against

the said persons or authorities would be violation of judicial discipline."

For the reasons aforementioned, we are of the opinion that the impugned judgment, so far as it relates to adverse remarks made against the appellant as also the directions issued to the Government of Tamil Nadu to initiate proceedings against him should be set aside.

The appeal is allowed accordingly.

[S.B. SINHA]

.....J.

.....J
[CYRIAC JOSEPH]

New Delhi,
November 25, 2008.