S.K. VISWAMBARAN
v.
E. KOYAKUNJU & ORS.

MARCH 3, 1987

[B.C. RAY & S. NATARAJAN, JJ.]

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Criminal Procedure Code, 1973—s.482—Sessions Judge passed strictures against police officials concerning investigation—High Court approached for expunction of adverse remarks—Scope of Inquiry—Limited only to the bona fides of action of Petitioners before High Court—Adverse remarks made by High Court against another Police Officer conducting investigation without hearing him—Principles of natural justice—Opportunity to be given before adverse remarks made—Tests for making adverse remarks—What are—Whether followed in the instant case—High Court's order—Validity of.

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The Sessions Judge while acquitting the accused of the charge under s.302 IPC entertained serious doubts about PW 16 (Respondent No. 2.), the Inspector of Police, who partly investigated the case, carrying out the cellophone tape test to lift any fibres of coir sticking to the plams of the deceased and sending the tapes to the Forensic Science Laboratory and the bona fides of the exercise. On the basis of the suspicious features mentioned in his judgment, the Sessions Judge made severe adverse remarks against PW 16 (Respondent No. 2.) DW 2 (Respondent No. 3) and another policeman and observed that the con**duct of these officials was highly open to suspicion, that a full-fledged enquiry should be held against them and that "otherwise indiscipline and the tendency to tamper with official documents and create false documents will set at naught the very purpose of having a police establishment."**

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The Inspector PW 16 (Respondent No. 2) and the Head Constable PW 2 (Respondent No. 3) filed petitions before the High Court for expunging the adverse remarks made against them. A Single Judge without making any examination of the conduct of the petitioners before him and without considering whether the features noticed by the the Sessions Judge warranted the adverse remarks or not went at a tangent and put the appellant, a Deputy Suptd. of Police (PW 17), who had also investigated the case from 26.11.80 to 5.11.81, in the dock for having failed to place before the Court the scientific materials which PW 16

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A (Respondent No. 2) had obtained in the course of investigation to find out whether the death of the deceased was due to suicide or homicide. The learned judge observed that PW 16 (Respondent No. 2) and DW 2 (Respondent No. 3) had acted in a blemishless manner and the report of the Forensic Science Laboratory had been obtained through bonafide investigative process and it was the appellant who had schemingly kept B back the crucial records from the notice of the Court in order to secure a conviction unjustly against the accused and as such the appellant should be raprimanded in no uncertain terms.

Stung by the remarks made against him without even a hearing, the appellant preferred the instant appeal to seek expunction of the C remarks.

Allowing the Appeal,

HELD: 1. The adverse remarks against the appellant in the order of the High Court under appeal will stand expunged. [512E]

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2. When PW 16 and DW 2 moved the High Court for expunging the adverse remarks against them the scope of the enquiry was confined to the bona fides of their action in the investigation proceedings and whether the Sessions Judge was justified in drawing adverse inference against them on the basis of the suspicious features catalogued by him. E The High Court was not dealing with an appeal against the acquittal of the accused and there was no need or occasion for the High Court to go into the conduct of the appellant. The enquiry was only touching upon the conduct of PW 16 and DW 2. Furthermore the High Court had completely overlooked the fact that the appellant ceased to be in charge of the case on 5.1.81. Thereafter the investigation of the case was taken F charge of by PW 18 and still later by PW 19 and according to DW 2 the report from the Forensic Science Laboratory was sent to the Crime Detachment only on 7.1.81 whereas the appellant ceased to be in charge of the case on 5.1.81 itself. It, therefore, passes one's comprehension as to how the appellant can be accused of having wilfully suppressed material documents from the notice of the Court in order to secure a convic- G tion unjustify against the accused in a murder case. [510D-G]

3. The High Court has not applied its mind to the series of suspicious features noticed by the Sessions Judge to draw an adverse inference against PW 16 and DW 2 in conducting theso-called cellophone tape test and sending the tape to the Forensic Science Laboratory for its H report. The Judge had taken it for granted that PW 16 had actually

carried out a cellophone tape test, that in carrying out such a test he was wedded to scientific methods of investigation, that he and DW 2 had acted fairly and squarely in trying to find out the real cause of the death of the deceased and that it was the appellant who had an aversion to the use of scientific methods in investigation of crimes and that the appellant had purposely concealed materials which were favourable to the accused in order to secure a conviction at any cost. The Judge had failed to see that as a matter of fact the accused was not kept in the dark regarding the cellophone tape test that was deemed to have been done but on the other hand he had full information of the test and its result, and it was on account of that he was able to summon police officials to figure as defence witnesses and police records as defence exhibits. The High Court had thus completely misdirected itself in its consideration of the petitions filed by respondents 2 and 3 to seek expunction of the adverse remarks made against them by the Sessions Judge. [510G-H; 511A-C]

4. Even assuming that for expunging the remarks against respondents No. 2 and 3 the conduct of the appellant required scrutiny and merited adverse comment, the principles of natural justice required the High Court to have issued notice to the appellant and heard him before passing adverse remarks against him if it was considered necessary. By its failure the High Court has failed to render elementary justice to the appellant. [511D-E]

5. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before Courts of law in cases to be decided by them, it is relevant to consider (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. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. [512A-C]

State of U.P. **v.** *Mohd. Naim,* **[1964] 2 S.C.R. 363, 374 equal to AIR 1964 S.C. 702;** *R.K. Lakshmanan* **v.** *A.K. Srinivasan,* **[1976] 1 SCR 204; AIR 1975 SC 1741 and** *Niranjan Patnaik* **v.** *Sashibhushan Kar & Anr.,* **[1986] 2 SCC 569, relied upon.**

6. Judged in the light of the above tests it is clear that none of the tests is satisfied in this case. [512D]

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 109 of 1987.

From the Judgment and Order dated 12.6.86 of the Kerala High Court in Crl. M.C. No. 511/1982 and 212/1985.

B P.S. Poti, P.N. Puri and E.M.S. Anam for the Appellant.

Baby Krishnan for the Respondents.

The Judgment of the Court was delivered by

C **NATARAJAN, J.** This Appeal by Special Leave is by a Gazetted Police Officer to seek expunction of certain adverse remarks passed against him by the High Court of Kerala in an order passed with reference to two Criminal Miscellaneous Petitions filed by Respondents 2 and 3 herein without issuing any notice to him and without D hearing him.

The somewhat unusual circumstances in which the appellant has been made the victim of strictures by the High Court may now be looked into. One Chandrasekaran Pillai residing within the limits of Karunagapally Police Station was charged under Section 302 I.P.C. for E having committed the murder of his wife Komalavalli by first beating her and kicking her and then hanging her in order to make it appear that it was a case of suicide. The accused's son aged about 12 years and a neighbour claimed to have witnessed the beating as well as the accused dragging the deceased to the western side of the house. A little later the son made bold to go into the house and found his mother F having with a noose round her neck. He raised alarm and the neighbours including his maternal uncle came to the house and cut the rope and rendered first aid unsuccessfully because Komalavalli had already died.

A report was given at Karunagapally Police Station and a case of G "suspicious death" was registered and investigation was done by Shri T.P. Rajagopalan, Inspector of Police (Respondent No. 2) who was examined as P.W. 16 in the Sessions Trial against the accused. As the brother of deceased Komalavalli was not satisfied with the manner of investigation of the local police he filed a petition before the Deputy Inspector General Southern range. Under orders of the Deputy Ins- H pector General the investigation was entrusted to the Crime Detach-

ment in which the appellant was serving as a Deputy Supdt. of Police. The appellant took charge of the case and his investigation revealed that Komalavalli's death was due to homicide and not suicide. The appellant was incharge of the investigation of the case only from 26.11.1980 to 5.1.1981 and thereafter the further investigation was done by another police officer of the Crime Detachment who was examined as P.W. 18 in the trial. The charge sheet was eventually filed by yet another officer viz. P.W. 19 an Inspector of Police.

The defence of the accused was that his wife Komalavalli had committed suicide and that he had not murdered her. In support of his defence the accused placed reliance upon the first Investigating Officer viz. P.W. 16 carrying out a cellophone tape test on the palms of Komalavalli and sending the cellophone tapes to the Forensic Science Laboratory to find out whether any fibres of coir rope were found in the cellophone tape and if so whether the fibres had come out of the coir rope used for the hanging. The report of the Forensic Science Laboratory was that the cellophone tape contained fibres of coir which were similar to the coir rope used for the hanging. It was, therefore, contended that Komalavalli's death was due to suicide as otherwise fibres from the coir rope used for hanging would not have been found in the palms of her hands. To prove the despatch of the cellophone tapes to the Forensic Science Laboratory and the receipt of the report from the said Laboratory and its despatch to the Crime Detachment a Head Constable of Karunagapally Police Station by name E. Koyakunju (Respondent No. 1) was examined as Defence Witness No. 2.

The Sessions Judge entertained serious doubts about P.W. 16 carrying out the cellophone tape test to lift any fibres of coir sticking to the palms of Komalavalli and sending the tapes to the Forensic Science Laboratory and the bona fides of the exercise. We shall set out later the numerous suspicious features noticed by the Sessions Judge regarding the conduct of P.W. 16 and DW 2 with reference to the carrying out of the cellophone tape test and the despatch of the tapes to the Forensic Science Laboratory and the entrustment of the report to the Crime Detachment. For the present we will continue with the narrative so as to make known the circumstances which have led to the filing of this Appeal.

After evaluating the prosecution evidence the Sessions Judge held that the prosecution had failed to prove the case against the accused beyond reasonable doubt and, therefore, gave him the benefit

A of doubt and acquitted him of the charge under Section 302 I.P.C. It is significant to note that the acquittal was not rendered in acceptance of the defence case that Komalavalli had committed suicide but because the Court felt that it would not be safe to act upon the evidence of P.W. 2, the son and P.W. 3, the neighbour and convict the accused for the offence of murder.

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In the course of his judgment the Sessions Judge made severe comments against P.W. 16, the Inspector of Police, D.W. 2, Head Constable and another Policeman P.C. 2599 and observed as follows:

> "Therefore in my view this is a fit case where appropriate action has to be taken against P.W. 16, D.W. 2 and P.C. 2599 who wrote Ext. D14 for the reasons stated earlier. Otherwise indiscipline and the tendency to tamper with official documents and create false documents will set at naught the very purpose of having a police estabishment. When one wing of the police establishment tries to investigate properly and to book the culprit, P.W. 16, D.W. 2 and P.C. 2599 were trying to neutralise all the work that has been done by the Crime Detachment and to help the accused to get an acquittal. This is a serious situation which the higher authorities in the police department have to take serious notice of and curb the tendency even in the beginning."

C D E

Aggrieved by the strictures passed by the Sessions Judge, the Inspector (P.W. 16) and the Head Constable (D.W. 2) filed Criminal Misc. Petitions before the High Court of Kerala for expunging the adverse remarks made against them. A learned single judge of the High Court, without making any examination of the conduct of the F petitioners before him and without considering whether the features noticed by the Sessions Judge warranted the adverse remarks or not went at a tangent and put the appellant in the dock for having failed to place before the Court the scientific materials which P.W. 16 had obtained in the course of investigation to find out whether Komalavalli's death was due to suicide or homicide. The learned judge had taken G it for granted that P.W. 16 and D.W. 2 had acted in a blemishless manner and that the report of the Forensic Science Laboratory had been obtained through bona fide investigative process and it was the appellant who had schemingly kept back the crucial records from the notice of the Court in order to secure a conviction unjustly against the accused and as such the appellant should be raprimanded in no uncer-H tain terms. The relevant portions in the judgment where the appellant

who was examined as P.W. 17 in te Sessions Trial has been criticised are as under:-

> "(para 6.) P.W. 17, Dy. S.P. who conducted the investigation kept the above facts concealed purposely. If the report sent by the Assistant Director of forensic Science Laboratory was made available to the court it would have gone a long way to establish innocence of the accused. So to foist a false case of murder on the account he did not send the report of the Assistant Director of Forensic Science Laboratory to the Court. He pleaded complete ignorance of the above examination when examined before court.
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> (para 8.) The part played by P.W. 17 is not beyond suspicion. He had purposely concealed materials which were favourable to the accused. It would appear that this officer was averse to scientific methods being made use of in investigation of crimes. His attempt was only to see that the accused is convicted in this case. This should not have been the approach of a senior officer like P.W. 17, who was investigating a very serious crime. The life and liberty of innocent persons should not be placed at the mercy of such unscrupulous officers. It will be proper for the higher officers in the department to look into this matter and take proper corrective measures for future guidance."

Stung by the remarks made against him without even hearing, the appellant has preferred this Appeal to seek expunction of the remarks.

Now let us have a look at the distressing and suspicious features noticed by the Sessions Judge in the conduct of P.W. 16 and D.W. 2 in the "cellophone tape test" carried out by them and in obtaining the report of the Forensic Science Laboratory and the despatch of the opinion to the Crime Detachment. The relevant portions extracted from the Judgment are as follows:-

(i) "The inquest Report prepared by this witness (P.W. 16) does not show that he had seized any cellophone tape or coir or that they were sent to the Forensic Science Laboratory";

(ii) "There are no documents to show that the tape and coir

A were taken into custody for the purpose of sending them to the Forensic Science Laboratory in the case diary";

(iii) "Normally any material to be examined by the Forensic Science Laboratory will be sent only through the court. Admittedly the cellophone tape and the coir were not sent
B through court. On the other hand it is stated that they were sent to the laboratory through a constable. But the case diary does not show that any constable was sent to the Forensic Science Laboratory for handing over these articles";

C (iv) "P.W. 16 did not prepare, any mahazar for seizure of any cellophone tape and inquest report also does not state anything about any tape said to have been affixed by him on the palm or the dead body and taken for the purpose of examination at the laboratory";

D (v) "D.W. 1 Assistant Director of the Forensic Science Laboratory, Trivandrum, examined by the defence to prove his report Exhibit D.10 regarding the presence of small bits of coconut fibres bearing similarity to the coir rope that was also sent, had stated in cross examination that even if the tape was affixed to the coir (instead of the
E palms) and then sent, it will contain the fibres similar to the one found on the coir":

(vi) "The investigation was taken over by the Crime Detachment on 26.11.1980. The cellophone tapes and the coir pieces are said to have been sent by P.W. 16 to the labora-
F tory on 1.12.80 when he had ceased to be the Investigating Officer;"

(vii) "Even if he had taken any cellophone tape and coir pieces at the time of inquest or thereafter and wanted them to be examined by the laboratory the proper course for him
G would have been to send them to the Dy. S.P. who was investigating the case on 1.12.1980;"

(viii) D.W. 2 Head Constable, summoned and examined by the defence to prove the sending of the cellophone tapes and coir to the laboratory and the report received from the
H laboratory had stated "that there is no document in the

Policy Station to prove that cellophone tape or coir piece were sent from Karunagappally Police Station to the Forensic Science Laboratory, Trivandrum."

(ix) "He further stated that the report received from the laboratory was sent to the Crime Detachment on 7.1.1981 but claimed that there is nothing to show that it was received by any officer of the Crime Detachment Office. The despatch register Ext. D13 only shows that a cover was handed over to a constable for delivery to the Crime Detachment Office. But there is no acknowledgement to show that the constable had actually handed over the same to the office of the Crime Detachment at Quilon."

(x) "D.W. 2 produced a notebook Ext. D.14 said to have been maintained by the constable to whom this cover was handed over for delivery at the office of the Crime Detachment. In this the curious aspect is that the entry regarding this handing over is written in a sheet of paper which is affixed in the note book as an extra sheet ... ... This entry Ext. D. 14 has been purposely manufactured for the purpose of this case and I have no doubt that it has been done at the instance of D.W. 2 the Head Constable and P.C. 2599 who wrote Ext. D. 14. Therefore the constable who wrote Ext. D. 14 and DW 2 are equally responsible for this fraud."

(xi) "The extent to which DW2 would go to help the accused is evident from the fact that he voluntarily producted Ext. D.17."

(xii) "Ext. D.17 is a letter sent from the Forensic Science Laboratory to the S.I. on 15.11.1980." This letter states that the sealed packet said to contain the MOs involved in Crime 220 of 1980 of Karunagapally Police Station were being returned unopened for want of forwarding note and certificate and hence the sealed packet may be resubmitted with proper forwarding note and certificate. At the bottom of this letter in vernacular it is written "cellophone tape." Except this vernacular writing there is nothing to show that the MOs referred to in Ext. D.17 were cellophone tape and coir piece ...... As the packet sent from the Karunagapally Police Station was not opened, by the Forensic Science

A Laboratory, the writing in vernacular at the bottom of Ext. D.17 could not have been written by anybody from the laboratory. It is a subsequent interpollation probably at the instance of D.W. 2. This was also interferring with official documents and tampering with it by D.W. 2 or somebody from the Police Station at Karunagapally.

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It was with reference to all these features the Sessions Judge made his adverse remarks against P.W. 16, D.W. 2 and P.C. 2599 and observed that the conduct of the concerned official was highly open to suspicion, that as such a full fledged enquiry should be held against them and that "otherwise indiscipline and the tendency to tamper with C official documents and create false documents will set at naught the very purpose of having a police establishment."

Coming now to the merits of this Appeal when P.W. 16 and D.W. 2 moved the High Court for expunging the adverse remarks against them the scope of the enquiry was confined to the bonafides of D their action in the investigation proceeding and whether the Sessions Judge was justified in drawing adverse inferences against them on the basis of suspicious features catalogued by him. The High Court was not dealing with an appeal against the acquittal of the accused and there was no need or occasion for the High Court to go into the conduct of the appellant. The enquiry in the Criminal Misc. Petitions E was only touching upon the conduct of P.W. 16 and D.W. 2 and not the conduct of the appellant. Furthermore one material fact which the High Court had completely over-looked is that the appellant ceased to be in charge of the case on 5.1.1981. Thereafter the investigation of the case was taken charge of by P.W. 18 and still later by P.W. 19. Even according to D.W. 2 the report from the Forensic Science F Laboratory was sent to the Crime Detachment only on 7.1.1981 whereas the appellant ceased to be incharge of the case on 5.1.1981 itself. It, therefore, passes one's comprehension as to how the appellant can be accused of having wilfully suppressed material documents from the notice of the court in order to secure a conviction unjustly against the accused in a murder case. The High Court, it is surprising G to find has not applied its mind to the series of suspicious features noticed by the Sessions Judge to draw an adverse inference against P.W. 16 and D.W. 2 in conducting the so-called cellophone tape test and sending the tape to the Forensic Science Laboratory for its report. The learned judge has taken it for granted that P.W. 16 had actually carried out a cellophone tape test, that in carrying out such a test he H was wedded to scientific methods of investigation and that he and DW

2 had acted fairly and squarely in trying to find out the real cause of death of Komalavalli and that it was the appellant who had an aversion to the use of scientific methods in investigation of crimes and that the appellant had purposely concealed materials which were favourable to the accused in order to secure a conviction at any cost. The learned judge had failed to see that as a matter of fact the accused was not kept in the dark regarding the cellophone tape test that was deemed to have been done but on the other hand he had full information of the test and its result, and it was on account of that he was able to summon police officials to figure as defence witnesses and police records as defence exhibits. We are, therefore, clearly of opinion that the High Court had completely misdirected itself in its consideration of the petitions filed by respondents 2 and 3 to seek expunction of the adverse remarks made against them by the Sessions Judge.

We have also to point out a grievous procedural error committed by the High Court. Even assuming for argument's sake that for expunging the remarks against respondents 2 and 3 the conduct of the appellant required scrutiny and merited adverse comment, the principles of natural justice required the High Court to have issued notice to the appellant and heard him befoe passing adverse remarks against him if it was considered necessary. By its failure the High Court has failed to render elementary justice to the appellant.

Yet another serious infirmity contained in the impugned order is that the High Court has failed to bear in mind the well-settled principles of law laid down by this Court in more than one case that should govern the Courts before disparaging remarks are made against persons or authorities whose conduct comes into consideration before Courts of law in cases arising before them for decision. In *State of U.P.* v. *Modh. Naim*, [1964] 2 S.C.R. 363, 374 equal to AIR 1964 S.C. 702 it was held as follows:

> "If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are

A made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending B 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. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve".

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This ratio has been followed in *R.K. Lakshmannan* v. *A.K. Srinivasan*, [1976] 1 SCR 204: AIR 1975 SC 1741 and *Niranjan Patnaik* v. *Sashibhushan Kar & Anr.*, [1986] 2 SCC 569 (to which one of us was a party). Judged in the light of the above tests, it may be seen that none D of the tests is satisfied in this case. It is indeed regrettable that the High Court should have lightly passed adverse remarks of a very serious nature affecting the character and professional competence and integrity of the appellant in purported desire to render justice to respondents 2 and 3 in the petition filed by them for expunction of adverse remarks made against them.

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The appeal is, therefore, allowed and the adverse remarks against the appellant in the order of the High Court which have been extracted above will stand expunged from the order under appeal.

A.P.J. Appeal allowed.