

**Kiran Vs. State of M.P.**

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**Court :** Madhya Pradesh

**Decided On :** Feb-01-2007

**Reported in :** 2007(2)MPLJ132

**Judge :** S.C. Vyas, J.

**Appellant :** Kiran

**Respondent :** State of M.P.

**Judgement :**

ORDER

**S.C. Vyas, J.**

1. This petition has been filed under Section 482 of Criminal Procedure Code invoking extra-ordinary jurisdiction of this Court for expunction of remarks made against the petitioner in Paragraph Nos. 17 and 18 of the judgment dated 25-3-2006 passed by Sessions Judge, Shajapur in Sessions Trial Case No. 151/2005.

2. The short facts of the case are that petitioner was working on the post of Station House Officer at Police Station, Sarangpur at the relevant time. On 8-3-2005 one Kamal Singh s/o Shankaralal informed at Police Station, Sarangpur, that 5 days ago his mother Bhawaribai had gone to work at Village Padlya Mata, with his sister Sunita and had not returned home since then. Though Sunita returned home on the same day. On the basis of this information, a missing person report No. 7/2005

was registered at the Police Station, Sarangpur and during the course of investigation pursuant to this report on 24-3-2005 such Bhanwaribai was traced and found at bus stand Sarangpur. Her statement was recorded on the same day, wherein she alleged that about 20-22 days ago one Bhagirath s/o Ranjeet Singh on the enticement of getting higher wages had taken her to Pachor and then to Vidisha, Narsinghgarh and Village Billorin. It was also alleged by her that under the threat of life she was repeatedly ravished by the accused Bhagirath. On the basis of aforesaid statement of Bhawaribai Crime No. 210/2005 was registered against Bhagirath for the commission of the offences punishable under Sections 363, 376, 506 of Indian Penal Code and he was arrested on 20-6-2006. After investigation challan was submitted against the said accused Bhagirath in the Court of Judicial Magistrate First Class, Sarangpur, who committed the case for trial to the Court of Sessions Judge, Shajapur. Petitioner was examined as P.W. 11 being an Investigating Officer of the case. After an elaborate trial in S.T. Case No. 151/2005 learned Sessions Judge by judgment dated 25-3-2006 acquitted the accused Bhagirath and held that the charges of abduction as well as rape were not proved against accused. It was also found that it was a case of consent and on the basis of these findings accused was acquitted.

3. Learned Sessions Judge, however, in Paragraph Nos. 17 and 18 of the judgment Annexure A-1 has passed adverse remarks against present petitioner, holding that the petitioner had made irresponsible statements; the statement of Bhawaribai recorded on the missing person report was not filed along with the challan and that the present petitioner had not himself recorded the statement of the prosecutor under Section 161 of Criminal Procedure Code, the present petitioner had failed to state or clarify as to who had written the said statement and that there was failure to comply with the provisions of Section 157 of Criminal Procedure Code. The learned Sessions Judge has also forwarded a copy of the judgment to the Director General of Police, Bhopal with a direction to initiate disciplinary proceedings against the present petitioner.

4. Feeling aggrieved by the above stated adverse remarks present petition has been filed, on the ground that remarks have been passed without giving any opportunity of hearing to the present petitioner and the remarks are unwarranted

and unjustified and were also unnecessary for the decision of the case and, therefore, the same deserve to be expunged.

5. Learned Counsel for the petitioner Shri B.L. Pavecha, Sr. Advocate assisted by Mr. M. Phadke, Advocate argued that learned Sessions Judge has committed a grave error in drawing inference that it was the duty of the present petitioner to disclose the name of the police officer who had written the statements of the prosecutrix and that his failure to disclose the name of the scribe of the statement Exh. D-5 was indicative of petitioner's negligence. He submitted that the learned Sessions Judge should have taken note of it that under the prevailing procedure of recording of evidence, a witness is required only to answer those questions which are put to him either by the prosecutor in examination-in-chief or in re-examination or by the defence Counsel in cross-examination or by the Court and such witness has no liberty to volunteer any statement on his own. He has also submitted that no question was asked to the present petitioner as regards to the scribe of the statements of prosecutrix (Exh. D-5) either by prosecutor or by the defence counsel or even by the Court. In these circumstances, there was no failure or negligence on the part of the present petitioner to disclose any fact before the Court.

6. Learned Sr. Counsel also submitted that in the case diary of the case there is a clear mention that copy of the FIR, on the basis of which offence was registered was sent to JMFC, Sarangpur on 24-3-2005 itself and an acknowledgment thereof was also available in the case diary. There is also an entry in the case diary to the effect that the statement of prosecutrix Bhawaribai (Exh. D-5) was recorded by another Sub Inspector Jitendra Rathore. He submitted that learned Sessions Judge should have called the case diary before passing any remarks against present petitioner. He also submitted that no question was put to the present petitioner regarding compliance of Section 157(6) of the Criminal Procedure Code, and, therefore, petitioner had no opportunity to offer his explanation regarding compliance of Section 157(6), Criminal Procedure Code. In this way the observations made by learned Sessions Judge regarding negligence of present petitioner in this regard are also totally baseless.

7. Learned Counsel for the petitioner placed heavy reliance on the decision of this High Court passed in the case of K.P. Singh Kushwaha v. State of M.P., reported in 2005(2) M.P.H.T. 423 : 2005(2) MPLJ 276 : 2005(2) JLJ 258 and stated that learned Trial Judge has passed disparaging remarks against petitioner without following the guidelines of the Supreme Court, which have been emphasized in the case of State of Uttar Pradesh v. Mohammad Naiem : [1964]2SCR363 and further followed by the Supreme Court in the catena of the judgments.

8. Per contra, learned Dy. Public Prosecutor Shri Karnik submitted that sufficient material was available on record for passing such remarks against the present petitioner. He was the Station House Officer of Police Station, Sarangpur and it was his duty to record the statements of prosecutrix under Section 161 of Criminal Procedure Code and to see that the copy of the FIR is timely sent to the concerning Magistrate. He failed to see as to whether prosecutrix was examined during the course of investigation or not and who had recorded her statement under Section 161 of Criminal Procedure Code In such circumstances, learned Dy. Public Prosecutor tried to justify the remarks passed by the learned Sessions Judge in the judgment impugned.

9. I have very minutely examined the record of Sessions Trial No. 151/2005 decided by Sessions Judge, on 25-3-2006 including the judgment rendered in the case. Learned Sessions Judge in Paragraph No. 19 of the judgment has clearly held that it was a case of consent and prosecutrix remained in company of the accused for a long time, without making any complaint to anyone. On the basis of this finding he held that offences punishable under Sections 366 and 376 are not made out against the accused and, therefore, accused was acquitted. It was the case in which the prosecutrix supported the case of prosecution and so far as the statement Exh. D-5 is concerned, only one question was asked to that witness during the course of his cross-examination in Paragraph No. 23, wherein this contradiction was projected that she went along with accused to Village Karondi and the accused kept her with him for about 1 1/2 months, but the judgment of the Sessions Judge shows that this portion of the cross-examination of prosecutrix was not the basis for disbelieving her. The statement of this witness was disbelieved by learned Sessions Judge on another ground regarding which there

was no material contradiction between her statement given in Court and recorded during investigation as Exh. D-5. In such a situation if the name of scribe of Exh. D-5 was not told by the present petitioner during his examination in the Court, then also it hardly makes any difference in the finding arrived at by the Trial Court. Present petitioner Kiran Lashkarkar was examined in the Trial Court as P.W. 11. His statement shows that no question was asked to him by any party or even by the Court regarding the scribe of Exh. D-5, therefore, he was having no opportunity to tell the name of the scribe of Exh. D-5. Similarly no question was also asked to him regarding sending the copy of the FIR to the concerning Magistrate and, therefore, on this point also he was having no opportunity to submit his explanation. In this way it is apparent that even during the examination of present petitioner Kiran Lashkarkar in the course of trial no opportunity was provided by the Trial Court to him to explain his conduct on both the above stated counts. Later on also before passing the judgment dated 25-3-2006 no opportunity was provided to him to offer his explanation and it is clear from the record that before passing the disparaging remarks against the conduct of the present petitioner no opportunity of explaining or defending himself was provided to the present petitioner.

10. The remarks which have been passed against the present petitioner were also not necessary for the decision of the case as an integral part thereof because the judgment of acquittal was recorded on some other grounds and not on the basis of delay in sending copy of FIR to the Magistrate or considering some contradiction between the statement of prosecutrix given in the Court and recorded under Section 161 of Criminal Procedure Code during the course of investigation.

11. Learned Sessions Judge had also failed to call the case diary before passing these remarks to ascertain as to whether a copy of the FIR was in fact timely sent to the concerning Magistrate or not and also to ascertain as to who was the scribe of the statement Exh. D-5 recorded during the course of investigation. It was also the duty on the part of the Court to put specific question to the concerning witness during the course of his examination during trial, so that necessary evidence can be brought on record justifying the remarks.

12. Supreme Court in the case of State of Uttar Pradesh v. Mohammad Naiem : [1964]2SCR363 has clearly held that

It has been judicially recognized that in the matter of making disparaging remarks against person 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 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.

13. The same view was against expressed in the case of Niranjan Patnaik v. Sashibhusan Kar : 1986 CriLJ911 and in the case of S.K. Viswambaran v. E. Koyakunju : 1987 CriLJ1175 .

14. In the case of A.M. Mathur v. Parmod Kumar Gupta : [1990]2SCR110 , it has been clearly held that:

Judges should not use strong and, carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognize that they are not infallable and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so they may do considerable harm and mischief and result in injustice.

15. In the case of State of Karnataka v. Registrar General High Court of Karnataka : 2000 CriLJ3958 . While considering the remarks pertaining to poor investigation passed by the Division Bench of Karnataka High Court Apex Court held that 'Demoralisation of Police Department would badly erode the already impaired efficiency of the forces'. After expressing this view Supreme Court expunged those remarks as they were unnecessary for the decision of the case.

16. In the facts of the present case also the disparaging remarks which have been passed against the present petitioner appears unnecessary and were not necessary for the decision of the case as its integral part. It is also clear that no opportunity of explaining or defending himself was provided by the learned Trial Court to the present petitioner before passing these remarks. The disparaging remarks against the present petitioner and the issuance of directions to Director General of Police to hold departmental inquiry and to punish the present petitioner are just contrary to the guidelines laid down by the Supreme Court in the case of State of Uttar Pradesh v. Mohammad Naiem (supra), and in other cases which have been discussed hereinabove and, therefore, the remarks in Paragraph Nos. 17 and 18 of the judgment dated 25-3-2006 passed in Sessions Trial No. 151/2005 by the Sessions Judge Shajapur are not sustainable and are liable to the expunged.

17. This Court in the case of K.P. Singh Kushwaha v. State of M.P. (supra), has also held that 'Trial Court has no jurisdiction to direct the authority for initiation of departmental enquiry and to punish the applicant. At the most, the learned Trial Court, after passing the adverse remarks, could have directed the superior authority to take necessary action in accordance with law'.

18. Therefore, the directions which have been given in the present case to the Director General of Police to initiate departmental enquiry against the present petitioner and to punish him are also not sustainable.

19. As a result of foregoing discussion this petition succeeds and is allowed. The remarks passed by Trial Court in Paragraph Nos. 17 and 18 are hereby expunged.

20. This M.Cr.C. is thus disposed of.