

State Vs. Amar Singh and ors.

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Court : Himachal Pradesh

Decided On : May-23-1972

Reported in : 1972CriLJ1578

Judge : Chet Ram Thakur, J.

Appellant : State

Respondent : Amar Singh and ors.

Judgement :

ORDER

Chet Ram Thakur, J.

1. This is a petition under Section 561-A of the Code of Criminal Procedure by Shri J. C. Thapar for ex-functio of remarks passed against him in cases Nos. 105/2 and 106/2 of 1970 decided on 12-11-1970 by the Chief Judicial Magistrate while discharging the accused. Amar Singh, who had been challaned under Section 409 of the Indian Penal Code.

2. The petitioner was working as Block Development and Panchavat Officer. Baiinath at the time when these embezzlements are stated to have been committed by Amar Singh accused for which he had been challaned. The brief facts giving rise to the case against Amar Singh are that he was the President of the Gram Panchavat Chuk. Tehsil Palampur. in the years 1961 to 1963. The

accused is alleged to have drawn Rs. 300/-for the construction of a Danga from the Block Development and Panchavat Officer (petitioner). Bainath, by way of Government grant; an amount of Rs. 350/-which was collected by Shri Inder Singh member of Gram Panchavat by way of contribution from the villagers towards the Village Supply Scheme. Chadiar. was received by the accused and an amount of Rs. 20/- out of the amount of House Tax was collected by him for the period 19-12-1961 to 7-8-1962. All these amounts were appropriated by the accused for himself. The accused, therefore, was challaned by the police.

3. The learned Chief Judicial Magistrate, after perusal of the documentary evidence and without recording any evidence in the Court, came to the conclusion that there was no prima facie case against the accused. The matter was of a civil nature, hence he discharged the accused under Section 251-A. (2) Cr. P.C. but made certain derogatory remarks as find mention in para No. 17 of the Judgment against the petitioner, who at the relevant time, as already stated, was working as the Block Development and Panchavat Officer. Bainath. The relevant portion of para 17 in which derogatory remarks appear and which are sought to be expunged, runs as under:

So. in view of this specific condition of completion of the work within three months, it is not understood how the matter remained without any action for such a long period running into so many years. when I find that this very Block Development and Panchavat Officer. Shri Jagdish Chander remained as such in his very Block till 1967. This is not only a gross carelessness but it amounts to connivance and abetment of the offence if there is any on the Dart of the accused, by this Officer. So, this matter calls for departmental proceedings and action to set the matters right with a view to obviating such repetition in future.

4. The matter that High Court has inherent power to expunge objectionable remarks in Judgment or order of subordinate Court against stranger, after it has become final was considered in the State of Uttar Pradesh v. Mohmmad Nairn : [1964]2SCR363 , wherein their Lordships of the Supreme Court held, 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, fairplay 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. This very view was reiterated in *Jage Ram v. Hans Rai Midha* : 1972 CriLJ768 .

5. In the instant case it would have been noticed that the learned Chief Judicial Magistrate did not examine any evidence in the Court besides this documentary evidence and it was only on the basis of this documentary evidence collected by the investigating agency and placed with the challan that it came to the conclusion that the case was of a civil nature. The petitioner against whom these condemnatory remarks have been passed was not examined in the Court even if it may be stated that he was a witness in the sense that he had lodged the First Information Report in the case. In order to pass this judgment of discharge on the basis of the documentary evidence it was hardly necessary for the learned Magistrate to have commented upon the conduct of the petitioner, who was not present in the Court nor any opportunity had been afforded to him for explaining his conduct. He is a Government servant and his career would be marred by these derogatory and condemnatory remarks, which are of a most serious nature because he has been dubbed as careless and is alleged to have connived in and abetted the commission of the offence. In *Lal Singh Kang v. The State* it has been held that if remarks made against a person without any foundation are allowed to remain in the judgment of the trial court, his adversaries by utilizing the certified copy of the judgment, can do irreparable harm to him. The contrary observations

made by the High Court exonerating him would not be available along with the judgment of the trial court. In appropriate cases therefore, the only way in which the High Court can effectively prevent abuse of the process of the Court and further the ends of justice is by ordering the damaging remarks to be expunged and the jurisdiction to do so must necessarily be deemed to be inherent in the High Court.

6. The petitioner was not a witness as already stated, and if he had been examined as a witness in the Court then it could be said that the Court while evaluating the evidence of the witness was competent to give a finding that the witness was a trustworthy or a false one, because the person who comes before the Court as witness runs the risk of being adjudged as false witness in case his evidence does not inspire confidence and is otherwise contradictory to the relevant material facts on record as would be clear from the aforesaid Supreme Court authority. : [1964]2SCR363 (supra).

7. Further the contention of the petitioner's learned Counsel is that he was not cited as a witness and that he was stranger to the proceedings and. therefore there was no occasion or justification for the Court to have passed these derogatory remarks against him and he relied on Dr. Raghubir Saran v. State of Bihar : 1964 CriLJ1 wherein it was held that the High Court has inherent power to expunge objectionable remarks in judgment or order of subordinate court against stranger. So if the petitioner was not a witness in the case then these remarks were definitely unjustified and uncalled for. especially so. when there was not a judgment after the trial and it was merely a discharge order based on the documentary evidence placed by the police with the challan.

8. A perusal of the judgment would reveal that the objected remarks are not relevant to the case because they are not found on any evidence and evidence in my opinion is that which was recorded in Court and could be tested by cross-examination of the witnesses in the Court. But since there is no evidence, therefore, in my view the remarks are quite unwarranted against a stranger and these remarks are such as can be detached from the judgment.

9. The question that the petitioner had been grossly careless is also not true as would be evident from the judgment itself. The petitioner had sent a letter to the Director of Panchavats in the year, 1967 about the embezzlement having been committed by the accused, but the latter sent him a reply only in the year 1969 and it was only thereafter that he could send the F.I.R. in the case. Therefore, this also would go to show that the petitioner was not quality of gross carelessness and these derogatory remarks, therefore, which are of a very serious nature, which would mar the career of the officer, should therefore, be ordered to be expunged in view of the circumstances of the case and I hereby allow this petition and order the expunction of the remarks from the judgment.

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