

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4870/2024

Pallav Sharma son of Late Sh.Brij Mohan Sharma, aged about 43 Years, Resident Of 6-D/311, Chitrakoot, Jaipur-302 021

-----Petitioner

Versus

1. State of Rajasthan, through Public Prosecutor
2. Basant Dayani s/o Sh. Prabhu Das Dayani, aged about 34 years, resident of Dada Bari, Kota City, Kota (Rajasthan)
3. Prabhu Das son of Chotharam, resident of Dada Bari, Kota City, Kota (Rajasthan)
4. Surendra Pal Singh Sahni Son of Late Sh. Rajendra Singh Saini, aged about 66 Years, resident of 'Rajendra Villa' Rubber Factory Road, Bhimganj, Mandi, Kota Junction, Kota (Rajasthan).

-----Respondents

For Petitioner(s) : Mr. Sunil Samdaria

For Respondent(s) : Mr. Vivek Choudhary, PP

JUSTICE ANOOP KUMAR DHAND

Order

07/01/2025

Reportable

1. By way of filing of this petition, the following prayer has been made by the petitioner:

"In conspectus of aforesaid state of facts it is prayed to Honourable Court to allow the present petition expunging the adverse remarks recorded against the petitioner advocate in Para 9, 10 and 11 of the order dated 8.2.2024 passed in S.B. Criminal Misc. Petition No.548/2024 (Surendra

Pal Singh Sahni Vs State of Rajasthan and Others)

Award cost of the petition and pass any other appropriate order which this Honourable Court deem fit and proper in facts and circumstances of the case in favour of the petitioner."

2. Learned counsel for the petitioner submits that the petitioner is an Advocate practicing before this Court for last more than 19 years and during this period, his professional career remained unblemished and there was no complaint whatsoever against him. Counsel submits that at the time of arguments in the case of Surendra Pal Singh Sahni vs. State of Rajasthan and Others, before this Court in SB Criminal Misc. Petition No.548/2024, certain adverse remarks have been passed by this Court while passing the order dated 08.02.2024 in para Nos.9, 10 and 11. Counsel submits that before passing the aforesaid adverse remarks against the petitioner, no opportunity of hearing was provided to him, which would affect his future professional career. Counsel submits that the petitioner being a professional and Officer of this Court has highest regard to the majesty of the law and he cannot even think to disobey and disregard the Court by any act of indiscipline or misbehavior. Counsel submits that an additional affidavit has been submitted on 11.12.2024, wherein the petitioner has submitted that from the bottom of his heart, he reiterates that he holds this Court in high esteem and expresses regret, if this Hon'ble Court feels and believes that the alleged demeanour of the petitioner was not above board.

3. Counsel submits that even the Hon'ble Apex Court in the case of **Neeraj Garg vs. Sarita Rani and Others** reported in **2021 (9) SCC 92** and in the case of **Dushyant Mainali vs. Diwan Singh Bora and Another [SLP(C) No.15191/2022]** has held that before making any adverse remark, even against a lawyer, an opportunity of hearing is required to be given and the principle of natural justice is required to be followed, as nobody can be condemned unheard. Counsel submits that under these circumstances, the adverse remarks passed against the petitioner in para nos.9, 10 and 11 be expunged in the interest of professional career of the petitioner. He has also placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **State of UP vs. Mohd. Naim**, reported in **AIR 1964 SC 703**.

4. Per contra, learned counsel for the State opposed the arguments raised by the counsel for the petitioner, but he is not in a position to controvert the submissions made by the counsel for the petitioner.

5. Heard and considered the submissions made at Bar and perused the material available on the record.

6. Perusal of the record as well as the order dated 08.02.2024 indicate that while hearing the arguments of the said petition, the Co-ordinate Bench of this Court felt that the demeanour of the petitioner was not proper and that is why it was observed by the Co-ordinate Bench that the petitioner misbehaved with the Court and used undisciplined language/words and failed to maintain the discipline of the

Court and left the desk from the Court after showing tantrums and attitude. On the basis of the aforesaid observations and taking note of the aforesaid factual aspect of the matter, such alleged conduct of the petitioner was ordered to be kept on the record.

7. Advocates are officers of the Court first and they are the mouth speaker of their clients after that. Being officer of the Court, an Advocate is not expected to be either discourteous to the Court or Judge or use intemperate language against the Judge. Instance of any kind of misbehavior towards the Court cannot be tolerated. Courts can function only in a cordial atmosphere.

8. Maintenance of certain ethical standards is very necessary for upholding the dignity of the legal profession. As officers of the Court, Advocates should always maintain decorum in the Courtroom. An Advocate is supposed to control his emotions in the Courtroom, specially when the Judge makes a decision or passes an order. He/She should not make any faces or express disagreement or gratitude over the Court's order. Controlling emotions depicts seriousness and professionalism, which should not be limited to the four walls of the Courtroom. An Advocate is supposed to convince the Court by his/her logical arguments and reasons and not by appealing his sentiments.

9. Lawyers play an important part in the administration of justice. The profession itself requires the safeguarding of high moral standards. As an officer of the Court the overriding duty of a lawyer is to the Court, the standards of

his profession and to the public. Since the main job of a lawyer is to assist the Court in dispensing justice, the members of the Bar cannot behave with doubtful scruples or strive to thrive on litigation.

10. The Hon'ble Apex Court in the case of **O.P. Sharma vs. High Court of Punjab and Haryana** reported in **2011 (6) SCC 86**, has held that the role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. The role of lawyers in the framing of the Constitution needs no special mention. Lawyers are the officers of the Court in the administration of justice. The Bench as well as the Bar has to avoid unwarranted situations or trivial issues that hamper the cause of justice and are in no one's interest.

11. In the case of **Chetak Construction Ltd. vs. Om Prakash** reported in **1998 (4) SCC 577**, it has been held in para 16 that:

"16. Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and the rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to 'terrorize' or 'intimidate' Judges with a view

to 'secure' orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it."

12. Bar-Bench relation in law refers to the cordial relationship between the Advocates and the Judges. The Bar (Advocates) and Bench (Judges) play an important role in the administration of justice. The Judges administer the law with the assistance of the lawyers. The lawyers are the officers of the Court. They are expected to assist the Court in the administration of justice. As the officers of the Court the lawyers are required to maintain respectful attitude towards the Court bearing in mind that the dignity of the judicial office is essential for the survival of the society. Mutual respect is necessary for the maintenance of the cordial relations between the Bench and Bar.

13. The opinion of the Hon'ble Supreme Court, in the context of Bench-Bar relation, has been clearly laid down in **P.D. Gupta vs. Ram Murti and Others** reported in **AIR 1998 SC 283** as follows:

"14.....A Lawyer owes a Duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting judges. No one should be able to raise a finger about the conduct of a lawyer....."

14. The judges and the lawyers are complementary to each other. The primary duty of the lawyer is to inform the

court as to the law and facts of the case and to aid the Court to do justice by arriving at the correct conclusions. Good and strong advocacy by the counsel is necessary for the good administration of justice.

15. It appears that unwarranted hot altercations took place in the Courtroom during the course of arguments, hence the adverse remarks have been passed against the petitioner in the order dated 08.02.2024.

16. By submitting an additional affidavit on 11.12.2024, the petitioner has regretted about his alleged demeanour and it has been stated by him in para 4, which reads as under:

"4. That, deponent has explained his stand in Para 3 (iv) of the above captioned petition and also as to what transpired in court and how the verbal exchanges between the Court and deponent were treated as an act of indiscipline/misbehaviour. Deponent from the bottom of his heart reiterates that he holds this Honourable Court in high esteem and expresses regret, if Honourable Court feels and believes that alleged demeanour of the deponent was not above board. "

17. As per the contentions of the counsel for the petitioner, the aforesaid remarks have been recorded by this Court without affording any opportunity of hearing, hence, under these circumstances, the aforesaid observations made by this Court has flouted the principles of natural justice.

18. Hon'ble Apex Court in the case of **Neeraj Garg** (supra) has dealt with the identical situation, where the petitioner

therein, was also practicing at the High Court of Uttarakhand with around 17 years standing at the Bar and certain remarks were passed against him by the High Court without affording him any opportunity of hearing. The aforesaid remarks were assailed by the said counsel before the Hon'ble Apex Court by way of filing Civil Appeal No.4555/2021 and the same were expunged and it has been observed and held by the Apex Court in para 1 and 15 to 18, which reads as under:

"1. The appellant is a practising lawyer, before the High Court of Uttarakhand with around 17 years standing as member of the Bar. The present appeal is limited to expunging certain observations made against the appellant by the learned Judge of the High Court while deciding four cases in which the appellant was representing one of the contesting parties. The following are the orders and proceedings of the High Court with which, we are concerned in this matter.

xxx xxx xxx xxx xxx

15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court.

16. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before

recording the adverse comments, give any opportunity to the Appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the Counsel, without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments.

17. The tenor of the remarks recorded against the appellant will not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the comments remain unexpunged in the court judgments, it will be a cross that the Appellant will have to bear, all his life. To allow him to suffer thus, would in our view be prejudicial and unjust.

18. In view of the forgoing, we are of the considered opinion that the offending remarks recorded by the learned judge against the appellant should not have been recorded in the manner it was done. The appellant whose professional conduct was questioned, was not provided any opportunity to explain his conduct or defend himself. The comments were also unnecessary for the decision of the Court. It is accordingly held that the offending remarks should be recalled to avoid any future harm to the appellant's reputation or his work as a member of the Bar. We therefore order expunction of the extracted remarks in paragraphs 4, 5, 6 and 7 of this judgment. The appeals are accordingly disposed of with this order."

19. Following the aforesaid proposition of law, as propounded by the Apex Court in the case of **Neeraj Garg** (supra) again the same view was reiterated recently by the Apex Court in the case of **Dushyant Mainali** (supra) and it has been observed and held in para 2 to 6 which reads as under:

"2. This appeal challenges certain adverse observations made by the learned Single Judge of the High Court of Uttarakhand at Nainital against the appellant.

3. The appellant is a lawyer by profession. He was neither appearing for any party in the matter nor was he indirectly connected.

4. This Court, in the case of same learned Judge of the High Court on various occasions, including in the reported judgment in the case of Neeraj Garg Vs. Sarita Rani and Ors. reported in 2021(9) SCC 92 and recently in C.A. Nos.110043-11044 of 2024 titled as "Siddhartha Singh vs. Assistant Collector First Class/Sub Divisional Magistrate & Ors.", vide order dated 24.09.2024, have observed with disapproval the proclivity of the said learned Judge of the High Court in making remarks against the advocates.

5. There is no necessity to reiterate that even the Courts, including a highest court of the Country, are bound by principle of natural justice. Nobody can be condemned unheard.

6. We are of the considered view that the approach of the High Court in making the observations against the appellant without giving him any opportunity of being heard is totally unsustainable in law."

20. Hon'ble Apex Court in the case of **Mohd. Naim** (supra)

in para 10 has held as under:

"10.If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of judges and Magistrates must be maintained and they must be allowed to perform their 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 restraint. It is not

infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in 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 remarks ; and (c) whether it is necessary for the decision of the case as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

21. Keeping in view the proposition of law as laid down by the Apex Court in the case of **Neeraj Garg** (supra), **Dushyant Mainali** (supra) & **Mohd Naim** (supra) and looking to the averments made by the petitioner in his additional affidavit that from the bottom of his heart, he reiterates that he holds this Court in the high esteem and expresses regret, if this Court feels and believes that his alleged demeanour was not above board, the instant petition stands allowed.

22. Looking to regret felt by the petitioner regarding his demeanour during the Court proceedings on 08.02.2024, as mentioned in para 4 of his additional affidavit dated 11.12.2024, the adverse remarks passed against him in para 9, 10 and 11 of the order dated 08.02.2024 in SB Criminal Misc. (Petition) No.548/2024 stand expunged.

23. Office is directed to put a copy of this order in the file of SB Criminal Misc. (Petition) No.548/2024 and whenever

any person applies to get certified copy of the order dated 08.02.2024, the copy of this order dated 07.01.2025 be supplied to him/her.

24. Stay application and all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

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