V.K. JAIN

v.

HIGH COURT OF DELHI THROUGH R.G. AND ORS.

(Criminal Appeal No. 521 of 2004)

SEPTEMBER 23, 2008*

[DALVEER BHANDARI AND HARJIT SINGH BEDI, JJ.]

Judiciary – Judicial officer – Strictures and remarks against judicial officer – Expunging of remarks – Held: Criticism by superior courts must be in a language of utmost restraint – Judicial decorum to be maintained at all times and even where criticism is justified – Duty and obligation of superior courts to ensure judicial discipline – Principles of law laid down in the light of decisions made over several decades – On facts, remarks expunged – Judicial restraint – Judicial discipline/decorum – Administrative Law – Principles of Natural Justice.

Appellant was a judicial officer. Certain observations were made by High Court in the impugned order, whereby he was projected as an incompetent judicial officer who had no knowledge of basic laws and jurisprudence and who had no regard for the fundamental rights of the citizens. According to the impugned order, the appellant was administering justice in the medieval way and in an arbitrary manner.

In appeal to this Court, appellant contended that High Court was not justified in passing totally unmerited and undeserved strictures and remarks against him and prayed for expunging the remarks so made.

Allowing the appeal, the Court

* Received for reporting, on 1.9.2009.

A **HELD: 1. It is the duty and obligation of the higher courts to modify or set aside orders which are contrary to law or the facts of the case. This is one of the most important functions of the superior courts. Indian legal system acknowledges the fallibility of the judges and**
B **provides for appeals and revisions. Judges of the superior courts while discharging their duty ought to be extremely careful before passing imputations, strictures and remarks against subordinate judicial officers. There was no justification in passing any imputations, remarks**
C **or strictures against the appellant. Even if it is assumed that the order passed by the appellant was wrong or erroneous, even then the High Court ought to have either modified or set aside the order, but the High Court was not justified in passing totally unmerited, derogatory,**
D **harsh and castigating remarks against the appellant. [Paras 41 and 49] [944-A-C; 948-C-E]**

Kunhayammed and Ors. v. State of Kerala and Anr. **(2000) 6 SCC 359;** *Commissioner of Income Tax, Bombay v. Amrit Lal Bhogi Lal and Co.* **AIR (1958) SC 868;** *Gojer*
E *Brothers (Pvt.) Ltd. v. Ratan Lal Singh* **(1974) 2 SCC 453;** *Kashi Nath Roy v. State of Bihar* **(1996) 4 SCC 539;** *Braj Kishore Thakur v. Union of India and Ors.* **(1997) 4 SCC 65;** *Panchanan Banerji v. Upendra Nath Bhattacharji* **(1926) I.L.R. 49 All 254; H. Daly AIR (1928) Lah 740;** *State v. Mikanth*
F *Shripad* **AIR (1954) Bom. 65;** *L. Banwanri Lal v. Kundan Cloth Mills Ltd.* **AIR (1937) Lahore 527;** *Dr. Raghubir Saran v. State of Bihar and Anr.* **AIR (1964) 1;** *Anjani K. Verma v. State of Bihar and Anr.* **(2004) 11 SCC 188;** *A.M. Mathur v. Pramod Kumar Gupta and Ors.* **AIR (1990) SC 1737;**
G *Niranjan Patnaik v. Sashibhushan Kar and Anr.* **AIR (1986) SC 819;** *Samya Sett v. Shambhu Sarkar and Anr.* **(2005) 6 SCC 767;** *Ishwari Prasad Misra v. Mohammad Isa* **(1963) 3 SCR 722;** *State of M.P. And Ors. v. Nandlal Jaiswal and Ors.* **(1986) 4 SCC 566;** *K.P. Tiwari v. State of M.P.* **(1994) Supp.**
H **1 SCC 540; In re: 'K' A Judicial Officer (2001) 3 SCC 54;**

Ramesh Chander Singh v. High Court of Allahabad and Anr. (2007) 4 SCC 247, referred to. A

2.1. The following principles of law are laid down in the light of decisions spreading over a century. Erosion of credibility of judiciary in the public mind, for whatever reason, is the greatest threat to the independence of judiciary. Judicial discipline and restraint are imperative for the orderly administration of justice. Judicial decorum makes it imperative that the judgments and orders must be confined to the facts and the legal position involved in the cases and the courts should not deviate from propriety, moderation and sobriety. [Para 50] [948-E-H; 949-A] B C

2.2. Majesty of Court is not displayed solely in cracking the whip on mistakes, inadvertent errors of lapses, but by persuasive reasoning so that the similar errors and mistakes are not repeated by the judicial officers. Majesty of Court would be enhanced by practicing discipline and self-restraint in discharging of all judicial functions. The role of superior courts is like a friend, philosopher and guide of the judiciary subordinate to it. The judicial officers have to be treated with parental care and affection. The approach of the superior courts ought to be correctional and not to be intended to harm or ruining the judicial career of the officers. The superior courts should always bear in mind that the judicial officer is not before it and should ordinarily refrain from passing strictures, derogatory remarks and scathing criticism. The passing of such order without affording a hearing to the judicial officer is clearly violative of the principles of natural justice. [Para 50] [949-A-F] D E F G

2.3. The superior courts should always keep in mind that disparaging and derogatory remarks against the judicial officer would cause incalculable harm of a permanent character having the potentiality of spoiling H

A the judicial career of the concerned officer. Even if those remarks are expunged, it would not completely restore the harmed judge from the loss of dignity and honour suffered by him. [Para 50] [949-F-H]

B 2.4. The superior courts should convey its messages to the concerned judicial officers through a process of reasoning highlighting the correct provisions of law, precedents and proper analysis of evidence and material on record, but rarely by passing harsh and derogatory remarks. They must always keep in mind that it is a C herculean task for the judicial officer to get the derogatory remarks expunged by the superior court. He is compelled to take assistance from lawyers,who may be appearing before him. It is embarrassing, humiliating, time consuming and an expensive exercise. [Para 50] [950-A-D C]

2.5. The superior courts must always keep in mind that much cherished judicial independence must not be presented only from outside but from within, by those E who form the integral part of the judicial system. Damage from within has much larger and greater potential for harm than danger from outside. [Para 50] [950-C-D]

2.6. The superior courts should not use strong F derogatory, disparaging and carping language while criticizing the judicial officers. They must always keep in mind that, like all other human beings, the judicial officers are also not infallible. Any remarks passed against them may result in incalculable harm resulting in grave injustice. The superior courts judges should not be, like G a loose cannon, ready to inflict indiscriminate damages whenever they function in judicial capacity. They should keep in mind that infliction of uncalled for, unmerited and undeserved remarks clearly amount to abuse of the process of court. It must be remembered that the H subordinate judicial officers at times work under charged

atmosphere and are constantly under psychological pressure with all the contestants and their lawyers almost breathing down their necks and more correctly upto their nostrils. [Para 50] [950-E-H; 951-A-C]

2.7. To err is human and no one is infallible. A judge who has not committed an error is yet to be born. Judicial decorum has to be maintained at all times and even where criticism is justified. It must be in a language of utmost restraint always keeping in view that the person marking the comment is also fallible. Judges of the superior courts' have a duty and obligation to ensure judicial discipline and respect for judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticized intemperately and castigated publicly. It is the duty and obligation of the judges of the superior courts to ensure that independence of judiciary is not compromised and every judicial officer should feel that he can freely and fearlessly give expression to his own opinion. This is absolutely imperative in maintaining the independence of judiciary. [Para 50] [951-C-H]

3. On consideration of the totality of the facts and circumstances, the impugned order passed by Single Judge cannot stand scrutiny of law as far as passing the remarks and strictures against the appellant were concerned and consequently the impugned order is set aside to the extent of expunging the remarks made against the appellant in the said order. [Para 51] [952-B-C]

Case Law Reference:

(2000) 6 SCC 359	referred to	Para 8
AIR (1958) SC 868	referred to	Para 8

A	(1974) 2 SCC 453	referred to	Para 8
	(1996) 4 SCC 539	referred to	Para 22
	(1997) 4 SCC 65	referred to	Para 24
B	(1926) I.L.R. 49 All 254	referred to	Para 25
	AIR (1928) Lah 740	referred to	Para 26
	AIR (1954) Bom. 65	referred to	Para 27
	AIR (1937) Lahore 527	referred to	Para 28
C	AIR (1964) 1	referred to	Para 29
	(2004) 11 SCC 188	referred to	Para 30
	AIR (1990) SC 1737	referred to	Para 31
D	AIR (1986) SC 819	referred to	Para 34
	(2005) 6 SCC 767	referred to	Para 35
	(1963) 3 SCR 722	referred to	Para 38
E	(1986) 4 SCC 566	referred to	Para 39
	(1994) Supp. 1 SCC 540	referred to	Para 40
	(2001) 3 SCC 54	referred to	Para 42
	(2007) 4 SCC 247	referred to	Para 44

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 521 of 2004.

From the Judgment & Order dated 14.7.2003 of the High G Court of Delhi in Criminal Misc. (M) No. 522 of 2003.

T.R. Andhyarujina, Prashant Bhushan, Rohit K. Singh and Somesh Rattan for the Appellant.

B.B. Singh, T.A. Khan, B.K. Prasad, P. Parmeswaran, A.

H

Mariarputham and Aruna Mathur, (for Arputham, Aruna & Co.) for the Respondents.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. This appeal is directed against the order dated 14th July, 2003 passed by the High Court of Delhi in Criminal Misc. (M) No.522 of 2003.

2. The appellant, a judicial officer of the Delhi Higher Judicial Service, is aggrieved by the remarks and strictures which have been passed by the High Court of Delhi against him. According to the appellant, the remarks were totally undeserved, unjustified, unmerited and unnecessary for deciding the issue involved in the case. In this appeal, he has prayed for expunging and deleting the remarks passed by the High Court.

3. Brief facts which are necessary to dispose of this appeal are recapitulated as under:

The appellant, at the relevant point of time, was posted as a Special Judge dealing with the case of Central Bureau of Investigation (for short, 'CBI') at New Delhi. The appellant all through has been an outstanding officer of the Delhi Higher Judicial Service and consistently getting outstanding (A+) ACRs in his entire service career.

4. Respondent No.3 Chander Prakash, a non-resident Indian (NRI) along with others were charge-sheeted by the CBI under section 120-B read with sections 420/467/468/471 of the Indian Penal Code (for short, 'IPC') and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. Respondent No.3 Chander Prakash was granted bail on 1.3.2002 subject to the condition that he will not leave the country without permission of the court. On 4.3.2002, respondent no.3 filed an application seeking permission to go to Hong Kong. The said application was opposed by the CBI in writing on the ground that respondent no. 3 might flee from justice and he may

A not be available for facing the trial. During the pendency of the said application, to assure the court and the CBI that respondent no.3 Chander Prakash would be available for the trial, respondent no.3 expressed willingness to deposit the passports of his wife and mother, who are respondent nos.4 B and 5 in this appeal, before the CBI Court. Respondent no.3 Chander Prakash presumably with the consent and concurrence of respondent nos.4 & 5 volunteered to deposit the passports of respondent no.4 and 5. Pursuant to the offer made by respondent no.3, vide order dated 4.3.2002, C respondent no.3 was granted permission to go to Hong Kong after depositing the passports of respondent nos.4 & 5. They were not aggrieved by the order at any point of time because the order was in the nature of a consent order rather than strict directions of the court. The order passed by the appellant dated D 4.3.2002 reads thus:

"ORDER

Case taken up today on the application of Chander Parkash for permission to go Hong Kong and for return of E his passport. He states that he is an NRI and is working in Hong Kong. Keeping in view the fact that he had appeared in response to the summons issued by this court and he has expressed his willingness to deposit the passports of his wife and his mother in the court in order F to ensure that he shall not abscond during trial, he is permitted to go to Hong Kong subject to the condition that he shall remain present on the next date of hearing and shall file an FDR of Rs.one lac today itself. On filing of FDR and passports of the mother and wife of the accused Chander Parkash, his passport be released to him. G Accused Chander Parkash has already given his office address of the Hong Kong in the application. He is also directed to give his residential address in Hong Kong to the court. He shall deposit the passport in court on return from Hong Kong.

H

Special Court / New Delhi" A

5. An application dated 10.8.2002 was filed after more than five months of the order dated 4.3.2002 in which respondent nos. 4 and 5 prayed that their passports be returned on the ground that respondent no.5 wanted to get her treatment done by respondent no.3 who at that time was in Hong Kong. The CBI opposed the application in writing. Vide orders dated 14.8.2002, the application was rejected by the appellant. It was noted in the order that respondent nos.4 & 5 had willingly deposited their passports and, therefore, it would not be appropriate to release their passports till respondent no.3 (accused Chandra Prakash) returns from abroad and seeks fresh permission to go abroad without depositing the passports of respondent nos. 4 and 5. B C

6. The order dated 4.3.2002 passed by the appellant was challenged by respondent nos.4 & 5 by filing Criminal Misc. (Main) No.4200/02 in Criminal Misc. (M) No.1043/02 before the High Court of Delhi. The High Court vide order dated 9.10.2002 directed release of passport only of respondent no.4 for a period of two months as respondent no.3 was admitted in the hospital. She was directed to return and surrender her passport thereafter. The said order is reproduced hereunder: D E

"IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIM MM 1043/2002 F

Chander Prakash ..... Petitioners
Through Mr. Jatan Singh

Versus

C.B.I. ..... Respondent
Through Mr. A. K. Dutt G

ORDER

09.10.2002

CRL M. 4200/2002 H

A The applicants are the mother and wife of the accused/petitioner. The petitioner has through this petition challenged the impugned order dated 4th March, 2002 passed by the learned ASJ permitting the accused to go to Hongkong subject to the condition that he shall deposit
B passports of his wife and mother and shall deposit an FDR of Rs. One lac and after doing so his passport shall be released to him. After complying with this condition the petitioner's passport was released and he is presently stationed at Hongkong. It is stated that there he is admitted
C in the Hospital and since there is no family member to look after him the mother and the wife be permitted to go there and, therefore, their passports be released. It appears that the condition of depositing the passports of the mother and the wife of the accused was imposed in order to ensure
D and procure the presence of the accused on the dates of hearing. However, the record shows that the accused has been regularly attending the hearing. However Counsel for the petitioner states that he shall be satisfied if the passport of the wife of the petitioner is released facilitating her to go to Hongkong to care for her husband. Since the
E applicant wife is not an accused nor a surety, the request of the counsel for the petitioner appears to be justified. Let the passport of the wife of the accused Anjana Batheja be released for a period of two months whereafter she will return and surrender the passport so as to facilitate the
F decision of the main petition.

Dasti.

Sd/-
Judge, High Court

G October 09, 2002."

7. It may be pertinent to mention that Criminal Misc. (M) No.1043/02 was finally disposed of by the High Court vide order dated 20.11.2002 without setting aside or adversely
H commenting on the orders dated 4.3.2002 and 14.8.2002

passed by the appellant. The High Court did not adversely comment on the order because the High Court did not find anything erroneous, unreasonable or obnoxious in the said order. It is astonishing that when the same order of the appellant dated 4.3.2002 again came up for consideration on 14.7.2003, the High Court adversely commented on the order of the appellant and passed the impugned order dated 14.7.2003 which is reproduced as under:

"IN THE HIGH COURT OF DELHI

Crl. M (M) No. 522/2003

Date of Decision: July 14, 2003

Smt. Anjana Batheja & Anr. ....Petitioner
Through Mr. Jatan Singh, Adv.

Versus

Central Bureau of Investigation . ... Respondent
Through Mr. H.J.S. Ahluwalia, Adv.

1. Whether the reporters of local papers may be allowed to see the judgment?

2. To be referred to the report or not?

3. Whether the judgment should be referred in the Digest?

ORAL JUDGMENT

1. Mindboggling situation has arisen in these proceedings. One Chander Prakash is facing trial before Sh. V. K. Jain, Special Judge CBI Court Delhi for the offences punishable under Sections 420/467/468/471 read with Section 120-B of the Indian Penal Code and Sections 13(2), 13(1)(d) of Prevention of Corruption Act. He is on bail. Since he was on bail, he made an application for release of his passport for going to Hong Kong where he has a business.

A In order to ensure his presence on the dates of hearing, Learned Special Judge has passed an order which has overtones of keeping his mother and wife as hostages as he has directed the petitioner not only to deposit their passports but also deposit Rs.1 lac by way of F.D.R. if he B wants his passport to be released.

2. Forced by circumstances, the petitioner after depositing their passports went to Hong Kong where he fell seriously ill. There was nobody to look after him at Hong Kong. Consequently, his mother and wife moved an application C for releasing their passports before the learned Special Judge but their applications were dismissed vide order dated 4.3.2002 though an offer to keep the sister of the accused as another hostage was made as they offered to deposit the passport of the sister of the accused and also D to furnish the bank guarantee.

3. Through this petition they have challenged not only the legality and rationality of the impugned order but its propriety and harshness. It is pertinent to mention here that E since the release of accused, he has been regularly attending court proceedings even during brief sojourns to Hong Kong. More so his appearance was also exempted till the framing of charges.

4. Not only on the face of it but even on the premise of F layman's understanding condition of releasing the passport of the accused subject to deposit of passports of his mother and wife and deposit of Rs. One lac by way of F.D.R. appears to be highly irrational, illegal, harsh and difficult to ram down the throat as it is unknown to the G criminal jurisprudence.

5. Every criminal court is a creature of Criminal Procedure Code and as such is neither above it nor can rise above it. The court is empowered to impose any kind of condition H upon the accused to ensure his presence but to curtail or

scuttle the liberty of other members of his family who are in no way connected with the crime is to take away precious fundamental right of free movement of an individual granted by the Constitution. This is nothing but a medieval way of administering justice when family members used to be kept as hostages in lieu of either release of their detained kith and kin or procure the surrender of the wanted man.

6. Once passport of the accused was released on the condition of filing FDR of Rs. 1 lac though the legality of such a condition is in serious doubt imposing of any other condition or order for depositing the passports of his mother and wife was beyond the judicial domain of the court.

7. if the learned Special Judge was of the opinion that the release of passport to the accused was not safe as he may flee from justice, such a request could have been rejected and if allowed any other reasonable kind of condition could have been imposed upon him and him alone.

8. The impugned order is wholly illegal, irrational and hits at the foundation of fundamental right of a person and jurisprudential structure and is therefore difficult to sustain and has to go. Merely because the accused had shown his willingness to ensure his appearance on the next date of hearing by way of depositing the passports of his wife and mother does not mean that the Court should also pass the order directing him to do an act for which the accused had neither any legal authority nor any legal right. Every individual is independent entity. How can on the statement of an accused passports of his family members can be ordered to be deposited. To imagine this is beyond comprehension.

9. Without tarrying further on this aspect and concept of

A liberty and freedom of movement of the citizens, I feel persuaded to set aside the impugned order which cannot stand even prima facie judicial scrutiny.

10. In the result the petition is allowed. The impugned order is hereby set aside. Passport of the petitioners, if deposited, shall be released to them forthwith.

B

11. For guidance, copy of this order be sent to all the judicial officers.

C July 14, 2003

Sd/-
Judge"

8. The appellant submitted that the order dated 4.3.2002 passed by him stood merged in the order of the Hon'ble High Court dated 9.10.2002. It is settled proposition of law, reiterated in *Kunhayammed & Others vs. State of Kerala and another* (2000) 6 SCC 359, *Commissioner of Income Tax, Bombay v. Amrit Lal Bhogi Lal & Co.,* AIR 1958 SC 868 and *Gojer Brothers (Pvt.) Ltd. v. Ratan Lal Singh* (1974) 2 SCC 453 that once the order of a lower court has been challenged before a superior forum and has been reviewed, modified or affirmed, it is the order of the superior forum, which alone subsists and is operative. Therefore, it was not permissible for the petitioner to review or modify the order dated 4.3.2002.

D

E

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9. The appellant is aggrieved by the following observations made by the High Court in its impugned order dated 14.7.2003:

"1. Mindboggling situation has arisen in these proceedings... .... In order to ensure his presence on the date of hearing, learned Special Judge has passed an order which has overtones of keeping his mother and wife as hostages.....

G

4. Not only on the face of it but even on the premise of layman's understanding condition of releasing the passport

H

of accused subject to deposit of passports of his mother and wife and deposit of Rs.one lac by way of FDR appears to be highly irrational, illegal, harsh and difficult to ram down the throat as it is unknown to the criminal jurisprudence. A

5. .... This is nothing but a medieval way of administering justice when family members used to be kept as hostages in lieu of either release of their detained kith and kin or procure the surrender of the wanted man. B

8. The impugned order is wholly illegal, irrational and hits at the foundation of fundamental right of a person and jurisprudential structure." C

10. The order dated 14.07.2003 was circulated to all the judicial officers and widely reported in the newspapers. The appellant was projected as an incompetent judicial officer who had no knowledge of even basic laws and jurisprudence and who had no regards of the fundamental rights of the citizens. According to the impugned order, the appellant was administering justice in the medieval way and in an arbitrary manner. D E

11. Mr. T.R. Andhyarujina, learned senior advocate and Mr. Prashant Bhushan, learned advocate appearing on behalf of the appellant submitted that the appellant has seriously suffered on account of the Hon'ble Judge of High Court of Delhi who passed the impugned observations and remarks, taking on record an erroneous statement of facts regarding the working of the appellant as a Special Judge while deciding the Criminal Misc. (M) No.3686/02, 3687/02 and 3688/02 titled *P. Dass Gupta v. State (through CBI)* vide order dated 13.11.2002. In para 4 of the order dated 13.11.2002, the learned Judge of the High Court noted: F G

"Learned senior counsel for the petitioner states at the Bar that this particular Special Judge has not granted bail to any of such accused who has appeared at the time of filing H

A of challan by CBI in spite of the fact that CBI did not take such accused into custody."

12. Learned counsel appearing for the appellant submitted that though grant or refusal of bail is of no consequence, but the correct factual position was that till the date of the order dated 13.11.2002 passed by the High Court, 30 accused charge-sheeted by the CBI were granted bail whereas 18 such accused were refused bail by the appellant. Thereafter, erroneous statement of facts was recorded by the High Court without any verification and without calling for any information, record or comments from the appellant. The appellant is seriously aggrieved by the unmerited, unjustified and unwarranted remarks passed by the learned Judge of the High Court. Learned counsel submitted that the appellant subrnitted that he passed the order dated 04.3.2002 because respondent no.3 expressed his willingness to deposit the passports of his wife and mother, respondent nos.4 & 5 in the court presumably with their consent and concurrence. The order was almost in the form of a consent order.

13. Mr. Andhyarujina, learned counsel for the appellant also submitted that the High Court has been passing similar orders for a long time and as a Subordinate Judicial Officer he was duty bound to follow the same.

14. The learned counsel for the appellant, in order to strengthen his argument, gave reference to the orders passed by a Division Bench of the High Court in CW No.118 and CM No.225 of 1983 on 20th January, 1983. The relevant part of the said order is reproduced as under:

"ORDER

20.1.83 Present:Mr. Soli J. Sorabjee, Senior Advocate,with Mr. Harish Salve for the petitioner.

Mr. D. P. Wadhwa for the respondents.

C.W. 118 and C.M. 225 of 1983

1. Mr. Wadhwa prays for time to file answer to show cause and reply to the application. The same may be filed within four weeks with copy to counsel for the petitioner. Rejoinder, if any, within two seeks thereafter. Case for March 11, 1983.

2. Pending final determination of the matter, we order that without prejudice to the contentions raised by the petitioner or the contentions that may be raised by the respondents, petitioner be permitted to visit the United States of America so as to return to India on or before March 2, 1983 subject to his fulfilling the conditions that we se hereafter.

3. Petitioner shall before leaving India, in additional to the bonds already given in the sum of Rs.1,00,000 with two sureties, give additional security for Rs.2,00,000 to the satisfaction of the Joint Registrar of this Court. The said surety bond will be in favour of the Directorate of Enforcement. Petitioner will give an undertaking to this Court by an affidavit that he would appear before the Enforcement Officer, New Delhi to 10 1.m. on March 7, 1983.

4. The petitioner shall also before leaving India file photo copy of his current passport duly certified by him as true copy with the Enforcement Directorate. Photo copies may be prepared by the Directorate at petitioner's cost.

5. Petitioner on March 7, 1983 produce in the Enforcement Directorate transcript of his bank account or accounts in United States of America from the period January 1, 1978 till three days before his departure from America.

6. Petitioner will cause the current passport of his wife and his child to be deposited with the Registrar of this Court along with an undertaking on affidavit by his wife to this court that in case the petitioner does not return to India on

A or about March 2, 1983 and does not appear before the Enforcement Officer on March 7, 1983, the petitioner's wife will surrender herself to the Enforcement Officer for being detained in civil prison till such time as the petitioner comes and surrenders himself.

B

7. On return of the petitioner to Delhi and on his appearing before the Enforcement Officer, the petitioner will deposit his passport with the Enforcement Officer. The additional sureties of Rs.2 lakhs each will then stand discharged. The passport of the wife of the petitioner shall forthwith be C returned on such appearance and the undertaking of the wife of the petitioner would then stand discharged.

8. We are told that petitioner's child does not have a passport nor any endorsement with regard to his child is D made either on the petitioner's passport or on the passport of his wife. On this aspect petitioner will file an affidavit in this court along with other papers which he has directed to file.

E 9. The matter may be placed before the Joint Registrar (J) on January 21, 1983 for complying with this order. True copies of this order may be given both to the petitioner and to Mr. Wadhwa.

Sd/-
F CHIEF JUSTICE
Sd/-
B.N. KIRPAL, J.

January 20, 1983."

G 15. The High Court of Delhi in Criminal M. (M) NO. 50/98 2.2.1998 passed the following order in similar terms:

" ORDER

Present: Ms Geeta Luthra with
Mr. P. K. Dubey for petitioner.

H

Ms. Mukta Gupta for the State. A

Crl. M (M) NO. 50/98

This petition is for permission to go abroad for business purposes. The latest itinerary filed by the petitioner along with the application dated 13.1.1998, has B become infructuous as the departure date from Delhi was 20th January, 1998. Learned counsel for the petitioner says that in case the permission is granted, a revised itinerary will be supplied to the State. However, the period of remaining abroad would not be more than two months. C

Heard the learned counsel for the parties.

Learned counsel for the respondent says that investigation is almost complete and the challan would be filed and, in these circumstances, joining of the D investigation may not be necessary by the petitioner but in case permission to go abroad is granted to the petitioner, it has to be ensured that he comes back and faces the trial. For that it has been suggested that a bank guarantee of rupees one lac may be given and the places E of stay abroad may be given.

In view of the facts and circumstances of the case, the petitioner is allowed to go abroad on the following conditions:

F

1. He shall furnish a bank guarantee of rupees fifty thousand;

2. One surety of rupees twenty five thousand;

G

3. Personal bond of rupees twenty five thousand;

4. The petitioner shall give the revised itinerary which will not be for more than two months;

5. Before starting the journey, the petitioner shall give H

A the copy of itinerary to I.O. SI Dinesh Kumar and file a copy of the same in court;

6. In case the petitioner can give the addresses where the petitioner would be staying abroad, that shall also be given to IO in advance;

B

7. Petitioner shall deposit passport of his wife Ms. Perwaiz Johan and passport of his eldest daughter Jauvier Nayyar with the concerned court of Magistrate.

C The Bank guarantee, the personal bond and the surety will be to the satisfaction of the conerned court of Magistrate. The passport of the petitioner will be released to him for going abroad on terms ordered above and the same shall be deposited after the journey abroad with the concerned Magistrate.

D

Dasti to counsel for both parties.

The main petition and all pending Crl. Ms. are disposed of.

E

February 02, 1998

Sd/-
A.K. Srivastava,
Judge"

F 16. The appellant being a subordinate judge of the Delhi Higher Judicial Service was duty bound to follow these orders and while passing the order dated 4.3.2002 he followed the pattern of the orders delivered by the Delhi High Court.

G 17. Learned counsel further submitted that the High Court even after the impugned order dated 14.7.2003 passed the similar order dated 31.3.2006, which reads as under:

"IN THE HIGH COURT OF DELHI AT NEW DELHI

H 31.03.2006

Present: Mr. Rajiv Nayar, Sr.Advocate with Mr. R. N. Karanjawala, A

Mr. Viraj Datar, Sandeep Mittal and Mr. Sarvesh Singh for the appellant with appellant in person.

Ms. Mukta Gupta with Mr. Rajat Katyal for the State. B

LPA No. 530/2006 and CM No. 4816/2006

This is an appeal preferred by the appellant Bina K. Ramani from the order dated 24.03.2006 and 29.03.2006 C of the learned Single Judge, whereby he declined to pass an immediate order enabling the petitioner to travel abroad. Learned Single Judge held that in the circumstances, there was need to investigate the matter and permission could not be granted without affording a D reasonable opportunity of hearing to the respondent. The matter was posted for 5th April, 2006. Appellant moved another application, which was listed on 29.03.2006. The said application was also ordered to be posted to 5.4.2006 on account of non-availability of the Senior Counsel. E

Appellant has assailed both these orders in appeal. Appellant's daughter Malini Ramani and Mr. George Mailhot were the petitioners in the writ petition, wherein lookout notices issued were challenged. Interim F application was moved on the plea that wedding of the appellant's niece, i.e., her real brother's daughter, was scheduled for 31.03.2006. Permission was sought to travel abroad. The appellant wishes to leave on the intervening night of 24th and 25th March, 2006 to attend the G celebrations commencing from 29th March, 2006. The appellant, Mr. George Mailhot and her daughter, petitioners in the writ petition, wanted to join in earlier for the marriage preparations. It is submitted that posting the application to 5.4.2006, when all the functions would be H

A over, rendered the appellant's prayer and application infructuous. Learned Senior Counsel for the appellant submits that the appellant, till date, is not accused of any offence. Rather, she was a witness whose evidence had been material for the State. Further, the appellant had fully
B cooperated with the State in prosecution of the Jessica Lal murder case. Learned counsel also submits that no statutory order under the Foreigners Act has been passed, prohibiting the travel or departure of the appellant.

C Ms. Mukta Gupta, learned counsel for the State, opposes the prayer for permission to travel abroad. She submits that the appellant is a British

Passport holder and a foreign national. She submits

D that recently, FIR No.120/2006 dated 6th March, 2006 under Sections 120-B/201/218/34 IPC has been registered at P.S. Mehrauli, with regard to destruction of evidence against unnamed persons. She submits that the appellant and her daughter Malini Ramani and Mr. George
E Mailhot are suspects in the said FIR as she claims that the scene of occurrence was tampered with and the blood stains had been washed away. On the question of permission being granted to go abroad, she submits that the correspondence attached by the appellant does not inspire confidence or conclusively show the relationship of
F the appellant. The functions scheduled for 29th, 30th and 31st March, 2006, i.e., the main functions for the wedding,

are/would be over and there would be no fruitful purpose in considering grant of permission at this stage.

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She further states that when the appellant, her daughter Malini Ramani and Mr.George Mailhot were called for investigation, they did not cooperate and their participation was an eye wash and ineffective answers were given. It is submitted before us that the appellant is

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required to join in for investigations on 4th April, 2006, to give the remaining replies to the notices. A

Learned counsel for the appellant submits that the appellant along with Mr.George Mailhot and her daughter Malini Ramani have been staying in India for over two decades and have properties and roots in India. From 1999 onwards, the appellant has travelled numerous times. To re-assure the court regarding the presence and availability of the appellant, Mr. George Mailhot and her daughter Malini would deposit their passport with the Investigating Officer Mr. M.K. Sharma, ACP. Besides, the appellant undertakes to the court that she will return by 3rd/ 4th April, 2006 and will be available for joining investigations on 4th April, 2006 and would duly furnish the replies of the notices without seeking further extension in this regard. Learned counsel for the appellant submits that the appellant would deposit today itself, a demand draft in the sum of Rs.5 lacs favouring the Registrar General of the High Court of Delhi as security for her due compliance with the aforesaid undertakings. B C D E

We prima facie find that the appellant has been staying in India for a number of years. She has travelled abroad a number of times as is revealed from her Passport. While the appellant has missed out the main wedding and some functions of her niece, learned Senior Counsel submits that she would be able to attend the function of 'Reception Dinner' on Saturday at 8.00 p.m. F

Considering the above circumstances, we permit the appellant to proceed to Phuket, Thailand on compliance with the above terms and conditions as set out. She would return on the intervening night of 3rd and 4th April, 2006. The State would also ensure that no obstruction is caused, on account of the lookout notices, in her travelling to Phuket. G H

A We make it clear that any observation made in this order shall not be taken as expression of any opinion on the subject matter of the validity of the lookout notices, which is pending in the writ petition before the learned Single Judge, who would decide the same uninfluenced B by any observation made herein. The appeal and application stand disposed in above terms.

Copy of this order be given dasti to counsel for both the parties under the signatures of Court Master.

C Manmohan Sarin, J
Manju Goel, J

March 31, 2006."

18. Learned counsel for the appellant submitted that the D order dated 04.3.2002 earlier came before the same Hon'ble Judge and he did not find the same objectionable or unreasonable and passed the order dated 9.10.2002.

19. The order dated 4.3.2002 again came for consideration by the same learned Judge of the High Court, this time, for E totally unjustifiable reason, the court passed unmerited remarks and the observations against the appellant. The impugned order passed by the High Court is against all the norms and settled legal position. He also submitted that as a Subordinate Judge, the appellant was duty bound to follow the earlier order F passed by the Division Bench and the Single Bench of the Delhi High Court.

20. Mr. Andhyarujina also submitted that the learned Judge of the High Court ought to have viewed the entire order in right G perspective that the order was passed on the request made on behalf of respondent no.3 who volunteered to deposit the passports of respondent nos.4&5 presumably with their consent and concurrence. In this view of the matter, the appellant cannot be faulted for passing the order dated 04.3.2002.

H 21. Mr. Andhyarujina further argued that assuming that the

order passed by the appellant was wrong or erroneous, even then the learned Judge of the High Court ought to have set aside or modified the order but he was not justified in passing totally unmerited and undeserved strictures and remarks against the appellant. A

22. In *Kashi Nath Roy v. State of Bihar* (1996) 4 SCC 539, this court had an occasion to deal with a similar matter of expunging of adverse remarks observed thus: B

> "7. It cannot be forgotten that in our system, like elsewhere, appellate and revisional Courts have been set up on the pre-supposition that lower Courts would in some measure of cases go wrong in decision-making, both on facts as also on law, and they have been knit-up to correct those orders. The human element in justicing being an important element, computer-like functioning cannot be expected of the Courts; however, hard they may try ad keep themselves precedent-trodden in the scope of discretions and in the manner of judging. Whenever any such intolerable error is detected by or pointed out to a superior Court, it is functionally required to correct that error that may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the Court and independence of judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear, and result-orienting, but rarely as a rebuke. Sharp reaction of the kind exhibited in the afore-extraction is not in keeping with institutional functioning. The premise that a Judge committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge-Subordinate, unless there existed something else and for exceptional grounds." C D E F G

23. Lord Denning in his celebrated book "The Due Process of Law" has observed the importance of independence for judicial officers in the following words: H

A "Every judge of the courts of this land – from the highest to the lowest – should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure "that they may be free in thought and independent in judgment", it applies to every B judge, whatever his rank. Each should be protected from liability to damages when he is acting judicially. Each should be able to do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself: "If I do C this, shall I be liable in damages?" So long as he does his work in the honest belief that it is within his jurisdiction, then he is not liable to an action. He may be mistaken in fact. He may be ignorant in law. What he does may be outside his jurisdiction – in fact or in law – but so long as he D honestly believes it to be within his jurisdiction, he should not be liable. Once he honestly entertains this belief nothing else will make him liable. He is not to be plagued with allegations of malice or ill-will or bias or anything of the kind. Actions based on such allegations have been struck out and will continue to be struck out. Nothing will E make him liable except it to be shown that he was not acting judicially, knowing that he had no jurisdiction to do it."

24. In *Braj Kishore Thakur v. Union of India & Others* F (1997) 4 SCC 65, this court again dealt with a case of expunging of adverse remarks. The court observed thus:

"11. 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 G 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 H

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 lower judiciary." A

B

25. Sulaiman J. in *Panchanan Banerji v. Upendra Nath Bhattacharji* [(1926) I.L.R. 49 All. 254, 256.] : (AIR 1927 All 193 at p.193) holds that section 561A of the Code of Criminal Procedure, which was added in 1923, confers such a power and he does not see any reason why such an inherent power should not comprise a power to order a deletion of passages which are either irrelevant or inadmissible and which adversely affect the character of persons before the Court. C

26. In the matter of *H. Daly,* AIR 1928 Lah 740 at page 742 Tek Chand, J. observed as under:- D

"It is of the utmost importance to the administration of justice that Courts should be allowed to perform their functions freely and fearlessly and without undue interference by this Court." E

27. Chagla, *C.J. in State v. Nilkanth Shripad* AIR 1954 Bom. 65 observed as under:-

"It is very necessary, in order to maintain the independence of the judiciary, that every Magistrate, however junior, should feel that he can fearlessly give expression to his own opinion in the judgment which he delivers. If our Magistrates feel that they cannot frankly and fearlessly deal with matters that come before them and that the High Court is likely to interfere with their opinions, the independence of the judiciary might be seriously undermined. F G

This Court further observed:

"that every judicial officer must be free to express his H

A mind in the matter of the appreciation of evidence before him. The phraseology used by a particular Judge depends upon his inherent reaction to falsehood, his comparative command of the English language and his felicity of expression. There is nothing more deleterious to the B discharge of judicial functions than to create in the mind of a Judge that he should conform to a particular pattern which may, or may not be, to the liking of the appellate Court. Sometimes he may overstep the mark. When public interests conflict, the lesser should yield to the larger one. C An unmerited and undeserved insult to a witness may have to be tolerated in the general interests of preserving the independence of the judiciary. Even so, a duty is cast upon the judicial officer not to deflect himself from the even course of justice by making disparaging and undeserving D remarks on persons that appear before him as witnesses or otherwise. Moderation in expression lends dignity to his office and imparts greater respect for judiciary. But occasions do arise when a particular Judge, without any justification, may cast aspersions on a witness or any other person not before him affecting the character of such E witness or person. Such remarks may affect the reputation or even the career of such person. In my experience I find such cases are very rare. But if it happens, I agree with the Full Bench of the Bombay High Court that the appellate Court in a suitable case may judicially correct the F observations of the lower Court by pointing out that the observations made by that Court were not justified or were without any foundation were wholly wrong or improper. This can be done under its inherent power preserved under s. 561-A of the Code of Criminal Procedure. But that power G must be exercised only in exceptional cases where the interest of the Party concerned would irrevocably suffer."

28. In the famous case of *L. Banwanri Lal v. Kundan Cloth Mills Ltd.*, AIR 1937 Lahore 527, Skemp, J., more than eight H decades ago, observed that reflections on the conduct of the

party should also be in sober language. The Court observed as under ;

> "In may be necessary for a Judge or a Magistrate to pass reflections upon the conduct or honesty of a party or the truthfulness of a witness; when this is necessary that should be done in sober and becoming language.

29. In *Dr. Raghubir Saran v. State of Bihar & Anr.* AIR 1964 p.1, this court while approving the judgment in AIR 1954 Bom 65 at p.66 (FB) (supra), the court observed :-

> "Whatever maybe the degree of impact, the result of expunging remarks from a judgment is that it derogates from its finality. A judgment of a lower Court may be wrong; it may even be perverse. The proper way to attach that judgment is by bringing it under the scrutiny of the superior Court and getting the judgment of the lower Court judicially corrected. The inherent power that the High Court possesses is, in proper cases, even though on appeal or revision maybe preferred to the High Court, to judicially correct the observations of the lower Court by pointing out that the observations made by the Magistrate were not justified or were without any foundation or were wholly wrong or improper. The contrary view infringes the fundamental principles of jurisprudence that a judgment made by a Court, however inferior it may be in the hierarchy, is final and it can only be modified in the manner prescribed by the law governing such procedure.

In this judgment the court further observed :-

> "Every judicial officer must be free to express his mind in the matter of the appreciation of evidence before him. The phraseology used by a particular judge depends upon his inherent reaction to falsehood, his comparative command of the English language and his felicity of expression.

30. In *Anjani K. Verma v. State of Bihar and Anr.* (2004) 11 SCC 188, the court observed as under:-

> "....at the same time, while passing strictures against a member of the subordinate judiciary utmost care and caution is required to be taken, also having regard to the stress and conditions under which, by and large, the judicial officers have to render justice."

31. In *A.M. Mathur v. Pramod Kumar Gupta & Ors.* AIR 1990 SC 1737 this court has held as under:-

> "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 a 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 co-ordinate branches of the State, the Executive and 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. "

32. In the said decision, this court has also observed that Judges have the absolute and unchallengeable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. The Court further observed that concededly the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that

derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. A

33. In the said case, this court while quoting Justice Cardozo and Justice Frankfurter stated that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still 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 should be the constant theme of the judges, observed the Court: "This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary." B C

34. In yet another case of similar nature, this court in the case of *Niranjan Patnaik v. Sashibhusan Kar and Anr.*, AIR 1986 SC 819 again reminded that the higher the forum and greater the need for restraint and the more mellowed the reproach should be. The court again reiterated the settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. D E

35. In *Samya Sett v. Shambhu Sarkar and Anr.* (2005) 6 SCC 767 at 773, this court observed as under:- F

> "In *Alok Kumar Roy v. Dr. S.N. Sarma* AIR 1968 SC 453 the vacation Judge of the High Court of Assam and Nagaland passed an interim order during vacation in a petition entertainable by the Division Bench. After reopening of the Court, the matter was placed before the Division Bench presided over by the Chief Justice in accordance with the High Court Rules. The learned Chief Justice made certain remarks as to "unholy haste and G H

A hurry" exhibited by the learned vacation Judge in dealing with the case. When the matter reached this Court, Wanchoo, C.J., observed: (SCR pp. 819 F-820 A):-

> "It is a matter of regret that the learned Chief Justice thought fit to make these remarks in his judgment against a colleague and assumed without any justification or basis that his colleague had acted improperly. Such observations even about Judges of subordinate courts with the clearest evidence of impropriety are uncalled for in a judgment. When made against a colleague they are even more open to objection. We are glad that Goswami, J. did not associate himself with these remarks of the learned Chief Justice and was fair when he assumed that Dutta, J. acted as he did in his anxiety to do what he thought was required in the interest of justice. We wish the learned Chief Justice had equally made the same assumption and had not made these observations castigating Dutta, J. for they appear to us to be without any basis. It is necessary to emphasise that judicial decorum has to be maintained at all times and even where criticism is justified it must be in language of utmost restraint, keeping always in view that the person making the comment is also fallible."

In *Samya Sett* (supra), the court further observed:-

"It is universally accepted and we are conscious of the fact that judges are also human beings. They have their own likes and dislikes; their preferences and prejudices. Dealing with an allegation of bias against a Judge, in *Linahan, Re Frank* J. stated:

> "If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the

> mind of the Judge, then no one has ever had a fair trial, and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition are prejudices."

36. Justice John Clarke has once stated:

> "I have never known any judges, no difference how austere of manner, who discharged their judicial duties in an atmosphere of pure, unadulterated reason. *Alas! we are 'all the common growth of the Mother Earth' — even those of us who wear the long robe."*
>
> (emphasis supplied)

37. Similar was the view of Thomas Reed Powell, who said:

> "Judges have preferences for social policies as you and I. They form their judgments after the varying fashions in which you and I form ours. They have hands, organs, dimensions, senses, affections, passions. They are warmed by the same winter and summer and by the same ideas as a layman is."

38. The learned counsel placed reliance on the judgment of this Court in *Ishwari Prasad Misra v. Mohammad Isa* (1963) 3 SCR 722. In this judgment, this court made some observations regarding approach adopted by the High Court in passing the remarks and comments about a judicial officer:

> "27. Before we part with this appeal, it is necessary that we should make some observations about the approach adopted by the High Court in dealing with the judgment of the court which was in appeal before it. In several places

A the High Court has passed severe strictures against the trial Court and has, in substance, suggested that the decision of the trial Court was not only perverse but was based on extraneous considerations. It has observed that the mind of the learned Subordinate Judge was already
B loaded with bias in favour of the plaintiff an that the plaintiff had calculated that such of the evidence as he would produce "long with the pull and weight that would be harnessed from behind would be sufficient to carry him through." Similarly, in criticising the trial Court for accepting
C the evidence of Jamuna Singh, the High Court has observed that the presumption made by the trial Court that teacher, as a rule, is a respectable person, "is not any legal appreciation of the evidence but a way found to suit the convenience of the court for holding in favour of the plaintiff."
D It would thus be seen that in reversing the decision of the trial Court, the High Court has suggested that the trial Court, was persuaded by extraneous considerations and that some pull and weight had been, used in favour of the appellant from behind. "

E This Court observed:

"We are constrained to observe that the High Court was not justified in passing these strictures against the trial Judge in dealing with the present case. Judicial experience
F shows that in adjudicating upon the rival claims brought before the courts it is not always easy to decide where truth lies. Evidence is adduced by the respective parties in support of their conflicting contentions and circumstances are similarly pressed into service. In such
G a case, it is no doubt, the duty of the Judge to consider the evidence objectively and dispassionately, examine it in the light probabilities and decide which way the truth lies. The impression formed by the Judge about the character of the evidence will ultimately determine the conclusion which he reached. But it would be unsafe to
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overlook the fact that all judicial minds may not react in the same way to the said evidence and it is not unusual that evidence which appears to be respectable and trustworthy to one Judge may not appear to be respectable and trustworthy to another Judge. That explains why in some cases courts of appeal reverse conclusions of facts recorded by the trial Court on its appreciation of oral evidence. The knowledge that another view is possible on the evidence adduced in a case, acts as a sobering factor and leads to the use of temperate language in recording judicial conclusions. Judicial approach in such cases should always be based on the consciousness that one may make a mistake; that is why the use of unduly strong words in expressing conclusions or the adoption of unduly strong intemperate, or extravagant criticism, against the contrary view, which are often founded on a sense of infallibility should always be avoided."

This Court further observed that:

"In the present case, the High Court has used intemperate language and has even gone to the length of suggesting a corrupt motive against the Judge who decided the suit in favour of the appellant. In our opinion, the use of such intemperate language may, in some cases, tend to show either a lack of experience in judicial matters or an absence of Judicial poise and balance. We have carefully considered all the evidence to which our attention was drawn by the learned counsel on both the sides and we are satisfied that the imputations made by the High Court against the impartiality and the objectivity of the approach adopted by the trial Judge are wholly unjustified. It is very much to be regretted that the High Court should have persuaded itself to use such extravagant language in criticising the trial Court, particularly when our conclusion in the present appeal shows that the trial Court was right and the High Court was wrong. But even if we had not

A upheld the findings of the trial Court, we would not have approved of the unbalanced criticism made by the High Court against the trial Court."

39. In another case, this Court deprecated the practice of passing stricture against subordinate judicial officer. In *State of M.P. & Others v. Nandlal Jaiswal & Others* (1986) 4 SCC 566, the Chief Justice P.N. Bhagwati (as he then was) observed that Judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Chief Justice Bhagwati further observed that sweeping observations attributing mala fides, corruption and underhand dealing to the State Government made by the High Court Judge were unwarranted and not justified on record.

40. In *K.P. Tiwari v. State of M.P.* 1994 Supp. (1) SCC 540, this court while dealing with a similar matter of expunging of remarks observed thus:

"4. 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 and be done to the administration of justice and to the confidence of the people in the judiciary can 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

A 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."

B 41. It is the obligation and duty of the higher courts to modify or set aside orders which are contrary to law or the facts of the case. This is one of the most important functions of the superior courts. Our legal system acknowledges the fallibility of the judges and provides for appeals and revisions. Judges of the superior courts while discharging their duty ought to be C extremely careful before passing imputations, strictures and remarks against subordinate judicial officers.

42. A three-Judge Bench of this court again dealt with a similar issue In *re: 'K' A Judicial Officer* (2001) 3 SCC 54. In D this case, the court passed a comprehensive order which reads thus:

"15. 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. E 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 F 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 G 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."

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This Court further observed that: A

"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 B 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, C 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 D 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, E 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 F 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, G 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 H

A 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 B 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 C 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 D avoided?"

43. The remarks made against a judicial officer are so grave that even if they are expunged would not completely restitute and restore the harmed Judge from the loss of dignity and honour suffered by him. In *re: 'K' A Judicial Officer* (supra), E the court further observed:

> **17.** The remarks made in a judicial order of the High Court against a member of subordinate judiciary even if expunged would not completely restitute and restore the F harmed Judge from the loss of dignity and honour suffered by him. In *Judges by David Pannick* (Oxford University Press Publication, 1987) a wholesome practise finds a mention suggesting an appropriate course to be followed in such situations:
>
> G "Lord Hailsham explained that in a number of cases, although I seldom told the complainant that I had done so, I showed the complaint to the Judge concerned. I thought it good for him both to see what was being said about him from the other side of the

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court, and how perhaps a lapse of manners or a momentary impatience could undermine confidence in his decision." A

44. Chief Justice K. G. Balakrishnan in a three-Judge Bench of this Court in *Ramesh Chander Singh v. High Court of Allahabad and Anr.* (2007) 4 SCC 247 observed as under:- B

"The higher court should convey its message in the judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellowed but clear and result oriented and rarely a rebuke." C

45. Mr. Andhyarujina lastly submitted that the strictures and remarks passed against the appellant be expunged.

46. Mr. A. Mariarputham, learned advocate appearing for the High Court of Delhi submitted that the appellant is a very good judicial officer in the Delhi High Judicial Service. He enjoys excellent reputation of ability and integrity. Mr. Mariarputham also submitted that he has been consistently getting outstanding (A+) in ACRs. D

E

47. Mr. Mariarputham could not justify the remarks made against the appellant and submitted that this Court may pass an appropriate order.

48. We have heard the learned counsel for the parties at length and have carefully perused the records. F

49. In the light of law which has been followed for several decades, remarks, imputations and strictures passed by the learned Single Judge of the High Court in this case are totally unjustified, unwarranted and unnecessary for the following reasons: G

(a) The appellant has passed the order dated 04.3.2002 because respondent no.3 expressed willingness to deposit the passports of his wife and H

A mother, respondent nos. 4 and 5 in the court presumably with their consent and concurrence. It may be pertinent to observe that none of them made any grievance about the said order. Respondent nos. 4 and 5 sought modification only B when they wanted to travel after five months of passing the order.

(b) The appellant has followed the previous orders passed by different Benches of the High Court. As a Subordinate Judge, he was duty bound to follow C the orders of the High Court. There was no justification in passing any imputations, remarks or strictures against the appellant for passing an order in terms of earlier orders of the High court.

D (c) Assuming that the order passed by the appellant was wrong or erroneous, even then the High Court ought to have either modified or set aside the order, but the High Court was not justified in passing totally unmerited, derogatory, harsh and castigating E remarks against the appellant.

50. When we examine the facts of the instant case in the light of the judicial decisions spreading over a century, the following principles of law can be culled out:

F (I) Erosion of credibility of judiciary in the public mind, for whatever reason, is the greatest threat to the independence of judiciary.

(II) Judicial discipline and restraint are imperative for G the orderly administration of justice.

(III) Judicial decorum makes it imperative that the courts' judgments and orders must be confined to the facts and the legal position involved in the cases and the courts should not deviate from propriety,

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moderation and sobriety. A

(IV) Majesty of Court is not displayed solely in cracking the whip on mistakes, inadvertent errors or lapses, but by persuasive reasoning so that the similar errors and mistakes are not repeated by the judicial officers. B

(V) Majesty of Court would be enhanced by practicing discipline and self-restraint in discharging of all judicial functions. All actions of a judge must be judicious in character. C

(VI) The role of superior courts is like a friend, philosopher and guide of the judiciary subordinate to it. The judicial officers have to be treated with parental care and affection. D

(VII) The approach of the superior courts ought to be correctional and not to be intended to harm or ruining the judicial career of the officers.

(VIII) The superior courts should always bear in mind that E the judicial officer is not before it and should ordinarily refrain from passing strictures, derogatory remarks and scathing criticism. The passing of such order without affording a hearing to the judicial officer is clearly violative of the principles of natural F justice.

(IX) The superior courts should always keep in mind that disparaging and derogatory remarks against the judicial officer would cause incalculable harm of a permanent character having the potentiality of G spoiling the judicial career of the concerned officer. Even if those remarks are expunged, it would not completely restitute and restore the harmed judge from the loss of dignity and honour suffered by him.

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(X) The superior courts should convey its messages to the concerned judicial officers through a process of reasoning highlighting the correct provisions of law, precedents and proper analysis of evidence and material on record, but rarely by passing harsh and derogatory remarks.

(XI) The superior courts must always keep in mind that it is a herculean task for the judicial officer to get the derogatory remarks expunged by the superior court. He is compelled to take assistance from lawyers and such a practitioner may be appearing before him. It is embarrassing, humiliating, time consuming and an expensive exercise.

(XII) The superior courts must always keep in mind that the much cherished judicial independence must not be presented only from outside but from within, by those who form the integral part of the judicial system. Damage from within has much larger and greater potential for harm than danger from outside. We alone in judicial family can take care of it.

(XIII) The superior courts should not use strong, derogatory, disparaging and carping language while criticizing the judicial officers. They must always keep in mind that, like all other human beings, the judicial officers are also not infallible. Any remarks passed against them may result in incalculable harm resulting in grave injustice.

(XIV) The superior courts judges should not be, like a loose cannon, ready to inflict indiscriminate damages whenever they function in judicial capacity.

(XV) The superior courts should keep in mind that

infliction of uncalled for, unmerited and undeserved remarks clearly amount to abuse of the process of court.

(XVI) The superior courts should not allow themselves even momentarily the latitude of ignoring judicial precaution and propriety.

(XVII) It must be remembered that the subordinate judicial officers at times work under charged atmosphere and are constantly under psychological pressure with all the contestants and their lawyers almost breathing down their necks and more correctly upto their nostrils.

(XVIII) Err is human and no one is infallible. A judge who has not committed an error is yet to be born. Judicial decorum has to be maintained at all times and even where criticism is justified. It must be in a language of utmost restraint always keeping in view that the person making the comment is also fallible.

(XIX) Judges of the superior courts have a duty and obligation to ensure judicial discipline and respect for judiciary from all concerned. The respect for the judiciary is not enhanced when judges at the lower level are criticized intemperately and castigated publicly. Our legal system acknowledges the fallibility of the judges and provides for appeals and revisions.

(XX) It is the duty and obligation of the judges of the superior courts to ensure that independence of judiciary is not compromised and every judicial officer should feel that he can freely and fearlessly give expression to his own opinion. This is absolutely imperative in maintaining the independence of judiciary.

(XXI) The superior courts' judges must always bear in mind that no greater damage can be caused to the administration of justice and to the confidence of people when judges at superior courts express lack of faith either in ability or integrity of subordinate judges.

51. On consideration of the totality of the facts and circumstances, the impugned order passed by the learned Single Judge cannot stand scrutiny of law as far as passing the remarks and strictures against the appellant are concerned and consequently we deem it appropriate to set aside the impugned order to the extent of expunging the remarks made against the appellant in the said order. We order accordingly.

52. The appeal is accordingly allowed and disposed of.

D.G. Appeal allowed.