

R. K. LAKSHMANAN. A

vz

A. K. SRINIVASAN & ANR.

August 1, 1975

[Y. V. CHANDRACHUD, P. N. BHAGWATI AND R. S. SARKARIA, JJ.] B.

Practice and procedure—Disparaging remarks against persons or authorities whose conduct comes for consideration before Courts of Law—Tests to be applied.

The appellant was a District Magistrate. In a case pending before him an affidavit of one of the sureties was attested by the respondent who was a practising advocate. On the failure of the surety to appear in the Court on the due date, notice was issued to him. The notice having been returned unreserved, the Magistrate issued a notice to the respondent, despite the fact that he was not the duly constituted attorney of the surety, calling upon him to appear in the court in connection with this case. The respondent thereupon moved the High Court under s. 561A Cr. P.C. alleging that the notice was arbitrary and amounted to an abuse of the process of the court because there was no provision in the Criminal Procedure Code empowering the Magistrate to issue such a notice to him, that he was in no way connected with the bail bond and that the notice was issued to humiliate him and the Bar since the latter had passed a resolution protesting against the improper and discourteous behaviour of the Magistrate. The respondent prayed that the appellant be directed to withdraw the notice. C

The High Court called for a report from the appellant as to the circumstances in which he had thought fit to issue notice as also the provision of law. After receiving the appellant's report the High Court quashed the notice holding that the action of the Magistrate constituted grave misuse of his power and flagrant abuse of the process of the Court. D

The appellant's application to the High Court for expunction of certain remarks made against him was rejected. E

Dismissing the appeal to this Court,

HELD : (i) The tests to be applied in considering expunction of disparaging remarks against persons or authorities whose conduct comes in for consideration before courts of law in cases to be decided by them 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. It has also been recognised that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve. F

[209A-D]

State of U.P. v. Muhammad Nain, [1964] 2 S.C.R. 363 at 374, applied. G

In the present case in response to the High Court's notice the appellant submitted a detailed report. Before the High Court he was represented by a senior Public Prosecutor. He had thus adequate opportunity of explaining his conduct in defending the impugned action. The appellant cannot complain that the remarks were passed by the High Court without affording him due opportunity to explain and defend his action. [209E-F]

(2) Though the notice by itself was not a very offensive document, the allegation of bad faith and that it was issued to humiliate an advocate and the Bar who had earlier passed a resolution complaining against the misbehaviour of the appellant showed that the notice was illegal, arbitrary and tainted with bad faith. It was a preliminary step taken under cover of s. 476 Cr. P.C. for possible prosecution of the Advocate. [209G—210C] H

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(3)(a) The notice issued to the surety which was returned by the police stated that the service could not be effected for want of sufficient information and more detailed particulars regarding the surety while the appellant stated that "it was reported by the police that there was no such person as far as they could gather from the detailed inquiries made and, therefore, notice could not be served." Evidently this misleading stand was taken by the appellant to show that action under s. 476 Cr. P.C. against the Advocate would not be groundless. [210E-H]

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(b) The remarks of the High Court were an integral part of the reasoning of the High Court. They were not irrelevant or foreign to the matter under issue. They were inextricably intertwined with the findings and the order recorded by the High Court. Excision of these remarks would emasculate the order of the High Court robbing it of its very rationale. [211A-B]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 130 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 13th March, 1974 of the Kerala High Court in Criminal Misc. Petition No. 7 of 1974 with CrI. M.P. No. 967/73.

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K. T. Harindranath and *T. T. Kunhikanan*, for the appellant.

A. S. Nambiar for respondent no. 1.

K. R. Nambiar, for respondent No. 2.

The Judgment of the Court was delivered by

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SARKARIA, J.—This appeal by special leave is directed against a judgment of the Kerala High Court rejecting the appellant's application under s. 561-A. Criminal Procedure Code for expunction of certain remarks made against him in the High Court's Order, dated 20-11-1973, in Criminal Misc. Petition No. 967 of 1973.

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The appellant is a member of the Kerala Judicial Service, while the respondent herein is an Advocate practising at Ernakulam. On 14-8-1973, the appellant was working as District Magistrate Ernakulam. One Kamalasanan, who was an accused in C.C. Nos. 216 and 217 of 1973 pending before him, was ordered to be released on bail on his executing a bond for Rs. 1,000/- with two sureties in the like amount. The two sureties were Kamaleswaran, the brother of the accused, and Sri Thankappan Nair. Thankappan's address was given as "businessman, son of Parameswaran Pillai, Thambanoor Trivandrum." The affidavit filed by Thankappan, while offering himself as surety, was attested by Sri A. K. Srinivasan Advocate stating "solemnly affirmed at Ernakulam on this 14th day of August 1973 and signed before me who is personally known to me".

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The above cases stood posted for examination of the accused under s. 342 of the Code of Criminal Procedure. When on that date the cases were called for hearing, the accused was absent. His Counsel Shri Srinivasan appeared and represented that although he had no information from the accused, who had to come from Trivandrum, yet he was expecting him to reach the court in time. The appellant (District Magistrate) thereupon ordered cancellation of the bail bonds and

directed issue of notices to the Surety under s. 514 of the Code of Criminal Procedure calling upon him to show cause before 16-10-1973 why the terms of the Surety bonds providing for forfeiture of the sum of Rs. 1,000/- be not enforced. The notices issued to the Surety Thankappan Nair, were returned unserved whereupon on the 17th October, 1973, the appellant issued a non-bailable warrant for the arrest of the Surety. On the following day, the appellant issued a notice to Sri A. K. Srinivasan, Advocate which ran as under :

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“Ernakulam District Magistrate Court No. M.C. 106 and M.C. 107 of 1973.

Notice for Shri A. K. Srinivasan, Advocate.

The above-mentioned cases are being fixed for hearing 3-11-1973 at 11 A.M. You are required to appear before the Court.

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By Order

Sd./-

18th October, 1973

SARISHADAR.”

It may be mentioned here that in the proceedings initiated under s. 514 of the Code of Criminal Procedure in the two cases. Mr. Srinivasan, Advocate was not the duly constituted attorney for the Surety, Thankappan.

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On receipt of the aforesaid notice, Mr. Srinivasan, Advocate filed Crl. M.P. 967 of 1973 before the High Court of Kerala under s. 561-A of the Code of Criminal Procedure praying that the appellant be directed to withdraw the notice, dated 18-10-1973, on the ground that the issue of notice was arbitrary and amounted to an abuse of the process of the court because—

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- (a) There is no provision in the Criminal Procedure Code empowering the Magistrate to issue such a notice to command the Advocates' appearance when he is not connected either as a witness or a party or otherwise with the proceedings relating to cancellation of bail-bonds;
- (b) The notice was issued to humiliate him and the Bar since the latter had passed a resolution, on 21-7-1973, protesting against the improper and discourteous treatment meted out by the Magistrate to the members of the Bar.

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The learned Judge of the High Court before whom this petition came up for hearing, by an order dated 2-11-1973, called for a report from the appellant by 5-11-1973 regarding the allegations contained in the Advocate's petition and particularly as to under which provision of law and under what circumstances he had thought it fit to issue a notice to the Advocate requiring him to appear before him on 3-11-1973. The appellant thereupon submitted the report to the High Court, the material part of which reads :

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“When notice was sent to the surety Thankappan Nair whose address is given as, business-man, Thambanoor,

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A Trivandrum, it was reported by the Police that there is no
such person, as far as they could gather, from the detailed
enquiries made and therefore notice could not be served. In
the affidavits filed by Shri Thankappan Nair in these two
cases when he offered himself as surety the signatures of the
deponent were attested by Shri A. K. Sreenivasan, Advocate
stating Solemnly affirmed at Ernakulam on this the 14th
B day of August 1973 and signed before me, who is personally
known to me. From the report of the Police Trivandrum it
appeared that this might be a case of false personation. It
is seen that in several cases the accused have been got re-
leased by false sureties. I have already submitted a report
about this to the Hon'ble High Court as per my letter dated
31-10-1973.

C There are several other similar instances of false personation
and filing false affidavits pending enquiry before this
Court. Under the circumstances in this case also it appeared
to the court that a false affidavit has been filed by false personation.
If it is false personation, the attestation by the advocate should
D necessarily be false. The offences under Sections 193, 196, 197, 199 and 205 of the Indian Penal
Code appear to have been committed. These are some of the offences
mentioned in Section 195 Cr. P.C. Under section 476 of the Cr. P.C.
when any Civil, Revenue or Criminal Court is, whether on application
made to it in this behalf or otherwise, of opinion that it is expedient
in the interest of justice that an enquiry should be made into any
E offence referred to in Section 195, Sub-section (1), Cl. (b) or cl. (c),
which appears to have been committed in or in relation to a proceeding
in that court, such court may, after such preliminary inquiry if any,
as it thinks necessary, record a finding to that effect and make a
complaint thereof in writing signed by the presiding officer of the
F Court. To ascertain whether there is a person as described in the affidavits
filed in the name of Shri Thankappan Nair notice was issued as part
of the preliminary enquiry contemplated under Section 476 Cr. P.C.
to Shri A. K. Sreenivasan who has attested the affidavits of the
said Thankappan Nair stating that the deponent is personally known
to him. This had to be done in view of the report of the police.
G Notice to Shri A. K. Sreenivasan was issued to appear in court on
3-11-1973 not in his capacity as Advocate appearing for the accused
but as the person who has attested the affidavit of the said surety
stating that he personally knows the surety. The court can make
the preliminary enquiry mentioned above, either through the police
or to the accused or to the other surety or to the person who
attested the affidavit. In this matter accused is absconding.
H the other surety could not be served and the police report is as
stated above. So the only person to whom the inquiry under 476
could be made in the circumstances is the person who has attested
the affidavit."

On 8-11-1973, the Advocate filed an affidavit in which he *inter-alia* averred :

"I submit that the present explanation that the notice was issued to me as a part of the preliminary enquiry contemplated under sec. 476 of the Criminal Procedure Code is obviously an after-thought, since it is difficult that any reasonable man would have inferred from the Police Report dated 12-10-1973 that Sri Thankappan Nair, one of the sureties was a non-existent person and therefore the attestation made by me on 14-8-1973 would have been false".

He further reiterated with elaboration the allegations in his petition that the impugned action of the Magistrate lacked good faith and due care and had been issued to humiliate the bar generally and the petitioner particularly.

After taking into consideration the appellant's report and other material on record, the High Court quashed the notice holding that the "action of the District Magistrate in issuing the impugned notice to the appellant constitutes grave misuse of his power and flagrant abuse of the process of the court".

The appellant then moved an application (Cr. M.P. No. 7 of 1974) for expunction of the remarks made against him by the High Court in its order, dated 20-11-1973. The application was rejected.

Against that order, dated 13-3-1974, refusing to expunge the adverse remarks, Shri Lakshmanan, the District Magistrate has come in appeal to this Court.

In the reply affidavit, dated 21-3-1975, filed in this Court, the appellant has submitted that if this Court is *prima facie* of the opinion that the passages requested to be expunged are too many and spread over throughout the order, at least these four passages be expunged from the order in question :

"(i) I cannot help remarking that the information furnished to this Court by the District Magistrate in his report dated 3-11-1973 regarding the contents of the Police Report is grossly inaccurate and misleading."

"(ii) I make no secret of my opinion that the action taken by the District Magistrate, in the present case in issuing a notice to the petitioner, who is a member of the bar, was most highly arbitrary and the very casual fashion in which the said action has been done renders it all the more objectionable."

"(iii) that the action taken against the petitioner by the District Magistrate is totally devoid of any legal sanction and highly arbitrary."

A “(iv) I hold that the action of the District Magistrate in issuing the impugned notice to the petitioner constitutes a grave misuse of his power and also flagrant abuse of the process of his court”.

B The tests to be applied in considering the expunction of disparaging remarks against persons or authorities whose conduct comes in for consideration before courts of law in cases to be decided by them, were neatly summed up by this Court, speaking through S. K. Das, J., in *State of U.P. v. Muhammad Nain*,⁽¹⁾ thus :

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- “(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. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.”
- D

Let us now apply these tests to the present case.

E In the petition filed under s. 561-A, Code of Criminal Procedure, by the Advocate, the appellant was impleaded as the sole respondent. The appellant was called upon by the High Court to explain his conduct in issuing the impugned notice. In reply, the appellant submitted a detailed report. It is not controverted that before the High Court, the appellant was represented by a senior Public Prosecutor who had been directed to defend him by the State Government. The appellant had thus adequate opportunity of explaining his conduct and defending the impugned action. Indeed, in his report submitted to the High Court, he did his best to justify his conduct in that case. The appellant therefore, cannot complain that the remarks in question were passed by the High Court without affording him due opportunity to explain and defend his action.

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Nor can it be said that this is a case where there was no evidence on record bearing on the conduct of the appellant to which the remarks in question pertain.

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H It is true that ex-facie, the notice requiring the Advocate to attend the Court of the Appellant on 3-11-73, though couched in curt and peremptory language, was not, by itself, a very offensive document. But the Advocate's allegation was that it had not been issued in good faith and the sole purpose of issuing this notice was to humiliate the Advocate and the Bar who had earlier passed a resolution complaining to the High Court against the misbehaviour of the appellant towards the members of the Bar. Subsequently, on 8-11-1973 the

(1) [1964] 2 S.C.R. 363 at 374.

Advocate filed an affidavit setting forth full particulars of the circumstances which, according to him, showed how the notice was illegal, arbitrary and tainted by bad faith. He annexed a copy of the Bar's resolution, to his affidavit. The report sent by the appellant to the High Court confirmed that the allegations made in the Advocate's petition were not empty apprehensions. The report revealed that the notice was not an innocuous request to the Counsel to furnish better particulars of the Surety, but it was a preliminary step taken under cover of s. 476, Criminal Procedure Code for possible prosecution of the Advocate. The appellant gave a clear clue to his ulterior intent, when in the report, he said :

"Notice to Shri A. K. Sreenivasan was issued . . . not in his capacity as Advocate appearing for the accused but as the person who has attested the affidavit of the said Surety . . ."

Thus there was ample material before the High Court bearing on the impugned conduct of the appellant, justifying the adverse comments in question.

Again, the passages sought to be expunged could not be said to be irrelevant or alien to the subject matter of the case before the High Court.

The notice issued to the Surety had been returned by the police with an endorsement which, rendered into English, reads as under :

"Notice could not be served on the person referred to in the notice as he (process server) did not get any information about him after detailed enquiry made about him in Tampanoor from different businessmen. For want of sufficient information and more detailed particulars regarding the nature of the business conducted at Tampanoor by the person referred to in the notice, the service could not be effected.

Submitted for orders".

But in his report submitted to the High Court, the appellant stated that "it was reported by the Police that there is no such person as far as they could gather from the detailed inquiries made and therefore notice could not be served". Manifestly, this statement did not present a faithful and correct picture of the endorsement of the process server. Evidently, this misleading stand was taken by the appellant to show that action under s. 476, Criminal Procedure Code against the Advocate would not be groundless. In these premises it cannot be said that the observations of the High Court that "information furnished to this Court by the District Magistrate in his report dated 3-11-73 regarding the contents of the Police Report is grossly inaccurate and misleading" was unjustified.

A The substance of the other remarks in question is substantially the same, viz., that the issue of the impugned notice to the Advocate by the appellant was illegal and arbitrary and amounted to a gross abuse of the process of the Court. These remarks were an integral part of the reasoning of the High Court. They were not irrelevant or foreign to the matter in issue. They were inextricably intertwined with the findings and the order recorded by the High Court in that case. Excision of these remarks would emasculate the order of the High Court, robbing it of its very rationale.

B Judged by the aforesaid tests, no case for interference by this Court has been made out.

C Accordingly, we dismiss the appeal, with no order as to costs.

P.B.R.

Appeal dismissed.