

(1998) 04 AHC CK 0013

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 833 of 1998

Pramod Tewari

APPELLANT

Vs

Kalyan Singh and Others

RESPONDENT

Date of Decision : 10-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 154(1), 154(3), 156(3), 190, 200

Penal Code, 1860 (IPC) — Section 409

Prevention of Corruption Act, 1988 — Section 10, 12, 13, 7, 9

Citation : (1998) CriLJ 3824

Hon'ble Judges : S.K. Phaujdar, J; S. Rafat Alam, J

Bench : Division Bench

Advocate : G.S. Chaturvedi and S.M.A. Kazmi, for the Appellant; R.P. Goel, S.C. and Yatindra Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed by the leader of the Congress Legislature Party in U.P. Assembly. Through this writ petition he has made a prayer for an order or direction in the nature of mandamus directing the respondents Nos. 40 and 41 (the Home Secretary, U.P. and the State of U.P. through the Senior Superintendent of Police, Lucknow) to register criminal cases against respondents No. 1 to 39 for offences under Sections 7 9 10 12 and 13 of the Prevention of Corruption Act, 1988. There is a further prayer that a further direction in the nature of mandamus be issued directing the Central Bureau of Investigation (hereinafter referred to as the "C.B.I.") to enquire into the matter and submit a report with regard to the incidents from 19-10-1997 to 31-10-1997 and from 21-2-1998 to 26-2-1998 involving what was described as "purchasing the ML. As." by respondents Nos. 1, 2 and 3 and involvement of respondents No. 1 to 39 in the act of accepting illegal gratification.

2. The gist of the allegations is that in the last election, for the constitution of U.P. Assembly, no particular political party got absolute majority. Hence political

negotiations went on between different political parties and groups and finally the Bharatiya Janta Party and Bahujan Samaj Party (hereinafter referred to as the "R.J.P." and "B.S.P." respectively) combined together to form a Government and a Cabinet headed by Sushri Mayawati of B.S.P. was constituted with Members from both the B.J.P. & B.S.P. There was a political understanding between the two parties that after six months Sushri Mayawati would make over the office of the Chief Minister to Sri Kalyan Singh of the B.J.P. It was, however, felt towards the fag-end of the tenure of Sushri Mayawati that there was an apparent squabble going on between, the so called partners of the Government. It was alleged that the process of alluring the Members of the Legislative Assembly from other groups began in September, 1997 only with a view to get a show of majority in favour of the B.J.P. It was alleged that the first prey of Sri Kalyan Singh was Sri Naresh Agarwal, who was elected to the assembly as an aspirant from Indian National Congress. Allegations were made that there were circumstantial and documentary evidence to suggest that Sri Agarwal was bribed not only to change over side but to procure others also to join hands with the B.J.P. It was alleged that in the third week of October, 1997 when Mayawati withdrew her support and the Government of Kalyan Singh was called upon to prove its majority on the floor of the house on 21-10-1997, a deal was struck by Kalyan Singh with Naresh Agarwal in derogation to all norms and decencies of public and political life and 22 Members of the Legislative Assembly, erstwhile belonging to the Indian National Congress formed a break away group and joined hands with Kalyan Singh and voted in his favour on the floor of the house. It was alleged that the defection was achieved upon a consideration of gratification by way of offering berths in the Cabinet to all these 22 defectors. There were certain other Members of the Legislative Assembly who belonged to the B.S.P. and certain ignore belonging to the Janta Dal, who were also allured by Kalyan Singh with gratification by way of political power and, thus, majority in favour of the B.J.P. Government led by Kalyan Singh was "purchased".

3. It was alleged further that in his interview, before the media including the Electronic Media, Naresh Agarwal had accepted that he had changed loyalty for sharing power. The petitioner described such an act as reflective of the total degradation of political morality and taking the action within the purview of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act"). It was alleged that certain other Chief Ministers of other States belonging to the B.J.P. had also come with sizeable amount of money to purchase the M.L. As. before the trial of strength on the floor of the U.P. Assembly on 21-10-1997 and these Chief Ministers were also arrayed as respondents, against whom also Action was sought for. Reference was made to Schedule X of the Constitution providing for disqualification on the ground of defection. Certain allegations were also made regarding other opposite parties alleging their participation in the process of bribing or purchasing of M.L. As. or what was described as "horse trading".

4. We are not required at this stage to record any comments on the merits of the case, but it must be stated that if the allegations are true, they present the

hollowness of the democracy we brag to practise. If the allegations are true, they reflect a total erosion of values in our political circles. If we take up the matter on merits at any future point of time, we would look to the truth of the allegations to determine if at all the allegations, if true, would make out offences under the Act. For the preliminary objections, however, we start with the presumption for the sake of argument: only, that there had been certain offences committed by respondents No. 1 to 39. In this light we may now look to the preliminary objections raised by the learned Advocate General, Sri R.P. Goel."

5. It was contended by Sri Goel that whenever any offence is committed either under the Indian Penal Code or under any special law, the Code of Criminal Procedure provides for initiation of a criminal case and for investigation and enquiry and trial into the same. It is not for the writ Court to act as a substitute for the authorities created by law for institution of criminal cases and for investigation of the same. He read out the provisions of Sections 154(1) 154(3) 156(3) as also Sections 190 and 200, Cr.P.C. to highlight his points. Ample scope was there for any person aggrieved by a criminal act either to lodge an F.I.R. before the concerned Police Station or to make a complaint directly in Court. Criminal Courts are empowered to take cognizance of offences either on complaint or on police report or even on personal knowledge. The Cr.P.C. further provides in Section 154(3) that if the Officer-in-Charge of a Police Station refused to record an F.I.R. the complainant could send a copy of his complaint to the Superintendent of Police. There is yet another door open for a complainant. He could approach the Magistrate empowered u/s 190, Cr.P.C. with a complaint for referring it to a Police Station for institution of a case and investigation. The learned counsel contended that there being so many alternatives open to a petitioner for initiation of a criminal case, it would be unnecessary for the writ Court to look into the matter as a Court of first instance.

6. The second preliminary objection that was raised by the learned Advocate General was that a prayer for issuance of writ or order in the nature of mandamus has been made through this petition, but it was the settled law that mandamus could be issued when there is some statutory right which has been violated or some statutory duty which has not been complied with. In the instant case there is no allegation that any authority had denied to act according to any statutory direction and, as such, a writ of mandamus could not have been issued.

7. The third objection raised by the learned Advocate General was on the points of jurisdiction. It was stated that the seat of the Government of U.P. is at Lucknow and all the respondents, as per array of the parties, are stated to be living at Lucknow (barring the Chief Ministers of other States) and cause of action, if any, must be accused to have accrued at Lucknow and only the Lucknow Bench of this High Court would have jurisdiction in the matter.

8. Before entering into the reply of the petitioner on the first two objections, we may take up the last mentioned objection first. The allegations made in the petition nowhere state that all the acts of "bribing", "purchasing" or "horse

trading" were committed in Lucknow itself and not outside the jurisdiction of the Lucknow Bench, The allegations are of general nature which are evident from the end product that certain M.L.As., who had defected from their original parties, were made Ministers in the Cabinet of Kalyan Singh. As to whether the allurements, offer of berth in the Ministry and other gratification was given, would be a matter of investigation, if at all any investigation is directed to be taken up or is taken up under any law. It would be unwarranted, therefore, to say at this stage itself that only the Lucknow Bench would have jurisdiction over the matter as it is a question of conduct of the Members of the U.P. Assembly representing constituencies falling within the jurisdiction of the Allahabad Bench also. This preliminary objection, concerning jurisdiction, must, therefore, be discarded. We hold that we have a jurisdiction to take up the matter firstly on the preliminary points and if the same are answered against the State, on the merits of the allegations also.

9. As regards alternative remedy covered by the Cr.P.C. and the absence of allegation of denial of remedy by the authorities, Sri Chaturvedi, learned counsel for the petitioner, submitted that the writ jurisdiction of the High Court is wide enough to do complete justice between the parties and the unusual nature of the facts behind this petition and the involvement of the top brass of the Government give the case an unusual stature which requires even an unusual step to be taken by the High Court notwithstanding the existence of a remedy under the Cr.P.C. and notwithstanding absence of denial of remedy by the, lower authorities. It was contended that the Court must take a pragmatic approach to the problem and is to keep in mind that when a complaint may be made against a Chief Minister and other Ministers, there could hardly be any officer working under the same administration to dare to lodge an F.I.R. and to start an investigation. It was contended that it would be a futile exercise and an empty ritual to have approached the local police and to get a refusal and only then to come to this Court for a relief. In answer to this submission of Sri Chaturvedi, the learned Advocate General submitted that what is being described an extraordinary situation is not at all so and already a period of six months has elapsed since the date of the alleged offence.

10. Sri Goel relied on certain case laws in support of his submissions. In the case reported in (1996) 11 SCC 582, All India Institute of Medical Sciences Employees' Union v. Union of India the Supreme Court was approached in a SLP by the petitioner against an order of the Delhi High Court dated 14-5-1996 in Writ Petition No. 1946 of 1996 wherein the High Court was approached for a direction for institution of proceedings against a former Director of the All India Institute of Medical Sciences for an offence u/s 409, I.P.C. The Division Bench of the High Court refused to issue mandamus and against that order the SLP was filed. It was argued before the Supreme Court that the petitioner had laid all the necessary information before the Director as well as the Minister concerned and also the Prime Minister of India bringing to their notice all the offences committed by the former Director but no action in that behalf had been taken. It

was argued before the Supreme Court that the High Court was not right in refusing to entertain the writ petition and giving directions in this behalf. The Supreme Court quoted the relevant provisions of Section 154(I), Cr.P.C. and the provisions concerning investigation and observed in paragraph 4 of the judgment as under:

4. When the information is laid with the police but no action in that behalf is taken, the complainant is given power u/s 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint u/s 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused.

In the next paragraph the Supreme Court observed as under:

5. In this case, the petitioner had not adopted either of the procedure provided under the Code. As a consequence, without availing of the above procedure, the petitioner is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI which is not required to investigate into all or every offence. The High Court, therefore, though for different reasons, was justified in refusing to grant the relief as sought for.

With the aforesaid observations, the SLP was dismissed keeping it open to the petitioner to take up proceedings under the procedures indicated by the Supreme Court.

11. Reliance was further placed on another judgment of the Supreme Court in the case of *Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI)*, . In paragraph 24 of this judgment the Supreme Court observed that the powers of the High Court under Article 226 of the Constitution are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd edition, Vol. 13, p. 106). The Supreme Court then quoted from Halsbury as follows:-

As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of

considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was merely a refusal.

12. Our attention was drawn, during arguments, to a decision of the Delhi High Court as reported in *Rashtriya Mukti Morcha Vs. Suraj Mandal*, The matter dealt with alleged bribery and corruption to secure confidence in Lok Sabha by certain Prime Minister. The Delhi High Court was; approached in a writ petition after a complaint! was lodged with C.B.I, against certain Member! of the Parliament, who was charged with receiving a huge sum of money in Heuof his voting in a particular motion in the Lok Sabha touching stability of a Government. The question before the High Court was whether the C.B.I, could register a case on the basis of a complaint only and the question was answered in the affirmative. Reference was also made to a decision of the Delhi High Court dated 12-9-1997 in respect of a bunch of criminal revisions, one of which was concerning the erstwhile Prime Minister, Sri P.V. Narsimha Rao. The matter before the Delhi High Court concerned alleged political corruption. We find that the High Court had recorded the order in exercise of its powers under the criminal revision jurisdiction and not the extra-ordinary power under Article 226 of the Constitution.

13. Reference was also made to a judgment of the Allahabad High Court in Writ petition No. 32982 of 1994, in common parlance, the Uttarakhand case, in which the Court had, according to the petitioner, issued a writ directing an investigation, although there had been no approach to the local authorities for action and consequently no refusal on their part. The records were called for. The prayers in that writ petition related to issuance of writ or order upon the U.P. Government for appointing a commission to make an enquiry into the alleged police atrocities in Uttarakhand region of U.P. for quashing the appointment of a retired Judge as the Commission of Enquiry and for directing enquiry by an independent person and to direct him further to do it expeditiously.

14. A careful reading of the judgment of the Division Bench in the Uttarakhand case indicates that action was taken by the Court as there had been gross violation of human rights of the victims of violence, looting, sexual assault and the like.

15. With great respect for the sentiment expressed by the Division Bench in the case of Uttarakhand, we feel that the points now agitated before us were not agitated before the earlier Division Bench and as such there had been no pronouncement on the law point. We have already referred the cases relied upon by the petitioner to indicate that actions were taken by the Delhi High Court in exercise of powers under criminal revision in respect of existing criminal cases.

16. As observed by us, the law touching the two preliminary objections had been pronounced by the Supreme Court in the judgment of *All India Institute of Medical Sciences*, as also in the judgment of *Saraswati Industrial Syndicate* "

Limited (both supra). Even thereafter a further judgment the Supreme Court dealt with the question regarding exercise of powers under Article 226 of the Constitution of India when an alternative remedy was available. This judgment *Sri Ramdas Motor Transport Ltd. and Others Vs. Tadi Adhinarayana Reddy and Others*, The Supreme Court was approached in its civil appeal jurisdiction against an order of a Division Bench of the Andhra Pradesh High Court. The first respondent before the Supreme Court had desired, through a writ petition, filed before a single Judge of the High Court, to get the affairs of a company investigated into in a manner provided under the Companies Act. Neither the Central Gov- eminent nor the Company Law Board had been moved by the first respondent in accordance with law for this purpose. There had been a prayer in the writ petition that the Court should direct an enquiry by the Central Bureau of Investigation into the alleged financial mismanagement of the company and misappropriation of funds by some] of the appellants before the Supreme Court. The single Judge refused the relief under Article 226 : of the Constitution but, on a Special Appeal, the Division Bench allowed the prayers of the petitioner before the High Court on amongst other grounds that the petition raised many serious issues as to falsification of the accounts of a public limited company and the acts of the company would jeopardize public interest and as the petition involved wider "public interest", it should be entertained. The Supreme Court observed "Under an excuse that the Company Law Board has not yet made an order, a shareholder has very effective remedies under the Companies Act for prevention of oppression and mismanagement. When such remedies are available, the High Court should not readily entertain a petition under Article 226." The appeal was allowed and the judgment of the Division Bench of the Andhra Pradesh High Court was set aside. This was also a case which, in our view, reiterates the earlier opinion of the Supreme Court that the powers of the High Court under Article 226 of the Constitution would not be used when an alternative remedy under the Cr.P.C. was available and not even in the name of "public interest".

17. It is true that the situation elaborated in the writ petition speaks of alleged corruption at the highest level of our political administration and that sends a wrong signal to the public in general that corruption is the rule of the day. It is also true that the allegations, if true, reflect the lowest ebb of our political morality. It is also true that persons occupying high public office are alleged to be involved in the case. Despite all these facts, it must be stated that the makers of law did not make any difference in procedure for offences committed by commoners and offences committed by persons in authority, bar ring the requirement of sanction when necessary. Our Criminal Procedure Code and the provisions of the Prevention of Corruption Act are wide enough to investigate allegations of offences committed by the political big bosses as well. What has been described as an unusual situation calling for an unusual remedy is really an offence very much within the scope of the Prevention of Corruption Act for being investigated into and the keepers of law are not without powers to initiate proceedings against guilty persons. The High Court, in our view, must not use its

powers under Article 226 of the Constitution when adequate and efficacious remedy is available to the complainant and that is precisely the dictum of law, as pronounced by the Supreme Court.

18. We have no doubt that in our investigation system and in our law enforcing forces there are upright persons who would not be hesitant to take the right step as required under the law if at all proper materials are there. It would be the duty of the concerned police/C.B.I./other investigating agencies to make proper investigation in the matter if at all any complaint is filed before them. If they could do it under a direction from the Court, there is no reason why they cannot do it under the direction from the text of the law.

19. With these observations, we feel that the preliminary objections Nos. 1 and 2, as raised by the learned Advocate General, Sri R.P. Goel, are quite sustainable. The writ petition, therefore, stands dismissed with the observation that it would be open for the petitioner to seek redress before the authorities under Code of Criminal Procedure and/or under the Prevention of Corruption Act.