Strictures & Remedies

(Defences Against Judicial Assault)

S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in

It is often seen that some times disparaging remarks are recorded by the Judges of the Superior Courts in their judgments and orders against the members of Subordinate Judiciary which not only adversely affects their career and reputation but it also deeply hurts them in terms of their peace and calm and confidence as well. In many cases, the Judicial Officers find it quite difficult as to what are the remedies in law available to them in the event of being faced with the condemnatory remarks and strictures at the hands of the superior court Judges. The Hon'ble Supreme Court has, over the years, evolved the law on the subject through its host of judgments and the remedies of the Judicial Officers can well be found in those judgments. Some important decisions of the Hon'ble Supreme Court containing guidelines and remedies regarding expunction of strictures alongwith the instances of cases wherein they were recorded are being discussed here as under:

1. **Object behind creating different tiers of judicial hierarchy**: In the case noted below, the Supreme Court has reminded the Judges of higher courts that the higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of 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". See**:** Braj Kishore Thakur Vs. Union of India & others, (1997) 4 SCC 65.

2. **Superior Court Judges to act as friend, philosopher & guide of Sub-ordinate Judges**: The role of High Court is also of a friend, philosopher and guide of Judiciary subordinate to it. See: "K", A Judicial Officer, In Re, (2001) 3 SCC 54.

3.1. **Difference in views, approach and perception between the higher and lower court not to be made ground for strictures:** In the case noted below the Supreme Court has observed thus: "This Court has laid down in several reported decisions that higher courts should observe restraint and disparaging remarks normally should not be made against the learned members of the lower judiciary. In Ishwari Prasad Mishra Vs. Mohd. Isa, (1963) 3 SCR 722, a Three-Judge Bench of this Court has emphasized the need to adopt utmost judicial restraint against using strong language and imputation of motive against the lower judiciary by noticing that in such matters the concerned Judge has no remedy in law to vindicate his position. The law laid down by this Court in the matter of expunction of remarks where a subordinate Judge has been subjected to disparaging and undeserved remarks by the superior Court is well settled by this Court in the matter of `K', a Judicial Officer Vs. Registrar General, High Court of Andhra Pradesh, 2001 (3) SCC 54. In the said decision, this Court has succinctly outlined the guidelines in this regard in paragraph 15 of the said judgment thus: 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. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in the open and therefore becomes public. Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher court gives the litigating party a sense of victory

not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge. Fourthly, seeking expunging of the observations by a judicial officer by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court, a situation not very happy from the point of view of the functioning of the judicial system. And last but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous Judge being caught unaware in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralizing effect not only on him but also on his colleagues. If all this is avoidable why should it not be avoided? However, this Court has further provided that the parameters outlined hereinbefore must not be understood as meaning that any conduct of a subordinate judicial office unbecoming of him and demanding a rebuff should be simply overlooked. This Court has outlined an alternate safer and advisable course of action in such a situation that is of separately drawing up proceedings, inviting the attention of the 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. The actions so taken would all be on the administrative side with the subordinate Judge concerned having an opportunity of clarifying his position and he would be provided the safeguard of not being condemned unheard, and if the decision be adverse to him, it being on the administrative side, he would have some remedy available to him under the law. Again, in K.P. Tiwari Vs. State of M.P., 1994 Supp. (1) SCC 540, this Court had to remind all concerned that using intemperate language and castigating strictures on the members of lower judiciary diminishes the image of judiciary in the eyes of public and, therefore, the higher courts should refrain from passing disparaging remarks against the members of the lower judiciary. The record would show that the appellant had discharged her judicial duties to the best of her capacity. To err is human. It is often said that a Judge, who has not committed an error, is yet to be born. This dictum applies to all the learned Judges at all levels from the lowest to the highest. The difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. But merely because there is

difference in views, it does not necessarily establish that the lower courts are necessarily wrong and the higher courts are always right. Therefore, this Court in several reported decisions has emphasized the need to adopt utmost judicial restraint against making the disparaging remarks so far as members of lower judiciary are concerned". See: Smt. Mona Panwar Vs. Hon'ble High court of Judicature at Allahabad through its Registrar, 2011(2) ALJ 445(SC) (para 11).

3.2. Disciplinary proceeding against Judicial Officer cannot be initiated merely for wrong order: In case a Judicial Officer passes a wrong order which is against the settled norms but there is no allegation of any extraneous influence leading to the passing of such order then appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the Judicial Officer concerned. These matters can be taken into consideration while considering the career progression of the concerned Judicial Officer. Once note of the wrong order is taken and they form part of the service record, these can be taken into consideration to deny selection grade and promotion etc. and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the Judicial Officer in accordance with the Rules. Thus, unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the Judicial Officer or merely on the ground that the judicial order is incorrect. See: Krishna Prasad Verma (Dead) through LRs Vs. State of Bihar, AIR 2019 SC 4852.

4. Judicial Officers deserve parents-like care from their High Courts: Under the constitutional scheme, control over the district courts and courts subordinate thereto has been vested in the High Courts. The control so vested is administrative, judicial and disciplinary. 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 if 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 parents-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. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in open and therefore becomes public. Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge. Fourthly, seeking expunging of the observations by a judicial officer by filing an appeal or petition on his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court– a situation not very happy from the point of view of the functioning of the judicial system. May be for the purpose of pleading his cause he has to take the assistance of a legal practitioner and such legal practitioner may be one practicing before him. Look at the embarrassment involved. And last but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous Judge being caught unaware in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralizing effect not only on him

but also on his colleagues. If all this is avoidable why should it not be avoided? See: Braj Kishore Thakur Vs. Union of India & others, (1997) 4 SCC 65. Braj Kishore Thakur Vs. Union of India & others, (1997) 4 SCC 65.

5. **Strictures amount to grave damage to the confidence of people in judicial institution:** While cancelling the bail order passed by a very senior Sessions Judge under the provisions of NDPS Act in the matter of recovery 97 Kgs. of non-duty paid Ganja, a single Judge of the Patna High Court had passed strictures against the Sessions Judge concerned that he was not aware of the law on the subject, had passed the bail order casually and leisurely possibly for extraneous considerations and therefore he was not entitled to continue as Sessions Judge, the Supreme Court expunged the adverse remarks and observed thus : "No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher Courts publicly express lack of faith in the subordinate Judges. It has been said, time and again, that respect for judiciary is not enhanced by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a Judicial Officer against whom aspersions are made in the judgment could not appear before the higher Court to defend his order. Judges of higher Courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against lower judiciary." See:

(i) Amar Pal Singh Vs. State of UP, AIR 2012 SC 1995
(ii) Braj Kishore Thakur Vs. Union of India and others, AIR 1997 SC 1157
(iii) A.M. Mathur Vs. Pramod Kumar Gupta, (1990) 2 SCC 533
(iv) S.K. Viswambaran Vs. E. Koyakunju, 1987 (24) ACC 318.

6. **Strictures tantamount to destruction of the institution of Judiciary from within:** In the case noted below, the M.P. High Court while cancelling the bail granted to the accused by a very senior Addl. Sessions Judge for the offences u/s. 147, 148, 149, 506, 341, 302 IPC observed that the ASJ had granted the bail as he was won over by the accused and corrupting influences had worked with the ASJ in granting the bail. Expunging the critical remarks, the Supreme Court issued a note of caution against

recording of strictures against the subordinate Judges in these words: “The High Court Judge should not have allowed himself the latitude of ignoring judicial precaution and propriety even momentarily. The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the judges and hence provides for appeals and revisions. A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks – more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive. It is possible that a particular judicial officer may be consistently passing orders creating a suspicion of judicial conduct which is not wholly or even partly attributable to innocent functioning. Even in such cases, the proper course for the higher court to adopt is to make a note of his conduct in the confidential record of his work and to use it on proper occasions. The judges in the higher courts have also a duty to ensure judicial discipline and respect for the judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticized intemperately and castigated publicly. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary than when the judges of the higher courts publicly express lack of faith in the subordinate judges for one reason or the other. It must be remembered that the officers against whom such strictures are publicly passed, stand condemned for ever in the eyes of their subordinates and of the members of the public.

No better device can be found to destroy the judiciary from within. The judges must, therefore, exercise self-restraint. There are ways and ways of expressing disapproval of the orders of the subordinate courts but attributing motives to them is certainly not one of them. That is the surest way to take the judiciary downhill." See: K.P. Tiwari Vs. State of M.P., 1994 Suppl. (1) SCC 540.

7. **Calling explanation of ASJ for having allowed second bail application has chilling effect on district judiciary against exercise of their discretionary power conferred on them by law:** In the present case, the High Court of Madhya Pradesh cancelled the bail which was granted to the appellant by the lower court. The High Court observed that the Trial Court had granted bail to the appellant without taking into account an earlier order of the High Court dated 21 July 2022 rejecting bail. The High Court observed that the mere fact that the charge-sheet had been filed could not be considered as a change in circumstances. The police was directed to arrest the appellant immediately. The High Court also directed the Registrar General to issue a notice to show cause to the Second Additional Sessions Judge, Harda to seek his explanation on the circumstances in which he had granted bail to the appellant. The narration of facts in the earlier part of the order indicates that though the application for bail had been rejected both by the Trial court and the High Court on the earlier occasion, the High Court had granted liberty to the appellant to move a fresh application for bail after a reasonable period of time. After the charge-sheet was submitted before the competent Court under Section 173 of the Code of Criminal Procedure 1973, the appellant moved for bail afresh. The order passed by the Trial Judge granting bail on the ground that the charge-sheet had been submitted and that the other accused were on bail was eminently fair and reasonable. The order of the High Court directing that the appellant be arrested immediately and seeking an explanation from the Second Additional Sessions Judge was wholly disproportionate and was not warranted. Such orders of the High Court produce a chilling effect on the District judiciary. The members of the district judiciary cannot be placed in a sense of fear if they were to exercise the jurisdiction lawfully entrusted to them for granting

bail in appropriate cases. The order of the Trial Judge does not indicate that he had applied the wrong principles of law. Quite to the contrary, the exercise of the discretion to grant bail, having due regard to the nature of the offence, the fact that other accused had been granted bail and the charge-sheet had been submitted, was appropriate. See: Judgment dated 06.04.2023 of the Supreme Court passed in Criminal Appeal No 1010 of 2023, Totaram versus State of Madhya Pradesh and another.

8. **Pre-conditions for recording strictures:** The Supreme Court has laid down following guidelines as pre-conditions to be observed by the Judges of the superior courts before recording strictures against the sub-ordinate Judicial Officers in the judgments and orders:

(i) whether the judicial officer or any other person whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(ii) whether there is evidence on record bearing on the conduct of the judicial officer or of the person concerned justifying the critical remarks; and

(iii) whether it is necessary for the decision of the case, as an integral part thereof, to comment critically on the conduct of the judicial officer or the person concerned.

(iv) Judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. See: S.K. Viswambaran Vs. E. Koyakunju, 1987 (24) ACC 318 (SC).

9. **Strictures to withstand certain tests:** It has been clarified by the Supreme Court, in the cases noted below, that a superior court has got powers to record critical observations on the objectionable and improper conduct of the persons and authorities whose judgment or order comes for scrutiny before the superior court but if such critical remarks recorded by the superior court are questioned then the critical remarks recorded by the superior court must withstand the following tests:

(1) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(2) whether there is evidence on record bearing on that conduct justifying the remarks; and

(3) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. The overall test is that the criticism or observation must be judicial in nature and should not normally depart from sobriety, moderation and reserve. See:

(i) Manish S. Pardasani Vs. Inspector State Excise, (2019) 2 SCC 660
(ii) Amar Pal Singh Vs. State of UP, AIR 2012 SC 1995
(iii) "K", A Judicial Officer, In Re, (2001) 3 SCC 54.
(iv) State of U.P. Vs. Mohd. Naim, AIR 1964 SC 703

10. **Stricture as potential damage to career**: A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not get approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge. See:

(i) "K", A Judicial Officer, In Re, (2001) 3 SCC 54.
(ii) Manish S. Pardasani Vs. Inspector State Excise, (2019) 2 SCC 660

11. **Loss of dignity due to strictures cannot be restored even when expunged:** The Supreme Court has held that the critical remarks made in a judicial order of the High Court against a member of subordinate judiciary even if expunged would not completely restitute and restore the harmed Judge from the loss of dignity and honour suffered by him. See: "K", A Judicial Officer, In Re, (2001) 3 SCC 54

12. **Confidential report to Chief Justice by superior court Judges—when to be sent? :** It has been laid down by the Supreme Court that the conduct of a judicial officer,

unworthy of him, when having come to the notice of a Judge of the High Court hearing the matter on judicial side, the lis may be disposed of by pronouncing upon the merits thereof as found by him by 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 the 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 Administrative 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. See: "K", A Judicial Officer, In Re, (2001) 3 SCC 54

13.1. Calling for report from the Sub-ordinate Judges on the judicial orders passed disapproved by the Supreme Court: It has been ruled by the Supreme Court that the High Courts should not ask the subordinate Judicial Officers to send up report in defence of their judicial orders as reasons in support of a judicial order can appear only in the order itself and it is an unwholesome practice to compel a Judicial Officer to write a report subsequently in defence of his conclusions. See: Braj Kishore Thakur Vs. Union of India and others, AIR 1997 SC 1157.

13.2. High Court should be extremely careful in summoning the Judicial Officers: High Court has discretion to summon a person whose attendance is necessary in the Court for deciding the case. When the summoning of a serving Judicial Officer is concerned, the Court must record sufficient reasons for summoning him or her and give sufficient indication for the purpose for which he or she is summoned to the High Court. The

judicial officers discharge important judicial functions under the supervision of the court. The High Court is required to be extremely careful when summons are issued to the judicial officers to appear in the Court. It is only when the allegations are substantiated that the Court may, if it is necessary to decide any case and if it is absolutely necessary in a rarest of rare case to summon the judicial officer after recording reasons on record, and if such necessity arises the proceeding should be held in camera, so that the judicial officer is not put to embarrassment and is not required to face the same litigants, who are appearing or have appeared in Court. So far as possible the proceedings should be concluded on affidavits filed by the concerned judicial officer. See: *Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.*

13.3. **On summoning of a Judicial Officer, proceedings should be held in camera**: On summoning of a Judicial Officer, proceedings should be held in camera. See: *Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.*

13.4. **Affidavit of Judicial Officer concerned may be required by the Court**: Affidavit of Judicial Officer concerned may be required by the Court. See: *Judgment dated 10.04.2014 passed by the Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Sunil Ambwani & Hon'ble Devendra Kumar Upadhyaya, JJ. in Writ Petition (M/B) No. 9736/2013, Rajendra Prasad Vs. State of UP.*

14. **Grounds for expunction of strictures**: It has been clarified by the Supreme Court, in the cases noted below, that a superior court has got powers to record critical observations on the objectionable and improper conduct of the persons and authorities

whose judgment or order comes for scrutiny before the superior court but if such critical remarks recorded by the superior court are questioned then the critical remarks recorded by the superior court must withstand the following tests:

(1) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(2) whether there is evidence on record bearing on that conduct justifying the remarks; and

(3) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. The overall test is that the criticism or observation must be judicial in nature and should not normally depart from sobriety, moderation and reserve. See:

(i) "K", A Judicial Officer, In Re, (2001) 3 SCC 54.
(ii) State of U.P. Vs. Mohd. Naim, AIR 1964 SC 703.

15. Critical remarks in judgments and orders should not be passed if the lis can be decided without passing them: Higher Judiciary must avoid as far as possible from making any disparaging harsh remarks and strictures against any judicial or administrative officer while examining their action or order impugned in the judicial proceedings. In the present case, the High Court, while disposing of the writ petitions, made serious observations and passed adverse remarks in the manner in which the Commissioner, State Excise, had dealt with the appeallants' case, particularly the manner in which ex-parte interim orders were passed, and oral directions issued to the subordinate officers, and had also issued directions to the Commissioner, State Excise to act properly, and in accordance with law in future, and refrain from acting with high handedness, and exercise restraint in the exercise of her judicial and administrative powers and authority. The Supreme Court held that the disparaging remarks and strictures coupled with the directions of how one should behave and pass orders was unnecessary in the facts of the case and were not germane for deciding the lis between the parties. Such remarks and strictures, therefore, should not have been made. The Supreme Court expunged the critical remarks and deleted them from the impugned order. See: Manish S. Pardasani v/s Inspector, State Excise (2019) 2 SCC 660

16. Strictures against police officers not to be passed: By way of present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner who is currently posted as Deputy Commissioner of Police, North East Delhi seeks quashing and setting aside of orders dated 13.10.2022, 24.11.2022 and 07.12.2022, passed by learned Additional Sessions Judge, North East, Karkardooma Courts, Delhi, in Sessions Case No. 298/2019 titled "State Vs. Sunil @ Kallu & Ors.", to the extent of observations and remarks made against the petitioner herein and also to recall and cancel the bailable warrants issued against the petitioner vide order dated 07.12.2022. The facts and circumstances leading to the filing of the present petition are that an FIR bearing no. 246/2019 was registered under Sections 22/29 of NDPS Act, 1985 at Police Station Khajuri Khas, wherein five accused persons were arrested. Charge-sheet under Section 173(2) of Cr.P.C. was filed on 14.08.2019 and a supplementary report was filed on 30.10.2019 to bring on record the FSL report which confirmed the seized contraband to be "Tramadol". By way of another supplementary charge-sheet filed on 15.09.2021, the FSL report with respect to mobile phones and SIM cards of accused persons was placed on record. During the investigation, it was felt necessary by the Investigating Agency to take voice samples of the two accused persons namely Ankit Kumar and Rupesh Kumar Gupta. Thereafter, third supplementary charge-sheet dated 15.01.2022 was filed before the learned Trial Court whereby detailed report of contraband seized in the present case was placed before the learned Trial Court and the Court was also informed that voice samples of accused would be taken on 25.01.2022. Voice samples of the accused persons were then sent to FSL, Rohini on 20.05.2022 for examination. The learned Trial Court, on 26.07.2022, directed the petitioner herein, for the first time, to make efforts to obtain the FSL Report of voice samples. On 29.07.2022, the petitioner in compliance of the said order of the learned Trial Court issued a letter apprising the Director, FSL, Rohini, regarding order passed by the Court and requested the Director concerned to prepare the report on priority basis. On 04.10.2022, a status report was filed and these facts were placed before the learned Trial Court. On 13.10.2022, vide the first order impugned before this Court, the learned Trial Court made certain

remarks against the petitioner as well as the IO, SHO and ACP concerned by using terms “negligent” and “insensitive”. The relevant portion of order dated 13.10.2022 is reproduced thus: “The matter is fixed for consideration on charge and also for filing of the report of FSL regarding voice sample of the accused Ankit and Rupesh, which is still pending. So the DCP, North-East was directed to make sincere efforts to obtain the report of FLS. Copy of the last order was sent to the DCP, North East for compliance. The DCP has written a letter stating therein that DO letter was written on dated 29.07.2022 but as this case was registered way back in the year 2019, it appears to this court that the **IO/SHO/ACP/DCP are negligent persons, as, they are not making sincere efforts for obtaining the report of the FSL expeditiously. Since, accused Sunil @ Kallu and Vicky @ Harminder are in judicial custody and these police officials are insensitive enough. So, DCP(North-East) is called upon through bailable warrants in the sum of Rs. 5,000/- for the next date of hearing. Bailable warrants are ordered to be executed through Commissioner of Police (Delhi).”** A single Judge of the Hon’ble Delhi High Court, while expunging the critical remarks made by the Trial Court against the police officers of Delhi, observed thus: “It is made clear that by way of this Judgment, this Court is not holding or laying down as earlier expressed in case of Ajit Kumar v. State (NCT) of Delhi, 2022 SCC OnLine Del 3945, that the courts are powerless to point out disobedience of orders passed by the courts, but the judicial utterances or orders passed regarding the conduct of police officers have to be in consonance with the misconduct, if any, after carefully analyzing that such misconduct is solely and without any doubt attributable to them. Nevertheless, Section 6 of Chapter 1, Part H (The Judgment) of the Delhi High Court Rules for “Practice in the Trial of Criminal Cases” provides guidance to the Trial Courts as to what can be the appropriate procedure in cases where a Court is dissatisfied with the manner in which investigation has been done by concerned authorities and agencies. If the circumstances so warrant, the Courts can also take recourse to the Delhi Police Act and relevant provisions under appropriate laws and can issue notice and initiate appropriate action. The Courts are not powerless to indicate any lapse or omission on part of investigating agencies, or any disobedience

of the directions of the Court. The courts have to take recourse to the judicial precedents and the High Court Rules instead of taking into their own hands the duty of conducting enquiries, etc., and have to leave the same to the parent department and disciplinary authority of the police officers concerned. As also earlier directed in Ajit Kumar v. State (NCT of Delhi) (supra), this Court once again, by way of abundant caution, directs all the learned Judicial Officers to exercise utmost restraint and judicial discipline while deciding the cases before them and refrain from judging the credibility of police officers and passing scathing and disparaging remarks against them, when the same are not required for the adjudication of matters before them. In view of the aforesaid discussion, the remarks passed against the petitioner herein, as reproduced in para no. 3 and 5 of this judgment are hereby expunged and deleted from the impugned orders dated 13.10.2022 and 24.11.2022, and the bailable warrants issued against him vide impugned order dated 07.12.2022 as reproduced in para no. 7 of this judgment are hereby cancelled and set aside. Accordingly, the present petition stands allowed in above terms. Learned Registrar General of this Court is directed to forward a copy of this judgment to all the District and Sessions Judges of Delhi who shall ensure the circulation of this judgment among all the Judicial Officers in their Courts for sensitization of Judicial Officers on this issue. A copy be also forwarded to Director (Academics), Delhi Judicial Academy for taking note of its contents. See: Judgement dated 01.03.2023 passed by Delhi High Court in W.P.(CRL) 76/2023, Sanjay Kumar Sain versus State of NCT of Delhi.

17. **Strictures against police officers to be avoided by Courts:** Briefly, the facts relevant for the present appeals are that during the pendency of bail proceedings of Respondent No. 1, who is a police officer alleged to have taken a bribe, the High Court vide impugned interim order dated 07.07.2022 made adverse remarks against the Appellants, who had no lis in the above-mentioned bail proceedings. On 20.05.2022, an FIR was registered under Section 7(a) of the Prevention of Corruption Act against the Respondent No. 1 herein, for allegedly demanding a bribe from the informant. The respondent no. 1 was subsequently taken into custody. During the same bail

proceedings, on 04.07.2022, the High Court made adverse remarks against the Appellants herein. These remarks made by the High Court were widely reported in the media and caused injury to the reputation of the Appellants. The Supreme Court held that the legal system in general, and the judicial system in particular, has ushered into a new age of accessibility and transparency due to the adoption of virtual hearings and live telecasting of open court proceedings. These changes in the judiciary have ensured that the courts as redressal mechanisms have become more accessible to the common man than ever before. The limitations of physical infrastructure, that has constrained the courts to a physical location, has often been cited as one of the main roadblocks in the path towards access to justice. This roadblock, however, has now been cleared due to the availability of technology and the adoption of the same. This never before seen transparency in the judicial system, while it brings with it great benefits, it also attaches with it a stricter standard of responsibility on judges while conducting such court proceedings. Remarks passed in court, due to the live broadcasting of court proceedings, now have ramifications that are far reaching, and as can be seen in the present case, can cause great injury to the reputation of the parties involved. In such a circumstance, it is essential for the courts to be extremely cautious while passing adverse remarks against the parties involved, and must do so with proper justification, in the right forum, and only if it is necessary to meet the ends of justice. See: Seemant Kumar Singh versus Mahesh PS and Others, 2023 SCC OnLine SC 304.

18. Remedies of Judicial Officers against strictures: A Judicial Officer has following remedies for expunction of strictures recorded against him:

(1) Invoking inherent powers of the same court u/s 151CPC if the strictures have been passed in a civil case.

(2) Invoking inherent powers of the High Court u/s 482CrPC if the strictures have been passed by the High Court in a criminal case.

(3) Review Petition before the court recording the strictures in the cases other than criminal ones where Section 362CrPC operates as bar against review or recall of orders.

(4) Writ Petition before the High Court under Article 226 of the Constitution.

(5) Petition under Article 136 and/or 142 of the Constitution before the Supreme Court.

Note : (a). While seeking expunction of strictures through any of the above modes, the Judicial Officer should not challenge the merits or the decision of the Court concerned and instead should keep his prayer confined to the expunction of the critical remarks. The Judicial Officer can, however, cite the relevant provisions of law, rulings and Circular Orders etc., if any, in support of the validity of the order passed by him but he must not show any interest in the parties and the subject matter of the case and the decision made therein.

(b). Any passage from an order or judgment may be expunged by the Court or directed to be expunged subject to satisfying the following three tests :

(i) that the passage complained of is wholly irrelevant and unjustifiable;

(ii) that its retention on record will cause serious harm to the person to whom it refers;

(iii) that its expunction will not affect the reasons for the judgment or order. See:

(i) Amar Pal Singh Vs. State of UP, AIR 2012 SC 1995

(ii) "K", a judicial officer, in re, (2001) 3 SCC 54

(iii) Raghubir Saran (Dr) Vs. State of Bihar, AIR 1964 SC 1

(iv) State of U.P. Vs. Mohd. Naim, AIR 1964 SC 703

(c). Grounds for expunction of strictures can also be taken from 'The Judicial Officers' Protection Act, 1850' & 'The Judges (Protection) Act, 1985'. The Judicial Officers' Protection Act, 1850 contains only one section and is aimed at providing protection to the judicial officers acting in good faith in their judicial capacity. In the year 1985, the Parliament passed 'The Judges (Protection) Act, 1985' to provide certain more protections to the Judges and Magistrates of the Sub-ordinate Judiciary in addition to what was already available to them under the Judicial Officers' Protection Act, 1850. Section 52 of the IPC defines the word 'good faith' and provides that nothing is said to

be done or believed in good faith which is done or believed without due care and attention. Section 77 of the IPC provides that nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law. In the case of High Court of Judicature at Patna Vs. Shiveshwar Narayan and another, 2011 (3) SLJ 392 (SC), the Hon'ble Supreme Court has held that a judicial officer exercises sovereign judicial powers.

19. Certain reported cases involving severe strictures: A few cases wherein strictures were recorded by the High Court are quoted below:

19.1 Dr. Bhagwan Das Gupta, CJM, Banda purchased a house in Lucknow. A dues of electrical bill to the tune of Rs. 2,19,063/- was pending to be paid by sellers on the date of execution of the sale deed. After the CJM purchased the said house, the electricity department of Lucknow sent him a demand notice of Rs. 2,19,063/- to the CJM who apprised the Power Corporation that the said arrear did not relate to him and was payable by the sellers of the house but the Power Corporation continued to insist for clearance of the arrear by the CJM. The CJM then lodged an FIR against the engineers of the Power Corporation. Police submitted final report. CJM had also filed a case before the District Consumer Commission, Lucknow and the same was also dismissed. CJM filed protest petition against the final report and the ACJM, Lucknow treated the same as complaint and summoned the engineers of the Power Corporation/accused persons for the offences u/s 406, 409, 419, 420, 467, 468, 471, 386 IPC. Engineers filed writ petition before the Allahabad High Court complaining therein that the CJM, Banda in collusion with the Kotwal, Banda got the aforesaid FIR lodged against them on the basis of certain fake witnesses and forged papers. A Division of the Allahabad High Court by its order dated 25.08.2023 state the summoning order passed by the ACJM, Lucknow and constituted a three member SIT comprising DIG and two senior SSPs to probe in depth the entire complaint and conduct against the CJM and submit report by 30.09.2023. The Division Bench formulated following questions to be investigated by the SIT:

(a) whether any cognizable offence is made out against the petitioner or not;

(b) whether respondent no. 4 has misused his power and position as the C.J.M. Banda;

(c) whether alleged transaction of Rs. 20,000/- was ever given by the respondent to a person named as Rakesh and its receipt;

(d) whether demand notice of Rs. 2,10,063/- is forged document;

(e) what are the past credentials of respondent no. 4 as judicial officer?

(f) whether the respondent no. 4 has taken into confidence or taken prior permission from the learned District Judge, Banda before lodging of the FIR.

See: Judgement dated 25.08.2023 passed by Division Bench of Allahabad High Court in Criminal Misc. W.P. No. 13460/2023, Manoj Kumar Gupta Vs. State of UP & Others.

19.2 Stricture by Supreme Court in May, 2023 against Sri Sanjay Shanker Pandey, District Judge, Lucknow, due for retirement on 30.06.2023, for not observing the law/guidelines of the Hon'ble Supreme Court issued in Satendra Kumar Antil Vs. CBI, (2021) 10 SCC 773 and Sushila Aggarwal Vs. State, (NCT of Delhi), (2020) 5 SCC 1 (Five-Judge Bench) to grant anticipatory bails u/s 438 CrPC. Sri Pandey was directed to undergo training programme on law of anticipatory bails. SLP filed by him in June, 2023 was not decided by the Supreme Court and the same was deferred for July, 2023 for disposal after his retirement on 30.06.2023.

19.3. : Addl. Sessions Judge, Lucknow condemned for being totally negligent, careless and ignorant of the law in framing charge and convicting against a single accused for offence u/s 120-B IPC. The Division Bench directed the ASJ to undergo exhaustive training at the JTRI, Lucknow to be recharged with the nuances of law on the point. See: Judgment dated 25.02.2015 of the Lucknow Bench in Cr. Appeal No. 1150/2011, Hoshiyar Singh Vs. State of UP.

19.4. : Addl. Sessions Judge, Aligarh condemned for awarding death sentence to three persons on the basis of incomplete chain of circumstantial evidence. See: Kiran Pal Vs. State of U.P., 2009 (65) ACC 50 (All—D.B.)

19.5. : Strictures against Addl. Sessions Judge (Fast Track Court), Aligarh for illegal conviction and penalty u/s 363 IPC r/w Sec. 3(2)(5) of the SC/ST (Prevention of

Atrocities) Act, 1989. See: Munni Devi Vs. State of U.P. 2009 (65) ACC 522 (All—D.B.).

19.6. : Sessions Judge, Ghazipur condemned for holding in revisional order that revision u/s 397 CrPC does not lie against a cognizance taking order passed by Magistrate u/s 190(1)(b) CrPC upon police report (charge-sheet) received u/s 173(2) CrPC. See: Arvind Kumar Tewari Vs. State of UP, 2005 (51) ACC 139 (All) & S.K. Bhatt Vs. State of UP, 2005 (52) ACC 699 (All--D.B.)

19.7. : Strictures against Sessions Judge, Rampur for, contrary to the provisions of Section 195/340/344 CrPC, directing the SSP, Rampur in a judgment delivered in Sessions Trial to register and investigate FIR against the complainant/PW for having lodged false FIR against the accused person. See: Lekhraj Vs. State of UP, 2008 (61) ACC 831 (All).

19.8. : Strictures against CJM, Rampur & other Judicial Officers for not granting bail to accused persons detained under U.P. Prevention of Cow Slaughter Act, 1955 & Prevention of Cruelty to Animals Act for their excessive devotion towards cows and cow progeny. See: Asfaq Ahmad Vs. State of UP, 2008 (63) ACC 938 (All).

19.9. : Strictures (now expunged) against Judicial Magistrate for treating an application u/s 156 (3) CrPC as complaint. See: Smt. Mona Panwar Vs Hon'ble High court of Judicature at Allahabad through its Registrar, 2011(2) ALJ 445(SC).

19.10. : Strictures against ACJM, Agra for lack of knowledge of law while rejecting the discharge application and framing charge u/s 409 IPC against the accused. See: Mukesh Chauhan Vs. State of UP, 2008 (63) ACC 514 (All).

19.11. : against Magistrate for order diluting and dropping charge without recording reasons. See: R.S Mishra Vs. State of Orissa, 2011 CrLJ 1654 (SC).

19.12. : Strictures against the Addl. District Judge, Lucknow for awarding inadequate compensation to the tune of Rs. 1,86,380/- only in the case of accidental death of an employee of the UP Civil Secretariat, Lucknow and for not applying the law declared

by the Hon'ble Supreme Court in the case of Rani Gupta & others Vs. United India Insurance Company Limited & others, (2009) 13 SCC 498 while deciding the said MACP on 29.05.2006 as Presiding Officer of the MACT. A Division Bench of the Lucknow Bench vide its judgment & order dated 30.07.2014 passed in Writ Petition (S/B) No. 1446/2012, Prabhat Chandra Tripathi Vs. High Court of Judicature at Allahabad through Registrar General directed the said stricture to be expunged from his service record.

19.13. : Strictures against the Addl. District Judge, Kanpur Nagar/Judge SCC for having recorded illegal findings on the necessity of notice u/s 106 of the Transfer of Property Act. See : Smt. Anjali Awasthi Vs. Mohammad Shafique, 2006 (65) ALR 204 (All).

19.14. : Strictures (directed to be treated as advisory and not as adverse remarks) against the Addl. Sessions Judge, Deoria for awarding only three years imprisonment for offence u/s 304(II) IPC. See : order dated 21.09.2012 of the Allahabad High Court passed in Criminal Appeal No. 3337/2012, Ram Deni Vs. State of UP.

19.15. : Strictures by the Delhi High Court against an Addl. Sessions Judge of Delhi for committing error of law in passing some judicial order with the direction to undergo four months training in the Delhi Judicial Academy.

19.16. : For strictures against Police Officers, See : (i) State of Karnataka Vs. Registrar General, Karnataka High Court, AIR 2000 SC 2626 (ii) S.K. Viswambaran Vs. E. Koyakunju and others, 1987(24) ACC 318 (SC) and (iii) State of UP Vs. Mohd. Naim, AIR 1964 SC 703.

19.17 : For Strictures against IAS Officers, See : (i) Smt. Aneeta Bhatnagar Vs. State of UP, 2003 (47) ACC 1082 (Allahabad) and (ii) Girish Vyas Vs. State of Maharashtra, AIR 2012 SC 2043.

19.18. : For strictures by P & H High Court against the Chief Minister of Haryana, see : Om Prakash Chautala Vs. Kanwar Bhan, AIR 2014 SC 1220.

19.19. : A Principal Judge of the Family Court, Sultanpur was summoned by a Division Bench of the Lucknow Bench of the Hon'ble Allahabad High Court to explain as to why and how he passed an order regarding maintenance to a divorced wife contrary to the provisions of law. On appearance before the Division Bench, when asked by the bench to explain the illegality in passing of the order, the Principal Judge, Family Court, instead of replying to the query, apprised the Bench that the said order was passed by his predecessor and not by him and asked the Bench why it had summoned him and wasted the time of his court at Sultanpur. During the questions-answers by the Bench, the Principal Judge, Family Court lost his temper and commented in the open court that he was appointed through selection by the Public Service Commission of Uttar Pradesh and not by the opaque system of collegium. The Division Bench reprimanded him and recorded severe strictures against him condemning his conduct and sent the copy of the order to the Chief Justice of the Allahabad High Court for action against him. Given his previous similar misconduct in the past on appearance before the Lucknow Bench in another case, the Chief Justice placed him under suspension and instituted a departmental enquiry into his misconduct. See: Order dated 18.11.2019 passed by the Division Bench of the Lucknow Bench in First Appeal No. 25 / 2017, Mohd. Irshad Vs. Smt. Anjum Bano.

19.20. : Court criticized the District Judge, Hardoi for passing strictures against an ACJM, Hardoi in Criminal Appeal by observing that she had poor knowledge of law and wrongly recorded conviction of the accused for offence u/s 406 IPC. See:Judgment dated 15.12.2020 of the Lucknow Bench u/s 482,378,407 CrPC in Petition No.2389/2020, Alka Pandey Vs. State of UP.

List of Important Reported Cases on Strictures

1.	An SIT comprising DIG & two senior SSPs constituted by Division Bench of Allahabad High Court to investigate into conduct/complaint against CJM Banda, Dr. Bhagwan Das Gupta, whose protest petition against final report in favour of accused engineers of UP Power Corporation was registered by ACJM, Lucknow for having given him a bill/demand notice of Rs. 2,10,063/- as arrear of electric bill on a house in Lucknow purchased by him from sellers.	Judgement dated 25.08.2023 passed by Division Bench of Allahabad High Court in Criminal Misc. W.P. No. 13460/2023, Manoj Kumar Gupta Vs. State of UP & Others.
2.	Division Bench order dated 14.09.2023 requiring Shri Lal Bahadur Gond, CJM, Hardoi to appear before Lucknow Bench to explain as to why he allowed application u/s 156(3)CrPC to register FIR against SDM Dr. Arunima Srivastava without sanction of competent authority.	Division Bench order dated 14.09.2023 of Lucknow Bench of Allahabad High Court passed in Criminal Misc. W.P. 7084/2023, State of UP Vs. State of UP
3.	Totaram versus State of Madhya Pradesh	Judgment dated 06.04.2023 of the Supreme Court passed in Criminal Appeal No 1010 of 2023
4.	Sanjay Kumar Sain versus State of NCT of Delhi.	Judgement dated 01.03.2023 passed by Delhi High Court in W.P.(CRL) 76/2023
5.	Manish S. Pardasani v/s Inspector, State Excise	(2019) 2 SCC 660
6.	Hoshiyar Singh Vs. State of UP	Judgment dated 25.02.2015 of the Lucknow Bench in Cr. Appeal No. 1150/2011
7.	Om Prakash Chautala Vs. Kanwar Bhan,	AIR 2014 SC 1220.
8.	Awani Kumar Upadhyay Vs. Hon'ble High Court of Judicature at Allahabad,	AIR 2013 SC 2189
9.	Anuja Prabhu dessai Vs. State of Goa,	AIR 2013 SC 1076
10.	Amar Pal Singh Vs. State of UP	AIR 2012 SC 1995
11.	Smt. Mona Panwar Vs. Hon'ble High court of Judicature at Allahabad through it's Registrar,	2011(2) ALJ 445(SC)
12.	Munni Devi Vs. State of U.P.	2009 (65) ACC 522 (All—D.B.)
13.	Kiran Pal Vs. State of U.P.	2009 (65) ACC 50 (All—D.B.)
14.	Asfaq Ahmad Vs. State of U.P.	2008 (63) ACC 938 (All)
15.	Mukesh Chauhan Vs. State of U.P.	2008 (63) ACC 514 (All)
16.	Lekhraj Vs. State of U.P.	2008 (61) ACC 831 (All)
17.	Smt. Anjali Awasthi Vs. Mohammad Shafique	2006 (65) ALR 204 (All)
18.	Jogendra Vs. State of U.P.	2005 (52) ACC 153 (All)
19.	Samya Sett Vs. Shambhu Sarkar	(2005) 6 SCC 767
20.	Teesta Setalvad Vs. State of Gujarat	2005 (51) ACC 692 (SC)
21.	State Vs. N.M.T. Joy Immaculate	(2004) 5 SCC 729
22.	In the Matter of: 'RV', A Judicial Officer	(2004) 7 SCC 729
23.	Zahira Sheikh Vs. State of Gujarat	(2004) 5 SCC 353
24.	Smt. Aneeta Bhatnagar Vs. State of U.P.	2003 (47) ACC 1082 (All)
25.	"K", A Judicial Officer, In Re	(2001) 3 SCC 54
26.	Manish Dixit and others Vs. State of Rajasthan	AIR 2001 SC 93
27.	Devendra K. Sharma Vs. State of Rajasthan	AIR 2001 SC 93
28.	State of Karnataka Vs. Registrar General	2000 (41) ACC 577 (SC)
29.	Pammi Vs. Government of M.P.	AIR 1998 SC 1185
30.	Braj Kishore Thakur Vs. Union of India and others	AIR 1997 SC 1157
31.	Kashi Nath Roy Vs. State of Bihar	JT 1996 (4) SC 605
32.	K.P. Tiwari Vs. State of M.P.	AIR 1994 SC 1031
33.	A.M. Mathur Vs. Pramod Kumar Gupta	(1990) 2 SCC 533

Model Representation to Expunge Strictures

Dated: 19.12.2019

From:

A.B.
Addl. Chief Judicial Magistrate
Court No. 4, -------

To,

The Hon'ble District & Sessions Judge

Subject: Request for recalling certain critical remarks recorded against me by your goodself in your judgment dated 19.10.2019 passed in Criminal Appeal No. 47/2019, Yamohan Singh Versus State of UP & Others.

Respected Sir,

I most humbly beg to submit my representation on the subject noted above as under:

1. That I had passed my judgement and order dated 17.08.2019 convicting the accused Yamohan Singh for the offences u/s 406 and 411 of the IPC and sentenced him with the rigorous imprisonment for two years and fine of Rs. 5000/- in each of the said penal sections. As per the prosecution case, the accused Yamohan Singh had appeared in the High School Examination of the subject Sanskrit- II paper on 20.04.1999 and had taken away his answer sheet from the examination center. An FIR at Crime No. 74/1999 for the offences u/s 406, 411 IPC was registered against him with the Police Station: Madhoganj, District: ----------. After investigation of the case, the police had submitted to the court a charge-sheet against the accused Yamohan Singh for the offences u/s 406 and 411 of the IPC. After completion of the trial in my court, the aforesaid judgement and order of conviction of the accused Yamohan Singh was passed by me on 17.08.2019 and he was sentenced accordingly. The convict/appellant Yamohan Singh preferred criminal appeal bearing No. 47/2019, Yamohan Singh Vs. State of Uttar Pradesh & Others u/s 374(3) CrPC before the court of the learned Sessions Judge, ------. The said criminal appeal was decided on 19.10.2019 by Shri. ----------, the present Hon'ble Sessions Judge, -------- and the convict appellant Yamohan Singh was acquitted of the said offences. Shri ----------, the present Hon'ble Sessions Judge, --------, while passing his aforesaid

judgement and order of acquittal dated 19.10.2019 of the convict/appellant Yamohan Singh made following critical observation against me:
"विद्वान मजिस्ट्रेट ने बिना साक्ष्य का विश्लेषण किये हुए अपीलार्थी/अभियुक्त के विरूद्ध आरोप सिद्ध होने का जो निष्कर्ष निकाला है वह त्रुटिपूर्ण है। यहाँ यह उल्लेखनीय है कि विद्वान मजिस्ट्रेट के द्वारा जो निर्णय लिखा गया है, उसमें अभियोजन केस के उपरान्त उस साक्ष्य का वर्णन किया गया है जो अभियोजन ने प्रस्तुत किया है जिसमें सभी साक्षियों की मुख्य परीक्षा व प्रतिपरीक्षा के बयान उसी रूप में उतार लिए गये हैं और फिर उसके बाद बिना साक्ष्य का कोई विश्लेषण किये हुए विद्वान मजिस्ट्रेट सीधे निष्कर्ष पर आ गये हैं और यह निष्कर्ष दे दिया है कि अभियोजन साक्ष्य से अभियुक्त के विरूद्ध धारा 406 व 411 भा.दं.सं. के आरोप सिद्ध हो रहे हैं। अपर मुख्य न्यायिक मजिस्ट्रेट स्तर के न्यायिक अधिकारी से ऐसे निर्णय की अपेक्षा नही की जा सकती। विद्वान मजिस्ट्रेट से निर्णय लेखन में सुधार अपेक्षित है" ।

2. That I most earnestly clarify my position here that by means of this representation of mine, I am not questioning the conclusion of acquittal of the accused / appellant reached by your goodself in the said Criminal Appeal No. 47/2019 nor I am interested in the merits of the appeal. By means of this representation of mine, I am only requesting your goodself to recall the critical observations recorded against me regarding non-appreciation of evidence on record of the case in as much as I had discussed in detail the entire evidence, oral as well as documentary, before recording the findings of fact in support of conviction of the accused / appellant for the offences u/s 406 and 411 of the IPC.

3. If the observations of the learned Sessions Judge, -------- made in his said judgement dated 19.10.2019 are mere advisory in character then I have no grievance and thankfully respect the said observations and would abide by the said advice of the learned Sessions Judge. However, the part of the observation of the learned Sessions Judge that "अपर मुख्य न्यायिक मजिस्ट्रेट स्तर के न्यायिक अधिकारी से ऐसे निर्णय की अपेक्षा नही की जा सकती, विद्वान मजिस्ट्रेट से निर्णय लेखन में सुधार अपेक्षित है" is not mere advisory in nature but condemnatory, disparaging, ridiculous and damaging to the career of mine as Judicial Officer. The judgement and order dated 19.10.2019 acquitting the convict/appellant could have been passed by the learned Sessions Judge, -------- on merits of the appeal and without passing the aforesaid condemnatory, disparaging, ridiculous and damaging remarks against me. Since the said critical remarks of the learned Sessions Judge, -------- are contained in the aforesaid appellate judgement dated 19.10.2019 which is a public document, many lawyers and others have also come to know about the same and I am being ridiculed by many in the Bar, the brother officers and the officials of the judgeship and the same is causing immense damage to my reputation, mental peace and calm as well.

4. That none of the parties to the said Criminal Appeal or anybody else had ever made any complaint against me in respect of the said judgment and order of conviction of the accused / appellant Yamohan Singh passed by me nor the convict / appellant had leveled any allegations against me in appeal except preferring his appeal on the grounds of facts and evidence on record of the case.

5. That in my six years of career so far in judicial service, no Hon'ble Judge of any superior court has ever passed any critical remarks against me nor any judgment or order of mine has ever been commented upon adversely. If the critical remarks against me passed by your goodself in your said appellate judgment and order dated 19.10.2019 are not expunged and are retained and allowed to exist in the said judgment, the same are bound to hurt my reputation as a Judicial Officer.

6. **That in the cases reported in (i) Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537, (ii) Baby Vs. Inspector of Police, (2016) 13 SCC 333 and (iii) Lalita Kumari Vs. State of UP, (2014) 2 SCC1, the Hon'ble Supreme Court while explaining the scope of the appellate powers u/s 386 CrPC has repeatedly ruled that many a times two views are possible on the same very evidence, one as taken by the trial court and the other one as taken by the superior/appellate court and if the appellate court takes a different view than the one taken by the trial court then it does not mean that the view taken by the trial court was not a possible view. I again clarify here that I bow my head to the view taken by your goodself in your appellate judgement dated 19.10.2019 and respect the same. My grievance is confined only to the critical remarks recorded against me in the said judgement of your goodself.**

7. **That even assuming that there was some mistake on my part in appreciating the evidence on record, it cannot be inferred that the same was done by me for any extraneous reasons as there was no evidence at all on record to that effect. In the case of Braj Kishore Thakur Vs. Union of India & Others, (1997) 4 SCC 65, the Hon'ble Supreme court has held that *"a Judge who has not committed any error is yet to be born"*. Passing of strictures, disparaging remarks and similar other observations by the superior courts against the members of the subordinate judiciary has repeatedly been prohibited by the Hon'ble Supreme Court over the**

decades as has been reported in the cases (i) "K", A Judicial Officer, In Re, (2001) 3 SCC 54, (ii) Amar Pal Singh Vs. State of UP, AIR 2012 SC 1995, (iii) Braj Kishore Thakur Vs. Union of India and others, AIR 1997 SC 1157, (iv) A.M. Mathur Vs. Pramod Kumar Gupta, (1990) 2 SCC 533, (v) S.K. Viswambaran Vs. E. Koyakunju, 1987 (24) ACC 318, (vi) S.K. Viswambaran Vs. E. Koyakunju, 1987 (24) ACC 318 (SC), (vii) K.P. Tiwari Vs. State of M.P., 1994 Suppl. (1) SCC 540, (viii) Manish S. Pardasani Vs. Inspector State Excise, (2019) 2 SCC 660 and (ix) Amar Pal Singh Vs. State of UP, AIR 2012 SC 1995.

8. **I most humbly invite the kind attention of your goodself towards the decision of the Hon'ble Supreme Court rendered in the case of Smt. Mona Panwar Vs. Hon'ble High Court of Judicature at Allahabad through its Registrar, 2011(2) ALJ 445(SC) (para 11) where certain critical remarks recorded by the Hon'ble High Court against the Judicial Magistrate Smt. Mona Panwar were expunged by the Hon'ble Supreme Court by making following observations:**

"This Court has laid down in several reported decisions that higher courts should observe restraint and disparaging remarks normally should not be made against the learned members of the lower judiciary. In Ishwari Prasad Mishra Vs. Mohd. Isa, (1963) 3 SCR 722, a Three-Judge Bench of this Court has emphasized the need to adopt utmost judicial restraint against using strong language and imputation of motive against the lower judiciary by noticing that in such matters the concerned Judge has no remedy in law to vindicate his position. The law laid down by this Court in the matter of expunction of remarks where a subordinate Judge has been subjected to disparaging and undeserved remarks by the superior Court is well settled by this Court in the matter of `K', a Judicial Officer Vs. Registrar General, High Court of Andhra Pradesh, 2001 (3) SCC 54. In the said decision, this Court has succinctly outlined the guidelines in this regard in paragraph 15 of the said judgment thus: 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. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in the open and therefore becomes public. ***Thirdly,*** *human nature being what it is, such criticism of a judicial officer contained in the judgment of a higher court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge.* ***Fourthly,*** *seeking expunging of the observations by a judicial officer by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court, a situation not very happy from the point of view of the functioning of the judicial system.* ***And last*** *but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous Judge being caught unaware in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralizing effect not only on him but also on his colleagues. If all this is avoidable why should it not be avoided? However, this Court has further provided that the parameters outlined hereinbefore must not be understood as meaning that any conduct of a subordinate judicial office unbecoming of him and demanding a rebuff should be simply overlooked. This Court has outlined an alternate safer and advisable course of action in such a situation, that is of separately drawing up proceedings, inviting the attention of the 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. The actions so taken would all be on the administrative side with the subordinate Judge concerned having an opportunity of clarifying his position and he would be provided the safeguard of not being condemned unheard, and if the decision be adverse to him, it being on the administrative side, he would have some remedy available to him under the law. Again, in K.P. Tiwari Vs. State of M.P., 1994 Supp. (1) SCC 540, this Court had to remind all concerned that using intemperate language and castigating strictures on the members of lower judiciary diminishes the image of judiciary in the eyes of public and, therefore, the higher courts should refrain from passing disparaging remarks against the members of the lower judiciary. The record would show that the appellant had discharged her judicial duties to the best of her capacity. To err is human. It is often said that a Judge, who has not committed an error, is yet to be born. This dictum applies to all the learned Judges at all levels from the lowest to the highest. The difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. But merely because there is difference in views, it does not necessarily establish that the lower courts are necessarily wrong and the higher courts are always right. Therefore, this Court in several reported decisions has emphasized the need to adopt utmost judicial restraint against making the disparaging remarks so far as members of lower judiciary are concerned".*

9. That expressing my utmost regard and sense of subordination of mine to your goodself, I request your goodself with my folded hands to pardon me to state here that the aforesaid critical remarks in the appellate judgment and order dated 19.10.2019 of your goodself have been passed against me in breach of the imperative law declared repeatedly by the Hon'ble Supreme Court in the aforesaid cases as quoted in the preceding paragraphs and for that reason the same are not sustainable in law and deserve to be recalled. In the cases reported in **Mayuram Vs. CBI, (2006) 5 SCC 752,** *(*Para 11*)* and **State of Orissa Vs. Mamata Mohanty, (2011) 3 SCC 436**, it has repeatedly been declared by the Hon'ble Supreme Court that to perpetuate an error is no heroism and to rectify it is the compulsion of the judicial conscience. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. The provisions of Section 362 CrPC are therefore not an obstacle against recall of the crucial remarks recorded by your goodself in your said judgment and order dated 19.10.2019 in as much as I am not pressing for altering or recalling or setting aside the substance or the part of the appellate judgment and order dated 19.10.2019 of your goodself acquitting the convict appellant Yamohan Singh of the offences u/s 406 and 411 of the IPC. I am only requesting to expunge the critical remarks against me which will not alter or set aside any substantive part of the appellate judgment and the recall of the critical remarks would not alter or reflect upon the ultimate result of acquittal reached by your goodself in your aforesaid appellate judgment.

10. **It is further noticeable that the law declared by the Hon'ble Supreme Court of India is binding on all courts and authorities by virtue of mandate of Article 141 of the Constitution of India and the judicial discipline to abide by such law cannot be forsaken for any reasons as has been declared by the Hon'ble Supreme Court itself in the cases reported in (i) Union of India Vs Major General Shri Kant Sharma, (2015) 6 SCC 773, (ii) Suga Ram @ Chhuga Ram vs. State of Rajasthan, AIR 2006 SC 3258, (iii) State of Punjab vs. Bhag Singh, (2004) 1 SCC 547, (iv) S.I. Rooplal vs. Lt. Governor, Delhi, AIR 2000 SC 594 (Three-Judge Bench) and (v) Union of India vs. Kantilal Hemantram Pandya, AIR 1995 SC 1349.**

11. That a very disturbing rumour has been going on in the District Court premises, --------- for the last few months that a Police Sub-Inspector of the P.S.: Kachhauna, District: ---------, has been instrumental and the epicenter of all the troubles against me from the end of the Hon'ble Sessions Judge, -------, be it public snubbing of mine in the monthly meetings, issuance of D.Os. and in

several other forms of humiliations. For sake of the dignity of the institution, for preserving the cordial and congenial atmosphere within the judgeship, sobriety and above all my subordination to the higher echelon of the district judiciary, I prefer here to exercise restraint in divulging more details with regard to the role of the said Police Sub-Inspector in bringing troubles against me. With all respect and reverence at my command towards your goodself, I most humbly hereby apprise your goodself that after verifying the truth in the said rumour, I will soon send a separate confidential report to your goodself in regard to the heard of role of the said Police Sub-Inspector in bringing all the troubles against me since September, 2019 and onwards.

12. That as is evident from my said judgment and order dated 17.08.2019 convicting the accused Yamohan Singh for the offences u/s 406 and 411 IPC, I had considered all the oral and documentary evidence on record and had recorded my findings in support of his conviction for the said offences as per my understanding of the evidence on record and the law applicable thereto. If your goodself found the findings of facts recorded by me unsustainable, I have no problem to the same. My only grievance is with regard to the critical observations recorded by your goodself against me. I had passed my said judgment and order of conviction bona fide in utter good faith with clean conscience and in discharge of my judicial functions as the Presiding Officer of my court and for that reason I was and even now I am entitled to the protection of the '**Judicial Officers Protection Act, 1850**' and the '**Judges Protection Act, 1985**' and am further entitled to the protection of **Sections 52 & 77 of the IPC and Section 114(e) of the Evidence Act.**

13. That there had been no evidence on record reflecting on any extraneous motive of mine in passing the said judgment and order of conviction dated 17.08.2019 of the accused Yamohan Singh nor your goodself has recorded any such observations in your appellate judgment and order of acquittal dated 19.10.2019 passed in the said Criminal Appeal No. 47/2019.

14. That I wanted to annex certified copies of the said two judgements dated 19.10.2019 and 17.08.2019 with this representation of mine and had submitted my application dated 07.12.2019 and then a reminder application dated 13.12.2019 to the Addl. District & Sessions Judge at -------- who is In-Charge of the Copying Section of the -------- Judgeship requesting her to provide me the certified copies of the said two judgements but no copy has been provided to me till date and when I personally requested her, she verbally apprised me that she has been forbidden by some higher authority of the judgeship not to pass any

order upon my said application and the reminder application and not to issue any certified copy of the said two judgements to me.

15. I most humbly request your goodself to recall that part of your observation in your aforesaid appellate judgement dated 19.10.2019 which is critical and damaging to my career. I shall remain grateful to your goodself for this grace of yours all through my life.

or Alternatively

If your goodself finds yourself constrained to recall the said critical remarks against me, I hereby request your goodself to refer this representation of mine to the Hon'ble Administrative Judge of the District Court, -------- for his Lordship's kind consideration and expunction of the said critical remarks recorded by your goodself against me in your aforesaid judgement dated 19.10.2019 passed in Criminal Appeal No. 47/2019.

With Profound Regards,

Yours Obediently

(----------)
Addl. Chief Judicial Magistrate
Court No. 4, ----------.

AFR

Court No. – 29

Case :- U/S 482/378/407 No. - 2389 of 2020

Applicant :- Alka Pandey
Opposite Party :- State Of U.P. & Others
Counsel for Applicant:- Pradeep Kumar Rai,Devansh Mishra,Prakarsh Pandey,Praveen Kumar Shukla,Priyansu Singh
Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur,J.

1. Heard Sri Pradeep Kumar Rai, learned counsel for the applicant assisted by Sri Prakarsh Pandey, Advocate as well as learned Additional Government Advocate for the State of U.P. and Sri Gaurav Mehrotra, Advocate who has put in appearance on behalf of opposite party no. 2.

2. The present application under section 482 Cr.P.C. has been filed by a judicial officer whose judgment in Criminal Case No. 909/2019 convicting the accused under Section 406 and 411 IPC , was set aside in appeal by the Sessions Judge, who has also commented adversely on the applicant and therefore being aggrieved by the same, prayer has been made to quash/expunge the said remarks.

3. The facts in brief are that the applicant while posted as Additional Chief Judicial Magistrate, Court No. 01, Hardoi heard and decided Criminal Case No. 909/2019 (State Vs. Yamohan Singh). The accused therein, was alleged to have appeared in an examination on 20/04/1999, and during the said examination when the investigator had accompanied one other student outside the hall, the accused left the examination along with the question paper and the answer sheet. It is stated that he was subsequently apprehended and found to be in possession of the answer sheet and was therefore charged under Section 406 and 411 of the IPC. The applicant decided the said case on 17/08/2019 and found the accused guilty and sentenced him to 2 years simple imprisonment and a fine of Rs. 5000/- failing which he was to undergo six months further imprisonment. The order of trial Court was subjected to appeal before the Sessions Judge, Hardoi.

4. The Sessions Judge, Hardoi allowed the Criminal Appeal No. 47/2019, filed by the accused against the order passed by the applicant. The Sessions Judge held that there was no eyewitness of the fact that the accused had ever participated in the said examination nor did anyone see him leaving the said examination hall along with the question paper. He also returned a finding that the Investigating Officer was not examined and therefore the recovery of the question paper itself was doubtful and therefore held that none of the charges could be proved by the prosecution and consequently allowed the said appeal. He also made the following remarks against the applicant:-

Þfo}ku eftLVsªV us fcuk lk{; dk fo'ys"k.k fd;s gq, vihykFkhZ@vfHk;qDr ds fo:) vkjksi fl) gksus dk tks fu"d"kZ fudkyk gS og =qfViw.kZ gSA ;gk¡ ;g mYys[kuh; gS fd fo}ku eftLVsªV ds }kjk tks fu.kZ; fy[kk x;k gS] mlesa vfHk;kstu dsl ds mijkUr ml lk{; dk o.kZ; fd;k x;k gS tks vfHk;kstu us izLrqr fd;k gS] ftlesa lHkh lkf{k;ksa dh eq[; ijh{kk o izfrijh{kk ds c;ku mlh :i esa mrkj fy;s x;s gSa vkSj fQj mlds ckn fcuk lk{; dk dksbZ fo'ys"k.k fd;s gq, fo}ku eftLVsªV lh/ks fu"d"kZ ij vk x;s gSa vkSj ;g fu"d"kZ ns fn;k gS fd vfHk;kstu lk{; ls vfHk;qDr ds fo:) /kkjk 406] 411 Hkk0na0la0 ds vkjksi fl) gks jgs gSaA vij eq[; eftLVsªV Lrj ds U;kf;d vf/kdkjh ls ,sls fu.kZ; dh vis{kk ugha dh tk ldrhA fo}ku eftLVsªV ls fu.kZ; ys[ku esa lq/kkj visf{kr gSAß

5. Aggrieved by the comments and observations made by the judgment passed in the criminal appeal, the Judicial Magistrate, who authored the trial Court's judgment, has approached this Court by means of present application under Section 482 Cr.P.C.

6. In the instant application we are not called upon to examine the correctness of the order passed by the Sessions Judge with regard to the findings recorded on merits of the case as sitting in appeal, but examine the impugned judgment only with regard to the aforesaid comments/observations made against the applicant who was discharging the duties of the presiding judge.

7. The question which arises for determination in the present application is whether it was appropriate or was there any justification for the Sessions Judge in his capacity as an appellate Court to pass any comments regarding the dexterity, knowledge or intelligence or manner of dealing with a case by the trial Judge. Numerous judgments have been placed before us passed by the Hon'ble Supreme Court as well as by this Court which have unequivocally discouraged the practice by the superior Courts from commenting upon the capabilities or in any manner reflecting upon the

persona of the Judge of the subordinate Court while hearing an appeal or revision where such judgment is under challenge or even otherwise where such a judgment is placed for consideration before the higher Court.

8. We also heard Sri Gaurav Mehrotra, Advocate appearing on behalf of the High Court, who has submitted the written instructions. He has also informed that the remarks of the District and Sessions Judge are only advisory in nature and not condemnatory. He further informed this Court that on the basis of the said remark no action has been taken against the applicant nor is there any proposal of the same.

9. The jurisdiction of this Court under section 482 Cr.P.C. to expunge the remarks made in the order of subordinate Court was duly considered and answered in affirmative by the Hon'ble Supreme Court in the case of **State of U.P. Vs. Mohd. Naim, (1964) 1 CrLJ 549**. The Hon'ble Apex Court duly considered the power of the High Court under section 482 Cr.P.C. and observed that it has inherent powers to expunge the remarks made by itself or by subordinate Court to prevent abuse of process of Court or otherwise secure the ends of justice. It was further observed in the said judgment that if there is one principle of cardinal importance in the administration of justice, it is :

"*the proper freedom and independence of judges and magistrates will be maintained and they must be allowed to perform the functions freely and fearlessly and without undue interference by anybody, even by this Court, at the same time it is equally necessary that in expressing their opinions judges and magistrates must be guided by considerations of justice, fair play and restrain.*"

10. It is not infrequent that sweeping generalisation defeat the very purpose for which they are made to stop it has been traditionally recognised that the matter of making disparaging remarks against person/authority who’s conduct comes into consideration before the Courts of law in the cases to be decided by them. It is relevant to consider (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself, (b) whether there is evidence on record bearing on that conduct justifying the remark, (c) whether it is necessary for decision of the case, as an integral part thereof, to advert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from some petty moderation and reserve.

11. The Sessions Judge while hearing the appeal had full powers and jurisdiction at his command to re-appreciate the evidence to disagree and come to a different conclusion that of the trial Court, but his jurisdiction fell short of commenting upon the shortcomings of the applicant while discharging the duties of trial Court dealing with the said case. It was not expected from him to remonstrate that applicant while discharging the duties of a trial judge had not written the judgment as expected from a judicial officer. The said comment starkly reflects upon the persona of the judicial officer, and while deciding the said appeal the Sessions Judge was expected to judge the case which were before him, and had no jurisdiction to judge the judicial officer who was the author of the judgment. Undeniably the District and Sessions Judge has administrative control over the judicial officers subordinate to him, but the administrative control cannot be equated to power of superintendence which is vested only with the High Courts. The Hon'ble Supreme Court in this regard has also even cautioned the High Courts to refrain from making observations extending to criticism of the subordinate judicial officer in as much as the said judicial officer is condemned unheard which is violative of principles of natural justice, and it should not be forgotten that the subordinate judiciary itself is dispensing justice and it gives chance to the litigating party to have a sense of victory not only over his opponent but also over the judge who decided the case against him. This is subversive of the judicial authority of the deciding judge and such an unsavory situation leads to the judicial officer filing a petition which reduces his status to a litigant and this is clearly not conducive of judicial functioning. In the case of **In the Matter of "K" A Judicial Officer (2001) 3 SCC 54** it was observed:-

"*Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our Judges. This quality in decision-making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other coordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the Judge has failed in these qualities, it will be neither good for the Judges nor for the judicial process."*

12. It should also be remembered that the conduct of the subordinate judicial officer unbecoming of himself and requiring corrective action should not be overlooked, but there is an alternative safe and advisable course available to choose from which is to intimate the Hon'ble the Chief Justice or the Administrative Judge along with

the copy of the judgement for further action, rather than taking up the matter on the judicial side. The advantage of this course of action would be, that the subordinate judge concerned would have an opportunity to clarify his position and shall not be condemned unheard.

13. In the case of **Amar Pal Singh vs State of Uttar Pradesh and Another, (2012) 6 SCC 491** the Apex Court observed as follows :

"*27. A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on use of dignified language and sustained restraint, moderation and sobriety. It is not to be forgotten that independence of judiciary has an insegregable and inseparable link with its credibility. Unwarranted comments on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law. The sanctity of decision making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the part of the superior Courts to take recourse to correctional measures. A reformative method can be taken recourse to on the administrative side.*

28. It is condign to state it should be paramount in the mind of a Judge of superior Court that a Judicial officer projects the face of the judicial system and the independence of judiciary at the ground reality level and derogatory remarks against a judicial officer would cause immense harm to him individually (as the expunction of the remarks later on may not completely resuscitate his reputation) but also affects the credibility of the institution and corrodes the sacrosanctity of its zealously cherished philosophy. A judge of a superior Court however strongly he may feel about the unmerited and fallacious order passed by an officer, but is required to maintain sobriety, calmness, dispassionate reasoning and poised restraint. The concept of loco parentis has to take a foremost place in the mind to keep at bay any uncalled for any unwarranted remarks.

29. Every judge has to remind himself about the aforesaid principles and religiously adhere to them. In this regard it would not be out of place to sit in the time machine and dwell upon the sagacious saying of an eminent author who has said that there is a distinction between a man who has command over 'Shastras' and the other who knows it and puts into practice. He who practises them can alone be called a 'vidvan'. Though it was told in a different context yet the said principle

can be taken recourse to, for one may know or be aware of that use of intemperate language should be avoided in judgments but while penning the same the control over the language is forgotten and acquired knowledge is not applied to the arena of practice. Or to put it differently the knowledge stands still and not verbalised into action. Therefore, a committed comprehensive endeavour has to be made to put the concept to practice so that it is concretised and fructified and the litigations of the present nature are avoided.

30. Coming to the case at hand in our considered opinion the observations, the comment and the eventual direction were wholly unwarranted and uncalled for. The learned Chief Judicial Magistrate had felt that the due to delay and other ancillary factors there was no justification to exercise the power under Section 156 (3) of the Code. The learned Single Judge, as is manifest, had a different perception of the whole scenario. Perceptions of fact and application of law may be erroneous but that never warrants such kind of observations and directions. Regard being had to the aforesaid we unhesitatingly expunge the remarks and the direction which have been reproduced in paragraph three of our judgment. If the said remarks have been entered into the annual confidential roll of the judicial officer the same shall stand expunged. That apart a copy of the order be sent by the Registrar of this Court to the Registrar General of the High Court of Allahabad to be placed on the personal file of the concerned judicial officer."

14. Considering the dictum of the Hon'ble Supreme Court and applying it to the facts of the present case it is apparent that even though in his decision, the Sessions Judge has given adequate reasons for coming to a different conclusion in the criminal appeal, and setting aside the judgment of the trial Court, there was no occasion for him to observe that it was not expected of the judicial magistrate to write such a judgment and further that there is further scope of improvement. Though these comments on the face of it do not seem to be adverse but they clearly convey the dissatisfaction and displeasure of the District and Sessions Judge towards the applicant. It has repeatedly been observed by the Supreme Court as well as by this Court that criticism and observations touching upon the judicial officer incorporated in judicial pronouncements have their own infirmities for not only the judicial officers are condemned unheard of the harm caused by such criticism or observations also incapable of being undone. Sobriety, moderation and reserve are the greatest qualities of a judicial officer and he/she should never be divorced from them.

15.In the present case the Sessions Judge has re-examined the entire evidence and came to a contrary finding and has therefore allowed the criminal appeal. There was absolutely no occasion or any need to make any comments upon the applicant and in case he felt strongly about the shortcomings of the applicant, then it was always open for him to inform his Administrative Judge or Hon'ble the Chief Justice.

16.Therefore for the reasons stated above, I have no hesitation in deleting the following observations made in the judgment and order dated 19.10.2019, passed by the Sessions Judge, Hardoi in Criminal Appeal No. 47/2019 - Yamoham Singh Vs. State of U.P. :-

Þfo}ku eftLVsªV us fcuk lk{; dk fo'ys"k.k fd;s gq, vihykFkhZ@vfHk;qDr ds fo:) vkjksi fl) gksus dk tks fu"d"kZ fudkyk gS og =qfViw.kZ gSA ;gk¡ ;g mYys[kuh; gS fd fo}ku eftLVsªV ds }kjk tks fu.kZ; fy[kk x;k gS] mlesa vfHk;kstu dsl ds mijkUr ml lk{; dk o.kZ; fd;k x;k gS tks vfHk;kstu us izLrqr fd;k gS] ftlesa lHkh lkf{k;ksa dh eq[; ijh{kk o izfrijh{kk ds c;ku mlh :i esa mrkj fy;s x;s gSa vkSj fQj mlds ckn fcuk lk{; dk dksbZ fo'ys"k.k fd;s gq, fo}ku eftLVsªV lh/ks fu"d"kZ ij vk x;s gSa vkSj ;g fu"d"kZ ns fn;k gS fd vfHk;kstu lk{; ls vfHk;qDr ds fo:) /kkjk 406] 411 Hkk0na0la0 ds vkjksi fl) gks jgs gSaA vij eq[; eftLVsªV Lrj ds U;kf;d vf/kdkjh ls ,sls fu.kZ; dh vis{kk ugha dh tk ldrhA fo}ku eftLVsªV ls fu.kZ; ys[ku esa lq/kkj visf{kr gSAß

17.The application is accordingly **allowed**.

Order Date:- 15.12.2020
A. Verma

(Alok Mathur, J.)

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