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MANGILAL AND ORS.

v.

STATE OF M.P.

APRIL 27, 1994

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[M.N. VENKATACHALIAH, CJ. AND S. MOHAN, J.]

Code of Criminal Procedure, 1973: Section 386—Appeal against conviction—Hearing of—Lawyers' strike during—Absence of lawyer—Dismissal of appeal for non-prosecution—Validity of—High Court's observation as to reasons for strike and comments on lawyers' conduct in relation to strike—Justification of.

Judicial process—Decision making—Judge—Need to avoid personal prejudice.

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During the hearing of appellants' appeal, against conviction under Sections 147 and 307 of the Indian Penal Code, their counsel were absent due to Lawyers' strike. The High Court dismissed the appeal for want of prosecution observing that there was no justification in the lawyers' decisions to go on strike and the decision to strike obstructed the judicial process. The appellant's application for restoration of the appeal and to decide the same on merits was also dismissed by High Court.

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In appeal to this Court it was contended on behalf of the appellants that the High Court should have merely enquired into justification of Lawyers' absence and it was not justified in examining the question as to what prompted the Advocates to go on strike and in commenting upon their conduct in relation to the strike.

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Setting aside the High Court's order and directing the restoration of appeal to be heard on merits, this Court

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HELD : 1. The High Court has shown a lack of judicial restraint in adverting to and influenced by matters which were extraneous. It should not have embarked on the reason for the strike which was not the issue before it. The learned Judge should not have let out his bile against the advocates who are free to hold any opinion as to the lapses

committed by the then Chief Justice. Holding of such opinions can hardly be characterised as an unruly attitude on the part of the advocates. Such holding of opinion, nor again, would either obstruct or disturb the judiciary. [777-H, 778-A-B, H, 779-A]

Ramnaresh Yadav v. State of Bihar, A.I.R. (1987) S.C. 1500, cited.

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2. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undeflected. It is essential a judge should not allow his personal prejudice to go into the decision-making. [778-B-C]

R. v. Bath Compensation Authority, (1925) 1 K.B. 685, referred to.

C

3. A closed mind is antithetical to fair hearing. Prejudice tends to corrupt the ability to exercise independent judgment. It has a tendency to intrude upon a free mind and may influence the outcome. [778-D]

Public Utilities Commission of the District of Columbia v. Franklin S. Pollak, 343 US 451, 96 Law Ed. 1068, referred to.

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CRIMINAL APPEAL JURISDICTION : Criminal Appeal No. 298 of 1994.

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From the Judgment and Order dated 11.10.93 of the Madhya Pradesh High Court in Crl. A. No. 117 of 1986.

S.K. Gambhir and Vivek Gambhir for the Appellants.

The Judgment of the Court was delivered by

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MOHAN, J. Leave granted.

The appellants were tried before the learned First Additional Sessions Judge, Hoshangabad in Sessions Trial No. 30 of 1985 for offences under Sections 147 and 307 of Indian Penal Code. On trial, they were convicted and sentenced as per the judgment dated 23.1.86 as under :-

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Rigorous imprisonment for one year each under Section 147 of the Indian Penal Code, rigorous imprisonment for 5 years and fine of Rs. 500

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A each, in default of payment of fine, rigorous imprisonment for two months under Section 307 of the Indian Penal Code. Both sentences were directed to run concurrently. The appellant filed Criminal Appeal No. 117 of 1986 in the High Court. On 27.8.93 the appeal came up before D.M. Dharmadhikari, J. It was adjourned since the lawyers at Jabalpur were on strike on that day. Thereafter the matter was listed on 11.10.93. On that day also the lawyers were on strike. Therefore, the appeal was dismissed by the impugned judgment for want of prosecution. On 20.11.93 an application under Section 482 Code of Criminal Procedure was preferred for restoration of the appeal and to decide the same on merits. By an order dated C 26.11.93 the said application was dismissed. Hence, the special leave petition.

D The learned counsel for the appellant would urge that the court should not have gone into the question as to what prompted the advocates to go on strike. On the contrary, it should have merely enquired into the facts whether there is justification for the absence of the appellant's counsel when the appeal was taken up for hearing. It was also not correct to have commented upon the conduct of the advocate in relation to the stirke.

E It is unfortunate that Criminal Appeal No. 117 of 1986 came to be dismissed for want of prosecution. While dismissing the appeal on 11.10.93 the High Court observed as under :-

F "No Advocate nor their Association has apprised this Court about the grievances of the Advocates and why they do not wish to appear in this Court. But in this connection news have been punlished in the newspapers from time to time. It appears from the news published in the local newspapers that on 13.8.93 and 14.8.93 representatives of the Advocates met the Hon'ble Chief Justice of India and the Minister for Law and submitted a memorandum and requested for transfer of the Chief Justice of this High Court to some other High Court. After that, after passing a resolution on 18.8.93 for the same transfer issue decision to go on strike for a week was taken. Thereafter, on 23.8.93 in a meeting G of Bar Association an opinion was expressed that Justice Gulab H

Gupta of this High Court is the only Justice who has got support A from the Chief Justice as such he is also responsible for the acts of the Chief Justice. It appears that on this account only the Bar Association has demanded that this Court should also be transferred. It is learnt that a Writ Petition has been preferred seeking transfer of the Chief Justice and it is under consideration. The learned Justices of the Supreme Court have urged the Advocates of this Court that during the pendency of the said Writ Petition they should not resort to any such agitation and withdraw the agitation that is being continued by them. News items published in the newspapers indicate that the strike has been called off on 13.9.93 and a decision has been taken to boycott appearance before the Chief Justice and this Court. As regards the question of transfer of the Chief Justice, it is under the consideration of Supreme Court and hence this Court need not say anything in this context. As far as this Court is concerned, the Advocates hold that this Court has got the support of the Chief Justice and as such this Court also is responsible for the lapses committed by the Chief Justice and this can never be accepted. This decision of the Advocates speaks of their unruly attitude and for this the judicial process would not be allowed to be obstructed or disturbed. Since according to this Court there is no justification in the decision of Advocates, their absence is unpardonable. In such exigency as per section 386 of the Criminal Procedure Code this Court without hearing the parties is competent to decide the appeal on merits. But pursuant to the decision of the Supreme Court in *Ramnaresh Yadav v. State of Bihar*, A.I.R. (1987) S.C. 1500 it has been held that ordinarily in criminal appeals without hearing the parties the appeal should not be decided on merits and if the conduct of the Advocates is such that it causes hindrance in the judicial process then the appeal should be dismissed for want of prosecution and lesson should be taught. Following the observations of the Supreme Court the appeal deserves to be dismissed for want to prosecution." G

We are afraid that the High Court has shown a lack of judicial restraint and decreed in adverting to and influenced by matters which were H

A extraneous. The judicial proceedings in this Court relating to the administrating the High Court during that period would indicate that this went severly wrong in the High Court's administration in certain matters. The fact is that the advocates were on strike justifiably or otherwise. Why should the court embark on the reason for the strike which was not the issue before it? Therefore, all the observations which we have quoted above were totally unwarranted. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undeflected. It is essential a judge should not allow his personal prejudice to go into the decision-making as was remarked by Scrutton, L.J. in *R v. Bath Compensation Authority*, C (1925) 1 KB 685 at 719:

"The object is not merely that the scales be held even; it is also that they may not appear to be inclined."

D A closed mind is antithetical to fair heraing. Prejudice tends to corrupt the ability to exercise independent judgment. It has a tendency to intrude upon a free mind and may influence the outcome. At this stage, it is worthwhile to recall the words of Mr. Justice Frankfurter in *Public Utilities Commission of the District of Columbia v. Franklin S. Pollak*, 343 US 451 at 465-466 (96 Law. Ed. 1068 at 1079):

E "The judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. *There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted.*" (Emphasis supplied)

G Should the judge take cognizance of the newspaper report and the reasons which prompted the advocates to seek transfer of the then Chief Justice? The learned Judge should not have let out his bile against the advocates who are free to hold any opinion as to the lapses committed by H the then Chief Justice. Holding of such opinions can hardly be charac-

terised as an unruly attitude on the part of the advocates. Such holding of A opinions, nor again, would either obstruct or disturb the judiciary. If the learned Judge had the slightest compunction he should have rescused himself.

Therefore, we set aside the same and direct the appeal be restored B to file and heard on merits.

T.N.A.

Appeal restored.