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ILR 2005 KAR 3699

S.R. BANNURMATH AND A.C. KABBIN, JJ.

"R",* Judicial Officer -vs- The Registrar General *

CODE OF CRIMINAL PROCEDURE, 1973-SECTION 482-JUDICIAL OFFICER SOUGHT FOR EXPUNCTION OF ADVERSE REMARKS MADE IN AN ORDER BY A LEARNED SINGLE JUDGE OF THE HIGH COURT-Imputation of Judicial impropriety and direcliction of duty on the part of the judicial officer-Allegations that the Judicial Officer not clubbingtwo criminal appeals filed against the same judgment of conviction and not disposing of both the appeals at the same time-HELD-On a close scrutiny of facts and materials on record it was found that Crl.A.47/97 was not pending and it had been dismissed on the ground that it was barred by time. Though the appeal was restored by an order passed by the Court, there was delay in the High Court in communicating the order and therefore Crl.A.27/97 was heard and disposed of by the Petitioner Sessions Judge, in ignorance of the restoration of Crl.A.47/97. Therefore the petitioner Sessions Judge could not have clubbed both the appeals. There was neither dereliction of duty nor any judicial impropriety. It is apparent that there was absolutely no negligence, much less dereliction of duty or judicial impropriety on the part of the petitioner. The observations of the learned single Judge is without any justification. As the observation of the learned single Judge was in ignorance of facts and has far reaching consequence affecting the career of the Judicial Officer, it is just and proper to expunge the same. (Para 7,9)

* Criminal Petition No.40 of 2005, Dated 1st March 2005

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HELD-*There is another factor which is required to be mentioned here. The records of the Trial Court had been secured by this Court for reference in Crl.A.No.674/97 filed by the State for enhancement of sentence. Since this Court by order dated 5-8-2002 passed in that appeal 674/97 felt that unless the appeal filed before the Sessions Judge challenging the conviction was disposed of, it would not be proper to decide the enhancement appeal before this Court, Trial Court's records were sent to the Sessions Court with a direction that Crl.A.N0.27/97 pending before the petitioner should be decided expeditiously. It is this direction dated 5-8-2002 which prevailed over the learned Sessions Judge to dispose of the Criminal Appeal by the order dated 5-6-2003. However, as the records disclose, by the time the order dated 30-5-2003 passed in Crl.RP.No.246/2003 restoring Crl.A.No.47/97 reached the Sessions Court on 31-7-2003, the learned Sessions Judge had already disposed of the Crl.A.No.27/97 on 5-6-2003. Consequently, the question of clubbing both the appeals did not arise.*

Criminal Petition allowed.

CASES REFERRED: **AT PARAS**

1)	*ILR 2004 KAR 4049* *State of Karnataka -vs- G.M.Sumanabai,, Shimoga and others*	*(Ref)*	*1*
2)	*(2001) 3 SCC 54* *"K" A Judicial Officer*	*(Ref)*	*4*
3)	*1994 CRL.LJ.1377.* *K.P. Tiwari -vs- State of Madhya Pradesh*	*(Ref)*	*5*
4)	*AIR 1981 Rajasthan 206* *Gordhan -vs- Ali Bux*	*(Ref)*	*6*

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Sri Jayavittal Rao Kolar, Advocate for Petitioner.
Sri H.S. Chandramouli, SPP, Advocate for Respondent.

ORDER

Bannurmath, J

1. In this petition filed under Section 482 of the Code of Criminal Procedure, a judicial officer has sought for expunction of adverse remarks made in the order dated 16-6-2004 passed in Crl.A.No.674/97 connected with Crl.R.P.No.1231/03. The facts necessary for the decision of this petition are in brief as under:

> "The petitioner herein was serving as the Principal District and Sessions Judge Shimoga, at the relevant point of time. A case in CC.No.476/93 on the file of the learned JMFC., Shikaripur had been disposed of on 19-4-1997 holding the accused 1 to 3 guilty of the offences punishable under Sections 419, 420 and 468 of the IPC.
>
> Aggrieved by the said Judgement of conviction, the accused no.3 filed Crl.A. No.27/97 before the Prl. Sessions Judge, Shimoga. The accused nos.1 and 2 also filed an appeal before the said Court challenging their conviction and that appeal was numbered as Crl.A.No.47/97. Since there was delay on the part of accused nos.1 and 2 in preferring that appeal, they filed an application for condonation of delay. The petitioner herein, who was the Prl. Sessions Judge, Shimoga then, took up for consideration I.A.I filed for condonation of delay in preferring Crl.A.No.47/97 and dismissed the same by order dated 3-2-2003. Consequently Crl.A.No.47/97 also came to be dismissed. Challenging the order of dismissal in Crl.No.47/97, the accused nos.1 and 2 preferred

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Crl.R.P.No.246/03 before this Court. At the time of arguments of the said Crl.R.P.No.246/03, a submission was made that the appeal preferred by the other accused i.e., accused no.3 in Crl.A. No.27/97 challenging the very order of conviction and sentence, was pending for consideration before the petitioner-Sessions Judge. Taking into consideration that factor, Crl.R.P.No.246/03 was allowed and the order dated 3-2-03 dismissing Crl.A.No.47/97 was set aside and the said Crl. Appeal was restored to the file of the Prl. Sessions Judge, Shimoga. A direction was given that the said appeal be disposed of on merits after clubbing the said appeal with Crl.A.No.27/97. Before that order was communicated to the petitioner-Sessions Judge, Crl.A.No.27/97 had come up for hearing which had been disposed of by the petitioner-Sessions Judge by order dated 5-6-2003 allowing the appeal and setting aside the conviction of accused no.3. In the meantime, the State had preferred Crl. Appeal No.674/97 before this Court u/s 377 of the Cr.P.C. seeking enhancement of sentence. A similar submission was made in the said Crl.A.No.674/97 that the two appeals filed before the Prl.Sessions Judge, Shimoga challenging the conviction of accused nos.1 to 3 were still to be decided and that the records of the lower Court called for reference in the criminal appeal were required before the learned Sessions Judge. Taking into consideration that submission, this Court by order dated 5-8-2002 (SRBMJ) in Crl. AppealNo. 674/97 directed that the records of the lower Court be sent to the learned Sessions Judge, Shimoga, who shall dispose of both the appeals within two months from the date of receipt of records. When that order was communicated, the petitioner-Sessions Judge by letter No.CRL:DJS:843/03 dated 8-9-2003 intimated the High Court that Crl.A.No.27/97 had already been disposed of by order dated 5-6-2003 setting aside the order of conviction passed by the lower Court in C.C.No.476/93 against the accused no.3 and that only Crl.No.47/97 which had been restored to

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file by order of the High Court was pending consideration. It appears that letter was not placed before this Court in Crl.A.No.674/97. The petitioner-Sessions Judge taking into consideration the direction of this Court passed in Crl.A.No.674/97 to dispose of the matter within two months from the date of receipt of intimation, took up for consideration Crl.A.No.47/97 and dismissed the same on merits by judgment dated 31.10.2003. Challenging the said judgment and the judgment of conviction rendered by the learned Munsiff & J.M.F.C., Shikaripura, the accused nos.1 and 2 preferred Crl.R.P.No.1231/2003. That revision petition and Crl.A.No.674/97 were taken up together for consideration by the learned single Judge and were disposed of on 16-6-2004. Crl.R.P.No.1231/03 filed by the accused nos.1 and 2 was dismissed. Crl.A.No.674/97 was partly allowed modifying the sentence. However, in the order dated 16-6-2004 STATE OF KARNATAKA -vs- G.M.SUMANABAI, SHIMOGA AND OTHERS[1] the learned single Judge made certain adverse remarks against the petitioner-Sessions Judge, for the expunction of which the present petition has been filed.

2. At this stage, it is necessary to reproduce the said observations of the learned single Judge and they are as follows:

"Lastly, it needs to express dissatisfaction, the manner in which the two appeals have been disposed of without clubbing them though arise out of a Judgment in C.C.No.476/1993. This is nothing but a sheer negligence on the part of the learned Prl. Sessions Judge, Shimoga, who delivered two separate judgments in Crl.A.No.27/1997 (ending in acquittal of accused 3), and Crl.A.No.47/1997 (ending in confirming the conviction of accused 1 and 2). This show, it is a

1. ILR 2004 KAR 4049

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dereliction of duty amounting to judicial impropriety.
The copy of this Judgment shal be kept in the C.R. of the said Judicial officer."

3. Sri Jayavittal Rao Kolar, learned counsel appearing for the petitioner submitted that these observations have been made without properly noticing the facts. The observations imputing judicial impropriety and dereliction of duty on the part of the Judicial officer were not justified, since there ws neither judicial impropriety, nor dereliction of duty. He further submits that the direction issued by the learned Single Judge of this Court to keep a copy of the judgment in the C.R. of the Judicial Officer was unwarranted. In this regard, we have also heard Sri Chandra Mouli, learned SPP representing the respondent-Registrar General of this Court and have perused the records of relevant cases.

4. Before considering the merits of demerits of the petition, the observations of the Hon'ble Supreme Court in different decided cases about the caution to be exercised before making observations on the conduct of officers have to be kept in mind. In the case of "K" A JUDICIAL OFFICER[2] , it is observed thus:

> "The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition if comitted once innocently or unwittingly. "Pardon the error but not its repetition." The power to control is not to be exercised solely by wielding a teacher's cane; the members of subordinate judiciary look up to the High Court for the power to control to be exercised with parent-like care and affection. The exercise of statutory jurisdiction, appellate or revisional and the exercise of

2. (2001) 3 SCC 54

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constitutional power to control and supervise the functioning of the district Courts and Courts subordinate thereto empowers the High Court to formulate an opinion and place it on record not only on the judicial working but also on the conduct of the judicial officers. The existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders cannot be denied, however, the High Courts have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their own mischievous infirmities. Firstly, the judicial officer in 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 observations 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 a 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-

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a situation not very happy from the point of view of the functioning of the judicial system. May be for the purpose of pleading his cause he has to take the assistance of a legal practitioner and such legal practitioner may be one practising before him. Look at the embarrassment involved. And last but not the least, the possibility of a single or causal aberration of an otherwise honest, upright and righteous Judge being caught unawares in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralising effect not only on him but also on his colleagues. If all this is avoidable why should it not be avoided?"

5. In the case of K.P. TIWARI vs STATE OF MADHYA PRADESH[3] the Supreme Court has held as follows:

"We are however, impelled to remind the learned Judge of the High Court that however anguished he might have been over the unmerited bail granted to the accused, he should not have allowed himself the latitude of ignoring judicial precaution and propreity even momentarily. 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 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. Some times, 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 was

3. 1994 CRL.LJ. 1377

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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 lawyer almost breathing down their necks more correctly up to 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 attribbuted to improper motive. It is possible that a particular judicial officer may be consistenly 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 intempertately 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."

6. Thus, what is seen from these decisions of the Hon'ble Supreme Court is that the appellate Courts have to ensure judicial discipline before passing remarks on the subordinate Courts. Their actions must

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be with constraint. It is observed by the Rajasthan High Court in the case of GORDHAN -vs- ALI BUX[4] as follows

> "An appellate Court is competent to find fault with the finding arrived at by the lower Court, but there is no authority vested in it nor there is any justification for its denouncing the Presiding Officer of the suboridinate Court as a person. Judicial pronouncements must be couched in rather dignified and respectful language, even while referring to inferior or subordinate Courts. Though disagreement may be expressed firmly, freely and without fear, yet it should not exhibit any lack of decency."

7. Coming to the facts of the present case, on careful scrutiny of the entire records, we do not find any negligence on the part of the petititioner, much less dereliction of duty or to judicial impropriety. Adverse observations made by the learned Single Judge of this Court in Crl.A.No.674/97 is regarding the act of the petitioner Sessions Judge in not clubbing Crl.A.Nos.27/97 and 47/97, both filed against the same judgment of conviction and not disposing of both the appeals at the same time. The facts disclose that when Crl.A.No.27/97 was taken up for final hearing, the other appeal i.e., Crl.A.No. 47/97 was not pending and it had been dismissed on the ground that it was barred by time. Though that appeal was restored by order dated 30-5-2003 in Crl.R.P.246/2003 passed by this Court, there was delay in the High Court in communicating the order and therefore, Crl.A.No. 27/97 was heard and disposed of by the petitioner Sessions Judge, in ignorance of the restoration of Crl.A.47/97. Therefore, the petitioner Sessions Judge could not have clubbed both the appeals. There was neither dereliction of duty nor any judicial impropriety.

8. There is another factor which is required to be mentioned here. The records of the Trial Court had been secured by this Court

4. AIR 1981 Rajasthan 206

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for reference in Crl.A.No.674/97 filed by the State for enhancement of sentence. Since this Court by order dated 5-8-2002 passed in that appeal 674/97 felt that unless the appeal filed before the Sessions Judge challenging the conviction was filed before the Sessions Judge challenging the conviction was disposed of, it would not be proper to decide the enhancement appeal before this Court, Trial Court's records were sent to the Sessions Court with a direction that Crl.A.N0.27/97 pending before the petitioner should be decided expeditiously. It is this direction dated 5-8-2002 which prevailed over the learned Sessions Judge to dispose of the Criminal Appeal by the order dated 5-6-2003. However, as the records disclose, by the time the order dated 30-5-2003 passed in Crl.RP.No.246/2003 restoring Crl.A.No.47/97 reached the Sessions Court on 31-7-2003, the learned Sessions Judge had already disposed of the Crl.A.No.27/97 on 5-6-2003. Consequently, the question of clubbing both the appeal did not arise.

9. On these facts, it is apparent to us to that there was absoutely no negligence, much less, dereliction of duty or judicial impropriety on the part of the petitioner. We find the observations of the learned Single Judge without any jusitification. As the observation of the learned Single Judge was in ignorance of facts and has far-reaching consequence affecting the career of the Judicial Officer, we deem it just proper to expunge the same.

10. In the result and for the reasons stated above, the criminal petition is allowed. The impugned paragraph at page-20 of the Crl.A.674/1997 c/w. Crl.RP.1231/2003 is hereby expunged.

11. A copy of the order shall be sent to the concerned judicial officer wherever she is. A copy of the order shall also be placed before the Hon'ble Chief Justice for considering the necessity of removing the order of the learned Single Judge from the C.R. of the Judicial Officer.
