IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

CRL.MC NO. 3486 OF 2022

CRIME NO.1087/2019 OF Manimala Police Station, Kottayam

AGAINST THE ORDER/JUDGMENT DATED IN ST NO.122 OF 2020 OF FAST TRACK SPECIAL COURT, CHANGANASSERY

PETITIONER/S:

SHAJU JOSE
AGED 52 YEARS
AGED 52, S/O.A.T.JOSEPH, IYKKARAPARAMBIL HOUSE, PERINGULAM P.O, POONJAR SOUTH, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN - 686582

BY ADV T.R.RAJESH

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

OTHER PRESENT:

SR PP RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21.11.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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Crl.M.C No.3486 of 2022-E

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Dated this the 21st day of November, 2024

O R D E R

In this Criminal Miscellaneous Case filed under Section 482 of the Code of Criminal Procedure, the relief sought for by the petitioner is to expunge the adverse remarks made against him by the Fast Track Special Judge, Changanassery, in paragraphs 10 and 11 of the order in Crl.M.P.No.78/2021 in S.C.No.122/2020 dated 10.09.2021.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail. Perused the impugned order.

3. In this matter, originally crime was registered, alleging commission of offences punishable under Sections 447, 354-C and 324 of the Indian Penal Code (`IPC' for short) as well as Section 15 of the Protection of Children from Sexual Offences Act, 2012 (`POCSO Act' for

short) by the accused. Thereafter, the accused filed an application under Section 227 of Cr.P.C seeking discharge contending that none of the offences would attract against him. The learned Special Judge addressed the contention raised by the accused and discharged the accused for the offences punishable under Sections 201 and 354 of IPC as well as Section 15 of the POCSO Act and allowed prosecution against him for the offences punishable under Sections 447 and 324 of IPC. While pronouncing the order, the learned Special Judge in paragraphs 10 and 11 observed as under:

> *"10. Let me consider the maintainability of Sections 201 and 354(C)11.2019 itself the accused and the mobile phone were handed over to the Inspector of Police Manimala Circle at about 1 p.m. However the Circle Inspector freed the accused and handed over the mobile phone without further enquiry. The first information report was recorded by the Sub Inspector of Manimala only on 20.11.2019. According to prosecution the accused destroyed the mobile phone in between. So there is no scope for forensic examination of the mobile phone used by the accused on 05.11.2019. Anyhow the court could only found that from the porn picture in the mobile phone, age of the girl in the picture cannot be presumed or concluded. Since the main offence under Section 15 of the POCSO Act is not maintainable, offence of destruction of the*

mobile phone carrying such a picture is also not maintainable under Section 201 IPC. Similar is the situation of 354(C) IPC. If the mobile phone seized from the accused on 05.11.2019 was forwarded to the court, it would have been properly examined at the forensic lab and this instrument would have been the best evidence to maintain the offence under Section 354(C) IPC. However by the conscious and purposeful return of the mobile phone, immediately without further enquiry to the accused, the Inspector of Police, Manimala Circle has closed the chance of evidence to facilitate the cause of the accused. Hence court concludes that there are no materials to frame charges against the accused under Sections 354() and 201 IPC. At the same time the wrongful entry of the accused in the school premises and hitting Cw1 with his helmet, the accused is prima facie committed the offences punishable under Sections 447 and 324 IPC. Hence accused is liable to face trial before the proper court for offences punishable under Sections 447 and 324 IPC.

11. The court found from the prosecution records itself the purposeful and conscious attempt from the Inspector of Police, Manimala Circle on 05.11.2019 to save the accused by facilitating the destruction of evidene. He who handed over the mobile phone without forensic enquiry immediately to the accused has caused his discharge at least in respect of the offence under Section 354© IPC. Hence this court recommends stringent departmental action against the Inspector of Police, Manimala Circle on 05.11.2019 by the State Government. Immediately after delivering this order, communicate a copy of the same to the

respected Registrar, District Judiciary, Hon'ble High Court to invoke departmental disciplinary action against the Inspector of Police, Manimala Circle on 05.11.2019 by the Secretary of Government, Home Department, Government Secretariat, Thiruvananthapuram."

4. According to the learned counsel for the petitioner, in view of Annexure A9 order, Government initiated disciplinary action against the petitioner as per Annexure A7 Government order and he was given charge and statement of allegations as on 07.05.2022 and the same is Annexure A8. According to the learned counsel for the petitioner, the petitioner had only supervisory jurisdiction in the matter of investigation and the learned Special Judge made castigating remarks against the petitioner without giving him an opportunity of being heard. The learned counsel for the petitioner placed a decision of this Court reported in [2002 KHC 1017 : 2002 (3) KLT SN 104 : 2002 (2) KLJ 582 : ILR 2003 (1) Ker.52], ***Ajayababu v. State of Kerala***, to contend that High Court has inherent jurisdiction to expunge remarks made by it or by a subordinate court to secure the ends of justice and to maintain dignity as well as to prevent an abuse of process of court. In the said case, this Court expunged the remarks made against the petitioner therein by the Additional Sessions

Judge, Kollam, after referring earlier decisions of the Apex Court. The learned counsel also placed decision of the Apex Court reported in [1964 KHC 481], ***State of U.P v. Mohammad Naim***, where the Apex Court considered Section 561A of Cr.P.C and held in paragraphs 9 and 10 as under:

> *"9. The second point for consideration is this has the High Court inherent power to expunge remarks made by itself or by a lower court or otherwise to secure the ends of justice? There was at one time some conflict of judicial opinion on this question. The position as to case law now seems to be that except for a some what restricted view taken by the Bombay High Court, the other High Courts have taken the view that though the jurisdiction is of an exceptional nature and is to be exercised in most exceptional cases only, it is undoubtedly open to the High Court to expunge remarks from a judgment in order to secure the ends of justice and prevent abuse of the process of the court (see* ***Emperor v. Mohd. Hassan****, AIR 1943 Lah. 298;* ***State v. Chhotey Lal****, 1955 All LJ 240;* ***Lalit Kumar v. S. S. Bose****, AIR 1957 All 398;* ***S. Lal Singh v. State*** *AIR 1959 Punj 211;* ***Ramsagar Singh v. Chandrika Singh****, AIR 1961 Pat 364 and in re* ***Ramaswami****, AIR 1958 Mad. 305). The view taken in the Bombay High Court is that the High Court has no jurisdiction to expunge passages from the judgment of an inferior court which has not been brought before it in regular appeal or revision; but an application under S. 561A Cr. P.C. is maintainable and in a proper case the High Court has inherent jurisdiction, even though no appeal*

or revision is preferred to it, to correct judicially the observations made by pointing out that they were not justified, or were without foundation, or were wholly wrong or improper (see ***State v. Nilkanth Shripad Bhave****, ILR (1954) Bom 148 : (AIR 1954 Bom 65)). In* ***State of U. P. v. J. N. Begga****, Cri A. No. 122 of 1959 D/- 16-1-1961 (SC) this court made an order expunging certain remarks made against the State Government by a learned Judge of the High Court of Allahabad. The order was made in an appeal brought to this Court from the appellate judgment and order of the Allahabad High Court. In* ***State of U. P. v. Ibrar Hussain****, Cri.Appeals Nos. 148 of 1957 and 4 of 1958, D/- 28-4-1959 (SC), this court observed that it was not necessary to make certain remarks which the High Court made in its judgment. Here again the observation was made in an appeal from the judgment and order of the High Court. We think that the High Court of Bombay is correct and the High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only. In fairness to learned counsel for the appellant we may state here that he has submitted before us that the State Government will be satisfied if we either expunge the remarks or hold them to be wholly unwarranted on the facts of the case. He has submitted that the real purpose of the appeal is to remove the stigma which has been put on the police force of the entire State by those remarks the truth of which it had no opportunity to challenge.*

10. The last question is, is the present case a case of an

exceptional nature in which the learned Judge should have exercised his inherent jurisdiction under S.561A Cr. P.C. in respect of the observations complained of by the State Government? If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judges and Magistrate must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

5. Another decision of the Apex Court reported in [(1986) 2 SCC 569], ***Niranjan Patnaik v. Sashibhusan Kar and another***, also has been placed, where the Apex Court held that *harsh or disparaging remarks are not to be made against persons and authorities whose*

conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. Having regard to the hearsay nature of evidence of the appellant who was not a material witness in the case, it was not necessary at all for the High Court to have animadverted on the conduct of the appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal, the remarks of the appellate Judge should be in conformity with the settled practice of courts to observe sobriety, moderation and reserve. The higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be.

6. Another decision reported in [(1990) 2 SCC 533], ***A.M.Mathur v. Pramod Kumar Gupta and others***, also has been placed in this regard.

7. Whereas it is submitted by the learned Public Prosecutor that though notice was not served upon the petitioner, as per the impugned order, it was found by the learned Special Judge from the materials

available, that the accused and the mobile phone containing the overt acts were handed over to the Inspector of Police, Manimala (the petitioner herein) at 1 p.m on 05.11.2019. However, the Circle Inspector of Police freed the accused and handed over the mobile phone back to him without registering an FIR or conducting any investigation. Thereafter, only on 20.11.2019, the Sub Inspector of Police, Manimala, registered the FIR. The court also observed that if the mobile phone seized from the accused on 05.11.2019 would have been properly examined at the Forensic Science Laboratory immediately on its seizure itself, the same should have been the best evidence to maintain the offence under Section 354(C) of IPC. However, by the act of the Circle Inspector of Police, who immediately freed the accused and released the mobile phone without registering crime, he facilitated the accused to destroy the contents of the mobile phone, and eventually when registering the FIR after 15 days, the crucial evidence was already destroyed. It is at this juncture, the learned Special Judge recommended departmental/disciplinary action as stated in paragraph 11, as extracted above, of the impugned order. According to the learned Public Prosecutor, in such a case, there is no necessity to give an

opportunity of hearing to the officer concerned. It is pointed out by the learned Public Prosecutor that while passing judgments and orders on the basis of evidence and the materials available, if the court issues notice to the person against whom some attending circumstances found, which may be adverse, the same would delay pronouncement of orders and judgments and therefore the contention raised by the petitioner herein in this regard would not succeed. Therefore the impugned order doesn't require any interference. In the decision in ***A.M.Mathur v. Pramod Kumar Gupta and others*** (*supra*), the Apex Court in paragraphs 13 and 14 observed as under:

> *"13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judge. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary, Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.*

> *14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. [See (1) **R.K.Lakshman v. A.K.Srinivasan**, [(1975) 2 SCC 466 : 1975 SCC (Cri) 654 : (1976) 1 SCR 204].*

8. At the same time, in paragraph 15, it was stated that the observations made and aspersions cast on the professional conduct of the appellant are not only without jurisdiction, but also they are wholly and utterly unjustified and unwarranted. In the facts of the case therein, the grievance of the petitioner and the manner in which it was addressed by the Apex Court, could be gathered from paragraphs 7 and 8, which read as under:

> *"7. From the foregoing order it will be seen that the learned Judge seems to have formed an opinion that the appellant*

did not act honestly and bona fide in briefing the then Chief Minister Mr.Arjun Singh and if he had acted bona fide and in honest manner, the fraud on the court would have been avoided and the Chief Minister would not have given a misleading press statement. He has also remarked that the appellant did not act befitting with the status of the high office of the Advocate General and he did not have the courage to face the situation in the court. Such are his conclusions, or surmises in the review petition which was not disposed of on the merits, but dismissed for want of jurisdiction.

8. The appellant's complaint before us is that he had no opportunity to meet the allegations in the review petition, much less as against averments in the subsequent application dated January 25, 1989. He made it clear to the High Court on October 6, 1988 and also on October 29, 1988 that he entered appearance pursuant to service of a copy of the review petition as per the High Court Rules, on the Advocate General's office. He has not entered appearance as such on behalf of the State or other respondents. He has, further, made it clear that there was no ground for review and it deserved to be dismissed and so he did not wish to enter appearance at that stage before the admission of the review petition. The appellant appears to be correct in these statements and they are found recorded in the court proceedings dated October 6, 1988."

9. Now the question arose for consideration are two fold:

(i) Whether High Court can exercise its inherent jurisdiction to expunge remarks made by it or by a court in the District Judiciary?

(ii) If the High Court has the jurisdiction, what are the parameters for doing the said exercise?

10. In answer to the above queries, it is held that High Court has the inherent jurisdiction to expunge the remarks made by it or by a subordinate court to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in rare and exceptional circumstances. Harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. Holding the legal position in the above perspective, in this matter, the trial court considered the application filed by the accused, where offences under Section 354C of IPC and under Section 15 of the POCSO Act were alleged among other offences and the Special Court was forced to address whether ingredients for the said offences are made out, *prima facie,* and, in turn, the Special Court also addressed the attending circumstances, whereby the relevant evidence, which should have, if tendered, would show the said offences also. But the material dereliction on the part of the petitioner herein, led

to discharge of the accused for the offences under Section 354C of the IPC as well as under Section 15 of the POCSO Act, on merits, by the Special Judge. Accordingly, the learned Special Judge found that there was purposeful and conscious act on the part of the Inspector of Police, Manimala Circle on 05.11.2019 to save the accused by facilitating the destruction of evidence. It was so found, after reading the statements that, when the accused as well as the mobile phone were handed over to Inspector of Police, Manimala Circle, the Circle Inspector (petitioner) released the accused as well as the mobile phone without registering any crime and without sending the mobile phone for forensic analysis to see whether there was evidence to see commission of offence under Section 15 of the POCSO Act and under Section 354C of IPC. Thereafter when crime was registered on 20.11.2019, the accused had already destroyed the mobile phone with a view to screen himself from the crime. In such a case, it has to be held, as already held by the Apex Court in ***Niranjan Patnaik v. Sashibhusan Kar and another***'s case (*supra*), that such a finding by the learned Special Judge was absolutely necessary for taking an appropriate decision of the discharge petition as an integral part thereof.

Therefore, in such a case, it was difficult to issue notice to the Circle Inspector of Police before making observations.

11. It is also relevant to note that, during hearing of this petition also, when the learned counsel for the petitioner is asked as to why the finding of the Special Judge was unwarranted, the learned counsel submitted that the petitioner has no criminal antecedents and that he did not have any precedents of dereliction of duty, but nothing argued otherwise to establish that the accused was neither released nor the mobile phone containing vital evidence was not returned over to the petitioner, as found by the learned Special Judge. Thus the petitioner's dereliction found by the Special Judge in no way held as illegal, irrational or improper to revisit the same by way of expungement. Therefore, in such cases, hearing of the delinquent officer is neither mandatory nor possible. Regarding the prayer to expunge the remarks, no materials forthcoming to warrant expungement of those remarks as unnecessary in the facts of this particular case. It is true that in view of the recommendation made by the Special Judge, now as per Annexure A7, the Government has initiated proceedings against the petitioner and the same shall be continued.

However, it is made clear that the findings as part of disciplinary proceedings shall be in accordance with law after hearing the version of the petitioner. In view of the above discussion, the prayer in the petition is liable to fail. Accordingly the petition stands dismissed.

12. Interim order already granted stands vacated.

Registry shall forward a copy of this order to the jurisdictional court and the Director General of Police for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/

APPENDIX OF CRL.MC 3486/2022

PETITIONER's ANNEXURES

Annexure A1	**TRUE COPY OF THE F.I STATEMENT OF PW1 MR. SOJAN ANTONY**
Annexure A2	**TRUE COPY OF THE ABOVE FIR REGISTERED BY THE SUB INSPECTOR OF POLICE, MANIMALA POLICE STATION IN CRIME NO.1087/2019 DATED 20.11.2019**
Annexure A3	**TRUE COPY OF THE ABOVE REPORT SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT POLICE CHIEF, KOTTAYAM DATED 12.12.2019**
Annexure A4	**TRUE COPY OF THE ABOVE CASE DIARY PREPARED BY THE PETITIONER IN CRIME NO.1087/2019 DATED 15.12.2019**
Annexure A5	**TRUE COPY OF THE ABOVE COMMUNICATION ISSUED BY THE DISTRICT POLICE CHIEF, KOTTAYAM DATED 02.03.2020**
Annexure A6	**TRUE COPY OF THE ABOVE FINAL REPORT SUBMITTED BY THE SUB INSPECTOR OF POLICE, MANIMALA POLICE STATION BEFORE THE DISTRICT & SESSIONS COURT, KOTTAYAM DATED 04.03.2020**
Annexure A7	**TRUE COPY OF THE G.O(RT)NO.3515/2021/HOME DATED 19.12.2021**
Annexure A8	**TRUE COPY OF THE ABOVE CHARGE MEMO AND STATEMENT OF ALLEGATION SERVED ON THE PETITIONER DATED 07.05.2022**
Annexure A9	**TRUE COPY OF THE ABOVE ORDER DATED 10.09.2021 PASSED BY THE FAST TRACK SPECIAL JUDGE, CHANGANASSERY IN CRL.M.P.NO.78/2021 IN SC.NO.122/2020**