

(2011) 10 AP CK 0045
In the Andhra Pradesh High Court
Case No : Writ Petition No. 27811 of 2011
In Re: P. Shankar Rao and others

Date of Decision : 14-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2011) 10 AP CK 0045

Hon'ble Judges : Vilas V. Afzulpurkar, J; Nisar Ahmad Kakru, J

Bench : Division Bench

Advocate : P. Kesava Rao for C.B.I. for Respondent No. 8 and None for Respondent No. 9 to 13, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Chief Justice, Shri Nisar Ahmad Kakru

1. This "Taken-up Writ Petition" originates from a news item, reported in Telugu and English media, containing charges of corruption, levelled by a Cabinet Minister against two of his Cabinet colleagues in the Andhra Pradesh Government. Proceeding on the basis of the said news report, a learned Single Judge of this High Court on his own motion passed certain directions including the one requiring Registry to post the matter before the Court having provision for the matters of this nature, forthwith.

2. It is in the background of aforementioned facts that the writ petition has come up before us today. We have heard the learned Advocate General and perused the press reports, reported in "The Hans India" and "Indian Express" dated 27.9.2011, which reveals that the allegations made by the Cabinet Minister against his two Cabinet colleagues are reported on left side column of the newspaper and with denials and rejoinders by the said Cabinet colleagues on the right side column in the same newspaper. The allegations made by one Cabinet Minister against his Cabinet colleagues were thus refuted by his other two Cabinet colleagues, therefore, we find it difficult to prefer one press report and ignore the other one, containing denials and rejoinders appearing simultaneously

and then, in view of the mandate of the judgment of the Supreme Court that the press statements cannot form basis for setting law in motion (see *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, and *Shri Ravinder Kumar Sharma Vs. The State of Assam and Others*, coupled with the fact that there is no material even worth the name other than press reports indicating the allegations levelled by one and denials by the other with explanations by the Minister, being prima facie convincing, we refuse to approve of the reliance placed and cognizance taken by the learned Single Judge upon such press reports. On top of all, we are of the view that an exercise of extraordinary writ jurisdiction by this Court under Article 226 of the Constitution of India for resolution of internal disharmony among the Cabinet Ministers is uncalled for.

3. We would now like to take notice of the parameters referable to cognisance of anonymous letters by treating them as PILs, either u/s 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India, thus reference to a judicial pronouncement handed down by the Supreme Court in *Divine Retreat Centre Vs. State of Kerala and Others*, becomes imperative and the relevant paragraphs be extracted hereunder:

50. Can the High Court set the law in motion against the named and unnamed individuals based on the information received by it without recording the reasons that the information received by it prima facie disclosed the commission of a cognizable offence. Setting Criminal Law in motion is fraught with serious consequences, which cannot lightly be undertaken by the High Court even in exercise of its jurisdiction under Article 226 of the Constitution of India. In our view, the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a Special Investigation Team on the strength of anonymous petitions. The High Courts cannot be converted into Station Houses.

58. It is not the case of the appellant that no writ petition under Article 226 of the Constitution of India can be entertained on the strength of a letter addressed by a bona fide litigant to the High Court. This Court in *Sunil Batra Vs. Delhi Administration and Others etc.*, has accepted a letter written to the Supreme Court by one Sunil Batra, a prisoner from Tihar Jail, Delhi complaining of inhuman torture in the jail. In *Dr. Upendra Baxi (I) Vs. State of Uttar Pradesh and Another*, this Court entertained letter sent by the two professors of Delhi University seeking enforcement of the constitutional right of the inmates in a Protective Home, at Agra who were living in inhuman and degrading conditions. In *Mrs. Veena Sethi Vs. State of Bihar and Others*, this Court treated letter addressed to a Judge of this Court by the Free Legal Aid committee at Hazaribagh, Bihar as a writ petition. In *Citizens for Democracy through its Citizens for Democracy Vs. State of Assam and Others*, upon which reliance has been placed by *Shri P.P. Rao*, this Court entertained a letter addressed by *Shri Kuldip Nayar*, an eminent journalist, in his capacity as president of Citizens for Democracy" to one of the judges of this Court complaining of human rights violations of TADA detainees and the same was treated as a petition under Article

32 of the Constitution of the India. But in none of these cases, the Court entertained anonymous petition and converted the same into a Public Interest Litigation.

59. We do not propose to burden this judgment with various authoritative pronouncements of this Court laying down the parameters of Public Interest Litigation. Suffice it to recapitulate that this court uniformly and consistently held that the individual who moves the court for judicial redress in cases of Public Interest litigation must be acting bone fide with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration. The Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular petition filed in Court. In *S.P. Gupta Vs. President of India and Others*, this Court in clear and unequivocal terms observed that it would be prudent for the constitutional courts to confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organization which can take care of such cases.

70. Institution's own reputation is a priceless treasure. History teaches us that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility to resolve the issues which are otherwise not entrusted to it by adopting procedures which are otherwise not known.

71. There is heavy duty cast upon the constitutional courts to protect themselves from the onslaught unleashed by unscrupulous litigants masquerading as Public Interest litigants. The individual judges ought not to entertain communications and letters personally addressed to them and initiate action on the judicial side based on such communication so as to avoid embarrassment; that all communications and petitions invoking the jurisdiction of the court must be addressed to the entire Court, that is to say, the Chief Justice and his companion Judges. The individual letters, if any, addressed to a particular judge are required to be placed before the Chief Justice for consideration as to the proposed action on such petitions. Each Judge cannot decide for himself as to what communication should be entertained for setting the law in motion be it in PIL or in any jurisdiction."

4. In addition to the above referred decisions, the learned Advocate General, who has assisted us, contended that the issue in the present case does not involve any breach of fundamental rights nor does it suggest violation of any environmental law, therefore, cognisance on press report or treating it as PIL is not warranted. To substantiate the contention, he has placed reliance upon a decision of the Supreme Court reported in *Secretary, Minor Irrigation & Rural*

Engineering Services, UP and others v. Sahngoo Ram Arya and another (2002) SCC 521 besides a decision of a Division Bench of the Madras High Court in In Re: The Chief Election Commissioner and Others,

5. So far as the decision of the Supreme Court in Secretary, Minor Irrigation & Rural Engineering Services, UP and others v. Sahngoo Ram Arya and another (4th supra), it is not attracted in the present case as the proposition therein relates to directing enquiry by the Central Bureau of Investigation (CBI) without reaching any conclusion as to prima facie case against the person. That stage has not reached in the present case, as no such order has been passed and the press report was directed to be registered only for examination of the issue as to whether the enquiry by CBI deserves to be ordered.

6. Coming to the decision of the Madras High Court in In re : The Chief Election Commissioner, New Delhi & others (5th supra), it was dealing with a suo motu writ petition initiated on the basis of a news item published in Hindu daily by a Bench of the Madras High Court. The Bench formulated certain issues for consideration and directed the Registry to register it as a writ petition and as per the said direction, it was placed before the Bench of the Hon''ble Chief Justice. The legal position in respect of such matters was noted in paragraph-2 of the judgment which is extracted hereunder:

Before going into the merits of the case, we would like to express our view with regard to the power of the Hon''ble Judges in initiating writ proceeding suo motu. There is no dispute that initiation of writ proceeding suo motu, in public interest, is within the competence of every Hon''ble Judge of this Court, which is the integral part of the constitutional scheme. But, such power is required to be exercised and regulated in accordance with the rules made by the High Court and the norms set keeping in view the administrative instructions issued and roster of sitting prepared by the Chief Justice. While exercising suo motu power of exercising public interest litigation, self-restraint and judicious exercise is expected to be borne in mind. It would be appreciated that as and when any matter of public importance is sought to be brought to the notice of the Court, a reference may be made to the Chief Justice for initiation of action. After such reference is made by any Hon''ble Judge to the Chief Justice for initiation of action, the Chief Justice will examine the matter according to the guidelines formulated by the Supreme Court and after the matter is examined, the same can be placed before the appropriate Bench in accordance with the directive issued in that regard by the Chief Justice for further necessary action. While exercising power of initiating suo motu writ proceeding in public interest, great care and caution should be taken by the Hon''ble Judge, keeping in mind the directions and observations made by the Supreme Court in a catena of decisions. It would not be proper that as and when any news item is published in the newspaper, the Court will take notice of such news item and treat the same as writ petition suo motu in public interest without referring the matter to the Chief Justice.

7. Regard being had to the fact that such kind of suo motu actions are likely to consume public time hereafter as well, we deem it appropriate to say a word with regard to the scope of the power of the Hon'ble Judges of the High Court in initiating writ proceedings suo motu and a short but an important question arises as to whether it would be permissible for a Judge or Judges of the High Court to take notice of a news item and treat the same as writ petition suo motu in public interest and pass directions without referring it to the Chief Justice?

8. Before answering the question we would like to extract the directions passed by the learned Single Judge.

....Therefore, the matter deserves to be treated as a taken up case by this Court.

Since the allegations pertain to the affairs in the Home Department also, it is felt that the matter be investigated by the Central Bureau of Investigation (CBI). The two Ministers, against whom the allegations are made, and the C.B.I., need to be made as parties to the writ petition. Since more departments are involved, the Government of Andhra Pradesh, represented by the Chief Secretary also be made a party. In addition to that, Sri P. Shanker Rao, the Minister, who made the allegations, may also be added as a party, for the limited purpose of enabling him to vouch for the correctness or otherwise of the reports, and if he stands for his allegations, to furnish additional material facts, paving the way for effective investigation and further steps.

Since the matter is of utmost importance, the Registry is directed to post the matter before the Court having provision for matters of this nature, forthwith."

6. A bare perusal of the directions would make it clear that the learned Single Judge, has treated the press report as a "Taken-up case", assigned the case to himself, passed several directions, declared it to be a fit case to be investigated by the CBI and then directed the Registry to post the case as per roster. Going by the directions, nothing is left for the Bench before which it would come up to consider, excepting a direction for implementation of the order passed by the learned Single Judge and if such practice is allowed to go unchecked, no wonder that it would plunge the administration of the High Court into a chaotic situation, therefore we have taken upon ourselves to examine the matter in the light of the High Court Rules, norms, administrative instructions, guidelines of the Supreme Court and the judicial decisions, a bare perusal whereof makes it manifest that the learned Single Judge lacks the power to exercise jurisdiction in such a fashion. However, we would hasten to add, to avoid any confusion or controversy, that it cannot be denied that a Judge of the High Court has the jurisdiction, power and authority, to initiate writ proceedings suo motu, in public interest but such power has to be exercised in accordance with the rules made by the High Court, set norms and the administrative instructions, which among other things envisage examination of the matter according to the guidelines formulated by Hon'ble Supreme Court and directions of the Chief Justice, including assignment of the cases. All these powers have been assumed by the

learned Single Judge unto himself which power cannot be conceded to the Hon"ble Judge, for the simple reason that the power to assign a case to the Judge of the High Court absolutely vests in the Chief Justice alone and when a Judge takes notice of a matter of public importance for initiation of action on judicial side, he is required to refer it to the Chief Justice for further necessary action. Viewed thus, it would not be permissible for a Judge or Judges of the High Court to take notice of a news item and treat the same as a writ petition suo motu in public interest and pass the directions without referring it to the Chief Justice. The question is accordingly answered in the negative. Thus, we rule that the instructions to the Registry for posting of such like cases before the Bench in the absence of a direction from the Chief Justice shall be incapable of implementation.

For what is stated hereinabove, this "Taken-up writ petition" is dismissed.