

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.889/2015

A.R. Khan

Vs.

State of M.P.

M.Cr.C. No.927/2015

Manohar Soni

Vs.

State of M.P.

Shri Abhiseksh Tugnawat, learned counsel for the applicants.
Shri R.S. Chouhan, learned G.A. for the respondent/State.

ORDER

(Passed on 30/04/2015)

This common order shall govern the disposal of M.Cr.C. Nos.889/2015 and 927/2015.

2. These applications are filed under Section 482 of Cr.P.C. for quashment of adverse remarks passed against the present applicants by 3rd Additional Sessions Judge, Ujjain in judgment passed in Sessions Trial No.198/2012 dated 27.08.2014.

3. The present applicants were working in Madhya Pradesh Civil Supplies Corporation, Division Ujjain. As per the prosecution story, in Sessions Trial No.198/2012 on 16.06.2011, a meeting was going on in the office of labour department. The complainant was also attending the meeting. In this meeting, the present applicants were there and one another officer was also there. During the meeting the accused Aziz S/o Ghulamnabi Musalman came in the office and started misbehaving with the present applicants. Thereafter, the accused fired a gun shot due to which injury was caused to a person who was present there.

4. While passing the judgment, the learned Additional Sessions Judge acquitted the accused from all the charges, however, in para 46, the learned Additional Sessions Judge passed the following adverse remarks against the present applicants:-

“46. निर्णय समाप्त करने के पूर्व मैं यह टिप्पणी करना आवश्यक समझता हूँ कि, नागरिक आपूर्ति विभाग के एम.डी. के द्वारा इस संबंध में ठेकेदार शेर खा, अब्दुल रउफ असा-2 एवं मनोहर सोनी असा-3 प्रबंधक के विरुद्ध नोटिस देकर ठेकेदार के विरुद्ध कार्यवाही करे एवं इस बात की विभागीय जांच की जावे कि उन्होंने शेर खान का ठेका निरस्त करने का बाद दोबारा ठेका क्यों दिया एवं जब दिनांक 16.06.2011 को श्रम विभाग में कोई मिटिंग नहीं थी, तब न्यायालय में आकर उनके द्वारा दिनांक 16.06.2011 के संबंध में मिटिंग होने का कथन क्यों दिया और मिटिंग में उपस्थित होने की जानकारी दी। जो यह दर्शित करता है

कि या तो उपरोक्त अनाधिकृत रूप से अपने कार्यालय से दिनांक 16.06.2011 को अनूपस्थित थे और उनके द्वारा न्यायालय में झूठी गवाई इस संबंध में दी गई।”

5. This application is filed to expunge the above quoted adverse remarks passed against the present applicants. Learned counsel for the applicants places reliance on judgment of Hon'ble Apex Court in case of **State of U.P. Vs. Mohd. Naim, AIR 1964 SC 703** and also the judgment of division Bench of this Court in **Sushil Ranjan Singh Vs. State of M.P., 2006(5) M.P.H.T. 489** where division Bench of this Court while placing reliance on judgment of Apex Court in case of **Mohd. Naim (supra)** observed that while passing adverse remarks against persons whose conduct came into consideration before the Court of law in cases to be decided by them, the following aspect to be considered :-

“(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.”

6. The learned counsel also relying on judgment of co-

ordinate Bench of this Court in **Shiv Pal Singh Vs. State of M.P., 2013(II)MPWN 29**. In this case also Court observed that when no opportunity of hearing afforded and adverse remarks was passed, such remarks should be expunged.

7. Applying the principle laid down in aforesaid cases, in the present case the adverse remarks passed against the present applicants was totally uncalled for. He was not granted an opportunity to explain his conduct before the remarks were passed and in this view of the matter, the adverse remarks passed by the learned Judge deserves to be expunged. Accordingly, this application is allowed. The adverse remarks passed by the learned Sessions Judge in para 46 of the judgment which were quoted above are expunged.

8. Before parting with the order, it may be observed that in case the competent authority initiated a departmental enquiry against the present applicants, the departmental enquiry shall not be affected by expungement of the adverse remarks passed by the Court, however, the observation and inferences drawn by the learned Additional Session Judge shall not be taken into consideration and the departmental enquiry should be conducted independently and on the

evidence that was brought on record during the enquiry.

9. With that direction and observations, these applications stand disposed of.

(ALOK VERMA)
JUDGE

Kafeel