SUPREME COURT OF INDIA

In Re "RV", A Judicial Officer

Vs.

Crl.A.No.1152 of 2004

(R.C.Lahoti CJI. and P.P.Naolekar JJ.)

06.10.2004

JUDGMENT

R.C. Lahoti CJI.,

1. Leave granted.

2. The appellant before us is a member of Higher Judicial Service, presently posted as an Additional District Judge in a Fast Track Court. The appellant was Presiding Judge of the trial court wherein an accused was facing trial (since 1994) in a criminal case on charges under Sections 420, 467, 468 & 471 of the Indian Penal Code. In the year 2001, the accused filed a petition under Section 482 of the *Code of Criminal Procedure* (for short "the Cr.P.C.") seeking quashing of the proceedings on the ground of delay at the trial. On 8th March, 2001 a learned Single Judge of the High Court hearing the petition filed by the accused, passed an order directing the trial court to take all possible steps immediately to ensure that the witnesses were positively examined on 24th April, 2001. The trial court was also directed to explain as to why for such a long time, very often process was not issued to the witnesses resulting in prolonging of the trial. The petition under Section 482 of the Cr.P.C. was kept pending. It came up for hearing again on 27th April, 2001.The learned counsel for the accused-petitioner seems to have complained before the High Court that only 20 witnesses were called by the trial court to remain present on 24th April, 2001 out of whom only 5 witnesses turned up and they were examined while the next date was appointed as 29th May, 2001. The learned Single Judge hearing the petition seems to have felt agitated on non-receipt of the explanation from the Presiding Judge of the trial Court in the terms as directed on 8th March, 2001. The case was taken up for hearing in the earlier part of the day. The Registry was directed to seek an explanation from the Presiding Judge of the trial court post-haste on telephone and the case was directed to be taken up in the later part of the day i.e. post-lunch. The oral response as received on telephone and brought to the knowledge of the learned Single Judge of the High Court was a gist of the explanation which was received on the following day in writing. The Presiding Officer of the trial court explained that the summons to the witnesses who were to be examined were issued in time for recording evidence on the appointed date i.e. 24th April, 2001. However, only 5 witnesses turned up and their statements were recorded. In all, there were 60 witnesses to be examined. The trial court had directed them to be summoned by appointing 3 dates of hearing i.e. 29th May,

2001; 12th June, 2001 and 26th June, 2001. The date 29th May, 2001 was appointed for examining such witnesses as had failed to turn up on 24th April, 2001 while the remaining two dates were appointed for examining 20 witnesses on each date. So far as the non-issuance of the process (and also the non-examination of the witnesses) is concerned it will be useful to extract and reproduce the following part of the explanation furnished by the trial court;

> "Explanation was sought from the concerned Clerk for not issuing the process earlier. In between the application of the accused for closing the prosecution evidence, total 11 hearings took place. Out of which process was issued for three dates. The Clerk explained that due to excess work load, process could not be issued. Strict instructions have been given for issue of process to the Clerk.
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> Delay in deciding the case was also due to non-returning the process by the police. On indicating the orders of the Hon'ble High Court, while issuing the letter with process dated 24/4/2001, 13 processes were served. Out of which five witnesses were present whose evidence was recorded.
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> Sir, approximately four thousand cases were pending before this Court already. Currently, about two thousand five hundred cases are pending. Different work remains excessive. In this case, there are four different counsels for the accused. For that the court has to spend more - for their presence at one time.
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> Returning of process by the police is also unsatisfactory. At number of times, processes are not returned. Even in returning the process, reports are sent incomplete. Even after these circumstances, I assure you, Sir, that in deciding the cases, every step will be taken for early disposal."
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> On 27th April, 2001 the learned Single Judge of the High Court directed the petition under Section 482 of the Cr.P.C. preferred by the accused to be dismissed. However, at the same time in the operative part of the order, the learned Single Judge directed the Registrar General to 'initiate necessary departmental proceedings' against the Presiding Judge of the trial court 'looking to the conduct of the trial judge' and 'for not complying with the order' passed by the High Court on 8th March, 2001 'in not submitting his explanation to today and for the gross delay in the trial'. A copy of the order was directed to be kept on the personal file of the Judge concerned.

3. The Subordinate Judge left with no order alternative preferred a petition to the High Court seeking expunging of the observations made and direction given by the learned Single Judge to the extent to which they were directed against him. The petition has been disposed of by the impugned order by another learned Single Judge of the High Court who has observed that the explanation which was sought to be provided by the learned Subordinate Judge in his petition was available to be set up by way of defence in the disciplinary proceedings directed to be initiated against him and, therefore, it could not be said that the order of the High Court dated 27th April, 2001 would result in any manifest injustice or would amount to abuse of

process of any Court. Feeling aggrieved, the Subordinate Judicial Officer has filed this appeal by special leave.

4. The High Court has made appearance through a counsel instructed by the Registrar of the High Court. A counter affidavit sworn in by the Registrar (Writs) of the High Court has been filed contesting the petition for special leave to appeal.

5. We have heard the learned senior counsel for the appellant-Judicial Officer as also the learned counsel for the High Court. We are satisfied that the impugned order of the High Court runs counter to the law laid down by this Court in a series of pronouncements and, therefore, is liable to be set aside.

6. Time and again this Court has emphasised the need for keeping the subordinate judiciary under control-disciplinary, administrative and judicial - of the High Court. However, at the same time this Court has cautioned the High Courts by stressing upon the need for restraint, care and circumspection while exercising its power of superintendence lest those who dispense justice to others, should themselves suffer injustice. It would suffice to make a reference to only a few of the decisions. In Mahabir Singh vs. State of Haryana, 47, this Court emphasised the need for maintaining judicial restraint and avoiding unnecessary castigation of (police and) subordinate judiciary. Again in R.C. Tamrakar and another vs. Nidi Lekha), reiterating its observations in several earlier cases this Court held that judicial restraint is a virtue concomitant of every judicial dispensation. The higher tiers are provided in the judicial hierarchy to set right the errors which could possibly have crept, in the findings, orders or proceedings of the courts at the lower tiers. "Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that 'a Judge who has not committed any error is yet to be born'. Castigating members of the subordinate judiciary does no goods to the system as placing on public record, the aspersions cast on them, shakes the very confidence of the people in judicial institutions. Such remarks, if avoidable and uncalled for, compel the members of the subordinate judiciary to approach the High Court seeking expunging of the remarks, which is rather unfortunate.

7. "In the matter of : 'K' a Judicial Officer" 95, a Bench presided by the then Chief Justice of India had an occasion for dealing with such an issue in very many details and from several angles. This Court reminded the High Courts that the supervisory jurisdiction vesting in them over the subordinate judiciary was meant to be exercised like a friend, philosopher and guide. The power vesting in the higher echelons is not meant for cracking a whip or for being exercised with vindictiveness on errors, mistakes or failures committed by those in lower echelons which does no good to the system but has to be exercised for the purpose of toning up the system so that the mistakes, errors or failures which may have been committed unknowingly or unwittingly are not repeated. The Court illustratively enumerated the consequences which flow onto the subordinate judiciary when the High Courts indulge in castigating its members, which is at times, an uncalled for display of judicial might. This Court took care to see that its observations may not be misunderstood and suggested an alternative, safe and advisable course so as to be just and fair to the members of the

subordinate judiciary whose conduct or behaviour having come to notice during the course of hearing on judicial side did not meet the approval of the High Court. This Court suggested:--

> "The conduct of a judicial officer, unworthy of him, having come to the notice of a judge of the High Court hearing a matter on the judicial side, the lis may be disposed of by pronouncing upon the merits thereof as found by him but avoiding in the judicial pronouncement criticism of, or observations on the 'conduct' of the subordinate judicial officer who had decided the case under scrutiny. Simultaneously, but separately in-office proceedings may be drawn up inviting attention of Hon'ble Chief Justice to the facts describing the conduct of the Subordinate Judge concerned by sending a confidential letter or note to the Chief Justice. It will thereafter be open to the Chief Justice to deal with the subordinate judicial officer either at his own level or through the Inspecting Judge or by placing the matter before the full court for its consideration. The action so taken would all be on the administrative side. The Subordinate Judge concerned would have an opportunity of clarifying his position or putting forth the circumstances under which he acted. He would not be condemned unheard and if the decision be adverse to him, it being on administrative side, he would have some remedy available to him under the law. He would not be rendered remediless."

8. Reverting back to the facts of the present case, we are of the opinion that the learned Single Judge of the High Court passing the order date 24th April, 2001 would not probably have made those observations and directed initiation of departmental inquiry if only he would have waited for a day when the written and detailed explanation furnished by the Presiding Judge of the trial court would have been available before him. It is a judicially noticeable fact that the subordinate courts are over-burdened and are called upon to deal with such number of cases as is totally out of proportion with what a Judge can reasonably be supposed to handle. Yet they do their best. The appellant has in his explanation pointed out the huge pendency of cases before him, the number of witnesses (about 60) which were required to be examined before concluding the trial, the recalcitrant process serving agency and again the over-burdened Clerk in the Court issuing the processes - summonses and warrants, and at the cap of all these the number of different counsel appearing for a number of accused persons who all insist on their convenience also being accommodated by the Court. The learned Single Judge of the High Court also acted with undue haste inasmuch as he insisted on the explanation being called for from the trial Judge on that very day and that too telephonically. The explanation dated 28th April, 2001, in our opinion, is reasonable and satisfactorily explains the reasons for the alleged non-compliance with the orders made by the learned Single Judge on 8th March, 2001.

9. The High Court in its impugned order ought to have directed expunging of the remarks contained in the order dated 27th April, 2001 and prejudicial to the appellant.

10. The appeal is allowed. The petition filed above the High Court by RV, the member of the subordinate judiciary and disposed of by the impugned order shall stand allowed. The

adverse observations made against the appellant in the order dated 27th April, 2001 and the direction contained therein shall stand expunged.

11. Before parting, we make it clear that we have directed the observations being expunged and directions contained in the judicial order being set aside as we think that the same were uncalled for and should not have been made a part of the judicial order more so made without affording the Judicial Officer an opportunity of hearing. However, this order would not come in the way of the High Court if it chooses to initiate any proceedings in exercise of the jurisdiction conferred on it under Article 235 of the Constitution of India but independently of the observations made and direction given in the order dated 27th April, 2001