
(2022) 11 TEL CK 0062
In the Telangana High Court
Case No : Writ Appeal No. 749 Of 2022

Bharatiya Janata Party

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 15-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 120B, 171B, 171E, 506
Prevention of Corruption Act, 1988 — Section 8

Citation : (2022) 11 TEL CK 0062

Hon'ble Judges : Ujjal Bhuyan, CJ; C.V. Bhaskar Reddy, J

Bench : Division Bench

Advocate : Naresh Reddy Chinnolla

Final Decision : Disposed Of

Judgement

1. Heard Mr. Vaidyanathan Chitambaram, learned Senior Counsel for the appellant and Mr. Dushyant Dave, learned Senior Counsel representing respondents No.1 to 5.
2. This appeal is directed against the order dated 08.11.2022 passed by the learned Single Judge in W.P.No.39767 of 2022 filed by the appellant as the writ petitioner.
3. By the aforesaid order, learned Single Judge held that investigation could not be stalled for an indefinite period and that the Court was not inclined to continue further with the interim order dated 29.10.2022 Accordingly, the police were permitted to go ahead with the investigation. It is against this order that the present appeal has been filed.
4. Appellant before us is the Bharatiya Janata Party (BJP), Telangana State Unit. It is stated that on 26.10.2022, a first information was lodged by respondent No.8 alleging that on 06.09.2022 two out of the three accused persons viz., Ramachandra Bharati @ Satish Sharma and Nanda Kumar had met the informant

and started negotiations with him not to contest as a candidate from the Telangana Rashtra Samithi (TRS) party; instead he was asked to join BJP party by resigning from the TRS party. In this connection, he stated that he was offered an amount of Rs.100 crores besides certain contract works of the Central Government. Informant alleged that if he did not do as per the diktat of the accused persons, criminal cases would be foisted on him besides raids by central agencies. It is in the above backdrop that the first information was lodged before the Moinabad Police Station on the basis of which Cr.No.455 of 2022 came to be registered under Sections 120-B, 171-B, 171-E, 506 read with Section 34 of the Indian Penal Code, 1860 (IPC) as well as under Section 8 of the Prevention of Corruption Act, 1988.

5. According to the appellant the entire episode was stage managed with the sole objective of defaming appellant political party. Repeatedly the name of appellant political party was mentioned in the first information. However, it has been clarified that appellant is in no way connected with the accused persons who are neither members of the appellant political party nor are associated with it in any manner.

6. In the above backdrop, the related writ petition came to be filed contending that Cr.No.455 of 2022 registered with the Moinabad Police Station should be entrusted to a Special Investigation Team (SIT) for a free and fair investigation.

7. Learned Single Judge passed an order dated 29.10.2022. From a perusal of the order dated 29.10.2022, we find that State had raised objection as to the locus standi of the appellant to institute the writ petition. However, learned Single Judge was of the view that State should file a detailed counter-affidavit and till such counter-affidavit was filed, further investigation in Cr.No.455 of 2022 of Moinabad Police Station was deferred.

8. After the State filed the counter-affidavit to which appellant filed rejoinder, the matter was again taken up by the learned Single Judge. In the meanwhile another writ petition being W.P.No.40733 of 2022 came to be filed by the three accused persons seeking investigation in Cr.No.455 of 2022 by a SIT or by the Central Bureau of Investigation (CBI). Both the writ petitions were taken up together. Learned Single Judge observed that it was too early for the Court to reach any prima facie opinion that action of the State Police is tainted with mala fides and aimed only to target the appellant. While the crime was registered on 26.10.2022 appellant filed the writ petition on the very next day i.e., on 27.10.2022. Deferment of investigation order was passed on 29.10.2022. While keeping the writ petitions pending, as according to the learned Single Judge larger issues of public importance are involved for which a detailed hearing is required, the embargo on investigation was lifted whereafter respondent Police were allowed to go ahead with the investigation vide the order dated 08.11.2022.

9. Learned Senior Counsel for the appellant has taken us minutely to the first information and submits that the allegations contained therein are only towards

the appellant party. Therefore appellant cannot be construed as a stranger to the entire proceeding. However, this aspect would be gone into during the final hearing of the writ petition. Referring to and relying upon the Constitution Bench judgment of the Supreme Court in *State of West Bengal vs. Committee for Protection of Democratic Rights, West Bengal* (2010) 3 SCC 571, he submits that this Court has the power under Article 226 of the Constitution of India to transfer investigation to an independent agency inasmuch as impartiality of the State Police does not inspire confidence in the appellant. He submits that it is the limited prayer of the appellant that the writ petition may be heard as early as possible and during the interregnum, the initial interim order passed on 29.10.2022 deferring investigation may be continued.

10. Opposing such submission, Mr. Dushyant Dave, learned Senior Counsel representing the State has at the outset pointed out that there is no such interim prayer in the writ affidavit to stay investigation. Infact as per the prayer of the appellant itself in the writ petition, respondents be directed to constitute a SIT to investigate Crime No.455 of 2022. Therefore, stalling of investigation does not arise.

11. Learned Senior Counsel has referred to a decision of the Supreme Court in *Neeharika Infrastructure Private Limited v. State of Maharashtra* 2021 SCC Online SC 315, more particularly to the conclusions rendered in paragraph 80 thereof, and submits that after analysing the law laid down by the Court for the last 70 odd years Supreme Court has concluded that police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure, 1973 (Cr.P.C.) particularly in Chapter XIV thereof, to investigate into a cognizable offence; Courts would not thwart any investigation into a cognizable offence; criminal proceedings ought not to be scuttled at the initial stage. He also pointed out from the decision of the Supreme Court in *Sanjai Tiwari v. State of Uttar Pradesh* 2020 SCC Online SC 1027 that a third party like the appellant has no locus to approach the Court either for quashing of a criminal complaint or seeking transfer of investigation. He has also referred to a decision of the Supreme Court in *Wander Ltd. v. Antox India P. Ltd.* 1990 (Supp) Supreme Court Cases 727 on the point that against an interlocutory order, writ appeal would not ordinarily be entertained when the learned Single Judge has exercised his discretion in a judicious manner. He submits that the deferment order was passed by the learned Single Judge on 29.10.2022 whereafter, counter-affidavit was filed by the State. After hearing the parties and considering the rival pleadings, learned Single Judge passed the impugned order which is just and proper in the facts and circumstances of the case. He submits that insofar grievance of the appellant that its image is being tarnished by being named in the first information, it may avail its remedy as is permissible in law but certainly the intra-court appeal is not maintainable and should be dismissed.

12. In his reply submission Mr. Vaidyanathan Chitambaram, learned Senior Counsel for the appellant submits that decisions relied upon by learned Senior

Counsel for the respondents are not at all attracted in the facts and circumstances of the case inasmuch as those decisions were rendered when the prayer made was for quashing of first information/criminal complaint. In the present case, appellant has not sought for quashing of the complaint. All that the appellant seeks is for a fair investigation and till the issue is decided by the learned Single Judge the State Police should stay its hands off. In this connection, learned Senior Counsel for the appellant has referred to certain materials on record, such as, the observation panchanama at page 81 of the paper book to contend that while the seizure proceedings had commenced on 26.10.2022 at 12:30 hours and had concluded at 14:30 hours on the same day, the mediators had put their signature on 27.10.2022 as opposed to 26.10.2022 put by the officials, a vital discrepancy which strikes at the very credibility of the investigation being carried out.

13. In the course of the hearing the Bench informed learned counsel that certain materials were received by the office of the Chief Justice from the President of the TRS party. Learned Senior Counsel for the appellant informed that similar materials have been dispatched to various other constitutional authorities.

14. When a query was made to Mr. Dushyant Dave, learned Senior Counsel for the State on this aspect, he expressed his sincere regret and submitted that this should not have happened.

15. Towards the end of the hearing, Mr. Dushyant Dave, learned Senior Counsel for the State has placed before us a copy of G.O.Ms.No.63 dated 09.11.2022 issued by the Principal Secretary to the Government of Telangana, Home (Legal) Department constituting a Special Investigation Team headed by Sri C.V.Anand, IPS, Commissioner of Police, Hyderabad City to investigate Cr.No.455 of 2022 registered before the Moinabad Police Station.

16. We also put a query to learned counsel for the parties as to whether the proceedings should be continued before the learned Single Judge or should be brought before DB-I. Though learned counsel for the appellant agreed with the above query, Mr. Dushyant Dave, learned Senior Counsel for the State however pointed out that this may lead to unwarranted objection at a later stage. Therefore, it would be appropriate to allow the learned Single Judge to continue the proceedings.

17. Submissions made by learned counsel for the parties have received the due consideration of the Court. We have also perused the materials on record and gone through the decisions cited at the bar.

18. The appeal before us is within a very narrow compass. We have already seen that on 29.10.2022, learned Single Judge had deferred further investigation in Cr.No.455 of 2022 registered with Moinabad Police Station until counter-affidavit was filed by the State. After the counter-affidavit was filed and after hearing learned counsel for the parties, learned Single Judge was not inclined to continue further with the interim order dated 29.10.2022 and accordingly, did not extend

the same vide the order dated 08.11.2022. Respondent Police were permitted to go ahead with the investigation.

19. Considering the fact that the case has serious political ramifications, we are of the view that it would be in the interest of all concerned if the investigation is done in a fair and professional manner; insulated from political allegations and counter allegations. As already noted above, a Special Investigation Team (SIT) has been constituted which is headed by Sri C.V.Anand, IPS., who is presently the Commissioner of Police of Hyderabad City. Sri C.V.Anand, I.P.S., is a senior police officer of the State. The other members of the SIT are as follows:

- i. Smt. Rama Rajeshwari, IPS, SP, Nalgonda.
- ii. Sri Kalmeshwar Shingenavar, IPS, DCP, Crimes, Cyberabad
- iii. Sri R.Jagadishwar Reddy, DCP, Shamshabad, Cyberabad
- iv. Sri N.Venkateshwarlu, SP, Narayanpet,
- v. Sri B.Gangadhar, ACP, Rajendranagar Division, Cyberabad
- vi. Sri Laxmi Reddy, SHO, Moinabad Police Station, Cyberabad.

20. While in a proceeding under Article 226 of the Constitution of India, that too at the appellate stage assailing an interlocutory order, it may not be proper for the writ appellate court to stall the investigation in a crime of this nature, more particularly when appellant itself insists on a fair investigation by a SIT, we are of the view that the following directions would sub-serve the cause of justice.

21. Accordingly, we issue the following directions:

- i. Since a Special Investigation Team (SIT) has been constituted as above, it shall proceed with the investigation in Crime No.455 of 2022 of Moinabad Police Station;
- ii. SIT shall submit its first report in sealed cover before the learned Single Judge about the progress of investigation on 29.11.2022;
- iii. SIT shall not disclose the progress or divulge the details of investigation before any authority as well as the media;
- iv. There shall be no selective leakage of investigation or materials gathered during investigation; it is the responsibility of the Chairman of the SIT- Sri C.V.Anand, IPS, to ensure that the same is scrupulously followed;
- v. Insofar investigation into Crime No.455 of 2022 is concerned, SIT shall not report before any authority, be it political or executive;
- vi. There shall not be any interference by any authority in the investigation by the SIT in Crime No.455 of 2022 and if any permissions are required to proceed further with the investigation, SIT would be at liberty to make suitable application before the learned Single Judge;

vii. Learned Single Judge shall monitor the investigation and on the basis of materials including progress of investigation to be submitted before him in sealed cover by the SIT from time to time, as may be directed, may pass such order as may be deemed fit and proper; and

viii. List the writ petitions before the learned Single Judge on 29.11.2022.

22. With the above directions, writ appeal is disposed of. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.