

State of Orissa Vs. John Bhotra

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Court : Orissa

Decided On : Jul-18-1972

Reported in : 38(1972)CLT851; 1973CriLJ553

Judge : S. Acharya, J.

Appellant : State of Orissa

Respondent : John Bhotra

Judgement :

ORDER

S. Acharya, J.

1. This is a petition by the State of Orissa Under Section 561-A, Cr.P.C. for expunging certain derogatory observations made against a Superintendent of Police and a Deputy Superintendent of Police in the judgment delivered by the Special Judge Koraput in T.R. Case No. 1 of 1969. The said Superintendent of Police had accorded the necessary sanction for the prosecution of the accused, and the Deputy Superintendent of Police investigated into the case at one stage and also figured as P.W. 12 in that case.

2. The complained of remarks are in the following extract from paragraph 2 of the judgment of the Court below, as stated in this miscellaneous petition.

What is most surprising, as already indicated, is that the Deputy Superintendent of Police (P.W. 12) did not canalise his investigation on the facts disclosed from these official records which he found to be true. If he were diligent he could have avoided this long-drawn process of harassment caused to the accused-constable. It is a greater surprise that even an order of sanction (Ext. 3) also could be obtained and the authority granting such sanction apparently passed it mechanically without realising for a moment the responsibility inlaid for granting such a sanction by which a criminal prosecution is set in motion against a public servant.

The first two sentences in this paragraph contain certain observations against the aforesaid Deputy Superintendent of Police and in the last sentence of that paragraph there are certain observations against the authority who granted the sanction for the prosecution, referring thereby to the abovementioned Superintendent of Police.

3. It is seen from the judgment of the Court below that the observations contained in the above-quoted paragraphs were made by the Judge while he was in the midst of discussing, considering and weighing the evidence on record.

4. Judges while writing out judgments have to discuss, appreciate and weigh the evidence on record in the proper perspective, and in doing so they have to express their opinion on the veracity, conduct and character of a witness as borne out on the materials on record. It is of cardinal importance that judicial officers of all classes must be allowed to perform their judicial functions freely, fearlessly and without undue interference by anybody howsoever high in the administration of justice. They should be given proper freedom to express their mind on matters requiring their decision and on things intimately and intrinsically connected with the same. They should be able to freely express their inherent reaction to falsehood and/or any suspicious and undesirable conduct, of a witness. If unnecessary fetters are placed on their language and expression, it may be difficult for them to properly assess and weigh the evidence on record and give a proper account of the same, in their judgments and to express their reasonings for discarding the evidence of some witness or preferring one set to another. However, each man

has his own language to express things, and unnecessary fetters should not be placed on his own way to express his reaction or opinion about matters before him. But remarks and observations which are absolutely not called for or not justified on the evidence on record or on the facts of the case, nor are necessary for decision or disposal of the case and are sweeping generalisations must always be avoided for 'judicial pronouncements must be judicial in nature and should not normally depart from sobriety moderation and reserve.' : [1964]2SCR363 .

5. The power to expunge remarks and observation in a judgment is an extraordinary power and can be exercised only in exceptional cases. It is well settled that remarks and observations which are made by a judge for the purpose of weighing the evidence on record or for discussing the merits of the case or for arriving at a decision in matter before him. and which are necessary for the due disposal of the case, should not and cannot be expunged merely because they hurt somebody or injure his reputation causing consequential humiliation, difficulty and/or embarrassment to him. That is so because a court's judgment should not be mutilated by removing therefrom materials which are necessarily entwined or intermingled with the same. This Court, however, can. in exercise of its inherent jurisdiction, expunge remarks made by it or by a lower Court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice. The jurisdiction in this direction is of exceptional nature and has to be exercised in exceptional cases only : [1964]2SCR363 . In proceeding to expunge remarks from an order or judgment this Court should be very cautious so as not, in any event, to alter the judgment on merits or on any matter of substance. It can only delete from it matters which, being alien to the matter before the Court need not be there if they are found to be objectionable, and unnecessarily and unjustifiably hurt anybody in a prejudicial manner. Their Lordships of the Supreme Court in the State, of Uttar Pradesh v. Mohammad Naik, reported in : [1964]2SCR363 have observed:

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.

6. On the above view of the law on the subject, it has to be examined if the observations made in the above-quoted passage against the two officers of the Police Department, who were intimately connected with the prosecution of the accused in this case, can be expunged as prayed for. A perusal of the judgment of the court below shows that the complained-of-observations have been made in course of the appreciation of the evidence on record and for the purpose of properly assessing the merits of the prosecution case. These observations are made while discussing certain facts disclosed by the evidence on record, and they indicate the judge's reactions to those facts, and the weak and deficient evidence on which the prosecution was launched against the accused. They form a part of the court's reasonings for acquitting the accused, for whose prosecution both the said two Police Officers had an important part to play. There is no departure from sobriety, moderation and reserve in the language used in the above-quoted passage, and it cannot be said that the judge was not at all justified in stating all that has been stated therein. The Deputy Superintendent of Police appeared as a witness in this case, and he had full opportunity of explaining his conduct disclosed by the evidence on record. The Superintendent of Police, who accorded sanction for the prosecution of the accused, has not, however, figured as a witness in this case. The Court below, while appreciating the evidence on record and assessing the merits of the prosecution case, finds that the said sanction was mechanically granted, as a result of which the accused, a public servant, had to undergo a criminal prosecution on such deficient materials. The observations of the judge in this connection were actuated by his reactions to the facts disclosed by the evidence on record. The reference to the sanction granted in this case, in the context in which it is made, is clearly for the purpose of lending affirmance to the court's finding of acquittal. There is nothing objectionable in the language in which it is expressed.

7. On the above considerations and on a careful perusal of the judgment of the court below I am satisfied that the above-mentioned remarks and observations

made against P.W. 12, the Deputy Superintendent of Police, and the authority granting the sanction, which, as alleged, refers to the Superintendent of Police of the district, cannot be expunged from the judgment of the court below.

I do not find any merit in this petition and it is hereby dismissed.

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