

**Criminal Revision**  
**Present :-The Hon'ble Justice Ashim Kumar Roy**  
**Judgment On : 21-05-2010**

***C.R.R. No. 130 of 2010***

***With***

***CRAN No. 557 of 2010***

***Shyamal Kumar Sarkar***

***Versus***

***State Of West Bengal***

**POINTS**

Quashing – Direction for initiating Departmental Proceedings against I.C & I.O. in criminal case – Petitioners were not before the court below – No opportunity of hearing given – Making of remarks, if appropriate - Code of Criminal Procedure, 1973 S 482.

**FACTS**

In a Sessions case the Learned Trial Judge while passing the order of an acquittal made certain remarks against the I.C and I.O and directed the initiation of disciplinary proceedings against them who were not before the Trial Judge and who were not being given any opportunity of being heard. The petitioners in this application for expunction of the order.

**HELD**

The Learned Trial Court without giving any opportunity to the present petitioner to challenge such statement of the Investigating Officer of the case the P.W. 7, accepted the same to be conclusive and made the above remarks and passed the direction for initiation of disciplinary action against him. Apart from the facts the petitioner was not giving any opportunity of explaining or defending himself against the allegations made against him by the Investigating Officer of the case P.W. 7, the remarks of the Learned Trial Court based on the bare allegations of the Investigating Officer of the case is not at all justified.

Para 6

**CASES CITED :-**

- 1) In the case of Dr. Dilip Kumar Deka & Anr. Vs. State of Assam & Anr., reported in (1996) 6 SCC 234.  
Para 5

For Petitioner : Mr. Sekhar Basu  
Mr. Tapan Deb Nandi  
Mrs. Debjani Sahu  
Ms. Koel Mukherjee

For State : Mr. Alope Roy Chowdhury

**THE COURT** 1. In connection with a sessions trial relating to offences punishable under Section 376/313/34 of the Indian Penal Code, while passing an order of acquittal, the Learned Additional Sessions Judge, Fast Track, 3rd Court, Barrackpore, North 24-Parganas, made some remarks against the present petitioner, who happened to be the Inspector-in-Charge of the Titagarh Police Station and the Investigating Officer of the case and directed for initiating disciplinary proceedings against them. The petitioner has now moved this Court invoking its inherent jurisdiction praying for expunction of such remarks and for quashment of the order for initiation of disciplinary proceedings against him.

2. Heard Mr. Sekhar Basu, the Learned Counsel appearing on behalf of the petitioner as well a Mr. Alok Roy Chowdhury appearing for the State. Perused the impugned Judgement and order and other materials on record.

3. The remarks, the expunction of which has been sought for, are quoted below;

*“In the Court victim has stated that accused persons took her to a Nursing Home at Sodepur and in that Nursing Home her pregnancy was terminated. It is true that the above allegations of the victim may be true or false. But the*

*P.W. 7 being the I.O. of the case has admitted in Court that without any medical document he has submitted charge-sheet against the accused persons under Section 313 of the Indian Penal Code as per the instruction of the I.C., Shyamal Sarkar. For such type of negligent act of the P.W. 7 and the said I.C. the victim in a case of rape did not get justice in respect of her claim for abortion of her pregnancy. On the other hand, the said charge-sheet under Section 313 of the I.P.C. against both the accused persons are illegal because without any medical proof the P.W. 7 has submitted the said charge-sheet under Section 313 of the Indian Penal Code against both the accused persons causing injustice to them.”*

*“According to the Police Regulation of Bengal, the I.C. concerned is duty bound to supervise the investigation made by the subordinate police officer under him. But the above materials on record sufficiently proved that the P.W. 7 has investigated this case negligently and illegally and I.C. Shyamal Sarkar has supported the said negligent and illegal investigation made by the P.W. 7 causing injustice to both the victim and the accused persons of the case.”*

.....

*“Let a copy of the relevant portion of this order be sent to the Superintendent of Police, North 24-Parganas by name directing him to start a proceeding against Sub-Inspector Md. Imran Hossin, the Investigating Officer of the case and Inspector-in- Charge, Shyamal Sarkar for their negligent and illegal investigation and take stringent action against them and submitting compliance report to this Court within one month from the date of receipt of this order.”*

4. Mr. Sekhar Kumar Basu, the learned advocate of the petitioner vehemently urged that recording of such remarks is completely un-called-for and the Learned Judge should not have made such remarks and passed any direction for initiation of any disciplinary action without giving any opportunity of hearing to the present petitioner. He further submitted these remarks would have a serious consequence against the petitioner. On the other hand, the learned advocate appearing on behalf of the State submitted that making such remarks against the present petitioner is not at all warranted and justified.

5. In the case of Dr. Dilip Kumar Deka & Anr. Vs. State of Assam & Anr., reported in (1996) 6 SCC 234, a similar question arose for consideration, and in Paragraphs 6, 7, 8, 9 and 10 the Apex Court observed as follows:

*“The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a court of law in cases to be decided by it were succinctly laid down by this Court in State of U.P. V. Mohd. Naim. Those tests are:*

*(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.*

*The above tests have been quoted with approval and applied by this Court in its subsequent judgments in Jage Ram V. Hans Raj Midha, R.K. Lakshmanan V. A.K. Srinivasan and Niranjan Patnaik V. Sashibhusan Kar. (para 6)*

*We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice. (para 7)*

*Judged in the context of the first test laid down in Mohd. Naim case the above discussion of ours is sufficient to quash the impugned remarks, but we find that the remarks are vulnerable also to the second test laid down therein. On perusal of the order dismissing the revision petition we find that the remarks of the learned Judge are based solely upon the fact that the report of the Medical Board consisting of four medical experts belied their report. Indeed, except the report of the Board we have also not found any other material on record from which the learned Judge could have legitimately and justifiably obtained satisfaction to pass the above remarks against the two appellants before us. We hasten to add that in making the*

*above observation we have left out of our consideration the materials which prompted the learned Judge to make adverse comments against the IO. (para 8)*

*Mr. Goswami, the learned counsel for the appellants, contended that it could not be said that the report of the Medical Board belied those of the appellants for they were based on clinical examination of Smt. Kalita only and that too much earlier than her examination by the Board. Mr. Goswami next submitted that the appellants had submitted a further report on 25-8-1995 stating that her condition had improved. In the context of the above facts, Mr. Goswami urged that simply because the Board on its later examination found that Smt. Kalita was not suffering from any major ailment then, it could not be said that the reports earlier given by the appellants about the ailments of Smt. Kalita were incorrect. We do not however wish to delve into this aspect of the matter and would proceed to examine the justifiability of the remarks on the basis that the diagnosis of the appellants was patently wrong and that of the Board, which was admittedly a superior body, right. (para 9)*

*If the learned Judge's reasoning to make the impugned remarks is taken to its logical conclusion, it would mean that whenever a superior court sets aside a finding of a lower court, which is patently wrong, the former gets a charter to make vituperative remarks against the latter simply because it had recorded such a finding. Before drawing any conclusion that an inferior body or court has recorded a wrong finding with an ulterior motive or for an oblique purpose the superior body or court, as the case may be, must demonstrate that there are materials – other than the patently wrong finding – which impels it to so conclude. Else, the conclusion would be presumptuous and justice and fair play would be casualties.”(para 10)*

6. Now, so far as the case at hand is concerned, it is an admitted position the present petitioner was never before the Court concerned which made those remarks against him, nor he was afforded with an opportunity of hearing before the Court made those remarks. It further appears from the perusal of the impugned order the observation against the present petitioner was based on the alleged claim of the Investigating Officer of the case, who was examined in the trial as P.W. 7 and deposed that as per the instruction of the present petitioner he submitted charge-sheet against the accused persons under Section 313 of the Indian Penal Code without any medical papers.

Besides, such bald claim of the Investigating Officer of the case there was no other materials against the petitioner that on his instruction the charge-sheet was submitted under Section 313 of the Indian Penal Code without any medical papers. The Learned Trial Court without giving any opportunity to the present petitioner to challenge such statement of the Investigating Officer of the case the P.W. 7, accepted the same to be conclusive and made the above remarks and passed the direction for initiation of disciplinary action against him. Apart from the facts the petitioner was not giving any opportunity of explaining or defending himself against the allegations made against him by the Investigating Officer of the case P.W. 7, I am of the opinion that the remarks of the Learned Trial Court based on the bare allegations of the Investigating Officer of the case is not at all justified. In view of above, this criminal revision stands allowed and the remarks against the present petitioner made by the Learned Trial Court in its judgement in question stands expunged as well as the direction for taking disciplinary action against him on such observation stands quashed. Accordingly, the application for extension of interim order being CRAN No. 557 of 2010 stands disposed of. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

( *Ashim Kumar Roy, J.* )