S.N. Dhingra

v.

State, NCT of Delhi & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

Criminal Appeal No. 520 Of 2004 | 21-11-2013

This Appeal is directed against the Judgment of the Learned Single Judge of the Delhi High Court in Criminal Revision No.521 of 2003 decided on 24-7-2003. The appellant prays that certain objectionable and derogatory remarks made against him by the learned Single Judge of the Delhi High Court in the impugned Judgment be expunged. The remarks which are sought to be expunged are as follows:-

"1. It appears that Shri S.N. Dhingra, Addl. Sessions Judge has scant regard for the judgments of this court and sticks to the procedure of trial of complaint cases under Section 138 of the Negotiable Instruments Act invented by him and not the one prescribed under the Code of Criminal Procedure.

2. The illegality, harshness and judicial tyranny is writ large in the impugned order as the learned ASJ imposed a cost of Rs.15,000.

5. .....At the first instance procedure adopted by the learned ASJ suffers from every vice that illegality, irregularity, infirmity and non adherence of mandatory provisions laid down in the Criminal Procedure Code.

6. Even on the premise of misconceived notion about the procedure of trial, the impugned order is anything but judicial.

There is no provision in Cr. P.C. for passing an order of the kind we are confronted with.

7. It appears that learned ASG was labouring under the belief that evidence in defence is just a formality and is not as important as evidence of the complainant or the prosecution.

.....The impugned order militates not only against judicial conscious but also criminal jurisprudence and therefore is unsustainable and has to go.

9. It is not for the first time that this court has come across several such orders passed by this learned ASG which hit at the foundation of judicial tenets and decisions down the lines.

.....Learned ASJ is advised to be careful in future in acting upon the dictums handed down by this court lest he lands himself for action for contempt of court.

10. Copy of this order be sent to all the Judicial Officers/M.Ms. ASJs. for guidance and compliance in order to rule out the possibility of any other Judicial Officer emulating Shri S.N. Dhingra by resorting to such a misadventure."

At the relevant time, the appellant was Additional Sessions Judge. While posted as such, the appellant had occasion to decide a case under Section 138 of Negotiable Instruments Act. In that case, the complainant had filed three complaints in regard to dishonouring of following three cheques:-

Cheque No. Date Amount

213634 lst August, 1999 Rs.10 lakhs

213635 lst August, 1999 Rs.10 lakhs

213636 1st August, 1999 Rs.10 lakhs

Separate complaints were filed in regard to the dishonouring of each cheque of Rs.10 lakhs. The learned Metropolitan Magistrate after recording of preliminary evidence brought on record by the complainant and hearing arguments, prima facie found that an offence under Section 138 of Negotiable Instruments Act was deemed to have been committed. He took cognizance of the offence and summoned the accused for 8-4-2002.It appears that in obedience to the general order issued by the Delhi High Court, all cases under Section 138 of Negotiable Instruments Act pending before the Magistrates' Courts were transferred to the Court of Sessions. In these circumstances, this particular case came to be allotted to the Court of the appellant. The accused along with his counsel appeared before the appellant. They were directed to furnish bail bonds and surety which were duly furnished. Copies of the

complaints and all documents and pre-summoning evidence were also furnished to the accused.

Thereafter the case was fixed for consideration of notice under Section 251 Cr.P.C. on 14-8-2002. Notice under Section 251 Cr.P.C. was served on the accused on 14-8-2002 who pleaded not guilty and the case was fixed on 10-10-2002 for complainant's evidence. Since there were three complaints, they were all clubbed together by the Order dated 10-10-2002. Evidence was ordered to be recorded in one case i.e., Case No.308 of 2002. The other two cases bearing Case Nos.226 of 2002 and 227 of 2002 were tagged to the Case No.308 of 2002. The case was adjourned for complainant's evidence. The statement of complainant was recorded on 11-3-2003. The complainant in his evidence claimed that the cheques were dishonoured. Notice under Section 138 of Negotiable Instruments Act had been duly served on the accused. The complainant was cross-examined. After the evidence of the complainant, the accused was examined who pleaded that he had no liability and the cheques were forcibly obtained from him. He also pleaded that he made a complaint to the Police in this regard. The accused also sought permission to lead evidence by way of defence. Therefore, the Judge adjourned the case for 1-5-2003 for defence evidence. On 1-5-2003, the accused failed to produce any evidence.

Keeping in view that the dishonoured cheques were for an amount of Rs.30 lakhs and that the adjournment was sought to summon witnesses and records, the Judge granted the adjournment but made it subject to payment of Rs.15000/- as costs. The case was fixed for defence evidence on 27-5-2003.On that day, the accused filed certified copies of certain documents and made an application to recall the complainant for further cross-examination. Costs of Rs.15000/- which had been imposed on 1-5-2003 were partly paid. The case was adjourned to 26-7-2003 and the witnesses were allowed to be summoned for the date fixed. The application for recalling the witnesses was heard on 26-7-2003 and it was allowed by order dated 31-7-2003. However, further cross-examination of the complainant was allowed subject to costs of Rs.500/- and the case was again adjourned to 9-9-2003 for further cross-examination of the complainant.

In the meantime, the accused filed a revision petition in the High Court against the Order dated 1-5-2003. The revision petition was allowed by the High Court by the impugned Order dated 24-7-2003.

The Orders dated 11-3-2003 and 1-5-2003 were set aside.

The present appeal is filed by the Additional District Judge who had passed the orders dated 11-3-2003 and 1-5-2003 seeking the relief that the adverse remarks recorded in the impugned Judgment by the learned Single Judge of the High Court be expunged.

We have heard Mr. Ashok Grover, learned Senior Advocate appearing for the appellant and Mr. A.D.N. Rao, learned counsel appearing for the High Court.

We must notice at the outset the two orders passed by the Additional District Judge which prompted the recording of the adverse and derogatory remarks. The Orders are as follows:-

"Order dated 11-3-2003.

11.3.2003.

Present: Counsel for the parties.

Statement of complainant recorded.

The evidence of issuance of cheque by accused against the liability towards the complainant and dishonouring of the cheque by dishonoured memos and service of notice has been put to the accused. Accused states that he had no liability towards the complainant and cheques were obtained forcibly from the accused after giving threat and in this respect he made complaint to SHO C.R. Park on 31-1-1999.

Accused states that he shall give evidence in his defence.

Put up for defence evidence on 1-5-2003.

Order dated 1-5-2003.

1-5-2003

Present: Counsel for the parties.

Case is today fixed for D.E. No DE is present. Counsel for the accused has made an application that he wants to call dealing clerk of Registrar, High Court of Delhi and record keeper of P.S. Chitranjan Park. He should have made this application well in time if he wanted to summon above these witnesses. However, in the interest of justice, the case is

adjourned for DE subject to cost of Rs.15,000/- for 27-5-2003. The application made for summoning witness is allowed. Summons be sent to witnesses on process fee and diet money. Diet money be given in court.

Commenting on the aforesaid two orders, the learned Single Judge observed that it is not for nothing that the old adage says that "justice should not only be done but should appear to have been done and there should not be an iota of apprehension in the mind of accused that he is not being treated fairly what to talk of getting a fair trial." Thereafter the adverse and derogatory remarks have been made against the Judge which have been reproduced in the earlier part of the order.

It is unfortunate that the learned Single Judge chose to make the aforesaid adverse remarks without even issuing a notice to the Judge who had passed the orders. It is a settled proposition of law that when the higher court upon examination of the matter is prima facie of the view that the Judgment or the Judge of the lower court calls for some adverse remarks, it is necessary to put the concerned Judge who has authored the Judgment of the lower court on notice. This is the basic and fundamental principle i.e., "justice must not only be done but must be seen to be done." Although the learned Single Judge seems to be aware of the principle but has misapplied the same in the facts and circumstances of this case. The wholly irrelevant castigating remarks made by the learned Single Judge cannot be appreciated, let alone approved. The remarks are wholly extraneous to the issue that was pending before the learned Single Judge i.e., imposition of costs. Another settled proposition about the decorum and demeanour which is required to be maintained by the Presiding Officers is that the language used in the Judgments should be restrained and temperate as well as being definite. There is no room for the use of loose or foul language in a judicial pronouncement.

In our opinion, the learned Judge has failed to observe the basic restraint which was expected of a High Court Judge while deciding the Criminal Revision. This Court has on numerous occasions laid down the guidelines to be followed by the Judges at all levels while writing/pronouncing judgments. We shall make a reference only to the latest judgment in the case of V.K. Jain versus High Court of Delhi (2008) 17 538. We may also notice that even the Judgment in V.K. Jain's case also arose from a similar order passed by the same learned Judge of the Delhi High Court. Since the Judgment in V.K. Jain's case was delivered after Judgments were delivered by the Judge, unnecessarily castigating three thoroughly honest Judges, it is to be assumed that the Judge was not aware of the principles which have to be followed and the decorum which have to be maintained. These principles have been reiterated in a number of earlier Judgments of this Court. We normally presume that the Judges would be aware of the guidelines given by this Court to the Judicial officers in numerous Judgments earlier. It appears that in the present case, the learned High Court Judge was not aware of the same.

We may notice here the observations made by this Court in the matter of 'K' a Judicial Officer in (2001) 3 SCC 54 where this Court observed as follows:-

.....The role of High Court is also of a friend, philosopher and guide of judiciary subordinate to it. The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition committed once innocently or unwittingly. "Pardon the error but not its repetition". The power to control is not to be exercised solely by wielding a teacher's cane; the members of subordinate judiciary look up to the High Court for the power to control to be exercised with parent like care and affection. The exercise of statutory jurisdiction, appellate or revisional and the exercise of constitutional power to control and supervise the functioning of the district courts and courts subordinate thereto empowers the High Court to formulate an opinion and place it on record not only on the judicial working but also on the conduct of the judicial officers. The existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders cannot be denied, however, the High Courts have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their own mischievous infirmities. Firstly, the judicial officer is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal natural justice so as to shield against being condemned unheard. Secondly, the harm caused by such criticism or observation may be incapable of being undone."

These observations, in our opinion, are sufficient to show that the learned Single Judge transgressed the limits of the decorum expected of a High Court Judge in deciding a judicial matter.

For the aforesaid reasons, the appeal is allowed and the adverse and derogatory remarks as reproduced in the earlier part of the order are hereby expunged and the impugned Judgment is set aside.