

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CM(M) No. 265/2025

Anu Charak

.....Petitioner

Through: Mr. Ayushman Kotwal, Advocate

Vs

UT of J&K & Anr.

.....Respondents

Through:

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
ORDER
(22.09.2025)

- 01.** The petitioner, through the medium of the present petition, has challenged order dated 08.09.2025 (impugned order) passed by Juvenile Justice Board, Samba, to the extent of passing of strictures against the conduct of the petitioner.
- 02.** Heard learned counsel for the petitioner and perused the record.
- 03.** The record reveals that the petitioner is posted as Assistant Public Prosecutor (APP) in the court of learned Additional Special Mobile Magistrate, Samba, but it seems that on the fateful day i.e. on 08.09.2025, the Assistant Public Prosecutor of the Juvenile Justice Board, Samba had proceeded on leave and additional charge of the Juvenile Justice Board was assigned to the petitioner. The record

further shows that on the said date, the petitioner was busy in recording statement of prosecution witnesses in the court of learned Additional Special Mobile Magistrate, Samba, which continued up to the expiry of court timing. This is clear from the minutes of proceedings dated 08.09.2025 of case titled “**State Vs. Pankaj Kumar & Anr.**” pending before the court of learned Additional Special Mobile Magistrate, Samba.

- 04.** It seems that during the same period when the petitioner was examining a witness in the court of learned Additional Special Mobile Magistrate, Samba, she was required to argue a bail application that was pending before the Juvenile Justice Board, Samba. In view of her pre-occupation before the court of learned Additional Special Mobile Magistrate, Samba, the petitioner, it seems, could not attend the Juvenile Justice Board, Samba. This, it appears, was taken by the Juvenile Justice Board, Samba as an act of dereliction of duty on the part of the petitioner which resulted in passing of certain disparaging remarks against the petitioner and the matter was directed to be brought to the notice of Deputy Director of Prosecution, Kathua-Samba, with a recommendation to take a strict note of the matter on account of improper, negligent and unbecoming conduct of the petitioner.

05. Before proceeding to determine as to whether it was appropriate for the Juvenile Justice Board, Samba to pass adverse remarks against the petitioner, it would be apt to notice the legal position on the issue relating to passing of disparaging remarks and adverse comments/strictures in judgments/orders.
06. The Supreme Court has, in the case of “***State of Madhya Pradesh vs. Narmada Bachao Andolan & Anr.***” (2011) **12 SCC 689**, held that adverse remarks should not be made lightly as it may seriously affect the character and integrity of an individual. Paras 13, 14 and 15 of the Judgement are relevant to the context. The same are reproduced as under :-
- “13. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalisations defeat the very purpose for which they are made. Thus, it is relevant to consider:
- (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
 - (b) whether there is evidence on record bearing on that conduct justifying the remarks; and
 - (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

14. This view has been persistently approved and followed by this Court as is evident from the judgments in *Jage Ram v. Hans Raj Midha*³, *R.K. Lakshmanan v. A.K. Srinivasan*⁴, *Niranjan Patnaik v. Sashibhusan Kar*⁵, *Major General I.P.S. Dewan v. Union of India*⁶, *Dilip Kumar Deka v. State of Assam*⁷ and *State of Maharashtra v. Public Concern for Governance Trust*⁸.

15. Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.”

07. Again the Supreme Court in “**State (Govt. of NCT Delhi) Vs. Pankaj Chaudhary & Ors.**” (2019) 11 SCC 575, held that any disparaging remarks and direction to initiate departmental action against the persons whose conduct comes into consideration before the court would have serious impact on their official career. Para 42, 43 and 44 of the judgement are relevant to the context and the same are reproduced as under :-

“42. While passing disparaging remarks against the police officials and directing prosecution against them, in our considered view, the High Court has failed to bear in mind the well settled principles of law that should govern the courts before making disparaging remarks. Any disparaging remarks and direction to initiate departmental action/prosecution against the persons whose conduct comes into consideration before the court would have serious impact on their official career.

43. In *S.K. Viswambaran v. E. Koyakunju*⁶ this Court held as under: (SCC pp. 113 & 116-17, paras 9 & 13-14)

"9. Stung by the remarks made against him without even a hearing....

13. We have also to point out a grievous procedural error committed by the High Court. Even assuming for argument's sake that for expunging the remarks against Respondents 2 and 3 the conduct of the appellant required scrutiny and merited adverse comment, the principles of natural justice required the High Court to have issued notice to the appellant and heard him before passing adverse remarks against him if it was considered necessary. By its failure the High Court has failed to render elementary justice to the appellant.

14.In *State of U.P. v. Mohd. Naim*⁷, it was held as follows: (AIR p. 707, para 10)

‘10. ... If there is one principle of cardinal importance in the administration of justice, it is this: 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, even by this Court. 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 generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct, justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.’

This ratio has been followed in *R.K. Lakshmanan v. A.K. Srinivasan*⁸ and *Niranjan Patnaik v. Sashibhusan Kar*⁹ (to which one of us was a party). Judged in the light of the above tests, it may be seen that none of the tests is satisfied in this

case. *It is indeed regrettable that the High Court should have lightly passed adverse remarks of a very serious nature affecting the character and professional competence and integrity of the appellant in purported desire to render justice to Respondents 2 and 3 in the petition filed by them for expunction of adverse remarks made against them."*

(emphasis supplied)

44. In *Manish Dixit v. State of Rajasthan*¹⁰ this Court held as under: (SCC pp. 608-09, paras 42-43)

"42. ... Such disparaging remarks and the direction to initiate departmental action against him could have a very serious impact on his official career.

43. Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensure serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW 30 (Devendra Kumar Sharma). (*State of U.P. v. Mohd. Naim*⁷, *Jage Ram v. Hans Raj Midha*¹¹, *R.K. Lakshmanan v. A.K. Srinivasan*⁸, *Niranjan Patnaik v. Sashibhusan Kar*⁹ and *State of Karnataka v. High Court of Karnataka*¹²)".

(emphasis supplied)

08. From the foregoing analysis of the legal position, it is clear that normally courts should avoid passing strictures and disparaging remarks against Government officials when they have not been afforded an opportunity of explaining or defending themselves. The adverse remarks/observation can be made by the courts only if it is absolutely necessary

for disposal of the case and when there is material on record to suggest complicity of the officers.

09. The sequence of events in the instant case, reveal that there was some communication gap between the learned Presiding Officer of Juvenile Justice Board, Samba, and the petitioner which resulted in passing of impugned order. It seems that Juvenile Justice Board, Samba, without ascertaining the reason as to why the petitioner had not been able to attend the proceedings before the Board, has proceeded to pass strictures against the petitioner. It also appears that the petitioner was unable to properly explain the circumstances before the Juvenile Justice Board, Samba, which precipitated the situation.

10. The courts are expected to be highly tolerant, magnanimous and large hearted in ignoring trifling misdemeanour of a litigant, lawyer or a public servant. Merely, because a public prosecutor has been unable to argue a matter or has sought time to prepare the brief does not call for passing of strictures against the said public prosecutor even if it is assumed that his/her conduct may not be upto the mark, that too in a case, where the accused was not behind the bars and *heavens were not going to fall* if the case was adjourned for a day. The remarks made by Juvenile Justice Board, Samba, against the petitioner are

therefore, uncalled for and were definitely not necessary for the disposal of the case.

- 11.** Time and again this Court has cautioned the courts to eschew the tendency to pass strictures and remarks against the public servants unless the same is absolutely necessary for disposal of the case and the concerned officer has been put to notice. The Juvenile Justice Board has while recording the impugned remarks, neither put the petitioner to notice nor was it necessary to pass such remarks for disposal of the case. The disparaging remarks made in the impugned order dated 08.09.2025 by Juvenile Justice Board, Samba against the petitioner, therefore, deserve to be quashed.
- 12.** Accordingly, the petition is allowed and the remarks about the conduct of the petitioner made in the impugned order dated 08.09.2025 are directed to be **expunged**. The Deputy Director of Prosecution, Kathua-Samba, shall not take any further action against the petitioner on the basis of the impugned remarks.

(SANJAY DHAR)
JUDGE

JAMMU
22.09.2025
SUNIL

Whether the order is speaking	:	Yes/No
Whether the order is reportable	:	Yes/No