

(2010) 08 DEL CK 0001
In the Delhi High Court
Case No : Criminal M.C. 1436 of 2009

A.K. Gupta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Citation : (2010) 171 DLT 609 : (2010) 7 RCR(Criminal) 1681

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Ajay Burman, for the Appellant; Harish Gulati, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—In this country a folklore goes that if you are caught taking bribe you can get scot free by giving bribe. In this case, CBI intended to prove the same.

2. The petitioner in this case was caught accepting bribe from a complainant who had official business pending with the petitioner, working as Engineer in the department where a trap was laid on the basis of a complaint lodged on 17th November, 1990. The petitioner was caught red handed on 19th November, 1990 at Room No. 22, First Floor of Hotel Maharaja, in the evening in the presence of shadow witness. The investigation was referred to CBI, CBI did not file result of investigation for 11 long years in a trap case where the investigation would not have taken more than few days. Ultimately, the CBI filed a closure report after 11 long years. The CBI had no explanation as to why the result of investigation was not filed for all these years. In view of this state of affairs, the only thing that comes to mind is the folklore as quoted above.

3. The closure report filed by the CBI was not accepted by the Special Judge of CBI as the Special Judge found that the reasons given in the closure report were flimsy, not convincing and vague. It was found that CBI had not investigated the case properly and had unnecessarily doubted the credibility of the complainant.

The learned Special Judge passed a detailed order as to why the closure report was not being accepted and gave directions for further investigation. He also directed that an investigation should also be done into the aspect of delay of 11 years in filing the closure report. After passing of this order by the Court of Special Judge on 4th May, 2002, it took CBI approximately another 7 years to file charge-sheet and the charge-sheet was filed against the petitioner on 18th February, 2009. The Special Judge then took the cognizance of the offences vide order dated 28th February, 2009.

4. The present petition has been filed by the petitioner for quashing of charge-sheet on the ground of delay. It is alleged by the petitioner that investigation in this FIR had remained pending for so many years. The petitioner took voluntary retirement on 31st January, 2004 i.e. about 21 months prior to his actual date of retirement. The petitioner submitted that since the charge-sheet was filed with such an extra-ordinary delay and the delay had not been explained, the charge-sheet should be quashed. It is submitted that speedy investigation and speedy trial was right of the petitioner and delay in filing the charge-sheet would hamper the defence of the petitioner as all the witnesses whom petitioner could have examined in his defence had retired with passage of time and it would be impossible for the petitioner to locate and trace them or to find them.

5. There is an apparent connivance between the petitioner and the officials of CBI. In a trap case, where a person is caught red handed, the investigation to be done by CBI involves only recording of statements of witnesses involved in the trap, statement of complainant, seizure of the bribe money and sending of hand wash of the accused to FSL and obtaining report. This entire process does not take more than 2 months. There is no explanation given by CBI as to why this case was kept pending investigation for 11 years at first instance and for 7 years at second instance. It only seems that the CBI was not at all interested that the corrupt officials sitting in public offices should be brought to book. The petitioner was an Executive Engineer in DESU at that time and had allegedly demanded bribe. He was caught red handed while accepting bribe. Even if CBI had to file a closure report doubting the credibility of the complainant and other witnesses, CBI should have filed the same within a reasonable time but, perhaps, CBI wanted that the case should die a slow un-natural death that is why for 11 years CBI kept sitting on this investigation and then filed a closure report giving lame excuses. When it was asked to further investigate, for another 7 years it kept sitting on investigation and then filed a charge-sheet. The only logical conclusion is that CBI was not honest and sincere in investigation of this case. Had the CBI been honest in investigation of the case, it would not have delayed filing of the charge-sheet or the initial closure report. There is unexplained long interval of 7 years between the order rejecting closure report and charge-sheet at second instance.

6. No doubt, speedy investigation and speedier trial is the right of accused but speedy and fair investigation is also a right of the society being victim of the

crime. The people of this country have a vested right to ensure that officers working in public offices should be honest and persons with integrity and those who indulge in corruption should be brought to book. If the investigating agency mixes up with the accused persons and investigation reports are not filed for such a long time as in this case, then every accused person would get investigation delayed and say that he should be let of because investigation has taken such a long time.

7. It would be a matter of investigation as to who was responsible for such an inordinate delay in this case. I consider that instead of accused being let of, it could be appropriate that those officials of CBI, who were responsible for dereliction of duty, should be brought to book and action should be taken against them.

8. I find no force in the petition. The petition is hereby dismissed. However, Trial Court shall expedite the trial in this case.

9. Director, CBI is directed to investigate as to who were responsible for keeping the investigation of this pending. A report shall be filed before this Court, about this, within three months. The CBI director shall also intimate as to what action was being taken against those officials who were responsible for this inordinate delay.

10. The petition is being kept alive to ensure action against the erring officials. List the matter on 18th November, 2010.