IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(121-2) **Reserved on :26.09.2025**
Date of Pronouncement:30.09.2025

(1) CRM-M-15604-2022 (O & M)

Veer Singh DSP .... Petitioner

V/s

State of Haryana and anr. ...Respondents

(2) CRM-M-53510-2023 (O & M)

State of Haryana .... Petitioner

V/s

Hans Raj Rathi ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vinod Ghai, Sr. Advocate,
with Mr. Sandeep Kumar Yadav, Advocate,
for the petitioner (in CRM-M-15604-2022).

Mr. Vipul Sherwal, AAG, Haryana,
for respondent No.1 (in CRM-M-15604-2022)
and for the petitioner-State (in CRM-M-53510-2023).

Ms. Sehaj Sandhawalia, Legal Aid Counsel,
for respondent No.2.

*****

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two criminal miscellaneous petitions i.e. **CRM-M-15604-2022 and CRM-M-53510-2023** as the same have been preferred against the same judgment dated 23.02.2022 (Annexure P-9).

2. The prayer in the present petitions under Section 482 BNSS, 2023 is for setting aside the judgment dated 23.02.2022 passed by the Additional Sessions Judge, Gurugram (Annexure P-9) (hereinafter to be known as the 'the Trial Court') to the extent that while convicting the accused persons, the Trial Court has directed the Home Secretary Haryana as well as D.G, CID Vigilance to file a challan against the petitioner and further directed to complete the proceedings within two months.

3. For the sake of convenience, the facts are being taken from the petition bearing No.CRM-M-15604-2022 titled as 'Veer Singh versus State of Haryana and another'.

4. The brief facts of the case are that an FIR No.406 dated 05.09.2009 under Sections 420, 465, 466, 468 and 120-B IPC, Police Station Civil Lines, Gurugram came to be registered at the instance of SI Ram Dayal against Hans Raj Rathi (complainant in the present case), Narender Kumar, Rajender Kumar, Sham Sunder Dutta and Chander Parkash. The copy of the said FIR is attached as Annexure P-1 to the petition.

5. After the filing of the challan in the above said FIR, accused Hans Raj Rathi moved a complaint against Ram Dayal SI (complainant in FIR, Annexure P-1), Vinod Kumar Constable, Rajesh Kumar Constable, Sunil Kumar Constable and the petitioner-Veer Singh DSP as well as other employees, namely, Constable Janmitar, Constable Gursewatk, and Constable Prahalad. The complaint was investigated by the DSP CID, Crime Branch, Panchkula. Vide his report dated 09.06.2010 suspension of

SI Ram Dayal, Constable Sunil Kumar, Constable Vinod and Constable Rajesh was ordered and the directions were also issued for the registration of the FIR. The copy of the said report dated 09.06.2010 is attached as Annexure P-3 to the petition.

6. Based on the aforementioned report dated 09.06.2010, FIR No. 381 dated 29.07.2010 under Sections 166, 347, 384, 120-B IPC and Section 7 of the Prevention of Corruption Act, Police Station Civil Lines, Gurugram came to be registered against SI Ram Dayal and other police officials whereas the accused in the case FIR No.406 dated 05.09.2009 (Annexure P-1), namely, Hans Raj Rathi etc. were discharged.

7. Pursuant to the discharge, a cancellation report was submitted to which SI Ram Dayal filed a protest petition. The same was accepted and the cancellation report dated 02.08.2010 was rejected vide order dated 14.03.2011. The aforementioned order has been challenged before this Court by Hans Raj Rathi vide petition bearing No.CRM-M-10611-2011.

8. Meanwhile, FIR No.381 dated 29.07.2010 (Annexure P-4) was thoroughly investigated by the DSP Krishan Murari and ACP Gurugram and it was concluded in his report dated 10.02.2011 that the petitioner was innocent. The copy of the report dated 10.02.2011 is attached as Annexure P-5 to the petition. An investigation was also carried out by the DSP Dalbir Singh who also exonerated the petitioner vide his zimni report Annexure P-6.

9. The Trial in FIR No.381 dated 29.07.2010 (Annexure P-4) proceeded against Constable Vinod, Constable Rajesh, Constable Sunil Kumar and SI Ram Dayal. They were convicted and sentenced by the Court of Additonal Sessions Judge, Gurugram vide judgment of conviction and order of sentence dated 23.02.2022. The copy of the said judgment is attached as Annexure P-9 to the petition. While convicting the aforementioned accused, the Court passed directions to the effect that the challan shall be submitted against the petitioner, Constable Janmittar, Constable Gursewak and Constable Prahalad. Para 28 of the Judgment where the observations are made is reproduced as under:-

> *28. While concluding judgment, this court will he failing in its duty if it does not pass any order for initiating proper action against Inspector Bir Singh who was Incharge CIA staff Gurugram at the time of incident against whom complainant Hans Raj Rathi and PW Narender have levelled specific allegations of mercilessly beating them and raising the demand of Rs.1 Lac from complainant Hans Raj along with accused facing trial. The investigating agency has not submited the challan against these persons despite the fact that adequate evidence was available on the file against Insp. Bir Singh, Ct, Janmitar, Ct. Gursewak and C. Prahlad. On the one hand, Ct. Janmitar, Ct. Gursewak and Ct. Prahlad were the members of police party which had conducted raid at the premises of complainant along with accused persons facing trial whereas said raid was conducted under the leadership of Ram Dayal and it had taken place at the behest of Inspector Bir Singh who was incharge of CIA staff at that time. Copy of this judgment be*

sent to Home Secretary, Haryana as well as D.G. C.I.D Vigilance for initiating proceedings for submission of challan against Insp. Bir Singh, Ct. Janmitar, Ct. Gursewak and Ct. Prahlad and entire proceedings are required to be completed within a period of two months from the date of receiving the judgment. It shall be the responsibility of the Home Secretary, Haryana as well as D.G. CID Vigilance Sector 6, Panchkula to ensure the compliance.

10. The aforementioned directions issued in Para 28 of the judgment (Annexure P-9) have been challenged by the petitioner-Veer Singh DSP in the instant petition bearing No.15604-2022 and the by the State in petition bearing No.CRM-M-53510-2023.

11. The learned Senior counsel appearing for the petitioner-Veer Singh DSP (in CRM-M-15604-2022) and the learned State counsel for the petitioner-State (in CRM-M-53510-2023) contend that during the course of the Trial, the Trial Court could have summoned the accused under Section 193 Cr.P.C. at the time of taking cognizance and once again during the course of recording of the prosecution evidence under Section 319 Cr.P.C. The said procedure was not adopted by the Trial Court. Instead, the directions have been issued on the culmination of the Trial while convicting the co-accused. They contend that the directions issued to submit a challan in the impugned judgment (Annexure P-9) are in violations of the High Court Rules (Capter I Part H Rule 6). They contend that the remarks had been made against the petitioner and the other officials without following the

principle of *audi alteram partem* inasmuch as the petitioner and the other officials were required to be heard before the said directions had been 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) and Dr. Mrs. Naresh Saini versus State of Haryana and another, (CRM-M-22310-2014 decided on 29.08.2017)'.*** They, therefore, contend that the present petitions ought to be allowed and the impugned directions issued in para 28 of the judgment dated 23.02.2022 (Annexure P-9) are liable to be quashed.

12. The legal aid counsel for respondent No.2, on the other hand, has very fairly conceded that the contentions raised are in accordance with settled legal principles inasmuch as the Trial Court could have resorted to Section 193 Cr.P.C. or Section 319 Cr.P.C. and it if was to issue directions at the fag end of the Trial then, the prospective accused ought to have been heard.

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

14. Before proceeding further, it would be apposite to examine The High Court Rules (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".

15. The judgments referred to by the learned Senior counsel and the learned State counsel for both the petitioners in their respective petitions 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.

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".*

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.

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

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

(JASJIT SINGH BEDI)
JUDGE

September 30, 2025
sukhpreet

Whether speaking/reasoned Yes/No

Whether reportable Yes/No