IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(269)

CRM-M-12260-2022 (O & M)
Reserved on :14.11.2025
Date of Pronouncement: 18.11.2025
Uploaded on 19.11.2025

Daya Kishan Sharma .... Petitioner

V/s

State of Haryana and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Gautam Dutt, Sr. Advocate,
with Ms. Radhika Mehta, Advocate,
for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

Mr. Sudhanshu Sikka, Advocate,
for respondent No.2 (Through V.C.).

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petitions under Section 482 Cr.P.C. is for setting aside the portion of judgment/direction contained in Para 27 of the judgment dated 24.02.2022 passed by the Additional Sessions Judge, Gurugram (Annexure P-5) in Sessions Case No.38 of 2018 (CIS No.PC/16/2018), FIR No.42 dated 07.09.2015 under Section 7 of the Prevention of Corruption Act, 1988 later on charges framed under Sections

417, 420 IPC and Section 9 of the Prevention of Corruption Act, PS State Vigilance Bureau, Gurugram whereby while convicting co-accused under Section 9 of the Prevention of Corruption Act, 1988, the Presiding Officer issued direction to the Director General of Police, Vigilance, Panchkula to look into the matter for submitting challan against the present petitioner after completing requisite formalities.

2. The brief facts of the case are that FIR No.42 dated 07.09.2015 under Section 7 of the Prevention of Corruption Act, 1988 (later on charges framed under Sections 417, 420 IPC and Section 9 of the Prevention of Corruption Act) came to be registered at Police Station State Vigilance Bureau, Gurgaon at the instance of Jitender Kathuria.

3. After conducting the investigation, the prosecution filed an application for the discharge of the petitioner. Based on the said application, the Court of the Additional Sessions Judge, Gurugram vide order dated 19.04.2016 ordered the discharge of the petitioner.

4. During the course of the Trial, the statement of the complainant was recorded and he was also cross-examined. At that stage, the Public Prosecutor moved an application to summon the petitioner as an additional accused. The said application was dismissed vide order dated 02.08.2019 passed by the Additional Sessions Judge, Gurugram by recording the following observations:-

> *4. Arguments advanced by learned PP assisted by learned counsel for complainant have been heard and file has been perused intrinsically and ultimately, this Court finds that prima*

facie, there is no sufficient evidence available on the file to summon D.K Sharma, who is named in the application as accused to face trial along with co-accused who is already appearing in the Court because the prosecution has examined the complainant Jitender as PW1 but during the cross examination, he has turned hostile and has stated that he had never visited the premises of the accused i.e. Shivam Consultancy, Sector 15, prior to 04.09.2015 and Mr.Puran Khanna accused was not known to him. This witness has further stated that on he said date, Sh. D.K Sharma, did not meet him in the office and someone in the office had suggested him to visit the office of Shivam Consultancy. Since during cross examination, the complainant has resiled from his earlier statement, hence on the request of Ld. PP, he had been declared hostile and as such, he had been cross examined by Ld. PP as well.

5. After recording the statement of the complainant, Ld. PP has moved an application under sect0ion 319 Cr.P.C for summoning additional accused D.K Sharma FSO Gurugram. However, perusal of the case file reveals that complainant has not uttered even a single word against aforersaid D.K Sharma FSO and present application has been moved by ld. PP on the basis of averments made by the complainant in his statement recorded under Section 164 Cr.P.C,. While deciding the application under Section 319 Cr.P.C, the court is required to take into consideration the statement made by complainant in the court wherein no word has been uttered by him against the present accused.

5. On the conclusion of the Trial, while co-accused Puran Khanna was held to be guilty under Section 9 of the Prevention of Corruption Act, the same Court that had dismissed the application seeking summoning of the petitioner under Section 319 Cr.P.C. observed that a great sin had been committed in declaring the petitioner innocent when he, in fact, was the main accused and the Director General of Police, Vigilance, Panchkula was directed to look into the submission of the challan against the petitioner after completing the requisite formalities. A copy of the judgment dated 24.02.2022 is attached as Annexure P-5 to the petition. The relevant Para 27 thereof is reproduced as under:-

> *27. In view of the aforementioned facts sand circumstances, it is established that the prosecution has been able to prove the guilt of the accused beyond reasonable doubt. Accordingly, accused Puran Khanna is held guilty under Section 9 of the Prevention of Corruption Act, 1988. He be taken into custody. The case is now adjourned to 04.03.2022 for hearing the accused/convict on the quantum of sentence under section 235(2) Cr.P.C.*
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> *This judgment is being concluded with the note that police authorities have committed great sin by declaring D.K.Sharma as innocent as he was the main culprit in this case and accused facing trial namely Puran Khanna was only his conduit and as such, Director General of Police, Vigilance, Panchkula is directed to look into the matter for submitting the challan against D.K Sharma after completing requisite formalities. Copy of this judgment be sent to Director General of Police, Vigilance, Panchkula through proper channel.*

6. The directions issued in Para 27 of the aforementioned judgment (Annexure P-5) are under challenge in the present petition.

7. The learned Senior counsel for the petitioner contends that the petitioner was initially discharged by the Trial Court. During the course of the Trial, an application under Section 319 Cr.P.C. was moved to summon the petitioner as an additional accused which application came to be dismissed by the Trial Court. However, the same Court that had dismissed the application to summon the petitioner as an additional accused under Section 319 Cr.P.C. has passed the impugned directions while convicting the co-accused. He contends that the directions issued to submit a challan are in violation of High Court Rules Chapter 1 Part H Rule 6. He contends that the remarks have been made against the petitioner without following the principle of *audi alteram partem* inasmuch as the petitioner was required to be heard before the said directions were issued. Reliance is placed in the judgments in ***'State of Punjab and anr versus M/s Shikha Trading Co., 2023 (136) CutLT 739, State (Govt. of NCT of Delhi) versus Pankaj Chaudhary and others, 2019(5) RCR (Criminal), Astha Modi versus State of Haryana and another, (CRM-M-38422-2019 decided on 08.11.2023), Dr. Mrs. Naresh Saini versus State of Haryana and another, (CRM-M-22310-2014 decided on 29.08.2017) and Veer Singh DSP versus State of Haryana with State of Haryana versus Hans Raj Rathi (bearing CRM-M No.15604 of 2022 & CRM-M No.53510 of 2023 decided on 30.09.2025)'.*** He, therefore, contends that the present petition ought to be allowed and the

impugned directions issued in Para 27 of the judgment dated 24.02.2022 (Annexure P-5) are liable to be quashed.

8. The learned counsel for the respondent-State alongwith the counsel for respondent No.2 have not disputed the factual aspect as also the legal principles as set-out in the preceding paragraphs.

9. I have heard the learned counsel for the parties.

10. Before proceeding further, it would be apposite to examine The High Court Rules & Order Volume III (Chapter 1 Part H Rule 6) which reads as under:-

> *"**6. Criticism on the conduct of police and other officers:-**It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant to the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that when they have worked up a case, they are regarded with distrust by the courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officer to believe anything and everything against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant he should send a copy of his judgment to*

> *the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving in reference to the Home Secretary's circular letter No. 920-J-36/14753, dated the 15th April, 1936. Similarly, Sessions Judges shall also send a copy of their judgment containing criticism of the work and conduct of police officers to the District Magistrate. They shall also send a copy of the judgment direct to the High Court accompanied by a covering letter giving reference to the High Court circular letter No. 1585-Gaz./XXXI-2, dated the 14th February, 1936".*

11. The judgments referred to by the learned Senior counsel are discussed hereunder:-

The Hon'ble Supreme Court of India in ***'State of Punjab and anr versus M/s Shikha Trading Co., 2023 (136) CutLT 739'***, *held as under:-*

> *14. Further, we notice the directions of the High Court not to be in the light of settled principles of law, for the order does not qualify the tests laid down by this Court in State of UP v. Mohammad Naim AIR 1964 SC 703 (four-Judge Bench), in regards to passing remarks against a person, whose conduct is being scrutinised before them i.e., "whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; whether there is evidence on record bearing on that conduct, justifying the remarks; whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct."*

15. These principles stand reiterated and followed in various judgments such as R.K. Lakshmanan v. A.K. Srinivasan (1975) 2 SCC 466 (three-Judge Bench); S.K. Viswambaran v. E. Koyakunju (1987) (two- Judge Bench); Samya Seet v. Shambhu Sarkar (2005) 6 SCC 767 (three-Judge Bench); State of Madhya Pradesh v. Narmada Bachao Andolan (2011) 12 SCC 689 (three-Judge Bench) and K. G. Shanti v. United Indian Insurance Co. Ltd and Ors (2021) 5 SCC 511 (two-Judge Bench).

16. It is apparent from record that, neither was the officer made party to the dispute, nor was he given an opportunity to show cause, and further, nothing on record reflected the officer holding an animus against the respondent, before such adverse directions were passed against him.

17. By way of this appeal, we have been asked to exercise powers, inherent in this Court, to expunge remarks reproduced supra against the said officer, from record. It would be appropriate to consider the various principles in respect of passing adverse remarks against an officer- be it judicial, civil (as in the present case) or police or army personnel, and expunction thereof.

18. The three principles laid down in Naim (supra) deal with what is required of the court, prior to, finding it fit to pass adverse remarks.

18.1 It has been reasserted time and again that remarks adverse in nature, should not be passed in ordinary circumstances, or unless absolutely necessary which is

further qualified by, being necessary for proper adjudication of the case at hand[8].*

> *[8* Niranjan Patnaik v. Sashibhusan Kar (1986) 2 SCC 569, two-Judge Bench; Abani Kanta Ray v. State of Orissa (1995) Supp (4) SCC 169, two-Judge bench; A.M. Mathur v. Pramod Kumar Gupta (1990) 2 SCC 533; two-Judge Bench]*

18.2 Remarks by a court should at all times be governed by the principles of justice, fair play and restraint[9]. Words employed should reflect sobriety, moderation and reserve[10*].*

> *[9* Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi, (1987) 1 SCC 227; three-Judge Bench]*
>
> *[10* K.G. Shanti (supra)]*

18.3 It should not be lost sight of and per contra, always be remembered that such remarks, "due to the great power vested in our robes, have the ability to jeopardize and compromise independence of judges"; and may "deter officers and various personnel in carrying out their duty". It further flows therefrom that "adverse remarks, of serious nature, upon the character and/ or professional competence of a person should not be passed lightly"[11].*

[11 E. Koyakunju (supra)]*

19. Keeping the above principles in mind, the power to expunge remarks may be exercised by the High Court and this Court: –

19.1 With great caution and circumspection, since it is an undefined power[12];*

> *[12* Dr. Raghubir Saran v. State of Bihar, AIR 1964 SC 1; two-Judge Bench]*

19.2 Only to remedy a flagrant abuse of power which has been made by passing comments that are likely to cause harm or prejudice[13];*

[13 Dr. Raghbir Saran (supra)]*

19.3 In respect of High Courts exercising such power, it has been observed:

19.3.1 The High Court, as the Supreme Court of revision, must be deemed to have power to see that courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it [14].*

> *[14* Panchanan Banerji v. Upendra Nath Bhattacharji (AIR 1927 All 193, as referred to in Sashibhusan Kar (supra)]*

19.3.2 Though in the context of Judicial officers, this Court has observed that "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". This principle would apply equally for all services. The power to control is not to be exercised solely by wielding a teacher's cane[15]-[16*].*

[15 Manu Sharma v. State (NCT of Delhi), 2010 6 SCC 1; two-Judge Bench]*

[16 'K' A Judicial Officer (supra)]*

20. The impugned directions issued by the High Court in registration of criminal investigation against an officer, unquestionably against the above-referred settled principles of law, having a demoralizing effect on the well-meaning officers of the State. It is clear that the impugned directions were passed upon an incorrect and erroneous appreciation of the record. 21. Consequent to the above discussion, we find it a fit case to, in accordance with the principles summarised hereinabove, expunge the observation made and the directions issued by the High Court extracted supra (para 5) vide impugned order dated 08.12.2010 in CWP No. 19909 of 2010 titled as M/s Shikha Trading Co. v. The State of Punjab and anr. Further, proceedings initiated, if any, pursuant thereto, including the FIR shall stand closed with immediate effect.

The Hon'ble Supreme Court in '***State (Govt. of NCT of Delhi) versus Pankaj Chaudhary and others, 2019(5) RCR (Criminal) 133',*** held as under:-

42. By perusal of the impugned judgment of the High Court, we find that the High Court has not recorded a finding that "it is expedient in the interest of justice to initiate an inquiry into the offences

punishable under Sections 193 and 195 IPC against the police officials and under Section 211 IPC against the prosecutrix". Without affording an opportunity of hearing to the police officials and based on the materials produced before the appellate court, the High Court, in our view, was not right in issuing direction to the Registrar General to lodge a complaint against the police officials and the said direction is liable to be set aside.

43. The High Court erred in brushing aside the evidence of the prosecutrix by substituting its views on the basis of submissions made on the sequence of events in FIR No.558/97 and the report of the Joint Commissioner of Police (Ex.-DW6/A) and the report of the Deputy Commissioner of Police. The High Court erred in taking into consideration the materials produced before the appellate court viz., the alleged complaints made against the prosecutrix and other women alleging that they were engaged in prostitution. Even assuming that the prosecutrix was of easy virtue, she has a right of refuse to submit herself to sexual intercourse to anyone. The judgment of the High Court reversing the verdict of conviction under Section 376(2)(g) recorded by the trial court cannot be sustained and is liable to be set aside.

44. For the conviction under Section 376(2)(g) IPC, the accused shall be punished with rigorous imprisonment for a term which shall not be less than

ten years, but which may be extended to imprisonment for life. After the amendment by Act 13 of 2013 (with retrospective effect from 03.02.2013), the minimum sentence of ten years was increased to twenty years as per Section 376-D and in the case of conviction, the court has no discretion but to impose the sentence of minimum twenty years. However, prior to amendment, proviso to Section 376(2) IPC provided a discretion to the court that "the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than ten years." Though the court is vested with the discretion, in the facts and circumstances of the case, we are not inclined to exercise our discretion in reducing the sentence of imprisonment of ten years imposed upon the respondents-accused.

45. In the result, the impugned judgment of the High Court is set aside and the appeal preferred by the State is allowed. The verdict of conviction of accused-respondent Nos.1 to 4 (CA No.2299/2009) 30 under Section 376(2)(g) IPC and also the sentence of imprisonment of ten years imposed upon them is affirmed. The respondents-accused Nos.1 to 4 shall surrender themselves within a period of four weeks from today to serve the remaining sentence, failing which they shall be taken into custody. We place on record the valuable assistance rendered by the counsel Mr. Praveen Chaturvedi who has been nominated by the Supreme Court Legal Services

> *Committee to argue on behalf of the respondents/accused.*

This Court in the case of ***'Astha Modi versus State of Haryana and another, (CRM-M-38422-2019 decided on 08.11.2023)'*** has held as under:-

> *9. Examination of the impugned order shows that after noting the affidavit filed by the petitioner, learned Sessions Judge has failed to follow the settled procedure of calling upon the petitioner, whose work and conduct is under scrutiny. She is not a party to the proceedings, no notice has been issued to her to explain nor has she been afforded with any opportunity of hearing before damning her. The Sessions Court has not adhered to tests laid down by the Apex Court and has made adverse remarks against the petitioner's conduct, which are unwarranted and uncalled for. This Court, therefore, has no hesitation in coming to the conclusion that the remarks recorded by the Sessions Court, deserve to be expunged.*
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> *10. Accordingly, the castigating remarks recorded by the Sessions Judge in order dated 27.09.2018, Annexure P-7, against the petitioner are expunged from the record and they shall not be taken into consideration for any intent or purpose.*

This Court in '***Dr. Mrs. Naresh Saini versus State of Haryana and another, (CRM-M-22310-2014 decided on 29.08.2017)'***, held as under:-

> *Upon hearing learned counsel for the rival parties, I find that the remarks have been made by the trial Court, in Para 56 of its judgement, which read thus:-*
>
> > *"56. As sequel to above discussion, it is held that the prosecution has miserably failed to prove its case on any of the points with cogent, and reliable evidence beyond the shadow of doubt, rather, the defence of the accused that he has been falsely implicated by PW11 in collusion with then CMO, by manipulating and concocting all the proceedings of trap and arrest of the accused for this crime is proved to be well founded and thus also goes to prove that it is a case of false implication with malafide intention and thus a fit case where the accused is entitled for acquittal without any blemish whatsoever and thus stands acquitted accordingly. His bail bonds stands discharged. As far as the plea raised by defence counsel that PW-11 along with all the guilty to brought to books for this case, is concerned, since the outcome of this judgment leads to multifarious actions against so many persons, the accused is at liberty to initiate whatever action he wants or can approach the court of law for the same as per the procedure provided under the law and this Court refrains itself to do so at this stage, though it goes without saying that it is fit case where criminal action is required to be initiated against all involved in this malicious prosecution of the accused. File be consigned to record room".*

> *The record nowhere shows that the learned Special Judge had given a show-cause notice or called for explanation of the petitioner before making the remarks against her, in Para 56 of its judgement above. It is a well settled legal position that no person can be condemned unheard. Therefore, the rule of audi alteram patrem must be followed. Perusal of Para 56 above and the entire judgment nowhere show that the petitioner was at all given a notice of hearing before making disparaging remarks against her. The nature of remarks are such that are bound to effect the petitioner in her career and society. After all, the trial Court ought to have considered that the petitioner has been occupying the position of a CMO in a Government organization and cannot be condemned in the manner that has been done that too without hearing her. In that view of the matter, this petition must succeed.*
>
> *To sum up, this petition must be allowed. Remarks made against the petitioner, in Para 56 of judgment dated 23.03.2012 passed by Additional Sessions Judge-cum-Special Judge, Karnal are ordered to be deleted".*

This Court in '***Veer Singh DSP versus State of Haryana with State of Haryana versus Hans Raj Rathi (bearing CRM-M No.15604 of 2022 & CRM-M No.53510 of 2023 decided on 30.09.2025)',*** held as under:-

> *16. A perusal of The High Court Rules (Chapter 1 Part H Rule 6) (supra) would show that if the conduct of police officers and other officers is to be criticized or any*

action is to be taken against an officer, then the procedure mentioned in Rule 6 is to be followed i.e. a copy of the judgment is required to be sent to District Magistrate who would forward it to the Registrar, High Court, accompanied by a covering letter given in reference to the Home Secretary's Circular dated 15.04.1936. No such procedure had been followed in the instant case and the Trial Court while convicting the accused directed the submission of a challan against the petitioner and other officials and for completion of the proceedings within 02 months. This procedure followed by the Trial Court is unknown to law.

17. Further, a perusal of the judgment in State of Punjab and anr. Versus M/s Shikha Trading Co. (supra), State (Govt. of NCT of Delhi) versus Pankaj Chaudhary and ors. (supra), Astha Modi versus State of Haryana and another (supra) and Dr. Mrs. Naresh Saini versus State of Haryana and another (supra) would show that prior to the taking of any action against any official, he must be given an opportunity of hearing to explain his position. The same having not been done in the instant case would render the proceedings initiated against the petitioner and others nugatory.

18. Even otherwise, if the Trial Court during the course of the Trial of the co-accused had come to a conclusion that the petitioner and others ought to have faced Trial as well, Section 193 Cr.P.C. could have been resorted to at the time of taking cognizance against the co-accused and Section 319 Cr.P.C. could have been resorted to when the prosecution evidence was being recorded. None of these procedures were adopted by the Trial Court.

> *19. In view of the aforementioned discussion, the directions issued in Para 28 of the judgment dated 23.02.2022 passed by the Additional Sessions Judge, Gurugram (Annexure P-9) and all other consequential proceedings arising therefrom stand quashed qua the petitioner.*

11. A perusal of The High Court Rules & Order Volume III (Chapter 1 Part H Rule 6) (supra) would show that if the conduct of police officers and other officers is to be criticized or any action is to be taken against an officer, then the procedure mentioned in Rule 6 is to be followed i.e. a copy of the judgment is required to be sent to the District Magistrate who would forward it to the Registrar, High Court, accompanied by a covering letter given in reference to the Home Secretary's Circular dated 15.04.1936. No such procedure had been followed in the instant case and the Trial Court while convicting the co-accused directed the submission of a challan against the petitioner. This procedure followed by the Trial Court is unknown to law.

12. Further, a perusal of the judgment in ***State of Punjab and anr. Versus M/s Shikha Trading Co. (supra), State (Govt. of NCT of Delhi) versus Pankaj Chaudhary and ors. (supra), Astha Modi versus State of Haryana and another (supra), Dr. Mrs. Naresh Saini versus State of Haryana and another (supra) and Veer Singh DSP versus State of Haryana with State of Haryana versus Hans Raj Rathi (supra)*** would show that prior to the taking of any action against any

official, he must be given an opportunity of hearing to explain his position. The same not having been done in the instant case would render the proceedings initiated against the petitioner nugatory.

13. Even otherwise in the instant case, the Trial Court during the course of the Trial had dismissed the application under Section 319 Cr.P.C. to summon the petitioner as an additional accused. Once the same very Court had dismissed the said application, he ought not to have issued the directions in Para 27 of the judgment dated 24.02.2022 (Annexure P-5) which have been impugned in the present petition.

14. In view of the aforementioned discussion, the directions issued in Para 27 of the judgment dated 24.02.2022 (Annexure P-5) passed by the Additional Sessions Judge, Gurugram and all other consequential proceedings arising therefrom stand quashed qua the petitioner.

15. The present petitions stand disposed of in the above terms.

16. The pending application(s), if any, shall stand disposed of accordingly.

(JASJIT SINGH BEDI)
JUDGE

November 18, 2025
sukhpreet

Whether speaking/reasoned Yes/No
Whether reportable Yes/No