

(1998) 08 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10899 of 1998

Balbir Singh Nehra

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 25-08-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (1998) CriLJ 4722 : (1999) 1 ILR (P&H) 331 : (1998) 120 PLR 710 :
(1998) 4 RCR(Civil) 157 : (1998) 4 RCR(Criminal) 157

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.S. Tacoria, for the Appellant; H.S. Hooda, Advocate-General,
Surinder Bishnoi, Virender Nittal, Pratap Singh, Manoj D. Taneja, R.K. Handa and
Ashok Gupta, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The petitioner alleges that respondent No. 7 illegally withdrew an amount of Rs. 2.60 crores from the State Bank of India on March 2, 1998. A case was registered on March 10, 1998. The accused were granted anticipatory bail on March 20, 1998. In spite of the lapse of sufficient time, the police has not made a proper investigation. He, thus, pray for the issue of a writ of mandamus to the State of Haryana to transfer the investigation of the case registered vide FIR No. 129 dated March 10, 1998 with the Police Station. City Kaitha u/s 420, IPC to the C.B.I.

2. Separate written statements have been filed on behalf of different respondents.

3. Counsel for the parties have been heard.

4. Mr. Tacoria, counsel for the petitioner has contended that respondent Nos. 6 to 8 had, in collusion with the officers of the Bank illegally withdrawn a substantial amount viz. Rs. 2.60 crores from the State Bank of India. The police has moved at snail's pace. Since public funds are involved, it is in the interest of all concerned that the case is investigated by an impartial agency. In particular,

learned counsel has pointed out that respondent No. 7 is a relation of respondent Nos. 4 and 5 who are Ministers in the Haryana State Cabinet. Thus, he pray that the investigation be transferred.

5. Mr. H. S. Hooda, learned Advocate-General appearing for respondent Nos. 1 to 5, has very fairly stated at the outset that the State Government has no objection to the transfer of the investigation to the C.B.I. However, Mr. Manoj Taneja, learned counsel appearing for respondent Nos. 6 to 8 has contended that the petitioner has no locus standi to file the petition and that a petition u/s 482 of the Code of Criminal Procedure having already been filed by the State Bank of India, the writ petition is not maintainable. Learned counsel has referred to the decisions of their Lordships of the Supreme Court in *Ramsharan Autyanuprasi* and another Vs. Union of India and others, , *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, and *S.P. Anand Vs. H.D. Deve Gowda and others*, . On behalf of the C.B.I. Mr. R. K. Handa, has submitted that the agency is already overburdened and, thus, the Court may consider the desirability of the case being investigated by the State Police itself.

6. Since the matter is at the stage of investigation, we do not wish to comment on the merits of the controversy. However, it is not disputed that an amount of Rs. 2.60 corers had been withdrawn from the State Bank of India (Kaithal Branch) on March 2, 1998. Still further, it is also the admitted position that three cheques for Rs. 90 lacs, Rs. 90 lacs and Rs. 80 lacs drawn on the Central Bank of India were presented to the State Bank of India. However, the amount of Rs. 2.60 crores was released to the seventh respondent without getting the aforesaid three cheques encashed or even verifying as to whether or not the "payee" had the funds in the Central Bank of India. It is also not disputed that the money was released on March 2, 1998 itself when the aforesaid three cheques had been presented. Still further, it has not been disputed that respondent No. 7 is related to respondent Nos. 4 and 5 who are Ministers in the State Cabinet. It has only been suggested that the relationship is very remote. Even if that be so, the factum of relationship is not in dispute. In this situation, it appears to be in public interest that the investigation of the case is done by an impartial agency.

7. Mr. Taneja contends that the petitioner has no locus standi to file the petition.

8. We are unable to accept this contention. It is undoubtedly correct that the Court can refuse to entertain a petition when it is filed by a person on account of extraneous considerations or for personal gain. It is equally correct that the Court does not intervene at the instance of a "meddlesome interloper." However, in the present case, it has not been shown even prima facie that the petitioner has any personal cause for grievance against respondent Nos. 6 to 8. Equally, it has not been indicated that the petitioner has any personal interest or cause to serve. He has only brought to the notice of the Court the fact that a substantial amount of Rs. 2.60 crores was paid to respondent No. 7 even though he did not have adequate funds in the Bank. In this situation, the petition cannot be dismissed on the ground of locus standi.

9. Mr. Taneja has also referred to the decisions of their Lordships of the Supreme Court regarding the locus standi of a person to approach the High Court under Art. 226 of the Constitution. In the case of Jasbhai Desai (supra), it was undoubtedly observed by their Lordship of the Supreme Court that the "petitioner should be an aggrieved Person". This was in the context of the issue of a "No Objection Certificate" for the establishment of a Cinema House. This view was later on considered by their Lordships of the Supreme Court in S.P. Gupta Vs. President of India and Others, wherein the centre of locus standi was sufficiently enlarged. Their Lordships were pleased to observe that the traditional rule in regard to locus standi is of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would there fore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power" Their Lordships were pleased to observe that it is when an individual moves the Court, he "must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person" Such is not the situation in the present case. It has not been shown that the petitioner is acting for personal or political gain.

10. The view taken by the Constitution Bench in S. P. Gupta's case (supra) has been reiterated. In S. P. Anand's case (supra), there was no departure from the decision in S. P. Gupta's case. The only caution given by the Court was that the persons seeking to espouse public cause should not "succumb to spasmodic sentiments". Even the Courts were required to exercise due care while entertaining petitions in public interest.

11. There is no quarrel with the rule enunciated by their Lordships of the Supreme Court in the cases referred to by the learned counsel. However, the only issue is - Has the petitioner no interest ?

12. Apparently, he has no personal interest. However, he has pointed out certain facts which are a cause for concern to the Society. Public funds - a substantial amount - are involved. The State itself has no objection to the transfer of the case. Keeping in view the fact that respondent No. 7 is related (even though remotely as alleged on his behalf) to the two Ministers in the State of Haryana, it appears to be just and fair to accept the request made on behalf of the petitioner. It would promote public confidence and ensure an impartial investigation.

13. Mr. Taneja has pointed out that the State Bank of India has already filed a petition u/s 482 of the Code of Criminal Procedure. A copy of this application was not available on the record of this case. However, it has been produced during the course of hearing. We have perused this application. The State Bank of India

has filed a petition with a prayer that "the investigation of FIR No. 129 dated 10-3-1998 registered at Police Station, City Kaithal u/s 420/120B of IPC be handed over to respondent No. 2 CBI". Thus, the Bank has also made a prayer to the same effect as the present petitioner. Merely because a petition has been filed by the Bank, it cannot be said that writ petition is incompetent. Still further, the Bank had also made an application for being impleaded as a party in this writ petition. This application was allowed by the Bench vide its order dated August 24, 1998. The Bank is also before us. The prayer made in the application has been reiterated by the counsel for the Bank during the hearing of this case. It, thus, appears that the petitioner as well as the State Bank of India are jointly requesting the Court to transfer the investigation of the case to an impartial agency. Resultantly, we find no conflict between the two proceedings. Thus, the pendency of Criminal Misc. No. 10543-M of 1998 which had been filed by the Bank does not operate as a bar to the filing of the present writ petition. If at all, it has only afforded an opportunity to respondent Nos. 6 to 8 to put forth their view point. This is so because, learned counsel for the parties have stated before us, that M/s. Kewal Krishan, Sanjiv Kumar and Narender Chander who are respondent Nos. 6 to 8 in the present petition are no longer parties in the petition filed by the State Bank of India.

14. It is true that the Central Bureau of Investigation may by now be overburdened. However, the present is a case which will be a useful addition to its burden.

15. Resultant, we allow the petition and directed that the investigation of the case registered vide FIR No. 129 dated 10-3-1998 at Police Station, City Kaithal u/s 420/120B IPC shall be transferred to the Central Bureau of Investigation. In the circumstances, there will be no order as to costs.

16. Petition allowed.