

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1340-1341 OF 2013
(Arising out of S.L.P. (C) Nos. 18859-18860 of 2012)

Awani Kumar Upadhyay

.... Appellant(s)

Versus

The Hon'ble High Court of Judicature at
Allahabad and Ors.
Respondent(s)

....

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted.
- 2) These appeals arise from the judgment and final orders dated 01.03.2012 and 23.04.2012 passed by the High Court of Judicature at Allahabad in Second Appeal No. 1444 of 2000 and Civil Misc. Modification Application No. 122702 of 2012 in Second Appeal No. 1444 of 2000 respectively, whereby the High Court, while allowing the second appeal, passed severe

strictures against the appellant-herein and forwarded a copy of its judgment to Hon'ble Chief Justice of the High Court to consider as to whether disciplinary proceedings are warranted against him?

3) The case of the appellant, in brief, is as under:

a) The appellant, who is a Member of the U.P. Higher Judicial Service, is posted as Additional District and Sessions Judge, Moradabad and, according to him, he is having unblemished service career and has successfully completed 30 years of service.

b) The High Court, while allowing the Second Appeal No. 1444 of 2000 titled *U.P. Avas Evam Vikas Parishad, Lucknow and Another vs. Lajja Ram*, passed severe strictures against the appellant herein in the judgment which, according to him, are ultimately going to affect permanently not only his reputation but also his entire service career.

c) It is the claim of the appellant that in the Second Appeal No. 1444 of 2000, he has not rendered any

judgment as trial Court Judge or as the first Appellate Court Judge. According to him, a suit bearing No. 418 of 1997 was filed by Shri Lajja Ram against the U.P. Avas Evam Vikas Parishad, Lucknow and another and the said suit was decided by one learned Civil Judge, Senior Division, Ghaziabad presided over by Shri Chaturbhuj by a judgment and order dated 02.05.1997. Aggrieved by the said judgment, a first appeal was filed being First Appeal No. 105 of 1997 in the Court of Shri A.K. Aggarwal, second Additional Dist. & Sessions Judge, Ghaziabad. The first Appellate Court framed 12 additional issues and on those additional issues, the matter was remanded to the Court of the appellant as he was working as Civil Judge, Senior Division, Ghaziabad. Thereafter, in compliance with the order of the first Appellate Court, after recording the evidence of the parties, the appellant recorded the evidence of the parties and gave his findings on 31.05.1999.

d) It is the case of the appellant that in the impugned judgment and order, the High Court has neither furnished any independent finding on the issues which were determined by the appellant herein nor anything about his ultimate decision. The present appeal is confined only to the portion wherein the High Court has made certain strictures. The appellant has also asserted that the High Court has not considered that the appellant has not rendered any decision as trial Judge or as the Judge of the first Appellate Court. On the direction by the first Appellate Court, only 12 additional issues were adjudicated by the appellant. Inasmuch as “severe strictures”, if allowed to stand, would affect his entire future prospects of service, he approached this Court by filing this appeal by way of special leave.

e) While answering the substantial questions of law, namely, 3, 4, 5 and 6, the High Court decided the same in favour of the appellants therein and against the

respondents. Ultimately, both the second appeals were allowed with exemplary cost of Rs. 5 Lakhs in Second Appeal No. 1444 of 2000 and Rs. 1 Lakh in Second Appeal No. 1445 of 2000. The High Court ultimately set aside the decrees passed by the courts below and dismissed both the suits. The High Court also directed that a FIR be lodged immediately against the plaintiffs for malicious prosecution and manipulation in the official records. After issuing such directions the High Court passed the following order, with which we are concerned in these appeals:

“Severe stricture is passed against the Judge of the trial Court as well as of lower appellate Court for passing extremely illegal and unjust judgments and decrees. A copy of this judgment shall be placed in their service records and be also sent to Hon’ble the Chief Justice to consider as to whether disciplinary proceedings are warranted against them.”

f) On coming to know of the strictures and the ultimate direction of the High Court, the appellant filed a Civil Misc. Modification Application No. 122702 of 2012 in Second Appeal No. 1444 of 2000 for expunging

the remarks made in the judgment dated 01.03.2012. The High Court, after hearing the counsel for the judicial officer without modifying the judgment, observed that *"I did not intend to make any suggestion for initiating disciplinary proceedings against the Judge who had decided the remitted issues only"*, and by saying so disposed of the said application, however, permitted the appellant to make representation on the administrative side of the High Court. Not satisfied with the same, the appellant has filed the above appeal for a limited purpose of expunging those adverse remarks.

4) Heard Mr. Harshvir Pratap Sharma, learned counsel for the appellant and Mr Ravi Prakash Mehrotra, learned counsel for the Registrar General, High Court of Allahabad. In the present appeals, the other parties have been shown only as proforma respondents.

5) The questions which arise for consideration are:

- (a) Whether in the facts and circumstances of the case, the High Court was justified in making

severe strictures and directions against the appellant in its judgment dated 01.03.2012?

(b) Whether the direction to send the impugned judgment to Hon'ble Chief Justice of the High Court with a request to consider whether disciplinary proceedings are warranted against the appellant herein was justified?

(c) Whether the High Court is justified in disposing of the application for modification without expunging the offending portion which was made without affording opportunity to the appellant?

6) It is settled legal position that no adverse remark can be made against any judicial officer without giving an opportunity to explain the conduct. It is useful to refer a decision of this Court in **Parkash Singh Teji vs. Northern India Goods Transport Company Private Limited and Another**, (2009) 12 SCC 577 which is identical to the case on hand. In the above decision, the directions of the High Court in its order dated 06.07.2006 reads as under:-

“Before parting, we wish to make it clear that the learned Judge who passed the impugned judgment and decree need be careful in future, rather than adopting a hasty, slipshod and perfunctory approach as is manifest from the judgment delivered by him in this case. We further direct that a copy of this order shall be placed on the

personal/service record of the officer, while another copy be placed before the Hon'ble Inspecting Judge of the officer for His Lordship's perusal."

According to the appellant, by making such remarks and that too behind his back, are not warranted. Here again, after adverting to the earlier decisions and principles enunciated therein, this Court expunged the offending remarks made against the appellant and allowed the appeal filed by him.

7) Apart from the above decision, in an identical circumstance, this Court has expunged adverse remarks made against a judicial officer in **Amar Pal Singh vs. State of Uttar Pradesh and Another**, (2012) 6 SCC 491. The appellant therein, a judicial officer, being aggrieved by the comments and observations passed by the learned Single Judge of the High Court of Judicature of Allahabad in **Sunil Solanki vs. State of U.P** (Criminal Revision No. 1541 of 2007, order dated 31.05.2007) has preferred an appeal before this Court. In this case, one Sunil Solanki had filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 before the CJM, Bulandshahar with the allegation that on 11.02.2007 at 9.30 p.m. when he was

standing outside the front door of his house along with some others, a marriage procession passed from in front of the door of his house and at that juncture, one Mauzzim Ali accosted him and eventually fired at him from his country-made pistol which caused injuries in the abdomen area of Shafeeque, one of his friends. However, he escaped unhurt. Because of the said occurrence, Sunil Solanki endeavoured hard to get the FIR registered at the police station concerned but the entire effort became an exercise in futility as a consequence of which he was compelled to knock at the doors of the learned CJM by filing an application under Section 156(3) of the Code for issuance of a direction to the police to register an FIR and investigate the matter. While dealing with the application, the Chief Judicial Magistrate, the appellant in that appeal, ascribed certain reasons and dismissed the same.

8) Being dissatisfied, the appellant therein preferred a revision before the High Court and the learned Single Judge, taking note of the allegations made in the application, found that it was a fit case where the learned Magistrate should

have directed the registration of FIR and investigation into the alleged offences. While recording such a conclusion, the learned single Judge has made certain observations which are reproduced below:

“This conduct of the Chief Judicial Magistrate is deplorable and wholly mala fide and illegal.”

Thereafter, the learned single Judge treated the order to be wholly hypothetical and commented it was:

“Vexatiously illegal.”

After stating so the learned single Judge further stated that the Chief Judicial Magistrate has committed a blatant error of law. Thereafter, he further commented:

“... and has done unpardonable injustice to the injured and the informant. His lack of sensitivity and utter callous attitude has left the accused of murderous assault to go scot-free to this day”.

9) After making the aforesaid observations, the learned Single Judge set aside the order and remitted the matter to the Chief Judicial Magistrate to decide the application afresh in accordance with law. Thereafter, he directed as follows:

“Let a copy of this order be sent to the Administrative Judge, Bulandshahar to take appropriate action against the CJM concerned as he deems fit.”

10) Aggrieved by the said direction, the appellant therein approached this Court by way of a special leave petition to delete the aforesaid comments, observations and the ultimate direction.

11) After referring all the various earlier decisions of this Court on this point expunged the remarks and set aside the said observation/comments and the direction made against the judicial officer. This Court also directed that if the said remarks have been entered into the annual confidential roll of the judicial officer, the same shall stand expunged and also marked a copy of the judgment to the Registrar General of the High Court, Allahabad to be placed on the personal file of the judicial officer concerned.

12) It is made clear that we are not undermining the ultimate decision of the High Court on merits. However, we are constrained to observe that 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. Our legal system acknowledges the fallibility of the Judges, hence it provides appeals and revisions. Inasmuch as the

lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure and they do not have the facilities which are available in the higher courts, we are of the view that the remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put-forth his reasonings. Further, if the passage complained of is wholly irrelevant and unjustifiable and its retention on the records will cause serious harm to the persons to whom it refers and its expunction will not affect the reasons for the judgment or order, request for expunging those remarks are to be allowed. We, once again, reiterate that harsh or disparaging remarks are not to be made against judicial officers and authorities whose conduct comes into consideration before courts of law unless it is really for the decision of the case as an integral part thereof.

13) We hold that the adverse remarks made against the appellant were neither justified nor called for. The perusal of the impugned judgment would show that the word “severe strictures” is mentioned whereas no logical reasoning has

been given as to what is the fault of the appellant and the High Court has not adduced any finding as to why it has disagreed with the reasoning given by the appellant particularly when the appellant asserted that neither he has rendered any decision as trial Court Judge nor as the first Appellate Court Judge except deciding 12 additional issues on the directions issued by his predecessor. The strictures passed against the appellant are neither warranted nor is in conformity with the settled law as propounded by this Court.

14) Under these circumstances, the adverse remarks passed in the impugned judgment and the final orders dated 01.03.2012 and 23.04.2012 insofar as the appellant is concerned are set aside. Since these appeals are confined only for expunging the strictures, the same are allowed as pointed above. No costs.

.....J.
(P. SATHASIVAM)

.....J.
(JAGDISH SINGH KHEHAR)

NEW DELHI;
FEBRUARY 13, 2013.

SUPREME COURT OF INDIA



JUDGMENT