IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4728 OF 2010
(Arising out of S.L.P. (C) No.23869 of 2009)

'K' A Judicial Officer … Appellant

Versus

Registrar General, High Court of A.P. … Respondent

O R D E R

1. Leave granted.

2. The appellant who is a member of superior judicial service of the State of Andhra Pradesh has preferred this appeal for expunging the remarks made by the Division Bench of Andhra Pradesh High Court in paragraphs 10 and 11 of order dated 25.6.2009 passed in Civil Misc. Appeal No.420 of 2009 and the direction contained in paragraph 13 thereof.

3. Pochamreddy Subba Reddy and three others (hereinafter referred to as `the plaintiffs') filed O.S. No.1 of 2009 for grant of permanent injunction to restrain Maddika Nageshwari and six others (hereinafter referred as `the defendants') from interfering with the plaint schedule properties. They also filed I.A. No.34 of 2009 for grant of temporary injunction. The defendants contested the prayer for temporary injunction by asserting that the plaintiffs

do not have any right over the suit property and that in the suits filed by them temporary injunction has already been granted by the trial Court restraining the plaintiffs from interfering with their possession. By an order dated 12.3.2009, the appellant, who was then holding the post of Principal District Judge, Kadapa, granted temporary injunction in favour of the plaintiffs and restrained the defendants from interfering with the plaint schedule property. Simultaneously, he injuncted the plaintiffs from intermeddling with the suit property. While passing the order of injunction, the appellant did take cognizance of the fact that the defendants had filed O.S. Nos. 336 of 2008 and 781 of 2008 against the plaintiffs and the concerned courts had passed order of injunction in their favour and that this fact was against the plaintiffs, but still he directed the parties to maintain status quo.

4. The defendants carried the matter to the High Court. The Division Bench of the High Court allowed the Civil Miscellaneous Appeal No. 420 of 2009 filed by them and set aside the order passed by the appellant mainly on the ground that while granting injunction in favour of the plaintiffs, the learned Judge totally ignored that in the suits filed by the defendants, trial Court had already passed order of injunction and restrained the plaintiffs from interfering with their possession. The Division Bench of the High Court also observed that in view of the injunction order passed in favour of the defendants, the appellant was not at all justified in directing the

defendants not to interfere with the possession of the plaintiffs. While allowing the appeal preferred by the defendants, the Division Bench of the High Court made scathing criticism of the appellant as a Judicial Officer and recorded highly disparaging remarks in paragraphs 10 and 11, which read as under:

> "**10**. This attitude of the learned District Judge is out of sheer arrogance and disrespect to the lawful orders passed by subordinate Courts. Even if he is disagreeable with the findings reached by the Subordinate Courts in granting injunction in favour of the defendants in the suits filed by them, unless those orders are set aside or modified, as the case may be, in parallel proceedings, he cannot nullify those injunction orders so granted in favour of the defendants which can be done only by the appellate Court in the appeal, if any filed. Admittedly, no such appeals were preferred against the temporary injunction orders granted in favour of the defendants. In the absence of the same, granting injunction in favour of the plaintiffs will not only create law and order problem but also diminish the image of the judiciary among the general public and the implementing agencies of the injunction order like police, as they will be in a turmoil situation as to which injunction order would be implemented. It must be remembered that it is the duty of every member of the legal fraternity to ensure that the image of the judiciary is not tarnished and its respectability eroded. The manner in which proceedings were taken by the learned Judge exposes a total lack of respect for judicial discipline. Judicial authoritarianism is what the proceedings in the instant case smack of. It cannot be permitted under any guise. Judges must be circumspect and self disciplined in the discharge of their judicial functions. Further, the impugned order, if allowed to stand, will create a law and order problem and lead to unrest and fight among the parties with each one having injunction order in their favour.
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> **11**. We are deeply perturbed and pained with the attitude of the learned District Judge in granting injunction in favour of the plaintiffs. For the reasons best known to the learned District Judge, he appears to have decided to grant injunction in favour of the plaintiffs in support of which, the above

> reasons were assigned with contradictory observations as already pointed out. For the forgoing reasons, we cannot sustain the impugned order passed by the lower Court and the same is liable to be set aside."

In para 13 of its order, the Division Bench gave the following directions:

> "Registry is directed to place this order as well as the impugned order before the Administrative Committee. A copy of this order shall remain placed on the personal file of the officer concerned."

5. The grievance of the appellant is that disparaging remarks contained in paragraphs 10 and 11 of the judgment of the Division Bench are not only contrary to the rules of natural justice but are also against the law laid down by this Court that the superior Court should exercise restraint and should not castigate the members of subordinate judiciary because the same would affect the image of the judiciary in the eyes of the public.

6. On 11.9.2009, this Court granted permission to the appellant to file special leave petition, ordered issue of notice and stayed the direction contained in paragraph 13 of order dated 25.6.2009 passed in C.M.A. No. 420 of 2009. On 30.4.2010, the Court directed impleadment of the High Court of Andhra Pradesh as a party. On 6.5.2010, the Bench presided by Hon'ble the Chief Justice directed listing of the case during summer vacation. This is how the matter has been placed before the Bench during summer vacation.

7. We have heard Shri L. Nageshwara Rao, learned senior counsel for the appellant and Shri Gaurav Pachnanda, learned counsel representing the High Court of Andhra Pradesh.

8. At the very outset, we may observe that the learned counsel representing the High Court very fairly stated that he has no comments to offer in the matter and the High Court neither opposes nor supports the appellant's prayer.

9. The question whether in exercise of the appellate/revisional jurisdiction qua the orders/judgments of courts subordinate to it, the High Court should make disparaging remarks/comments casting aspersions on the credibility of the Judicial Officer, whose order is under challenge, has been considered in several cases. Almost 47 years ago, Gajendragadkar, J. (as he then was) speaking for a Bench of three-Judges in **Ishwari Prasad Misra v. Mohd. Isa** (1963) 3 SCR 722, stressed the need to adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary by observing that in such matters, the concerned Judge has no remedy in law to vindicate his position. In **K.P. Tiwari v. State of M.P.**, 1994 Supp (1) SCC 540, this Court reminded all concerned that using intemperate language and castigating strictures on the judges of the lower judiciary diminishes the image of judiciary in the eyes of public. Some of the observations made in that judgment are extracted below:

"We are, however, impelled to remind the learned Judge of the High Court that however anguished he might have been over the unmerited bail granted to the accused, he 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 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 criticised 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."
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> (emphasis supplied)

10. In **Braj Kishore Thakur v. Union of India** (1997) 4 SCC 65, this Court noted that while allowing an appeal preferred by the Collector of Customs, Patna against the grant of bail to two persons who were allegedly found in possession of 97 Kg of non-duty paid ganja, the learned Single Judge of Patna High Court made scathing remarks against Sessions Judge-cum-Special Judge, Purnia. This Court quashed the remarks and observed:

> "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 enhances 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 the lower judiciary."

11. In A**.M. Mathur v. Pramod Kumar Gupta** (1990) 2 SCC 533, this Court sounded a note of caution against making derogatory remarks against persons or authorities whose conduct comes under scrutiny and 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 Judge nor for the judicial process."

12. In the matter of **'K' A Judicial Officer** (supra), the Court reviewed some of the earlier precedents and observed:

> "The primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it. A Judge is not expected to drift away from pronouncing upon the controversy, to sitting in judgment over the conduct of the judicial and quasi-judicial authorities whose decisions or orders are put in issue before him, and indulge in criticising and commenting thereon unless the conduct of an authority or subordinate functionary or anyone else than the parties comes of necessity under review and expression of opinion thereon going to the extent of commenting or criticising becomes necessary as a part of reasoning requisite for arriving at a conclusion necessary for deciding the main controversy or it becomes necessary to have animadverted thereon for the purpose of arriving at a decision on an issue involved in the litigation. This applies with added force when the superior court is hearing an appeal or revision against an order of a subordinate judicial officer and feels inclined to animadvert on him. The wisdom of a Superior Judge itching for making observations on a Subordinate Judge before ventilating into expression must pause for a moment and read the counsel of Cardozo—
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> > "Write an opinion, and read it a few years later when it is dissected in the briefs of counsel. You will learn for the first time the limitations of the power of speech, or, if not those of speech in

> general, at all events your own. All sorts of gaps and obstacles and impediments will obtrude themselves before your gaze, as pitilessly manifest as the hazards on a golf course. Sometimes you will know that the fault is truly yours, in which event you can only smite your breast, and pray for deliverance thereafter."
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> (*Essays on Jurisprudence, Columbia Law Review*, 1963 at p. 315.)

In the case at hand we are concerned with the observations made by the High Court against a judicial officer who is a serving member of subordinate judiciary. 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 role of High Court is also of a friend, philosopher and guide of judiciary subordinate to it. 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 parent-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. The same Judge who found himself persuaded, sitting on judicial side, to make observations guided by the facts of a single case against a Subordinate Judge may, sitting on administrative side and apprised of overall meritorious performance of the Subordinate Judge, may irretrievably regret his having made those observations on judicial side, the harming effect whereof even he himself cannot remove on administrative side. 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. 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 practising 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 unawares in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralising effect not only on him but also on his colleagues. If all this is avoidable why should it not be avoided?"
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> (emphasis supplied)

13. We may now revert to the present case. Although, the order of injunction passed by the appellant may not be legally correct or justified and he may have committed an error in not taking serious view of the conduct of the plaintiffs who had apparently concealed the factum of injunction orders having been passed in favour of the defendants in the suits filed by them

and, therefore, the Division Bench of the High Court may be fully justified in setting aside the order of injunction, but there was absolutely no justification for the Division Bench to make highly disparaging remarks against the appellant as a judicial officer casting doubts on his ability to decide the cases objectively. The use of the words `out of sheer arrogance and disrespect to the lawful order' and the expression `judicial authoritarianism' in paragraph 10 shows that the Division Bench ignored the words of caution administered by this Court in several judgments including those referred to hereinabove and castigated the appellant without any justification. The observations and remarks made by the Division Bench of the High Court are bound to adversely affect the image of the appellant in the eyes of the public, his credibility as a judicial officer and also affects his career. We are sure that if the Division Bench of the High Court had kept in view the judgments of this Court, it would not have made disparaging remarks against the appellant, which, in the facts and circumstances of the case, were not at all called for.

14. In the result, the appeal is allowed. Paragraphs 10 and 11 of judgment dated 25.6.2009 of the Division Bench of the High Court as also the direction contained in paragraph 13 thereof are set aside.

……J.
[G.S. Singhvi]

……J.
[C.K. Prasad]

New Delhi
May 24, 2010.