(2015) 12 DEL CK 0083

In the Delhi High Court

Case No : W.P.(C) No. 3903/2011

Deepak Anand APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Citation : (2015) 12 DEL CK 0083

Hon'ble Judges : G. Rohini, C.J. and Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : Abhay Prakash Sahay, CGSC and Deepak Gupta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, an Advocate, has filed this petition as a Public Interest Litigation (PIL) seeking a direction to the Ministry of Home Affairs, Government of India to constitute an independent Special Investigating Team (SIT) or the Special Task Force (STF) for fair, unbiased, impartial and proper investigation of case FIR No. 878/2000 of Police Station Kalkaji, New Delhi and to "expose the fake stamps scams and book all the persons involved in the crime".

2. The petition was entertained and the respondent No. 2 Central Bureau of Investigation (CBI) directed to file and has filed an affidavit and to which a rejoinder was filed by the petitioner.

3. The petitioner, in the petition has sought to justify the relief by pleading i) that though the accused in the FIR had disclosed getting supply of fake stamps from one Hemant Dubey of Mumbai but after the investigation of the case was taken over by the CBI, the CBI surprisingly not only gave a clean chit to the said Hemant Dubey but also cited him as a prosecution witness in the charge sheet; ii) that from what has emerged in the investigation, it is evident that apart from the "Telgi Scam", there was another fake stamp scam which was run parallel to Telgi Scam; iii) that though the fake stamp scam of Abdul Karim Telgi had come

to an end with the recovery of his printing press in June, 2002, the parallel scam of Hemant Dubey and others is yet to be unearthed.

4. The respondent No. 2 CBI in its counter affidavit has pleaded that:

"i) The petition is based on baseless presumptions.

ii) The contention in the petition that the fake stamps recovered were printed by Hemant Dubey is devoid of any merits.

iii) Earlier also several writ petitions were filed by accused persons in fake stamp cases registered with CBI raising similar issues as in the present PIL and all the writ petitions were dismissed.

iv) Since the accused persons failed to scuttle the progress of the trial of the said cases, they have now got the present writ petition filed.

v) The role of Hemant Dubey was probed but except the allegation of accused Narender Singh nothing substantial came on record which could have formed the basis for prosecuting Hemant Dubey in the said cases.

vi) The cases relating to Telgi Fake Stamps Scam were assigned to CBI by the Supreme Court.

vii) The petitioner has a vested interest in filing this PIL; he wants to delay the course of trial of the said cases;

viii) The charge sheets filed by the CBI in fake stamps cases are supported with quality oral and documentary evidence and this fact has been approved by several judgments by different Courts in such cases wherein number of accused persons have already been convicted.

ix) Therefore it is wrong to say that the investigation by CBI is questionable.

x) The claim as made in this petition "of two fake stamps scams" has been made by some of the accused persons involved in RC-2/2003, EOU-VI and RC-3/2004, EOU-V to cover up their own role in the crime and to divert the course of investigation.

xi) The claim regarding another fake scam syndicate led by Hemant Dubey was investigated by the CBI and the outcome of the investigation has been discussed in the charge sheets filed in the Court.

xii) Specific role of Hemant Dubey was examined during investigation but nothing substantial emerged on record except the statement of accused persons who themselves were part of the same offence.

xiii) If the petitioner had reliable material evidence in support of his claim as is produced along with this PIL, then it is inexplicable as to why he kept silent for a long time and has filed this petition at a crucial stage.

xiv) Though the accused named Hemant Dubey but during investigation could not corroborate the same.

xv) The name of Hemant Dubey figures in the body of charge sheets because his involvement was suspected at initial stage; however further investigation in the case did not establish his role or involvement in the said cases.

xvi) After emergence of Telgi Fake Stamp Scam, an SIT under the supervision of Joint Director, CBI was formed by CBI and around 48 cases of fake stamps scam spread over different parts of the country were thoroughly investigated by the SIT during 2004-05 and the investigation was regularly monitored by the Supreme Court.

xvii) The CBI has carried out the investigation in accordance with law and with complete transparency.

xviii) That the PIL has been filed at the behest of accused persons.

xix) Filing of the present PIL is part of the strategy formed by the accused persons.

Else, each and every contention in the petition is specifically met with in the said affidavit."

5. The petitioner has filed a rejoinder controverting the contents of the counter-affidavit of the CBI.

6. The petitioner has also placed on record the transcript of a television interview of the former Director of the CBI to make out a case of interference by politicians in the investigation by the CBI.

7. The counsel for the petitioner during hearing relied upon Bharati Tamang Vs. Union of India (UOI) and Others, to contend that evidence obtained as a result of illegal search or seizure is not liable to be shut out and the test of admissibility of evidence lies in relevancy and unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out and further remind this court of its duties as culled out in para 37 of the said judgment.

8. It was also argued by the petitioner appearing in person that there is no evidence till date of the origin of the supply of fake stamps and the CBI has under dictates of the politicians closed the cases against the kingpin of the said scam.

9. Per contra, the counsel for the CBI during the hearing referred us to the order dated 15th March, 2004 of the Supreme court in W.P.(C) No. 522/2003 titled Ajay K. Agrawal v. Union of India transferring 48 stamp scam cases to the CBI for investigation and further directing that no High Court shall entertain any petition or pass any order in regard to the said cases. It was further informed that the said three cases were not part of the said 48 cases and are of a subsequent date and a fall out of the earlier cases. A copy of the order dated

17th January, 2008 of this Court in Crl.M.C. No. 4413/2006 titled Puran Singh v. Union of India was also handed over to show that similar allegations as made by the petitioner herein were made in that case also and were not accepted. It was further contended that the Trial Court before which the proceedings are pending is fully competent to summon Hemant Dubey if feel the need therefore. Reliance was placed on Sushila Devi Vs. State of Rajasthan and Others, to contend that monitoring by the Court of the case can be till the investigation stage only but when the investigating agency appointed by the Court completes the investigation, files a charge sheet and takes steps in the matter in accordance with the provisions of law before a competent Court of law, it would not be proper for the High Court or the Supreme Court exercising supervisory jurisdiction to keep on monitoring the trial which is continuing before the competent Court.

10. The petitioner appearing in person in rejoinder handed over a copy of the FIR No. 298/2006 of Police Station Marine Line, Mumbai to show that Hemant Dubey was an accused therein. The counsel for the CBI responded that this has no relevance to the subject controversy.

11. The counsel for the CBI during the hearing also handed over a status report disclosing the status of the trial.

12. Supreme Court as far back as in State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, held that though the Courts in exercise of their power of judicial review are entitled to direct investigation and that such direction would not amount to infringement of the doctrine of separation of powers but such power should not be exercised just for asking or to satisfy the ego or vindicate the prestige of a party interested in such investigation and only if the Court finds such a direction necessary in the facts and circumstances of the case. Similarly in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, it was held that no direction should be issued without the Court being prima facie satisfied. Again in Babubhai Vs. State of Gujarat and Others, it was reiterated that only in exceptional circumstances and in order to prevent miscarriage of criminal justice would the Court interfere in investigation. Only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court would step in and exercise its extraordinary power. The said principles were recently reiterated in Mithilesh Kumar Singh Vs. State of Rajasthan, .

13. In the present case, not only has this Court on an earlier occasion not found any merit in the allegations as now made in this PIL but we are otherwise also satisfied that no case for interference at this stage is made out. We rather find considerable merit in the pleas aforesaid taken by the respondent No. 2 CBI with respect to the locus of the petitioner and the motive of the petitioner in filing this petition. However, the petitioner being an advocate of this Court, we refrain from saying anything more and further refrain from imposing any costs.

Dismissed.

