V. Sujatha Etc. Etc vs State Of Kerala And Ors on 19 September, 1994

Author: Madan Mohan Punchhi

Bench: Madan Mohan Punchhi

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           CASE NO.:
Appeal (crl.)  652 of 1989

PETITIONER:
V. SUJATHA ETC. ETC.

RESPONDENT:
STATE OF KERALA AND ORS.

DATE OF JUDGMENT: 19/09/1994

BENCH:
MADAN MOHAN PUNCHHI & K. JAYACHANDRA REDDY

JUDGMENT:
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JUDGMENT 1994 SUPPL. (3) SCR 646 The Judgment of the Court was delivered by PUNCHHI, J. Special leave granted in S.L.P. (Crl.) No. 180 of 1989.

Criminal Appeals Nos. 653-655 of 1989 preferred by V. Sujatha, Chief Judicial Magistrate, Ernakulam are linked up with Appeal arising out of Special Leave Petition (Criminal) Nos. 180 of 1989. The latter is directed against the judgment and order of Hon'ble S. Padmanabhan, Judge of the High Court of Kerala dated September 8, 1988 passed in Criminal Appeal No.476 of 1987, in which Gopalan Nair is the appellant.

Criminal appeal No. 652 of 1989 also preferred by V. Sujatha, Chief Judicial Magistrate, Ernakulam is linked up with Criminal Appeal No. 625 of 1988. The latter is directed against the judgment and order also of S. Padmanabhan, Judge of the High Court of Kerala dated September 19, 1988 in Criminal Appeal No. 194 of 1987, in which R. Vikraman is the appellant.

All these matters shall be disposed of by a common order.

CRIMINAL APPEAL ARISING OUT OF S.L.P. NO. 180 OF 1989 :

> The appellant, Gopalan Nair, was the driver of Bus no. KLX 3627 belonging to the Kerala State Road Transport Corporation. At the relevant time it was under repairs in one of its workshops. At about 3.00 p.m. on 26-6-85, the but after repairs with a board hung "ON TRIAL" was taken out on a trial run by the appellant on a particular

road at Ernakulam. It is the case of the prosecution that he drove the bus in a rash and negligent manner endangering human life or causing hurt or injury to pedestrians and other vehicular traffic. While doing so it hit against a pedestrian, P.W.7 who was walking in the same direction as was the bus with the result that he was knocked down on the road getting injuries. The but then hit against a tree whereby P.Ws. 1, 2 and 8 who were inmates of the bus were injured.

These consequences resulted because the appellant allegedly had over-taken a bus parked on the side of the road alighting passengers in front of St. Theresa's Convent, ignoring a car coming from the opposite direction. On the other hand, the positive defence of the appellant was that the happening of the accident was beyond his control on account of brake failure. The appellant's version in his statement, made at the trial for offences punishable under section 279 and 337 I.P.C. before the Judicial Magistrate, IInd Class, Ernakulam, was that on seeing the bus parked in front of him, he had applied brakes but there was no response and the foot paddle completely went down due to brake failure. Perceptibly, at that moment, he claims to have swerved the bus to avoid larger loss and caused it to jam against a tree and that the P.Ws had been injured for no fault of his.

P.W. 1, one of the injured inmates of the bus went on support the brake failure theory of the appellant. He was a mechanic attached to the divisional workshop of the Kerala State Road Transport Corporation and thus the appellant's charge-man. He also supported the version of the appellant with regard to the necessity to swerve the bus, as otherwise more harm would have ensued by damage to human life and property. For obvious reasons he was declared hostile. Likewise P.Ws. 2 and 8, other mechanics of the Kerala State Road Transport Corporation and injured inmates of the bus deposed in favour of the appellant. They too were declared hostile. Police Constable, P.W.4 on traffic duty was an eye witness and according to him, the appellant had carelessly attempted to overtake the parked bus resulting injuries to a pedestrian, P.W.7, and colliding against a tree. Therefore, it is on the injuries of P.W.7 that the prosecution case was ultimately built up. But according to P.W. 7 he did not known by whose fault the incident had occurred, though he had come to know that the appellant was driving the bus at the time of the incident. Pleading for himself he had said that the was not at fault at all.

The brake failure case then rightly hinged on the value to be attached to the evidence of P.W. 3, the then Motor Vehicles Inspector, Ernakulam and his Inspection Report P-l. Two days after the accident i.e. on 26-8-1985, he claims to have inspected the offending bus and according to him the brake system of the bus was efficient, and there was no mechanical defect. In opposition, defence witnesses, who were mechanics of the Transport Corporation stating that after the accident the master cylinder the hydraulic brake system of the bus had to be changed, were not believed by the trial Magistrate. Complete reliance on the road-worthiness of the vehicle was placed on the evidence of P.W.3. As a result the appellant was convicted for offences

under sections 279 and 337 I.P.C. and sentenced to pay a fine of Rs, 500 in default to undergo simple imprisonment for 45 days for offence under section 297 I.P.C. but no separate sentence was imposed for offence under section 337 I.P.C.

The appellant took the matter in appeal before Smt. V. Sujatha, Chief Judicial Magistrate, Ernakulam. After reappraising the entire evidence, she allowed the appeal, setting aside the convictions and sentence. The evidence of P.W. 3, the Assistant Motor Vehicles Inspector and his Inspection Report Ex. P-l, in which he had noted the damage, came under heavy criticism by her. The inspection report seemingly was in the form of a questionnaire in Column 11, the Inspector was required to mention what was the cause of failure of the foot brake, and whether it was (a) hydraulic or (b) mechanical. He kept (a) blank and remarked in (b) "Not applicable". The learned Chief Judicial Magistrate finding (a) left blank viewed that when the evidence of P.W. 3 at the trial was that the foot brake was efficient having no mechanical defect, he was required to answer in column (a) that the hydraulic brake system (a brake in which the force is generated and transmitted by means of a compressed fluid) was in order. She thus safely inferred that by keeping the space at (a) blank he had not checked the hydraulic system as such. The appellant's version was that he had thrust the brake paddle down to the maximum but got no response, meaning thereby that the hydraulic system was not functional. Therefore, his quick reflexes prompted him to swerve the vehicle to avoid larger loss to life and property, like colliding with a car coming from the opposite direction and wherefor P.W. 7 was hurt. The learned Chief Judicial Magistrate appreciated his stance because the place of the incident was. in front of the St. Theresa's Convent where a large number of students were studying and her opinion those could have been put to danger but for the quick reaction of the appellant. She thus went on to hold that when P.W. 3 had not cared to check up the hydraulic brake system, his Inspection Report had to be negatived. She then went on to observe as follows :

"So, one cannot find fault with the accused. But what provoked the learned Magistrate to find the accused/appellant guilty is nothing but a personal vendetta.....1 have no hesitation to quote that the learned Magistrate went utterly wrong in finding the accused/appellant guilty."

Holding so, she recorded an order of acquittal.

The State of Kerala filed an appeal against acquittal before the High Court of Kerala which was placed before Padmanabhan, J. for final disposal that appeal was allowed on September 8, 1988 and the appellant judgment and order of V. Sujatha, Chief Judicial Magistrate was set aside and sentence imposed by trial magistrate restored. It is against this order that we have granted leave.

There are two aspects which have to be taken care of. One relates to the guilt or otherwise of the appellant. The second relates to some adverse remarks made by Padmanabhan, J. against Smt. V. Sujatha, Chief Judicial Magistrate, Ernakulam. Her grievance is triple faceted. One re-lates to the

adverse remarks against her mentioned in the judgment under appeal. She wants them expunged. She is challenging the said order in her own right. She had earlier made an application for expunction of those remarks to the learned Judge of the High Court but when realising that it would be appropriate for her to move this Court in appeal, she prayed before the learned Single Judge for withdrawal of the application. The learned Single judge disallowed that prayer. This is her second grievance which has given her a a right to approach this Court in appeal. Then finally when the application for expunction of remarks was partially allowed by the learned Single Judge, aggrieved by the non-expunction of the remaining remarks, and suggestedly addition of some others, has also given her the third cause and right to approach this Court in appeal. These appeals on her behalf among themselves are Criminal Appeal Nos. 653-655 of 1989. Their fate has got entwined with Gopalan Nair's appeal, as would be plain hereafter.

The learned Judge of the High Court in Paragraph 11 of the Judgment has observed as follows :

> "I recorded all these facts only because I was really worried in the manner in which a good reasoned judgment of the trial Magistrate was reversed by a shabby judgment written by the Chief Judicial Magistrate and that too with unjustified attacks against the trial Magistrate and P.W.3 and unmerited encomium to the respon-dent."

Further observations made were :

> The reasons alleged by the Chief Judicial Magistrate for disbeliev-ing P.W. 3 are: (1) "He conceded that he did not check whether the brake was hydraulic or not." This finding is a judicial dishonesty by the Chief Judicial Magistrate.....,.....,.....

(2) "In questionnaire ll(a) cause of failure of foot brake (a) if hydraulic he did not answer. Likewise, quarry ll(b) if mechanical, he answered "not applicable". But he deposed in chief that "foot brake system was efficient and no mechanical defects". This is quite unreasonable. I fail to understand how the stand taken by the Chief Judicial Magistrate that he did not answer ll(a) is a judicial dishonesty.....

And so on are other adverse remarks, using harsh language against the Chief Judicial Magistrate in justification for upsetting the orders of acquittal.

Adverting to the merits of Gopalan Nair's appeal, the learned Single Judge of the High Court opined that the evidence of P.W.4 clinched the issue. It is to be recalled that he was the traffic policeman on duty. He had given his version about the way in which the bus swerved knocking down P.W.7 and then jamming against a tree on the footpath. We fail to see how evidence of P.W.4 clinches the issue. These facts, which speak for them-selves, are not denied by Gopalan Nair. It is the mechanical road-worthi-ness or otherwise of the offending vehicle which would clinch the issue.

With regard to P.W.7, the learned Single Judge commented that when it is said by him that he did not know anything except that the incident was not due to any negligence on his part, it appears that the accused (appellant herein) paid him sufficient money and hence he was not interested in giving

any incriminating evidence. To say the least, there is no basis for such insinuation against the appellant herein. We are left guessing as to what provoked the learned Single Judge to be so vocal against the appellant or against P.W. 7. There was no suggestion much less evidence in that regard. We do not appreciate this uncalled for remark by the High Court.

With regard to PW.3, the Motor Vehicles Inspector, it is noteworthy that he having deposed that the foot brake system was efficient with no mechanical defect, it was the right of the defence to tear his opinion apart and pick holes in Inspection Report Ex.P.1. As is plain, Column 11 of the questionnaire requires cause of failure of the foot brake to be mentioned, whether mechanical or hydraulic. Such as those who have elementary knowledge of driving a vehicle, know that hydraulic foot brake, are highly efficient, but are more prone to failure by wear and tear, because of power generation and transmission by means of brake fluid through the master cylinder, which force is set into motion by pushing the foot brake paddle. Such pressure is felt by the driver when the brakes get functional. In case of brake failure, the foot paddle is unresponsive, for no pressure is felt. But sometimes by repetitive paddling, pressure is built up even when malfunctioning. P.W.3 claims to have driven the bus to say that the "foot brake system was efficient with no mechanical defects". But he did not check the hydraulic system as such to any weakening or malfunctioning. Had he done so, he could have filled column ll(a) as well "Not applicable". If the bus was road-worthy, there was no reason why three mechanics, who are stamped witnesses, P.W.s 1, 2 and 8 should be in the bus for a trial run. Thus, in our view, the evidence of P.W.3 was unnecessarily given high importance by the High Court, when there was considerable suspicion in a part of the preparation of Inspection Report Ex.P-1, We thus hold that it is not safe to rely on the evidence of P.W.3 or on his report Ex.P.1 We are also of the view that the High Court did not appreciate the defence led by the respondent through the employees of the Road Transport Corporation, who had disclosed that the master cylinder in the brake system had to be replaced in the offending bus. Here again, the learned Single Judge rejected the defence evidence and made an unwarranted remark against the employees of the Transport Corporation by observing as following:

> "It is possible of the employees in the K.S.R.T.C. to manipulate records by making entries b the work register and preparing an issue notice. By such a notice they are only to gain because the cylinder could be otherwise utilised by them".

There was absolutely no basis for such a remark. The issuance of master cylinder from the store was by an official document. It was put as a replacement in the offending bus, was again a matter of record. It cannot be imagined that all this evidence was created by the Transport Corpora- tion employees merely to support the defence of the appellant. He was one employee in large contingent. No special interest could have been aroused for him.

Lastly, the learned -Single Judge has assumed that when a bus goes out for a "trial run", it is presumed that it was after complete repairs in the workshop and that such presumption should apply to the offending bus. In the first place, we find it difficult to accept there is such a presumption, but even if it be so, it gets rebutted by the actual performance of the vehicle, A "trial run" is after all a test run to satisfy the repairers that the repair work has been completed to their satisfaction. It may not necessarily relate to the repairs effected for in the trial run, other defects can

be noticed or detected as well, which may have escaped notice earlier. Putting a vehicle to trial run, therefore, is not certifying to its road-worthiness. Rather the requirement of the rules that a board should be hung on the vehicle to that effect is to warn all concerned that such a vehicle on road is not absolutely road-worthy but was being tested for the purpose, and the possibility of its failing could not be ruled out. It thus appears to us that the High Court over rated this point.

For all these reasons, we are of the view that the High Court was in error in upsetting the well considered judgment passed by the Chief Judicial Magistrate on merits. Accordingly, we set aside the impugned judgment and order of the High Court, restoring that of the Chief Judicial Magistrate, with the result, the appellant, Gopalan Nair, gets acquitted of the charges. Criminal Appeal arising out of Special Leave Petition (Criminal) No. 180 of 1989 would thus stand allowed.

CRIMINAL APPEAL NO. 625 OF 1988 :

The appellant, R, Vikraman was the Managing Director of a partner-ship concern known as "Bell Foods". He alongwith his wife, the second accused, and his brother, the third accused were put up for trial by the C.B.I, before Smt, V. Sujatha, Chief Judicial Magistrate, Ernakulam for offences punishable under sections 120-B, 420,467,468 and 471.P.C. Vide order dated 25th October, 1986, the learned Chief Judicial Magistrate acquitted the accused of all offences. The C.B.I. filed an appeal against the acquittal before the High Court of Kerala. S. Padmanabhan, J. of that Court allowed the appeal vide order dated September 19,1988 maintaining acquittal of the wife and brother of the appellant but recording conviction of the appellant on two counts namely Sections 420 and 471 I.P.C. awarding him punishment of rigorous imprisonment for a period of one year under each count and additionally under section 420 I..P.C. paying of a fine of Rs. 10,000 in default of payment of which simple imprisonment for six months. The judgment and order of Mrs. V. Sujatha, Chief Judicial Magistrate was upset to this limited extent, just after 11 days and under the hangover of the passing of the order in Gopalan Nair's case, which order we have upset, wherein, as said before, are certain remarks made against Smt V. Sujatha, for which there is an appeal for expunction, linked up as it is, for disposal.

Bell foods was firm of Cochin engaged in the export of Sea Foods and the three accused were partners thereof. The appellant was its Managing Director. The prosecution case was that from October, 1979, he entered into a criminal conspiracy for the export of 310 cartons of sub-standard frozen shrimps by forging and using Quality Control Certificate (QCC) and Certificate of Origin (COO) as genuine knowing them to be forged in order to receive payment of price from the Dena Bank. Farther case of the prosecution is that using these certificates as genuine, he obtained clearance from the Customs for shipment and exported sub-standard goods, thereby cheating the Customs Department, the Export Inspection Agency and the Marine Products Export Development Agency as well as the foreign buyer. It was also the case of the prosecution that the accused cheated the Dena Bank by producing the forged COO and drawing a sum of Rs. 4,88,501.60.

The modus operandi for purposes of exporting Marine Products was stated to be in this manner. The exporter had to obtain QCC from the Export Inspection Agency, which had to be issued after inspection by drawing samples and putting them to scientific tests. The exporter would have to make an application for the purpose on paying the requisite fee in a particular manner. On the issuance of QCC, the goods for export were to be produced in the wharf. QCC and other papers are required to be presented before the Customs for clearance. In order to claim the benefits of shipping, it is necessary for the exporter to obtain and show a COO.

To further their export, the Bell Foods are accused of having forged the requisite QCC in order to export the said 310 cartons of sub-standard frozen Shrimps to foreign buyer in London. Those goods on arrival at London were found to be sub-standard and unworthy for palate. The foreign buyer complained to the Central Government through the Indian Embassy. Tracing the export, it was found that the original QCC was not available with either the Export Inspection Agency or the Customs authorities. Bell foods were, therefore, contacted. It is the case of the prosecution that the appellant herein produced the original QCC, (precise-ly a carbon copy) before P.W. 3 and 23 who took two Photostat copies of the same and original was returned to the appellant, one copy was kept on the file and other was sent to the Export Inspection Agency. The signatures of the Assistant Director purporting to be on such carbon copy, from which Photostat copies were prepared, were forged in as much as those signatures were not that of the concerned Assistant Director. The Photostat copies of the suggested forged documents were sent to an expert P.W. 24 for opinion, but he expressed his inability to give any opinion on a Photostat copy. Significantly the originals were available with the department, as it pointedly appeared at the trial. P.W. 9,10,11 and 12 who were departmental men stated that the original QCC was with the Customs. In the absence of the original QCC, It could not be established that the Photostat copy Ex. P-9 was that of the original QCC. As said before, the hand-writing expert, P.W, 24 had thrown up his hands in despair. It is On this State of evidence that the High Court recorded the conviction of the appellant under section 471I.P.C.

Further case of the prosecution is that the accused similarly and fraudulently obtained a COO by forging the signatures of the Asstt, Director and used it for cheating the bank and the buyer in obtaining price payment of Rs. 4,88,501.60 for the consignment, and thereby cheated the buyer and Dena Bank, Cochin, and had made themselves punishable for a similar offence as also Section 420 I.P.C. Here Ex.P-15, Photostat copy of the COO was sought to be introduced as the forged document despite the fact that the original of P-15 was available, The complaint of the Dena Bank with regard to their having been cheated, filed before the Criminal Court was quashed in a proceeding under section 482, Cr. P.C. by the High Court on the ground that what was involved between the bank and the accused was only a civil liability for which the bank had filed a civil suit. Padmanabhan, J, expressed reservations of the view taken by the High Court but still viewed that the earlier order

of the High Court may hold good, in so far as the allegation of cheating the bank was concerned, but it would not affect the prosecution case of forgery by using forged documents and cheating for the purpose of facilitating export by use of forged documents as genuine.

It would be worthwhile to extract paragraph 18 of his judgment under appeal, which is as follows :

"18, It is true that the allegation is one affecting the image of the Government of India and the two responsible agencies, namely, E.I.A. and M.P.E.D.A. So also the matter was seriously taken up through the Indian Embassy. But that does not mean, as argued for the defence, that the C.B.I. and the official witnesses of the customs, E.LA, and M.P.E.D.A. were interested in fabricating a false case or false evidence. I do feel that a more serious probe from the C.B.I. was necessary to pursue the availability of the original of Ex, P.9, But the evidence sufficiently discloses its non-availability for reasons not very clear from the evidence. Any how the circumstances indicate that the accused must have had a hand in it though the object could have been achieved only with the connivance of some of the employees of the E.IA. The investigation of this case is certainly not one which is capable of adding anything to the image of the C.B.I. The missing of the two sheets from the printed book in the possession of P.W.5 and the seal of P.W3 which facilitated the forgery of Ex.P9 would have been achieved only if some of the employees either actively or passively connived. That aspect has not been satisfactorily investigated. But the laches in that respect has not in any way affected the conclusion that Ex,P15 and the original of Ex,P9 are fabrications and forgeries. It is true that the prosecution was not able to establish as to who forged these documents. Any how the only possible conclusion is that forgeries could have been only by or at the instance of the accused and they were used with the full knowledge that they are forgeries,"

The learned Judge farther observed in paragraph 41 as follows :

"..... From the evidence of the Customs officials it is seen that the original of Ex.P9 was presented and that shipping was allowed only because they had no reason to suspect its veracity. When both these items of evidence are taken together the inevitable conclusion is that by the production of the QCC the customs officials were actually deceived and induced to permit export of the goods. That is the only inference possible. I do not think that it is necessary to stand on the technicality of insisting on an item of evidence from the concerned witnesses that but for the deceit or fraudulent or dishonest inducement, they would not have permitted export. The gist of the prosecution evidence is that is the only possible in-ference also from the evidence. Therefore in disagreement with the counsel, I come to the conclusion that the prosecution evidence is capable of establishing an offence of cheating as against the first accused. The first accused is therefore found guilty of having committed offences punishable under ss. 420 and 471 of the Indian Penal Code."

On close scrutiny of the above views of the High Court, the least we can say is that its approach, and that too in an appeal against acquittal, was highly wanting. The prosecution had a long distance to travel between "what may be true" and "what must be true". In the absence of the original of Ex.P9 and P15 being produced at the trial, which as many as four prosecution witnesses admit were available with the Customs, how could a case of forgery be built up on their photostat copies, punishable under section 471 of the Indian Penal Code and the sequal offence under Section 420 I.P.C.? How could in such state of evidence and vacillating views, as recorded by the High Court, be the basis of the conviction of the appellant singularly and substantively, when originally he was not charged for such offences, but with the aid of section 120-B I.P.C.? Having acquitted the other two accused of the charge of conspiracy for commission of these offences, how could the High Court take the appellant to have been charged under Section 471 and 420 I.P.C. and not spell out a case of prejudice to him leading to mis-carriage of justice? In our view, the High Court over looked these important matters and rather over-simplified the issue. Eves though it has observed that the approach of the Chief Judicial Magistrate had made its job difficult, necessitating a lengthy discussion for the purpose of arriving at a conclusion, the emphasised parts of the judgment, above extracted, disclose that the High Court was not sure, as to who and which of the accused had committed the forgery and having done so, it could not have attributed necessary means rea for the user of such forged document as genuine to the appellant alone, so as to bring him within the grip of section 471 I.P.C. or Section 420 I.P.C. Thus we take the view that the High Court was wrong in upsetting the correct judgment and order passed by learned Chief Judicial Magistrate, Ernakulam. We thus no hesitation to restore it. Accordingly, this appeal is allowed and the judgment and order of the High Court is set aside restoring the acquittal of the appellant.

CRL. APPEAL NOS. 653-55 OF 1989 AND 652 OF 1989:

> These appeals by Mrs. V. Sujatha need a neat and formal disposal. We have allowed Criminal Appeal arising out of S.L.P. (Crl.) No. 180 of 1989 and Criminal Appeal No. 625 of 1988. In both the upset judgments of Padnamahan, J. adverse remarks have been made against Mrs. V. Sujatha, the appellant herein. Those judgments of the High Court do not remain operative and the judgments and orders passed by her in both cases have been restored. The adverse remarks in a sense are no longer legally tenable or existing, but they do stay written in court records all the same, In the special leave petitions before us, certain new facts have been sought to be introduced by Smt. V. Sujatha vis-a-vis Padmanabhan, J.. We do not, for cause of propriety, since Padmanabhan, J. is not a party before us, wish to make mention thereof in these proceedings, except to state that it is suggestive that at one point of time, apparently cordial relations existed between the two. We are told at the Bar that both of them have since retired. It has been lamented by learned counsel for Mrs. V. Sujatha that her career's was spoiled by such adverse remarks, which remarks the Press blew up beyond proportions to tarnish her image and name. Be that as it may, this will not prompt us to do the exercise of culling out and reproducing herein the adverse remarks, from the upset judgment of Padmanabhan, J. or to reproduce herein her grievances in the special leave petitions and record them in this judgment, again for sake of propriety, for we must bury an bury deep the harsh and unnecessary

provocative language employed in these documents. But before we do that, we do need to say what already has been said by this Court time and again, for judges to employ mellow and temperate language in their judgments, when referring to members of the judicial family. Some of these case are as follows:

(i) Ishwari Prasad Mishra v. Mohammad Isa, [1963] 3 SCR 722 at page 723 and pp. 745-748.

"In the present case the HC has used intemperate language and has even gone to the length of suggesting a corrupt motive against the judge who decided the suit in favour of the appellant. In our opinion, the use of such intemperate language may, in some cases, tend to show either a lack of experience in judicial matters or an absence of judicial poise and balance.....No doubt, if it is shown that the decision of the Trial Court in a given case is the result of a corrupt motive, the HC must condemn it and take 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 imputations are made has no remedy in law to vindicate his position."

(ii) H.Lyngdoh v. Crornfyn Lyngdoh, [1971] 1 SCC 754 at p.757.

"Before we part with the case, we were distressed to note certain personal remarks made by the learned Chief Justice against one of the Hon'blc judges of that court. To us these remarks do not appear to be cither proper or just. By making these remarks the learned Chief Justice has let down his office as well as his court. In the objective discharge of judicial function there is little jus-tification nay, none-at-all to assume any attitude other than of judicial restraint or to use a language while referring to one's colleagues, other than that which has been hitherto adopted by long usage."

(iii) Such restraint was due even for parties or their witnesses as seen in A.M. Mathur v. Pramod Kumar Gupta & Ors., [1990] 2 SCC 533, referring to the decision of this Court in State of M.P. v. Nandlal Jaiswal, [1986] 4 SCC 566 where Bhagwati, CJI Speaking for the Court had observed:

"We may observe in conclusion that judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognize that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and is so they may do considerable harm and mischief and result in injustice."

Cases need not be multiplied on the point.

Therefore, one of the main principles is that a judge should take special care in making disparaging remarks against a judge of a subordinate court or against a person or authority whose conduct comes in for con-sideration before him in cases to be decided by him. Making uncalled for remarks

against the said persons or authorities would be violation of judicial discipline,"

Reverting back to the merits, the appellant, Mrs. V. Sujatha, in the first instance needs to be reminded that she was harsh on the judicial Magistrate in Gopalan Nair's case and the remark made against him, rightly caught up by the High Court, was totally uncalled for. That remark of hers in her judgment, even though restored, would stand deleted. All the harsh and adverse remarks made against her by the High Court in Gopalan Nair's case would stand deleted and reference to her in derogatory terms shall be taken to have been pulled out. Her application for expunction of remarks which was declined to be withdrawn by the High Court would stand allowed. As a result, the orders passed thereon for declination and all orders passed thereafter shall be taken to have been withdrawn. This will have the effect of allowing Criminal Appeals Nos. 653-55/89, likewise, harsh and adverse remarks and references made to Mrs. V. Sujatha in the judgment of the High Court in R. Vikraman's shall be taken to have been pulled out and expunged, Those judgments of the High Court be read from that angle and in that light. Criminal appeal No. 652 of 1989 would also stand allowed accordingly.

To sum up, all these six appeals are allowed. Gopalan Nair in Criminal Appeal No. 621/94 arising out of S.L.P. (Crl). 180 of 1989 stands acquitted, R. Vikraman in Crl. Appeal No. 625 of 1988 stands acquitted. All the adverse remarks in the form of harsh and derogatory language employed against Mrs. V. Sujatha by the High Court in its two upset orders would stand pulled out and expunged. Criminal Appeals Nos. 652-89 and 653-55/89 would thus stand allowed.

This disposes of the six appeals.