

(2007) 08 DEL CK 0020
In the Delhi High Court
Case No : WP (Criminal) 796 of 2007

Court on its motion

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 2

Citation : (2007) 08 DEL CK 0020

Hon'ble Judges : Sudershan Kumar Misra, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Arvind Nigam, amicus Curia, for the Appellant; Sanjay Jain and Vijay Kumar Sondhi, for NDTV, for the Respondent

Judgement

Manmohan Sarin, J.—On 31st May, 2007, the court took notice of a telecast by NDTV on 30th May, 2007 relating to a sting operation pertaining to the role of defense lawyers and the Special Public Prosecutor in an on going Sessions Trial, commonly known as "BMW case" at Patiala House Courts. As the contents of the telecast raised serious issues concerning administration of criminal justice, court directed the facts to be ascertained. Registrar General was directed to collect all material available in respect of the telecast including copies of the CD, Video and transcripts and submit the same for consideration of the court. Pursuant to the above order, Ms. Poonam Agarwal, Reporter of NDTV produced in all, six C.Ds one edited and five unedited, containing the original footage. All the C.Ds were kept in a sealed cover. She also undertook to produce the transcripts. The transcripts were produced by Ms. Poonam Agarwal on 6th June, 2007. NDTV was directed to preserve the original chips.

2. Sealed cover was directed to be opened on 4th July, 2007 and NDTV was directed to provide three sets of transcripts on record. On 9th July, 2007, the Court directed a further affidavit to be filed by appropriate person(s) concerning the sting operation from the stage it was conceived, attendant circumstances,

details of the recordings done, time and place etc and other relevant circumstances, within two weeks. An affidavit dated 23rd July, 2007 has been filed by Ms. Poonam Agarwal, Reporter of NDTV News Channel together with its annexures including four C.Ds of the telecast of 30th and 31st May, 2007 (being Annexures `A" to `D" to the affidavit). Annexure `E" to the affidavit is copy of the transcript of the statement on camera by Mr. Sunil Laxman Kulkarni. Annexure `F" to the affidavit is transcript of the sequence of events narrated on camera by Mr. Sunil Laxman Kulkarni. Annexure `G" is the notice issued on behalf of Mr. R.K. Anand, Sr. Advocate to the News Channel alleging defamation and Annexure `H" is its reply thereto.

3. The court on 25th July, 2007 appointed Mr. Arvind Nigam, Advocate as an amicus Curiae and directed that before proceeding further in the matter, the Bench would like to view the original recordings and necessary arrangements be made. On 31st July, 2007, NDTV was directed to place on record transcripts free of typographical and other errors. The Bench had also called for the Trial Court record for its perusal.

4. We have perused the trial court record and transcripts of the C.Ds produced on record by NDTV, a TV News Channel. We have also viewed the C.Ds containing the unedited footage of the recordings done by NDTV in its sting operation covering the meeting of Shri Sunil Laxman Kulkarni with Shri I.U. Khan, Senior Advocate, the former Public Prosecutor in BMW case, Mr. R.K. Anand, Senior Advocate and Mr. Sri Bhagwan Sharma, Advocate for the accused in the case and one Mr. Lovely.

5. We have also perused the detailed affidavit of Ms. Poonam Agarwal, Reporter of NDTV dated 23rd July, 2007 giving the details of her meeting with Shri Sunil Laxman Kulkarni and the offer by him to reveal the alleged nexus between the prosecution and the defense in the BMW case. The affidavit sets out the above claim of the News Channel to expose the alleged nexus between prosecution and defense to influence the outcome of judicial proceedings by attempting to suborn a witness. The affidavit also sets out time, date and details of the meetings of Shri Sunil Laxman Kulkarni with Mr. I.U. Khan, the Special Public Prosecutor on 28th April, 2007 and the recording of the same through a hidden camera with Mr. Kulkarni accompanied by Mr. Deepak Verma of NDTV. The affidavit gives details of the meeting of Shri Kulkarni with Mr. R.K. Anand at the IG International Airport on 6th May, 2007 through a hidden camera and the recording thereof. The affidavit gives the details of the meeting of Shri Sunil Laxman Kulkarni on 8th May, 2007 with Mr. R.K. Anand when he accompanied him in his car from the High Court to New Delhi South Extension and the recording of the same. Ms. Poonam Agarwal has further averred that the meeting of Shri Sunil Laxman Kulkarni with Mr. R.K. Anand at his office did not materialize and instead Mr. Anand had asked Shri Sunil Laxman Kulkarni to proceed to Bata Show Room at NDSE Market where somebody would meet him. Sri Bhagwan Sharma, associate Advocate who had appeared on behalf of accused along with Mr. R.K. Anand, met

Shri Sunil Laxman Kulkarni who was also joined by one sikh gentleman, who had detailed conversation with Shri Sunil Laxman Kulkarni which have been recorded and is a part of the unedited footage and also figures in the edited conversation of the telecast of the sting operation. Ms. Poonam Agarwal has also averred that record of the conversation and the footage, recorded on 28th April, 2007, 6th May, 2007 and 8th May, 2007, was not aired till the conclusion of Shri Sunil Laxman Kulkarni's deposition in court as he had expressed apprehension of his and his wife's safety. She further averred that they attempted to persuade him to give his consent on 14th May, 2007 after his deposition and again on 17th May, 2007, when his examination-in -chief was complete, but he still claimed that his apprehension existed and did not consent. Once police protection was given to Shri Sunil Laxman Kulkarni on 29th May, 2007 and his deposition was over, it is stated that then NDTV decided that telecast could not be deferred any longer as it would cease to be news worthy otherwise. Accordingly, on 30th May, 2007, the edited version under the programme "India 60 Minutes" (ii) 9 O' clock News on 30th May, 2007, (iii) 8 O' clock News on 31st May, 2007 and (iv) 9 O' clock News on 31st May, 2007, were telecasted. Along with the affidavit, transcripts of the aforesaid programmes have been filed as Annexures `A". `B", `C", `D". In addition to transcripts of C.Ds, statement of Shri Sunil Laxman Kulkarni given on camera as Annexure `E", Copy of the transcript of the sequence of events as given by Shri Sunil Laxman Kulkarni as Annexure `F" have been filed. The NDTV has also produced recording of the reaction of Mr. R.K. Anand and Mr. I.U. Khan on being contacted as also of various other persons interviewed.

6. We have also heard learned amices curiae, Mr. Arvind Nigam, who has addressed us on various facets of the controversy at hand, especially on conduct which can be said to be impeding or interfering with the administration of justice. He has also cited (1987) 3 All ER 276 Attorney General, News Papers Publishing Plc and Ors (1973) 3 All E.R 54 Attorney General v. Times News Papers Ltd. (1975) 3 All E.R. 468 R.V. Kellett (1993) 2 All E.R. 409, R.V. Toney R.V. Ali (Tanveer) (1965) 2 All E.R. 168 Re; B.(JA) (an infant) (1980) 3 All E.R. 151 R.V. Machin Bar Council of India and referred to Standards of Professional conduct and Etiquette. As regards the role and responsibilities of advocates/counsel vis-a-vis Courts and the administration of justice, we do not propose to dwell on it at this stage, except to notice that counsel have an overall obligation of assisting the Courts in a just and proper manner, so as to keep the stream of administration of justice pure and unsullied.

7. The perusal of the transcripts and viewing of the C.Ds of the edited telecast as also of the original unedited footage, prima facie reveals the meeting of Shri Sunil Laxman Kulkarni with the Special Public Prosecutor Mr. I.U. Khan on 28th April, 2007 when a reference is made to the factum of his being dropped as a witness by prosecution and observations of Mr. I.U. Khan on whether he can be compelled to depose by the court. It also contains a query by Mr. I.U. Khan of Mr. Sunil Laxman Kulkarni having met `Bade Sahab" and the petition filed against

the recording of Kulkarni's statement in the High Court.

8. The recording shows and reveal the conversations on 6th May and 8th May, 2008 between Mr. R.K.Anand, Senior Advocate for the defense and Shri Sunil Laxman Kulkarni, discussion about the pending case, strategy to be adopted and the money to be demanded and reference of person who is to pay the money being hospitalized. It contains suggestions from the defense counsel to Shri Kulkarni to speak to the Special Prosecutor. Discussion on refusal of accepting summons on the advise of the Special Prosecutor and acceptance of summons only on the Special Prosecutor and the defense counsel so advising. Similarly the recorded conversation with Sri Bhagwan Sharma who is an associate counsel with Mr. R.K.Anand appearing in the case and Mr. Lovely reveal the detailed bargaining on the amount to be demanded for the deposition to be given by Mr. Sunil Laxman Kulkarni as required and the discussion on the share to be retained by Mr. Lovely and others. It is not necessary to set out in detail the recorded conversation and/or quote from the transcripts. These are to be seen as a whole. It is sufficient to notice that the meetings between Shri Sunil Laxman Kulkarni and the Special Public Prosecutor Shri I.U. Khan, Senior defense counsel Mr. R.K. Anand with Mr. Sri Bhagwan Sharma, Advocate and Mr. Lovely, a representative purportedly deputed by Mr. R.K. Anand were held on 28th April, 6th May and 8th May, 2007 i.e. prior to the recording of the statement of the witness on 14th May, 2007 and 17th May, 2007 and 29th May, 2007. The aforesaid transcripts, telecasts and the recordings in unedited footage, prima facie demonstrate an attempt to influence the deposition of a witness in a manner so as to interfere with the due legal process. The meetings and the conversations of the Public Prosecutor as well as defense Counsel with Mr. Sunil Laxman Kulkarni, prime facie, demonstrate interference in the due course of judicial proceedings and with administration of justice, Constituting criminal contempt.

9. From your aforesaid acts and conduct as discerned from the C.Ds and their transcripts, the affidavit dated 23rd July, 2007 of Ms. Poonam Agarwal along with its annexures, we are, prima facie, satisfied that you Mr. R.K. Anand, Senior Advocate, Mr. I.U. Khan, Senior Advocate, Mr. Sri Bhagwan Sharma, Advocate and Mr. Lovely have willfully and deliberately tried to interfere with the due course of judicial proceedings and administration of justice by the courts. Prima facie your acts and conduct as aforesaid was intended to subvert the administration of justice in the pending trial and in particular influence the outcome of the pending judicial proceedings. Accordingly, in exercise of the powers under Article 215 of the Constitution of India, we do hereby direct initiation of proceedings for contempt and issuance of notice to you, Mr. R.K.Anand, Senior Advocate, Mr. I.U. Khan, Senior Advocate, Mr. Sri Bhagwan Sharma, Advocate and Mr. Lovely to show cause as to why you should not be proceeded and punished for contempt of court as defined u/s 2(c) of the Contempt of Courts Act and under Article 215 of the Constitution of India.

10. You are, Therefore, required to file your reply showing cause, if any, against

the action as proposed within four weeks. Notices and contemptors shall be present in Court on the next date of hearing i.e. 24th September, 2007. Registry is directed to supply undermentioned material to the Notices:

- (i) Copy of the order dated 7th August, 2007;
- (ii) Affidavit of Ms. Poonam Agarwal dated 23rd July, 2007 together with annexures including the four copies of C.Ds filed along with the affidavit.
- (iii) Copies of the corrected transcripts filed on 6th August, 2007 in terms of the order dated 31st July, 2007.
- (iv) Copies of 6 C.Ds, including one edited and five unedited containing the original footage which were produced on 6th June, 2007 NDTV shall make available to the Registry sufficient number of copies of the C.Ds and transcripts, which the Registry has to supply to the Notices as above.

We also call upon the amicus Curiae to address us on the role of Mr. Sunil Laxman Kulkarni, NDTV as also the accused/possible beneficiaries to consider further action, if any, that may be required qua the said persons/entities. Renotify on 24th September, 2007.