

(2005) 07 SC CK 0022

In the Supreme Court Of India

Case No : Writ Petition (Criminal) No. 182 of 2004

K. Vidya Sagar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 380, 447, 454, 457

Citation : (2005) 2 ACR 2208 : AIR 2005 SC 2911 : (2005) 3 JCR 219 : (2005) 6 JT 20 : (2005) 5 SCC 581

Hon'ble Judges : R. C. Lahoti, C.J; H. K. Sema, J; G. P. Mathur, J

Bench : Full Bench

Advocate : K.K. Venugopal, A.C. and Party-in-Person, for the Appellant;
Vishwajit Singh, Ritesh Agrawal and Praveen Swarup, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This petition under Article 32 of the Constitution has been filed praying for a writ of mandamus or any other appropriate writ or other directions be issued to:-

"a) Conduct an inquiry by any Hon'ble Judge of the Hon'ble High Court or an independent and impartial Authority regarding the FIR 521 Dt. 9.7.98 lodged at Sector 20 P.S. NOIDA and the harassment caused to the petitioner for the last six years and grant compensation to the petitioner for rehabilitation at Delhi.

b) grant compensation to the petitioner for a further period of two years for restoration of his earlier practice and for settling in Delhi with his family.

c) Conduct an inquiry into the loss caused to Y. Pitchaiah the client of the petitioner whose original record was stolen by the accused after he fought the litigation for 15 years in the courts below.

d) Conduct an inquiry by any Hon'ble Judge of the Hon'ble High Court or an

independent and impartial Authority regarding six years of delay in prosecuting the accused especially with reference to the proceedings in Crl. Revision No. 33/2002 at Dehradun in the State of Uttaranchal.

e) Direct the Special Magistrate, C.B.I. Cases, Karkardooma, Delhi, to file status report for every 3 months.

f) Pass any other Writ/order/direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

2. The case of the petitioner, in brief, is that Smt. Tara Bhatt (respondent No. 4) gave on rent the ground floor of flat bearing No. B- 99, Sector 15, NOIDA, to him in September, 1995 on a rent of Rs. 3,000/- per month. Initially a lease agreement was executed for eleven months, which contained a stipulation that the rent would be increased by 10% every year. The respondent No. 4 demanded an increase of 30% at the time of renewal of lease in March, 1997 and threatened that in case he failed to pay the enhanced rent, he would be evicted from the premises by use of force. The petitioner then filed Civil Suit No. 411 of 1997 in the Court of Civil Judge (SD), Ghaziabad seeking a relief of prohibitory injunction for restraining the respondent No. 4 from evicting him wherein an ex-parte interim injunction was granted in his favour on 28.3.1997, which was confirmed on 31.1.1998. The petitioner along with his family left for his native place in Kakinada in Andhra Pradesh on 15.5.1998 after locking his residential premises, which contained household items like furniture, refrigerator, TV, files of his clients and library books, etc. The respondent No. 4, however, lodged an FIR on 18.5.1998 at Police Station Sector 20, NOIDA alleging that on 15.5.1998 she along with her family had gone to attend a marriage from where she came back late in the night. In the morning of 16.5.1998 she found that the doors of the residential premises, which was in the occupation of the petitioner, were wide open and that the petitioner had left the place and had also removed his goods. In the FIR a request was made that the premises may be inspected. The petitioner returned from his native place on 9.7.1998 and found that the respondent No. 4 had illegally taken possession of the premises, which was under his occupation. He then lodged an FIR about the incident at the concerned police station on 9.7.1998. The plea of the petitioner further is that by virtue of an order passed by this Court on 5.2.1999 the CBI was entrusted the job of investigating the criminal case, which had been registered on the basis of the FIR lodged by him. The CBI was able to recover his goods worth more than Rupees one lakh but the court files could not be found. After completing the investigation the CBI filed a charge-sheet for prosecution of respondent No. 4 under Sections 380 and 454 I.P.C. in the Court of Special Magistrate, CBI, Dehradun wherein the charges have been framed on 5.2.2002. The respondent No. 4 preferred criminal revision against the aforesaid order before the Sessions Judge, Dehradun, in which the record of the trial court was summoned and a large number of dates had been fixed. Subsequently, the petitioner moved a transfer application before this Court, which was allowed on 22.1.2004 and the criminal case and also the

criminal revision were transferred to Delhi.

3. The record shows that the petitioner K. Vidya Sagar had earlier filed a Writ Petition under Article 226 of the Constitution before the Allahabad High Court bearing number 24940 of 1998. In the said writ petition (1) State of U.P., (2) The Director General of Police, U.P., (3) SSP (NOIDA), (4) SP (NOIDA), (5) Shri Rajbir Singh, ASI, Gole Chakkar Police Chowky, Sector 15, NOIDA and (6) Smt. Tara Bhatt (respondent No. 4 in the present petition) were impleaded as respondents. The writ petition was filed on the same facts on which the present petition under Article 32 of the Constitution has been filed. The prayer made in the writ petition filed before the High Court reads as under: -

"i) issue an appropriate writ, order or direction directing the respondents to restore the possession of premises No. B-99, Ground Floor, Sector 15, NOIDA in possession of the petitioner forthwith and further direct the respondent No. 6 not to interfere with the peaceful possession of the petitioner and further not to dispossess the petitioner without following the procedure established by law.

ii) issue an appropriate writ, order or direction directing the respondents to restore the petitioner with all his movable property which the petitioner has left in the premises in question on 15.5.1998.

iii) issue an appropriate writ, order or direction to investigate into the whole matter by an independent investigating agency preferably by CBI.

iv) Issue an appropriate writ, order or direction awarding heavy financial compensation against the respondent No. 3 to 5 as this Hon'ble Court may deem fit in facts and circumstances of the case.

v) Issue an appropriate writ, order or direction, directing the respondent No. 1 and 2 to initiate disciplinary actions against the respondent Nos. 3 to 5 for their collusion with the respondent No. 6 in indulging an un-lawful activity, unbecoming of a police official who has to protect and enforce the law.

vi) Issue an appropriate writ, order or direction, directing the respondent No. 3 to 5 to charge-sheet the respondent No. 6 for the criminal activities done by her and further direct the respondent No. 6 to pay compensation to the petitioner for the inconvenience caused to him because of her unlawful activities.

vii) And/or to pass any further order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

After exchange of affidavits the writ petition was dismissed by the High Court by the judgment and order dated 22.9.1998 and the relevant portion of the order reads as under: -

"Sri P.K. Bisaria, learned standing counsel, informs us that the police authorities have filed their counter affidavits. According to the assertion made by him even the petitioner was interrogated in order to ascertain the truth of his allegations made in the first information report. Initially, the petitioner in person, denied to

have been interrogated by the police, but later on he comes up with a claim that the police had interrogated him u/s 161 Cr. P.C. on one day alone and had desired that he should file affidavits of at least two persons of the locality who had actually seen his goods being taken away by the landlady and her henchmen, on which he asked for some time.

Sri Namwar Singh, learned counsel appearing on behalf of the landlady, alleged that the petitioner has not paid a single farthing since February, 1997 and that the lease was only for 11 months period, which had expired on 30.8.1996. She has also raised the rent of the premises as per the terms of the lease by 10% but the increased rent was also never paid by the petitioner. The petitioner in reply contends that he had made certain payments. The petitioner also submitted that the fact that he along with his wife and child had left Noida on 15th May, 1998 was accepted by the Investigating Officer and thereby we should draw an assumption in his favour that he was the tenant and that after he had left Noida his goods which he had kept in the leased premises have been looted away by the landlady.

To this Mr. Namwar Singh, learned counsel for the landlady contended that the landlady had already left Noida along with her family members in the morning of 15th May, 1998 for attending marriage ceremony of her relation, and that the petitioner had already shifted his goods.

Having heard the learned counsel for the parties including the petitioner in person we are of the view that since disputed questions of facts are involved in this writ petition it will not be desirable for this Court to adjudicate them in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. If the petitioner thinks that he has got a valid case either before any civil court and/or criminal court or any authority, he may avail that forum.

Land-lady will also be at liberty to approach any forum to claim for recovery of alleged difference of rent and/or compensation.

With these observation this writ petition is dismissed. No costs."

4. Feeling aggrieved by the aforesaid judgment and order of the High Court, the petitioner filed SLP (C) No. 16237 of 1998 in this Court. In response to the notice issued the landlady Smt. Tara Bhatt (respondent No. 4) filed a counter affidavit. It was averred therein that the petitioner is an advocate and taking advantage of his position, had driven a poor house-wife, who had been staying alone in her house with two young daughters and a son, to several untenable and false litigations right from the inception he was inducted in the ground floor of her flat No. B-99, Sector 15, NOIDA. The petitioner had been given the ground floor of the flat on licence for a period of eleven months on Rs. 3,000/- per month with effect from 10.5.1995 and a licence deed in that regard was executed. In terms of the deed the licence could be extended with mutual consent with an increase of 10% in licence fee. The petitioner continued to occupy the premises without increasing the licence fee and as such no fresh licence deed was executed. He

paid rent/license fee only up to February, 1997 and thereafter he sent four cheques for Rs. 1500/-, Rs. 1500/-, Rs. 1675/- and Rs. 2000/- for the months of March, April, May and June, 1997, which were not got encashed by her. During this period the petitioner K. Vidya Sagar tried to break the seal of the electric meter and when she objected to it he abused her in filthy language and also gave her a beating. The respondent No. 4 sent a legal notice dated 23.3.1998 terminating the licence and demanding the arrears of licence fee for the period from March 1997 to March 1998. The petitioner left the premises surreptitiously on 15.5.1998 without making payment of arrears of licence fee, which amounted to more than Rs. 90,000/-. The respondent No. 4 had gone to attend a marriage on 15.5.1998 and when she returned she found that the petitioner had vacated the premises and thereafter she lodged a report at the concerned police station on 18.5.1998 and also sent applications to SHO of the concerned police station, SSP and other authorities of NOIDA for taking appropriate action. The police inspected the premises and found the same to be vacant and empty. It was further stated in the affidavit that the petitioner had lodged a false criminal complaint against respondent No. 4, who was a helpless housewife. In para 4(j) of the counter affidavit it was stated that the petitioner had earlier filed a writ petition under Article 32 of the Constitution in the Supreme Court, which was dismissed on 27.7.1998 and thereafter he filed writ petition No. 24940 of 1998 under Article 226 of the Constitution before the Allahabad High Court on the same cause of action.

5. The SLP (C) No. 16237 of 1998 was finally disposed of on 13.8.1999 by a Three Judge Bench of this Court and the order passed therein reads as under: -

"In this SLP arising out of an order passed in a writ petition by the High Court of Allahabad, by an interim order, the Central Bureau of Investigation was directed to investigate into the grievances of the petitioner and pursuant to the said investigation, a report dated 7.5.1999 has been filed. In view of this report, the main grievance of the petitioner for taking criminal action against the respondents stand redressed. The other grievance of the petitioner is alleged forcible possession of the premises in question by the ex-landlady. So far as that grievance is concerned, in view of above diverse cases put forward in these proceedings arising out of a writ petition under Article 226 of the Constitution, in our view, it is not appropriate for us to examine the rival contentions which raised disputed questions of facts. We, therefore, leave that question open. We are not inclined to entertain the SLP arising out of the writ petition, in the peculiar facts and circumstances of this case. Whatever other grievances remain in spite of the report of the C.B.I. so far as the petitioner is concerned, he may ventilate the same in accordance with law. The SLP is, therefore, disposed of."

6. The petitioner also filed Transfer Petition (Crl.) No. 176 of 2003 (K. Vidya Sagar v. Director, C.B.I. and Anr.) in this Court seeking transfer of the criminal cases. In the said transfer petition he moved CRLMP No. 8961/2003 in which an order was passed on 16.12.2003, which reads as under: -

"CRLMP 8961/2003

This is an application seeking direction to C.B.I. to investigate further and to file a report in this Court and to seize all documents relating to the application for passport of the petitioner.

These prayers lie within the jurisdiction of the trial court. The petitioner is at liberty to make that prayer to the Court where the matter is pending now or to the transferee court in the event of the transfer petition being allowed. While hearing a transfer petition this court cannot like exercising original jurisdiction make such orders.

The Criminal Miscellaneous Petition is rejected.

During the course of hearing the petitioner pointed out that his valuable articles relating to the present case are lying in the custody of C.B.I. and are getting spoiled. Let the learned counsel for the C.B.I. seek instructions in this regard."

7. The specific case of the petitioner is that he was a tenant of the ground floor in flat No. B-99, Sector 15, NOIDA, which is owned by Smt. Tara Bhatt and he had taken the same on rent in September, 1995 on a monthly rent of Rs. 3,000/-. It is also pleaded by him that a lease deed was executed for eleven months, which contained a stipulation that the rent would be increased by 10% every year. The case of the petitioner further is that he left for his hometown Kakinada in Andhra Pradesh on 15.5.1998 after locking the premises and during his absence the landlady illegally took possession of the premises. In paragraph 2(x) of the writ petition it is averred that after the petitioner returned from his home town and found that the respondent No. 4 had taken possession of the premises, he lodged an FIR at the concerned police station on 9.7.1998. In the same paragraph it is averred that when the accused/respondent No. 4 did not accept the rent, the arrears of rent amounting to Rs. 40,000/- were deposited in the bank by the petitioner. This statement is very vague, as no details of any kind have been given like the account number or the name of the bank. It is nowhere averred by the petitioner that he had either paid up-to-date rent to respondent No. 4 or that he had deposited the aforesaid amount of Rs. 40,000/- in the account of respondent No. 4. The case of the respondent No. 4, as disclosed from the counter affidavit filed by her in SLP (C) No. 16237 of 1998, is that the petitioner had not paid any rent from February, 1997 and he had surreptitiously vacated the premises on 15.5.1998 and had removed his goods. It may be mentioned here that the UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is not applicable to buildings for a period of 40 years from the date of their construction and, therefore, the said Act is currently is not applicable to buildings in NOIDA as the Authority itself has been established some time after 1976. The questions raised by the petitioner in this writ petition are all disputed questions of facts. For resolving the factual controversy oral and documentary evidence would have to be examined which is not feasible for this Court in a writ petition under Article 32 of the Constitution.

8. As mentioned earlier the petitioner had filed a writ petition under Article 226 of the Constitution before the Allahabad High Court seeking virtually the same reliefs, which have been sought in the present writ petition. The High Court dismissed the writ petition on the ground that the questions raised were all disputed questions of facts, which could not be adjudicated in a writ petition under Article 226 of the Constitution. The High Court further observed that the petitioner could approach the civil or criminal court or any other authority for this purpose. In the SLP preferred against the decision of the High Court it was observed in the order dated 13.8.1999 that it was not appropriate for this Court to examine the rival contentions which raised disputed questions of fact and the said questions were left open. It was further observed that whatever other grievances remain in spite of the report of the CBI, so far as the petitioner is concerned, he may ventilate the same in accordance with law.

9. In Virudhunagar Steel Rolling Mills Limited Vs. The Government of Madras, it was held that where a writ petition under Article 226 of the Constitution is disposed of on merits and the order of dismissal of the petition is a speaking order that would amount to res judicata and would bar a petition under Article 32 of the Constitution on the same facts irrespective of whether notice was issued to the other side or not before such a decision was given. In T.P. Moideen Koya Vs. Government of Kerala and Others, , the entire law regarding bar of res judicata was reviewed and it was held that a decision rendered by this Court in proceedings under Article 136 of the Constitution, which has attained finality would bind the parties and the same issue cannot be re-agitated or re-opened in a subsequent petition under Article 32 of the Constitution.

10. This being the settled position of law, the reliefs claimed by the petitioner in the present petition under Article 32 of the Constitution cannot be granted as he had claimed the same reliefs in the writ petition, which was filed under Article 226 of the Constitution in the Allahabad High Court, which was dismissed and the SLP preferred against the said decision was disposed of by this Court with a direction that he may ventilate the same in accordance with law.

11. After hearing the petitioner in person the Court by order dated 6.8.2004 had requested Mr. K.K. Venugopal, Senior Advocate to assist the Court as Amicus Curiae. Thereafter the petition was heard on 23.8.2004 and after hearing the petitioner and Mr. K.K. Venugopal following order was passed: -

"The only grievance which we find worth being taken care of and as highlighted by the learned Amicus Curiae is the remissness on the part of the concerned police officials in investigating the F.I.R. No. 521/98 lodged on 9.7.1998 at 2.50 p.m. at P.S. Sector 20, NOIDA, Uttar Pradesh."

Thereafter, notice was issued to I.G. Police, Meerut Zone, Meerut (U.P.) to show cause why an inquiry into the conduct of the police officials concerned regarding the investigation of the case be not directed. At the direction of the I.G. Police, Meerut an inquiry was conducted by the S.P., Gautam Budh Nagar and his report

has been placed on record. According to the report the conduct of Shri Ajay Joshi, the then Circle Officer-I, NOIDA did not show that he had committed any irregularity or carelessness in discharge of his duty. However, Shri Balram Singh, ASI, Police Station, Sector 20, NOIDA, did not properly investigate case crime No. 521 of 1998 which had been registered under Sections 447, 457 and 380 IPC and had shown carelessness in discharge of his duty. Since the matter is subjudice before the criminal court at Karkardooma, Delhi, the Inquiry Officer was of the opinion that at this stage no action is called for. In case the Court arrived at a finding that the investigation had not been properly conducted, appropriate departmental action would be taken against the concerned police officials.

12. We are also of the opinion that having regard to the fact that diametrically opposite versions have been given by the petitioner and landlady Smt. Tara Bhatt (respondent No. 4) and the matter being already before the criminal court it will not be proper for us to make any observations at this stage, lest it may prejudice the accused in their trial in the criminal case. After the trial is over, where the parties will get opportunity to adduce oral and documentary evidence, and if the criminal court comes to a finding that there was any remissness on the part of the concerned ASI of Sector 20 Police Station, NOIDA, who investigated the alleged offence, the authorities of the State Government may take appropriate departmental action.

13. It may be mentioned here that the CBI has already filed charge- sheet against respondent No. 4 for her prosecution under Sections 454 and 380 IPC and in the said criminal case charges have been framed by the learned Magistrate. The criminal case and the criminal revision preferred by the accused against the order framing of charge have already been transferred to Delhi by this Court. The petitioner has submitted that the trial of the criminal case is not proceeding and the learned Magistrate has been giving long dates. For an expeditious hearing of the case every party must cooperate. It will not be proper for us to give any direction to the learned Magistrate regarding fixation of dates in the said criminal case as it depends upon the docket of the Court. Any direction for an out of turn hearing of a case has the effect of pushing some other case behind. However, it is directed that the learned Magistrate shall make all possible endeavour to decide the criminal case expeditiously.

14. Subject to the observations made above, the writ petition is dismissed.

15. We are grateful to Mr. K.K. Venugopal, senior advocate for rendering valuable assistance.