Amar Pal Singh vs State Of U.P.& Anr on 17 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1995, 2012 (6) SCC 491, 2012 AIR SCW 2964, AIR 2012 SC (CRIMINAL) 970, 2012 (4) ALJ 414, 2012 (3) AIR JHAR R 637, 2012 ALL MR(CRI) 2413, 2012 CRILR(SC MAH GUJ) 597, 2012 (3) CALCRILR 336, 2012 (3) SCC(CRI) 179, 2012 (5) SCALE 647, (2012) 115 ALLINDCAS 7 (SC), (2012) 3 CRILR(RAJ) 597, 2012 CALCRILR 3 336, (2012) 3 CHANDCRIC 42, 2012 (95) ALL LR 18 SOC, (2012) 2 CURCRIR 372, (2012) 2 MADLW(CRI) 408, (2012) 3 RECCRIR 943, (2012) 2 GUJ LH 273, (2012) 3 MAD LJ(CRI) 853, (2012) 3 RECCIVR 963, (2012) 2 ORISSA LR 291, (2012) 52 OCR 817, (2012) 4 RAJ LW 2972, (2012) 3 ALLCRIR 2549, (2012) 5 SCALE 647, (2012) 2 UC 1367, (2012) 2 DLT(CRL) 658, (2012) 78 ALLCRIC 520, (2012) 3 ALLCRILR 367, 2012 (2) ALD(CRL) 610

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Bench: Dipak Misra, B.S. Chauhan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 651 OF 2009

Amar Pal Singh .....……..Appellant

Versus

State of U. P. & Anr. ……Respondents

J U D G M E N T

DIPAK MISRA, J.

The present appeal frescoes a picture and exposits a canvas how, despite numerous pronouncements of this Court, while dealing with the defensibility of an order passed by a Judge of subordinate court when it is under assail before the superior Court in appeal or revision, the

imperative necessity of use of temperate and sober language warranting total restraint regard being had to the fact that a judicial officer is undefended and further, more importantly, such unwarranted observations, instead of enhancing the respect for the judiciary, creates a concavity in the hierarchical system and brings the judiciary downhill, has been totally ostracised. Further, the trend seems to be persistent like an incurable cancerous cell which explodes out at the slightest imbalance.

2. The appellant, a judicial officer, being aggrieved by the comments and observations passed by the learned Single Judge of High Court of Judicature at Allahabad in Criminal Revision No. 1541 of 2007 vide order dated 31.05.2007, has preferred the present appeal. The brief resume of facts are that one Sunil Solanki had filed an application under Section 156 (3) of the Code of Criminal Procedure (for short 'the Code') before the Chief Judicial Magistrate, Bulandshahar with the allegation that on 11.02.2007 at 09.30 p.m. when he was standing outside the door of his house along with some others, a marriage procession passed through the front door of his house and at that juncture, one Mauzzim Ali accosted him and eventually fired at him from his country made pistol which caused injuries on the abdomen area of Shafeeque, one of his friends. However, as good fortune would have it, said Shafeeque escaped unhurt. Because of the said occurrence, Sunil Solanki endeavoured hard to get the FIR registered at the concerned police station but the entire effort became an exercise in futility as a consequence of which he was compelled to knock at the doors of the learned Chief Judicial Magistrate by filing an application under Section 156 (3) of the Code for issue of a direction to the police to register an FIR and investigate the matter. While dealing with the application, the learned Chief Judicial Magistrate, the appellant herein, ascribed certain reasons and dismissed the same.

3. Being dissatisfied, said Sunil Solanki preferred a revision before the High Court and the learned Single Judge, taking note of the allegations made in the application, found that it was a fit case where the learned Magistrate should have directed the registration of FIR and investigation into the alleged offences. While recording such a conclusion, the learned Judge has made certain observations which are reproduced below:-

> "This conduct of chief Judicial Magistrate is deplorable and wholly malafide and illegal" Thereafter the learned Judge treated the order to be wholly hypothetical and commented it was :-
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> "vexatiously illegal" After so stating the learned Single Judge further stated that Chief Judicial Magistrate has committed a blatant error of law. Thereafter the passage runs thus:-
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> ".....and has done unpardonable injustice to the injured and the informant. His lack of sensitivity and utter callous attitude has left the accused of murderous assault to go Scot- free to this day." After making the aforesaid observations, he set aside the order and remitted the matter to the Chief Judicial Magistrate to decide the application afresh in accordance with law as has been spelt out by the High Court of Allahabad in the case of Masuman v. State of U.P. and Another[1]. Thereafter, he directed as follows-

> "Let a copy of this order be sent to the Administrative Judge, Bulandshahar to take appropriate action against the concerned C.J.M. as he deem fit."

4. The prayer in the Special Leave Petition is to delete the aforesaid comments, observations and the ultimate direction.

5. We have heard Mr. Ratnakar Dash, learned senior counsel for the appellant and the learned counsel for the State.

6. It is submitted by the learned senior counsel appearing on behalf of the appellant that the aforesaid observations and the consequential direction were totally unwarranted and indubitably affect the self-esteem and career of a member of the subordinate judiciary and therefore deserve to be expunged.

7. The learned counsel for the State has fairly stated that a judicial officer enjoys a status in the eyes of the public at large and his reputation stabilises the inherent faith of a litigant in the system and establishes authenticity and hence, the remarks made by the learned Single Judge should not be allowed to stand.

8. At the very outset, we make it clear that we are neither concerned with the justifiability of the order passed by the Chief Judicial Magistrate nor are we required to dwell upon the legal pregnability of the order passed by the learned Single Judge as far as it pertains to dislodging of the order of the learned Magistrate. We are only obliged to address to the issue whether the aforesaid remarks and the directions have been made in consonance with the principles that have been laid down by the various pronouncements of this Court and is in accord with judicial decorum and propriety.

9. In Ishwari Prasad Mishra v. Mohammad Isa[2], the High Court, while dealing with the judgment of the trial court in an appeal before it, had passed severe strictures against the trial court at several places and, in substance, had suggested that the decision of the trial court was not only perverse but was also based on extraneous considerations. Dealing with the said kind of delineation and the comments, Gajendragadkar, J (as His Lordship then was) authoring the judgment held that the High Court was not justified in passing the strictures against the trial Judge. The Bench observed that judicial experience shows that in adjudicating upon the rival claims brought before the courts, it is not always easy to decide where the truth lies. Evidence is adduced by the respective parties in support of their conflicting contentions and circumstances are similarly pressed into service. In such a case, it is, no doubt, the duty of the Judge to consider the evidence objectively and dispassionately, examine it in the light of probabilities and decide which way the truth lies. The impression formed by the Judge about the character of the evidence will ultimately determine the conclusion which he reaches. But it would be unsafe to overlook the fact that all judicial minds may not react in the same way to the said evidence and it is not unusual that evidence which appears to be respectable and trustworthy to one Judge may not appear to be respectable and trustworthy to another Judge. That explains why in some cases courts of appeal reverse conclusions of facts recorded by the trial Court on its appreciation of oral evidence. The knowledge that another view is possible on the evidence

adduced in a case acts as a sobering factor and leads to the use of temperate language in recording judicial conclusions. Judicial approach in such cases would always be based on the consciousness that one may make a mistake; that is why the use of unduly strong words in expressing conclusions, or the adoption of unduly strong intemperate, or extravagant criticism against the contrary view, which are often founded on a sense of infallibility should always be avoided. It is worth noting that emphasis was laid on sobriety, judicial poise and balance.

10. In Alok Kumar Roy v. Dr. S. N. Sarma and Anr.,[3] the Constitution Bench was dealing the issue whether a Judge of High Court can pass order in that capacity while he was working as Head of the Commission of enquiry and whether he can entertain writ petition and pass interim order while being at a place which was not seat of High Court. The learned Chief Justice of High Court while dealing with the matter commented on the Judge that he had passed the order in "unholy haste and hurry". That apart certain observations were made. While not appreciating the said remarks in the judgment against a colleague, their Lordships opined that such observations even about the Judges of subordinate courts with the clearest evidence of impropriety are uncalled for in a judgment. The Constitution Bench further proceeded to state that it is necessary to emphasise that judicial decorum has to be maintained at all times and even where criticism is justified it must be in language of utmost restraint, keeping always in view that the person making the comment is also fallible. Even when there is jurisdiction for criticism, the language should be dignified and restrained.

11. In Ishwar Chand Jain v High Court of Punjab and Haryana and Anr.[4] , it has been observed that while exercising control over subordinate judiciary under Article 235 of the Constitution, the High Court is under a Constitutional obligation to guide and protect subordinate judicial officers.

12. In K. P. Tiwari v. State of Madhya Pradesh[5], the High Court while reversing the order passed by the lower Court had made certain remarks about the interestedness and the motive of the lower Court in passing the impugned order. In that context this Court observed that one of the functions of the higher Court is either to modify or ser aside erroneous orders passed by the lower Court. It has been further observed that a judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. "It is well said that a judge who has not committed an error is yet to be born", and that applies to judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks – more correctly upto their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive. It is possible that a particular judicial officer may be consistently passing orders creating a suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such cases, the proper course for the higher court to adopt is to make note of his conduct in the confidential record of his work and to use it on proper occasions. The judges in the higher courts have also a duty to ensure judicial discipline and respect for the judiciary from all

concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticised intemperately and castigated publicly. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary than when the judges of the higher courts publicly express lack of faith in the subordinate judges for one reason or the other. It must be remembered that the officers against whom such strictures are publicly passed, stand condemned for ever in the eyes of their subordinates and of the members of the public. No better device can be found to destroy the judiciary from within. The judges must, therefore, exercise self-restraint. There are ways and ways of expressing disapproval of the orders of the subordinate courts but attributing motives to them is certainly not one of them as that is the surest way to take the judiciary downhill.

13. In Kasi Nath Roy v. State of Bihar[6] it has been ruled that in our hierarchical judicial system the appellate and revisional Courts have been set up with the pre-supposition that the lower Courts in some measure of cases can go wrong in decision making, both on facts as also on law. The superior Courts have been established to correct errors but the said correction has to be done in a befitting manner maintaining the dignity of the Court and independence of the judiciary. It is the obligation of the higher Courts to convey the message in the judgment to the officers concerned through a process of reasoning, essentially, persuasive, reasonable, mellow but clear and result orienting but rarely a rebuke.

14. In Braj Kishore Thakur v. Union of India[7] this Court disapproved the practice of passing strictures for orders against the subordinate officers. In that context the two-Judge Bench observed thus:-

> "No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when judges of higher courts publicly express lack of faith in the subordinate judges. It has been said, time and again, that respect for judiciary is not in hands by using intemperate language and by casting aspersions against lower judiciary."

15. In A. M. Mathur v. Pramod Kumar Gupta[8] though in a different context immense emphasis was laid on judicial restraint and discipline, it is appropriate to reproduce a passage from the said decision:-

> "Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a 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 better be called judicial respect; that is, respect by the judiciary. Respect to those who come before the Court as well to other coordinate before the Court as well to other coordinate branches of the State, the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process."

16. In Re; K, a Judicial officer,[9] a two-Judge Bench of this Court was dealing about the adverse remarks contained in the judgment of the High Court disposing of a Criminal Misc. Petition under Section 482 of the Code and the expunction sought by a Metropolitan Magistrate was aggrieved of such remark. After discussing that aggrieved judicial officer could approach this Court for expunging the remarks the Bench opined under what circumstances the exercise of power of making remarks can withstand scrutiny. The Bench reiterated the view expressed in State of Uttar Pradesh v. Mohammad Naim[10], wherein it was clearly stated that the overall test is that the criticism or observation must be judicial in nature and should not formally depart from sobriety, moderation and reserve. Thereafter their Lordships referred to the conception of judicial restraint, the controlling power, the expectations of subordinate judiciary form the High Court, the statutory jurisdiction exercised by the High Court and eventually opined that the High Courts have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their won mischievous infirmities. Thereafter the Court proceeded to enumerate the infirmities. They read as follows:-

> "Firstly, the judicial officer is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal natural justice so as to shield against being condemned unheard. Secondly, the harm caused by such criticism or observation may be incapable of being undone. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in open and therefore becomes public. The same Judge who found himself persuaded, sitting on judicial side, to make observations guided by the facts of a single case against a subordinate Judge may sitting on administrative side and apprised of overall meritorious performance of the subordinate Judge, may irretrievably regret his having made those observations on judicial side the harming effect whereof even he himself cannot remove on administrative side. Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher Court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge. Fourthly, seeking expunging of the observations by judicial officer by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court - a situation not very happy from the point of view of the functioning of the judicial system." Thereafter the Bench laid down how the matter should be handled and should be dealt with on the administrative side and ultimately expunged the remarks.

17. In Samya Sett v. Shambu Sarkar and Anr.,[11] the court was dealing with the case where a judicial officer was constrained to approach this court for expunging the remarks made by Single Judge of the High Court of Calcutta against him. Their Lordships referred to the decisions in Mohammad Naim (supra), Alok Kumar Roy (supra), State of M. P. v. Nandlal Jaiswal and Ors.[12] and certain other authorities and opined that the stricture was totally inappropriate. In that context the court referred to certain passages about the view expressed in other countries. We think it apt to reproduce them.

"It is universally accepted and we are conscious of the fact that judges are also human beings. They have their own likes and dislikes; their preferences and prejudices. Dealing with an allegation of bias against a Judge, in Linahan, Re, (1943) 138 F IInd 650, Frank J. stated;

"If, however, 'bias' and 'partiality' be defined to mean that total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial, and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal create attitudes which precede reasoning in particular instances and which, therefore, by definition are prejudices." Justice John Clarke has once stated;

"I have never known any judges, no difference how austere of manner, who discharged their judicial duties in an atmosphere of pure, unadulterated reason. Alas! we are 'all the common growth of the Mother Earth' – even those of us who wear the long robe."

18. In State of Bihar v. Nilmani Sahu and Anr.[13] a sitting judge of the Patna High Court had approached this Court for expunction of the some observations made by this Court in disposing of a special leave petition arising out of a land acquisition proceeding. A Bench of this Court had used the expression "We find that the view taken by the learned Singh Judge, Justice P. K. Dev, with due respect, if we can say so, is most atrocious". The learned Single Judge had treated this to be stigmatic and approached this Court and raised a contention that it was not necessary for the decision. A two-Judge Bench of this Court after hearing the learned counsel for the parties and considering the judgment of this Court opined the expression used in the judgment was wholly inappropriate inasmuch as when this Court uses an expression against the judgment of the High Court it must be in keeping with dignity of the person concerned. Eventually the said observations were deleted.

19. From the aforesaid enunciation of law it is quite clear that for more than four decades this Court has been laying emphasis on the sacrosanct duty of a Judge of a superior Court how to employ the language in judgment so that a message to the officer concerned is conveyed. It has been clearly spelt out that there has to be a process of reasoning while unsettling the judgment and such reasoning are to be reasonably stated with clarity and result orientation. A distinction has been lucidly stated between a message and a rebuke. A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on use of dignified language and sustained restraint, moderation and sobriety. It is not to be forgotten that independence of judiciary has an insegregable and inseparable link with its credibility. Unwarranted comments on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law. The sanctity of decision making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the part of the superior Courts to take recourse to correctional measures. A reformative method can be taken recourse to on the administrative side. It is condign to state it should be paramount in the mind of a Judge of superior Court that a Judicial officer projects the face of the judicial system and the independence of judiciary at the ground reality level and derogatory remarks against a judicial officer would cause immense harm to him individually (as the

expunction of the remarks later on may not completely resuscitate his reputation) but also affects the credibility of the institution and corrodes the sacrosanctity of its zealously cherished philosophy. A judge of a superior Court however strongly he may feel about the unmerited and fallacious order passed by an officer, but is required to maintain sobriety, calmness, dispassionate reasoning and poised restraint. The concept of loco parentis has to take a foremost place in the mind to keep at bay any uncalled for any unwarranted remarks.

20. Every judge has to remind himself about the aforesaid principles and religiously adhere to them. In this regard it would not be out of place to sit in the time machine and dwell upon the sagacious saying of an eminent author who has said that there is a distinction between a man who has command over 'Shastras' and the other who knows it and puts into practice. He who practises them can alone be called a 'vidvan'. Though it was told in a different context yet the said principle can be taken recourse to, for one may know or be aware of that use of intemperate language should be avoided in judgments but while penning the same the control over the language is forgotten and acquired knowledge is not applied to the arena of practice. Or to put it differently the knowledge stands still and not verbalised into action. Therefore, a committed comprehensive endeavour has to be made to put the concept to practice so that it is concretised and fructified and the litigations of the present nature are avoided.

21. Coming to the case at hand in our considered opinion the observations, the comment and the eventual direction were wholly unwarranted and uncalled for. The learned Chief Judicial Magistrate had felt that the due to delay and other ancillary factors there was no justification to exercise the power under Section 156 (3) of the Code. The learned Single Judge, as is manifest, had a different perception of the whole scenario. Perceptions of fact and application of law may be erroneous but that never warrants such kind of observations and directions. Regard being had to the aforesaid we unhesitatingly expunge the remarks and the direction which have been reproduced in paragraph three of our judgment. If the said remarks have been entered into the annual confidential roll of the judicial officer the same shall stand expunged. That apart a copy of the order be sent by the Registrar of this Court to the Registrar General of the High Court of Allahabad to be placed on the personal file of the concerned judicial officer.

22. The appeal is allowed accordingly.

.....J. [DR. B.S. Chauhan] .....J. [Dipak Misra] New Delhi;

May 17, 2012.

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[1] 2007 ALJ (1) 221
[2] AIR 1963 SC 1728
[3] AIR 1968 SC 453
[4] AIR 1988SC 1395
[5] AIR 1994 Sc 1031

[6] AIR 1991 SC 3240
[7] 1997 SCR 420
[8] AIR 1990 SC 1737
[9] AIR 2001 SC 1972
[10] AIR 1964 SC 703
[11] AIR 2005 SC 3309
[12] 1987 1 SCR 1
[13] (1999) 9 SCC 211