

is correct. I am also of the opinion that the petitioning Company has failed to prove that it has left any property in Pakistan.

The result is that this petition fails and is dismissed with costs. Counsel's fee Rs. 150.

B.R.T.

The
Hyderabad
(Sind) Electric
Supply Company,
Limited

v.
Union of India,
etc.

Bishan Narain,
J.

CRIMINAL MISCELLANEOUS.

Before Gosain and Harbans Singh, JJ.

SARDAR LAL SINGH KANG,—*Petitioner.*

versus

THE STATE.—*Respondent.*

Criminal Miscellaneous No. 327 of 1956.

Code of Criminal Procedure (Act V of 1898)—Section 561 A—Jurisdiction of High Court to expunge remarks on the conduct of a witness when those remarks are necessary to the conclusion of the trial court or necessary for the arguments—Right of trial court to make damaging observations and the circumstances under which the High Court would normally expunge such remarks stated.

Held, that section 561 A confers no new powers upon the High Court and that it merely safeguards all powers which already existed in the High Court, and that the jurisdiction to judicially correct the judgment of the trial Court, therefore, can be exercised on an application made under this section even if no appeal or revision is before the High Court either because the person complaining about the adverse remarks in the judgment of the trial court is not a party to the proceedings or because no appeal or revision lies from such a judgment, for example, where the proceedings have resulted in favour of the persons against whom the disparaging remarks have been made.

Held, that with regard to the right of the trial Court to make damaging observations and the circumstances

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under which the High Court would normally expunge such remarks, there is a general consensus of opinion that—

- (1) In weighing evidence, in arriving at conclusions on questions of fact and in reviewing the conduct and the veracity of witnesses with reference to the particular incidents, the trial Court is entitled to make remarks which may reflect adversely on the character and conduct of the witnesses and the parties to the case and the High Court cannot substitute its own opinion and expunge such remarks, it being "of utmost importance to the administration of justice that the trial Courts should be allowed to perform their functions freely and fearlessly" without any undue interference by the High Court ;
- (2) However, as such adverse remarks are likely to injure the reputation or prejudicially affect the means of livelihood or the career, of the person concerned, this power should be exercised by the trial Court with great reserve and moderation so as to ensure that the witnesses are not restrained from coming forward to give evidence and giving their real opinions for fear of displeasing the trial Court. The need for this caution is still greater in case of remarks against officials whose entire career is likely to be affected by such remarks ;
- (3) In any case, such remarks, where justified, should be couched in restrained and decorous terms ;
- (4) No such remarks should be made unless (a) they are based on material legally and properly brought on the record ; and (b) where adverse inference is sought to be drawn from some alleged prior act, conduct or statement of witness, an opportunity is afforded to such witness to furnish an explanation, by bringing such act, conduct or statement to his notice, while he is being examined or by recalling him ;
- (5) So far as persons, who are neither witnesses nor parties to the case, are concerned, no adverse remarks should normally be made because they

have no opportunity of saying anything in their defence ;

(6) The High Court will, in the exercise of its inherent jurisdiction expunge such remarks if the same are likely to do harm to the person concerned and—

(a) are based on no evidence or on irrelevant or inadmissible evidence ; or

(b) even if based on proper evidence, they are wholly irrelevant to any point in issue and are not necessary either to the conclusions or for the arguments of the Court concerned ;
or

(c) where such remarks are based on some prior act, conduct or statement of a witness, which has not been brought to his notice to enable him to furnish an explanation ;

(7) This jurisdiction of the High Court is, however, of an exceptional nature and is to be exercised in rare cases of exceptional hardship, to avoid abuse of process of the Court and to secure the ends of justice ;

(8) If the remarks, though unjustified, form an integral part of the judgment and are not distinctly separable, the High Court would not expunge the same but content itself by recording its observations that the same are unjustified.

Case-law reviewed.

Case referred by Hon'ble Mr. Chief Justice A. N. Bhandari on 14th April, 1956, to a Division Bench, due to the point of general importance involved in the case, the Division Bench consisting of Hon'ble Mr. Justice K. L. Gosain, and Hon'ble Mr. Justice Harbans Singh, finally disposed of the case on 5th September, 1958.

Petition under Section 561-A Criminal Procedure Code praying for expunging the remarks made against the petitioner by the learned Sessions Judge, Hoshiarpur, in his

judgment, dated 7th March, 1956, in Sessions Case No. 2 of 1956—"State versus Mst. Gurdial Kaur, etc."

H. S. GUJRAL, for Petitioner.

N. L. SALOOJA, for Respondent.

ORDER

Bhandari, C. J.

BHANDARI, C. J.—This petition under section 561-A of the Code of Criminal Procedure raises a question of general importance, namely whether this Court would be justified in expunging remarks on the conduct of a witness when those remarks are necessary to the conclusion of the trial Court or necessary for his arguments.

Two conflicting opinions have been expressed on this proposition. *The State of Bombay v. Nil Kanth Shripad Bhane and another* (1) a Full Bench of the Bombay High Court expressed the view that the jurisdiction under section 561-A judicially to correct the judgment of the lower Court is a very exceptional jurisdiction which should be exercised in the most exceptional cases, when remarks are made without any foundation whatsoever, when remarks are made against strangers which remarks may do irreparable harm to them and who have not even been heard in their defence by the Court which passes the remarks. The jurisdiction is not intended to substitute the opinion of the High Court for the opinion of the lower Court, and a Judge, however, humble and however junior he may be, he is entitled to his own opinion with regard to matters that come before the Court. A similar view appears to have been expressed by Dalip Singh, J., in *Sheikh Karamat Ullah v. Emperor* (2), where it was observed that

(1) A.I.R. 1954 Bom. 65

(2) A.I.R. 1940 Lah. 42

the Judge must be at liberty to make remarks on the character or conduct of certain witnesses who appeared to support that case for otherwise he cannot arrive at a finding that the documents on which the prosecution rely are false and fabricated. It was held further that the High Court can interfere under section 561A where the remarks are made about a person who is not a party to the proceeding or a witness in the case, or when remarks are made about a party or a witness when the said remarks are not justified by the findings or when the judgment itself is shown to be due to bias or perverse. On the other hand certain other decisions have taken a contrary view. In *Emperor v. Attâullah Shah Bukhari* (1), Coldstream, J. held that although 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 the High Court, yet it is the duty of the High Court in order to prevent abuse of the process of the Courts and to secure the ends of justice to delete passages commenting adversely upon a person who is not a party to the proceeding and has not had a fair opportunity of being heard and also delete such passages when they are based upon no evidence or evidence not properly on the record. As the matter which arises for decision is of general importance and is likely to arise in other cases, I direct that this case be placed before a Division Bench for orders.

JUDGMENT

Harbans Singh, J.—On the 11th of July, 1955. Harbans Singh,
one Sita Rani was found dead in the house of J.
Ishar Singh, Station House Officer, Nurpur. S.

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Lal Singh Kang, a member of the P.C.S., was posted as Sub-Divisional Magistrate, Nurpur during those days. He held an enquiry into the cause of death of Sita Rani on 11th of July, 1955 and made a report showing that it appeared to be a case of suicide. The case became the target of a good deal of public attention and a further enquiry was held by Shri Kang when he reported that the probabilities were in favour of a murder having been committed by Mst. Gurdial Kaur and that it was not a case of suicide. Later Mst. Gurdial Kaur was tried and convicted by the Sessions Judge, Hoshiarpur, under section 302, Indian Penal Code, and sentenced to imprisonment for life and her husband Ishar Singh was convicted under section 201, Indian Penal Code, and sentenced to five years' rigorous imprisonment.

At the trial Shri Lal Singh Kang was examined as P.W. 15. He was asked to explain why he held the first inquest report late at night and rushed through the proceedings. Shri Lal Singh Kang explained that he had to go on tour the following day and therefore, he sat late in the night and finished his inquest. During the course of his examination he also stated that Hari Chand, Naib Tehsildar, had told him on 25th of July, 1955, that Bidhi Chand, P.W. (who was apparently one of the main witnesses in the case) had been detained by the police. He had further stated that the Deputy Inspector-General of Police had directed him (Shri Kang) in the Rest House of Nurpur that he should send for Mst. Gurdial Kaur accused to his house and interrogate her there which he declined to do. He claimed to have verbally informed the District Magistrate about both these incidents. Shri Kanwal Nain, District Magistrate, Kangra, who appeared as P.W. 37, however, denied that any such information was ever passed on to

him by Shri Lal Singh Kang. The learned Sessions Judge in this respect believed the statement of Shri Kanwal Nain, District Magistrate, and disbelieved that of Shri Lal Singh Kang. He also dubbed the explanation given by Shri Lal Singh Kang for rushing through the enquiry as insipid. While discussing the evidence of Shri Lal Singh Kang, the Sessions Judge made certain remarks unfavourable to Mr. Kang, who filed this application under section 561A Criminal Procedure Code on the 14th of July, 1956, (Criminal Miscellaneous No. 327 of 1956) praying for the expunction of these remarks.

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This miscellaneous application was directed to be heard after the decision of the appeal that had been filed by Mst. Gurdial Kaur and her husband Ishar Singh, against their convictions and sentences, as detailed in the earlier part of this order. Both the accused were acquitted by the High Court but in view of the appeal that had been filed by the State before the Supreme Court, the hearing of this application was further adjourned. After the dismissal of the appeal by the Supreme Court, the Hon'ble the Chief Justice before whom the matter came, by his order dated the 14th of April, 1958, referred this application for decision to a Division Bench in view of the fact that it raised an important question, namely—

“Whether this Court would be justified in expunging remarks on the conduct of a witness when those remarks are necessary to the conclusion of the trial Court or necessary for his arguments.”

The necessity for this reference arose because of the conflicting opinions which appeared to have been expressed on the matter. According to the

Sardar Lal Singh latest Bombay view, as given by the Full Bench in
Kang. *State of Bombay v. Nilkonth* (1):—

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“ * * * the jurisdiction under section 561A judicially to correct the judgment of the lower Court * * * is a very exceptional jurisdiction which should be exercised in the most exceptional cases. * * *
* * * A jurisdiction like this is intended to be exercised when remarks are made without any foundation whatsoever, when remarks are made against strangers which remarks may do irreparable harm to them and who have not even been heard in their defence by the Court which passes the remarks. This jurisdiction is not intended to substitute the opinion of the High Court for the opinion of the lower Court. A Judge, * * *, however humble and however junior, is entitled to his own opinion with regard to matters that come before the Court.”

Dalip Singh, J. in *Karamat Ullah v. Emperor* (2), expressed a similar view.

Coldstream, J., in *Emperor v. Atta Ullah Shah*, (3) however, was considered to have expressed a contrary view. The learned Judge had observed in that case that—

“* * * it is the duty of the High Court, in order to prevent abuse of the process of the Courts, and secure the ends of justice, to delete passage commenting adversely upon a person who is not a

(1) A.I.R. 1954 Bom. 65
(2) A.I.R. 1940 Lah. 42
(3) A.I.R. 1936 Lah. 429

party to the proceedings and has not had a fair opportunity of being heard and to delete such passages when they are based upon no evidence, or evidence not properly upon the record.”

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We have carefully gone through the three rulings noticed above and find that so far as the question involved, due to which this application has been referred to the Bench, is concerned there is hardly any conflict in the view taken by Coldstream, J. and that taken by the learned Judges in the other two cases. There is, however, some conflict between the view taken by the Full Bench of the Bombay High Court in the ruling noted above and that taken by the Lahore High Court and a number of other High Courts with regard to the jurisdiction of the High Court to expunge remarks, whatever be their nature. While delivering the judgment of the Full Bench, Chagla, C.J. observed that there is no inherent jurisdiction in the High Court to substitute its own judgment for that of the subordinate Court. The learned Judge observed as follows:—

“It would not be correct to say that expunging remarks from a judgment or deleting passage from a judgment constitutes the inherent power of any superior Court. * * * * in entertaining an application under section 561A what the High Court should do is not to expunge remarks but judicially to correct, by its judgment, the judgment of the lower Court.”

It was further noted that section 561A confers no new powers upon the High Court and that it merely safeguards all powers which already existed in

Sardar Lal Singh the High Court, and that the jurisdiction to
 Kang. judicially correct the judgment of the trial Court,
 v. therefore, can be exercised on an application made
 The State under this section even if no appeal or revision is
 Harbans Singh, before the High Court either because the person
 J. complaining about the adverse remarks in the
 judgment of the trial Court is not a party to the
 proceedings or because no appeal or revision lies
 from such a judgment, for example, where the
 proceedings have resulted in favour of the person
 against whom the disparaging remarks have been
 made.

So far as the Chief Court and the High Court of Punjab are concerned the inherent jurisdiction of the High Court to expunge a finding or remarks from the judgment of the subordinate Courts has never been doubted. Before the introduction of section 561A, this jurisdiction was exercised under section 435, Criminal Procedure Code. In this connection reference may be made to *Bhai Gopal Singh v. The Emperor*, (1). In that case the petitioner, who was prosecuted under sections 181 and 199, Indian Penal Code, for making a false statement on oath, was discharged on the ground that the oath was not legally administered, but, while discharging him, the Magistrate made the following remarks:—

“I am of opinion that both the accused have deliberately perjured themselves.”

Clark, C.J. (with him Chaterji, J.) held that section 435, Criminal Procedure Code, gave them ample jurisdiction to expunge these objectionable words because there was no evidence whatever on the record on the basis of which it could be said whether the statements were false or true. *Nur*

(1) (1901) 2 P.L.R. 164

Din alias Kada v. The Emperor, (1), dealt with a case where the Magistrate had made disparaging remarks in respect of two of the witnesses. Clark C.J. observed as follows:—

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“The right of Magistrates to make disparaging “remarks on persons who appear or are named in the course of a trial is one that should be exercised with great reserve and moderation, especially where the person disparaged has had little or no opportunity of explaining or defending himself. It would involve a great danger to the administration of justice if witnesses were restrained from stating their real opinions for fear of displeasing the Magistrate before whom they are giving evidence and great caution should be taken to avoid producing such an unfortunate result.”

In *Naba v. Emperor* (2), a Division Bench of the Chief Court, consisting of Kensington and Rattigan, JJ., expunged certain remarks made against Nur Muhammad who was one of the prosecution witnesses in the case. He admitted having had some communication with the father of Mst. Sohagan (the girl who was alleged to have been abducted) on a day prior to the incident in consequence of some representation made to him about her misconduct with one Rama Mal. A letter, however, was subsequently produced by a defence witness (which, according to the learned Magistrate, raised a suspicion) against Nur Muhammad purporting to have been written by Nur Mohammad and this was produced in support

(1) 27 P.R. 1903 (Cr.)
(2) 11 I.C. 577

Sardar Lal Singh of the plea of alibi taken on behalf of one of the
 Kang. accused. The learned Judges observed as
 v. follows:—
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“Nur Muhammad was not recalled or questioned about it and no opportunity was given to him of furnishing an explanation. In spite of this the Magistrate has assumed entirely without evidence that the letter is * * * * * forgery.”

The remarks against this witness were ordered to be expunged from the judgment of the trial Court.

In *Amar Nath v. King Emperor*, (1), the Sessions Judge condemned a police officer as perjurer, relying on the apparent conflict between his deposition and the diary. The diary was produced in Court after the police officer had given evidence and the officer concerned was not recalled to give him an opportunity to explain the conflict. The remarks against him were expunged as being unjustified and it was observed by Fforde, J. that—

“A Judge has no right to test evidence given in Court by material which has not legally been evidence. He has the right and the duty to test a witness’s evidence by putting questions to him for the purpose of cleaning up any matters which may be ambiguous or doubtful. But before he is justified in commenting adversely upon a witness’s evidence, he must establish the particular fact warranting such criticism by proper evidence in Court and not by reference to documents which are not properly on the record.”

(1) A.I.R. 1925 Lah. 187

The same learned Judge in *Benarsi Das v. Emperor*, (1), held that a Magistrate should not make disparaging observations with regard to a person who is neither a party nor a witness in the proceedings on materials which are not legally admissible and, in any case, even if they are to be legally admissible evidence, the Magistrate has no right to make such observations against the person without giving him an opportunity to be heard. In that case the learned Magistrate, while acquitting a Head Clerk of the Cantonment Magistrate's office of a charge under section 168, Indian Penal Code, for being engaged in trade while he was a public servant, observed that the accused appeared to be a victim of conspiracy on the part of the managing committee of the All India Cantonment Association of which the petitioner was the vice-president. The remarks were based on three letters written to the Cantonment Magistrate by the petitioner which letters were not properly proved by calling the writer.

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In *H. Daly*, in the matter of, (2), *Tek Chand, J.*, after referring to a number of decisions of the Chief Court including those noted above and certain decisions of the Allahabad High Court prior to the introduction of section 561A and, thereafter, came to the conclusion that the High Court has the power to expunge passages from the judgment delivered by itself or by a subordinate Court. It was then observed at page 742 of the report as follows:—

“This jurisdiction, which undoubtedly exists in this Court, is, however, of an extraordinary nature and has to be exercised with great care and caution.

(1) A.I.R. 1925 Lah. 392 (2)

(2) A.I.R. 1928 Lah. 740

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* * * in weighing evidence and arriving at conclusions on questions of fact, lower courts have to review the conduct of witnesses with reference to particular incidents and at times have to adjudge generally on the veracity or otherwise of such persons and in doing so they have often to make remarks which reflect adversely on their character. It is of the utmost importance to the administration of justice that Courts should be allowed to perform their functions freely and fearlessly * * *

* * *

The learned Judge then referred to the remarks of Clark, C.J. in *Nur Din alias Kada v. The Emperor*, (1), reproduced in the earlier part of the judgment with regard to the necessity, on behalf of the Magistrates, to exercise restraint in this respect and also referred with approval to the observations of Forde, J. in *Benarsi Das v. Emperor*, (2) and *Amar Nath v. King Emperor*, (3), (both noticed above). In the case decided by Tek Chand, J. while convicting two officials of the Salt Department under sections 409 and 467, Indian Penal Code, the trial Judge made certain disparaging remarks against Mr. Daly, an officer in the Salt Department, and suggested that he was negligent in his duty and that Mr. Daly and other clerks connected with the work of supervision "have been taking share out of the money defalcated". The learned Judge found that there was no evidence whatever on the basis of which the remarks with regard to the share of the money defalcated could be justified but held that there was sufficient material on

(1) 27 P.R. 1903
(2) A.I.R. 1925 Lah. 392 (2)
(3) A.I.R. 1925 Lah. 187

the record on which the inference of the Magistrate that Mr. Daly was grossly negligent in the discharge of his duties could be drawn. The remarks with regard to the negligence were, therefore, allowed to stand while those about the share of Mr. Daly and other clerks in the money defalcated were expunged. The case of *Emperor v. Wazir Singh*, (1), is rather instructive because it illustrates the circumstances under which this jurisdiction would be exercised. In that case Jai Lal, J. reiterated the principle laid down by Clark, C.J. that the jurisdiction of the High Court to expunge remarks in the judgments of the subordinate Courts is of an exceptional nature and should be exercised sparingly and in very rare cases to prevent injustice. With regard to the right of the subordinate Courts to make disparaging remarks against witnesses etc. it was laid down as follows:—

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“The remarks * * * having regard to the fact that, if justified, may seriously affect the future prospects of the official concerned, should not ordinarily be made except after careful consideration of the entire material on the record. It is desirable that Magistrates should avoid making such remarks, except in very clear cases and after giving the official concerned an opportunity of explaining his conduct. I do not of course suggest that the Magistrate should hold an independent enquiry but such an opportunity should be given when the statement of the official concerned is being recorded at the trial or when he is recalled after the charge has been framed.”

(1) A.I.R. 1903 Lah. 1048

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In that case a Magistrate had made certain disparaging remarks against an Excise Sub-Inspector who had appeared as a witness in the case. One of the remarks was as follows:—

“And yet Sardar Khan has the audacity to say that he obtained a receipt from Dalip Singh at the time of giving the money. In face of the clear contradiction by Dalip Singh, Sardar Khan has spoken a palpable falsehood.”

The learned Judge on going through the evidence of Sardar Khan found that he had not stated about having obtained a receipt in his statement anywhere and observed as follows:—

“This remarks of the Magistrate, therefore, appears to have been made under a misapprehension as to the exact nature of the statement made by Sardar Khan and is not, therefore, justified by the record.”

This remarks was, therefore, ordered to be expunged. There were two other remarks about Sardar Khan to the following effect:—

“I, therefore, hold that the statement of Sardar Khan * * * that they saw Dalip Singh paying the money to the accused, is an utter falsehood.

I cannot hold a man guilty on the evidence of * * * Sardar Khan, etc., who have uttered gross falsehood.”

With regard to these remarks the learned Judge observed as follows:—

“I am unable to hold that * * * I would be acting in the spirit of the rule

laid down for the exercise of this Court's inherent jurisdiction if on the present reference I were to revise the opinion of the Magistrate which opinion involves the question of appreciation of the weight of evidence and of inferences to be drawn from such evidence. It was within the province of the Magistrate to decide which of the two contradictory statements he would accept to be true, if at all, and, in the present case, I do not think I would be justified in examining the reasons given by him for disbelieving the statement made before him by Sardar Khan * * *

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* * * * *

These remarks were consequently not expunged though the learned Judge made it explicit in the order that he should not be understood to have endorsed the conclusions and observed—

“I have simply declined to express any opinion, whether they are justified or not, owing to the nature and scope of my jurisdiction in the matter.”

In *Ram Kishan and others v. Emperor* (1), the learned Sessions Judge in his reference to the High Court recommending that the order of the Magistrate, Ist Class, placing five persons on security under the provisions of section 107, Criminal Procedure Code, be set aside, made irrelevant and objectionable remarks which had no bearing whatever on the facts of that case. Addison J. remarked that these remarks were only a source of trouble and were consequently ordered to be expunged.

(1) A.I.R. 1933 Lah. 36

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In *Emperor v. Atta Ullah Shah, Bukhari* (1), Coldstream, J. cited with approval the observations of Tek Chand, J. in *H. Daly* in the matter of (2) laying down that the jurisdiction of the High Court to expunge remarks from the judgment of a subordinate Court is of an "extraordinary character to be exercised with care and caution in exceptional cases" because the Courts should be allowed to perform their functions freely and fearlessly and because in weighing evidence, and in arriving at conclusions on questions of fact, the lower Courts have often to make remarks which reflect adversely on the character of the witnesses. *Amar Nath v. King Emperor* (3), *Benarsi Das v. Emperor* (4), referred to above, were noticed with approval. Coldstream, J., however, laid another limitation on the exercise of this jurisdiction by the High Court. Reference was made to the decision of a Division Bench of the Sind Judicial Commissioner's Court in *Muhammad Hussain v. Emperor* (5), wherein it was observed as follows:—

" * * * if an unjustifiable attack be made on a person who had had no opportunity of being heard in his own defence, and the remark is irrelevant and separable, it can and should be expunged, especially if he is neither a party nor a witness. But it is not so easy to expunge remarks which though unjustified, are relevant and we do not think that it is possible to delete them unless they are separable, that is to say if they form an intergal part of the

(1) A.I.R. 1936 Lah. 429
(2) A.I.R. 1928 Lah. 740
(3) A.I.R. 1925 Lah. 187
(4) A.I.R. 1925 Lah. 392 (2)
(5) A.I.R. 1929 Sind 243

argument. A Judge or Magistrate is bound to record reasons for his decision, and even in the interests of justice we cannot delete those reasons and leave the decision without its reasons basis.”

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In that case a confession alleged to have been made by the accused before a Zamindar and the Deputy Superintendent of Police was disbelieved by the learned Sessions Judge and, therefore, logically the Sessions Judge was bound to express his opinion of the Deputy Superintendent of Police. The learned Judges, however, came to the conclusion that the remarks against the Deputy Superintendent of Police were unjustified but held that the remarks were not irrelevant and the same could not be expunged without running the argument and that passages could only be deleted if they were irrelevant and did not form an integral part of the judgment. While dismissing the application, the learned Judges, however, expressed the opinion that the remarks made against the applicant were wholly unjustified.

Coldstream, J. while following this decision allowed certain remarks to remain on the judgment of the Court below which formed an integral part of the argument but contented himself by observing that the same were unjustified while he expunged certain other unjustified remarks which were irrelevant and were separable. The learned Judge further conceded that the High Court in order to prevent the abuse of the process of the Court and secure the ends of justice has ample authority “to delete passages commenting adversely upon the person who is not a party to the proceedings and has not had a fair opportunity of being heard, and also to delete such passages when they are based upon no evidence or evidence not

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properly upon the record." He further stated that the jurisdiction is not confined only to such cases and that this power also entitles the High Court to delete passages which "though based on evidence, damage the character of a person (but) are wholly irrelevant to any point in issue and which, a Court has unnecessarily gone out of its way to include in a judgment." In addition to this, according to the learned Judge where it is brought to the notice of the High Court that a judgment is couched "in language injudicious and uncalled for, this Court should and ought to express its opinion in the matter whether and passage is or is not ultimately expunged."

Thus it would be seen that Coldstream, J. in the case noted above did not lay down that the Court would be justified in expunging remarks where these relate to the conduct of a witness when these remarks are necessary to the conclusion of the trial Court or necessary for its argument. In fact, following the Sind Court, the learned Judge made it clear that even if such remarks are unjustified yet these cannot be expunged if they form an integral part of the argument of the learned trial Court. The general principles on which the jurisdiction of the High Court is to be exercised as given in the earlier decisions of the Chief Court and the High Court were affirmed by the learned Judge. Thus it will be seen that there is hardly any conflict between the decision of Coldstream, J. and those of the other learned Judges in the rulings noted above.

In *Karamat Ullah v. Emperor* (1), Dalip Singh, J. took a view similar to that taken in the

(1) A.I.R. 1940 Lah. 42

earlier decided cases. Head-note (b) runs as follows:—

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“The High Court can interfere under section 561A to expunge disparaging remarks from a judgment in cases where the remarks are made about a person who is not a party to the proceedings or a witness in the case. The High Court can also interfere when remarks are made about a party to the proceedings or a witness in the case and those remarks are not justified by the findings or when the judgment itself is shown to be due to bias or preverse.”

In that case the trial Magistrate, while discharging one Sodagar Mal, an ex-employee of the Cantonment Board, Murree, who was prosecuted under sections 420/511, Indian Penal Code, concluded the judgment by recording that *inter alia* the conduct of the petitioner Karamat Ullah, who was an Executive Officer, Murree Cantonment, “has been both criminal and contemptible.” The Magistrate had held that the prosecution story was not proved and that the defence theory was more probable and was, in all probabilities, true and that the documents had been deliberately fabricated for the purposes of that case. Dalip Singh, J., taking these findings as correct, observed as follows:—

“The case, therefore, resolves itself into this proposition, should the High Court expunge remarks made by a Magistrate who has tried a case as regard the falsity of the prosecution or must the Magistrate confine himself to a finding that the accused is not proved guilty? *

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* * * it is the duty of a Magistrate if he considers that the prosecution case is not only not proved but was deliberately false and concocted to give such a finding in favour of the accused so that the accused should leave the Court without a stain on his character.

Now comes the question whether in arriving at the conclusion that a prosecution case is false and fabricated the Judge is at liberty to make remarks on the character or conduct of certain witnesses who have appeared to support that case. * * * the Judge must be at liberty to make these remarks for otherwise he cannot arrive at a finding that the documents on which the prosecution rely are false and fabricated. * * * I am not sitting as a Court of appeal to see whether that finding was correct or incorrect. All I have got to see is whether the finding is justified in the sense that it is not preverse and that the remarks are not based on *no evidence, or irrelevant or inadmissible evidence.*"

These observations, particularly the words underlined clearly indicate that the learned Judge was proceeding on the principles as laid down in the earlier cases noted above and was not making a departure therefrom.

To the same effect are the observations made by Tek Chand, J. while delivering the judgment of the Special Bench reported in *Hardless v. Hardless* (1). These proceedings were under the

(1) A.I.R: 1940 Lah. 82

Divorce Act of 1869 for making a decree absolute. The District Judge had made certain disparaging remarks regarding Mr. Hardless. The Court came to the conclusion that these remarks were unnecessary and head-note (a) runs as follows:—

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“Judge, when commenting on the conduct of parties and others, should be very careful to use sober restrained language. A passage which is not necessary to the conclusion of the Judge nor even necessary to his argument and is likely to militate seriously against party’s earning a living in his profession should be expunged from judgment.”

In *Emperor v. Ch. Mohd. Hussan* (1), a Division Bench of the Lahore High Court was concerned with the remarks made against a Superintendent of Police and other officials none of whom was either a witness or a party to the case and observed as follows:—

“A Magistrate is fully justified in making criticisms in his judgment (provided he does in restrained and decorous terms), of matters relevant to the conduct and merits of the case of persons who are witnesses but he should confine his criticisms to matters that are strictly relevant to the issue involved.”

The remarks made against persons, who were not witnesses or parties to the suit, and were irrelevant were ordered to be expunged. There were some other remarks which could not be removed without upsetting the reasoning given by the

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Magistrate and these were allowed to stand (as was done by Coldstream, J., in *Atta Ullah's case*) (1). Their Lordships, however, made the following observations indicating their disapproval of the same:—

“While it may be impossible to expunge all references to motives, without upsetting the balance of the Magistrate’s judgment, we should not be understood to associate ourselves in any way with any of the criticisms so freely levelled by the Magistrate and we direct that anything that is allowed to remain on the record of the Magistrate’s judgment should not be construed to justify any criticisms passed on any particular official.”

The view of the other High Courts is also materially the same; see for example *Panchanan v. Upendra Nath* (2), *Karam Singh v. Crown* (3), *Madhusudan v. State* (4), *Gokaran Prasad Gupta v. Emperor*, (5), *Bakshi Sita Ram v. Lachhmi Chand* (6), *In re k. v. Lakshmana Rao* (7), and *A. H. Gandhi v. The King* (8).

It would thus be seen that the power to expunge remarks is recognised by all the High Courts except Bombay.. The latter High Court, however, recognises the right of the High Court to judicially correct the judgment of a subordinate Court. With great respect, we feel that the view consistently taken by the Punjab High Court and

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- (1) A.I.R. 1936 Lah. 429
 (2) A.I.R. 1927 All. 193
 (3) A.I.R. 1951 Pepsu 50
 (4) A.I.R. 1951 Orissa 92
 (5) LL.R. 15 Luck. 39
 (6) A.I.R. 1954 Him. 4
 (7) A.I.R. 1940 Mad. 134
 (8) A.I.R. 1941 Rang. 324

also by other High Courts, that the unjustified and irrelevant remarks can be expunged, is more conducive to the result desired to be achieved; namely, to prevent abuse of the process of the Court and to further the ends of justice. If remarks made against a person without any foundation, are allowed to remain in the judgment of the trial Court, his adverseries, by utilising the certified copy of the judgment, can do irreparable harm to him. The contrary observations made by the High Court exonerating him would not be available along with the judgment of the trial Court. In appropriate cases, therefore, the only way in which the High Court can effectively prevent abuse of the process of the Court and further the ends of justice is by ordering the damaging remarks to be expunged and the jurisdiction to do so must necessarily be deemed to be inherent in the High Court.

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With regard to the right of the trial Court to make damaging observations and the circumstances under which the High Court would normally expunge such remarks, there is a general consensus of opinion that—

- (1) In weighing evidence, in arriving at conclusions on questions of the fact and in reviewing the conduct and the veracity of witnesses with reference to the particular incidents, the trial Court is entitled to make remarks which may reflect adversely on the character and conduct of the witnesses and the parties to the case and the High Court cannot substitute its own opinion and expunge such remarks, it being of utmost importance to the administration of justice that the trial Courts should be allowed

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to perform their functions freely and fearlessly" without any undue interference by the High Court;

- (2) However, as such adverse remarks are likely to injure the reputation or prejudicially affect the means of livelihood or the career, of the person concerned, this power should be exercised by the trial Court with great reserve and moderation so as to ensure that the witnesses are not restrained from coming forward to give evidence and giving their real opinions for fear of displeasing the trial Court. The need for this caution is still greater in case of remarks against officials whose entire career is likely to be affected by such remarks.
- (3) In any case, such remarks, where justified, should be couched in restrained and decorous terms;
- (4) No such remarks should be made unless:—
 - (a) they are based on material legally and properly brought on the record; and
 - (b) where adverse inference is sought to be drawn from some alleged prior act, conduct or statement of a witness, an opportunity is afforded to such witness to furnish an explanation, by bringing such act, conduct or statement to his notice, while he is being examined or by recalling him.

- (5) So far as persons, who are neither **witnesses not parties to the case, no adverse remarks should normally be made because they have no opportunity of saying anything in their defence;**
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- (6) The High Court will, in the exercise of its inherent jurisdiction, expunge such remarks if the same are likely to do **harm to the person concerned; and—**
- (a) are based on no evidence or on irrelevant or inadmissible evidence; or
- (b) even if based on proper evidence, they are wholly irrelevant to any point in issue and are not necessary either to the conclusions or for the arguments of the Court concerned; or
- (c) where such remarks are based on some prior act, conduct or statement of a witness, which has not been brought to his notice, to enable him to furnish an explanation;
- (7) This jurisdiction of the High Court is, however, of an exceptional nature and is to be exercised in rare cases of exceptional hardship, to avoid abuse of process of the Court and to secure the ends of justice;
- (8) If the remarks, though unjustified, from an integral part of the judgment and are not distinctly separable, the High Court would not expunge the same but content itself by recording its observations that the same are unjustified.

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Now viewing the facts of the present case in the light of the principles above-stated, we feel that the remarks objected to are not such as can be ordered to be expunged. The remarks mainly objected to are as follows:—

“Shri Lal Singh Kang * * *, P.W. 15 was by no means favourably inclined towards the prosecution and he tried to make some breaches and landslides in the prosecution case while he was under **corss-examination by the counsel for the accused.**”

Then follows a discussion of the evidence given by Shri Kang and the District Magistrate—

“He (Shri Kang) stated that Hari Chand Naib-Tehsildar had told him in the morning on 25th of July, 1955, that the police had beaten Bidhi Chand, P.W. and that he conveyed this information to the District Magistrate, Kangra, on the 11th or 12th of August, 1955. He further stated that the Deputy Inspector-General of Police had directed him in the Rest House at Nurpur that he should send for Mst. Gurdial Kaur accused in his house and interrogate her there, but he replied that it was not his job.. He claimed to have varbally informed the District Magistrate on 12th of August, 1955, about this matter also. Shri Kanwal Nain, District Magistrate, Kangra, appeared as P. W. 37 and he categorically denied that any such information was passed on to him.”

We thus find that there were two contradictory statements; that of Shri Kang to the effect that he had given certain information to the District Magistrate and that of the District Magistrate denying this assertion. The learned trial Court, having believed the statement of the District Magistrate, was entitled to arrive at the conclusion that Shri Kang, in making the aforesaid statement, was trying to help the defence and damage the prosecution. The remarks objected to, therefore, form, more or less, an integral part of the judgment of the trial Court and could have justifiably been made in view of the conclusions arrived at by him. We feel, therefore, that these remarks cannot be said to be either without any foundation or altogether irrelevant. It is, however, not necessary to go into this matter any further because we find that in appeal filed by Gurdial Kaur and her husband against their conviction, a Bench of this Court, on going through the evidence of these two witnesses did not agree with the appreciation of the evidence by the trial Court and preferred the statement of Shri Kang to that of the District Magistrate and accepting the statement of Shri Kang and taking other circumstances into consideration, reversed the findings of the learned trial Court and acquitted the accused. Thus the sting of these observations, if any, had been completely taken by the judgment of the High Court in appeal and Shri Kang has been completely exonerated. This application was filed before the appeal had been decided by the High Court and in view of the result of the appeal, we consider that no further action is necessary. This application is consequently dismissed.

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