IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL Nos. 443-445/2004
(Arising out of SLP (Crl.) Nos. 530-532/2004)

Teesta Setalvad & Anr. ……. Appellants

Versus

State of Gujarat & Ors. ……. Respondents

JUDGEMENT

ARIJIT PASAYAT, J.

Leave granted.

In these three appeals, certain observations made by the high court of Gujarat at Ahmedabad in Crl. A. No. 956/2003 with Crl. Misc. Appln. Nos. 7677/2003 and 9825/2003 are questioned by the appellants.

According to them, the high court has directly and/or at any rate indirectly cast aspersions on their credibility and bonafides in helping certain persons to approach this Court for redressal of their grievances. The case before the Gujarat high court related to an alleged communal carnage on 27th February 2002.

According to the appellants, being human rights activists, they wanted to find out what is the truth and in the process, though after conclusion of the trial, it was reliably felt by them on the basis of verifications made that truth has been the resultant casualty. They had made detailed study of the situation and also met the riot-affected persons. They helped the victims in lodging FIRs, and setting up legal aid clinics for the affected victims. They claim to be anti-fundamentalists and public activists with (the) avowed object of helping victims of communal violence. Their main and sincere objective is to maintain and preserve the secular image of the nation, secured

firmly under the Constitution of India, 1950 (in short the "Constitution"), the supreme law of the land.

Certain persons, who were not happy with the verdicts rendered by the trial court in the case commonly known as ""Best Bakery case"" also approached the appellants and they helped them in obtaining legal assistance. Unfortunately, the high court, while dealing with the appeal filed by the state of Gujarat against the acquittal of the accused persons and other connected cases, made some caustic observations casting serious aspersions on their bonafides and has used strong words like "super investigators", "anti-social" and "anti-national" elements.

Grievance is made that not only were the observations unnecessary and contrary to the truth but also were made against persons who were not even given an opportunity to justify their action. Principles of natural justice were said to have been grossly violated.

Prayer is made, therefore, for deletion of the offending portions from the judgement, which according to the appellants are as follows:

◆ In Para 15: "It is stated at the Bar that the Citizens for Justice and Peace petitioner before the Supreme Court in this case, is situated at Mumbai. Like other affidavits, this affidavit of Sahejadkhan was also sworn before the Notary Public at Mumbai whereas this witness resides at Vadodara. From Para 22 of the affidavit it appears that an attempt is made by the journalists/human rights activists and advocate Teesta Setalvad and Mihir Desai, respectively, of the Citizens for Justice and Peace to have parallel investigating agency, whereas the statutory authority to investigate any case is police, CBI or any other agency established under the Statute. We do not know how far it is proper but we can certainly state that it is not permissible under the law."

Para 20: "This very witness when examined before the court seems to have stated the truth before the court, but unfortunately, it seems that for some reasons, after the pronouncement of the judgement, they fell in the hands of some, who prefer to remain behind the curtain."

◆ "Certain elements failed everywhere, at all levels, and to obstruct the development and progress of the state and trying to misuse the process of law, so far they have not fully succeeded. Sometime back in the name of environment, (a) matter was filed before the apex court in (the) Narmada matter, which was dismissed by the apex court. However, because of the *ex parte* ad interim order, they were successful in causing huge loss, running into thousands of crores of rupees to the state because of the delay in construction of the dam. Ultimately, such huge loss had to be suffered by the people of the state for no fault of theirs. Gujarat is very much part and parcel of our nation and any loss to the state means loss to the nation.

"Once again, almost similar attempt is made not only to cause indirect financial loss to the state, but to create rift between the two communities and spread

hatred in the people of the state. Financial loss can be recovered at any time, but it is very difficult to rebuild confidence, faith and harmony between people of the two communities. This time, target is none else but the judiciary of the state and the system as a whole, which is really a matter of grave concern. Most unfortunate part of it is that, some people within the state and the nation, without realising the pros and cons of it, (are) unnecessarily giving undue importance to such elements, who are misusing poor persons like Zahira and others."

◆ "Instead of that, there are some persons (who) for their petty benefits, (are) trying to add the fuel to the fire, which is already extinguished, and keep the situation tense. They did (do) not know that (the) great harm they are causing to the state and the nation. One should not cut the branch on which (one) sits. Nation will suffer if Gujarat is made to suffer. It is most unfortunate that attempt is made to create a false impression not only in the other states but also in the world that Gujarat is a terrorist state, which is factually wrong."

◆ Para 21: "It is most unfortunate that only few, handful of people are indulging in dirty tactics and wrongly defaming the state and its people for ulterior motives and reasons. Much could have been said about such elements, but it would have been once again used as publicity, therefore, best thing is to simply ignore them. Even a note taken of this element amounts to giving some importance, which they do not deserve it at all."

We have heard Mr. Kapil Sibal, learned senior counsel for the appellants and Ms. Hemantika Wahi, learned counsel for the State of Gujarat. It is not in dispute and the records also reveal that the appellants were not parties in the case before the high court. It is beyond comprehension as to how the learned judges in the high court could afford to overlook such a basic and vitally essential tenet of "Rule of Law" that no one should be condemned unheard and risk themselves to be criticised for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics. The observations quoted above do not *prima facie* appear to have any relevance to the subject matter of dispute before the high court.

Time and again this Court has deprecated the practice of making observations in judgement, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, (not) unmindful of the serious repercussions they may entail on such persons.

Apart from that, when there is no relevance to the subject matter of adjudication, it is certainly not desirable for the courts to make any comments or observations reflecting on the bonafides or credibility of any person or their actions. Judicial decorum requires dispassionate approach and the importance of issues involved for consideration is no justification to throw to winds basic judicial norms on mere personal perceptions as saviours of the situation.

Learned counsel for the State of Gujarat also cannot successfully substantiate their

relevance or necessity for the case on hand and virtually had to concede that the observations really have no proximate or even remote link with the subject matter of adjudication which was involved in the cases before the high court.

Observations should not be made by courts against persons and authorities unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before it or those litigating for such causes. The parties before it and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

Courts are not expected to play to the gallery or for any applause from anyone or even need to take cudgels as well against any one, either to please their own or any one's fantasies. Uncalled for observations on the professional competence or conduct of a counsel, and any person or authority or harsh or disparaging remarks are not to be made unless absolutely required or warranted for deciding the case.

Even while dealing with recalcitrant subordinate judicial officers, this Court has advised restraint.

As far back as in the year 1963 in *Ishwari Prasad Misra V. Mohd. Isa [AIR 1963 SC 1728]* this Court, seeking through Rajendragadkar. J. (as he then was) in the context of dealing with strictures passed by the high court against one of its subordinate judicial officers, stressed the need to adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary because the judge against whom imputations are made had no remedy in law to vindicate his position. In *K.P. Tiwari V. State of M.P. [1994 Suppl. (1) SCC 540],* this Court made the following observations in this context:

> "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 appeal 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 has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under 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 or the 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."

We also extract below the observation of this Court in *Braj Kishore Thakur V. Union of India & Ors. [1997 (4) SCC 65]*:

"Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a judge which he is obliged to keep refurnished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that "a judge who has not committed any error is yet to be born.

"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 in hands 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 judgement 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."

The said observations would, in our view, apply with equal force to all such parties who were not before court and not merely could not be before the court in the proceedings concerned.

In view of the aforesaid, we direct that the observations of the high court, as against the appellants quoted above shall stand expunged and deleted from the judgement of the high court, and consequently must be treated as having never existed or being part of the high court judgement. The decision in this case is confined to the claim of the above appellant only and nothing to do with the claims of others before the high court and this Court in other related appeals.

The appeals are allowed to the extent indicated above.

.....J.
(Doraiswamy Raju)

.....J.
(Arijit Pasayat)
New Delhi.
April 12, 2004.