

Dr. Khalida Hakim and anr. Vs. S.K. Institute of Medical Sciences, Soura and ors.

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Court : Jammu and Kashmir

Decided On : Dec-23-1996

Reported in : AIR1997J& K86

Judge : Bilal Nazki, J.

Acts : Jammu and Kashmir Code of Civil Procedure (CPC), 1977 - Section 151

Appeal No. : C.M.P. No. 554 of 1995

Appellant : Dr. Khalida Hakim and anr.

Respondent : S.K. Institute of Medical Sciences, Soura and ors.

Advocate for Def. : A.H. Naik and; T. Khawaja, Adv.

Advocate for Pet/Ap. : Z.A. Qureshi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Bilal Nazki, J.

1. This is an application for expunging the remarks passed against the applicant in Civil Revision No. 78 of 1995. This Court while deciding the civil revision against the order passed by Sub Judge (Municipal Magistrate) Srinagar, made certain remarks about the Sub Judge. The Sub Judge has filed this application for expunging the remarks. This Court made following observations:--

'In total disregard to the well established legal principles relating to the grant of temporary injunctions, by gross non-application of mind and in utter abuse of the jurisdiction vested in the Court below, coupled with flagrant violation of the principles of natural justice and in a manner not expected of a Judicial Officer, the learned Sub Judge (Municipal Magistrate) Srinagar not only hastened but in fact rushed to grant temporary injunction in favour of the plaintiffs, against the petitioners herein, even without summoning them in the court and in their absence. I must say that the learned court below has acted unfairly and in disregard to the well established principles of judicial propriety. He passed a patently adverse order against the petitioners, jeopardising their service interests and that too without so much even as to summoning them in the court or afford them an opportunity of being heard. The merits and the facts of the case apart, the least that was expected of the Court below was to have called the petitioners, afford them an opportunity of hearing and then pass the order against them, even though erroneously.

The non-observance of the principles of natural justice apart, this is a case where the court below exercise a jurisdiction which did not patently vest in it. While saying so, I am not oblivious of the provision contained in Section 9 of the Code of Civil Procedure which confers jurisdiction upon the civil court to entertain any civil suit of the like nature. A bare reading of the plaint would show that the plaintiffs had not made any averments in the plaint which could even remotely or indirectly make out a case for any personal injury, grief or grievance in so far as the plaintiffs were concerned qua the defendants No. 4 and 5. Neither did the plaintiffs aver in the plaint as to how and in what manner was any wrong being done to them or as to how would they suffer. Personally or otherwise if defendants Nos. 4 and 5 would be appointed as Associate Professors.....

2. After these observations about the learned Judge, the Court passed these directions :--

'The Additional Registrar of this Court shall send a copy of this judgment to the Registrar of this Court for being placed on the personal file of the Presiding Officer of the Court of Sub-Judge (Municipal Magistrate) Srinagar. The Registrar in turn shall also have a copy of this judgment sent to the Presiding Officer for his information.'

3. It appears that an order of temporary injunction was passed by the applicant against which a revision was taken in High Court and High Court found that the learned Judge had acted in dis-regard to the principles governing the grant of temporary injunctions.

4. The learned Sub Judge submits that the order which was passed by him was made only for a period of ten days so that the status-quo could be maintained and there was no mala fide on the part of the applicant. A fair and serious question of law had been made out and he was of the view that a prima facie case existed, therefore, he had passed the order.

5. The learned counsel for the applicant submits that in the hierarchy of the Judicial system, it is always expected that a particular tier of the judiciary may commit a mistake, decide the matter before it wrongly, therefore, the well established principles are laid down even in the procedural law where a person aggrieved of an order passed by the subordinate court has a right to move to a higher court by way of appeal, by way of revisions. Mr. Qureshi further submits that although there is a presumption of law that every court shall pass an order or judgment which will be legal and fair, almost every judgment is either appealable or revisable. The creation of tier system of courts itself is a preemption that courts can commit mistakes.

6. I have gone through the record of the case. The order passed by the learned sub-Judge is obviously to be taken as incorrect because High Court has already quashed that order. It is also a fact that in the system of judiciary, mistakes are expected. Day in and day out we are hearing appeals and revisions against the

orders passed by the Presiding Officers of the Subordinate Judiciary and in hundreds of cases the judgments and orders, passed by the subordinate courts are revised or modified. Even this Court is not the final court and day-in and day out judgments passed by the single Judges of the High Courts are reversed by the Division Benches of the same Court in Letters Patents and the judgments of this Court are revised by the Hon'ble Supreme Court of India. In our system of judiciary there is only one Court in the country i.e. Supreme Court, the decisions of which are final.

7. Judges of the Subordinate Courts must be free to decide the matters in accordance with procedure and law. If they are afraid of getting adverse remarks from the High Court in case revision or appeal is filed, it will be a reason for the Judges of the Subordinate Judiciary either not to work or to work with lack of confidence.

8. Mr. Qureshi has produced a judgment of Supreme Court reported in 1994 SLJ 475. delivered in SLP (CRL) No. 2081-82 of 1993 in case titled K. P. Tiwari v. State of Madhya Pradesh. In this case the Addl. Sessions Judge granted bail to certain accused persons who were charged for offences Under Sections 147, 148, 149, 506, 341 and 302 IPC. The High Court cancelled the bail and while cancelling the bail, High Court made following observations about the learned Sessions Judge (at Page 1032 of AIR):--

'The fact that the final grant was made without hearing the State Govt. and without verifying the fact, points to the interestedness of Shri K. P. Tiwari, learned First Addl. Sessions Judge in the non-applicants. Indeed this interestedness is apparent in all the five cases. The impression that one gets is that Shri K. P. Tiwari, First A.D.J. has been won over by the non-applicants and therefore was open to write any judgment, or order, releasing non-applicants on bail. It is therefore a case where the non-applicant (SIC) not only have shown disregard to law and the judicial process but are reasonably suspected of exercising corrupt influence over Shri K. P. Tiwari, the First A. S. J. This Court has necessarily to recall such orders.

.....

Indeed, it (court) will be failing in its duty if it accepts corrupting influence of the non-applicants (SIC) and permits illegal orders to remain effective.'

The Supreme Court although found that that there was no case in favour of the persons released on bail but did not approve the remarks made by the High Court about the Additional Sessions Judge.

9. Therefore, seeing the judgment passed by this Court in the light of the Judgment of Hon'ble Supreme Court, I find that this court has also a right to correct itself. The remarks against the Judicial Officer should not have been made.

10. I would have been happy if this matter had been decided by my esteemed colleague, Hon'ble Justice Gupta, who had earlier passed the order. But his Lordship was transferred from this Court to Calcutta after this application was made by the Judicial Officer and I can say with confidence that his Lordship would have also corrected the mistake. This I am saying on two reasons; one because I had the privilege of working with him for a long time and his Lordship has always been open minded. The second reason being that this application has been entertained by his Lordship on 26-11-95 and his Lordship has already stayed certain portions of the order effecting the applicant.

11. For these reasons, I allow this application, expunge the remarks made against the present applicant and also withdraw the directions given to the Additional Registrar and Registrar of this Court.

12. With these observations this application is allowed. Application allowed.

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