IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

MISC. CRIMINAL CASE No. 8753 of 2023

BETWEEN:-

GOPAL KRISHNA GEHLOT S/O MR. NARANYAN JI, AGED 67 YEARS, OCCUPATION: RETIRED POLICE OFFICER INDRA NAGAR, NEEMUCH DISTRICT NEEMUCH (MADHYA PRADESH)

.....APPLICANT

(SHRI SAARANSH JAIN AND SHRI AJAY BAGADIYA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY VALLABH BHAWAN, DISTRICT BHOPAL. (MADHYA PRADESH)**
2. **DIRECTOR GENERAL OF POLICE POLICE HEADQUATERS JAHANGIRABAD DISTRICT BHOPAL (MADHYA PRADESH)**
3. **INSPECTOR GENERAL OF POLICE ZONE UJJAIN (MADHYA PRADESH)**
4. **SUPERINTENDANT OF POLICE AGAR MALWA (MADHYA PRADESH)**
5. **STATION HOUSE OFFICER AGAR MALWA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SUDHANSHU VYAS – PL)

Reserved on : 13.07.2023

Pronounced on : 25.08.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, ***Hon'ble Shri Justice Prakash Chandra Gupta***

pronounced this day:

ORDER

This petition u/S 482 of the Cr.P.C. filed by the applicant for expunging remarks passed in Paragraph No.29 of the impugned judgment dated 30.08.2022 (Annexure P-22) delivered by Ist Additional Sessions Judge, Agar in S.T. No.100027/2014 and for quashing of FIR/Crime No.641/2022 (Annexure P-12) registered at P/S Agar, Agar Malwa [M.P.].

2. Brief facts of the case are that on 09.12.2013, some unknown persons with intent to kill Roop Singh by means of *lathi* assaulted him. He sustained grievous injuries on his head and other body parts. An FIR was lodged on the same day by his nephew Pawan Batham at P/S Agar against 3 – 4 unknown persons. Due to injuries, Roop Singh got unconscious and was taken to Community Health Centre, Agar, wherefrom, he was referred to Sanjeevni Hospital, Ujjain. On 10.12.2013, ASI RB Singh Chouhan wrote a letter to Medical Officer at Sanjeevni Hospital, Ujjain to take statement of injured person, but the doctor had given opinion that the injured is not in a state to give statement. Thereafter, statement of eye-witnesses u/S 161 of Cr.P.C. of Shubham and Umesh were recorded by present applicant, who was posted as SI at P/S Agar. He also recorded statement of Parvez and Heeralal and it was found that the accused persons Siddhu Maharaj @ Siddhu Bhartiya and his wife Tulsibai had assaulted Roop Singh. When Roop Singh was admitted at Sanjeevni Hospital, Ujjain, then applicant had also recorded his statement. After completion of investigation, charge-sheet has been filed.

3. During trial of the aforesaid case, it was found by the trial Court that the applicant has not mentioned the name of injured Roop Singh in

witness list annexed with charge-sheet. His name was also not mentioned as a witness in the trial program filed by Additional Government Pleader. The applicant was examined before the trial Court on 25.08.2022, (Annexure P-9), at that time case diary was not available and the present applicant was retired from the service. The applicant had stated that he had not recorded the statement of Roop Singh, but after writing several letters to the Police Station and Senior Police Officers, on 26.12.2022 case diary was submitted. Then it appeared that the applicant, on 16.12.2023 had recorded statement of Roop Singh. The trial Court has also received information that Roop Singh had died one year ago, therefore, he could not be examined before the trial Court. Other eye-witnesses have also turned hostile and have not supported the case of prosecution. Therefore, the accused persons have been acquitted. Thereafter, the learned trial Court had observed that the applicant had recorded the statement of injured Roop Singh, but he gave false statement in the Court that he had not recorded the statement of Roop Singh. The applicant had also not annexed the statement of injured person with the charge-sheet. Therefore, on the aforesaid ground in Paragraph 29, the learned trial Court has passed remarks which runs as under:-

> "*29. इस प्रकार यदि ऐसे लापरवाह विवेचनाकर्ता पुलिस अधिकारी के विरूद्ध सख्त एवं दण्डात्मक कार्यवाही नहीं की गई तो न्याय का उद्देश्य विफल हो जायेगा तथा न्यायालय केवल विवेचनाकर्ता अधिकारी पर निर्भर रहेंगे और पीडित वास्तविक न्याय से वंचित हो जायेंगे जो कि देश और समाज के हित में नहीं होगा। अतः ऐसे उत्तरदायी विवेचनाकर्ता अधिकारी के विरूद्ध सख्त दण्डात्मक कार्यवाही किया जाना न्यायोचित होने से इस निर्णय की सत्यप्रति पुलिस अधीक्षक आगर मालवा को इस निर्देश सहित प्रेषित की जाये कि वह उत्तरदायी पुलिस अधिकारी के विरूद्ध आवश्यक जांच उपरांत प्रथम सूचना रिपोर्ट पंजीबद्ध कराकर वैधानिक कार्यवाही करने का कष्ट करें। निर्णय की एक–एक प्रति डी.जी.पीत्र पुलिस मुख्यालय भोपाल और आई.जी. झोन उज्जैन को सूचनाथ एवं आवश्यक कार्यवाही हेतु प्रेषित की जाये।*

4. Learned counsel for the applicant submits that at the time of the examination of the applicant before the trial Court, he was already retired and the case diary was not available before the Court. A letter (Annexure P-3) was annexed with the case, which was written by I.O. to the concerning doctor, wherein it was mentioned by the doctor that the injured person is not in position to give statement. In this situation, the applicant had given statement on basis of his memory that he has not recorded statement of injured person. Before passing the adverse remarks, the applicant has not been given any show cause notice, in the aforesaid respect by the trial Court and without giving opportunity to hear the applicant, no remarks could be passed. Apart from that the learned trial Court had directed to lodge FIR against the applicant because he committed offence u/S 193 and part (III) of S.201. In the direction of the learned trial Court, an FIR (Annexure P-12) is lodged against the applicant at P/S Agar. Statement of injured person was annexed with case diary, but the case diary was not produced by SHO, Agar, despite of many requisition letter issued by the trial Court. The case diary was produced by the SHO, Agar after examination of the applicant. Therefore, it cannot be said that the applicant has deliberately and intentionally disappeared the material evidence.

5. Further it has been submitted that as per provision of S. 195(b)(i) for the offence u/S 193, no Court can take cognizance except on the complaint in writing of that Court are by such officer of the Court as that Court may authorize in writing on this behalf or of some other Court to which that Court is subordinate. Admittedly, the complaint has not been

filed by the trial Court or by such aforesaid officer, therefore, lodging of FIR punishable u/S 193 is misuse of process and also is against provision of law. Therefore, it is prayed that alleged adverse remark may be expunged and subsequent FIR also be quashed. The learned counsel has placed reliance upon the case of ***State (NCT of Delhi) through Deputy Commissioner of Police South District, Delhi V Prince*** **[order dated 06.04.2023 passed by Delhi High Court] and** ***Dr. Dilip Kumar Deka And Anr. V State of Assam And Anr.*** **[(1996) 6 SCC 234].**

6. On the other hand, learned counsel for the respondent/State has objected the prayer and supported the impugned remarks and FIR.

7. I have heard learned counsels for the parties and perused the records.

8. It is pertinent to reproduce here provisions of S.195(b)(i), which runs as under:-

> "*195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—*
>
> *(1) No Court shall take cognizance—*
>
> *(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or*
>
> *(ii) of any abetment of, or attempt to commit, such offence, or*
>
> *(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;*
>
> *(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211*

> *(both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*
>
> *(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*
>
> *(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii)*
>
> *[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.]..."*

9. It is clear from aforesaid provision of S.195(1)(b)(i) that if the offence punishable u/S 193 of IPC, false evidence given in the Court, no Court shall take cognizance except on the complaint in writing of that Court or by officer of the Court authorized by that Court in writing in this behalf. Admittedly, that trial Court in place of filing complaint, directed the Police to lodge an FIR against the applicant, which is not permissible in law.

10. In the case of ***Prince (Supra)***, the Delhi High Court in Paragraph 9 has observed as under:-

> *"9. Reliance was also placed on the decision in State (NCT of Delhi) v. Sumit Gupta, 2023 SCC OnLine Del 1441 where this Court has stated as under:*
>
> *"7. Also, no purpose would be served in rephrasing or restating the statements made by the Hon'ble Supreme Court in the decisions cited above, since a referral to the same and perusal of the extracts (supra), would make the position*

incontrovertibly and categorically clear. All is needed is for Courts to heed these views, observations and directions in their true letter and spirit and avoid unnecessary waste of judicial time.

8. In these facts and circumstances, it is directed that all extrajudicial remarks made against the police officers including the IO, DCP (South) and the Commissioner of Police are expunged from the orders dated 08th August, 2022, 17th August, 2022, 24th August, 2022, 29th August, 2022 and 31st August, 2022 passed by the Ld. ASJ, South District, Saket Courts in Bail Application 1395/2022 arising out of FIR No. 267/2022 PS Sangam Vihar, Delhi, as also all directions for conducting inquiries against police officers or notices that have been issued to the police officers for contempt or for criminal proceedings or otherwise are recalled and stand deleted from the said orders."

10. In the case of ***Dr. Dilip Kumar Deka (Supra)***, the Supreme Court has held as under:-

"*6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a Court of law in cases to be decided by it were succinctly laid down by this Court in State in Uttar Pradesh vs. Moh. Naim (1964) 2 SCR 363. Those tests are:*

(i) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(ii) Whether there is evidence on record bearing on that conduct justifying the remarks; and

(iii) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in Jage Ram, Inspector of Police & Anr. vs. Hans Raj Midha AIR 1972 SC 1140, R.K. Lakshmanan vs. A.K. Srinivasan AIR 1975 SC 1741 and Niranjan Patnaik vs. Sashibhusan Kar & Anr. AIR 1986 SC 819.

> *7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Comdemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice.*

11. From the aforesaid principles given by the Apex Court, it is clear that the three essential components for the remark against a person includes that whether the party was in question before the Court or had an opportunity to defend himself alongwith any corroborating evidence of their conduct justifying the remarks coupled with its necessity for recording it.

12. In the instant case, admittedly before passing alleged remark the learned trial Court has not given an opportunity, to explain or defend, to the applicant and has passed adverse remarks against the applicant, the learned trial Court has made and casted a serious aspersion on the applicant affecting his character and reputation and may ultimately affect his image. Principle of natural justice is violated by such error of the trial Court by ignoring the prime aspect of giving an opportunity of being heard to the applicant. Therefore, impugned remarks is liable to be expunged as well as subsequent FIR lodged at instance of learned trial Court is also liable to be quashed.

13. Consequently, petition is allowed and impugned remark given in Paragraph 29 of impugned judgment is expunged and subsequent

alleged FIR is hereby quashed.

(PRAKASH CHANDRA GUPTA)
JUDGE

Shruti

SHRUTI JHA