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Crl.A.No. 966 OF 1998
ITEM NO.102 COURT NO. 5 SECTION IIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 966 OF 1998

Anjani K. Verma Appellant (s)

Versus

State of Bihar & Anr. Respondent (s)

(With Office Report)

Dated: 24/03/2004: This appeal was called on for hearing today.

CORAM

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE S.B. SINHA

For Appellant (s)Mr. SB. Sanyal, Sr.Adv.
Mr. DP. Mukherjee, Adv.

For Respondent (s)Kumar Rajesh Singh, Adv.
Mr. BB. Singh, Adv.

UPON hearing counsel, the Court made the following
O R D E R

The appeal is allowed.

(S. Thapar)(V.P. Tyagi)
PS to RegistrarCourt Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO..966 OF 1998

Anjani K. Verma Appellant (s)

versus

State of Bihar & Anr.Respondent (s)

O R D E R

This appeal is directed against the judgment of the High Court whereby petition filed under Section 482 of the Code of Criminal Procedure by the appellant for expunging the remarks against him as contained in the judgment of learned Session Judge dated 10th February, 1998, was dismissed.

At the outset, we may observe that a judicial officer who exceeds the limits of propriety and conduct and does not render justice in accordance with the facts of the case and the law, needs no protection from the superior courts. But, at the same time, while passing strictures against a member of subordinate judiciary utmost care and caution is required to be taken, also having regard to the stress and conditions under which, by and large, the judicial officers have to render justice. It would be appropriate to remember what was said long time ago by Justice Gajendragadkar, as noticed in the decision of this Court in Braj Kishore Thakur Vs. Union of India & Others [1997 (4) SCC 65], in the following words:

"A quarter of a century ago Gajendragadkar, J. (as he then was) speaking for a Bench of three Judges of this Court, in the context of dealing with the strictures passed by a High Court against one of its subordinate judicial officers (suggesting that his decision was based on extraneous considerations) stressed the need to adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary more so "because the Judge against whom the imputations are made has no remedy in law to vindicate his position" (Ishwari Prasad Mishra V. Mohd. Isa). This Court had to repeat such words on subsequent occasions also. In K.P. Tiwari V. State of M.P. this Court came across certain observations of a learned Judge of the High court casting strictures against a Judge of the subordinate judiciary and the court used the opportunity to remind all concerned that using intemperate language and castigating strictures at the lower levels would only cause public respect in judiciary to dwindle. The following observations of this Court need repetition in this context:

"The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. This is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the Judges and hence provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err.... It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks - more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however, gross it may look, should not, therefore, be attributed to improper motive."

In the same judgment an earlier decision in Kashinath Nath Roy Vs. State of Bihar [1996 (4) SCC 539] has been referred to the following effect:

"It cannot be forgotten that in our system, like elsewhere, appellate and revisional courts have been set up on the presupposition that lower courts would in some measure of cases go wrong in decision-making, both on facts as also on law, and they have been knit-up to correct those orders. The human element in justicing being an important element, computer-like functioning cannot be expected of the courts; however hard they may try and keep themselves precedent-trodden in the scope of discretions and in the manner of judging. Whenever any such intolerable error is detected by or pointed out to a superior court, it is functionally required to correct that error and may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the court and independence of judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear, and result-orienting, but rarely as a rebuke. Sharp reaction of the kind exhibited in the afore-extraction is not in keeping with institutional functioning. The premise that a Judge committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge - Subordinate, unless there existed something else and for exceptional grounds."

Reverting to the present case, the appellant as a judicial officer (Judicial Magistrate Ist Class, Dhanbad), by judgment dated 6th May, 1997 trying a case under Section 498A IPC and Section 3/4 of Dowry Prohibition Act, acquitted the two accused who had been charged for the said offence giving them benefit of doubt. It is a detailed judgment setting out the evidence in the case and recording reasons for the order of acquittal. The order of acquittal also records that virtually no investigation has been done by the investigating officer and charge sheet was submitted against the accused without taking any pain for bringing the truth before the Court. In this view, conclusion was reached that the entire prosecution story of alleged torture and demand of dowry was surrounded with shadow of doubts, on account whereof benefit of doubt was given to the accused.

The Sessions Judge, Dhanbad, trying altogether a different case for offence under Sections 364 , 302 and Section 201 read with Section 34 of the Indian Penal Code, by judgment dated 7th Feb ruary, 1998 convicted one of the accused and acquitted the other. In the course of the judgm ent, the Sessions Judge made observations in respect of order of acquittal above referred whi ch had been passed by the appellant. The Sessions Judge though observed that it was not the p roper forum to make observations against the Magistrate, that is to say, the Sessions Judge wa s trying an altogether separate case and the Magistrate had decided an altogether separate cas e. It was not an appeal against the order of the Magistrate. It may also be noted that again st the order dated 6th May, 1997, neither an appeal was filed by the State nor that order was challenged by the complainant. Further it is nobody's case that any notice was issued to the appellant before passing the strictures against him. In his judgment the Sessions Judge obser ved that the appellant was not at all justified in recording acquittal of the accused. The co nviction of the accused could have very well be based on the evidence brought on record. It d oes not appear that the evidence that had been led in the case decided by the appellant was be fore the Sessions Judge in the case in which these strictures were passed. Only a copy of the judgment was placed on the record of the Sessions Trial by the accused by way of defence. We are at a loss to understand how the Sessions Judge without record and evidence of the case cam e to the conclusion that the acquittal by the appellant was not justified and accused should h ave been convicted. Be that as it may, it is further evident that soon after passing the judg ment, learned District & Sessions Judge by issue of notice dated 3rd March, 1998 to the appell ant, asked him to furnish explanation as to the circumstances under which the order of acquitt al was passed. In that notice it has been stated that the order of acquittal was based on ext raneous considerations. In this appeal, however, the question is not about the validity or o therwise of that notice but is about the correctness of the strictures passed and the order of the High Court declining to expunge the remarks when a petition under Section 482 is filed by the appellant. The only reason given by the High Court is that the case does not require interference. The petition was dismissed in limine without issuance of notice to the responde nts. Further it appears that the observations in the impugned judgment of the High Court that no show cause notice had been issued to the appellant, are also not correct, since, as above noticed, the show cause notice dated 3rd March, 1998 had been issued. A perusal of petition un der Section 482, Cr.P.C. shows that the notice dated 3rd March, 1998 had been annexed thereto. Moreover, issue of notice was not very relevant to decide the correctness of order passing s trictures against the appellant.

In view of the aforesaid factual position, ordinarily, we would have remanded the case to the High Court for fresh decision of petition under Section 482 of Code of Criminal Procedure. Bu t, having regard to the long pendency of the matter and having perused the material placed bef ore us, we have no doubt that on the present facts and circumstances, there was no justificati on for passing the strictures against the appellant. In this view, we expunge the strictures passed against the appellant in para 20 of the judgment dated 7th February, 1998 rendered in S essions Trial No.364 of 1995 by Sessions Judge, Dhanbad.

The appeal is accordingly allowed.

.....J
(Y.K. Sabharwal)

.....J
(S.B. Sinha)

New Delhi,
March 24, 2004