
(1996) 08 PAT CK 0048

In the Patna High Court

Case No : S.L.P. (Criminal) No. 2048 of 1996 and Writ Petition (Criminal) No. 223 of 1996

P.V. Narasimha Rao

APPELLANT

Vs

State (CBI/SPE)

RESPONDENT

Date of Decision : 22-08-1996

Acts Referred:

Constitution of India, 1950 — Article 32
Criminal Procedure Code, 1973 (CrPC) — Section 319, 482
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (1997) 1 BLJR 263

Hon'ble Judges : S.C. Agrawal, J;G.T. Nanavati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Lakhubhai Pathak, a resident of United Kingdom submitted a written complaint on September 25, 1987, at the High Commission of India at London addressed to the Director, Central Bureau of Investigation (CBI), New Delhi. The said complaint was treated as a First Information Report and a case was registered by the CBI on February 5, 1988. After completing the investigation on the charge-sheet was filed in the court of Chief Metropolitan Magistrate, New Delhi (for short CMM). The CMM has framed charges under Sections 420, 120B/420, IPC against Chardraswami and Kailash Nath Aggrawal. During the course of the trial the prosecution has examined and Lakhubhai Pathak as a witness before the CMM and his statement is recorded on July 5, 6 and 3, 1996 but was not completed. On July 9, 1996 the CMM passed an order u/s 319, Code of Criminal Procedure, 1973 (Cr.PC) whereby the petitioner has been added as an accused for being party to the criminal conspiring of cheating the complainant Lakhubhai Pathak and summons have been issued against him u/s 120B/420, IPC.

2. Feeling aggrieved by the said order of the CMM dated July 9, 1996, the petitioner filed a petition u/s 482, Cr.PC in the Delhi High Court for quashing the order dated July 9, 1996 passed by the CMM. The said petition of the petitioner

has been dismissed by the High Court by the judgment dated July 30, 1996. SLP (Crl.) No. 2048 of 1996 has been filed by the petitioner for special leave to appeal against the said judgment of the High Court. The petitioner has also filed a writ petition (Crl.) No. 223 of 1996 under Article 32 of the Constitution of India wherein he has challenged the validity of Section 319, Cr.PC and has prayed that all proceedings that have been initiated against him by the CMM resulting in the order dated on July 9, 1996 and all actions subsequent thereto including the amongst issued for appearance of the petitioner be set aside.

3. We have heard Shri K. Parsaram and Shri Kapil Sibal, the learned senior Counsel appearing for the petitioner in both these matters and the learned Attorney General for India. On behalf of the petitioner it has been submitted that the CMM in passing the order dated July 9, 1996 has not considered the statement of Lakhubhai Pathak and the document produced during the course of statement in a proper perspective and has failed to take note of various features which would indicate that no case has been made out for proceeding against the petitioner u/s 319, Cr.PC It has been urged that the power conferred u/s 319, Cr.PC is an extraordinary to be used very sparingly and only when compelling reasons exist and that the power by the CMM. It has also been submitted that though it is open to the petitioner to appear before the CMM in response to the summons and ask for recalling the order dated July 9, 1996 there is very little likelihood of the petitioner succeeding in view of the observations that have been made by the CMM in his order dated July 9, 1996.

4. Having regard to the fact that the order dated July 9, 1996 is based on a prima facie opinion formed by the CMM on the basis of the evidence adduced before him and at that stage the did not hear the petitioner, it is open to the petitioner to show to the CMM that on the basis of the evidence that has been adduced in the trial no case is made out for proceeding against him u/s 319, Cr.PC and adding him as an accused and issuing summons to him in respect of offences u/s 120B/420, IPC, We do not propose to deal with in the, submissions that have been urged by the learned senior Counsel for the petitioner to assail the order dated July 9, 1996 by the CMM. We leave it to the petitioner to agitate the same before the court entrusted with the trial of the case. In the circumstances, we consider it appropriate in the interest of justice to make if clear that observations that has been made by the CMM in the order dated July 9, 1996 and by the High Court in the impugned judgment dated July 30, 1996 would not preclude the concerned court from considering on merits the submissions of the petitioner against his being added as an accused u/s 319, Cr.PC or is discharged.

5. There is no doubt that the CMM who has passed the order dated July 9, 1996 has acted fairly and impartially. Though there is no cause for apprehension in the mind of the petitioner that he would not receive a proper hearing if the matter goes before the same judicial Officer, but keeping in view the principle of that justice should not only be done but must also appear to be done and without

casting any reflection whatsoever on the concerned officer, we are of the view that it would sub serve the ends of justice if the matter is dealt with by some other Judicial Officer who is competent to deal with it. The Delhi High Court is requested to assign the case for trial to some other Judicial Officer. The personal presence of the petitioner before the concerned Court entrusted with the trial of the case is exempted till the court considers and passes an order, on the submissions that are made by the petitioner against his being added as an accused u/s 319, Cr.PC and in the event of the said submissions being rejected the Court, may give suitable directions regarding the personal appearance of the petitioner.

6. The SLP is disposed of accordingly.

W.P. (CrI). 223/96. Mr. Kapil Sibal, the learned senior Counsel appearing for the petitioner seeks leave to withdraw the writ petition. The writ petition is dismissed as withdraw.

A copy of this Order be sent to the Registrar, Delhi High Court for taking immediate actions.