

(2002) 04 AHC CK 0008

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 542 of 2000

Harish Chandra Singh (I.P.S.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Constitution of India, 1950 — Article 356
Criminal Procedure Code, 1973 (CrPC) — Section 156, 157(1), 159, 197, 8(1)
Penal Code, 1860 (IPC) — Section 109, 120B, 127, 147, 148
Police Act, 1861 — Section 29, 7
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 17, 23(2), 5A
Uttar Pradesh Police Regulations, 1948 — Rule 1

Citation : (2002) 2 ACR 1115

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Shashank Shekhar, S.K. Singh and A.D. Giri, for the Appellant; K.N. Pandey, A.G.A. and S.N. Srivastava, S.C., for the Respondent

Final Decision : Allowed

Judgement

B.K. Rathi, J.—This petition has been filed to quash the proceedings of Criminal Case No. 279 of 2000 under Sections 302, 468, 217, 218, 201, 120B, 176 and 177 read with Section 34, Indian Penal Code pending in the Court of Chief Judicial Magistrate, Saharanpur.

2. The facts giving rise to this petition are as follows:

The Petitioner is an I.P.S. Officer and it is alleged that his career throughout was very bright and he had held very important posts in different districts of Uttar Pradesh. The Petitioner was also awarded President's police medal for gallantry in 1990 while he was posted as Superintendent of Police, Lakhimpur Kheri.

3. The Petitioner was posted as S.S.P., Saharanpur from 15.8.1996 to 16.3.1997. During this period, he was awarded letter of appreciation by the Director General of Police. The incident of this case took place on 28.2.1997 at 11 p.m. in village

Daudpur, police station Behat district Saharanpur. The F.I.R. of this incident was lodged by Ruliya Singh. According to which three persons, namely, Kuldeep Singh, Surjbhan and Sompal were returning to their house on motor cycle. They were fired at by the police party as a result of which two persons died on the spot and the third person died on way to hospital. According to the F.I.R., three persons were in police uniform in a car and fired on them, but no body could recognise them. The name and description of the police personnel was also not mentioned in the F.I.R. The matter was entrusted to C.B.C.I.D. for investigation. It was investigated by the Inspector of C.B.C.I.D., and charge-sheet for the above offences has been submitted against the Petitioner and other accused.

4. Two contentions have been raised in this petition. The first is that there is no proper sanction for prosecution u/s 197, Criminal Procedure Code and, therefore, the prosecution is bad. The other contention is that the matter was investigated by an officer of a Inspector rank of C.B.C.I.D., who is a non-Gazetted Officer. As against this, the Petitioner is a Gazetted Officer of the rank of Superintendent of Police and, therefore, according to Clause 1 (3) of paragraph 486 of U. P. Police Regulations the Investigating Officer should be of higher rank than the officer charged. The provisions of Regulation is mandatory and any investigation in violation of the provisions of the said paragraph will be illegal and is liable to be quashed.

5. Counter-affidavit has been filed by the State of Sri Dev Raj Singh, Inspector C.B.C.I.D. on behalf of the opposite parties. According to him, the matter was investigated and it was found that the police party who committed the murder included the present Petitioner ; that, therefore, charge-sheet was submitted against the Petitioner ; that the investigation was entrusted to C.B.C.I.D. by letter of Director General of Police. It is further alleged that the sanction for prosecution is a proper sanction and the prosecution is not barred u/s 197, Criminal Procedure Code

6. It is contended that the Inspector of C.B.C.I.D. is authorised to investigate the present matter ; that para 486 (3) of U. P. Police Regulation deals with the departmental enquiry against the police officers and the same is not applicable in the present case. This provision of para 486 (3) is meant only for departmental enquiry under Sections 7 and 29 of the Police Act ; that therefore, the proceedings cannot be quashed.

7. The Petitioner has filed rejoinder-affidavit re-ascertaining his allegations.

8. I have heard Sri A. D. Giri, Senior Advocate assisted by Sri Shashank Shekhar, learned Counsel for the Petitioner, Sri K. N. Pandey, learned Counsel for the Union of India and the learned A.G.A.

9. Firstly, I consider the first argument that the sanction is not a proper sanction accorded without application of mind and, therefore, the prosecution is barred by Section 197, Criminal Procedure Code In this case, originally, the prosecution of the Petitioner was sanctioned by the Governor of Uttar Pradesh ; that sanction

was challenged in this Court in Criminal Misc. Writ Petition No. 5296 of 1998 which was decided by the Division Bench of this Court and was allowed. It was observed that according to proviso to Section 197(1), Criminal Procedure Code, the Central Government would be the proper authority to accord sanction and not the State Government as on the date of the commission of the alleged offence, a proclamation under Article 356 of the Constitution of India was in force in the State of Uttar Pradesh and the President of India had proclaimed to have assumed to himself all the executive powers of the State Government. The sanction was, therefore, quashed. Thereafter, the sanction for prosecution of the Petitioner was granted by the President by letter dated 22.7.1999, Annexure-16 to the petition.

10. The only contention of Sri A. D. Giri, learned Counsel for the Petitioner regarding sanction is that this is true carbon copy of the original sanction, Annexure-11 to the petition granted by the Governor which was quashed by this Court. It is contended that, therefore, this sanction is also bad. The argument of the learned Counsel is not correct. The sanction granted by the Governor, Annexure-11 to the petition was quashed only on the ground that the President of India could have granted the sanction. All the facts were mentioned in the sanction order and the same is, therefore, not defective. Now the sanction has been granted by the President of India and it cannot be quashed or held to be illegal for the reason that it is true copy of earlier sanction, Annexure-11 to the petition. As the entire facts were mentioned in the sanction, Annexure-11, therefore, no new facts are required to be mentioned in the sanction granted by the President of India, Annexure-16 to the petition. I, therefore, find that the first argument of the learned Counsel is without merit and the sanction is not illegal.

11. Now coming to the second and last argument, Sri A. D. Giri, senior Advocate has referred to my decision in Criminal Misc. Application No. 2558 of 1996, Brij Raj Meena v. State of U. P. 2000 (1) ACR 169: 2000 CBC 105 . The facts of this case are almost identical and Brij Raj Meena was an I.P.S. Officer, who was being prosecuted for offences under Sections 147, 148, 504, 506, 323, 342, 343, 395, 109, 127, 384, 297, 220, 193, 176, 177, 302/120B and 201/34, Indian Penal Code The investigation in this case was conducted by the Inspector of C.B.C.I.D., and one Deputy S. P. Relying on certain observations of the Apex Court made in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , and the provision of para 486 (1) (3) of the Police Regulations. I held that the investigation by the officer of a lower rank was not proper and the charge-sheet submitted by him is liable to be quashed. The charge-sheet was, therefore, quashed in the above petition. In that case, there was another ground that there was no sanction u/s 197, Criminal Procedure Code It has been argued by Sri A. D. Giri that the facts of the present case are identical and that decision applies with full force in the present case.

12. As against this, learned A.G.A. has referred to the decision of the Apex Court

in State of M.P. and Ors. v. Ram Singh 2000 (1) ACR 470 (SC): 2000 SCC 886. In this decision, the two Judges bench of the Apex Court considered the decision of the Apex Court in State of Haryana v. Ch. Bhajan Lal (supra). It was observed that the case against Ch. Bhajan Lal was for offences under Prevention of Corruption Act. Section 17 of the Act provided for investigation of the offences. Section 17 of the Act is as follows:

17. Persons authorised to investigate.--Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank:

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police ;

(b) in the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under Sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police ;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest therefore, without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be or make arrest therefore, without a warrant:

Provided further that an offence referred to in Clause (e) of Sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

13. It was observed that in the case of Ch. Bhajan Lal, the Superintendent of Police ordered "please register the case and investigate". After this order, the Station Officer of the police station registered a case and investigated the same ; that the order of investigation by the Superintendent of Police is without application of mind regarding allegation of the complaint and, therefore, it was not valid order under the second proviso of Clause (c) of Section 17 above ; that S.H.O. is not clothed with valid legal authority to take up the investigation and proceed with the same within the meaning of Section 5A(1) of the Prevention of Corruption Act. However, in the cited case, the Superintendent of Police passed following orders:

In exercise of powers conferred by the provisions on me, u/s 17 of the Prevention of Corruption Act, 1988, I, P. K. Runwal, Superintendent of Police, Special Police Establishment, Division I, Lokayukta Karyalaya, Gwalior Division, Gwalior (M.P.), authorise Shri D. S. Rana, Inspector (S.P.E), Lak-Gwl (M.P.) to

Investigate Crime No. 103 of 1992 under Sections 13(1)(e), 23(2) of the Prevention of Corruption Act, 1988, against Shri Ram Singh, D.O., Excise, Batul (M.P.).

14. It was held that it was a well considered order and the facts of the case of Ch. Bhajan Lal are distinguishable. The Inspector was, therefore, authorised to take up the investigation. The result of the above discussion is that no different view was expressed by the Apex Court than the view taken in the case of Ch. Bhajan Lal.

15. In the case of Ch. Bhajan Lal, the authorisation by the Superintendent of Police under the second proviso to Station House Officer was held invalid. The investigation of the case of Ch. Bhajan Lal was, therefore, quashed only for the reason that the S.H.O. is not clothed with valid legal authority to take up the investigation and proceed with the same. Both these cases were regarding Prevention of Corruption Act.

16. The present case is for murder and other offences of the Indian Penal Code. In this case, it is contended that according to para 486 (1) (3) of U. P. Police Regulation, the investigation can be done by a police officer higher in rank than the officer charged. The Apex Court in the case of The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, has held that Rule 1 of para 486 of U. P. Police Regulations is mandatory.

17. In the case of Ch. Bhajan Lal (supra), the Apex Court has quashed the investigation only for the reason that it was done by an unauthorised person. Similar is the position in the present case and, therefore, the investigation is liable to be quashed.

18. The contention of the counter-affidavit that para 486 of U. P. Police Regulations applies to the departmental proceedings under Sections 7 and 29 of the Police Act is not correct. To appreciate this argument, it is necessary to refer to para 486 which is as follows:

486. When the offence alleged against a police officer amounts to an offence only u/s 7 of the Police Act, there can be no Magisterial enquiry under the Criminal Procedure Code. In such cases, and in other cases until and unless a Magisterial enquiry is ordered, inquiry will be made under the direction of the Superintendent of Police in accordance with the following rules:

(1) Every information received by the police relating to the commission of a cognizable offence by a police officer shall be dealt with in the first place under Chapter XIV (now Chapter XII) of Criminal Procedure Code, according to law, a case under the appropriate section being registered in the police station concerned provided that ; (1) and (2)....

(3) unless investigation is refused by the Superintendent of Police u/s 157(1)(b), Criminal Procedure Code and not ordered by the District Magistrate u/s 159, or unless the District Magistrate orders a Magisterial enquiry u/s 159, investigation

u/s 156, Criminal Procedure Code shall be made by a police officer selected by the Superintendent of Police and higher in rank than the officer charged.

19. The bare perusal of this para shows that it does not apply to the departmental proceedings under Sections 7 and 29 of the U. P. Police Regulations, but it applies to the offences committed by the police officers.

20. In the result, the petition succeeds and is allowed. The charge-sheet submitted against the Petitioner by the Inspector C.B.C.I.D., in Criminal Case No. 279 of 2000 under Sections 302, 468, 217, 218, 201, 120B, 176 and 177 read with Section 34, Indian Penal Code pending in the Court of Chief Judicial Magistrate, Saharanpur is hereby quashed. However, it may be clarified that fresh investigation of the case can be done by an officer of the rank as provided in para 486 of the U. P. Police Regulations.