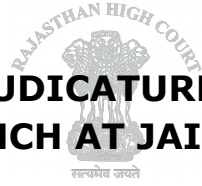




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4177/2024

Giriraj Sharma S/o Shri Magan Lal Sharma, Aged About 53
Years, R/o Krishna Nagar, Baran, District Baran, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Inspector General Of Police, Kota Range, Kota Near Cad
Circle, Kota, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Abhishek B. Sharma
For Respondent(s) : Mr. Atul Sharma, PP

HON'BLE MR. JUSTICE SAMEER JAIN

Order

REPORTABLE

Reserved on 25/07/2024

Pronounced on 30/08/2024

1. The instant petition is filed with the following prayers:

*“(A) By issuing an appropriate order, or direction to quash the impugned order dated 19.03.2024 passed by the Court of Judicial Magistrate, Baran in **Case No.323/2021** titled as **State of Rajasthan V. Jitendra and Ors.** only to the extent of adverse remarks passed against the petitioner by expunging the same, after declaring the same as illegal and arbitrary. (Annexure-3)*

(B) By issuing an appropriate order, or direction, direct the Respondents to not to initiate any departmental inquiry on the basis of adverse remarks and if already ordered then same may be dropped.

(C) Any other appropriate order or direction which this Hon'ble Court deems fit and proper be passed in favor of the Petitioner.”



2. In a nutshell, the factual narrative of the instant matter is that the present petition is filed assailing the impugned order dated 19.03.2024, passed by the Judicial Magistrate in Criminal Case No. 323/2021 to the extent of paragraph nos. 9 and 11, wherein, the learned Trial Court had passed deleterious remarks, and had ordered respondent no. 2 to initiate appropriate inquiry qua the petitioner herein, who was the Investigating Officer in the dispute before the learned Trial Court.

3. In this backdrop, learned counsel appearing on behalf of the petitioner submitted that on 25.05.2021 an F.I.R. numbered as 114/2021 was made to be registered at the behest of Shri. Ramchandra at Police Station, Sadar Baran, District Baran, for offences under Section 447 read with Section 34 of I.P.C. It is an undisputed fact that the petitioner was posted as 'Assistant Sub-Inspector' in the said Police Station, and was appointed as the Investigating Officer for the said dispute. Subsequently, on 19.06.2021, the charge sheet qua the instant matter was submitted by the petitioner, before the learned Trial Court.

4. It is further submitted that the said dispute was only on account of the feud between the two brothers. Vide the impugned order dated 19.03.2024 the learned Trial Court, acquitted the accused therein, on account of benefit of doubt. Withal, the learned Trial Court whilst exercising its jurisdiction under the General (Criminal) Rules, 1980 passed deleterious remarks qua the petitioner and also ordered for initiating appropriate inquiry.

5. In this regard, learned counsel had submitted that the learned Trial Court – Magistrate had failed to follow the requisite mandate, categorically stated in the ratio passed by the Hon'ble



Apex Court, in **State of Uttar Pradesh Vs. Mohammad Naim** reported in **AIR 1964 SC 703**. It was further submitted that in order to pass disparaging remarks against persons/authorities whose conduct comes into consideration before the Court, in order to consider the said act, it is relevant to consider the following aspects:

5.1 That whether party whose conduct is in question, is before the Court and a reasonable opportunity to explain himself is tendered to him.

5.2 That whether sufficient evidence is placed on record, to justify the said remarks.

5.3 That whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

6. Additionally, learned counsel had also placed reliance upon the ratio encapsulated in **Sumit Kumar Vs. State of Rajasthan** reported in **2017 (1) RLW 733 (Raj.)**, and has submitted that the aforementioned mandates were not followed in the case of the petitioner.

7. Lastly, learned counsel appearing on behalf of the petitioner had averred that once an observation of the Court on a judicial order is passed the same can only be expunged by the Constitutional Court either under Section 482 of Cr.P.C. or under Article 226 of the Constitution of India, as the same may have detrimental effect upon the promotions, transfers and retirement benefits of a person/authority.

8. *E-converso*, learned counsel representing the State had vehemently opposed the instant petition and contended that the said observations/remarks were only made on account of the



shoddy investigation done by the Investigating Officer. Moreover, the petitioner was called before the learned Trial Court as a witness wherein, during the examination he had time and again changed his statements.

9. Considering the aforementioned facts and circumstances of the instant matter, scanning the judgments cited at the Bar and upon a perusal of the record, more specifically the order impugned dated 19.03.2024, the relevant extract of which is reproduced herein below:

" 9. वही जहाँ तक अनुसंधान अधिकारी द्वारा परिवादी रामचन्द्र से मिलकर मुलजिमान के विरुद्ध दुर्भावनापूर्वक तफतीश किये जाने का प्रश्न है तो अनुसंधान अधिकारी पी.ड.10 गिरिराज ने जिरह में यह स्वीकार किया है कि सुरेश व रामहेत ने मुलजिमान द्वारा जमीन हाँकते हुये नहीं देखना व किस तारिख को हाँकी, यह भी नहीं बताया है, लेकिन ट्रेक्टर से हाँकना बताना, जो ट्रेक्टर के नंबर नहीं बताना व ट्रेक्टर बताना, उसी आधार पर ट्रेक्टर जब्त करना बताते हुये इससे इंकार किया कि ट्रेक्टर नंबर नहीं होने के बावजूद भी जब्त किया हो, बल्कि परिवादी द्वारा ट्रेक्टर का नंबर बताना व आगे यह स्वीकार किया कि परिवाद व बयानों में परिवादी द्वारा ट्रेक्टर का नंबर नहीं बताया, लेकिन परिवादी द्वारा ट्रेक्टर मुलजिमान का होना बताना, किन्तु परिवादी को धारा 91 दप्रसं का नोटिस नहीं देना बताते हुये यह स्वीकार किया कि मुलजिमान से तफतीश से पहले ही मुलजिमान को ट्रेक्टर सहित थाने पर बुला लिया था। इस प्रकार अनुसंधान अधिकारी के द्वारा साक्ष्य में जो कथन किये गये हैं, उसमें सुरेश व रामहेत द्वारा जमीन हाँकते हुये नहीं देखने की बात स्वीकार की है एवं ट्रेक्टर से हाँकना बताना, जबकि ट्रेक्टर के नंबर नहीं बताना बताया है, ऐसे में जब ट्रेक्टर के नंबर ही गवाहो द्वारा नहीं बताये गये हो, वहाँ हँकाई करने वाला ट्रेक्टर मुलजिमान के नाम हो, इस बाबत कोई अनुसंधान नहीं किया जाना प्रकट होता है। अनुसंधान अधिकारी ने पहले तो ट्रेक्टर के नंबर परिवादी द्वारा बताना बताता है, किन्तु आगे पेश परिवाद व बयानों में नहीं बताया बताता है, किन्तु फिर फर्द जब्ती प्रदर्शपी-7 में ही नंबर का उल्लेख होना बताता है। वही मुलजिमान से ट्रेक्टर मंगवाने के लिये धारा 91 दप्रसं का कोई नोटिस नहीं दिया जाकर तफतीश से पहले ही मुलजिमान को ट्रेक्टर सहित थाने पर बुला लेना का कथन किया है। अनुसंधान अधिकारी ने भी जिरह में यह स्वीकार किया है कि मात्र ट्रेक्टर बताया था, जिस आधार पर ही ट्रेक्टर को जब्त किया था, किन्तु उक्त ट्रेक्टर के नंबर किसी भी गवाह द्वारा धारा 161 दप्रसं के बयानों में नहीं बताये जाने से फर्द जब्ती प्रदर्शपी-7 से जब्त किया गया ट्रेक्टर क्या वही ट्रेक्टर था, जिससे हँकाई की गई थी, यह अनुसंधान अधिकारी स्पष्ट नहीं कर पाने से तफतीश संदेहपूर्ण रही है। वही अनुसंधान अधिकारी ने जिरह में इससे इंकार किया है कि उसने तफतीश रामचन्द्र से मिलकर मुलजिमान के दुर्भावना से की हो। इस प्रकार जिस प्रकार अनुसंधान अधिकारी के द्वारा अपने बयानों को बार-बार परिवर्तित



कर साक्ष्य दी गई है, उससे अनुसंधान अधिकारी द्वारा निष्पक्ष अनुसंधान नहीं किये जाने व दुर्भावनापूर्वक अनुसंधान किये जाने की संभावना से पूर्ण रूप से इन्कान नहीं किया जा सकता है।

11. फलस्वरूप अभियुक्त (1) जितेन्द्र पुत्र श्रीलाल, उम्र 38 साल, निवासी भडसुई, पुलिस थाना सदर, बारां, जिला बारां (2) श्रीलाल पुत्र रामप्रताप मीणा, उम्र 74 साल, निवासी भडसुई, पुलिस थाना सदर, बारां, जिला बारां को आरोपित अपराधी अन्तर्गत धारा 447, 34 भारतीय दण्ड संहिता, 1860 में संदेह का लाभ दिया जाकर दोषमुक्त घोषित किया जाता है। अभियुक्तगण के अंवीक्षाकालीन जमानत मुचलके निरस्त किये जाते हैं। उक्त निर्णय की सत्यप्रति निःशुल्क सहायक अभियोजन अधिकारी को दी जावे।

उक्त निर्णय पैरा संख्या 9 में किये गये विवेचन के आधार पर तत्कालीन अनुसंधान अधिकारी श्री गिरिराज, सहायक उप निरीक्षक, पुलिस थाना सदर बारां के विरुद्ध समुचित जाँच किये जाने बाबत उक्त निर्णय की सत्यप्रति महानिरीक्षक पुलिस, कोटा रेन्ज, कोटा को मय अग्रेषण पत्र के तुरन्त भिजवायी जाये। ”

This Court is of the view that the primary issue in the matter in hand is that can disparage remarks be passed against an Investigating Officer. Nevertheless, the long quest qua the said issues is settled by the Hon'ble Supreme Court, in **Mohammad Naim (Supra)** judgment.

10. At this juncture, this Court deems it appropriate to jot down certain indubitable facts:

10.1 That the instant petition is filed assailing the impugned order dated 19.03.2024, upto the extent of paragraph nos. 9 and 11, only.

10.2 That the petitioner was the Investigating Officer in Criminal Case No. 323/2021, wherein, he had conducted the investigation and had seized a tractor.

10.3 That while adjudicating the said matter the learned Trial Court in exercise of its powers under General (Criminal) Rules, 1980 had passed certain deleterious remarks qua the petitioner.

11. This Court would prefer to err on the side of caution, and adjudicate the instant matter in correspondence to the ratio of



Mohammad Naim (Supra). Considering the same this Court deems it appropriate to dismiss the instant petition for the reasons stated herein below:

11.1 It is evident that prior to making any disparaging remarks against any person/authority, a triple test/ three vital factors ought to be considered. The said applicability qua the instant matter is noted herein below:

11.1.1 Whether party whose conduct is in question, is before the Court and is tendered with a reasonable opportunity to explain himself – it is noted that the petitioner herein, was cross-examined before the learned Trial Court, in the said matter as PW-10 wherein, he had time and again altered moreover altogether modified his statements. Hence, proper opportunity of hearing was rendered to the petitioner.

11.1.2 Whether sufficient evidence is placed on record, to justify the said remarks – Upon a perusal of the impugned order dated 19.03.2024 (Annexure-3), it is noted that the learned Magistrate had categorically stated the arbitrary acts of the petitioner. The said order explicitly states that the petitioner conducted a shoddy investigation and on the basis of assumptions and presumptions had seized the tractor, without abiding/following the requisite procedure. Moreover, no summons were issued under Section 91 of Cr.P.C. Withal, the accused along with the said tractor was called in the Police Station prior to any investigation. Ergo, it can be inferred that the said order (till the extent it is assailed) is *sans* any irregularity and is a well-reasoned, speaking order.



11.1.3 Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct – this Court is of a *prima facie* view that considering the hitherto investigation conducted by the petitioner herein, the learned Magistrate was compelled to grant the benefit of doubt to the accused therein. Ergo, it can be inferred that the negligent approach/investigation adopted/conducted by the petitioner had direly affected the matter before the learned Trial Court.

For the sake of convenience the relevant portion of

Mohammad Naim (Supra) is reproduced herein below:

*"11. 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 Section 561-A 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 Magistrates 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 generalizations defeat the very purpose for which they are made. **It has been judicially recognized 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 recognized that judicial***



pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.”

12. In light of the aforementioned, it is evident that the order dated 19.03.2024 is *sans* any irregularities or arbitrariness. Moreover, is strictly in accordance with the settled principle of law, sobriety and moderation. It is also pertinent to note that the judgments cited by the learned counsel for the petitioner are on differential factual matrix, as in the matter in hand the learned Trial Court has passed a speaking order, meticulously noting the rationale qua passing of the said remarks and initiating the inquiry against the petitioner (Paragraph 9 of the order dated 19.03.2024).

13. Accordingly, the instant petition being devoid of any merit is dismissed. Pending applications, if any, shall stand disposed of.

(SAMEER JAIN),J

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