

Court on Its Own Motion Vs. Umesh Kumar

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Court : Delhi

Decided On : Jul-24-1997

Reported in : 1997IVAD(Delhi)741; 1998CriLJ604; 70(1997)DLT600; 1997(42)DRJ627; 1997RLR497

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 228

Appeal No. : Criminal Miscellaneous Appeal No. 1756 of 1995

Appellant : Court on Its Own Motion

Respondent : Umesh Kumar

Advocate for Pet/Ap. : Haridayjot Singh, Adv

Judgement :

Jaspal Singh, J.

(1) On the 23rd day of March, 1995 Court Room No. 294, in the sprawling Tis Hazari Courts complex, was a witness to an unfortunate incident. On that day, at about 11.15 A.M., while a Metropolitan Magistrate (hereinafter referred to as the complainant) was in the thick of a judicial proceeding, an accused threw a polythene bag at him containing human excreta. It struck against an almirah and

burst. Its contents flew around besmearing the wearing glasses, the turban and the robes of the complainant. The incident led to the filing of a complaint which came up for trial before another Metropolitan Magistrate who, after a trial, convicted and sentenced the accused under Sections 228, 353 and 355 of the Indian Penal Code. Though the main judgment convicting the accused consumed only 18 pages, the order on sentence ran into 80. Not that lengthy orders are not known. They are. However, what caught the discerning eye of a brother judge of this Court were the remarks passed therein by the trial Metropolitan Magistrate against the complainant. They are as under: (Page 34 - para 65) 'It is beyond my imagination as to how a Magistrate, and that too a Judicial Magistrate, could, with such wantonness, violate personal liberty of this young, hapless and destitute Dalit, who had already suffered immensely. In fact, before the facts of that case came to my knowledge. I had never visualised that a Magistrate in Delhi could violate personal liberties to such a severe extent. I was under an impression that such judicial transgressions are reserved for remote areas only.' (Page 37 para - 68) '.....The complainant had absolutely no regard for the mandatory requirements of a speedy trial. Nor he had any respect for personal liberty of the convict.' (Page 39 - para 72) 'The 22nd day of September, 1994 was one of the most significant days in the excruciatingly, protracted and unjustly conducted trial of the convict. It was on that day that clinching evidence came on record to establish beyond any shadow of doubt that the convict was innocent and had been falsely implicated by the police in that case. The convict deserved to be granted a clean requital and set at liberty forthwith. Even a Kangaroo Court could not have ruled otherwise. But still, this convict had to wait for about 6-1/2 months to hear the verdict of acquittal, but without freedom, for the fetters of this case were on him by them.' (Page 51 - para 87)

'.....THE management of the proceedings of that case by the complainant was vocative of all his obligation, constitutional, statutory and innate, to hold an expeditious and fair trial. In fact, the inquiry, trial and detention of the convict lost their claim to be called legal and constitutional much before this crime was committed.'

(Page 71 and 72 - para 115)

'.....IThas become apparent to me, like a self-evidence truth, that the diabolic act of the convict, by which the complainant was dishonored, was a consequence of the oppression unleashed by complainant against the convict. That quality of being civilised was undoubtedly wanting in the conduct of both of them. How could they stoop so low and conduct themselves so dishonorably. There was no justification legal or moral, for the continuous, incarceration of the convict by the complainant.''Both have undoubtedly committed grave transgression of those legal and moral values which they ought to have upheld. The responsibility of the complainant in this regard was much greater as compared to that of this semiliterate and long incarcerated convict. Had the complainant proved true to the demands of his duty, no occasion would have arisen for the convict to commit this crime. No doubt, I am bound to inflict sufficient punishment against the convict.....'

'.....IT is also my bounden duty, as a sentencing judge, to take into consideration that illegal and unjust conduct of the complainant that has led to such a demoralising crime. It is also necessary to denounce and condemn that conduct. That conduct of the complainant cannot but be an extenuating circumstance for reduction of the sentence from the maximum permissible.'

'..... No doubt, the provocation which the convict received from the conduct of the complainant was really grave.'

(2) The remarks reproduced above are the subject-matter of *ese suo motu* proceedings under Section 482 of the Code of Criminal Procedure.

(3) The eighty pages long order spun out by the trial Magistrate from the delay in the disposal of the criminal trial of the accused pending before the complainant and the information that the accused happened to be a dalit whose bail bond stood rejected by the complainant, starts with why 'since generations' the judicial officers are addressed 'with the designation: of 'Your Honour', what that 'expression' implies and how it 'stoops to a vanishing point' and then travels through a long-winding invective harangue. He denounces the complainant in a manner which shocks. He reaches this desired result by going off on his tangents lending support to the studies on the psychology of human understanding, which have been

synthesized in books such as E.S.Gombrich's *Art and Illusion* (1960) and Thomas Kahn's *The Structure of Scientific Revolutions*, indicating that the human mind can often interpret a single sense datum in more than one way and that the interpretation given to the datum depends upon pre-existing expectations in mind. But then, the human mind here being that of a trained judicial officer, it was expected to reason in the proper direction, look at the facts as they appeared, accept them as they were and curb any desire to twist them.

(4) Every case is a canvas. The facts are the paints. Law, the brush. The Judge is then left to explore the possibilities. What to draw? And how? It is here that problems arise. And, knowing that the ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature, he proceeds to realize the object with the hands of an artist. As every musical composition has a structure, or shape, that is, the arrangement of individual elements so as to constitute a whole, a judgment too may be likened to a musical notation with words like notes. They have to be arranged properly to create harmony. And, above all, they cannot be used without thought and content. A judgment thus must not only be systematically constructed, it must also be intellectually compelling. Seamus Hearney who recently won the Nobel Prize in literature wrote in *The Harvest Bond*: 'The end of Art is peace.' A good judgment has also that end in view. And, if we assess the ability of a painter by looking at his painting, we assess judges by looking at their judgments. Nothing would be more destructive of the confidence of any society in its judges than the feeling that decisions are made to a standard of reasoning personal to the individual judge. That is why he must give full Explanationn of the judgment and what he produces must have precision, clarity and elegance of expression.

(5) Unfortunately, the order in question lacks analysis, is insensitive to the context and fails to sift the facts with care and caution. It is prepared with a broom besmeared with anger and venom. Of course there was delay in the disposal of the criminal case, but then the record of the Court proceedings and the back-breaking load of work ought not to have been ignored. That the accused happened to be a Dalit was hardly of any consequence and, in any case, hardly a provocation for the diatribe. And, as for the rejection of the bail bond it was on

account of the surety not having control over the accused - a perfectly legal ground. Where was the occasion then for the trial Magistrate to be so vituperative? The order unfortunately verges on populism too. It would have perhaps done him good to remember that populism has in it streaks of Narcissism and that Narcissism carries within it the seeds of destruction. Philip Allen Lacovara, Philip Allen Lacovara, *Uncouthly Manners: Quarrelsome Justices are no longer a Model of Civility for Lawyers*, *Aba, J.* 50 (Dec. 1994) a distinguished practitioner and former Deputy Solicitor General in a recent article in the *American Bar Association Journal* scored the escalation of 'scathing and snide reports' among Supreme Court justices in recent times. Let us be away from it. I know a perfect judge is an abstraction. He will never exist in fact. But then every cosmology has its ethics. There is no judicial discretion allowing a Judge to lose his sangfroid. Hot-button temperaments mar judgments and barbs demean the Courts. True, at times there may be judicial necessity to point to the right path. Even judicial pain may impel an appellate court in some cases to provide proper direction, but, while dealing with peccadilloes suggesting the failings of individuals, the judges have to exhibit high intellectual, professional and literary skills. A Judge can neither afford to be unfair nor vituperative.

(6) The uncalled for and unjustified remarks passed by the trial Magistrate against his own colleague and the order which to borrow the words of Albert Abel *Albert Abel, book review* (1974) 24 *Utlj* 318 displays 'shoddy craftsmanship' led me to bite the bullet and explicitly deal with the issue. I have done so with the hope that henceforth no judicial officer and no Judge will say or write what may be condemned as 'an exercise in legal barbarism.' \$F An expression borrowed from J.G. Wettor. *The styles of Appellate Judicial Opinions* (1961) 313 quoted in R. Komar's *Reasons for Judgment. A Handbook for Judges and other Judicial Officers* (Toronto : Butterworths, 1980).

(7) The remarks in question are expunged.

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