BOMBAY HIGH COURT

The State of Bombay

Vs.

Nilkanth Shripad Bhave

Criminal Appln. No. 79 of 1953

(Chagla, C.J., Bavdekar and Dixit, JJ.)

30.08.1952. 29.06.1953

JUDGMENT

Chagla, C.J.

1. This is an application by the State of Bombay to expunge certain remarks made by the Sessions Judge, North Satara, when dealing with a bail application. The remarks that were made by the Sessions Judge were about the learned Magistrate before whom the criminal case was pending, and the question that has to be considered by this full bench is whether there is any jurisdiction in this Court to entertain this application. This application is neither an appeal nor a criminal revision application. No effective order has been passed by the Sessions Judge which can be complained of by any party, nor is there any finding given by the learned Sessions Judge which can be challenged in this Court, and the question that arises for our consideration is whether this Court has jurisdiction first to entertain an application which is neither an appeal nor a revision, and, if it has such jurisdiction, whether it has further the jurisdiction to expunge remarks from the judgment of the lower Court.

2. Turning to the Criminal procedure Code, it is not disputed by the Advocate General that this application does not fall either under Section 435 or Section 439. Clearly the Court is not called upon to exercise its revisional jurisdiction, but what is urged upon us is that we should exercise the jurisdiction conferred upon us under Section 561A, Criminal Procedure Code. The Privy Council in two decisions in '*Emperor v. Nazir Ahmed*[1]', and in '*Jairam Das v. Emperor*[2]', has taken the view that Section 561A does not confer any new power upon the High Court. It merely safeguards all powers which already existed in the High Court. Section. 561A gives the power to the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One possible view that can be taken of Section 561A is that if a proceeding is properly before this Court, then the High Court may pass any order which is not contemplated by Criminal

Procedure Code, provided it is passed for the purpose mentioned in that section. To take such a view of our powers, may in conceivable cases, lead to irreparable harm being done and the High Court being put in a position where it could not give redress and do justice.

[1] AIR 1945 PC 18

[2] AIR 1945 PC 94

Take a very familiar case of a lawyer or a stranger to the proceedings being unjustly and severely criticized by a Magistrate. Remarks may be made by him which may affect his reputation and he may require redress at the hands of the High Court. But if the view was that the High Court could only act under Section 561A provided a proper application was made to it, proper in the sense that it was contemplated by other sections of Criminal Procedure Code, then such a lawyer or a stranger to the proceedings could get no redress at all from this Court, because if he were to make an application to us, he would be met with this answer that his. application is neither an appeal nor a revision nor is it an application contemplated by Criminal Procedure Code. Therefore, in our opinion, as Section 561A was enacted to emphasize the fact that the High Court has the widest jurisdiction to pass orders to secure the ends of justice, Section 561A must give the power to this Court to entertain applications which are not contemplated by Criminal Procedure Code. Therefore, if the High Court feels that ends of justice require that an order should be made in an application, although the application is not contemplated by the Code, the High Court will entertain the application and make the necessary orders to secure the ends of justice.

3. The other question that arises for our consideration is, assuming this application is maintainable and we have jurisdiction to entertain it, has the Court an inherent power to amend or alter the judgment of a lower Court? In this case the Sessions Judge has delivered a certain judgment. In that judgment he has passed strictures against the Magistrate. The State comes before us and asks us to alter or amend that judgment by deleting from it certain portions to which it takes exception or by expunging certain portions from that judgment. The important question that arises is whether a superior Court has inherent power to alter the record, as it were, by changing or altering a judgment which has already been delivered and has become final as far as that particular Court is concerned. It is difficult to understand how such an inherent power can possibly arise in a superior Court. A judgment of a lower Court may be wrong; it may even be perverse. The proper way to attack that judgment is by bringing it under the scrutiny of the superior Court and getting the judgment of the lower Court judicially corrected. But is it proper for the superior Court to alter or amend the judgment which has already been delivered? In our opinion, the inherent power that the High Court possesses is, in proper cases, even though no appeal or revision may be preferred to this Court, to judicially correct the observations of the lower Court by pointing out that the observations made by the Magistrate were not justified or were without any foundation or were wholly wrong or improper. The Advocate General says that making observations about the judgment of a lower Court stands on a different footing from expunging the remarks from the judgment. The Advocate General says that in gross cases the High Court must exercise its power to expunge the remarks and not merely in its judgment pass strictures against the lower Court. In our opinion, it is not necessary to express the displeasure of

this Court against any observations made by a Magistrate or by a Sessions Judge by expunging the remarks from the judgment delivered by him. The English language is not lacking in proper vocabulary and the English language can be utilized by showing our displeasure in as strong terms as possible. In our opinion, therefore, it would not be correct to say that expunging remarks from a judgment or deleting passages from a judgment constitutes the inherent power of any superior Court and therefore the inherent power of the High Court.

4. In the light of what we have just said, it is necessary to look at certain judgments of our Court. The full bench was constituted because there was a conflict between judgments of a division bench and judgments delivered by other division benches of this Court. The judgment to which reference should first be made is the judgment in '*Rogers v. Shriniwas*[3]', That is a judgment of Sir John Beaumont, Chief Justice, and Mr. Justice Sen, and the view that the learned Chief Justice expresses in his judgment was that remarks can be expunged provided the matter comes before this Court in an appeal or in revision. When we turn to the judgment of the learned Chief Justice, he points out at p. 267 : "In my opinion no Court can claim inherent power to alter the judgment of another Court." With respect, we agree with that observation, but then, having expressed this opinion, the learned Chief Justice takes the view that the Court has inherent jurisdiction to alter a judgment once the matter comes before it in appeal or revision. It is difficult to understand, if the High Court has no inherent jurisdiction to alter the judgment of another Court, how that jurisdiction arises merely because the matter comes before the High Court in appeal or revision. Either the Court has inherent jurisdiction or it has not. If it has inherent jurisdiction, it can be exercised either in appeal or in revision, or, as we have just pointed out, by an independent application made by the party under Section 551A.
Then again at p. 267 the learned Chief Justice, being oppressed by the fact that in a particular case a party may go without any remedy, says : "If the Court thinks that any such action is called for, (viz., the action of expunging remarks, it can itself send for the record and act regularly in revision." It is difficult to understand how the Court can act regularly in revision if there is no effective order which can be challenged in revision. Therefore, in our opinion, this judgment was correctly decided to the extent that it laid down that there was no inherent jurisdiction in a superior Court to alter the judgment of another Court. But to the extent that this division bench laid down that the power to judicially correct the judgment of a lower Court only arose in appeals and revisions, it was not correctly decided. The power of the High Court judicially to correct any Subordinate Judge exists independently of applications which come before it by way of appeal or revision. This Court can judicially correct any Subordinate Judge in any application made to it which it can entertain under Section 561A of the Code.

5. Now, this judgment was considered in '*Dinshaw J.B. Mistri v. King Emperor*[4]', That bench took the view that the Court had jurisdiction to expunge the remarks from the judgment of a lower Court although the matter was not before them in appeal or revision. In fact, in that case the remarks were not expunged because on merits the Court came to the conclusion that the observations of the learned Magistrate were not objectionable. But the bench referred to the

judgment in '*Rogers v. Shriniwas'* and pointed out, we think with respect correctly, that they did not find it easy to understand how if, as is said, the power to alter the judgment of an inferior Court is not an inherent power, it can be brought in aid as an innerent power provided only the matter is before the High Court in what the learned Chief Justice later called regular revision. Therefore, in our opinion, this judgment was correctly decided except that, as we have already pointed out, in entertaining an application under Section 561-A what the High Court should do is not to expunge remarks but judicially to correct by its judgment the judgment of the lower Court

6. Our attention has also been drawn by the Advocate General to certain unreported

[3] AIR 1940 Bom 266

[4] Cri. Revn. App. Nos. 804 and 805 of 1949 (Bom)

judgments of this Court and the judgment in '*State v. Gulam Mahomed*[5]*',* where remarks were expunged, but we find on perusing the judgments that the question of jurisdiction was not raised and was not considered.

7. Turning to the other High Courts, there is a judgment of the Lahore High Court in 'In the matter of Daly', AIR 1928 Lahore 740 and there is a judgment of the Madras High Court in '*Public Prosecutor, In re*[6]*',* and there is a judgment of the Allahabad High Court in '*Panchanan Banerji v. Upendra Bhattacharji*[7]*',* and these High Courts have taken the view that they have jurisdiction to expunge remarks from the judgment of the lower Court. With respect to these High Courts, we think that the question as to whether there is inherent power to alter the judgment of another Court was not considered. If these High Courts meant by expunging the remarks that the High Court has the power judicially to correct a judgment of the lower Court, although no appeal is preferred against that judgment or there is no revision application against that judgment, we agree with the views of these High Courts.

8. Coming to the question of the exercise of the jurisdiction, I think it is necessary for us to point out that although we have the jurisdiction under Section 561A judicially to correct the judgment of the lower Court, this is a very exceptional jurisdiction which should be exercised in the most exceptional cases. It is very necessary, in order to maintain the independence of the judiciary, that every Magistrate, however junior, should feel that he can fearlessly give expression to his own opinion in the judgment which he delivers. If our Magistrates feel that they cannot frankly and fearlessly deal with matters that come before them and that the High Court is likely to interfere with their opinions, the independence of the judiciary might be seriously undermined. A jurisdiction like this is intended to be exercised when remarks are made without any foundation whatsoever, when remarks are made against strangers which remarks may do irreparable harm to them and who have not even been heard in their defense by the Court which passes the remarks. This jurisdiction is not intended to substitute the opinion of the High Court for the opinion of the lower Court. A Judge, as we said before, however humble and however junior, is entitled to his own opinion with regard to matters that come before the Court. Judicial corrections should be restricted to cases where the decision is wrong or erroneous, but if the decision is right or if no decision is arrived at, then this Court should interfere under Section 561A in the most

exceptional and the rarest of cases.

Order accordingly.

[5] AIR 1953 Bom 152

[6] AIR 1944 Mad 320

[7] AIR 1927 All 193