

State of Maharashtra and another

Vs

Ramesh Narayan Patil

Criminal Appeal No. 326 of 1991 (arising out of S.L.P. (Cri.) No. 288 of 1991)

(S. R. Pandian, K. Jayachandra Reddy JJ)

26.04.1991

JUDGMENT

1. Special leave granted. The respondent, though served with dasti notice even on 12-2-91, neither is he present in Court nor is he appearing through any counsel. Hence, we heard the learned counsel for the appellants at length, perused the documents carefully as well as the impugned observations made by the learned Judges and the affidavit filed by the appellant No.2, namely, K. P. Raghuvanshi, who was then the Deputy Commissioner of Police, Zone 3, Kalyan, District Thane, Maharashtra State' The prayer in this appeal is for expunction of the following remarks made by the learned Judges in their order dated. 15-7-1988:

"In these circumstances we are constrained to inform the State Government that power to pass orders under the Bombay Police Act should be withdrawn from Raghuvanshi and this order should be communicated to Shri Raghuvanshi wherever he is posted."

2. In this context, we would like to point out that on an earlier occasion the appellants came before this Court for expunction of the same remarks but this Court passed the following order:

"We are of the opinion that instead of coming to this Court, the petitioner should have gone to the High Court for the review of the observations made against petitioner No. 2. The petition is accordingly dismissed."

Thereafter the appellants filed Criminal Application No. 2242/89 'in Criminal W.P. No. 831 of 1987 for deleting the remarks made against the 2nd appellant. But the High Court dismissed the application observing "It is not necessary to delete the observations." Hence this appeal. Before us, the second appellant, has filed an affidavit the relevant portions of which are extracted hereunder:

"I respectfully say and submit that on an erroneous assumption that I have been repeatedly committing the said mistake, the Hon'ble High Court made observations, and passed the strictures against me inter alia directing the State Government to withdraw the powers exercisable by me under the Bombay Police Act and particularly powers under S. 56(1)(b) of the said Act." (Vide Para VI of the affidavit)

3. In Paragraphs 7 and 8 the second appellant states as follows :

"I respectfully say and submit that in any case if at all the Hon'ble Court felt that I

had wrongly exercised the powers. under S. 56(1)(b) of the Bombay Police Act and that the said order has been passed without any application of mind, I state that the said committed by me are pure mistakes if any, committed by me are purely unintentional and inadvertent and in future I will strive to ensure that the same are not repeated."

"I respectfully say and submit that I wish to tender my sincere and unconditional apology to the Hon'ble High Court for the purported lapse on my part which are purely inadvertent and unintentional as stated above and as such I will ensure that such mistakes do not recur."

4. The reading of the entire affidavit shows that the second appellant has repented for what had happened and has now given an undertaking that he will ensure that such mistakes do not recur in future. Hence we accept this unconditional apology now tendered and feel that such remarks in these circumstances be expunged, otherwise these remarks made by the High Court will affect his entire future career. It may not be out of place to mention here that the Criminal Writ Petition No. 831/ 87 filed by Ramesh Narayan Patil (respondent No. 1 herein) for quashing the order of externment passed against him by the second appellant on 17th June, 1987 by declaring it as illegal and also to set aside the notice dated 5th October, 1987. The learned Judges while disposing that writ petition appears to have recalled several earlier judgments of the High Court wherein evidently the High Court had repeatedly come across cases wherein the second appellant had passed orders of externment which could not stand scrutiny. In view of the above circumstances, presumably the learned Judges were constrained to inform the State Government to withdraw the power to pass orders under the Bombay Police Act and made it as an integral part of the order in the writ petition. The above observation in the form of a direction, if allowed to stand on record, will continue throughout the career of the second appellant because it is not limited to any specified period. Further, the order has also been in force till date from 15th June 1988. Further in our considered opinion, such a harsh direction is not commensurate to the alleged conduct of the second appellant for the simple reason that he had usually served faulty notices under S. 59 of the Bombay Police Act. However, as we have pointed out earlier the petitioner is now repenting for his previous acts, and has given an undertaking that he will ensure that such mistakes do not occur in future, in addition to tendering his unconditional apology, we feel that the remarks made by the High Court which we have extracted above can be expunged. Accordingly we allow the appeal and direct that the above said observations directing the State Government "that power to pass orders under the Bombay Police Act should be withdrawn" and that the order should be communicated, to the second appellant wherever he is posted do stand expunged from the order of the learned Judges dated 15-7-1988.

5. The appeal is allowed.

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