
(2010) 11 BOM CK 0017

In the Bombay High Court

Case No : Criminal Writ Petition No. 2586 of 2010

Durgaram Ramrao Chaudhary

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Arms Act, 1959 — Section 25, 3, 35
Constitution of India, 1950 — Article 14, 21, 226
Penal Code, 1860 (IPC) — Section 115, 302

Citation : (2011) CriLJ 1526

Hon'ble Judges : A.P. Bhangale, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Subhash Jha, instructed by Law Global, for the Appellant; K.V. Saste, APP, for the Respondent

Final Decision : Dismissed

Judgement

1. By this Petition under Article 226 of the Constitution of India, direction is sought against the Respondents to provide necessary and requisite armed police protection to the Petitioner and his family members so as to ensure that the life and limbs of the Petitioner and of his family members are protected from the impending danger. The background, in which this petition has been filed is that: the Petitioner was named as one of the witnesses in the criminal case registered against four gangsters who were arrested with foreign made revolver, pistol and cartridges sometime on 30th March, 2008. FIR in respect of the said offence was registered by A.T.S., Mumbai on 16th April, 2008 for offence punishable u/s 302 and 115 of I.P.C. r/w 3, 25 and 35 of Arms Act, which were added subsequently. Since the Petitioner was one of the important witness in connection with the said criminal case, he was granted police protection on account of perceived threat perception to his life from Bunty Pandey gang. That police protection was continued from 7th June, 2008 till 3rd August, 2010, when it was withdrawn abruptly without prior notice to the Petitioner. It is the case of the Petitioner that even while police protection was made available to the Petitioner he had received

threatening calls on his land line on 20th December, 2008. As a result, the Petitioner had lodged police complaint, which was registered as N.C. No. 1578 of 2008. It is not in dispute that the Petitioner later on applied for revolver licence, which was granted on 21st July, 2009. Eventually, in March, 2010 the Petitioner deposed during the trial in connection with the criminal case arising out of the FIR 11/2008 registered by A.T.S., Mumbai. As aforesaid, the Petitioner's police protection came to be abruptly withdrawn on 3rd August, 2010. According to the Petitioner, the said criminal trial was pending and the threat perception perceived by the Petitioner was still subsisting, for which reason it was obligatory on the part of the Respondents to continue the police protection to the Petitioner. This is the principal grievance made in the present Petition.

2. The Respondents have resisted this Petition by filing affidavit of Bhagwan Gopaji Yashod, Assistant Commissioner of Police. The affidavit discloses that the Senior Inspector of Police of Kapurbavdi Police Station, Thane had submitted report on 24th May, 2010 mentioning that there was no continued threat perception to the Petitioner. On the basis of that report, the Deputy Commissioner of Police, Zone V, Thane submitted his report on 23rd June, 2010. The proposal regarding continuation of police protection to the Petitioner came up for consideration before the Review Committee consisting of six members headed by Commissioner of Police, Thane on 3rd August, 2010, in which it was eventually decided to discontinue the police protection to the Petitioner as the threat perception was not in existence. It is only thereafter, the police protection provided to the Petitioner was withdrawn on 3rd August, 2010. Besides, it is stated in the reply affidavit that the Petitioner has already been granted revolver licence on 21st July, 2009 and thereafter he has purchased revolver, which was sufficient to safeguard himself. In the circumstances, it is contended on behalf of the Respondent that the Petition is devoid of merits and the same be dismissed.

3. During the course of argument Counsel for the Petitioner placed emphasis on the decision of the Apex Court reported in (2008) 16 SCC 497 in case of National Human Rights Commission v. State of Gujarat and Ors. to contend that even though the Petitioner may have already deposed before the trial Court as prosecution witness, that ought not be made the basis to discontinue the police protection extended to him. The abovesaid decision of the Supreme Court which is pressed into service, is essentially an interim order issuing notice to the State of Gujarat, as also Union of India to respond in the context of the issues referred to therein. In the mean time, the State of Gujarat was directed to provide full and complete protection to the witnesses, their families and their relations in the fact situation of that case.

4. In the present case, however, recording of Petitioner's evidence took place in March, 2010. Besides, the trial has already concluded on 7th July, 2010. It has ended in acquittal of the accused. There is nothing on record to indicate that after the Petitioner had deposed before the Court in March, 2010, he has received any threat calls on phone or otherwise. No such case is made out in the

Petition nor any representation is made to the appropriate authority in that behalf. If such complaint was to be made, the authorities would have examined that aspect of the matter. In absence of any such threat received by the Petitioner, the subjective satisfaction has been arrived at by the appropriate authority. That found favour not only with the Deputy Commissioner of Police, but also eventually, of the Review Committee which consisted of six high ranking officials under the chairmanship of Commissioner of Police. The decision so arrived cannot be lightly brushed aside by the Court. The Court cannot sit over the subjective satisfaction of the Authority as a Court of appeal. The argument of the Petitioner is that, no reason has been recorded by the Review Committee as to why in its opinion, there was no continued threat perception to the Petitioner. This argument clearly overlooks that the decision of the Review Committee is on the basis of the subjective satisfaction. It is purely an administrative decision. The Review Committee has agreed with the subjective satisfaction of the recommending Authority. To support such decision, it is open to the Respondents to advert to the relevant circumstances and material on record considered by the Authority to arrive at a particular subjective satisfaction. In the present case, the Respondents have produced the relevant file or contemporaneous record to justify the subjective satisfaction and the impugned decision. It is noticed that the recommendation of the Senior Inspector of Kapurbavdi Police Station was based on the information gathered by him. That was not only considered by the Deputy Commissioner of Police, but also by the Review Committee consisting of six high ranking officials.

5. This decision of the Review Committee however, is then criticized on the argument that it now transpires that the said committee decided in all 44 cases in just about 40 minutes. According to the Petitioner, the Petitioner has been singled out and in respect of other cases, police protection has been continued. This argument though attractive at the first blush will have to be stated to be rejected. In the first place, the Petitioner has not asserted that any of the other cases decided by the Committee were comparable to the case of the Petitioner. Moreover, the fact that 44 cases have been examined in 40 minutes, by itself, does not mean that the opinion formed in respect of Petitioner's case is inappropriate or unsustainable in law. It is not possible to take that view. Inasmuch as, the complete profile in respect of 44 cases was made available to the members of the Committee well in advance and on scrutiny thereof they took conscious decision, essentially relying on the said material including the recommendation made by the concerned official. Adopting such a course, in our opinion, does not militate against the subjective satisfaction recorded by the Officials at different levels about non-existence of threat perception qua the Petitioner as of now.

6. Counsel for the Petitioner has invited our attention to another decision of the Apex Court reported in (2009) 6 SCC 767 in case of National Human Rights Commission v. State of Gujarat and Ors.. The legal position expounded in the said decision cannot be disputed at all. The observations of the Apex Court and

the concern expressed therein about providing protection to the witnesses who are "yet to appear" during the trial of the criminal case or "during the investigation stage", may have no bearing on the fact situation of the present case. As aforesaid, the process of recording of evidence of the Petitioner has already concluded in March, 2010. The trial is over and has ended in acquittal of the accused in July, 2010. That however, does not mean that even if the threat perception persisted after the witness has already deposed before the Court, such witness would not deserve personal protection. In a given case, where such threat perception persists, the authorities would be bound to offer such protection to the witnesses until the threat subsides. However, in the present case, the subjective satisfaction recorded by the Authorities at different levels from the Inspector, who submitted initial report till the final opinion of the Review Committee consisting of six high officials, they were more than convinced that threat perception qua present Petitioner does not persist any longer. There is no positive material produced before us to even remotely suggest that threat perception still subsists, except the bare words of the Petitioner. For, there is nothing to indicate that after March, 2010, when the Petitioner deposed before the trial Court, he has received any threatening calls on phone or otherwise. The last threatening call received by the Petitioner on his landline telephone was on 20th December, 2008. In this view of the matter, in the fact situation of the present case it is not possible to overturn the subjective satisfaction recorded by the concerned authorities about the non-existence of persisting threat perception to the Petitioner.

7. Counsel for the Petitioner also relies on the judgment of the Delhi High Court in the case of *Neelam Katara v. Union of India and Ors.* reported ILR (2003) Del 377. This was a case where the Court considered question regarding necessity to give personal protection to witnesses who are going to depose during the trial. The Delhi High Court has noticed that there are no existing guidelines or instructions or law on the subject. In that backdrop, it proceeded to issue guidelines, which would operate till proper guidelines were to be framed by the Government. It has taken the view that atleast, in two categories of cases, namely, organised crime and a crime punishable with the capital sentence or imprisonment for life witness protection is required.

8. As aforesaid, that question does not survive for consideration in the fact situation of the present case. In this case, the question will have to be addressed on the touchstone of principles predicated in Articles 14 and 21 of the Constitution of India, as in the case of any other person or citizen of India. That is so because, the Petitioner has already deposed before the trial Court as back as in March, 2010. It is relevant to notice that even though revolver licence was granted to the Petitioner in July, 2009 and the Petitioner procured the weapon and is in possession thereof since then, yet the personal protection was continued to the Petitioner as recently till 3rd August, 2010. That presupposes that even after Petitioner deposed before the trial Court in March, 2010, the police protection was continued until it was realised, on the basis of information

collected by the concerned officials, that the threat perception no more persists qua the Petitioner. This essentially being the subjective satisfaction reached by the authorities, no interference in writ jurisdiction is warranted. It is not a case of non-compliance of any procedural requirement or irregularity committed in the process of taking final decision. It is well established position that the Court cannot sit over the subjective satisfaction of the authority as an appellate court. Understood thus, the challenge of the Petitioner is devoid of merits.

9. One of the grievance of the Petitioner is that the Petitioner has been singled out, inasmuch as, amongst 44 cases, only in the case of Petitioner the authority has taken the decision to discontinue the personal protection facility. This argument will have to be stated to be rejected. The fact that in other cases, police protection has been continued, that does not by itself mean that even in the case of Petitioner such facility ought to have been continued. The Petitioner's case has been considered independently. As a matter of fact, from record which was produced before us, it is noticed that each individual case has been examined independently. Moreover, since it is not possible for us to sit over the subjective satisfaction reached by the appropriate authority and until the same prevails, the argument regarding Petitioner having been singled out does not merit any consideration.

10. One of the grievance made before us is that from the record it is now revealed that even in case of other persons to whom police protection has been continued, they have been granted revolver licence and as a matter of fact, each of them possesses weapon such as pistol, rifle, revolver etc. Even so, the police protection has been continued to them. This argument does not take the matter any further. The Court has to consider whether it is possible to overturn the subjective satisfaction reached by the competent authority on the basis of material before it. Notably, in this Petition the challenge is not in respect of wrongful continuation of protection to others, but only of denial of similar facility to this Petitioner. As aforesaid, each case has been considered independently by the three authorities at different levels, including Committee consisting of six high officials headed by the Commissioner of Police, Thane. No case of bias is made out against any of these officials or the said Committee. To overcome this position, it was argued that the Review Committee has decided the matter in absence of any parameters or guidelines formulated for consideration of such proposal. It is not possible to countenance this submission.

11. In our opinion, taking over all view of the matter, Petition is devoid of merits. The same is dismissed. Ordered accordingly.