

(2014) 06 AHC CK 0032
In the Allahabad High Court
Case No : Misc. Bench No. 4911 of 2014

Hindu Front for Justice

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(3), 190, 200
Evidence Act, 1872 — Section 78(2), 81

Citation : (2014) 8 ADJ 707

Hon'ble Judges : Rajan Roy, J; Imtiyaz Murtaza, J

Bench : Division Bench

Advocate : H.S. Jain, Advocate for the Appellant

Judgement

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Rajan Roy, J.—The petitioners, who are advocates have filed this writ petition allegedly in Public Interest seeking the following reliefs: "(a) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to ensure the proper maintenance of public and law and order situation in the State of Uttar Pradesh.

(b) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to ensure that police registers without any delay a FIR as soon as the information received by it and takes prompt action and Hon'ble Court may evolve a mechanism under which District Magistrate, Chief Judicial Magistrate or any other officer as may be deemed fit and proper may be directed to receive information of commission of an offence from the complainant and immediately direct the police to investigate, and such authority may also have power of supervision over police in matter of investigation of such crimes.

(c) Issue a writ, order or direction in the nature of mandamus directing the State Government to evolve a policy and place before this Hon'ble Court for its

approval for posting of police officers at police stations on the basis of merit and without any extraneous considerations of creed, caste, religion or political affiliation.

(d) Issue a writ, order or direction in the nature of mandamus to the police officers to make independent and fair investigation and not to be influenced by political or other considerations and with liberty to approach/inform District Magistrate or Chief Judicial Magistrate in respect of any hindrance, influence or difficulties in making speedy and independent investigation.

(e) Issue any other writ order or direction as the Hon"ble Court may deem fit and proper to do complete justice in the case.

(f) Allow the costs of the writ petition."

Sri H.S. Jain, learned counsel appearing for petitioners has submitted that law and order situation in the State of Uttar Pradesh has deteriorated warranting the interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The cases of rape are increasing by the day. FIRs" are not registered or registered with delay, on account of which, the evidence which could be collected consequent to a prompt action cannot be collected and gets destroyed. The submission is that the existing mechanism for lodging of F.I.R./ complaints for offences does not meet the requirements of the times, therefore, new mechanism is required to be evolved. The provisions of Section 156(3) of the Code of Criminal Procedure are no longer sufficient to protect the rights of the citizens.

2. Learned counsel for petitioners submitted that it is for the Court to fill the vacuum in law in this regard by providing requisite guidelines. One of the suggestions made by the learned counsel for petitioners is that if the FIRs are not lodged, the District Magistrate or Chief Judicial Magistrate or any other officer should be empowered to receive such information of commission of offence from the complainant so that immediate action could be ordered by the police to investigate the matter and that such authority should be granted power of supervision over the police in the matters of investigation of such crimes.

3. It is also the contention of learned counsel for the petitioners that in the State of U.P. the posting of police officers is made on the basis of caste, creed and religion. He submitted that 50 percent police officers posted as Incharge of police stations belong to one class/section of society. He also submitted that there is no provision in the Code of Criminal Procedure for fair investigation if the investigating officer ignores the relevant evidence.

4. Smt. B. Godiyal, learned Additional Advocate General appearing for opposite parties No. 1 to 11, on the other hand, raises a preliminary objection as to the maintainability of the writ petition. She contends firstly that petitioner No. 1 i.e. Hindu front for Justice is not a registered society as per the petitioners own averments made in para-4 of the writ petition. Her second submission is that the

Courts have repeatedly held that the petitioners filing Public Interest Litigation have great responsibility upon them and such petitions should not be entertained in a casual manner. The Courts have also laid down the manner in which such petitions are to be filed and scrutinized. In support of her contentions learned counsel for opposite parties has relied upon para 151 and 156 of the judgment of the Supreme Court in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, . Her submission is that relief No. (a) in the writ petition is a vague relief. So far as relief No. (b) is concerned learned counsel submits that citizens have a remedy under the provisions of Section 156(3) of the Code of Criminal Procedure. With regard to relief No. (c) it has been submitted that the same is without any factual basis and the posting of police officers is purely within the domain of the executive. She also submits that the said relief being in the domain of service matter, the PIL is not maintainable.

5. Smt. Godiyal, learned Additional Advocate General submitted that from perusal of entire pleadings it appears that the writ petition is lacking in specificity and is a frivolous petition. The writ petition has been filed with political motive as would be evident from the averments contained in para 24 and that it is a proxy petition. The writ petition does not satisfy the pre-requisites laid down by the Supreme Court and this Court for entertaining Public Interest Litigations.

6. We have heard learned counsel for petitioners as well as learned Additional Government Advocate for opposite parties and perused the record.

7. So far as preliminary objection of the learned Additional Advocate General based on the assertions that petitioner No. 1 is not a registered society, is concerned, we are of the view that such a technicality cannot be allowed to come in the way of consideration of the PIL if the same is otherwise maintainable and in public interest and is a bona fide action. Moreover, the petitioner No. 2 to 6 are individuals, therefore, even if the objection with regard to petitioner No. 1 is sustained, the petition would be maintainable at the behest of other petitioners subject to what we have to observe in the succeeding paragraphs.

8. On perusal of the pleadings in the writ petition and the documents annexed therewith, the first thing which strikes us is that the writ petition contains sweeping allegations, rather conclusions that law and order in the State of U.P. has deteriorated, there is increase in the cases of rape in the State and most of the police officers posted in the police stations belong to one class/section and that such postings are made only on the basis of caste, creed and religion.

9. The only material which has been annexed alongwith the writ petition is the newspaper report published on 13.6.2014 in daily newspaper Hindustan, news report dated 10.6.2014 published in daily newspaper Apna Pradesh, news report dated 10.6.2014 published in daily newspaper Hindustan, news report dated 7.6.2014 published in daily newspaper Amar Ujala, news report dated 8.6.2014 published in newspaper Sahara, news report dated 13.6.2014 published in newspaper Nav Bharat Times and some other undated newspapers.

10. Apart from the aforesaid no other material has been brought on record.

11. The newspaper reports are of June, 2014. Some of them are of 13.6.2014. The writ petition itself has been filed on 16.6.2014, thus, it is apparent that immediately after reading the aforesaid news reports, within a few days, the petitioners, who are advocates have rushed to the Court by means of this writ petition. There is nothing in the pleading to indicate that any effort was made by them to verify the veracity of the newspaper reports being relied upon by them. There is also no pleading nor any material to show that any research whatsoever was done by them to ascertain the veracity of the allegations made by them in their writ petition with regard to the deteriorating law and order situation, increase in the cases of rape and the posting of the police officers on the basis of caste etc.

12. The pleadings in the writ petition are lacking in requisite details. The pleadings contained in the writ petition are of a very general and sweeping nature, unsupported by any specific incident or proof. No data has been furnished in support of their averments which could compel us to interfere in the matter. No example has been given about the cases where the FIRs have been registered belatedly. In para-12 of the writ petition vague averments have been made with regard to rape and killing of two sisters, who were found hanging from a tree in district Budaun and no action is alleged to have been taken in the matter by the local police for a considerable time but no specific date or time has been mentioned and only bald assertions have been made. Moreover, the investigation of the above mentioned offence relating to district Budaun has already been handed over to C.B.I. and the writ petition i.e. W.P. No. 4308 (MB) filed before this Court has been disposed of accordingly on 11.6.2014 but it appears that the petitioners have not made inquiry in this regard before filing the present writ petition. In paras 13 to 21 bald and vague averments have been made with regard to news items already referred above wherein certain rape cases have been reported in various districts of the State of U.P., based thereon it has been stated that no specific steps have been taken by the State Government and that it has lost its control over the police officers due to which it is alleged that the law and order situation is lacking in the entire State of U.P. In para-24 it has been stated that the office bearers of Bhartiya Janta Party have been murdered for political vendetta.

13. While there can be no doubt that maintenance of law and order is the constitutional obligation of the Government of the State which it cannot shirk or avoid at any cost but for the Court to interfere in the matter an exceptional case is to be made out by the petitioners herein.

14. The relief, such as, direction to the State Government to ensure maintenance of proper peace and law and order situation in the State cannot be issued merely for their asking. At one point during course of argument learned counsel for petitioners, presumably as he was conscious about the lack of requisite material in the writ petition, submitted that factual details have not been mentioned in

the writ petition as the deterioration in law and order situation in the State is within the knowledge of the public at large and is being reported every day in the electronic and print media. We are unable to accept this argument. As residents of the State and citizens of this country we may also have a subjective view regarding the prevailing law and order situation in the State based on media reports but when we are called upon to address ourselves and adjudicate on such issues as Judges in a Court of law, we have to be persuaded by the pleadings in the writ petition before us and the material which has been brought on record by the petitioners so as to enable us to form at least a prima facie objective view of the matter for our interference in exercise of our extra-ordinary/discretionary jurisdiction under Article 226 of the Constitution of India. We cannot be persuaded merely by media reports or what has been referred by the learned Advocate as "Common Knowledge". We cannot allow our subjective opinion based on media reports to creep in. Only after prima facie case is made out by the petitioners and relevant adequate material is placed before us, we may proceed with the matter. Newspaper reports can be additional information which may be taken into consideration coupled with other proof and admissible material but they on their own cannot form the basis for forming any opinion in the matter.

15. In this regard, there are repeated pronouncements of the Hon"ble Supreme Court that newspaper reports cannot be made the basis for entertaining such PIL but it appears that these pronouncements have either not been noticed by the learned Advocates who have filed this writ petition or if noticed, have been ignored in their zeal to rush to the Court believing that whatever has been stated in the newspaper reports is the gospel's truth, which does not require any further verification and the Courts will also pounce upon the same and grant relief without any further enquiry. We are constrained to observe that the petitioners are under a misconception.

16. It is trite that before entertaining a writ petition particularly a PIL, scrutiny is to be conducted to ascertain the existence of pre-requisites for entertaining such petitions in the light of the various pronouncements of the Hon"ble Supreme Court, some of which are as follows:

- (i) State of Uttaranchal Vs. Balwant Singh Chaufal and Others, .
- (ii) Ashok Kumar Pandey Vs. The State of West Bengal and Others, .
- (iii) Dr. B. Singh Vs. Union of India (UOI) and Others, .
- (iv) Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others, .
- (v) Rohit Pandey v. Union of India and others, 2005(13) SCC 702.
- (vi) Dr. Nutan Thakur v. Union of India, through Secretary, Prime Minister's Office, New Delhi [Writ Petition No. 8596 (MB) of 2012].

In this regard it is necessary to refer to the relevant extracts of the aforesaid judgments which are as under:

(1) State of Uttaranchal Vs. Balwant Singh Chauhal and Others, .

"174. A degree of precision and purity in presentation is a sine qua non for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to at least carry out the basic research whether the point raised by him is res integra or not. The lawyer who files such a petition cannot plead ignorance.

181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other Courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2)

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The Court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5)

(6) The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

(2) Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others, .

"10.....13. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and

not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

15. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

16. The Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra and Others Vs. Prabhu*, and *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another*, . No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Dr. Buddhi Kota Subbarao Vs. K.Parasaran and others*, . Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

17. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting

valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases..... It is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts."

(3) Dr. B. Singh Vs. Union of India (UOI) and Others, .

"3.....He only refers to the representation of Ram Sarup and some paper cuttings of news items. He has not indicated as to whether he was aware of the authenticity or otherwise of the news items. It is too much to attribute authenticity or credibility to any information or fact merely because, it found publication in a newspaper or journal or Magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence. Strangely, in the affidavit accompanying the writ petition he has stated as follows:

"That I have read over the contents of accompanying writ petition page No. 1 to 13 para, Para No. 1 to 18, synopsis and list of dates, page A to C and I say that the same are true and correct on knowledge and based on the record of the case".

The affidavit shows that the contents were true and correct to his knowledge and based on records. Strangely, it has not been indicated as to what is the source of his knowledge and are based on what records. Even the copy of the order passed by the Punjab and Haryana High Court where he filed writ application on allegedly identical issues, as indicated in the petition, has not been annexed. The casual and cavalier fashion it appears to have been handled and of late attempted to be made ipse dixit, in a laconic and lackadaisical manner compels to draw the only inference that the petitioner is a busy body bent upon self publicity sans any sense of responsibility unmindful of the adverse impact, at times it may go to create at the expense of decency and dignity of constitutional offices and functionaries and there is no element or even trace of public interest involved in the petition.

4.....The credibility of such claims or litigations should be adjudged on the creditworthiness of the materials, averred and not even on the credentials claimed of the person moving the Courts in such cases....."

(4) Rohit Pandey v. Union of India and others, 2005(13) SCC 702.

1.....The only basis for the petitioner coming to this Court are to newspaper

reports dated 25.1.2004 and the other dated 12.2.2004. This petition was immediately filed on 16.2.2004 after the aforesaid second newspaper report appeared.....

2. We expect that when such a petition is filed in public interest and particularly by a member of the legal profession, it would be filed with all seriousness and after doing the necessary homework and enquiry. If the petitioner is so public spirited at such a young age is so professed, the least one would expect is that an enquiry would be made from the authorities concerned as to the nature of investigation which may be going on before filing a petition that the investigation which may be going on before Investigation. Admittedly, no such measures were taken by the petitioner. There is nothing in the petition as to what, in fact, prompted the petitioner to approach this Court within two-three days of the second publication dated 12.2.2004, in the newspaper Amar Ujala....."

17. In this regard reference may also be made to the Division Bench judgment of this Court in Writ Petition No. 8596 MB) of 2012 [Dr. Nutan Thakur v. Union of India, through Secretary, Prime Minister's Office, New Delhi]. The relevant extract of which is being reproduced as under:

"Besides, it may be noticed that if the source of information is press release, it cannot be relied in the absence of affidavits of the persons who have released them to the press as also that of the owner, the editor and/or the correspondent who contributed the news item to the electronic/print media.

In the absence of such affidavit, the contents of the affidavit of the deponent-petitioner filed in support of the writ petition deserves to be outrightly rejected. The press items in question are not asserted to have been authenticated by a public officer or made available for public reference and used by any public office nor published under the authority of a public officer. Thus, they do not possess the attributes of public document, therefore, it would be necessary that the accompanying annexures forming the basis of filing this writ petition be supported by the affidavits of media persons as well as the public activists as aforesaid who are claimed to be in possession of such information. Since their affidavits are conspicuous by absence, the averments made in the writ petition as also the statements on affirmation in the affidavit do not carry any evidentiary value and as such can be safely rejected.

Hon"ble the Apex Court in a judgment in Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, , has held that the Court cannot take judicial notice of the facts stated in a news item published in a newspaper. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act and thus by a news item an allegation of fact cannot be proved. The presumption of genuineness attached under Section 81 of the Act to a newspaper report cannot be treated as proved of the facts reported therein. A statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence unless proved by evidence aliunde by the maker of the statement appearing in Court

and deposing to have perceived the fact reported. Reliance has been placed on the judgment of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, , in deciding this matter. In Samant N. Balkrishna's case, it has been held that a newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

18. The verification clause of the affidavit of Ranjana Agnihotri-petitioner No. 2 and the Secretary of petitioner No. 1 in support of writ petition reveals that para 1 to 26 of the writ petition have been verified as being true on the basis of her knowledge and para-27 i.e. grounds of challenge has been verified to be true on the basis of legal advice.

19. The perusal of the newspaper reports contained in Annexure-1 to 11 to the writ petition reveals that the same refer to various cases of rape as having taken place in various districts of State of U.P. during a particular period. There is no material on record to indicate that FIRs were not lodged in the said cases promptly or investigation was not done properly by the concerning police. Neither the press reporter nor editor nor the newspaper has been impleaded as a party nor their affidavits have been filed.

20. In view of above pronouncements there is no doubt that this writ petition which is based only on newspaper reports is not maintainable. As already stated, no effort has been made by the petitioners before us to inquire and collect necessary data/material in respect of the events and further, no attempt has been made by them to verify the factual position. The legal position as referred above has been totally ignored.

21. We are constrained to observe that such a casual approach in matters of public interest does more harm than good. The fact that petitioners are Advocates makes it all the more painful.

22. Public Interest Litigation cannot be entertained on the basis of speculative foundation and premises so as to make a roving inquiry.

23. So far as lodging of the FIR and investigation by the police is concerned a mechanism is provided in the Code of Criminal Procedure especially Sections 154, 156, 190, 200 etc. and the Courts have also filled the vacuum by clarifying the legal position from time to time. Reference in this regard may be made to the judgments of the Supreme Court in the case of Lalita Kumari Vs. Govt. of U.P. and Others, , in Sakiri Vasu Vs. State of U.P. and Others, and in the case of Aleque Padamsee and Others Vs. Union of India (UOI) and Others, .

24. The writ petition does not contain the factual pre-requisites nor any

reasoning in support of the bald assertions that the provisions of the Cr.P.C. are not sufficient to meet the emerging situation involving increase in the rape cases etc. In this regard, petitioners themselves have referred to the action taken by the competent authorities after the incident which is popularly known as "Nirbhaya's Case" including the constitution of committee headed by Justice J.S. Verma and then promulgation of POSCO Act. The petitioners have not been able to show as to how the existing provisions of law are not sufficient to meet the present day requirements. So far as non-compliance or non implementation of the law by the police or other authorities is concerned, petitioners have not brought on record any such material or factual details which would compel us to form an opinion in the matter for interference under Article 226 of the Constitution of India. Bald and general allegations as contained in the writ petition are of no help.

25. No specific facts have been brought on record regarding assertions that the police officers are posted in the police stations only on the basis of caste, creed and religion. In the absence of requisite material it is not possible to entertain this writ petition.

26. In view of the above, we are of the opinion that the writ petition does not pass the test when tested on the anvil of the parameters laid down by the Supreme Court as referred to above, therefore, the writ petition is not maintainable. No relief as claimed in the relief clause therein can be considered or granted. The writ petition is accordingly dismissed. The dismissal of this writ petition shall not be treated as affirmation or otherwise of any view whether for or against the issues raised herein.