(1989) 07 CAL CK 0014

Calcutta High Court

Case No: C.N. No. 2498 of 1988

Debabrata Chakraborty		APPELLANT
	Vs	
M.K. Das and Others		RESPONDENT

Date of Decision: July 27, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 82
- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 228

Citation: 93 CWN 1192

Hon'ble Judges: A.N. Bhattacharjee, J; A.K. Nandi, J

Bench: Division Bench

Advocate: B.B. Giri and Bandana Basu, for the Appellant; B.R. Ghosal and Sadananda Ganguli, for the Respondent

Judgement

A.M. Bhattacharjee, J.

The power of this Court to expunge remarks or observations from the judgment of the courts subordinate to it can and has never been doubted. What was doubted was the power of this Court do so when the proceeding in which it was made was not brought before it by way of regular appeal or revision or in the exercise of some other statutory jurisdiction. But the two decisions of the Supreme Court in Raghubir Saran (AIR 1964 5C i) and in Mohammad Nairn (AIR 1964 SC 703) must now be taken to have settled the question beyond the pale of any controversy and have held that this Court can do so in the exercise of its inherent powers even independently of any appeal or revision presented to it. True, both the Supreme Court decisions related to criminal matters and the power of the High Court to expunge remarks from the judgments or orders of the Courts below, independently of any appeal or revision pending before it, was recognised and traced with reference to Section 561A of the preceding Code of Criminal Procedure of 1898, now replaced, almost totidem verbis,

by Section 482 of the present Code of Criminal Procedure of 1973. But there can be no manner of doubt that the same would be the position in civil matters as well because, as is well settled, neither Section 561A of the old Code of Criminal Procedure did, nor Section ''+82 of the present Code or Section 151 of the CPC does, confer any particular power, but only saves all the gamut of powers inherently possessed by this Court to make such orders as may be necessary to secure the ends of justice or prevent the abuse of curial process. And, therefore, if, as ruled by the Supreme Court in Raghubir Saran (supra) and in Mohammad Nairn (supra), this Court can in a fit case expunge remarks or observations from the judgment or order of the subordinate Courts in criminal matters independently of any appeal or revision therefrom pending before it in the exercising of inherent powers saved by Section 561A of the old and Section 482 of the new Code of Criminal Procedure, this Court can obviously do the same in civil matters also in exercise of such inherent powers saved by Section 151 of the Code of Civil Procedure. It may be noted that the aforesaid two decisions of the Supreme Court have been referred to and relied on by a recent two judge bench of the Supreme Court in Niranjan Patnaik (1985-2 Supreme Court Cases 569). The matters at hand, however, has been brought before us in our supervisory jurisdiction under Article 227 of the Constitution, not at the instance of any party to the proceeding, but by the lawyer engaged by a party before the appellate authority, for expunging certain remarks made against him by the appellate authority. But if, as ruled by the Supreme Court in the decisions referred to above, we can exercise this power of there is any regular matter pending before us by way of appeal, revision or otherwise, then the question whether our supervisory jurisdiction under Article 227 could be invoked by a lawyer, without the party whom he represented, for expunging some observations made against that counsel personally, need not detain us. The question as to what remedy would be available to a lawyer engaged by a party for expunction of remarks made against him was adverted to by the majority in Raghubir Saran (supra, at 7, para 19), and it would appear that the majority was inclined to think that the lawyer, though he may not move in appeal or revision, may apply invoking the inherent powers of the High Court. And then again, it is also well-settled that once a matter is brought before us in our revisional or supervisory jurisdiction and we find that there are matters which warrant our intervention, the standi or competency of the person to invoke our jurisdiction may lose all relevance, as we could have called for the records on our own. Therefore, to the merits now.

2. The Chief Judge, Small Causes Court, while hearing an appeal as the Appellate Authority under the Payment of Wages Act, thought that the Advocate for the Appellant, who is the petitioner here, behaved with such arrogance and insubordination and caused such annoyance, insult and interruption as to amount to an offence u/s 228 of the Penal Code. The Chief Judge recorded these facts not only in the order-sheet on that day, being No. 10 dated 30.7.88, but also described in considerable details in the judgment itself delivered on 6.8.88 as to how and in what

manner and with what postures and gesticulation the Advocate conducted himself. In the order No. 10 dated 30.7.88, the Judge directed the Advocate "to leave the Court and not to appear again" and in the judgment also delivered on 6.6.88, the Judge recorded that the Advocate "was immediately asked to leave that Court room and not to appear in my Court in future as there are decent lawyers galore". The Chief Judge also directed that a copy of his judgment was to be forward to the appellant, the Controller of Telcom Stores, Calcutta.

3. The petitioner, on coming to know about this, filed an application u/s 151, CPC and while asserting that he always had and has the highest regard for the Court and that he had never behaved in any manner to annoy or insult the learned Judge, submitted further that "the entire incident so far as the petitioner is concerned is unfortunate and the same must have been an outcome of some misunderstanding and the petitioner sincerely regrets, if such misunderstanding has been caused due to any act on the part of the petitioner". The Judge rejected the application after observing that "fair play and justice do not demand that the observations should be expunged", "the petitioner had no business to annoy or insult the Court as to ail intents and purposes he is an officer of the Court" and that "considering the gravity of the offence it must be stated that he was lightly dealt with" and that "he should see that in future he does not invite such comments from any other Court."

4. When there is a dispute as to what happened before a Court or Tribunal, the statement of the Presiding Officer in regard to it is, as pointed out by the Supreme Court in Union of India v. T. R. Verma (AIR 1957 SC 882 at 884) and also in Bank of India v. Mahabir Lal (AIR 1964 Sc 377 at 380), generally accepted to the correct, unless, if we may add, the materials on record irresistibly warrant its non-acceptance. Lawyers and Judges, notwithstanding their training and expertise and wigs and robes, are not divine creatures not to have the human frailities of losing, on occasions, their much cherished sense of decency and dignity. But even if we accept the statement of the Chief Judge as to how the petitioner behaved in the Court, the Judge ought to have realised that the judgment in the appeal itself was not the place for the recording of the incident. A judgment may only record all that may be necessary for the disposal of the proceeding, the facts of the case, the contention of the parties, the relevant laws and the conclusion. It is wholly unnecessary to record therein as to whether a lawyer engaged therein has annoyed or insulted the Judge by his incident behaviour and unmannerly conduct. If such behaviour or conduct amounted to contempt of Court or, as the Chief Judge thought in this case, to an offence u/s 228 of the Penal Code, the Judge ought to have known how and in what manner the matter was to be dealt with. The Judge may or may not, in his discretion, take any action, but whether he does or does not, he obviously deflects himself from the propoer course of justice and goes entirely wrong if he pours out his indignation in the body of the judgment. Assuming, though not deciding, that the conduct of the petitioner was as stated by the-Chief Judge, it was not at all necessary for the decision of the case, to animadvert on that conduct and

the observations of the Supreme Court in Mohammad Nairn (supra, at 707, para 10 and at 708, para 11) would indicate that those observations were not to find place in the body of the judgment. And if these observations were not to be made it the body of the judgment, as being entirely unnecessary for the determination of the appeal, and they affect, as they would obviously do, the petitioner, then we are inclined to hold that the petitioner has made out a case for the expurgation of those observations.

5. We are also inclined to think that the Judge jumped too far and beyond his jurisdiction in directing the petitioner not to appear in this Court "in future". As we have already stated, for the purpose of this case, we have accepted, but not decided, the version of the Chief Judge to be correct and there can be no doubt that such conduct, if any, on the part of a lawyer deserves severest condemnation and stern action according to law. But we do not know as to how a Judge can extradite a lawyer from the Court for all cases to come and direct him not to appear in "my court in future"; so long the lawyer has the legal right to practice his profession in that Court. A Judge, to whom people would come for the determination and enforcement of their rights, must not betray his ignorance about'' his own rights, for that may shake the confidence of the people which is the main, if not the sole, strength of our Judiciary. We have not also been able to appreciate the expression "my court" used by the Judge. Even if we agree to project the Advaita Philosophy and to hold that the Judge treats the Court as an entity separate from him, he can not brand it as "my court", that being the altar of justice to which every one may come almost as a matter of right and every lawyer, otherwise qualified, has a right to appeal, unless his right to do so is suspended or abrogated in due course of law. We would accordingly allow the application and would direct that the portion beginning with the words "At this stage Advocate" and ending with the words "and not to appear again" in the order dated 30.7.88 and the second paragraph of the judgment dated 6.8.88, from the words "and in the process uttered" in the second sentence and the whole of the third paragraph of the order dated 23.8.88, except the last sentence, shall stand expunged and the court below is to effect and record such expunction.
Let a copy of our order, along with the records, if any. go down to the court of the Chief Judge forthwith for compliance.

A.K. Nandi, J.

I agree.