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never put forward before the learned Judges. As the point is one not of pure law but springs from the factual inadequacy of the property mortgaged to him to discharge his debt it is too late for the appellant to raise such a plea in this Court.

The appeal fails and is dismissed.

Appeals dismissed.

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March 14

DR. RAGHUBIR SHARAN

v.

THE STATE OF BIHAR

(K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR JJ.)

Criminal Trial—Revision application to High Court for expunging remarks from judgment of Lower Court—Extent of inherent power of High Court—Jurisdiction when to be exercised—Code of Criminal Procedure (Act V of 1898), s. 561A.

In a criminal case pending in the court of a Munsif Magistrate, two accused persons moved a bail application on the ground of serious illness in jail. The Magistrate called upon the appellant, who was at that time a Civil Assistant Surgeon and also Superintendent of the Sub-Jail, to submit a medical report. On the report, the Magistrate released the accused persons on bail but made certain observations against the appellant as a doctor, which are sought to be expunged. Against the said order, the medical officer filed a revision petition in the High Court which was dismissed. On appeal by special leave the appellant's main contention was that the High Court should have expunged the remarks which would affect the appellant's future official career. The question for decision in this court was whether in a case where the judgment has become final, that is to say, when no appeal has been preferred against the judgment by an aggrieved party, the High Court can expunge any remarks found therein at the instance of a third party.

Held, (per Mudholkar and Dayal JJ.), that every High Court as the Highest Court exercising criminal jurisdiction in a

state has inherent power to make any order for the purpose of securing the ends of justice. This power extends to expunction or ordering expunction of irrelevant passages from a judgment or order of a Subordinate Court and would be exercised by it in appropriate cases for securing the ends of justice. Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers such as by passing comment upon a matter not relevant to the controversy before it and which is unwarranted or is likely to harm or prejudice another.

The remarks in the present case were not of such a character, so as to call for the exercise of the extraordinary power of the High Court under s 561 A. The appeal, therefore, must fail.

The State of U. P. v. *J. N. Bagga*, Crl. A. No. 122/1959 decided on Jan. 16, 1961, In the matter of *H. Daly* (1927) I. L. R. 9 Lahore 269, *Panchanan Banerji* v. *Upendra Nath*, (1926) I. L. R. 49 All. 254; *Rogers* v. *Shrinivas Gopal Kewale*, I. L. R. (1940) Bom. 415, *Emperor* v. *C. Dunn*, (1922) 44 All. 401; *Emperor* v. *Sidaramaya*, (1917) 19 Bom. L. R. 912 and *State* v. *Nilkanth Shripad Bhave*, I. L. R. (1954) Bom. 148, referred to.

Per Subba Rao J. In the present case the following principles emerge : (1) A judgment of a criminal court is final; it can be set aside or modified only in the manner prescribed by law. (2) Every Judge, whatever may be his rank in the hierarchy, must have an unrestricted right to express his views in any matter before him without fear or favour. (3) There is a corelative and self imposed duty in a judge not to make irrelevant remarks or observations without any foundation, specially in the case of witnesses or parties not before him, affecting their character or reputation. (4) An appellate court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it.

Emperor v. *Nazir Ahmad*, A. I. R. 1945 P. C. 18, *Jairan Das* v. *Emperor*, (1945) 47 Bom. L. R. 634 (P. C.), *Panchanan Banerji* v. *Upendranath Bhattacharji*, (1926) I. L. R. 49 All. 254. In the matter of *Daly*, (1927) I. L. R. 9 Lahore 269, *Rogers P. J.* v. *Shrinivas Gopal* I. L. R. 1940 Bom. 415, *Bhutnath Khanwas* v. *Dasrathi Das*, A. I. R. 1941 Pat. 544, *In re Public Prosecutor*, A. I. R. 1944 Mad. 614, referred to.

State v. *Nilkanih Shripad*, I. L. R. 1954 Bom. 148, held applicable.

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Held further, that a judicial officer does not surrender his judgment in medical matters to the *ipse dixit* of the doctor. In this case the observation of the Magistrate was neither irrelevant nor without foundation and the appellate court was right in not treating it as an exceptional case and judicially correct the said observations. Besides, it is not such an exceptional case which calls for the interference of this court under Art. 136 of the Constitution.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 87 of 1961.

Appeal by special leave from the judgment and order dated October 7, 1960 of the Patna High Court in Criminal Revision No. 460 of 1960.

B. B. Tawakley, Mrs. E. Udayaratnam and *R. C. Prasad,* for the appellant.

D. P. Singh, M. K. Ramamurthi, R. K. Garg and *S. C. Agarwal,* for respondent No. 1.

1963. March 14. Subba Rao J. delivered his own Judgment. The Judgment of Dayal and Mudholkar JJ., was delivered by Mudholkar J.

Subba Rao J.

SUBBA RAO J.—I have perused the judgment prepared by my learned brother Mudholkar J. I agree that the appeal should be dismissed. But I would prefer to give my own reasons for doing so.

The facts giving rise to this appeal are simple. The appellant is a medical practitioner and during the year 1959 he was acting as Deputy Superintendent, Jahanabad Sub-Divisional Hospital and Superintendent, Sub Jail, Jahanabad. A criminal case was pending before the Court of the Munsif-Magistrate, First Class, Jahanabad, and the two accused therein filed a petition in that Court for releasing them on bail. On October 3, 1959, the learned Munsif-Magistrate called for a report from the said medical officer of his opinion on the health of the said accused. The said officer examined the

accused and sent the following report to the Munsif-Magistrate :

> "Examined accused Ramsewak Dusadh and Ramdeo Dusadh of village Havellipur, P. S. Ghosi, district Gaya and found that both of them are suffering from Hookworm infections and are anaemic."

On October 19, 1959 the learned Munsif-Magistrate made the following order granting bail to the said accused :

> "In view of the order dated 3-10-1959 a petition signed by Superintendent, Sub-Jail, Jahanabad, is received. In this petition it is mentioned that the accused persons are suffering from Hookworm infection and hence they are anaemic. From the petition it appears that its body portion has been written by somebody else and it is simply signed by Mr. R. Saran, Superintendent. It is curious to note that no actual examination report has been attached with this petition. It is an extreme case of carelessness on the part of the Doctor concerned. He ought to have realised that a judicial order would be passed on his actual report and not on his petition. Hence let the copy of this petition and order sheet he forwarded to the Civil Surgeon, Gaya, for information. It is argued by the lawyer appearing on behalf of the accused that these accused persons are poor and would not be in a position to defend themselves, in case they would not be allowed bail. I therefore on considering their poor circumstances and ill health allow them to remain on bail on Rs. 500/- with one surety for the like amount."

After making some infructuous attempts through administrative channels to get the said remarks

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against him expunged, the said medical officer filed a revision petition under ss. 435 and 439 of the Code of Criminal Procedure against the said order in the High Court of Judicature at Patna. The High Court dismissed the revision petition. Hence the appeal.

Learned counsel for the appellant contendend that the remarks made by the learned Munsif-Magistrate were unjustified and groundless and that they would affect the appellant's future official career and, therefore, the High Court should have expunged the said remarks. Learned counsel for the respondents, apart from justifying the remarks, contended that the High Court had no jurisdiction to expunge the remarks from the judgment which had become final.

At the outset I would like to make it clear that I am not expressing my opinion on the question whether the High Court in an appeal or a revision filed therein by an aggrieved party can expunge the remarks made by the trial Court in its judgment in disposing of the said appeal or revision. I am only addressing myself to the limited question whether in a case where the judgment has become final, that is to say, when no appeal has been preferred against the judgment by an aggrieved party, the High Court can expunge any remarks found therein at the instance of a third party. I am also confining the scope of my judgment to the power of an appellate Court to expunge remarks in a criminal case.

The only power on which reliance is placed by learned counsel for the appellant is that contained in s. 561A of the Code of Criminal Procedure, which reads :

> "Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give

effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

The Judicial Committee in two decisions, *viz.*, *Emperor* v. *Nazir Ahmad* (1), and *Jairam Das* v. *Emperor* (2), had taken the view that the said section gives no new powers but only provides that those which the Court already inherently possesses shall be preserved.

What is the scope of this inherent power? Can it be invoked in a case where the judgment has become final to expunge the remarks made therein? By expunging remarks what does the appellate Court do? Substantially it strikes out a part of the judgment. Sometimes the part struck out may be an integral part of the judgment, that is to say, the conclusion may not flow in the absence of the part deleted. On some occasions remarks made by a Court on the credibility of a witness, however exaggerated they may be, may be the sole reason for not believing that witness. There may also be other occasions when the remarks may be so irrelevant that they may not have any direct impact on the judgment, but such instances will be very rare. Whatever may be the decree of impact, the result of expunging remarks from a judgment is that it derogates from its finality. There is no provision in the Code of Criminal Procedure which enables an appellate Court in a case where the order of a lower Court has become final between the State and the accused to modify the said order by deleting or striking out some of the observations found therein. Does s. 561 A of the said Code confer such a power? The conflicting views on this question are reflected in some of the judgments cited at the Bar. Sulaiman J. in *Panchanan Banerji* v. *Upendra Nath Bhattacharji* (3), holds that s. 561A of the Code of Criminal Procedure, which was added in 1923, confers such a power and

(1) A. I. R. 1945 P. C. 18, 22. (2) (1945) 47 Bom. L. R. 634; (P.C.)
(3) (1926) I. L. R. 49 All. 254, 256.

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he does not see any reason why such an inherent power should not comprise a power to order a deletion of passages which are either irrelevant or inadmissible and which adversely affect the character of persons before the Court. Tek Chand J. *In the matter of Daly* (1), also concedes such a power to an appellate Court. Beaumont C. J. in *Rogers, P. J.* v. *Shriniwas Gopal* (2), remarks tersely that no Court can claim inherent power to alter the judgment of another Court. Dhavle J. in *Bhutnath Khawas* v. *Dasrathi Das* (3), agrees with Beaumont C. J. in holding that no Court can claim inherent power to alter the judgment of another Court. The Madras High Court in *In re Public Prosecutor* (4), holds that an appellate Court has power to expunge remarks in a judgment in a suitable case. The Full Bench of the Bombay High Court in *State* v. *Nilkanth Shripad* (5), posed the question thus: "The important question that arises is whether a superior Court has inherent power to alter the record, as it were, by changing or altering a judgment which has already been delivered and has become final as far as that particular Court is concerned", and expressed its view as follows:

> "A judgment of a lower Court may be wrong; it may even be perverse. The proper way o attack that judgment is by bringing it undtr the scrutiny of the superior Court and g ettieg the judgment of the lower Court judicia[ny corrected. ....Iln our opinion, the inherent power that the High Court possesses is, in proper cases, even though no appeal or revision may be preferred to this Court, to judicially correct the observations of the lower Court by pointing out that the observations made by the Magistrate were not justified or were without any foundation or were wholly wrong or improper."

With respect, I agree with the conclusion arrived

(1) (1927) I. L. R. 9 Lah. 269, 275. (2) I L.R. 1940 Bom. 415, 418.
(3) A. I. R. 1941 Pat. 544. (4) A.I.R. 1944 Mad. 614.
(5) I.L.R. 1954 Bom. 148, 157, 160.

at by the Bombay High Court. This judgment, if I may say so with respect, reconciles the doctrine of finality of a judgment and the necessity to give relief in an appropriate case to a person who is not a party to a proceeding, if uncharitable, unmerited and irrelevant remarks are made against him without any foundation whatsoever. The other decisions taking the contrary view infringe the fundamental principle of jurisprudence that a judgment made by a Court, however inferior it may be in the hierarchy, is final and it can only be modified in the manner prescribed by the law governing such procedure. All the learned Judges construing the scope of s. 561A of the Code of Criminal Procedure have agreed on one question, namely, to preserve the independence of judicial officers so that they may express their views without fear or favour. The observations made by some of the Judges are apposite in this context. Tek Chand J. observed in *In the matter of Daly* (1) :

> "It is of the utmost importance to the administration of justice that Courts should be allowed to perform their functions freely and fearlessly and without undue interference by this Court."

Chagla C. J. in *State* v. *Nilkanth Shripad* (2), observed :

> "It is very necessary, in order to maintain the independence of the judiciary, that every Magistrate, however junior, should feel that he can fearlessly give expression to his own opinion in the judgment which he delivers. If our Magistrates feel that they cannot frankly and fearlessly deal with matters that come before them and that the High Court is likely to interfere with their opinions, the independence of the judiciary might be seriously undermined."

I entirely agree with the remarks. I reiterate that every judicial officer must be free to express his mind

(1) (1927) I.L.R. 9 Lah. 269, 275. (2) I.L.R. 1954 Bom. 148, 157, 160.

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in the matter of the appreciation of evidence before him. The phraseology used by a particular Judge depends upon his inherent reaction to falsehood, his comparative command of the English language and his felicity of expression. There is nothing more deleterious to the discharge of judicial functions than to create in the mind of a Judge that he should conform to a particular pattern which may, or may not be, to the liking of the appellate Court. Sometimes he may overstep the mark. When public interests conflict, the lesser should yield to the larger one. An unmerited and undeserved insult to a witness may have to be tolerated in the general interests of preserving the independence of the judiciary. Even so, a duty is cast upon the judicial officer not to deflect himself from the even course of justice by making disparaging and undeserving remarks on persons that appear before him as witnesses or otherwise. Moderation in expression lends dignity to his office and imparts greater respect for judiciary. But occasions do arise when a particular Judge, without any justification, may cast aspersions on a witness or any other person not before him affecting the character of such witness or person. Such remarks may affect the reputation or even the career of such person. In my experience I find such cases are very rare. But if it happens, I agree with the Full Bench of the Bombay High Court that the appellate Court in a suitable case may judicially correct the observations of the lower Court by pointing out that the observations made by that Court were not justified or were without any foundation were wholly wrong or improper. This can be done under its inherent power preserved under s. 561-A of the Code of Criminal Procedure. But that power must be exercised only in exceptional cases where the interest of the Party concerned would irrevocably suffer.

From the aforesaid discussion the following

principles emerge : (1) A judgment of a criminal Court is final ; it can be set aside or modified only in the manner prescribed by law. (2) Every Judge, whatever may be his rank in the hierarchy, must have an unrestricted right to express his views in any matter before him without fear or favour. (3) There is a correlative and self-imposed duty in a Judge not to make irrelevant remarks or observations without any foundation, especially in the case of witnesses or parties not before him, affecting their character or reputation. (4) An appellate Court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it.

Let me now apply the said principles to the instant case. Here, a bail application was pending before the Magistrate on the ground that the accused were ill. The Magistrate asked the medical officer to report on their health. The said officer sent a report stating that he had examined the accused and that they were suffering from hookworm infection and were anaemic. In the statement of the case the appellant says that he made a clinical examination and also the examination of the stools of the accused; but he did not send along with his report the result of his clinical examination showing the particulars of the blood and stool tests. The learned Munsif-Magistrate pointed out that no actual examination report was attached to the petition (report) and that it was an extreme case of carelessness on the part of the doctor concerned. The Magistrate felt that as a judicial officer he could not accept the mere *ipsi dixit* of the doctor unsupported by the results of clinical examination to come to a conclusion one way or other whether the accused were really so ill as to be let on bail. In the circumstances, if the Magistrate characterised the act of the medicial officer in not sending the detailed report as

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an act of extreme carelessness, can it be said that his inference was such that the appellate Court should treat it as an exceptional case and judicially correct the said observations? Indeed, the High Court in its judgment said :

> "The observation of the learned Munsif-Magistrate does not seem to be wholly unjustified. The doctor should have given the reasons for calling the accused person on whose behalf bail petitions were moved as anaemic."

It rightly concluded thus :

> "In the circumstances, if the Court said that the doctor was careless, I do not think that there is any impropriety in such an observation. It is likely that some other Court may take a different view of the thing, but that is no ground for upsetting the observations of a Court. To accept this contention would amount to placing unnecessary fetters on the discretion of the Court in assessing any witness or any evidence in course of its judgment or order."

With these observations, it dismissed the petition.

Now, the question is whether in such circumstances this Court in exercise of its powers under Art. 136 of the Constitution should interfere with the order of the High Court. Is it such an exceptional case which calls for the interference of this Court? The High Court in exercise of its discretion, for the reasons given by it, refused to expunge the remarks. It is certainly not a case meriting the interference of this Court in its extraordinary jurisdiction.

That apart, I entirely agree with the observations of the High Court. A judicial officer does not

surrendar his judgment in medical matters to the *ipsi dixit* of the doctor. The opinion of a doctor has great weight, provided it is supported by the material on which he formed the opinion. If he does not disclose the particulars of the clinical results, how can the Court come to a conclusion that the accused were so ill as to be released on bail? In the circumstances, the Magistrate said that the doctor was grossly negligent. It is not possible to say that the said observation is either irrelevant or without foundation.

In the result, the appeal fails and is dismissed.

Mudholkar J.

MUDHOLKAR J. In this appeal by special leave from a judgment of the High Court of Patna the question raised is as to the powers of the High Court under s. 561-A of the Code of Criminal Procedure in regard to expunging remarks made in its judgment or order by a court against a person who is neither a party nor a witness to the proceeding.

The question arises this way. A bail application was moved in the court of Mr. B. Rai, Munsif Magistrate, Jahanabad on behalf of two persons who were accused in a criminal case pending in that court on the ground that they were lying seriously ill in jail. On October 3, 1959 the Magistrate passed an order calling upon the Civil Assistant Surgeon at that place, who, we are told, is also Superintendent of the Sub-Jail to report whether the accused persons are ill. On October 7, 1959. Mr. Sharan the Civil Assistant Surgeon, signing as the Superintendent of the Sub-Jail submitted the following report :

"Ref : Copy of order sheet dated 3-10-1959 in G. R. 367/59 Ghosi P. S. case 3 (8)/59.

Sir,

Examined accused Ramsewak Dusadh and Ramdeo Dusadh both sons of Dillan Dusadh of

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village Havellipur P. S. Ghosi, district Gaya and found that both of them are suffering from hookworm infections and are anaemic.

Yours faithfully,
Sd/ x x x "

The report was addressed to the Magistrate. On October 19, 1959 he passed his order releasing the accused persons on bail, in the course of which he made certain observations which are sought to be expunged. For some obscure reason the learned magistrate has regarded what is plainly a report to be a 'petition' and then blamed Dr. Sharan for not realising that a judicial order could be passed only on his report and not "his petition". That is not all. He has found fault with Dr. Sharan because (a) the report appeared to be in the handwriting of some person other than himself and was only signed by him and (b) "no actual examination report was attached with this petition (sic)". For these reasons he observed in his order : "It is an extreme case of carelessness on the part of the Doctor concerned" and ordered that a copy of the 'petition' and the order sheet be sent to the Civil Surgeon, Gaya for information.

The report of Dr. Sharan is couched in the usual form but if the Magistrate felt any doubt about the matter he could well have sought to have it cleared by writing to him for particulars. No doubt, this might have entailed postponment of the case and thus delayed passing an order. But it would seem that the Magistrate did not really think that the report was inadequate. For, acting upon it, he in fact released the accused persons on bail on the very day, that is October 19.

All this is, however, very trivial and is not a kind of matter which ought ever to have been brought up before this Court. No doubt the learned

Magistrate has said that the doctor was careless and by forwarding a copy of the order straight to his departmental superior indicated that he expected action to be taken on the basis of his remarks. But in view of the fact that the learned Magistrate had in fact acted upon the doctor's report and had wrongly characterised it as a petition his remarks could not reasonably have been regarded by the doctor's superiors as being very serious. No harm, much less any irreparable harm, could therefore be expected to result from these remarks.

Upon this view we would not have said anything further. But, Mr. D. P. Singh, appearing for the State of Bihar has raised an objection to the jurisdiction of the High Court under s. 561-A of the Code and since it raises a question of general importance, it is necessary to deal with it. That section reads thus :

> "Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

This provision was introduced in the Code when it was extensively amended in the year 1923. But it does not confer and was not intended to confer any new powers on the High Courts. The courts exist not only for securing obedience to the law of the land but also for securing the ends of justice in its widest sense. All courts, including the High Courts, can exercise such powers as the laws of the land confer upon them as well as such inherent powers to do justice as are preserved expressly or are not taken away by a statute. We shall confine ourselves to the inherent powers of the High Court in criminal cases. Now, s. 561-A says in clear terms that the inherent power of the High Court to do certain things is

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preserved and what we have to ascertain is whether the power to expunge any passage from the judgment of a subordinate court is inherent in the High Court and must, therefore, be deemed to have been preserved.

The power of the High Court to expunge remarks from the judgment or order of a subordinate court while dealing with an appeal from that court is not questioned by Mr. Singh. In fact expunction of remarks was ordered by this Court in appeal in *The State of U. P.* v. *J. N. Bagga* (1), but there is no discussion in the judgment on the point, as the existence of the power was not challenged. We are not concerned here with the powers of the appellate court. The question before us is whether the inherent power of the High Court to secure the ends of justice embraces the power to expunge passages from the judgment of a subordinate court which is independent of its statutory powers to alter, amend or reverse the judgments of subordinate courts in appeals or revisions before it.

Observations made by a subordinate court in its judgment or order may very seriously affect, in a given case, only a party thereto in which event he can, if the observations are irrelevent or unjustifiable, seek redress by appeal or revision, whichever of the remedies is available to him at law. But what if a stranger to the proceeding or a lawyer engaged in the case is affected by the court's remarks of a similar character? Has he no remedy? Must he suffer the consequences of irrelevant or unjustifiable remarks of a court though if similar remarks were made against a party to the proceeding that party is entitled to seek redress? It would be a travesty of justice if an injured stranger to a proceeding should have to suffer unheard as a result of unjustifiable and harmful observations made by a court against him. The case of an injured stranger would be of a kind in

(1) Cr. A. No. 122 of 1959 decided on January 16, 1961.

which redress would be possible only if some court possesses such power and can exercise it to secure the ends of justice. The question is whether the highest court in a State has and must always be deemed to have had such power. The further question is whether the exercise of such power would involve alteration of a judgment or order and if so whether that must be deemed to have been permitted by the Code.

Certain cases were cited at the Bar and we will deal with them in chronological order. The first is *In the matter of H. Daly* (1). In that case Tek Chand J., said that the High Court has power to expunge passages from judgments delivered by itself or by subordinate courts and its power to do so has been put beyond controversy by the enactment of s. 561-A in the Code of Criminal Procedure. While coming to this conclusion the learned Judge has referred to five decisions of the Chief Court of Lahore and pointed out that that court claimed the power to expunge remarks in appropriate cases. It may incidentally be mentioned that he has also referred to the decision in *Panchanan Banerjee* v. *Upendra Nath* (2), in which it was held that the High Court had inherent power to order deletion of passages which are either irrelevant or inadmissible and which adversely affect the character of persons before the Court. It may, however, be mentioned that that was a case where the learned Judge, Suleiman J. was dealing with an appeal against acquittal and ordered the expunction of remarks while exercising appellate jurisdiction though he has referred in this connection to the inherent powers of the court. Neither of these decisions, however, contains any discussion upon that point.

Then there is the decision in *Rogers* v. *Shriniwas Gopal Kawale* (3), in which Beaumont C. J.

(1) (1927) I.L.R. 9 Lah. 269. (2) (1926) I.L.R. 49 All. 254,
(3) I.L.R. (1946) Bom. 415,

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held that the High Court had no power under s. 561-A to expunge passages in judgments which have not been brought before it in regular appeal or revision. There, an application was made under s. 561-A for expunging certain observations criticising a witness made by the Additional Sessions Judge of Poona in a criminal appeal. Dealing with the application the learned Chief Justice observed :

> "It is obvious that, if the jurisdiction exists, its exercise must place the Court in an anomalous position. The Court must go though the record of a case in which it is not called upon to act judicially at the instance of a party who is not aggrieved by the decision, and it may well be that the Court will have to come to a conclusion upon matters not in issue in the proceedings."

He referred to the decision in *Emperor* v. *C. Dunn* (1), and *Emperor* v. *Sidaramaya* (2), in the first of which it was held that the High Court had no such jurisdiction and in the second it was said that it was doubtful whether such jurisdiction exists in the High Court. He expressed disagreement with the view taken in *Panchanan Banerjee's case* (3) and *Daly's case* (4) and observed :

> "With all respect to the learned Judges who have taken a different view, I am quite unable to see how section 561A affects the question. That section provides that nothing in the Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. So that all that the section does is to preserve the inherent powers of the High Court without conferring any additional power. In my opinion no Court can claim

(1) (1922) 44 All. 401.
(2) (1917) 19 Bom. L.R. 912.
(3) (1926) I.L.R. 49 All. 254.
(4) (1927) I.L.R. 9 Lah. 269.

> inherent power to alter the judgment of another Court. All powers in appeal and revision are statutory and not inherent in the superior Court. When once a matter is duly brought before a superior Court, then no doubt inherent powers may be called in aid to enable the Court to do complete justice, but the power to bring a matter in appeal or revision before a superior Court must be conferred by statute or some enactment having statutory effect."

The learned Chief Justice observed that the power of superintendence conferred upon the High Court by s. 224 of the Government of India Act over Courts subordinate to it does not enable the High Court to correct a judgment of a subordinate court and pointed out that ss. 435 and 439 Cr. P.C. only enable the High Court to satisfy itself about the correctness, legality or propriety of any finding, sentence or order of an inferior court or of the regularity of the proceeding before it. Then he observed :

> "When the High Court is hearing an application in appeal or revision, the whole matter is before it and it can make any order consequential or incidental to the order under review and, in my opinion, in such a case the Court is entitled to expunge any remarks in the lower Court's judgment which it thinks ought not to have been made. But it seems to be impossible to say that expunging passages from a judgment giving reasons for an order which is not under appeal involves anything consequential or incidental to the matter in appeal. If the Court thinks that any such action is called for, it can itself send for the record and act regularly in revision."

In the end the learned Chief Justice held that the decision in *Emperor* v. *Dunn* (1), was right and has not been altered by the introduction of s. 561-A.

(1) (1922) 44 All. 401.

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This judgment was partially overruled by a Full Bench in *State* v. *Nilkanth Shripad Bhave* (1). Ghagla C. J., who delivered the judgment of the court concurred with the observation of Beaumont C. J., that no court can claim inherent power to alter the judgment of another court and after pointing out that Beaumont C. J., had also said in his judgment that the Court had inherent jurisdiction to alter the judgment once the matter comes before it in appeal or revision, said :

> "It is difficult to understand, if the High Court has no inherent jurisdiction to alter the judgment of another Court, how that jurisdiction arises merely because the matter comes before the High Court in appeal or revision. Either the Court has inherent jurisdiction or it has not. If it has inherent jurisdiction, it can be exercised either in appeal or in revision, or, ...by an independent application made by the party under s. 561-A."

The learned Chief Justice then quoted the further observations of Beaumont C. J., which we have reproduced earlier and said :

> "It is difficult to understand how the Court can act regularly in revision if there is no effective order which can be challenged in revision. Therefore, in our opinion this judgment was correctly decided to the extent that it laid down that there was no inherent jurisdiction in a superior Court to alter the judgment of another Court. But to the extent that this Division Bench laid down that the power to judicially correct the judgment of a lower Court only arose in appeals and revisions it was not correctly decided. The power of the High Court judicially to correct any subordinate Judge exists independently of applications which come before it by way of

(1) I.L.R. (1954) Bom. 148.

appeal or revision. This Court can judicially correct any subordinate Judge in any application made to it which it can entertain under s. 561-A of the Court."

The learned Chief Justice then referred to an unreported decision of the Bombay High Court in which the view was taken that the Court has jurisdiction to expunge remarks from the judgment of a lower court although the matter was not before it in appeal or revision and in which the Court expressed difficulty in appreciating the view taken in *Roger's case* (1). Then the learned Chief Justice pointed out that he did not find it easy to understand how if, as was said by Beaumont C. J., the power to alter the judgment of an inferior Court is not an inherent power, it can be brought in aid as an inherent power provided only the matter is before the High Court, in what he has called regular revision. According to the learned Chief Justice in entertaining an application under s. 561-A "what the High Court should do is not to expunge remarks but judicially to correct by its judgment the judgment of the lower Court." We also find it difficult to understand what Beaumont C. J. meant when he said on the one hand that the High Court has no inherent power to alter the judgment of an inferior court and on the other that when the matter is before the High Court by way of regular revision it can alter the judgment by exercising its inherent power. Either the High Court has inherent power to alter a judgment of a subordinate court or it has not. If it has no inherent power to do so the mere fact that a regular proceeding arising out of the judgment of the subordinate court is before it would make no difference. For, even then it cannot do anything as its revisional powers under s. 439 Cr. P. C. do not enable it to expunge remarks. Yet, according to the learned Chief Justice, the High Court can then exercise its inherent power. How it can do so when on the

(1) I.L.R. (1940) Bom, 415.

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earlier statement of the legal position, it has no such inherent power, is not easy to follow.

We also feel some difficulty in understanding the judgment of Chagla C.J. when he says that by entertaining an application under s.561-A the High Court can judicially correct the judgment of a subordinate court but at the same time not expunge remarks therein as doing so would be altering the judgment of the subordinate court. If the alteration or amendment of the judgment or order of a subordinate court is not the necessary consequence of the judicial correction of such judgment or order we fail to see how removing from it a passage which is not relevant to the controversy decided by the judgment would amount to such alteration. A judgment consists of the verdict of the court and its reasons bearing on it. If a superior court supersedes or alters or amends either of these it will be reversing, altering or amending the judgment. But if a document embodying the judgment contains besides the court's verdict and reasons therefor, any additional matter which is unrelated to either of these two components of the judgment it cannot properly be regarded as a part of the judgment merely because it is contained in the same document. By including within the judgment irrelevant matter the court cannot make them an integral part of the judgment. The power to delete or order the deletion of such matter for securing the ends of justice must be deemed to inhere in the High Court.

The learned Chief Justice seems to accept the position that under s. 561-A an application can be made to the High Court complaining of injurious remarks by a subordinate court on the ground that they are unjustifiable or irrelevant and that such an application becomes a judicial proceeding before the High Court. He also accepts that the High Court can thereupon correct the judgment of the subordinate

court in appropriate circumstances. If the High court has power in such a proceeding to correct the judgment or order of a subordinate court how exactly and when does it exercise it ? Earlier in his judgment the learned Chief Justice has said :

> "A judgment of a lower court may be wrong; it may even be perverse. The proper way to attack that judgment is by bringing it under the scrutiny of the superior Court and getting the judgment of the lower Court judicially corrected. But is it proper for the superior Court to alter or amend the judgment which has already been delivered ? In our opinion, the inherent power that the High Court possesses is, in proper cases, even though no appeal or revision may be preferred to this Court, to judicially correct the observations of the lower Court by pointing out that the observations made by the Magistrate were not justified or were without any foundation or were wholly wrong or improper."

It may be mentioned that the Advocate-General who appeared in the case had urged that merely making observations of this kind or passing strictures on a subordinate court stands on a different footing from expunging objectionable remarks. The learned Chief Justice observed :

> "In our opinion it is not necessary to express the displeasure of this Court against any observations made by a Magistrate or by a Sessions Judge by expunging the remarks from the judgment delivered by him. x x x x In our opinion, therefore, it would not be correct to say that expunging remarks from a judgment or deleting passages from a judgment constitutes the inherent power of any superior Court and, therefore, the inherent power of the High Court."

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The learned Chief Justice quite rightly holds that the High Court has inherent power judicially to correct a subordinate court even for making harmful remarks against a person who is not a party to the proceedings. But, according to him, the sole content of this power consists of expression by the superior court of its displeasure at the offending remarks. We can discern no principle upon which such a limitation on the inherent powers of the High Court can be justified.

Moreover, mere expression by the High Court of its displeasure at the offending observations of a subordinate court cannot even be regarded as amounting to "judical correction" of the error committed by such Court. For, despite the disapprobation, the remarks continue to be there on the record of the subordinate court. The form normally adopted by a superior court for "judicial correction" of an error of a subordinate court does not consist of mere expression of its disagreement with the view taken by the subordinate court but of effacing that error and thus depriving it of its legal effect. That is precisely what ought to be done with respect to irrelevant remarks of a subordinate court when they are found to be unjustifiable and harmful. The appropriate form in which this part of the judicial process may be carried out would be either by expunging them or directing them to be expunged so that they would cease to have any effect.

There can be no doubt that the judgment of a tribunal empowered by law to adjudicate upon and decide any matter affecting the rights of parties is inviolable unless the law allows it to be questioned or interfered with. In such a case the judgment can be challenged only and interfered with only by the specified authority and to the extent permissible by the express provisions of law. No other court, not even the High Court, unless expressly permitted by

law can entertain a challenge or exercise any power with respect to a judgment. Its inherent power is not exerciseable for this purpose because what is made final or inviolable by law is beyond the purview of such power. But the inviolability which attaches to a judgment must necessarily be confined to its integral parts, that is the verdict and reasons therefor. It cannot extend to matters which though ostensibly a part of the judgment are not in reality its integral parts. It is because of this that the majority of the High Courts hold that they have always had the power to expunge passages from the judgments of subordinate courts in certain circumstances. In other words that this power has always been there and can be resorted to for securing the ends of justice. It is significant to note that despite this, though the Code was amended materially in 1955 the legislature did not indicate in s. 561-A or any other provision that this power did not exist or is taken away. Clearly the High Courts, by expunging remarks from an order or judgment of a subordinate court, would not in any event be altering it on merits or in any matter of substance but be only deleting from it matter which being alien to the matter before the court ought never to have been there. When such only is the effect of what the High Court does, can prohibition to this court be inferred from the fact that ss. 423 and 439, which deal with appellate and revisional powers, are silent about such matters? We are clear that they do not exclude such power. As already stated, expunction of irrelevant remarks does not amount to the alteration or amendment of a judgment or an order of a subordinate court. No doubt, the exercise of such power will have the effect of taking out of the judgment or order something which was there before and thus in a limited way to interference with the content of the document embodying the judgment or order. But bearing in mind the paramount

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importance of securing the ends of justice the High Court must be deemed to have such power.

When we speak of the inherent powers of the High Court of a State we mean the powers which must, by reason of its being the highest court in the State having general jurisdiction over civil and criminal courts in the State, inhere in that court. The powers in a sense are an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. When we speak of ends of justice we do not use the expression to comprise within it any vague or nebulous concept of justice, nor even justice in the philosophical sense but justice according to law, the statute law and the common law. Again, this power is not exercisable every time the High Court finds that there has been a miscarriage of justice. For, the procedural laws of the State provide for correction of most of the errors of subordinate courts which may have resulted in miscarriage of justice. These errors can be corrected only by resorting to the procedure prescribed by law and not otherwise. Inherent powers are in the nature of extraordinary powers available only where no express power is available to the High Court to do a particular thing and where its express powers do not negative the existence of such inherent power. The further condition for its exercise, in so far as cases arising out of the exercise by the subordinate courts of their criminal jurisdiction are concerned, is that it must be necessary to resort to it for giving effect to an order under the Code of Criminal Procedure or for preventing an abuse of the process of the court or for otherwise securing the ends of justice.

The power to expunge remarks is no doubt an extraordinary power but nevertheless it does

exist for redressing a kind of grievance for which the statute provides no remedy in express terms. The fact that the statute recognizes that the High Courts are not confined to the exercise of powers expressly conferred by it and may continue to exercise their inherent powers makes three things clear. One, that extraordinary situations may call for the exercise of extraordinary powers. Second, that the High Courts have inherent power to secure the ends of justice. Third, that the express provisions of the Code do not affect that power. The precise powers which inhere in the High Court are deliberately not defined by s. 561-A for good reason. It is obviously not possible to attempt to define the variety of circumstances which will call for their exercise. No doubt, this section confers no new power but it does recognise the general power to do that which is necessary "to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." But then, the statute does not say that the inherent power recognised is only such as has been exercised in the past either. What it says is that the High Courts always had such inherent power and that this power has not been taken away. Whenever in a criminal matter a question arises for consideration whether in particular circumstances the High Court has power to make a particular kind of order in the absence of express provision in the Code or other statute the test to be applied would be whether it is necessary to do so to give effect to an order under the Code or to prevent the abuse of the process of the court or otherwise to secure the ends of justice.

When the question arises before the High Court in any specific case whether to resort to such undefined power it is essential for it to exercise great caution and circumspection. Thus when it is moved by an aggrieved party to expunge any passage from

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the order or judgment of a subordinate court it must be fully satisfied that the passage complained of is wholly irrelevant and unjustifiable, that its retention on the records will cause serious harm to the person to whom it refers and that its expunction will not affect the reasons for the judgment or order.

This aspect of the matter has been emphasised by Chagla C. J., in the aforesaid case and we have no doubt that it is very necessary in order to maintain the independence of the judiciary that every presiding officer of a criminal court, however junior, should feel that he can fearlessly give expression to his view in the judgment or order which he delivers and that no impression should be allowed to be created in the mind of the presiding officer that the High Court is likely to interfere lightly with his opinions. For, otherwise his independence will be seriously undermined.

To sum up, every High Court as the highest court exercising criminal jursidiction in a State has inherent power to make any order for the purpose of securing the ends of justice. This power extends to expunction or ordering expunction of irrelevant passages from a judgment or order of a subordinate court and would be exercised by it in appropriate cases for securing the ends of justice. Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers such as by passing comment upon a matter not relevant to the controversy before it and which is unwarranted or is likely to harm or prejudice another.

In the case before us, as we have already indicated, the remarks are not such as are likely to cause harm to the appellant nor are such as shoul d cause any harm to him. We, therefore, hold tha t

this is not a fit case for the exercise of the extraordinary power of the High Court under s. 561-A. For these reasons we dismiss the appeal.

Appeal dismissed.

THE STATE OF UTTAR PRADESH

v.

MOHAMMAD NAIM

(S. K. DAS, A. K. SARKAR, K. N. WANCHOO and K. C. DAS GUPTA JJ.)

High Court—Inherent power in criminal cases—Remarks in Judgment—Duty of Judges—Expunging remarks—Power of High Court—State Government, if can apply—Code of Criminal Procedure, 1898 (Act V of 1898), s. 561-A.

While disposing of a criminal appeal the High Court directed the issue of a notice to N, the investigating officer, to show cause why a complaint should not be instituted against him under s. 195, Indian Penal Code. N appeared and threw himself at the mercy of the Court and asked for forgiveness. The High Court accepted the apology hesitatingly but made the following among other remarks against the police force.

"(a) If I had felt that with my lone efforts I could have cleaned this augean stable, which is the police force, I would not have hesitated to wage this war single handed.

(b) That there is not a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force.

(c) Where every fish barring perhaps a few stinks, it is idle to pick out one or two and say that it stinks."

The State applied to the High Court under s. 561-A, Code of Criminal Procedure, for expunging these remarks from the