
(2014) 08 SC CK 0018

In the Supreme Court Of India

Case No : W.P. (Crl.) No. 93 of 2011 and Crl. Misc. P. No. 24767 of 2013 and W.P. (Crl.) No. 171 of 2011

Pradeep N. Sharma

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : 2014 (9) SCALE 364

Hon'ble Judges : Ranjana Prakash Desai, J;N.V. Ramana, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In Writ Petition (Crl.) No. 93 of 2011, the Petitioner is seeking transfer of four criminal cases, the details of which are set out in prayer Clause (A) of the said writ petition, from State CID to the CBI. The transfer is sought on two grounds. The first ground is based on averments made at page (F) of the synopsis and elaboration of those averments in paragraphs 15 to 25 of the said writ petition. The second ground is regarding the alleged victimization of the Petitioner because he is the brother of Kuldip Sharma, IPS Officer, who is stated to have defied certain alleged illegal instructions of the then Chief Minister of Gujarat (R-3). On 12/5/2011, when this petition was listed before this Court, Mr. Colin Gonsalves, learned senior Counsel appearing for the Petitioner made the following statement, which was recorded by this Court in its order of the same date. Order dated 12/5/2011 needs to be quoted. It reads as under:

"Mr. Colin Gonsalves, learned senior Counsel appearing for the Petitioner states that he does not wish to retain the averment made at page F of the synopsis in its present form and the elaboration of that statement as contained in paragraphs 15 to 25 of the Writ Petition. In this connection, he states that he will file a supplementary petition making suitable amendments to those averments which tend to cast an unintended and wrong information in their present form. Mr. Colin Gonsalves added that neither he nor the Petitioner has any interest to

make the faintest allegation of any personal impropriety against the Chief Minister."

2. It is the case of the Petitioner that he has made suitable amendments as per statement made by his counsel whereas it is the case of the Respondents that certain averments which had to be deleted as per order dated 12/5/2011 are still on record. It was urged by Mr. Tushar Mehta, learned Addl. Solicitor General, who appears for the State of Gujarat that since the Petitioner has not complied with this Courts above order, the petition is liable to be rejected on that count. We are not inclined to go into this disputed question whether the concerned averments have been deleted or not because as stated above on 12/5/2011, a categorical statement was made by learned Counsel for the Petitioner that neither he nor the Petitioner had any interest to make the faintest allegation of any personal impropriety against the Chief Minister. The Petitioner is, therefore, not entitled to raise any contention based on averments made at page (F) of the synopsis and elaboration of that statement in paragraphs 15 to 25 of the said writ petition or at any other place in the said writ petition. If any of those averments are still in the petition, they cannot be taken into consideration. It is not possible for us to allow the Petitioners counsel to reopen those submissions, averments in respect of which were agreed to be deleted. In view of the above statement made on 12/5/2011, learned Counsel for the Petitioner addressed us on the second ground i.e. the alleged victimization of the Petitioner because his brother, an IPS Officer has defied the alleged illegal instructions of Respondent 3 and biased attitude of the State of Gujarat against the Petitioner on that count.

3. We have heard learned senior Counsel for the Petitioner at great length on the alleged victimization of the Petitioner. He has taken us through all the relevant averments made in the said writ petition and the material relied upon by the Petitioner in support of his case. We have also heard learned Addl. Solicitor general for the State of Gujarat. We have perused the affidavit in reply filed on behalf of the State of Gujarat and the relevant material relied upon by the State of Gujarat. We have also gone through the judgment of this Court in Jayendra Saraswathy Swamigal, Tamil Nadu Vs. State of Tamil Nadu and Others, to which our attention was drawn by learned Counsel for the Petitioner and judgment of this Court in Prof. K.V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai and Others, to which our attention was drawn by learned Counsel for the State of Gujarat.

4. We may particularly note paragraph 6 of the affidavit filed by the State of Gujarat to which our attention is drawn by learned Addl. Solicitor General. It reads thus:

"6. I state and submit that substantially the Petitioner has based his petition upon the allegations referable to his brother and instances of investigation conducted by his brother viz. Kuldip Sharma IPS.

I state and submit that while making assertions with respect to the offences

investigated by the brother of the Petitioner, the Petitioner has suppressed the following important and crucial facts.

I state and submit that the brother of the Petitioner approached the Honourable Central Administrative Tribunal relying upon the very same instances which are mentioned in the present petition and alleging factual mala fides against the Chief Minister and the then Minister of State (Homes). The then Director General of Police filed a detailed affidavit qua each and every instances cited by the brother of the Petitioner (which are cited by the Petitioner in the present petition). A copy of the said affidavit filed by the then Director General of Police, Gujarat State before the Central Administrative Tribunal dealing with all instances relied upon by the present Petitioner is annexed hereto and is marked as ANNEXURE-R6.

I respectfully state and submit that it was duty of the Petitioner to point out that after filing of the said affidavit giving factual chronology with respect to each of the instances relied upon by his brother(which is being relied upon by the Petitioner), the brother of the Petitioner himself had given up the allegation of factual mala fides which is recorded in the judicial pronouncement of the Central Administrative Tribunal, Principal Bench, New Delhi. It is thus clear that when the Petitioner's brother himself has given up the said factual mala fides after having received a detailed affidavit of the then Director General of Police concerning the instances relied upon, firstly, the Petitioner ought not to have referred to the same, and secondly, he ought to have brought to the notice of this Honourable court that his brother has already given up the said allegation in his own case before the Central Administrative Tribunal."

5. The above assertion made on affidavit has not been denied by learned Counsel for the Petitioner. Since Kuldip Sharma has himself given up factual/personal mala fides, in our opinion, the Petitioner cannot rely upon them to substantiate his case of transfer.

6. In view of the above and having considered the prayer of the Petitioner for transfer in its proper perspective in the light of relevant pleadings of the parties, we are of the opinion that no case for transfer of cases to the CBI is made out by the Petitioner. Allegations of bias are not substantiated. The said prayer, therefore, will have to be rejected and is rejected.

7. We must note here that during the pendency of the said writ petition, the Petitioner filed Criminal Misc. Petition No. 24767 of 2013 and prayed for the following reliefs:

"a) Allow the instant application;;

b) Take on record the documents and the transcripts annexed with the instant application and direct the Central Bureau of Investigation (CBI) to register a case and conduct a thorough enquiry/investigation into the violation of the Telegraph Act 1885 and other applicable laws by Shri Narendra Modi, Shri Amit Shah and

any other such person;

c) Allow the accompanying instant writ petition and;

d) Pass any other and further order as may deem fit and proper to this Hon'ble Court."

8. Though no notice was issued on this application, in the interest of justice we have gone through the criminal miscellaneous petition. We have heard learned Counsel for the Petitioner and also learned Addl. Solicitor General for the State of Gujarat and perused the affidavit filed by the State of Gujarat. We have also perused the material on which the State of Gujarat has placed reliance and the rejoinder filed by the Petitioner. We are of the considered opinion that the criminal miscellaneous petition deserves to be dismissed as being not connected with the prayer made in the said writ petition and being outside its scope.

9. Before parting, we make it clear that we have not expressed any opinion on the merits of the pending cases filed against the Petitioner and the courts seized of those cases must deal with them independently and in accordance with law. We have also not discussed the cases registered against the Petitioner in detail as that may be interpreted to mean that we have considered the merits of those cases. We have only considered the question whether the Petitioner has made out a case for transfer of the cases from State CID to the CBI. In the result, Writ Petition (Crl.) No. 93 of 2011 and Criminal Misc. Petition No. 24767 of 2013 are dismissed. In view of the dismissal of this writ petition, Writ Petition (Crl.) No. 171 of 2011 is also dismissed as it seeks transfer of FIR No. 033 of 2011 from the State CID to the CBI on similar grounds.