

State Vs. N.C. Jain

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Court : Allahabad

Decided On : Apr-28-1978

Reported in : 1978CriLJ1340

Judge : M. Murtaza Husain, J.

Appellant : State

Respondent : N.C. Jain

Judgement :

ORDER

M. Murtaza Husain, J.

1. This application under Section 482 Cr. P.C. (new) has been filed by the State of U. P. for expunging certain remarks and observations made by Sri N. C. Jain, III Addl. Sessions Judge, Lakhimpur Kheri while disposing of two connected Sessions Trials, namely Nos. A-247 of 1974 and A-417 of 1974 through his judgment dated 16-8-77.

2. Four persons, namely Asa Ram, Babu, Raja Ram and Danna stood their trials before the learned Sessions Judge in the aforesaid cases. The first named three persons faced their trial under Section 395 I.P.C. whereas the fourth one namely Danna stood his trial under Section 412 I. P. C, A sub-Inspector of Police namely, Sri L. K. Nigam had investigated the crime which had given rise to those cases. In

spite of repeated efforts made by the learned Sessions Judge attendance of S.I. L. K. Nigam could not be procured and the case was decided without recording his evidence. A panel Lawyer of Lakhimpur Kheri namely Sri Rajendra Singh conducted the case before the learned Sessions Judge on behalf of the prosecution.

3. The learned Judge found the case not proved against the four accused and acquitted them through his impugned order dated 16-8-77. While acquitting the accused the learned Sessions Judge made observations covering several pages whereby he criticised the conduct of Investigating officers of the case, the Panel Lawyer who conducted the case before him, and other authorities of the State, namely, the Superintendent of Police and the District Magistrates. He also condemned the entire institution of the Public Prosecutors and commented upon the mode of their recruitment, their integrity and performance. The learned Judge also made certain suggestions for their future recruitment and conditions of their service.

4. The State felt that the aforesaid comments and condemnatory observations made by the learned Judge in his judgment were neither correct nor justified, nor the same were relevant or necessary for the disposal of the cases to which the impugned judgment relates. Consequently this application has been moved for expunging the aforesaid remarks.

5. Sri! N. R. Kashyap, Government Advocate, argued this application before me quite zealously and placed all the relevant law on the subject. Sri P. C. Srimal, Advocate was engaged by the Presiding Officer, Sri N. C. Jain. He had earlier requested me to implead Sri Jain but that request was turned down by me because it was neither proper nor necessary to implead the presiding officer concerned in these proceedings, In order to be fair to the Presiding Officer and to appreciate his point of view. I requested Sri Srimal to appear as amicus curiae lawyer in the present case. He accepted my request and has elaborately placed the point of view of the Presiding Officer before me.

6. Before taking up the impugned remarks and observations made by the learned Sessions Judge in his judgment it would be convenient to recall the observations

of their Lordships of the Supreme Court made in *State of U.P. v. Mohd. Naim* : [1964]2SCR363 where guidelines have been laid down for the Presiding Officers making comments and observations about persons not appearing before them and about other departments of Government, Their Lordships have observed that:

It is a principle of cardinal importance in the administration of justice, that 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 the Supreme 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.

If we peruse the impugned portions of the judgment of the learned Sessions Judge in the light of the abovenoted observations it would appear that the learned Judge has criticised and condemned the entire bureaucracy and responsible authorities of the State Government without giving them an opportunity of being heard. He has unnecessarily entered into arenas of controversy by recalling the political changes that recently occurred in the country and which changes had, in his opinion, no salutary effect upon the bureaucracy. He has also in a sweeping and generalised manner condemned the functioning of District Magistrates and Superintendents of Police of the State. He has also gone out of way by making comments upon the behaviour of the executive towards the judiciary. The judgment in question was certainly not the proper medium to complain about the

discrimination said to have been shown by the executive authorities in allotting accommodation to judicial officers. There was absolutely no justification for the learned Judge to comment upon the so-called 'vanity', 'allergy', 'hallucination of superiority complex', 'extra-curricular activities', 'eat drink and be merry being their motto', 'un-punctuality', 'indiscipline', 'lethargy', 'illegalities', 'grave irregularities' and 'dishonest methods' of some or most of executive and administrative officers. Nor it was his function to suggest a course of training for the new entrants to executive and administrative services in order to teach them how to respect the judges and orders passed by them. Judges command respect through their personal behaviour and by following their age-old traditions of honesty, integrity, independence and aloofness. Orders passed by them have statutory sanctions for enforceability. If any particular District Magistrate, Deputy Inspector General, Supdt. of Police, or Sub-Inspector of Police had disobeyed the orders of the learned Sessions Judge, or had treated the same with contempt he could proceed against the erring officer in accordance with law. When he took no such action against anybody there was no reason for him to give vent to his feelings, and that too in such a bitter and sweeping style, in his judgment which was expected to be confined only to the facts of the cases which were being disposed of through it.

7. Sri Rajendra Singh, Panel Lawyer had discharged certain witnesses of the case which, in the opinion of the learned Judge ought not to have been discharged. It was open to the learned Judge to turn down the request of the Panel Lawyer and to examine those witnesses whom he considered necessary. When he himself failed to discharge his duty in that behalf, there was no justification for him in condemning Sri Rajendra Singh in his judgment. There was again no justification for him in condemning the entire institution of Public Prosecutors, the method of their recruitment, their performance and integrity. If he had to make any suggestions to the Government about the future recruitment of Public Prosecutors he could do so through a separate communication to be addressed to the High Court. While discharging his judicial functions, including the pronouncement of judgment, a Judge enjoys statutory protection. He is not expected to abuse that protection by expressing therein his own views on such extraneous matters which are likely to spark off confrontation with other departments, or criticism by the public,

8. After having fully considered the entire judgment of the learned Sessions Judge, I am of the opinion that the following observations of his judgment, which are clearly separable from the main judgment, should not remain on record and should stand expunged:

And now having arrived at a final conclusion in this case and before I close, I feel it my duty to draw the attention of the higher authorities who control the destiny of the nation and of this state, towards the excess of negligence, malpractices etc., perpetrated by officers of some of the departments which affect speedy justice and give rise to corruption due to which judiciary remains dependent on the executive thus frustrating the principle of complete separation of these two wings as envisaged in our Constitution.

But I am sorry to remark that most of the District Magistrates do not take any interest in any manner in supervising and controlling the investigations or prosecution of the case.

I also regret to say that most of the District Magistrates and Superintendents of Police have scant courtesy for the Judges and orders passed by them. They treat the judicial officers with contempt.

It appears that they are still living in the dark days of emergency or the ghost of emergency is still haunting their mind. They have either failed to notice the changes which the country has recently undergone or they are still not prepared to compromise with the new situation. They continue to disregard the orders passed by the judiciary and think the Presiding Judges to be second or third grade public servants. They seem to suffer from the hallucination of superiority complex. Some of those officers howsoever incompetent they may be, still try to imitate the English bureaucrats who left India 30 years ago. But they follow only as to what was evil in them and their virtues like punctuality, discipline, devotion to duty etc., exhibited by them seem to be quite foreign to these counterfeit personalities.

I am compelled to mention some of the reasons as to why some of the District Magistrates think themselves to be very superior. It is they who allot residential quarters to the Judicial Officers. Hence the judicial officers have to dance

attendance on them for allotment of suitable accommodation. But in spite of this, step-motherly treatment is mostly given to them and I find that in most of the districts. Civil Judges, Chief Judicial Magistrates, Judicial and Munsif Magistrates and even sometimes the Addl. District and Sessions Judges have been allotted 'D' Type quarters! meant for clerks or inferior staff or no quarters at all and superior type Government quarters or homes under allotment have been allotted to their own subordinates and others, or even to such of their flatterers who are not entitled to get any Govt. quarter. The judicial officers under these circumstances are compelled to take the help of the lawyers and the members of public for finding a suitable accommodation and this leads to various sorts of corruption. Most of the District Magistrates act in a most autocratic and despotic manner in the matter of allotment of accommodation to the Judicial Officers and this tendency has grown more after the imposition of the emergency. A full enquiry is therefore needed in this regard.

Lest I be misunderstood, I may mention that personally I have no grievance. A suitable quarter was allotted to me when I joined this district, which was previously in the occupation of my predecessor.

I am of opinion that the District Magistrates should be directed to allot suitable accommodation including Government quarters and houses under allotment to all the judicial officers when they are posted in their district. They should give priority to them in preference to the officers of their own or other departments, so that the judicial officers may not be compelled to seek any help from any lawyer or member of the public. There would be less harm if officers of the other departments have to take such help.

The other solution can be that the Government should reserve the existing Government quarters including suitable houses under allotment for the judicial officers posted in a district according to their strength and these quarters should be kept in the charge of the District Judges who alone should allot such quarters to the officers under him.

It has been laid down in the Constitution that the judiciary must be separate from the executive and the new Cr. P.C. has also been enacted to give [effect] to this

policy. But there can be no real or effective separation if the Judiciary can be influenced by the Executive in other ways. The District Magistrate is the head of the police administration of the district and he is always influenced by the ideas whispered in his ears by the S. P. and the members of the prosecuting staff. Therefore, the danger of the District Magistrate's exercising some sort of indirect influence over the judicial officers cannot be ruled out if they have to approach him daily and beg for an accommodation.

If what I suggest is followed then the vanity of District Magistrates who have got great allergy for the judicial officers would vanish and they would not treat them with contempt. The hallucination of superiority complex haunting their diseased mind must be made to disappear.

Most of the District Magistrates, Superintendents of police and other officers are very little interested in their duties which they are really required to perform and they take more interest in other extracurricular activities like opening ceremonies, attending rallies and other functions much to the detriment of their own official work for which they are paid. Now 'eat, drink and be merry' appears to be their motto.

Punctuality, discipline and hard work have no meaning for most of the public servants and now unpunctuality indiscipline and lethargy appears to be general rules.

It is now time for the states to impress upon such bureaucrats in its own interest and in the interest of the society that they should awaken from their long slumber and realise the reality of the situation. They should be made to feel that the judiciary must be respected by them at all cost and strict action should be taken against all such officers who disregard and show disrespect to the judicial officers. The supremacy of the judiciary which is the backbone of the democracy must prevail.

I would suggest that training be imparted to all the present District Magistrates and Superintendents of Police and their subordinates as how to respect the Judges and the orders passed by them. It would be advisable if a chapter is included in

the training course on this subject for the new entrants in the service.

It is very difficult and onerous task for me to mention here the complete details of the illegalities, grave irregularities and even dishonest methods being adopted by some of the administrative and executive officers which bring a bad name to the Government and which cause immense loss to the public exchequer and cause unnecessarily harrassment to the public.

What I am writing here may appear to be a bit out of the context but my feelings have been deeply hurt and I have no other option left but to express the same in this very judgment in the interest of the society, and the State so that there may be a real and effective separation of judiciary as required by our Constitution, After waiting for long years and after giving sufficient opportunity and warning, my patience has been completely exhausted and it has become impossible for me to continue witnessing as a silent spectator the contemptuous acts committed by the members of the executive towards the officers dispensing justice.

It is now in the power of the topmost persons only who are in the control of the affairs of the Central and the State Government and in whose hands the destiny of the nation lies to take appropriate and timely action so that democracy may become a permanent institution in this country leaving no chance for dictatorship or anarchy to raise its head. The bureaucracy and the bureaucratic methods must be wiped off and the public servants must be told in unequivocal terms to remain dedicated to the cause for which they serve.

I have also a few words to say regarding the existing institution of public prosecutors meant for Sessions Court which also requires dynamic reforms.

I find that most of the State counsel including the panel lawyers are quite inefficient, unpunctual and easy going. They dislike studying recent laws and case laws and in taking pains in the prosecution of the cases entrusted to them.

Some of the State counsel these days can be found playing carrom and chess in the Bar Association during court hours and they feel greatly annoyed if they are called by the presiding officers in the midst of their play. They also feel annoyed if

they are asked to be punctual. A secret enquiry is needed in this respect.

I am quite well aware of the corruption prevailing in this branch and the various corrupt methods adopted by them. But it is all due to the prevailing system of their recruitment. Incompetent persons have been appointed mostly as a political favour and hence they are generally busy in dancing attendance on the District Magistrates, Superintendents of police and other influential persons for getting their term renewed. They are deemed to be under the control of the local District Magistrates but the latter have little time or legal knowledge to have any effective control or supervision over them.

Some ways and means would have to be devised whereby only capable and dedicated lawyers are appointed as state counsel irrespective of any political consideration.

While all the Government servants including the prosecutors in the magisterial courts are liable to be transferred generally in three years and are not posted in their home district, but this is otherwise in the case of the State Counsel appearing in the Sessions court. The D. G. C.'s, A. D. G. C.'s and the panel counsel are appointed in their home districts and never transferred. They continue indefinitely till their age of superannuation. This leads to various malpractices. It is also a reality that capable persons are not appointed to fill these posts. This mini-Zamindari system should therefore end.

Much corruption also exists due to the part time panel counsel who appear for the State in certain cases and are also engaged by private parties and accused persons in other cases.

I would, therefore, suggest that a separate cadre of public prosecutors for Sessions court be created who should be able and capable persons and who should be selected by a panel of High Court Judges and whose services should be transferable and who should not be posted in their home district. They should be placed under the subordination of some able officer having good knowledge of law. If this is done then the various corruption existing shall vanish to a great extent and the cases shall be prosecuted honestly and faithfully.

I am fully aware that what I am writing may not be relished by affected persons and they may try to malign me by every means at their command but as a Judicial officer of long standing I am not afraid of the consequences and I feel that I would be failing in my duty if I do not bring all these facts to the notice of the higher authorities so that if a total revolution is to take place in the reform of judicial system then these points may not be ignored.

9. In para. 3 of the original judgment which commences from 'from the discussion of the facts' and ends with 'the accused were also shown to the witnesses at the thana' there are comments upon the conduct of an Investigation Officer, namely Sri J. S. Grewal. These comments are justified because the conduct of Sri Grewal was before the learned Sessions Judge and he could comment upon it. There are also comments against Sri B. S. Bedi, S. S. P. Lucknow, Sri Kahiv Mathur the then S. P. Kheri, Sub-Inspector Sri L. K. Nigam and Sri Rajendra Singh Panel Lawyer in that para, of the judgment which comments should, in my opinion, not stand. I, therefore, order the expunging of those remarks of the aforesaid paragraph of the judgment which concern the abovenamed four persons.

10. This application is allowed accordingly.

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