Braj Kishore Thakur vs Union Of India And Others on 24 February, 1997

Equivalent citations: AIR 1997 SUPREME COURT 1157, 1997 (4) SCC 65, 1997 AIR SCW 1166, (1997) 3 JT 26 (SC), 1997 (3) SERVLJ 73 SC, 1997 (2) SCALE 312, 1997 CALCRILR 96, 1997 (3) JT 26, 1997 CRILR(SC MAH GUJ) 386, 1997 UP CRIR 422, 1997 SCC(CRI) 514, (1997) 3 SERVLJ 73, (1997) 1 KER LT 80, 1997 CRILR(SC&MP) 386, 1997 (1) BLJR 606, 1997 BLJR 1 606, (1997) 2 SCR 420 (SC), 1997 (2) SCR 420, (1997) 41 DRJ 435, (1997) 69 ECR 490, (1997) 2 RECCRIR 202, (1997) 4 SCJ 82, (1997) 2 SUPREME 471, (1997) 21 ALLCRIR 534, (1997) 13 OCR 50, (1997) 1 CHANDCRIC 174, (1997) 1 CRIMES 199, (1997) 1 CURCRIR 287, (1997) 1 EASTCRIC 669, (1997) 1 EFR 508, (1997) 2 ALLCRILR 733, (1997) 2 BLJ 72, (1997) 2 PAT LJR 15, (1997) 2 SCALE 312, (1997) 34 ALLCRIC 501, (1997) SC CR R 693

Bench: Madan Mohan Punchhi, K.T. Thomas

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           CASE NO.:
Appeal (crl.)  200 of 1997

PETITIONER:
BRAJ KISHORE THAKUR

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT: 24/02/1997

BENCH:
MADAN MOHAN PUNCHHI & K.T. THOMAS

JUDGMENT:
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JUDGMENT 1997(2) SCR 420 The Judgment of the Court was delivered by THOMAS, J. Leave granted.

Judicial restraint is a virtue. A virtue which shall be concommitant of every judicial disposition. It is an attribute of a judge which he is obliged to keep refurbished time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other super-visory jurisdiction. Higher courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of courts at the lower tiers. Such powers certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that "a judge who has not committed any

error is yet to be born".

The context for making the aforesaid prefatory words is the grievance expressed by the appellant Braj Kishore Thakur, a senior District & Sessions Judge of Bihar Judicial Service over the caustic and severe cen- sure made against him by a single judge of the Patna High Court in an Order cancelling the bail granted to two accused involved in an .offence under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985, for short 'NDPS Act'. The aggrieved Sessions Judge moved the High Court to have those disparaging remarks expunged but instead of getting them erased learned single judge used the opportunity to reiterate those deprecatory remarks with aggravated severity. Hence the said Session Judge has come to this Court under Article 136 of the Constitution. We granted special leave to him.

The background is this : On 16.2,1995 some customs officials in Bihar stopped and inspected an Ambassador car at Fahengola (in Kishan Ganj) and detected 97 Kgs. of "non-duty paid Ganja" hidden hi a false chamber build inside the vehicle. The driver and two passengers of the car were arrested and were later remanded to judicial custody. About 3 months thereafter those three persons moved for bail and the application came up before the appellant who was Sessions Judge-cum-Special Judge, Purnea, He passed orders on 29.7.1995 rejecting bail for the driver and granting bail for the other two persons subject to certain conditions. This order was challenged by the Collector of Customs, Patna before the High Court of Patna. Learned Single Judge [Narayan Roy, J.) called for a report from the appellant as to the circumstances under which bail was granted. (We fail to appreciate how the learned single judge could have asked the subordinate judicial officer to sent up a report in defence of his judicial Order. Reasons in support of a judicial order can appear only in the order itself and it is an unwholesome practice to compel a judicial officer to write a report subsequently in defence of his conclusions.) Be that as it may -learned single judge after considering the report passed the order cancell-ing the bail granted to the aforesaid two persons and in that order made the following observations which have now become the subject of this appeal.

'The learned Special Judge, therefore, in view of the stringent law on the point should have taken care in not making haste, by granting bail to the accused opposite parties and when the seized contraband was of a consider able magnitude, serious view of the matter should have been taken and bail should not have been granted so lightly believing the plea taken by the accused persons."

> "...it appears to me that bail has been granted for extraneous considerations", "Before I part with this order, I would like to observe that the learned Special Judge, who happens to be a seniormost Sessions Judge could not have passed the order impugned in a leisurely manner completely ignoring the provisions of Section 37 of the NDPS Act. The acts of the learned Special Judge by granting bail to accused opposite party Nos. 1 and 2 amounts to judicial indiscretion and in view of his own admission as shown in his report that he was not aware of the law on the point, he does not deserve to remain as the Sessions Judge and he should be divested of his Original powers. I, therefore, take a serious view of the matter and place my displeasure on record,"

When appellant moved for expunging the above remarks learned Single Judge reasserted those and further added thus :

> "Order dated 20.5.1996 making certain remarks against the petitioner is self explanatory and speaks a volume against the petitioner. The remarks made against the petitioner cannot be said to be unwarranted as the same was passed in the peculiar facts and circumstances of the case, where the petitioner ignoring the legal norms dealt with the matter Very casually and leisurely and granted bail to the accused persons."

Learned Single Judge went on to add :

> "The observation of this Court that the learned Special Judge had granted bail for extraneous consideration, therefore, in my opinion, is commensurate with the findings of this Court and the possibility of extraneous consideration cannot be ruled out."

Before proceeding to consider the grievance of the appellant, a glance through the two relevant provisions of the NDPS Act is of ad-vantage. The offence under Section 20(b)(i) of the Act reads thus :

> "Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder -
>
> (a)-
>
> (b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-state or uses cannabis, shall be punishable -
>
> (i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees."

Section 37(l)(b) imposes restriction on the powers of the court in granting bail to persons accused of offences under NDPS Act. The material portion of Section 37(1) reads thus :

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1973
>
> -
>
> (b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to op-pose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable ground for believ-ing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

This Court has observed in Narcotics Control Bureau v. Kishan Lal and Others, AIR (1991) SC 558 that even the power of High Court under Section 439 of the Code of Criminal Procedure is subject to the limitations contained in Section 37 of NDPS Act.

As the order passed by the learned Single Judge cancelling bail is not in appeal before us it is not for us to consider the correctness or otherwise of the operative part of the order. But since we are now con-cerned with the justifiability of the impugned observations made against the appellant we deem it appropriate to refer to the stand adopted by him in defence of his own order. He invited our notice to the decision of a Division Bench of the Patna High Court in Kamlesh Kumar v. State of Bihar, (1994) 2 PUR 600 in which it has been held that "when air accused is charged with offence under Section 20(b)(i) of the NDPS Act the power under Section 37(l)(b) is not to be attracted."The Division Bench in that decision has made a reference to the decision of this Court in Kishan Lal's case (supra).

Though this appeal is not is the occasion to consider the correctness of the aforesaid dictum laid down by the Division Bench of Patna High Court we have to observe that all subordinate courts in the State of Bihar are bound by the said legal position in Kamlesh Kumar's case. We are not told of any decision of this Court taking a contrary view and hence the binding nature of the aforesaid ratio on the subordinate courts need not be over- emphasized. We cannot assume that learned Single Judge was unaware of the said legal position laid down by the same High Court though he did hot make any reference to it either in his order cancelling the bail or in his subsequent order refusing to expunge the remarks. When learned Single Judge castigated the appellant for being "ignorant of the law and was not aware of the latest rulings" it would have been desirable that learned Single Judge had reminded himself of the legal position laid down by the same High Court on the very same subject. If the position of law which is binding on the subordinate judiciary in Bihar was the above (as laid down by the Division Bench in Kamlesh Kumar v. State of Bihar) there was no justification at all for the learned Single Judge of the same High Court to observe that the appellant Special Judge had exceeded his juris-diction in granting bail.

We have no hesitation in holding that the Sessions Judge was well within the jurisdiction when he passed the order granting bail to the two persons, though it is a different matter whether the discretion was well exercised by him.

When the appellant petitioned before the learned Single Judge to expunge the extremely offensive imputation made against a judicial officer that "it appear to me that bail has been granted for extraneous considera-tions", fairness required of him at least to put forward his reasons when he chose to reiterate those remarks in the order now under challenge. It is very unfortunate - we may

say very distressing - that learned Single Judge persisted in repeating those highly disparaging observations without any justification whatsoever.

According to the appellant, he has put in more than 30 years of judicial service and he was promoted from one tier to the higher tier and in 1992 he was promoted as District & Sessions Judge and in 1995 he was granted Super- Time scale of pay. He expressed his deep felt mental pain when inflicted with such castigations that he stands condemned for ever in the eyes of his subordinates as also in the eyes of the members of the public. It was not only he, but the image of judiciary too would have remained tarnished by hurling such castigations.

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. It is well to remember that a judicial officer against whom aspcrtions are made in the judgment could not appear before the higher court to defend his order. Judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against lower judiciary.

A quarter of a Century ago Gajendragadkar, J. (as he then was) speaking for a bench of three judges of this Court, in the context of dealing with the strictures passed by High Court against one of its subordinate judicial officers (suggesting that his decision was based on extraneous considerations) stressed the need to adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary more so "because the Judge against whom the imputations are made has no remedy in law to vindicate his position" (Ishwari Prasad Mishra v. Mohammad Isa, [1963] 3 SCR 722), This Court had to repeat such words on subsequent occasions also. In K.P. Tiwari v. State of M.P., AIR (1994) SC 1031 this Court came across certain observations of a learned Judge of the High Court casting strictures against a Judge of the subordinate judiciary and the court used the opportunity to remind all concerned that using intemperate language and castigating strictures at the lower levels would only cause public respect in judiciary to dwindle. The following observations of this Court need repetition in this context:

> "The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the judges and hence provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err... 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 up to their nostrils. They dp 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."

Recently, we had to say the same thing though in different words in Kashi Nath Roy v. State of Bihar, JT (1996) 4 SC 605 in a similar situation. We then said thus :

> "It cannot be forgotten that in our system, like elsewhere, appellate and revisional courts have been set up on the pre-supposition that lower courts would in some measure of cases go wrong in decision-making, both on facts as also on law, and they have been knit-up to correct those orders. The human element in justicing being an important element, computer-like functioning cannot be expected of the courts; however hard they may try and keep themselves precedent-trodden in the scope of discretions and in the manner of judging. Whenever any such intolerable error is detected by or pointed out to a superior court, it is functionally required to correct that error and may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the Court and independence of judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear, and result-orienting, but rarely as a rebuke. Sharp reaction of the kind exhibited in the afore-extraction is not in keeping with institutional functioning. The premise that a Judge committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge - Subordinate, unless there existed something else and for exceptional grounds."

We are sorry to note that learned Single Judge did not remind himself of the above precautions which time and again have been exhorted. When he made unjustifiable, unsavoury and scathing remarks on an undefended Judge of the subordinate court he was only wounding the institution of judiciary.

In the interest of justice and fairness, we expunge all the offending remarks made against the appellant in the order dated 20.5.1996.

The appeal is disposed of accordingly.