

Dr Dilip Kumar Deka and Another

Vs

State of Assam and Another

Criminal Appeal No. 1699 of 1996

(M. K. Mukherjee, S. P. Kurdukar JJ)

10.09.1996

ORDER

1. Leave granted. Heard the learned counsel for the parties.
2. This appeal is for expunging certain remarks made by a learned Judge of the Guwahati High Court against the two appellants herein, namely, Dr. Dilip Kumar Deka and Dr. P. K. Baruah, who are attached to Mahendra Mohan Choudhary Hospital, Guwahati ('MMCH' for short), while disposing of a criminal revision petition filed by an accused in a murder case. Facts and circumstances leading to the remarks are as under.
3. Over the murders of Mrs Karabi Das and her niece Ms Chandra Rani Dharitri Das a case under Section 302 IPC was registered by Latasil Police Station on 1-8-1995. In connection with that case Smt Geeta Kalita and her husband Shri Bhagya Kalita were arrested on 2-8-1995; and on their production before the Chief Judicial Magistrate, Guwahati on the following day (3-8-1995), they were remanded to police custody for seven days on the prayer of the Investigating Officer. While in police custody Smt Kalita complained of severe abdominal pain in the night of 8-8-1995 and, therefore the police took her to MMCH. There she was first treated by Dr. K. S. Dowerah and, under his advice, was admitted in the hospital as an indoor patient. On the following day Appellant 1 examined her and diagnosed that she was suffering from peptic ulcer and appendicitis. Appellant 1 then advised the Deputy Superintendent of the hospital to transfer her to the Guwahati Medical College Hospital ('GMCH' for short) as the facility for ultrasonography was not available in their hospital. Accordingly, the Deputy Superintendent wrote a letter to the Officer-in-charge of Latasil Police Station on 9-8-1995 requesting him to make security arrangements for shifting her to GMCH. However, she was not removed to GMCH and, hence, continued to be treated by the doctors of the MMCH including the two appellants.
4. On 16-8-1995, when it was brought to the notice of the Additional Chief Judicial Magistrate, Guwahati, that without the order of the Court Smt Kalita had been hospitalised, he passed an order calling for an explanation from the Investigating Officer (IO) in that regard and directed him to furnish the names of the Medical Officers who had treated her. The Superintendent of MMCH was also directed to submit a detailed report about the condition of Smt Kalita by 21-8-1995. To comply with the said direction the Superintendent asked the appellants to submit a detailed report of her medical examination and on the basis of the report so submitted, he sent his report to the learned Magistrate. On perusal of the report the learned Magistrate passed another order on 21-8-1995 asking the Superintendent, MMCH to submit weekly reports about the condition of Smt Kalita. In terms of the said order the Superintendent forwarded the medical report submitted by the appellants on 24-8-1995 and on perusal thereof and other materials on record, the Chief Judicial Magistrate,

Guwahati passed an order on 27-8-1995, which, so far as it is relevant for our purposes, reads as under :

"The accused Smt Geeta Kalita was given in police custody and as per order of the Court she was to be produced before the Court on 16-8-1995. But due to the admission of the accused in hospital for the alleged ailment during the period of police custody, the court on prayer of the IO extended the period of police custody with a direction to produce the accused before the Court when released from the hospital. In the circumstances discussed above the detention of the accused Geeta Kalita in the MMC Hospital at the moment is not at all necessary and the IO has also shown no interest to get the accused discharged from the hospital and produce her before the Court.

Under the circumstances I refuse to allow the accused Geeta Kalita to be kept in the hospital any further and decline to extend the period of police custody. Hence the Superintendent, MMC Hospital is directed that he shall discharge the accused Geeta Kalita immediately on receipt of this order and hand her over to the IO. The IO shall attend the MMC Hospital to receive the accused and produce her before the Court by 1.30 p.m. on 29-8-1995 positively.

By flouting the orders of the Court both the IO and Dr. A. C. Bora, Superintendent, GMC Hospital have demeaned the authority of the Court without any justifiable reasons. Therefore, in order to preserve the supremacy of the rule of law, it may be necessary to take appropriate penal action against these two important and responsible functionaries. Therefore, Dr. A. C. Bora, Superintendent, GMC Hospital, Guwahati and the IO are hereby directed to show cause why they should not be proceeded with for non-compliance and clear avoidance to comply with the Court's order."

5. Aggrieved by the above order so far as it sought to direct her release from the hospital, Smt Kalita moved a revision petition before a learned Judge of the High Court. The learned Judge entertained that petition and passed an interim order on 29-8-1995 constituting a Medical Board comprising four eminent doctors for examining Smt Kalita and directing the IO not to produce Smt Kalita before the Chief Judicial Magistrate in terms of his order, till the Board submitted its report. Following the direction of the learned Judge. the Board examined Smt Kalita and submitted the following report on 5-9-1995 :

"Having collectively reviewed Smt Kalita's physical condition and the results of all the investigations done on her, we have come to the unanimous conclusion that she does not have any major illness at present apart from mild anaemia and minor bowel irregularity."

In view of the above report the learned Judge dismissed the revision petition of Smt Kalita and made the following remarks against the appellants which are impugned in this appeal :

"(i) As discussed above from the report it can be arrived at the conclusion that the report given by the two doctors of the MMC Hospital, namely, Dr. D. K. Deka and Dr. P. K. Baruah (the two appellants before us) is manipulated, motivated with a view to mislead the Court by stalling the process of the Court. Their conduct was unethical

and unprofessional which violated the code of conduct of the medical profession;

(ii) The course of events since 8-8-1995 to 27-8-1995 requires judicial scrutiny on the conduct and professional and official responsibility of the two doctors, namely, Dr. D. K. Deka and Dr. P. K. Baruah ... which shocked the conscience of the entire public;

(iii) For the foregoing reason I am constrained to hold that on and from 16-8-1995 accused Geeta Kalita was under the judicial custody, but for her alleged ailment, manipulated and highlighted by Dr. D. K. Deka and Dr. P. K. Baruah of MMC Hospital her hospitalisation was continued till 27-8-1995;

(iv) The IO is also a party to all manipulation with the two doctors;

(v) Apparently from 16-8-1995 the accused Geeta Kalita was not under police custody but at the connivance of the IO and the two doctors of the MMC Hospital she continued her stay in the hospital by flouting the Court's order; and

(vi) The systematic attempt of the two doctors, namely, Dr. D. K. Deka and Dr. P. K. Baruah of MMC Hospital ... have misused their official status and responsibility to thwart the court proceeding and delay the judicial process for which these two doctors ... are liable to be brought to book. Regarding conduct and behaviour of the two doctors, their extraneous activities speak volumes about their professional ethics ..."

6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a court of law in cases to be decided by it were succinctly laid down by this Court in *State of U.P. v. Mohd. Naim*. [(AIR 1964 SC 703 : (1964) 1 Cri LJ 549 : (1964) 2 SCR 363] Those tests are :

(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.

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in *Jage Ram v. Hans Raj Midha*, [(1972) 1 SCC 181 : 1972 SCC (Cri) 118 : AIR 1972 SC 1140] *R. K. Lakshmanan v. A. K. Srinivasan* [(1975) 2 SCC 466 : 1975 SCC (Cri) 654 : AIR 1975 SC 1741] and *Niranjan Patnaik v. Sashibhusan Kar*. [(1986) 2 SCC 569 : 1986 SCC (Cri) 196 : AIR 1986 SC 819]

7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation

of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice.

8. Judged in the context of the first test laid down in Mohd. Naim case [AIR 1964 SC 703 : (1964) 1 Cri LJ 549 : (1964) 2 SCC 363] the above discussion of ours is sufficient to quash the impugned remarks, but we find that the remarks are vulnerable also to the second test laid down therein. On perusal of the order dismissing the revision petition we find that the remarks of the learned Judge are based solely upon the fact that the report of the Medical Board consisting of four medical experts belied their report. Indeed, except the report of the Board we have also not found any other material on record from which the learned Judge could have legitimately and justifiably obtained satisfaction to pass the above remarks against the two appellants before us. We hasten to add that in making the above observation we have left out of our consideration the materials which prompted the learned Judge to make adverse comments against the IO.

9. Mr Goswami, the learned counsel for the appellants, contended that it could not be said that the report of the Medical Board belied those of the appellants for they were based on clinical examination of Smt Kalita only and that too much earlier than her examination by the Board. Mr Goswami next submitted that the appellants had submitted a further report on 25-8-1995 stating that her condition had improved. In the context of the above facts, Mr Goswami urged that simply because the Board on its later examination found that Smt Kalita was not suffering from any major ailment then, it could not be said that the reports earlier given by the appellants about the ailments of Smt Kalita were incorrect. We do not however wish to delve into this aspect of the matter and would proceed to examine the justifiability of the remarks on the basis that the diagnosis of the appellants was patently wrong and that of the Board, which was admittedly a superior body, right.

10. If the learned Judge's reasoning to make the impugned remarks is taken to its logical conclusion, it would mean that whenever a superior court sets aside a finding of a lower court, which is patently wrong, the former gets a charter to make vituperative remarks against the latter simply because it had recorded such a finding. Before drawing any conclusion that an inferior body or court has recorded a wrong finding with an ulterior motive or for an oblique purpose the superior body or court, as the case may be, must demonstrate that there are materials - other than the patently wrong finding - which impels it to so conclude. Else, the conclusion would be presumptuous and justice and fair play would be casualties.

11. Now that we have found, applying the first two tests of Mohd. Naim case [AIR 1964 SC 703 : (1964) 1 Cri LJ 549 : (1964) 2 SCR 363] that the impugned remarks cannot be justified, the question whether it satisfies the third test also need not be gone into. However, we will be failing in our duty if we do not advert to the phraseology the learned Judge has used while condemning the conduct of the appellants. In Mohd. Naim case [AIR 1964 SC 703 : (1964) 1 Cri LJ 549 : (1964) 2 SCR 363] this Court while laying down the three tests (quoted earlier) further observed :

"It has also been recognised that judicial pronouncement must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

While quoting with approval the above observations in Niranjana case [(1986) 2 SCC 569 : 1986 SCC (Cri) 196 : AIR 1986 SC 819] this Court further observed : (SCC p. 576, para 25)

"We need only remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be."

12. Recently, in *Abani Kanti Ray v. State of Orissa* [1995 Supp (4) SCC 169] this Court has made the following observations after referring to the earlier cases of this Court, including *R. K. Lakshmanan* [(1975) 2 SCC 466 : 1975 SCC (Cri) 654 : AIR 1975 SC 1741] and *Niranjan* [(1986) 2 SCC 569 : 1986 SCC (Cri) 196 : AIR 1986 SC 819] : (SCC p. 178, para 15)

"What we have said above is nothing new and is only a reiteration of the established norms of judicial propriety and restraint expected from everyone discharging judicial functions. Use of intemperate language or making disparaging remarks against anyone unless that be the requirement for deciding the case, is inconsistent with judicial behaviour. Written words in judicial orders form permanent record which make it even more necessary to practise self-restraint in exercise of judicial power while making written orders. It is helpful to recall this facet to remind ourselves and avoid pitfalls arising even from provocation at times."

13. In keeping with the above observations, we feel, the learned Judge ought to have used temperate language and moderate expressions while criticising the appellants, for judicious restraint in such matters only lends more dignity to the high office the learned Judge holds and imparts greater respect for the judiciary. For the foregoing discussion we allow this appeal and quash the earlier quoted disparaging remarks made against the appellants.

14. Before parting with this judgment we wish to point out that while dismissing the revision petition filed by Smt Kalita the learned Judge has recorded the following order :

"Accordingly I uphold the order of the learned Chief Judicial Magistrate which was passed against these government officials with direction to show cause and I direct the Court to proceed accordingly under the provision of law."

15. This direction of the High Court is not in conformity with the order of the Chief Judicial Magistrate (quoted earlier) for therein the direction is for holding an enquiry into the conduct of Dr. A. C. Bora, Superintendent, MMCH and the Investigating Officer and not the two appellants before us.