
(1981) 09 RAJ CK 0013
In the Rajasthan High Court

Jug Raj Verma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 151
Penal Code, 1860 (IPC) — Section 109, 120B, 147, 148, 149
Railways Act, 1989 — Section 105, 106

Citation : (1982) CriLJ 526

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Judgement

M. C. Jain, J.—The petitioner is a member of the Rajasthan Judicial Service and is at present serving as the Chief Judicial Magistrate, Pali. According to him on 14-9-1979 a criminal case Under Sections 147, 148, 149, 326, and 323, I.P.C., was registered at the Police Station, Sirohi, against 11 students and their bail application came up for consideration before the petitioner on 18-9-1979 when he was posted as the Chief Judicial Magistrate, Sirohi. While disposing of the bail application, certain observations were made by the petitioner with regard to the investigation and a copy of the order was sent to the District Magistrate. In that case the two accused Harbat Singh and Laxman Singh were sons of some Police Sub-Inspector, Shri Zalam Singh, Deputy Superintendent of Police, respondent No. 5, showed his personal interest in that case and he wrote a letter to the Chief Medical Officer, Sirohi, for constituting a Medical Board and in the case diary one pistol was shown to have been recovered from the accused Laxman Singh and it was mentioned in the case diary that the enquiry about the licence of the pistol will be made on arrest of the accused. But the pistol actually produced in the Court, was not sealed and it was nothing but a "Deepawali" toy. On these two factors the petitioner doubted the fairness of the investigation. The bail was refused to Harbat Singh and Laxman Singh. Refusal of their bail and criticism of investigation was not liked by respondent No. 5, so according to the petitioner, in order to take revenge, he started harassing the petitioner's

relatives, his brother-in-law Shri Kheta Ram and his nephew Shri Mangilal. He got them arrested u/s 151, Cr. P. C, on 17-10-1979 and they were paraded hand-cuffed in the village. The dispute was shown to relate to an agricultural field, regarding which the matter was pending adjudication before the Collector, Sirohi. According to the petitioner, both of his relatives were arrested at the instance of Shri Zalam Singh, Deputy Superintendent of Police, which fact was admitted by him before the petitioner at his residence on 29-11-1979 at 8-30 p.m. Shri Mangilal lodged a criminal complaint in the Court of the Judicial Magistrate, Sirohi, in respect of the alleged incident of arrest and taking of Rs. 100 from him by the police officers. It is also stated that the respondent No. 5 had threatened the witnesses with dire consequences, if they entered the witness box. The petitioner also stated that he moved an application for taking cognizance of criminal contempt against six persons, including respondent No. 5, and the Hon"ble High Court has taken cognizance against respondent No. 5 and Shri Bhairu Singh, Pahad Singh, Manak Chand Patwari and Chimana. The contempt case has been registered as D. B. Misc. Contempt No, 653/80.

2. As regards the present writ petition, the petitioner made allegations against Shri Zalam Singh, Deputy Superintendent of Police, respondent No. 5, that he lodged a false and fabricated first information report at the Police Station, Barlut, in order to put undue pressure and threat on the petitioner with malicious intention, The first information report was initially sent to the Superintendent of Police, Sirohi, respondent No. 3, which was received through post at the Police Station, Barlut, and was registered as CR. No. 14 dated 9-4-1981 Under Sections 466, 468, 420, 225 and 109, I.P.C. According to the petitioner the delay in lodging the first information report was explained in a fantastic manner that higher officers were using pressure not to file the first information report and it was only filed when the notice of the contempt matter was served on him. The petitioner has stated that the first information report does not disclose any offence whatsoever and it was lodged only with a view to harass the petitioner. Thus, there is complete abuse of law. The petitioner has prayed that the respondents Nos. 1 to 4 may be restrained from making any investigation on the basis of the first information report Annexure 1 and the entire proceedings including the report Itself may be quashed.

3. Notice to show cause was given to the respondents, of the writ petition as well as of the stay application. The respondents Nos. 1 to 4 submitted their reply to the stay application in which it was stated that the petitioner has no prima facie case for issuance of writ of prohibition or writ of mandamus. It was averred that the mala fides is of secondary importance and the investigation cannot be shut out on the ground that the complaint is actuated with mala fides. It was also averred that at this stage, without going into the mala fides on the part of respondent No. 5, which may also be the subject matter of investigation and can be finally determined only after the investigation, investigation has to be conducted on the basis of the report even so lodged. If the complaint is found to be false and mala fide, the law will take its own course against the complainant.

It was alleged that the investigation is an exclusive preserve of the executive through the Police Department and this power of the Police to investigate into the cognizable offences, is not to be interfered with by the judiciary. The Police Department is under an obligation to investigate into the alleged cognizable offence, otherwise it will be failing in its duty. If the Police Department is prevented from conducting investigation on the allegation of the accused that the complaint against him is false and mala fide, such a proposition would set at naught the entire machinery of investigation into the crime. Without investigation even the court will not be able to pronounce on the truthfulness or falsity of the charges.

4. The contesting respondents submitted that the investigation is being done by a senior officer of the rank of Additional Superintendent of Police, C.I.D. (Crime Branch), which is an independent Agency.

5. A rejoinder to the reply was filed by the petitioner. The petitioner stated that the investigation has been entrusted to a senior officer of the rank of Additional Superintendent of Police, but the investigation, which was done from 21-6-1981 to 24-6-1981, is neither independent nor fair. On the contrary, it is in disobedience of the stay order of this Court passed on 8-5-1981. The respondent No. 5 is taking personal interest and the investigating officer is proceeding in the matter under the influence and in collusion with respondent No. 5.

6. Reply to the rejoinder was further filed, by the contesting respondents, in which it was stated that the petitioner has made wholly unfounded and mala fide aspersions on the independent working of the investigating officer, on the basis of wholly incorrect affidavit of Mangilal. The facts stated in the affidavit of Mangilal were denied and the investigating officer Shri Ummedaram, Additional Superintendent of Police, C.I.D. (Criminal Branch), submitted his affidavit. Shri Ummedaram in his affidavit denied the allegations made against him that he is proceeding under the influence and collusion with respondent No. 5 and he further stated the detailed facts as to what investigation has been conducted by him on the various dates between 21-6-1981 to 23-6-1981. In his affidavit he submitted that he came to know of the order on 23-6-1981 at 7-00 p.m., when he contacted the petitioner to enquire from him as to whether the petitioner would come to Sirloin for getting his statement recorded or he should come to Pali at his convenience. It was from the petitioner that he learnt about the stay order of the High Court. After having learnt so, he conducted no investigation in the case.

7. I have heard Shri M. C. Bhoot, learned Counsel for the petitioner and Shri Rajesh Balia, learned Deputy Government Advocate.

8. Mr. M. C. Bhoot, learned Counsel for the petitioner, vehemently urged that the respondents deliberately did not file reply to the averments made by the petitioner with respect to the background in which the first information report came to be lodged. The respondent No. 5 too did not file any reply, though he

remained present in person in Court. The circumstances, as disclosed by the petitioner, clearly go to show that the first information report is a false, fabricated and concocted document and has been lodged only with an ulterior motive to harass the petitioner and the said first information report does not disclose any cognizable offence, so it is a fit case for exercise of powers under Article 226 of the Constitution. Reliance was placed by Shri Bhoot on a decision of the Supreme Court in *S.N. Sharma Vs. Bipen Kumar Tiwari and Others*, . Shri Bhoot took me through the first information and submitted that from the allegations made in the first information none of the offences enumerated therein, is prima facie made out against the petitioner.

9. Shri Rajesh Balia, learned Deputy Government Advocate, on the other hand refuted the submissions of Mr. Bhoot, learned Counsel for the petitioner, and with all emphasis maintained that the first information report prima facie itself discloses the alleged offences and it is only after investigation, the investigating officer can come to a conclusion as to whether any offence is at all made out, so that the case may be sent up for trial. At this stage of the case, that is, at the investigation stage of the case,, the Court should refrain from even considering as to whether the first information report discloses cognizable offence worth trial. During the course of investigation necessary evidence is to be collected and it is only thereafter it can be seen as to whether any case worthy to be tried, has arisen. Strong reliance was placed by Shri Balia on a decision of the Supreme Court in *State of Bihar and Another Vs. J.A.C. Saldanha and Others*,

10. Before dealing with the arguments of both the sides, it would be proper to read the first information report, which is as under:?

11. A bare reading of the first information report would show some allegations against the petitioner. The first allegation against the petitioner is that the petitioner asked the H. C. Bhairu Singh to release Mangilal and Khetaram stating that he had already met the Superintendent of Police, Sirohi, When Shri Bhairu Singh disclosed his inability on the ground of their arrest and police custody, the petitioner scolded him. Further allegation against the petitioner is that he got an entry of departure of Khetaram and Mangilal made in the register by making misuse of his office. Thereafter, the petitioner carried both of them to his house at Sirohi in a car and kept them at his house in the night, though a false entry was made in the Rojnamcha of Police Station, Sirohi, showing their presence at the Police Station, Sirohi, and further he got them produced directly from his residence in Court, through Sumer Singh constable No. 236. According to the complainant, the petitioner acted in a most illegal manner misusing his authority for selfish end and to provide unlawful assistance to his relatives.

12. The question arises as to whether at the threshold of the investigation, this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, can prohibit the investigating agency to proceed with the investigation and quash the first information report. The learned Counsel for both the sides, advanced arguments with regard to the ingredients of various alleged

offences. Shri Bhoot, learned Counsel for the petitioner, asserted that no offences are made out and Shri Balia, learned Deputy Government Advocate, submitted that offences do arise prima facie against the petitioner. He submitted that some other offences may also be made out against the petitioner other than what have been alleged in the report itself. He made references to Section 218, 353 and 420 read with Section 511, I.P.C. At the time of arguments no case-law was cited and Shri Bhoot, learned Counsel for the petitioner, sought time to submit authorities on the point whether investigation can be restrained when the first information report does not disclose any cognizable offence. After seeking time Shri Bhoot did not cite any authority to that effect, but submitted some cases dealing with the requirements of Sections 217, 218 and 464, IPC As regards the question of interference by this Court he referred to the decision of S.N. Sharma Vs. Bipen Kumar Tiwari and Others, in which their Lordships of the Supreme Court in para 7 made the following observations:?

It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal power.

In that case a first information report was lodged by one Vijay Shankar Nigam. The report stated that one Bipen Kumar Tiwari had been attacked by certain goondas who also stabbed him with a knife and further caused injuries to the informant. One of the principal accused named in that report was S. N. Sharma, Additional District Magistrate (Judicial), Gorakhpur. The allegation against him was that it was at his instigation that the goondas had attacked Shri Tiwari and attempted to murder him. In that case S. N. Sharma moved an application before the Judicial Magistrate alleging that a false report had been lodged against him at the connivance and instance of the local police and it was urged that the preliminary enquiry may be conducted by the Court itself and necessary directions may be issued to the Police to stop the investigation. The Magistrate thereupon directed the police to stop investigation and he decided to hold the enquiry himself. This order was challenged before the High Court u/s 561A, Cr. P. C. (old). This application was allowed and the order of the Magistrate was quashed and it was held that the police was at liberty to conclude the investigation and submit its report to the Magistrate after which the case could proceed in accordance with law. Shri S. N. Sharma challenged the order of the High Court in appeal by special leave, The appeal was dismissed and the above observations were made by their Lordships of the Supreme Court while dealing with an argument that when judicial officers give decisions frequently, which the police dislike in such cases, the police may engineer a false report of a cognizable offence against the Judicial Officer and may then harass him by carrying on a

prolonged investigation of the offence made out by the report. What has been observed in that case is that the High Court under Article 226 of the Constitution can stop investigation, if the High Court is convinced that the power of investigation has been exercised by a police officer mala fide and the investigating officer may be restrained from misusing his legal powers. It may be stated that in the present case in the main writ petition no allegations have been made against the investigating officer. Even in the rejoinder to the reply, no mala fides have been attributed to the investigating officer. What has been alleged is that the investigation done from 21-6-1981 to 24-6-1981 is neither independent, nor fair in the light of the affidavit at Shri Mangilal and it was alleged that the investigating officer is proceeding in the matter under the influence of and in collusion with Shri Zalam Singh. It has been alleged that the investigation has been done in disobedience and in defiance of the order of this Court. These allegations have been strongly refuted by Shri Ummeda Ram. I need not enter into this controversy in the present writ petition, as to whether any investigation was conducted in defiance of the order of this Court. But certainly from the allegations made in the rejoinder to the reply, it cannot be found that the investigating officer is acting mala fide or misusing his legal power. The present investigating officer is an officer of an independent agency of the C, I. D, (Crime Branch) and is an officer superior in rank to Shri Zalam Singh. In my opinion, the case cited by State of Bihar and Another Vs. J.A.C. Saldanha and Others, throws a flood of light on the questions, which arise for consideration in the present writ petition. In that case a first information was lodged under Sees. 420/120B, 418 and 368, IPC and Sections 105/106 of the Indian Railways Act. Investigation in that case was conducted in a most zigzag manner and I need (not) narrate the detailed facts of that case, a final report was submitted to the Additional Chief Judicial Magistrate along with the report of the Assistant Public Prosecutor not to accept the final report and to await the report of the police after completion of further investigation, which was directed by the Government in the case. The Magistrate passed an order to submit report of further investigation. That order of the Magistrate was challenged before the High Court. The Full Bench of the High Court quashed the order and the High Court gave various directions to the learned Additional Chief Judicial Magistrate how to dispose of the case. Two appeals were preferred by special leave, one by the State of Bihar, and the other by the Superintendent of Police, Railways. One of the questions that arose for determination by their Lordships of the Supreme Court, was that,? "Whether, when the investigation was in progress, the High Court was justified in interfering with the investigation and prohibiting or precluding further investigation in exercise of its extraordinary jurisdiction under Article 226 of the Constitution?" In that case their Lordships quoted the directions given by the High Court in extenso throwing light on the question as to whether offences in the nature of cheating and breach of trust have arisen or not. Their Lordships in para 27 observed that they would refrain from making even an implied observation on any facts involved in the dispute. The case is not at a stage where the court is called upon to quash the proceedings as disclosing no offence but the case is at a

stage where further investigation into the offence is sought to be thwarted by interference in exercise of the extraordinary jurisdiction. Their Lordships extracted the above passage from S.N. Sharma Vs. Bipen Kumar Tiwari and Others, and observed that apart from reiterating the caution administered way back in King Emperor v. Khwaja Nazir Ahmad ((1944) 71 Ind App 203): (46 Cri LJ 413) (PC) that unless an extraordinary case of gross abuse of power is made out by those in charge of investigation the Court should be quite loathe to interfere at the stage of investigation, a field of activity reserved for police and the executive. In the direction given by the High Court to the Additional Chief Judicial Magistrate, their Lordships observed that it is a clear case of usurpation of jurisdiction vested in the learned Additional Chief Judicial Magistrate to take or not to take cognisance of a case on the material placed before him. Their Lordships further observed that the High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. Their Lordships then expressed that the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete.

13. As regards the mala fides on the part of the informant their Lordships observed that if an information is lodged at the police station and an offence is registered, the mala fide of the informant would be of secondary importance if the investigation produces unimpeachable evidence disclosing the offence. The High Court in that case interfered at the stage where investigation was to be taken up by an independent agency.

14. It is urged by Shri Rajesh Balia, learned Deputy Government Advocate, with all emphasis at his command that serious and grave allegations have been made against the petitioner, who heads the Magistracy of the District and is a District Level Officer. First an attempt was made by him by a false representation to get his relatives released and thereafter by misusing his authority got false entries made in the Rojnamcha of the two police stations and kept his relatives at his residence in the night. Prima facie it cannot be said that such allegations do not make out any offence for further investigation and this Court should refrain from considering the question as to what offences the first information report prima facie discloses.

15. I find force in the above submission of Shri Balia, It is premature to pronounce any verdict as to any guilt or offence, as the matter is only at the investigation stage. The power under Article 226 of the Constitution, in my opinion, cannot be pressed into service to thwart or throttle the investigation at the threshold. It is only after the completion of investigation, it can be seen as to whether the facts, as disclosed in investigation, prima facie make out any offence or not. Thus, it is futile to examine the requisites and ingredients of the various offences, as alleged in the first information report or to make a search or survey of the Indian Penal Code to find out as to what offences are disclosed from the

contents of the first information report. Doing so would be contrary to what has been observed in the case of *State of Bihar and Another Vs. J.A.C. Saldanha and Others*,

16. After the close of the arguments on behalf of the petitioner, an application for amendment of the writ petition, has been made, and a reply to it has also been filed, in which it has been stated that the application is belated. It may be mentioned in this connection that in view of what I have considered above, in the light of the observations made in the case of *State of Bihar v. J. A. C. Saldanna* (supra), the position does not in any way improve. If the petitioner is not in any way satisfied with the conduct of the investigation by Shri Ummeda Ram, he may move the State Government or the competent authority for change of investigation from the hands of the present investigating officer. In my opinion even on the basis of the facts stated in the application for amendment, no case is made out for restraining the investigating officer from proceeding further with the investigation. It is also pertinent to observe that despite several adjournments, the petitioner did not come forward to implead Shri Ummeda Ram as a party to this writ petition. Even the amendment application is silent on this point. In the absence of impleading Shri Ummeda Ram as a party to this writ petition, the allegations made against him cannot be scrutinised. As already stated, in the present writ petition, the question of disobedience of the stay order of this Court, cannot be gone into. That can be enquired into in an application for contempt. Besides that, the punishment of censure imposed on the scribe of the *Rojnamcha*, is not relevant for the purpose of this writ petition. There is no material on the basis of which it can be found that the power of investigation is being exercised mala fide and that the investigating officer is misusing his legal power.

17. In the result, this writ petition has no force, so it is hereby dismissed, with no order as to costs.