

Pradip Kumar Das Vs. the State and ors.

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Court : Guwahati

Decided On : Feb-04-1964

Judge : G. Mehrotra C.J. and C.S. Nayudu, J.

Appellant : Pradip Kumar Das

Respondent : The State and ors.

Judgement :

C.S. Nayudu, J.

1. This is an application for the issue of a writ in exercise of the inherent jurisdiction of this Court under Section 561A of the Code of Criminal Procedure directing expunction of certain remarks made by the Magistrate, First Class, Barpeta, in his judgment in G. R. Case No. 462 of 1961 on 16-6-62.

2. The portions in the judgment to which exception has been taken are set out in paragraph 10 of the petition, through which we have been very carefully taken. These portions merely contain the remarks of the Magistrate while assessing the weight and value to be attached to the evidence of one Pradip Kumar Das who figured as a prosecution witness in the case before the learned Magistrate. Apparently, the learned Magistrate was satisfied that the witness was not telling the truth and that he had also admitted to have misappropriated the funds of the Government sanctioned for the library and children's park, although he claimed in his evidence that the writing was extorted from him. On a careful consideration of

these observations of the learned Magistrate we are not satisfied that they transgressed the limits of a careful and judicious appreciation of the evidence of the witness before the Magistrate. It is open to the fudge, before whom a witness appears, to consider the evidence of the witness and make to the best of his judgment, an assessment of the witness and his evidence and the value to be attached to it. If this privilege is denied then it would amount to undermining the judicial independence of judicial officers when exercising their judicial functions.

3. Our attention has been drawn to a decision of the Supreme Court in the case of Dr. Raghubir Saran v. State of Bihar reported in : 1964 CriLJ1 wherein their Lordships of the Supreme Court set out clearly the scope of interference by the High Court in the matter of the observations made by subordinate courts. It would be useful to extract the following passage:

Every High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice. This power extends to expunction or ordering expunction of irrelevant remarks made against a person who is neither a party nor a witness to the proceeding, from a judgment or order of a subordinate court, although the matter has not been brought before it in regular appeal or revision, and would be exercised by it in appropriate cases for securing the ends of justice. Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers such as by passing comment upon a matter not relevant to the controversy before it and which is unwarranted or is likely to harm or prejudice another.

We are fully conscious of the fact that in such matters as this a distinction should always be borne in mind in the matter of observations made by courts in regard to the parties and witnesses before them and in regard to other persons who do not so figure before the officers concerned. In the instant case, the petitioner was a witness and we do not consider that the observations made by the learned Magistrate were either irrelevant or unjustified. Although the remarks in question related to a person who was not a party, their Lordships of the Supreme Court came to the conclusion in the case above referred to that the inherent jurisdiction

of the High Court could not have been exercised on the facts of the case.

4. Reliance was also placed on a Single Bench decision of the Lahore High Court in the case of *Lachman Das v. Jai Gopal*, reported in 40 Cri LJ 214 : AIR 1938 Lah 793. The learned Judge who decided the case did take the precaution of pointing out that before any remarks are expunged from a judgment it must be found that those remarks were wholly unjustified in the circumstances of the case. It is unnecessary to examine this decision as the facts on which it is based were different. In any event, we are not satisfied that the remarks objected to in this case are either uncalled for or irrelevant. On the other hand, the learned Magistrate was entitled to come to a conclusion on the merits of the evidence given by the witness and make such comments as he considers to be justified. We see no reason to interfere in the exercise* of our inherent jurisdiction, which exercise has to be only confined to extreme cases as pointed out by their Lordships of the Supreme Court.

5. The petition, therefore, fails and is dismissed.

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