



2025:DHC:749



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:07.02.2025

+ **CRL.M.C. 4930/2022 & CRL.M.A. 19773/2022**

STATE (NCT OF DELHI)Petitioner

versus

NILESH MISHRARespondent

+ **CRL.M.C. 4947/2022 & CRL.M.A. 19802/2022, CRL.M.A. 22804/2022**

STATE (NCT OF DELHI)Petitioner

versus

**VIJAY PAL @ RAJEEV VERMA
& ANR.**Respondents

+ **CRL.M.C. 5780/2022 & CRL.M.A. 22732/2022**

**STATE (NCT OF DELHI THR. THE DEPUTY
COMMISSIONER OF POLICE (CRIME I)**Petitioner

versus

**VIJAY PAL @ RAJEEV VERMA
& ANR.**Respondents

+ **CRL.M.C. 5979/2022 & CRL.M.A. 23470/2022**

**STATE (NCT OF DELHI) THROUGH THE
DEPUTY COMMISSIONER OF DELHI
POLICE (CRIME-I)**Petitioner

versus

RAHUL @ AMIT SHARMA



2025:DHC:749

**@ AMIT PANDIT**

.....Respondent

+ CRL.M.C. 6801/2022 & CRL.M.A. 26366/2022, CRL.M.A. 2161/2023, CRL.M.A. 3677/2023**STATE (NCT OF DELHI) THROUGH THE
DEPUTY COMMISSIONER OF POLICE
(CRIME-I)**

.....Petitioner

versus

NILESH MISHRA

.....Respondent

Advocates who appeared in this case:

Present: Mr. Sanjeev Bhandari (Adv.) ASC (Criminal) for the State along with Ms. Charu Sharma, Mr. Arjit Sharma, Mr. Vaibhav Vats & Mr. Vikunj Bindal, Advs.
SI Shailendra Tiwari, ER-II/Crime Branch. Insp. Amit Prakash, AEKC / Crime
SI Amit Kumar, ISC / Crime Branch

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present petitions are filed seeking expunction/deletion of the remarks/observations/strictures issued by the learned Chief Metropolitan Magistrate, North East District, Karkardooma Courts, Delhi *vide* orders dated 12.08.2022, 12.09.2022, 02.11.2022 in CR Case No. 3350/2022, orders dated 04.07.2022, 04.08.2022, and 21.09.2022, 28.10.2022 in CR Case No. 466247/2015, orders dated 08.09.2022 and 14.10.2022 in CR Case No. 214/2021.



CRL.M.C. 4930/2022&CRL.M.C. 6801/2022

2. By way of the captioned petitions, the State challenges the orders dated 12.08.2022, 12.09.2022, 02.11.2022 passed by the learned Trial Court in CR Case No. 3350/2022.

3. The FIR in this case being FIR No. 159/2020 dated 17.10.2020 was registered under Sections 420/468/471/120B of the Indian Penal Code, 1860 ('IPC') and Section 3 of the Emblems and Name (Prevention of Improper Use) Act, 1950. Cognizance of the offence was taken under Sections 420, 468, 471, 201, 120B of the IPC and Section 5 of the Emblems and Names (Prevention of Improper Use) Act, 1950.

4. The FIR was registered on an allegation that the accused persons, on the pretext of selling a rice-puller, had cheated the complainant of several lakhs of rupees.

5. The learned Trial Court *vide* order dated 12.08.2022 dismissed the bail application filed by the respondent. The learned Trial Court noted that the respondent had not disclosed about the filing and disposal of the previous bail applications. It was noted that the allegations against the respondent were serious in nature and involved cheating of several lakhs of rupees. While dismissing the bail application, the learned Trial Court also made certain observations pertaining to the conduction of the investigation and the arrest of the accused and non-arrest of the other accused persons as under:

“It appears that the police at Crime Branch acted as recovery agents of the victims. Whoever returned money was not arrested and since accused Nilesh Mishra did not pay up, he was arrested by the police. It seems that the Crime Branch is not aware of the considerations it should have while determining if the accused



should be arrested, as has been enunciated by the Hon'ble Supreme Court in various cases.

Also, when the IO was questioned, if he had taken steps for obtaining non-bailable warrants and process under Section 82 Cr.PC against the accused persons who as per him were absconding and whose addresses are known to the Police, the way he did it qua the accused Siraj Malik, he has replied in the negative.

It is evident that the Police at Crime Branch exercised their discretion of treatment towards the various accused persons arbitrarily. As per the IO, several other accused persons including Akash Rana, Gurusharan Singh Chauhan, Manoj Sharma, Jaisim Ansari and Parvinder Kohli had also received the cheated amount, the way Nilesh Mishra did. As per the IO, the addresses of at least some of them are known to the Police. The Police took steps for declaring accused Siraj Malik as a proclaimed offender, but took no such steps towards other accused persons who as per Police were absconding.

If they were not absconding, for reasons best known only to the Crime Branch, they were not arrested. Whether to arrest an accused or not is a discretionary power of the Police. However, this discretion should not be exercised arbitrarily.

Since the exercise of discretion by the Police in the present case appears to have been arbitrarily done, it is the duty of the Court to bring it to the notice of Senior Police Officers.

Issue notice to the Special Commissioner of Police, Crime Branch with direction to examine the reasons for which the Police chose not to arrest accused persons other than the accused Nilesh Mishra and if those other accused persons have been absconding, the reasons why steps were not taken for initiating proceedings for declaring those accused persons as proclaimed offenders.

Copy of this order be sent alongwith the notice.

Action taken by the Special Commissioner of Police, be intimated to this Court on the date already fixed i.e. 12.09.2022.”

6. The learned Trial Court *vide* order dated 12.08.2022 made certain observations pertaining to the arrest and non-arrest of the accused persons and the manner in which the investigation was carried out by the investigating agency. Further, notice was also issued to the Special Commissioner of Police with direction to examine the reasons for which the police chose not to arrest the accused persons other than



the respondent. On the next date of hearing, that is, 12.09.2022 the learned Trial Court made the following remarks:

“At the outset, it is observed that when the Court directs a Police Officer to file a report, it is him who has to file it and if he does not, that amounts to non-compliance of the Court order, which is supposed to have consequences.

Even the report of the DCP Crime Branch does not disclose if the Special Commissioner conducted an enquiry to determine if there was indeed arbitrary exercise of discretion and if yes, what action has been taken against the delinquent police officers.

If the Special Commissioner of Police was of the opinion that there was no arbitrary exercise of discretion and therefore, there is no need to take any action against any Police Officer, this ought to have been mentioned in the report. It appears that the Police Officers involved in the investigation of the present case have the protection of Senior Police Officers in the rank of Special Commissioner of Police.

Issue notice to the Special Commissioner of Police, Crime Branch with direction to disclose why action be not taken against him for non-compliance of Court order. Copy of this order be sent alongwith the notice.

Issue notice to the Commissioner of Police with direction to examine the reasons for non-compliance of the Court direction given to the Special Commissioner of Police.

Since the Special Commissioner of Police has failed to comply with the Court order, now the Commissioner of Police will comply with the directions which were earlier given to the Special Commissioner of Police. He shall examine the reasons for which the Police chose not to arrest accused persons other than the accused Nilesh Mishra and if other accused persons have been absconding, the reasons why steps were not taken for initiating proceedings for declaring those accused persons as proclaimed offenders.

The Commissioner shall keep in view the observations made by the Court in the order passed on the last date of hearing. Copy of this order and of the order passed on the last date of hearing be sent alongwith the notice.

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To come up for report of the DCP, reply of Special Commissioner of Police, report of the Commissioner of Police and for scrutiny of documents on 28.09.2022.”



7. The learned Trial Court *vide* order dated 12.09.2022 observed that contrary to the direction of the Court, the Special Commissioner of Police did not submit any report on the discretion exercised by the Police while carrying out the investigation. It was noted that a report under the signatures of the DCP Crime Branch had been received which stated that the report had been filed with the approval of the Special Commissioner of Police. Subsequently, notice was issued to the Special Commissioner of Police with direction to disclose why action be not taken against him for non compliance of the Court order. Further, notice was also issued to the Commissioner of Police with direction to examine the reasons for non-compliance of the Court direction given to the Special Commissioner of Police.

8. Being aggrieved by the orders dated 12.08.2022 and 12.09.2022, State had filed CRL.M.C. 4930/2022. The learned ASC for the State sought a period of four weeks for the purpose of filing the reply through the DCP concerned after bringing the same to the notice of the Commissioner of Police. Consequently, this Court *vide* order dated 27.09.2022 granted 4 weeks to file reply before the learned Trial Court through the concerned DCP after bringing the same to the notice of the Commissioner of Police with respect to the observations/concerns raised by the learned Trial Court. Consequently, on 22.10.2022, a status report under the signatures of the DCP, and approved by the Commissioner of Police, Delhi was filed before the learned Trial Court.

9. Subsequently, the learned Trial Court *vide* order dated 02.11.2022 made certain remarks as under:



“It was way back on 12.08.2022 that this Court had brought to the notice of the Special Commissioner of Police that the discretion on whether to arrest certain accused persons or not may have been arbitrarily exercised by the police.

The Special Commissioner was directed to make an enquiry in this regard and also directed to examine the reasons for not initiating proceedings for declaring the absconding accused persons as proclaimed offenders even though the police always had their addresses.

This direction of the Court was not complied with by the Special Commissioner and therefore, on the next date of hearing i.e. 12.09.2022, this Court gave direction to the Commissioner of Police for making an enquiry as was directed on 12.08.2022.

In view of order dated 27.09.2022 passed by the Hon'ble High Court in the present case, the DCP has filed an undated report on behalf of the Commissioner of Police.

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From the report of the DCP, it is evident that the documentary evidence available against accused Gursharan Singh, Harish Verma and Javed Ali @ Sajid Ali @ Akash Rana @ Sameer is similar to what was available against the accused Nilesh Mishra. However, only accused Nilesh Mishra was arrested and for unknown reasons, these three accused persons have not been arrested by the Police.

When this Court brought to the notice of the Special Commissioner of Police and the Commissioner of Police that the discretion with regard to arrest of accused persons has been arbitrarily exercised by the Police, these Senior Police Officers agreed with the observations of the Court and therefore, transferred investigation to another police officer and issued show cause notice to the earlier IO and advisory to the earlier ACP. However, the report of the Commissioner does not disclose why other accused persons who as per the report of the DCP himself are similarly placed as accused Nilesh Mishra have not been arrested even by the new investigating officer.

In the report of the DCP, he has stated that investigation is being conducted by the new IO SI Ram Kumar under the supervision of ACP, AEKC and overall supervision of the said DCP. On asking by the Court, IO has admitted that no steps have been taken even after dismissal of the anticipatory bail application of accused Sajid Ali on 18. 10.2022, for arresting the accused Sajid Ali.

Even though it is stated in the report of the DCP that efforts are being made for carrying out custodial investigation of the accused Javed Ali, the Police has not done anything in atleast the last 15 days after dismissal of the bail application of Sajid Ali for arresting the accused. It is evident that the purported supervision



of ACP AEKC and of the DCP, Crime-1 is ineffective and perhaps non-existent.

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The investigation of the present case has been with the current investigating officer for sufficient time for him to have obtained non-bailable warrants against the accused persons who have been absconding and whose addresses are available with the police.

Despite this, he has neither arrested accused Gursharan Singh, Harish Verma and Javed Ali nor has he obtained non-bailable warrants against them. This is despite the fact that the anticipatory bail applications of these accused persons have been dismissed.

In view of the above observations, it is evident that the orders of this Court and even of the Hon'ble High Court dated 27.09.2022 which directed that the matter be brought to the notice of Commissioner of Police, have failed to get the desired effect and further investigation is still not been carried out fairly.

It has already been observed by this Court in its order dated 12.08.2022 that it is conscious of the fact that it is the discretionary power of the police to decide whether to arrest the accused or not. However, this Court has already held that this discretion is not to be exercised arbitrarily and since the exercise of discretion by the Police in the present case appears to have been arbitrarily done, it is the duty of the Court to bring it to the notice of Senior Police Officers.

Issue fresh notice to the Commissioner of Police with direction to ensure that further investigation in the present case is carried out fairly and under the supervision of a competent senior police officer."

10. The State essentially seeks expunction of the aforementioned remarks in the impugned orders dated 12.08.2022, 12.09.2022 and 02.11.2022 passed by the learned Trial Court.

CRL.M.C. 4947/2022&CRL.M.C. 5780/2022

11. By way of the captioned petitions, the State challenges the orders dated 04.07.2022, 04.08.2022, 21.09.2022 and 28.10.2022 passed by the learned Trial Court in CR Case No. 466247/2015.



12. The FIR in the captioned cases being FIR No. 305/2007 was registered under Sections 411/468/471/34 of the Indian Penal Code, 1860 ('IPC').

13. During the course of prosecution evidence, a submission was made by the learned Additional Public Prosecutor for the State that the testimony of Retired SI Rajbir could not be recorded since the vehicles, which were the subject matter of the theft, had not been produced. The learned Trial Court *vide* order dated 04.07.2022 noted that despite repeated directions, the case property had not been produced. Consequently, the learned Trial Court made the following remarks:

“Issue notice to the Commissioner of Police with direction to ensure that either the vehicles which are subject matter of the aforesaid three cases are produced or the photographs taken at the time of releasing of vehicles are filed, positively on the next date of hearing.”

14. Subsequently, on 04.08.2022, the learned Trial Court noted that the photographs of the case property suffice for the purpose of evidence during the course of examination of various witnesses. However, no photographs had been filed. Consequently, the following remarks were made by the learned Trial Court:

“No cogent reasons have been disclosed for not filing the photographs. No enquiry has been conducted by the Commissioner on why the photographs have not been found. It has not been disclosed whether the photographs were even taken before releasing the vehicles. Taking of photographs of the vehicles was mandated not only by the Hon'ble High Court in the aforesaid case of Manjit Singh, but also by the order of the concerned Magistrate which directed release of vehicle to the owner subject to taking of the photograph by the Investigating Officer.”



15. A report was filed by the Commissioner of Police through the concerned DCP on 24.08.2022. The learned Trial Court *vide* order dated 21.09.2022 made the following remarks:

“On 04.07.2022, this Court gave certain directions to the Commissioner of Police. However, these directions were not complied with and therefore, by order dated 04.08.2022, this Court again issued notice to the Commissioner of Police giving certain further directions.

For compliance of the directions given to the Commissioner by orders dated 04.07.2022 and 04.08.2022, notices were directed to be issued to the Commissioner of Police. However, no report from the Commissioner of Police has been received till date.

Reports of relatively junior officers in the Police have been received including one filed by the DCP, Crime-1, in which it is stated that it is being filed “for Commissioner of Police.”

This Court has repeatedly observed in numerous cases that case property is not being produced, specially in the cases investigated by Crime Branch. Despite having brought this to the notice to officers in the rank of DCP, the situation did not changed and therefore, this Court deemed it fit to bring the matter to the notice to the Commissioner of Police.

Despite issuance notices to the Commissioner of Police, the Commissioner has not taken any action in this regard.

At the outset, before taking any further action for non-compliance of the Court order, it must be ascertained if the Commissioner even received the notices issued by this Court. If the Commissioner did not even receive the notices, then this Court may not want to take any action against the Commissioner for non-compliance of directions.

*Issue notice to the Commissioner of Police with direction to inform this Court by the next date of hearing if he received notices that were directed to be issued by this Court *vide* orders dated 04.07.2022 and 04.08.2022.*

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It is directed that the Commissioner of Police will also enquire as to how the Police at PS Rajinder Nagar and PS Preet Vihar had released the vehicles, without there been any such direction from this Court.

16. In compliance with the order dated 27.09.2022 passed by this Court in CRL. MC. 4947/2022, a status report dated 28.10.2022 was



filed under the signatures of the DCP with the approval of the Commissioner of Police.

17. The learned Trial Court *vide* order dated 28.10.2022 noted that undisputedly the case property was seized and no order for the release of the case property was passed. It was noted that despite no such order being passed, the police chose to release the case property which was being justified by stating that the same was the practise being followed. Consequently, the learned Trial Court made the following remarks:

“Issue notice to the DCP with direction to disclose details of all the cases in which the Delhi Police adopted the illegal practice of releasing the case property without seeking permission from the Court in the case in which the case property was seized. The DCP will also disclose details of all the police officials involved in the decision making and supervision of the illegal release of the case property. In view of the order dated 27.09.2022 passed by the Hon'ble High Court, the DCP will file his report after bringing it to the notice of Commissioner of Police. Copy of this order be sent along with the notice.”

18. The State seeks expunction of the remarks/strictures passed by the learned Trial Court by the aforementioned orders dated 04.07.2022, 04.08.2022, 21.09.2022 and 28.10.2022 in CR Case No. 466247/2015.

CRL.M.C. 5979/2022

19. By way of the captioned petition, the State challenges the orders dated 08.09.2022 and 14.10.2022 passed by the learned Trial Court in CR Case No. 214/2021.

20. The FIR in this case being FIR No. 170/2020 dated 11.11.2020 was registered under Section 25 of the Arms Act, 1959.



21. The learned Trial Court *vide* order dated 08.09.2022 noted that the examination-in-chief of ASI Rahisuddin was partly recorded and further testimony was deferred for want of case property. The learned Trial Court noted that despite service of summons, the case property had still not been produced. It was noted that on account of the non production of the case property, the testimony of the witness again could not be recorded on the date and that the witness would have to be discharged un-examined.

22. The learned Trial Court also took note of multiple cases wherein the Crime Branch had failed to produce the case property. Consequently, the following remarks/observations were made:

“Despite the repeated directions given by this Court which has evidently fallen on deaf ears of the Commissioner and the Special Commissioner of Police, Crime Branch, case property has again not been produced.

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Issue notice to the Special Commissioner of Police with direction to show cause why action be not taken against him for non-production of case property and non-compliance of Court order.

Issue notice to the Commissioner of Police with direction to disclose the action taken by the police on receiving the aforesaid Court orders in which it was repeatedly noted that case property is not been produced.”

23. Subsequently, a status report dated 06.10.2022 under the signatures of the Special Commissioner of Police was filed to explain the reason behind the non-production of the case property. The learned Trial Court *vide* order dated 14.10.2022 recorded that the Special Commissioner had filed his report, however, the same was not complied with by the Commissioner of Police. Consequently, the following observations were made by the learned Trial Court:



“However, the Commissioner has not complied with the direction of the Court and has not submitted his report. However, a report of the DCP, Crime-1 has been received in which it has been stated that the report is being filed with the approval of the Commissioner of Police.

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When the Commissioner of Police has been directed to file his report, it is only him who is required to file report and only then there will be compliance of the Court direction.

There is no direction of the Hon’ble High Court in the present case that report can be filed by any other police officer after approval of the Commissioner of Police. The relief granted to the Delhi Police by the Hon’ble High Court in other cases cannot be granted by this Court, that too when there is no such request made to this Court. This Court cannot review its order and permit filing of reports by an officer who is not authorized to do so.

Issue notice to the Commissioner of Police with direction to disclose why direction of the Court has not complied with and why action be not taken against him for non-compliance of Court order.”

24. By way of this petition, the State seeks expunction of the remarks/observations made by the learned Trial Court *vide* orders dated 08.09.2022 and 14.10.2022 in CR Case 214/2021.

Submissions

25. The learned Additional Standing Counsel for the State submitted that the learned Trial Court erred in making scathing remarks/observations while passing the impugned orders. He submitted that while administering justice, the learned Trial Court has the liberty to observe on the inaction on the part of the investigating authority after the conclusion of the trial.

26. He submitted that the learned Trial Court *vide* impugned orders dated 12.08.2022 and 12.09.2022 in CR Case 3350/2022 issued directions to the Commissioner of Police for taking action as directed



by the order dated 12.08.2022 and submit action report. He submitted that such direction to submit a report prejudices action/inaction on the part of the investigating authority and other police officers.

27. He submitted that the Hon'ble Apex Court in a catena of decisions has made observations that scathing remarks ought not to be made. He relied upon the decision of the Hon'ble Apex Court in *A M Mathur v. Pramod Kumar Gupta and Others : (1990) 2 SCC 533* to submit that judicial restraint should be exercised and intemperate language should be avoided while passing judgements.

28. He further submitted that such remarks directing enquiry amidst prosecution evidence would have the impact of prejudicing the entire case of the prosecution.

29. He submitted that the learned Trial Court also made observations/remarks regarding the arrest and non-arrest of the accused persons. He submitted that the law is well settled on the aspect that the power to arrest is within the discretion of the investigating officer.

30. He submitted that in order to comply with the impugned orders, certain reports under the signatures of the DCP with the due approval of the Commissioner of Police were submitted before the learned Trial Court. He submitted that the same was however not considered to be compliance on the part of the Commissioner.

31. He submitted that remarks such as "*deaf ears of the Commissioner*" are derogatory in nature. He further submitted that such scornful remarks would have a devastating impact on the career of the Senior officers and subordinate staff. He consequently



submitted that the such remarks/observations be expunged from the impugned orders.

Analysis

32. From a perusal of the impugned orders, it is apparent that the learned Trial Court has made the remarks in relation to the lapse on the part of the investigating authority to preserve and produce the case property or in relation to the manner in which the investigation was conducted.

33. In CRL.M.C. 4930/2022 & CRL.M.C. 6801/2022, the learned Trial Court was considering an application for grant of bail preferred by the respondent. The FIR was registered on an allegation that the accused persons, on the pretext of selling a rice-puller, had cheated the complainant of several lakhs of rupees. While dismissing the bail application of the respondent, the learned Trial Court *vide* order dated 12.08.2022 made certain observations pertaining to the 4 year delay in the registration of the FIR, the delay in arrest of the accused. The learned Trial court also made observations regarding the arrest and non-arrest of the accused persons.

34. It was noted that appropriate steps were not taken to obtainailable warrants and for issuance of process under Section 82 of the Code of Criminal Procedure, 1973 against those accused persons who were absconding. The learned Trial Court also noted that while the decision to arrest was discretionary in nature, such discretion should not be exercised arbitrarily. Consequently, notice was issued to the Special Commissioner of Police with direction to examine the reasons for which the other accused persons were not arrested. Alternatively,



the Special Commissioner of Police was directed to examine why steps had not been taken to initiate proceedings to declare the absconding accused persons as proclaimed offenders.

35. A report was subsequently filed under the signatures of the DCP with the approval of the Special Commissioner of Police. The learned Trial Court *vide* order dated 12.09.2022 observed that the Special Commissioner of Police failed to file any report. It was noted that even the report filed by the DCP did not disclose if any enquiry was conducted against the delinquent officers. The learned Trial Court then went on to note that the Special Commissioner was bound to disclose whether there was any arbitrary exercise of discretion which he failed to do so. Consequently, a show cause notice was issued to the Special Commissioner of Police for non-compliance with the Court order. A notice was also issued to the Commissioner of Police with directions to examine the reasons for non-compliance of the directions given to the Special Commissioner of Police. The Commissioner of Police was further directed to examine why the other accused persons were not arrested, and had the other persons been absconding, why steps were not taken to initiate proceedings to declare such accused persons as proclaimed offenders.

36. Subsequently, a status report dated 22.10.2022 was filed by the DCP with the approval of the Commissioner of Police. The learned Trial Court *vide* order dated 02.11.2022 noted that despite the transfer of investigation to a new police officer, other accused persons were not arrested. Observations were made in regard to the arbitrary exercise of discretion in relation to the arrest of the accused persons.



Further, fresh notice was issued to the Commissioner of Police with direction to ensure that further investigation in the matter is carried out fairly and under the supervision of a competent senior police officer.

37. In CRL.M.C. 4947/2022 & CRL.M.C. 5780/2022, while at the stage of evidence, the learned Trial Court noted that the vehicle, that was subject matter of theft, had not been produced despite repeated instructions. Consequently, *vide* order dated 04.07.2022, the learned Trial Court issued notice to the Commissioner of Police to ensure that either the vehicle which formed the subject matter of three cases or the photographs taken at the time of release be filed.

38. Subsequently, *vide* order dated 04.08.2022, the learned Trial Court noted that the photographs had still not been filed. Consequently, it was noted that no cogent reasons had been disclosed for not filing the photographs. It was noted that the Commissioner failed to conduct an enquiry to see why the photographs had not been found. Remarks were also made to the effect that it was also not disclosed whether the photographs were even taken before releasing the vehicles.

39. The learned Trial Court *vide* order dated 21.09.2022 noted that notices were issued to the Commissioner of Police, however, no report had been filed. It was noted that reports of junior officers in the police had been received including one filed by the DCP which stated that the same had been filed for the Commissioner of Police. Certain observations with regard to non-production of case property in several cases were also made. The learned Trial Court further issued fresh notice to the Commissioner of Police to inform the Court whether he



had received the previous notices issued by the Court. Similarly, *vide* order dated 28.10.2022, the learned Trial Court issued notice to the DCP and directed him to disclose about the practice of releasing case property without seeking permission of the Court.

40. In CRL.M.C. 5979/2022, *vide* order dated 08.09.2022, the learned Trial Court noted that the examination-in-chief of ASI Rahisuddin could not be carried out for want of case property. In that regard, the learned Trial Court made certain remarks regarding non-production of the case property and issued notices to the Commissioner of Police with direction to disclose the action taken by the police on receiving the Court orders which repeatedly made observations regarding non-production of case property. Notice was also issued to the Special Commissioner of Police with direction to show why action should not be taken against him for non production of the case property.

41. The short point that falls for the consideration of this Court is thus whether such remarks/strictures could have been passed by the learned Trial Court during the course of hearing.

42. It is not in doubt that the orders passed by the Courts ought to be obeyed in order to maintain the majesty of the Court. Further, it is also not in doubt that judicial officers can pass directions and observations to indicate the lapse on the part of the investigating authority or fault, if any, in the conduction of the investigation. However, while noting so, it is also pertinent to mention that the use of vituperative remarks or those that tend to impeach the credibility of the investigating authority ought to be avoided.



43. It is pertinent to note that the Delhi High Court Rules for ‘Practice in the Trial of Criminal Cases’ under Chapter I, Part H, Section 6 notes as under:

“6. Criticism on the conduct of Police and other officers—It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of illusage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and every thing against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary’s circular Letter No. 920-J-36/14753, dated the 15th April, 1936.”

44. The Hon’ble Apex Court in ***A M Mathur v. Pramod Kumar Gupta and Others : (1990) 2 SCC 533*** emphasised the importance of exercising judicial restraint while administering justice and observed as under:

“12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said: [The Judiciary and Constitutional Politics — Views from the Bench, Mark W. Cannon and David M.O.’s Brien p. 27] “First and foremost, humility and an understanding of the range of the problems and (one’s) own inadequacy in dealing with them, disinterestedness ... and allegiance to nothing



except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law.”

13. 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 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 the 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.”

45. In the case of ***State of West Bengal v. Mir Mohammad Omar and Others*** : (2000) 8 SCC 382, the Hon'ble Apex Court noted that even when the flaw in the investigation results in acquittal of the accused, yet the Courts should ordinarily refrain from making castigating remarks, and observed as under:

“41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present



system, ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above.”

46. A Co-ordinate Bench of this Court in ***State v. Yogender Singh*** : **2015 SCC OnLine Del 14203** when dealing with a challenge to an order passed by the learned Trial Court whereby the Commissioner of Police was directed to take action against the concerned SHO, it was observed as under:

“15. While administering justice, a Judge is expected to be acting judicially without being deterred by any consideration. While doing so, he has the liberty of expressing his views about the conduct of the investigating agency or other organs of the Government but has to be careful about not overstepping its jurisdiction. An order or a judgment is a privileged document and a Judge has always to remind himself that the immunity which he enjoys in writing an order or a judgment carries with it the duty of circumspection.

16. If the learned Addl. Sessions Judge was not happy with the way in which the investigation was being carried out, it was enough to record his displeasure. That has been done aptly by the learned Addl. Sessions Judge. What is not approved of is his direction to send his order to the Commissioner of Police for taking action against the erring police officials and submission of action taken report to him. This cannot be taken kindly to on two scores. By saying so, the learned Judge has pre-judged the action/inaction of the investigating agency and other police officers without affording any opportunity to explain the circumstances for delayed lodging of the first information report; and the Court, by seeking action taken report has in a way, encroached upon the administrative functions of the police administration and thereby has begun monitoring not the investigation of the case but the process of taking disciplinary action against the police officials. The Commissioner of Police, is left with no choice, once a Court of law



holds that law has been flouted and, therefore, action be taken against the concerned persons. The disciplinary enquiry, therefore, would only be on paper when the offence is held by the court to have been committed.

17. The observations of the Court with regard to the failure of the investigating agency in taking prompt action is justified and is not being interfered with. What is unnecessary and unwarranted is the direction to the Commissioner of Police for taking action against erring police officials and submission of ATR in that regard. Such directions cannot be countenanced in the eyes of law.”

47. From a perusal of the impugned orders, it is apparent that the remarks were made in regard to the failure on the part of the investigating agency to carry out the investigation in a proper manner. The impugned orders further manifest that despite numerous orders, case property/photographs had not been produced. While the anguish of the learned Trial Court is not without reason, yet use of disparaging remarks that tend to lower the credibility of the investigating authority ought to be avoided. If the learned Trial Court was concerned with the manner of the conduction of investigation, the Court could simply have recorded the fact. However, use of castigating remarks, show-cause notices to the Commissioner of Police seeking action taken against the officers, manner of enquiry, etcetera, in the opinion of this Court, cannot be sustained.

48. It is also apparent that the learned Trial Court in CRL.M.C. 4930/2022 & CRL.M.C. 6801/2022 *vide* orders dated 12.08.2022 and 12.09.2022 had made certain observations in regard to the manner of the investigation carried out by the investigating agency and the arrest of the accused persons while considering the application for grant of bail.



49. It is well settled that while considering an application for grant of bail, the Court only ought to decide the question of grant or dismissal of bail. The Court thus cannot pass directions/strictures while considering an application for grant of bail. The Hon'ble Apex Court in ***State v. M Murugesan and Another : (2020) 15 SCC 251*** while considering the question regarding the scope of jurisdiction of Court when considering an application under Section 439 of the CrPC had observed as under:

*“11. We find that the learned Single Judge [M. Murugesan v. State, 2019 SCC OnLine Mad 12414] has collated data from the State and made it part of the order after the decision [M. Murugesan v. State, Criminal Original Petition No. 1618 of 2019, order dated 18-2-2019 (Mad)] of the bail application, as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. **The jurisdiction of the court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the court.**”*

(emphasis supplied)

50. Similarly, in ***Sangitaben Shaileshbhai Datanta v. State of Gujarat : (2019) 14 SCC 522*** the Hon'ble Apex Court while examining a question where the High Court after granting bail to the accused had also ordered the accused and their relatives to undergo scientific test, observed as under:

“6. Having heard the counsel for the parties, it is surprising to note the present approach adopted by the High Court while considering the bail application. The High Court ordering the abovementioned tests is not only in contravention to the first principles of criminal law jurisprudence but also violates



statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein the court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case.

7. In the instant case, by ordering the abovementioned tests and venturing into the reports of the same with meticulous details, the High Court has converted the adjudication of a bail matter to that of a mini trial indeed. This assumption of function of a trial court by the High Court is deprecated.”

(emphasis supplied)

51. Consequently, the learned Trial Court while considering the application for grant of bail cannot pass directions/strictures since the jurisdiction of the Court on such an occasion is limited to either the grant or dismissal of bail of the accused pending trial.

52. It is not in doubt that the orders of the Court must be obeyed and complied with. Further, no individual shall be allowed to diminish the authority and majesty of the Court. However, scathing remarks tend to have lasting consequences. It cannot be overlooked that every word that forms part of the record/judicial order gains permanence.

53. For this reason, strong criticism, vituperative remarks, may have a devastating impact on the reputation and career of the officials



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involved in the case. Such remarks, as has been observed by Courts in a catena of decisions, are not only unnecessary but also have serious consequences on the careers of public servants.

54. In view of the foregoing discussion, the remarks/observations/strictures passed by the learned Trial Court *vide* orders dated 12.08.2022, 12.09.2022, 02.11.2022 in CR Case No. 3350/2022, orders dated 04.07.2022, 04.08.2022, and 21.09.2022, 28.10.2022 in CR Case No. 466247/2015, orders dated 08.09.2022 and 14.10.2022 in CR Case No. 214/2021 are expunged.

55. The present petitions are allowed in the aforesaid terms. Pending applications stand disposed of.

56. A copy of this judgment be placed in all the matters.

AMIT MAHAJAN, J

FEBRUARY 7, 2025