REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2453 OF 2011

(Arising out of SLP(C) No. 35386 of 2010)

WITH

CIVIL APPEAL NO.2494 OF 2011

STATE OF PUNJAB AND ANR. ...APPELLANT(S)

VERSUS

M/S. SHIKHA TRADING CO. ...RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

CIVIL APPEAL NO.2453 OF 2011

1. The instant appeal has been filed by the State of Punjab against the judgment dated 08.12.2010 in CWP No. 19909 of 2010 by which the High Court of Punjab and Haryana, Chandigarh directed the Senior Superintendent of Police, Ludhiana to have a criminal case registered and duly investigated

against an officer of the State, i.e., the Assistant Excise and Taxation, Commissioner (AETC), Ludhiana – I.

BACKGROUND

2. Shikha Trading Company[1] preferred a Writ Petition against the illegal sealing of its shop by the officers of the Department of Excise and Taxation, Punjab on 13.09.2010.

3. The said petition being CWP No. 19909/2010, stood disposed of with two material directions; one, that since during the pendency of the petition, the shop (premises) of STC were de-sealed, thereby rendering the petition infructuous; and two, that Rishi Pal Singh, an officer of the State posted as Assistant Excise Taxation Commissioner (AETC Ludhiana-I) had filed an affidavit taking a false defence. Hence proceedings, criminal in nature, be initiated against him with the registration of FIR, with subsequent submission of the Action Taken Report to the Court within a period of three months.

4. The present appeal is directed against the second part of the order which is extracted hereinunder :-

1 Respondent herein; hereinafter referred to as 'STC'

> "Case of the petitioner is that team of the department visited the petitioner's premises on 13.09.2010 and illegally sealed the same. It is not disputed that the said team had visited the premises but sealing has been denied. Proceedings at the time of visit have not been produced. There is no reason for the petitioner to falsely allege sealing which is also shown in the photograph. It is not the case of the AETC that the petitioner has any animus against him. Thus, *prima facie*, it has to be held that sealing of the premises was by or at the instance of the department. It is further that the order an representation purporting to be dated 21.10.2010 was passed much later than the said date and has been antedated and the entry in the despatch register dated 21.10.2010 has been forged. If order had been passed and conveyed on 21.10.2010, there would have been no occasion for the petitioner to move this Court. Ink used, use of English language only for one entry as against all other entries in vernacular and pattern of entries in the despatch register create serious doubt about genuineness thereof. Men may tell lie but circumstances may not. Action of the AETC in taking an apparently false stand cannot be ignored. Since these actions of or at the instance of Mr. Rishi Pal Singh, AETC, Ludhiana I constitute cognizable offences, we direct SSP Ludhiana to get a criminal case registered and have the investigation conducted in accordance with law within three months from the date of receipt of a copy of this order. Further action may also be taken as per findings of investigation. Compliance report with copy of report of investigation may be forwarded to this Court apart from report of investigation being submitted to the concerned Court. It is made clear that observations made herein are *prima-facie* and will not affect final conclusion in investigation or trial.

THE PRESENT APPEAL

5. Here only, we may clarify that this Court has not dealt with or made any observation in regard to the alleged illegal actions of

STC in the evasion of tax, an infraction of the provision of Punjab Value Added Tax Act 2005.

6. Clarifying further, the learned counsel appearing for STC (respondent herein) has also not opposed the instant petition in relation to observations, subject matter of the present appeal. It is in this background; we are proceeding to adjudicate on the subject matter of the appeal.

7. Learned senior counsel appearing for the aggrieved party(s) has urged, amongst other grounds, that the impugned directions were passed without affording an opportunity to the concerned officer to explain the relevant facts and circumstances; the impugned directions rely only on assertions made by the respondent without any evidence to substantiate the same; the entry in the despatch register, more particularly the language in which it is made, reflects the document which is to be conveyed i.e., if the original document is in English, the entry corresponding thereto shall also be in English; passing of such an order against an officer of the State who has launched a

campaign against tax evaders, results in having a demoralizing effect on honest officers.

8. Before us, the respondent has nothing adverse to state against any functionary of the State of Punjab, much less the aggrieved officer. There is no opposition to the present appeal.

9. Having perused the records as produced in Court, we are of the considered view that this matter needs to put a quietus to. The record, we are satisfied, does not support the prime facie view taken by the court below, in regard to ante-dating or interpolation of the despatch register. The register records multiple entries in different hand, script, and language.

10. There is no basis for the High Court to arrive at such a conclusion. It is again a matter of record that for several reasons, various officials at the clerical level employed in the department are making entries in the despatch register, therefore, variation in ink and handwriting is bound to occur. A glance at the entries made in the register for the current as well as previous years would show that any communication, subject matter of which is in English, is usually recorded in English and whenever such a

communication is in Punjabi language, the entries are accordingly recorded in Punjabi. Moreover, the entries have been made *et seriatim* and no anomaly, whatsoever, could be found with the same. There is neither any cutting, overwriting nor any interpolation, of any sort. A glance at the relevant page of the despatch register would further make it clear that the entry at the said page starts from Sl No.2026 and ends at Sl No. 2043 and the despatch of the communication in question to the respondent falls at Sl No. 2032 which is in the middle of the page. Therefore, the question of any interpolation/tampering does not arise, even remotely so.

11. In view thereof, the doubt as to the genuineness of the register does not stand on firm ground and must be disregarded. It is also to be noted that the record in no way reflects the concerned officer to have any prior disposition or *animus* against the respondent.

12. There is no gainsaying in stating that officer was not to be benefitted in any manner in ante-dating the communication dated 21.10.2010, as the said date was still beyond the period of

10 days initially granted by the High Court to unseal the premises of the respondent herein, vide order dated 27.09.2010 of which fact, the High Court failed to take notice.

13. In our considered view, the conclusions arrived at, as re-produced (supra), are based on mere surmises and/or bald assertions, without any material attesting to the conclusions or regard for consequences. The directions were totally misplaced, more so, when the endeavour of the officer was to bring the offenders to book and save evasion of duty, mandatorily required to be paid by the assessee.

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**[2] (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

2 AIR 1964 SC 703

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**[3] (three-Judge Bench); **S.K. Viswambaran v. E. Koyakunju**[4] (two-Judge Bench); **Samya Seet v. Shambhu Sarkar**[5] (three-Judge Bench); **State of Madhya Pradesh v. Narmada Bachao Andolan**[6] (three-Judge Bench) **and K. G. Shanti v. United Indian Insurance Co. Ltd and Ors**[7] (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

3 (1975) 2 SCC 466
4 (1987) 2 SCC 109
5 (2005) 6 SCC 767
6 (2011) 12 SCC 689
7 (2021) 5 SCC 511

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].

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]

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

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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

9 Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi, (1987) 1 SCC 227; three-Judge Bench

10 K.G Shanti (supra)

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]

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];

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];

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

11 E. Koyakunju (supra)
12 Dr. Raghubir Saran v. State of Bihar, AIR 1964 SC 1; two-Judge Bench
13Dr. Raghubir Saran (supra)

and without any lawful excuse take away the character of a party or of a witness or of a counsel before it.[14]

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]

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.

14 Panchanan Banerji v. Upendra Nath Bhattacharji [AIR 1927 All 193, as referred to in Sashibhusan Kar (supra)
15 Manu Sharma v. State (NCT of Delhi), 2010 6 SCC 1; two-Judge Bench
16 'K' A Judicial Officer (supra)

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.

22. The appeal of the State is allowed and the connected appeal is disposed of in the aforesaid terms.

23. Interlocutory applications if any, shall stand disposed of.

24. No costs.

.....J.
(ABHAY S. OKA)

.....J.
(SANJAY KAROL)

NEW DELHI
AUGUST 25, 2023