

SURENDRA PRASAD MISHRA

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v.

SMT. RAMAWATI AND OTHERS

(Civil Appeal No.6634 of 2019)

AUGUST 16, 2019

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[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

Advocates: Dispute between lawyers with regard to payment of fees – In the instant case, a claim petition was filed before the appellant holding post of Motor Accident Claims Tribunal in which vakalatnama was filed by two lawyers – Settlement was arrived at between the claimant and the insurance company and signed by one of the lawyer – The other lawyer raised objection that his fees was not paid and, therefore, the compromise should not be recorded – Appellant accepted the request of the other lawyer and held that the compromise petition could only be filed through this lawyer – This order was challenged before High Court – High Court set aside the order – Held: High Court was right in setting aside the order – The claimants in the Motor Accident Claims Tribunal should not be made to suffer because of the dispute between the lawyers – It is not for any court to settle the dispute between the lawyers with regard to the fees – If there is any misconduct on the part of the lawyer in taking up the brief of another lawyer, normally it is for the Bar Council and not for the Court to settle the dispute – Bar Council.

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Judiciary: Subordinate judiciary – Adverse/Disparaging/Scathing remarks made on integrity of the judicial officer in the judgment – In the impugned judgment, High Court made certain observations against the appellant-judicial officer questioning his bona fide and casting aspersions on his integrity and also accused him of favouring lawyer and directed on the judicial side that the matter be referred on the administrative side for appropriate action – Held: The proper course is to place the matter before the Chief Justice on the administrative side with a request that action be taken against the concerned judicial officer – In this case, High Court did that but in addition passed scathing remarks which virtually meant that the appellant stood condemned even before any

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A *disciplinary proceedings were initiated against them – High Court by castigating the judicial officer as an unworthy and corrupt person, overstepped its boundaries – Remarks are expunged – Cost imposed on judicial officer is also set aside – Costs.*

B *Ishwari Prasad Mishra v. Mohammad Isa* [1963] 3 SCR 722 ; *K.P. Tiwari v. State of Madhya Pradesh* AIR 1994 SC 1031 : [1993] 3 Suppl. SCR 497 ; *Parkash Singh Teji v. Northern India Goods Transport Co. Pvt. Ltd. and Anr.* (2009) 12 SCC 577 : [2009] 6 SCR 278 ; *In 'K' A Judicial Officer v. Registrar General, High Court of A.P.* AIR 2010 SC 2801 – **relied on.**

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Case Law Reference

	[1963] 3 SCR 722	relied on	Para 5
	[1993] 3 Suppl. SCR 497	relied on	Para 6
D	[2009] 6 SCR 278	relied on	Para 7
	AIR 2010 SC 2801	relied on	Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6634 of 2019.

E From the Judgment and Order dated 05.11.2012 of the High Court of Judicature at Allahabad in W.P. No. 25607 of 2012.

Shaswat Goel, Vibhav Mishra. Ms. Ruchika Sharma (for M.P. Shorawala, Advs. for the Appellant.

The following Order of the Court was passed :

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ORDER

1. Leave granted.

G 2. The appellant, a judicial officer, was holding the post of Motor Accident Claims Tribunal at the relevant time. A claim petition was filed before him in which vakalatnama was filed by two counsel Mr. R.M. Singh and Mr. D.K. Saxena. The matter was settled between the claimant and the Insurance Company and the settlement petition was filed and signed by Mr. D.K. Saxena. At that time, Mr. R.M. Singh raised an objection that his fees had not been paid and that the compromise should not be recorded. The appellant here in accepted the request of Mr. R.M. Singh and held that the compromise petition

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could only be filed through Mr. R.M. Singh and not by Mr. D.K. Saxena. He came to the conclusion that since vakalatnama bears a sum of Rs.10/- for the Advocates Welfare Fund, one lawyer can only be authorized and not more. A

3. This order was challenged. The High Court rightly set aside the order. It is not for any Court to settle the dispute between the lawyers with regard to payment of fees. If there is any misconduct on the part of the lawyer in taking up the brief of another lawyer, normally it is for the Bar Council and not for the Court to settle the dispute. It was rightly held by the High Court that the claimants in the Motor Accident Claims Tribunal should not be made to suffer because of the dispute between the lawyers. Having held so, the High Court made certain observations against the appellant questioning his *bona fide* and casting aspersions on his integrity and also accused him of favouring Mr. R.M. Singh. The High Court also directed on the judicial side that the matter be referred on the administrative side for an appropriate action. As far as the remarks are concerned, we are clearly of the view that all the adverse remarks in the judgment made against appellant, whereby his integrity has been questioned or whereby aspersions have been cast on his character, judicial orders or otherwise are bound to be expunged. B C D

4. This Court in a number of cases has cautioned that remarks against judicial officers should normally not be passed in judgments. We follow a system where the judgment of a Court is subject to judicial scrutiny by Higher Courts. The judgment may be right or wrong, but the Higher Courts should not pass scathing remarks against the presiding officer of the lower courts only because they do not agree with the point of view of the Trial Court. E F

5. In *Ishwari Prasad Mishra v. Mohammad Isa* [(1963) 3 SCR 722], this Court observed as follows:

“No doubt, if it is shown that the decision of the trial court in a given case is a result of a corrupt motive, the High Court must condemn it and must take due further steps in the matter. But the use of strong language and imputation of corrupt motives should not be made light-heartedly because the Judge against whom the imputations are made has no remedy in law to vindicate his position. G H

A There is no doubt that judicial administration should be fearless; judges must have full freedom to express their conclusions in respect of the evidence given by the witnesses before them without any favour or fear; and so, judicial power to express its appreciation about oral evidence is very wide. But the very width of the said power must inevitably impose some healthy restraints upon its exercise.”

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6. In *K.P. Tiwari v. State of Madhya Pradesh* [AIR 1994 SC 1031], this Court observed as follows:

C “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.

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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 criticized 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. That is the surest way to take the judiciary downhill.”

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7. In *Parkash Singh Teji v. Northern India Goods Transport Co. Pvt. Ltd. and Anr.* [(2009) 12 SCC 577], this Court observed as follows:

“We are not undermining the ultimate decision of the High Court in remitting the matter to the trial court for fresh disposal. However, we are constrained to observe that 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. Our legal system acknowledges the fallibility of the Judges, hence it provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity, however, sometimes is likely to err. It has to be noted that the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure. They do not have the benefits which are available in the higher courts. In those circumstances, remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put forth his reasonings.”

8. In *‘K’ A Judicial Officer v. Registrar General, High Court of A.P.* [AIR 2010 SC 2801], this Court held as under:-

“....the Division Bench of the High Court may be fully justified in setting aside the order of injunction, but there was absolutely no justification for the Division Bench to make highly disparaging remarks against the appellant as a judicial officer casting doubts on his ability to decide the cases objectively. The use of the words ‘out of sheer arrogance and disrespect to the lawful order’ and the expression ‘judicial authoritarianism’ in paragraph 10 shows that the Division Bench ignored the words of caution administered by this Court in several judgments including those referred to hereinabove and castigated the appellant without any justification. The observations and remarks made by the Division Bench of the High Court are bound to adversely affect the image of the appellant in the eyes of the public, his credibility as a judicial officer and also affects his career. We are sure that if the Division Bench of the High Court had kept in view the judgments of this Court, it would not have made disparaging remarks against the appellant, which, in the facts and circumstances of the case, were not at all called for.”

In the present case, the remarks especially those in para 15 cast aspersions on the integrity of the judicial officer. Even if the High Court

- A felt as strongly as it did that action needed to be taken, then the proper course was to place the matter before the Chief Justice on the administrative side with a request that action be taken against the concerned judicial officer. In this case, the High Court did that but in addition passed the scathing remarks which virtually meant that the appellant stood condemned even before any disciplinary proceedings were initiated against him.
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9. The High Court can definitely say that the order passed shows total lack of knowledge of law. But when the High Court went further and virtually castigated the judicial officer as an unworthy and corrupt person then the High Court, in our view, over-stepped its boundaries and such remarks need to be expunged.
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10. We, accordingly, expunge all such remarks and direct deletion of para 15 of the judgment.

11. We also set aside the order in so far as the imposition of costs of Rs.10,000/- on the appellant is concerned. Normally, costs are not imposed on the presiding officer of the Court and this practice should not be encouraged.
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12. Learned counsel for the appellant states that as far as the administrative action is concerned, it has already been dropped and he is not pressing relief in this regard.
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13. The civil appeal is accordingly allowed and we direct expunging of all remarks made against the appellant and further direct that para 15 of the impugned judgment shall stand deleted for all intents and purposes.