A NEERAJ GARG

v.

SARITA RANI AND ORS. ETC.

(Civil Appeal Nos. 4555-4559 of 2021)

B AUGUST 02, 2021

[R. F. NARIMAN AND HRISHIKESH ROY, JJ.]

Expunction of remarks: Remarks made against counsel in judgments in which he was representing one of the parties – Judicial propriety – Held: The offending comments recorded in the High Court judgments were apparently made based on the personal perception of the Judge – Before recording the adverse comments, counsel was not given any opportunity to put forth his explanation – Such condemnation of the counsel, without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem – The requisite degree of restraint and sobriety expected in such situations was missing in the offending comments – The comments were also unnecessary for the decision of the Court – The offending remarks recalled to avoid any future harm to the counsel's reputation or his work as a member of the Bar – Remarks accordingly expunged – Natural Justice – Principles of audi alteram partem.

Disposing of the appeals, the Court

Held: 1. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court. [Para 15][1148-A-C]

2. The offending comments recorded in the High Court judgments, could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the Judge. It is also apparent that the Judge did not, before recording the adverse comments, give any opportunity to the Appellant to put forth his explanation. The

offending remarks recorded by the judge against the appellant should not have been recorded in the manner it was done. The appellant whose professional conduct was questioned, was not provided any opportunity to explain his conduct or defend himself. The comments were also unnecessary for the decision of the Court. It is accordingly held that the offending remarks should be recalled to avoid any future harm to the appellant's reputation or his work as a member of the Bar. Therefore, the extracted remarks are expunged. [Paras 16, 18][1148-C-G]

State of U.P. v. Mohammad Naim **AIR 1964 SC 703 : [1964] SCR 363;** *Alok Kumar Roy v. Dr. S.N. Sarma* **[1968] 1 SCR 813;** *A.M. Mathur v. Pramod Kumar Gupta* **(1990) 2 SCC 533 : [1990] 2 SCR 110;** *Abani Kanta Ray v. State of Orissa* **(1995) 4 Suppl SCC 169 : [1995] 4 Suppl. SCR 333;** *Samya Sett v. Shambhu Sarkar and Another* **(2005) 6 SCC 767 : [2005] 2 Suppl. SCR 686;** *A.N. Perera v. D.L.H. Perera and Ors.* **(1982) SCC SL SC 20 – relied on.**

Case Law Reference

[1964] SCR 363	**relied on**	**Para 9**
[1968] 1 SCR 813	**relied on**	**Para 10**
[1990] 2 SCR 110	**relied on**	**Para 11**
[1995] 4 Suppl. SCR 333	**relied on**	**Para 12**
[2005] 2 Suppl. SCR 686	**relied on**	**Para 13**
(1982) SCC SL SC 20	**relied on**	**Para 14**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4555-4559 of 2021.

From the Judgment and Order dated 14.11.2017, 22.11.2019, 12.03.2020 and 22.02.2021 of the High Court of Uttarakhand at Nainital in Writ Petition (M/S) No.2216 of 2017 and Writ Petition (M/S) No.2208 of 2017, Second Appeal No.190 of 2019, Second Appeal No.182 of 2019 and Writ Petition (M/S) No.519 of 2019 respectively.

Mukul Rohtagi, Krishnan Venugopal, Amar Dave (AC), Sr. Advs., Gaurav Agrawal, Rahul Pratap, Shivendra Singh, Advs. for the appearing parties.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. Leave granted. The appellant is a practicing lawyer, before the High Court of Uttarakhand with around 17 years standing as member of the Bar. The present appeal is limited to expunging certain observations made against the appellant by the learned Judge of the High Court while deciding four cases in which the appellant was representing one of the contesting parties. The following are the orders and proceedings of the High Court with which, we are concerned in this matter:

> "W.P. (M/S) No.2216 of 2017 and W.P. (M/S) No.2208 of 2017 titled *Vira Wali Manga Vs. Sarita Rani,* S.A. No.190/2019 titled *Landour Community Hospital Vs. Sandeep Bishnoi*. S.A. No. 182 of 2019 titled *Vinod Kumar Vs. Mandir Laxmi,* W.P. (M/S) No. 519 of 2019 titled *Parul Prakash Vs. Anil Prakash*."

2. This Court issued returnable notice in the matter on 02.07.2021 and appointed Mr. Amar Dave as the *amicus curiae* to assist the Court. Mr. Dave appears and makes submissions accordingly. The Office Report in the case reflects that the Counsel for the Appellant has circulated a letter dated 13.07.2021 stating therein that the Petition has been filed only for expunging certain observations recorded against the Appellant by the High Court in the concerned cases and the Appellant is not seeking any relief against any of the arrayed Respondents and as such they be treated as Proforma Respondents.

3. Representing the appellant, Mr. Mukul Rohatgi, the learned Senior Counsel submits that the appellant is regularly practicing in the Uttarakhand High Court with a fairly large practice. The Counsel then submits that the remarks/observations made by the learned Judge against the Appellant were recorded without putting the counsel to notice or providing any hearing to him, before recording the adverse comments. It is also submitted that those recordings are neither essential nor necessary for the Court's verdict in the concerned cases. According to Mr. Rohatgi, such adverse comments will not only undermine the professional reputation of the Appellant but would also impact his standing and practice as a lawyer.

4. The learned *amicus curiae*, Mr. Amar Dave, together with the learned Senior Counsel Mr. Mukul Rohatgi have drawn specific attention of this Court to the following remarks in the High Court's judgement dated 14.11.2017, in the W.P. (M/S) No.2216 of 2017 and W.P. (M/S) No.2208 of 2017, where the Appellant was appearing for one of the contesting parties in the case.

"*** *** *** *** ***

16. I express my deep anguish and hesitantly refraining myself from taking any action against the counsel for the petitioner for producing only part of document and placing reliance on the same for procuring an interim order by suppressing material fact.

17. The counsel for the petitioner is a seasonal advocate he owes a responsibility towards the institution and fraternity too, he had deliberately created a wrong example for the pious institution.

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5. Similarly, in the second case, i.e., S.A. No.190/2019 the learned Judge on 22.11.2019 recorded the following comments:

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2. In the present Second Appeal, when the argument for the learned counsel for the appellant was initiated too be addressed forquite some time, this Court is of the view that the tenacity of argument of the learned counsel for the plaintiff/ appellant was in a manner as if, he was intentionally attempting to make a mountain of a mole, which this Court will not hesitate to re mark that was a brutal assassination of time for those other litigants, whose matters were pending consideration on the said date before this Court. 'It further reflected that as if it was not an argument for the case but rather for the visitors' gallery.

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6. In the third judgement, i.e., S.A. 182 of 2019 dated 12.03.2020, the following unacceptable conduct of the counsel was noted:

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In order to avoid an argument at admission stage of the present Second Appeal, before this Court, the learned counsel for the

A appellant submitted that in a prior proceedings which was held before this Court by way of Writ Petition (M/S) No. 604 of 2009, Sri Vinod Goel v. Sri Sushi/ Chandra Sabbarwal & Another, since I had appeared as a counsel on behalf of the defendant/appellant herein, an attempt was made at a later stage of arguments, to avoid to address of the Second Appeal on its merits before this Court.

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7. In the fourth case, W.P.(M/S) 519 of 2019, the Court on 22.02.2021, noted its displeasure against the counsel in the following manner:

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2. Though this Court should have avoided to make this remark, but owning to the deliberate and intentional, modus operandi, which is normally adopted, which has now, become a regular feature, almost in most of the cases, which are filed by the learned counsel for the petitioner, this Court is constraint to make certain observations, which has been invariably found, to be followed by the learned Counsel, basically intended so as to mislead the Court or to avoid an adjudication of the case on merits and to pose the difficulty to the Court, at the time of hearing of the Writ Petition itself at admission stage, itself, by putting uncalled for documents, which are not even relevant, including the copy of the citation/ judgments, on which he wants to rely, as part of the records of the Writ Petition, making the records of the Writ Petition, running into several volumes, and that too in a writ jurisdiction under Article 227 of the Constitution of India, which is arising of the concurrent judgments.

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3. This has been a clear and a consistent device, and a tactics which has been adopted by the learned counsel for the petitioner, by placing voluminous records in the Writ Petition, including the copies of precedent/ judgments, on which, the reliance has been placed by the learned counsel for the petitioner, which in the instant case happens to be about 20 judgments, which the petitioner's counsel contends to rely on, in support of his case, as against the concurrent finding of facts, which has been recorded by both the Courts, below and that too in a summary proceedings, which were

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held, under Section 21(1)(a) of Act No. 13 of 1972. Though for the reasons to be recorded hereinafter, it could be apparently inferred, that even most of the judgments, on which, reliance has been made, are not even relevant for the purposes of consideration of the case, and even they may not be applicable under the facts and circumstances of the present case.

4. This attitude, adopted cannot be ruled out to be a professional and a strategic device, which is being adopted, so that Court may at the stage of hearing for admission of writ, due to paucity of time, would be constraint to admit, even the Writ Petitions, which are arising from concurrent judgments, in a summary rent control proceedings, where grant of interim order would become inevitable during its pendency, besides being taxing on the litigant also, to meet the artificially escalated expenses too, and this strategy is not an isolated example, but rather it is a regular feature, which had been adopted by the Counsel, as a routine in most of the cases, which are being instituted from his Chamber. This methodology is being deliberately adopted with a premonition, that if judgment is put to challenge before a superior platform, he may have his argument protected that the judgment relied by him, and which were on record, before the Court, were not considered by the Court, and thus the judgment is a consequence of non-application of mind, by the High Court.

52. This Court before addressing the judgment relied, on its merit, this Court had a l ready observed in para 2, 3 and 4 of the judgment, the modus operandi, of the counsel for the petitioner to place reliance on the irrelevant judgments, which had got no significance or its applicability, under the facts and circumstances of the present case, and this Court has already consciously observed that the intention behind making reference to the judgement, was to mislead the Court and to buy time in prolonging the proceedings in order to overcome the effect of dismissal of the concurrent, Writ Petitions in limine by placing voluminous judgements on records, and making references of them, by quoting its excerpts.

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8. The Appellant contends that the above referred comments in the judicial orders of the High Court against the Counsel's conduct were not needed for adjudication of the matters under consideration. In any

A case, the observations could not have been recorded without putting the counsel on notice about the intention of the Court. It is also submitted that by virtue of the remarks recorded against the Appellant, his hard-earned reputation has been tarnished. To project that such remarks were unmerited, Mr. Rohatgi points out that the Appellant, with an otherwise unblemished professional record, had no occasion to suffer such adverse B remarks from any other judge of the High Court. Since the concerned Presiding Judge, before his elevation on 19.05.2017 to the Bench, was a member of the same Bar as the Appellant and both were rival counsel in several contested matters, Mr. Rohatgi submits that the comments may have emanated from personal prejudice and may not be otherwise C warranted. Accordingly, it is argued that the Appellant should not be made to suffer adverse comments on his conduct as a lawyer only because the concerned Judge may not appreciate the efforts made by the Counsel, on behalf of his client.

9. To press home the argument that the offending remarks against D the counsel are unmerited, and do not meet the required parameters, the learned Sr. Counsel has cited *State of U.P. vs. Mohammad Naim*[1] where Justice S.K. Das laid down the following tests to be applied while dealing with the question of expunction of disparaging remarks against a person whose conduct comes in for consideration before a Court of law. Those tests are: E

(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

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

10. In *Alok Kumar Roy Vs. Dr. S.N. Sarma*[2], in the opinion written by Justice C.K.Wanchoo for a Five Judges Bench, this Court had emphasized that even in cases of justified criticism, the language employed G must be of utmost restraint. The use of carping language to disapprove of the conduct of the Counsel would not be an act of sobriety, moderation or restraint.

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[1] AIR 1964 SC 703

H [2] (1968) 1 SCR 813

11. The judgement of this Court in *A.M. Mathur Vs. Pramod Kumar Gupta*[3], delivered by Justice K Jagannatha Shetty, elaborates on the need to avoid even the appearance of bitterness. The Court observed that,

> "13…The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might be better called judicial respect, that is respect by the judiciary…"

12. The importance of avoiding unsavory remarks in judicial orders as per established norms of judicial propriety has also been succinctly noted in *Abani Kanta Ray Vs. State of Orissa*[4] by Justice J.S. Verma, in the following words,

> "Use of intemperate language or making disparaging remarks against anyone, unless that be the requirement for deciding the case, is inconsistent with judicial behaviors. Written words in judicial orders are for permanent record which make it even more necessary to practice self- restraint in exercise of judicial power while making written orders."

13. The principles laid down as above, have been quoted with approval and applied by this Court in several subsequent judgments, including for a 3 Judge Bench in *Samya Sett Vs. Shambhu Sarkar and Another*[5]. In this case Justice C.K. Thakker, writing for the Court opined that the adverse remarks recorded were neither necessary for deciding the controversy raised before the Court nor an integral part of the judgement, and accordingly directed deletion of those remarks.

14. The proposition of law laid down by Justice S.K. Das on behalf of the Four Judges Bench in *Mohammed Naim (Supra)* on recording of adverse remarks has been approved in a catena of decisions since 1964. It was also cited by the Supreme Court of Sri Lanka in *A.N. Perera Vs. D.L.H. Perera and Ors.*[6] where Abdul Kadir J. speaking for the Bench approved of the tests laid down by this Court and concluded that the

[3] (1990) 2 SCC 533
[4] 1995 Supp (4) SCC 169
[5] (2005) 6 SCC 767
[6] 1982 SCC SL SC 20

A judge's comments against the petitioner in that case were thoroughly unwarranted under each of those tests.

15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary B remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court.

16. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to C be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before recording the adverse comments, give any opportunity to the Appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the Counsel, D without giving him an opportunity of being heard would be a negation of the principles of *audi alteram partem*. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments.

17. The tenor of the remarks recorded against the appellant will E not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the comments remain unexpunged in the court judgments, it will be a cross that the Appellant will have to bear, all his life. To allow him to suffer thus, would in our view be prejudicial and unjust.

F 18. In view of the forgoing, we are of the considered opinion that the offending remarks recorded by the learned judge against the appellant should not have been recorded in the manner it was done. The appellant whose professional conduct was questioned, was not provided any opportunity to explain his conduct or defend himself. The comments were also unnecessary for the decision of the Court. It is accordingly G held that the offending remarks should be recalled to avoid any future harm to the appellant's reputation or his work as a member of the Bar. We therefore order expunction of the extracted remarks in paragraphs 4, 5, 6, and 7 of this judgement. The appeals are accordingly disposed of with this order.

Devika Gujral Appeals disposed of.