CASE NO.:
Appeal (crl.) 575-576 of 2004

PETITIONER:
State Rep. by Inspector of Police & Ors.

RESPONDENT:
N.M.T. Joy Immaculate

DATE OF JUDGMENT: 05/05/2004

BENCH:
Dr. AR. Lakshmanan.

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P.(Crl.) Nos. 3143-3144 of 2002)

Dr. AR. Lakshmanan, J.

I have had the privilege of perusing the judgment proposed by my learned brother Hon'ble Mr. Justice G.P. Mathur. I respectfully agree with the opinion expressed by him. However, I would like to add the following few lines.

Section 160 of the Code of Criminal Procedure deals with police officer's power to require attendance of witnesses. This Section aims at securing the attendance of persons who would supply the necessary information in respect of the commission of an offence and would be examined as witnesses in the inquiry or trial therefor. This Section applies only to the cases of persons who appear to be acquainted with the circumstances of the case, i.e. the witnesses or possible witnesses only. An order under this Section cannot be made requiring the attendance of an accused person with a view to his answering the charge made against him. The intention of the legislature seems to have been only to provide a facility for obtaining evidence and not for procuring the attendance of the accused, who may be arrested at any time, if necessary. In other words, this Section has reference to the persons to be examined as witnesses in the trial or inquiry to be held after the completion of the investigation. As an accused cannot be examined as a witness either for or against himself, he cannot be included in the class of persons referred to in the Section. But the police officers are fully authorised to require the personal attendance of the suspects during the investigation.

In the instant case, the High Court, by an impugned order has given a direction to the State Government to issue circulars to all the police stations instructing the police

officials that the woman accused/witness should not be summoned or required to attend at any police station under Section 160 Cr.P.C. but they must be enquired only by women police or in the presence of a women police, at the places where they reside. The High Court has issued a further direction to the Government to ensure that this instruction is strictly followed by the police in future.

In our opinion, the High Court has committed a serious error in giving such a direction contrary to the statutory provisions under Section 160 of the Cr.P.C. which is applicable only to the witnesses and not the accused. The High Court has also committed a grave error in giving a finding as to the confession and recovery of a nylon rope alleged to have been used in the commission of murder, thereby stifling/foreclosing the investigation into an offence of murder even before a final report in the case as contemplated under Section 173(2) of the Cr.P.C. is filed.

The High Court, in the present case, while dealing with the revision has not only set aside the order granting police custody, but has held that the consequent confession and the alleged recovery have no evidentiary value in the case. In other words, what has got to be decided in a full-fledged trial, the High Court merely on the pleadings of the parties has given a finding that the order granting police custody and

the consequent confession and the alleged recovery had no evidentiary value whatsoever in the case. The learned single Judge has also given a finding that records were created to implicate the respondent-Joy Immaculate in the case. Needless to state that any further investigation in the case permitted by the learned Judge would be an exercise in futility in the context of such finding which could be given only during the course of a full-fledged trial. The High Court, while disposing of the criminal revision, has given several findings/directions in para 40 of the judgment/order. In our opinion, the learned Judge has miserably erred in allowing the criminal revision petition against the order of the lower Court in criminal M.P. No. 5171/2001, as the order passed by the lower Court was acted upon, i.e., one day police custody was granted, the accused was taken into custody and surrendered back, and thus the petition to set aside that order has become infructuous. Further, the learned Judge has erred in directing the State Government to issue a circular to all the police stations instructing the police officials that the woman accused/witness should not be brought to the police station and that they must be enquired only by women police or in the presence of women police at the places where they reside. The learned Judge has failed to note that the aforementioned findings is contrary to the statutory provisions contained in Section 160 of the Cr.P.C. In fact, the learned Judge has erred in expanding the scope of Section 160 Cr.P.C. to the accused as well, which might lead to hardship to an investigating agency. If the directions of the learned single Judge is accepted, no purposeful investigation into any serious offence involving women accused could be conducted successfully.

Above all, the learned Judge has committed a grave error in awarding a compensation of Rs. 1 lakh on the ground that the police personnel committed acts of obscene violation, teasing the respondent herein. The learned Judge has relied upon only on the basis of the affidavit filed in the case for coming to the conclusion and also on the basis of the assumption that the respondent was not involved in the incident which will foreclose the further enquiry ordered by the learned Judge in the matter. There is no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has started. The learned Judge has also directed to take immediate departmental action against P-1 Inspector of Police and P-4 Inspector of Police and other Police Personnel who were responsible for the detention and other alleged acts committed on the respondent at P-4 police station. This direction, in our opinion, is not warranted in view of the fact of our allowing the criminal appeal and setting aside the judgment of the learned single Judge. The said direction issued by the learned Judge is set aside.

We, therefore, set aside the order in the criminal revision to prevent abuse of process of court or otherwise to secure the ends of justice. It is a principle of cardinal importance in the administration of justice that the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody. At the same time, it is equally necessary that in expressing their opinions, Judges and Magistrates must be guided by considerations of justice fair play and restraint. It is not infrequent that sweeping generalization defeat the very purpose for which they are made. It has been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve, as observed by this Court in The State of Uttar Pradesh vs. Mohd. Naim AIR 1964 SC 703. It is also very apt to quote para 13 of the judgment in A.M. Mathur vs. Pramod Kumar Gupta AIR 1990 SC 1737 which reads thus:

"Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our Judges. This quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect; that is, respect by the judiciary. Respect to those who come before the Court as well to other coordinate branches of the State, the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process."

This Court, in a number of other decisions, has also observed that the Courts should not make unjustifiable observations and directions beyond the scope and ambit

of the lis pending before it and that such a direction and observation issued will only hamper the free-flow of justice and cause lot of inconvenience to the litigants who come before the Court for redressal of their genuine grievances.

It is also apt to quote hereinbelow the observations made by this Court in Kashi Nath Roy vs. State of Bihar [(1996) 4 SCC 539] wherein this Court held that granting of bail on the ground of an infirmity in evidence in the criminal trial was not a glaring mistake or impropriety so as to attract adverse remarks and suggestion for initiation of action against the Judge-Subordinate from the High Court Judge. While stating the proper course to be adopted in such a case, this Court held as follows:
"The courts exercising bail jurisdiction normally do and should refrain from indulging in elaborate reasoning in their orders in justification of grant or non-grant of bail. For, in that manner, the principle of "presumption of innocence of an accused" gets jeopardized; and the structural principle of "not guilty till proved guilty" gets destroyed, even though all sane elements have always understood that such views are tentative and not final, so as to affect the merit of the matter. Here, the appellant has been caught and exposed to a certain adverse comment and action solely because in reasoning he had disclosed his mind while granting bail. This may have been avoidable on his part, but in terms not such a glaring mistake or impropriety so as to visit the remarks that the High Court has chosen to pass on him as well as to initiate action against him, as proposed.

Whenever any such intolerable error is detected by or pointed out to a superior court, it is functionally required to correct that error and may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the court and independence of judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear, and result-orienting, but rarely as a rebuke. The premise that a Judge committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge-Subordinate, unless there existed something else and for exceptional grounds."

I respectfully agree with all other directions and the observations made by brother G.P. Mathur, J. in allowing the criminal appeal and setting aside the impugned judgment of the High Court dated 11.04.2002.