

PATNA HIGH COURT

Ramsagar Singh

Vs

Chandrika Singh

Criminal Ref. No. 29 of 1960

(Kanhaiya Singh, J.)

07.09.1960

ORDER

Kanhaiya Singh, J.

1. This is a reference by the Sessions Judge, Patna, under Section 438 of the Code of Criminal Procedure recommending (1) expunction of certain adverse remarks made against Thakur Ramsagar Singh, Additional Deputy Superintendent, Patna Medical College Hospital, by Mr. B.N. Mishra, Judicial Magistrate, 1st Class, Patna, in his judgment *State v. Chandrika Prasad* and (2) quashing the proceeding under Section 250 of the Code of Criminal Procedure. The facts are these. At about 3 a.m. on 3rd February, 1959, Amina Khatun (P.W. 3) saw Chandrika Prasad, described as Chandrika who has also been Singh, carrying certain surgical instruments and drugs from the Eye Department of the Patna Medical College Hospital and raised alarm. He was pursued by her and Karu Ram (P.W. 1), Durga Ram (P.W. 2), Kishori (P.W. 5) and Jagat Narain Singh (P.W. 6). They succeeded in overpowering and apprehending him. He was thus caught red-handed with three instruments and some drugs. The aforesaid employees or the hospital produced him before Thakur Ramsagar Singh, Additional Deputy Superintendent, Patna Medical College Hospital, and reported to him how he was caught while stealthily carrying away the instruments and drugs. Chandrika Singh is alleged to have confessed his guilt before the Deputy Superintendent, who made a written report of the occurrence to the Sub Inspector of Police, mentioning therein the fact of confession. After investigation, the police charge-sheeted Chandrika Singh. and he was tried by Mr. B. N. Mishra, Judicial Magistrate, 1st Class, who by his order dated 15th January, 1980, acquitted him. In course of his judgment, he made the following remarks against the Deputy Superintendent :

(1) "These facts alone render him unreliable and it is clear he is trying to suppress facts admitted by the prosecution For the reasons discussed above he is not a reliable witness like his other subordinate corroborating witnesses."

(2) "His dealings in the case have not been straightforward and satisfactory. He has not shown any sense of responsibility Some of the P.Ws. seem to have been examined at the instance of the Dy. Supdt who appears to be unduly

keen and interested in piloting the investigation".

The recommendation of the Sessions Judge is confined to the second remark only. In this Court a prayer was made that the first remark also should be expunged, as it impinges upon his character.

2. At the same time, the Magistrate also drew up a proceeding against Thakur Ramsagar Singh and issued summons to him to appear before him and show cause why he should not pay compensation to the accused. It is this order also which the Sessions Judge recommends to be quashed.

3. The learned Sessions Judge has pointed out, and Mr. Rasbehari Singh appearing in support of the reference has reiterated that those remarks are wholly uncalled for and unwarranted on the evidence. There is absolutely no foundation for the Magistrate to call him an unreliable witness. It will be observed that Thakur Ramsagar Singh is not an eye-witness to the occurrence. He simply reported to the police what had been stated before him by his subordinate officers. The learned Magistrate calls him unreliable, because he omitted to verify the truth of the allegations made by his subordinates against Chandrika Singh and denied that he had injuries on his person, though other witnesses admitted the existence of injuries. None of these circumstances justifies the remark that he was unreliable. There was no legal obligation upon him to hold a preliminary enquiry before making a report to the police. Prima facie, he had no reasons to disbelieve what his subordinates reported to him, especially when Chandrika Singh had been caught red-handed with the instruments and drugs and had also been produced before him. At the worst, it was a mere unintentional omission on his part. Omission is not falsity, and if a man omits to do a thing, he is not necessarily a liar. As to the injuries, when the other prosecution witnesses had admitted their existence, there was no point in Thakur Ramsagar Singh's denial that Chandrika Singh had injuries on his person. It is not the evidence of Thakur Ramsagar Singh that he examined him before he forwarded him to the police. There is no reason why he will knowingly suppress those injuries, which had no bearing on the prosecution case. Thakur Ramsagar Singh denied in his cross-examination, that he saw any injury on his person, and there is nothing to show that he had in fact seen the injuries. After going through judgment of the learned Magistrate and the evidence in the record, I find no material, and none has been placed before me, to justify the remark that he was unreliable. The first remark is without foundation.

4. The second remark is entirely without foundation. Thakur Ramsagar Singh has not done anything to merit the said remark. He is a responsible officer of the Patna Medical College Hospital, and in his capacity as Deputy Superintendent he made the report to the police to investigate into the allegations made against Chandrika Singh by his subordinates. When such serious allegations were made, he could not have done otherwise. He was not competent to deal with the matter himself, and any detention of Chandrika Singh in the hospital would have been illegal. He has acted in the manner as any responsible officer would have done. Still, the learned Magistrate has castigated him as irresponsible. I fail to understand how on the evidence on the record he can be said to be lacking in "any sense of responsibility". It is incorrect to say that some of the prosecution witnesses were examined "at the instance of the Deputy Superintendent". No witness was examined at his instance. The investigating officer has made it clear that he examined the witnesses not at the instance of but with the permission of the Deputy Superintendent. There is no basis for the Magistrate's observation that he was "unduly keen and

interested in piloting the investigation". There is no basis of evidence to support this observation. It is based upon mere conjecture and preconceived notions of the learned Magistrate. Having perused the judgment, I am rather inclined to observe that these remarks are applicable to the Magistrate himself. He has shown undue zeal in this case, and I find that he ordered acquittal on most flimsy grounds. He went out of his way to procure from the investigating officer the statements made before him by Dr. Ramji Pandey not examined in this case, and used them, though they were clearly inadmissible, in his judgment in support of the defense. Further he forced Dr. Basdeo Swarup (D.W. 4) to depose after refreshing his memory from a certified copy of the injury report given by him. He had examined the injuries of Chandrika Singh. His original report was not produced. There was no evidence of the loss of the original. He protested that the certified copy was not his report. Still, at the instance of the Court, he was obliged to depose on the basis of the certified copy. He showed greater appreciation of the law of evidence than the learned Magistrate himself. There is no evidence worth the name to support that his dealings in the case were not straightforward and satisfactory.

Then the Magistrate indulged in such wide and general observations affecting the character and life of a responsible officer, like the Additional Deputy Superintendent of the Patna Medical College Hospital, he should have been careful to weigh the evidence and confine himself strictly to the facts proved or admitted in this case. He travelled beyond his legitimate functions as a judge in this case and based his remarks not on facts but on conjectures and surmises and on his own notion of what ought to have been done by the said officer. He has not indicated what code of conduct he desired an officer, placed in the same circumstances as the Additional Deputy Superintendent, to follow. Having perused the entire record of the case, I fail to find any remissness on his part. The remarks made by him are highly prejudicial, and if these remarks are really correct, Thakur Ramsagar Singh deserves nothing short of dismissal from service. When the remarks were so damaging as to cost him his office and to deprive him of the sole means of livelihood one should be extremely careful. He appeared as a witness. He was not given any opportunity to explain those remarks. He has no other remedy at law. There can be no greater injustice than to allow such remarks to have operation and affect the whole life of a man. If remarks are made against responsible officers of the State capriciously and in utter disregard of the evidence, it will have a deleterious effect upon administration, and more particularly, on the maintenance of law and order, and will hamper the faithful performance of their duties. In that event, many offenders will go unpunished, as no officer will like to report the commission of such offences. Then the subordinate officers of the hospital reported the theft to the Additional Deputy Superintendent, the only proper course for him was to report to the police, which he in fact did, and for this he has been taken to task. I do not mean in any way to fetter the freedom and independence of Judges. It must be laid down that the Judges are free to make whatever observations they deem proper. But, those observations must be such as are warranted by the evidence adduced in the case. While there should be no hesitation to express opinion without any fear or favor, the Magistrate should be careful in making adverse remarks against a person, especially when that person has no opportunity, as in the present case, to place his case before the Court. The observations are made ex parte and at the back of the person affected. While full freedom of expression of opinion must be secured to the judges, the judges also should remember that they should not by inadvertence and arbitrary observations affect the freedom of other officers to perform their duties faithfully and conscientiously. It is, therefore, incumbent upon a Magistrate to exercise proper restraint in making such damaging observations. He should not allow himself to be swayed by personal predilections and extraneous considerations. The observations must strictly be limited to the fair and impartial decision of the case. The principles

governing such cases have been clearly laid down in In the matter of H. Daly, ILR 9 Lah 269 at page 275 : (AIR 1928 Lahore 740 at p 742) in the following terms :

"...the High Court has power to expunge passages from judgments delivered by itself or by Subordinate Courts But this jurisdiction is of an extraordinary nature and has to be exercised with great care and caution. On the one hand, it has to be borne in mind that in weighing evidence and arriving at conclusions on questions of fact, lower Courts have to review the conduct of witnesses with reference to particular incidents and at times have to adjudge generally on the veracity or otherwise of such persons and in doing so they have often to make remarks which reflect adversely on their character. It is of the utmost importance to the administration of justice that Courts should be allowed to perform their functions freely and fearlessly and without undue interference by this Court. At the same time it is ... equally necessary that the right of Magistrates to make disparaging remarks on persons who appear, or are named in the course of a trial is one that should be exercised with great reserve and moderation, especially where the person disparaged has had little or no opportunity of explaining or defending himself. If the conduct of a witness appears to the Judge to be suspicious or otherwise not above board, he has the right and the duty to test his evidence by putting questions to him. But before he is justified in commenting adversely upon a witness's evidence he must establish the particular fact warranting such criticism by proper evidence in Court and not on conjectures or by reference to materials which are not properly on the record Againa Magistrate should not in his judgment 'make observations prejudicial to the. character of a person, who is neither a witness nor a party to the proceedings and who has no opportunity of being heard' ."

I respectfully agree with this view. Where there is absolutely no foundation for objectionable remarks, where the person disparaged had no opportunity of being heard in his own defense, where the remarks injurious to the character of a person are irrelevant and unnecessary for a proper decision of the questions involved, the Courts should refrain from making such remarks. If this elementary caution is not exercised and remarks are made arbitrarily, I think, this Court, in the interest of justice, will be justified in ordering their deletion from the judgment in exercise of its inherent power as it amounts to abuse of the process of the Court. In this case, the Magistrate abandoned judicial approach, allowed extraneous considerations to possess his mind and made the remarks without evidence to support them. These remarks are not necessary for proper adjudication of the case. Hence, they must be expunged.

5. Learned counsel appearing against the reference, however, contended that the Court had no power to order deletion of the remarks from the judgment. In support of his contention, he relied upon a Single Bench decision of this Court in *Bhutnath Khawas v. Dasrathidas*^{1A}. Dhavle, J. held that Section 561-A only preserved the inherent powers of the High Court without conferring additional power and that no Court can claim inherent power to alter the judgment of this Court. He relied upon a decision of the Bombay High Court in *Rogers v. Shrinivas Gopal*², The Bombay High Court has now taken a different view. In *State v. Gulam Mahomed*³, a Division Bench of the Bombay High Court held that the High Court had inherent power to expunge

passages from judgments whether, passed by itself or by subordinate Courts. Subsequently, this matter was considered by a Full Bench of the Bombay High. Court in *State of Bombay v. Nilkanth*⁴, The Full Bench had laid down that the inherent power that the High Court possesses is in proper cases, even though no appeal or revision may be preferred to High 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. In this Court, the view that has prevailed is that the remarks may be expunged. In *Harendra Nath v. The State*⁵, Sarjoo Prasad, J. held that the High Court has the power to expunge objectionable remarks made by a Magistrate in an order passed by him against a person without making him a party to the proceeding or giving him opportunity to explain his conduct. I may state that in an earlier case, *Birnarayan Singh v. Emperor*⁶, Jwala Prasad, J., expressed a similar view. I do not propose to embark upon a detailed examination of the authorities. Now, there is a consensus of judicial opinion, that the High Court is competent to delete objectionable remarks from the judgments when they are not justified by the evidence on the record. (See *Panchanan v. Upendranath*⁷, *Karamat Ullah v. Emperor*⁸, *Madhusudan Mahapatra v. State*⁹, *Ghumanmal v. Emperor*¹⁰, and *In re Public Prosecutor*¹¹, In view of these clear authorities, the argument that the remarks cannot be expunged cannot be accepted as correct.

6. The next question is whether the proceeding instituted by the Magistrate under Section 250 of the Code of Criminal Procedure for payment by Thakur Ramsagar Singh of compensation to the accused should be quashed. In view of my above observations, he cannot be held liable for payment of compensation. Apart from this, there are other reasons for quashing this proceeding. Sub-Section (1) of Section 250, which is relevant for the present purpose, provides as follows :

"If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous Or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid".

It will appear from the above that before an order for compensation is passed, the Magistrate must record by his order of discharge or acquittal a finding that the accusation against the accused was false and either frivolous or vexatious. There must be a definite finding to that effect. In absence of such a finding, the order awarding compensation will be invalid. In this case the Magistrate has recorded a finding that the case was false, but he has not expressed any opinion whether the case was frivolous or vexatious. The learned Sessions Judge thinks that because of the omission to record a finding about the frivolous or vexatious nature of the case, the order calling upon the Additional Deputy Superintendent to show cause why he should not pay compensation was illegal. This view, however, is not correct. When there is a finding that the accusation was false, the absence of a finding whether it was frivolous or vexatious constitutes

not an illegality but a mere irregularity, which does not affect the jurisdiction of the Magistrate to award compensation in appropriate cases. It has been laid down by this Court in *Ramautar Ahir v. The State*¹², that before an order for payment of compensation is passed, Section 250 necessarily implies a finding by the Magistrate on two heads : firstly whether the accusation was false, and, secondly, whether it was either frivolous or vexatious, and where in acquitting the accused person of the offences charged, the Magistrate expresses the opinion that the accusation was false and omits to record an opinion whether it was either frivolous or vexatious, the absence of the necessary finding under the other head does not affect the jurisdiction of the Magistrate to pass the order, and, therefore, the order is not bad ab initio. It is not a defect which goes to the root of jurisdiction. There are, however, potent grounds, on which the order of compensation cannot be maintained.

7. The provisions of Section 250 make it manifest that compensation can be awarded only against the "person upon whose complaint and information the accusation was made". It necessarily follows that the person who is neither the complainant nor the informant is not under the law to compensate the accused for a false and vexation or frivolous case. Therefore, the person who simply figures as witness and has nothing to do with the institution of the proceeding cannot be made liable for compensation.

This is what appears from a plain reading of Section 250. It, however, is a question of fact in each case to be determined, who was responsible for making the accusation. In most cases, the person who actually sends information of the commission of offence to the police officer or to any other competent authority is not necessarily a person responsible for the initiation of the proceeding against the accused. Whenever any information of the commission of any offence is conveyed to any person, it is his bounden duty as an honest citizen of the State to communicate that information to the proper authority. For doing this duty he should not be saddled with compensation, if eventually the information is found by a Court of competent jurisdiction to be false and vexatious. In such cases the persons who actually alleged the commission of the offence and professed to have seen it, should be regarded as the real complainant for the purpose of Section 250, and not the person who communicated their version to the proper authority. In this case, Thakur Ramsagar Singh was not a witness to the occurrence. In fact nothing happened in his presence. His subordinates reported to him that the accused Chandrika Singh had committed theft of surgical instruments and drugs belonging to the hospital. As an Additional Deputy Superintendent of the hospital, it was his duty to communicate this information to the police. He could not have hushed up the matter. The subordinate officer who professed to have seen the commission of theft and reported the matter to him is, in my opinion, the person on whose information the accused was put on his trial. In *Jagdami Pershad Singh v. Mahadeo Kandoo*¹³, a Division Bench of the Calcutta High Court has laid down that where a case was instituted ultimately upon a police report, but originally upon information given to a police officer, the case falls within Section 250 of the Criminal Procedure Code, and the person upon whose information the case was originally instituted may be dealt with under that section. Their Lordships have further observed that the question whether a servant is responsible under Section 250 for an information lodged on behalf of his master, is one of a fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expression to his master's accusation, or whether he joins personally in the accusation himself. In appropriate cases, therefore, though the servant may lodge the complaint, compensation cannot be awarded against him, if he was merely the mouthpiece of the master. In this particular case, the Additional Deputy Superintendent was a mere mouthpiece of his, subordinate officer. In

other words, the actual author of the accusation, and not the reporter of it, should be held liable for compensation under Section 250. In *Subramania Pillai v. Pakia Nadatchi*¹⁴, the Assistant Superintendent of Police sanctioned the prosecution for an offence under Section 211, Penal Code, of a woman who made a complaint to the village Munsif of her village, of robbery by five men. The Station House Officer concerned prepared a charge-sheet, and it was presented to the Joint Magistrate by a constable. The Magistrate tried the case and discharged the woman, and at the same time made an order under Section 250 against the constable directing him to pay her Rs. 10 as compensation, for making a vexatious complaint against her, or in default to suffer simple imprisonment for four days. A Division Bench of the Madras High Court held therein that the order for payment of compensation was illegal, as the constable was not the person upon whose complaint or information the order was made. In other words, when proceedings are instituted by a subordinate officer on information or order given by his superior officer, the subordinate officer cannot be ordered to pay compensation. A similar view has been expressed by the Allahabad High Court in *Emperor v. Bahawal Singh*¹⁵, One Jagmohan Dom gave information to the Revd. G. Spooner of the Wesleyan Mission to the effect that the accused constable had extorted from him the sum of Rs. 10. The Revd. G. Spooner made an enquiry on his account and then reported the matter to the District Magistrate of the constable. The Court having the case found the charge frivolous, acquitted the accused, and directed Jagmohan to pay compensation. It will be seen that the complaint was made on the prima facie information given by Revd. G. Spooner, but the real informant was Jagmohan Dom, who was made to pay compensation. Reference was made to the

High Court by the District Magistrate of Banaras for setting aside the order on the ground, that it was illegal. The High Court held that the order was not illegal. It has been laid down in that case that it is not necessary that the person against whom an order for compensation under Section 250 is made should be the person who himself gives information to a Magistrate, in consequence of which another is accused of the offence provided that he is the person upon whose information an accusation is made. Following the principle of this case, it is evident that Thakur Ramsagar Singh cannot be made to pay compensation, because though he gave the information to the police authorities the accusation was really based upon the information of his subordinate officer. Further, when a responsible officer in honest discharge of his duties communicates to the proper authority the commission of any offence within his jurisdiction on the faith of the information given to him by his subordinates, it should not be presumed that he has acted falsely and vexatiously in the sense of Section 250 of the Code of Criminal Procedure, or otherwise than in perfect good faith. (See Ref. to the High Court by the Judge of Sm. C. C. at Dacca, 15 Suth WR (Civil) 506). Therefore, I have no doubt whatsoever that the order of the Magistrate calling upon the Additional Deputy Superintendent to show cause why he should not pay compensation to the accused is illegal, and must be set aside and the proceeding quashed.

8. For the reasons, remarks set forth above be expunged from the judgment and the proceeding for payment of compensation be quashed.

Order accordingly.

Cases Referred.

¹ dated 15th January, 1960, in G. R. Case No. 218 of 1959

^{1A} AIR 1941 Pat 544

² AIR 1940 Bom 266

- ³ AIR 1953 Bom 152
- ⁴ AIR 1954 Bom 65
- ⁵ AIR 1951 Pat 285
- ⁶ AIR 1922 Pat 97
- ⁷ AIR 1927 All 193
- ⁸ AIR 1940 Lah 42
- ⁹ AIR 1951 Oris 92
- ¹⁰ AIR 1944 Sind 133
- ¹¹ AIR 1944 Mad 320
- ¹² AIR 1951 Pat 381
- ¹³11 Cr. LJ 201 (Cal)
- ¹⁴12 Cr LJ 482 (Mad)
- ¹⁵ ILR 40 All 79: (AIR 1918 All 111)