Supreme Court of India
Kashi Nath Roy vs State Of Bihar on 18 April, 1996
Equivalent citations: 1996 SCC (4) 539, JT 1996 (4) 605
Author: M Punchhi
Bench: Punchhi, M.M.

PETITIONER:
KASHI NATH ROY

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 18/04/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
THOMAS K.T. (J)

CITATION:
1996 SCC (4) 539 JT 1996 (4) 605
1996 SCALE (3)771

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Delay condoned.

Leave granted.

This is an appeal by a Judicial Officer in the Superior Judicial Service serving in the State of Bihar, who is aggrieved against an order of a learned Single Judge of the High Court of Patna in refusing to expunge remarks passed against him in a judicial order.

The broad facts giving rise to this appeal are that some accused in a dacoity case, at one point of time, approached the Court of Session, Munger for bail. The learned Sessions Judge rejected their bail application on 15-4-1991. About three months later, the request was renewed. The appellant by then, had assumed Chair in succession. Prayer for bail was reiterated before him on the ground that the evidence of Test Identification Parade of the culprits gathered by the investigation, an evidence

important in a dacoity case, was highly suspicious inasmuch as the witnesses who were made to participate in the same, had already on their own disclosed the names of the accused committing the crime to the Investigating Officer, which fact the appellant verified from the case-diary to be correct. Viewing that ground for bail had been made out, he granted bail to the accused persons vide order dated 17-8- 1991. This provoked an application for cancellation of bail at the instance of the complainant before the High Court. A learned Single Judge of that Court set aside that order and cancelled bail passing remarks that the appellant seemed to have been over-zealous, having gone out of his way in virtually approving the defence case, involving the merit of the matter, as if sitting on trial, forgetting the scope of discussion in disposing of a bail matter. Having observed this, he passed the following order:

> "While parting with the order, I must opine that by the aforesaid act, it remains not at all doubtful that this officer has intentionally exceeded and/or transgressed his limits by avoiding and in not maintaining the established decorous norms of the Institution. I, therefore, say that in my considered view, this officer, Shri K.N. Roy, the then Incharge sessions Judge, Munger, must be appropriately condemned and, for this, I understand that the only proper forum being the Standing Committee of the Court, this matter may laid before it under administrative approval of the Hon'ble Chief Justice, as scheduled by his Lordship. And ultimately I suggest that this officer should be divested from exercise of powers on the criminal side"

The appellant's effort to have expunged remarks made qua him in the orders of the High Court, in particular those as extracted above, failed giving rise to this appeal.

As embedded in the criminal jurisprudence obtaining in this country, courts exercising bail jurisdiction normally do and should refrain from indulging in elaborate reasoning in their orders in justification of grant or non-grant of bail. For, in that manner, the principle of "presumption of innocence of an accused" gets jeopardized; and the structural principle of "not guilty till proved guilty" gets destroyed, even though all sane elements have always understood that such views are tentative and not final, so as to affect the merit of the matter. Here, the appellant has been caught and exposed to a certain adverse comment and action solely because in reasoning he had disclosed his mind while granting bail. This may have been avoidable on his part, but in terms not such a glaring mistake or impropriety so as to visit the remarks that the High Court has chosen to pass on him as well as to initiate action against him, as proposed.

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 should therefore think, without much ado, that the High Court was unkind to the appellant and therefore the afore-paragraph deserves to be and is hereby pulled out from the orders of the High Court dated 28-1-1993 passed in Criminal Miscellaneous No.12034 of 1991 titled Lala Pandey vs. State of Bihar and 3 others decided by the High Court of Patna, as well as all other references in the said order which tell upon the functioning of the appellant.

We thus conclude resisting the temptation to say any more.

The appeal is allowed.