
(1980) 04 DEL CK 0017

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 211 of 1980

Ram Lalwani

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 24-04-1980

Acts Referred:

Citation : (1981) CriLJ 97 : (1980) 18 DLT 141

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

Bench : Single Bench

Advocate : K.L. Panjwani, D. Mathur and N.K. Parmar, for the Appellant;

Judgement

M.L. Jain, J.

(1) A knife was thrown at Smt. Indira Gandhi, the Prime Minister of India, on April 14, 1980, while she was returning from a function, but fortunately, the missile missed its target. The petitioner was arrested on the spot because it was alleged that it was he who did so. When he was produced before the Magistrate on April 15, 1980, for remand, Shri R. L. Panjwani came forward to appear on his behalf and moved an application for medical examination of the accused that he was badly beaten by the police and directions be made for medical examination by a registered medical practitioner of his choice. The Magistrate directed that he be so examined if he paid the requisite fee for the services of a medical practitioner. The accused offered a fee of Rs. 25.00 to the S. H.O., Parliament Street, but he declined to accept.

(2) On April 16, 1980, he moved an application that in view of S. 54 Cr. P. C., he could not be asked to pay the medical fee. On that day, the accused was also taken to Baroda in connection with investigation. The learned Magistrate accepted the application on April 17, 1980, and directed that the accused be examined forthwith by a civil surgeon of the place where the accused is currently lodged. The accused appears to have been examined by a medical officer since then. Shri Panjwani moved the same day yet one more application that in view of

the decision of the Supreme Court in Nandini Satpathy Vs. P.L. Dani and Another, , the police be directed to allow him to be present by the side of the accused at the time of interrogation. He gave his telephone number and address and offered to be available at a short notice, whenever the police informed him that questioning was to take place. The learned Magistrate rejected this request on the ground that according to the said decision of the Supreme Court, it is the accused who alone can make such a demand and not his advocate.

(3) The accused has moved this application under S. 482 Cr. P. G. with the prayer that the aforesaid orders of the Magistrate be quashed and strictures be passed against him. He orally submitted that this court may direct that the counsel be allowed to be present at the time of interrogation, arguments.

(4) Respecting medical examination, the accused has already been examined and no directions are any more desired. But, I must state that if the accused complains of personal violation and where he desires or where the Magistrate considers appropriate, medical examination of his person by a medical officer or the medical jurist is the least that the Magistrate should immediately direct. No fee can be demanded of him unless he wants to be examined only by a private practitioner of his choice.

(5) The other matter requires examination. The learned Public Prosecutor made the following objections to the consideration of the application

(I)the vakalatnama of Shri Panjwani is neither stamped nor attested nor docs it disclose the parentage and address of the accused)

(II)the application is not accompanied by an affidavit;

(III)there is no request in the application for direction for lawyer's presence at the time of interrogation;

(IV)since the court cannot interfere with investigation, the request cannot be acceded to in view of Hazari Lal Gupta Vs. Rameshwar Prasad and Another, etc., ; and

(V)this court cannot make any direction in this regard because (a) the accused has not made the request, and if he so desired, he should do so in the first instance to the investigating officer, (b) the Supreme Court decision in Nandini (supra) is not a mandate but a suggestion and there is no legal requirement for the acceptance of the request, and (e) at any rate, if any constitutional right is being invoked, that can be done by means of a writ petition before a division bench.

(6) I need not tarry to consider the objections other than the one whether the Supreme Court purported to lay down a mandate or merely desired that a lawyer should be allowed to be present when any interrogations take place. The remaining objections are rejected and do not call for any reasons in the peculiar circumstances of the case. I am of the view that presence of a lawyer at

interrogation does not interfere with the investigation and more over the later decision of the Supreme Court of 1978 will prevail over that of 1972. The application, oral or written, cannot be thrown out on these technical considerations which are only superficial and should be ignored in the interests of justice, and if the accused has a right to have a counsel by his side at the time of interrogation, then in the interests of justice, this can be enforced by a direction under S. 482 Cr. P. G. I have also no hesitation in saying that such a request will be valid if made by the counsel himself. There is a kind of legal identity between a counsel and his client. His request cannot be rejected simply because the counsel and not the accused has made the request. Here, the Magistrate was certainly in the wrong.

(7) Now, to Nandini. Article 20(3) and Art. 22(1) of the Constitution provide, inter alia, that "no person accused of any offence shall be compelled to be a witness against himself" and "no person who is arrested", "shall be denied the right to consult and to be defended by, a legal practitioner of his choice". The American Constitution provides that "no person shall be compelled in any criminal case to be a witness against himself" (Amendment V, 1791) and "In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense" (Amendment Vi, 1791). It appears that in the United States, statements and confessions made during investigation by the police are admissible in evidence against the accused. In *Miranda v. Arizona* 384 U. S. (1966), Ernesto A. Miranda was arrested for kidnapping and rape. He was interrogated for two hours without being advised of any right to- have counsel present at the interrogation. The accused signed a written confession. The Supreme Court of America held such confession to be improperly obtained not because of any specific third degree tactics of the police but because the entire aura and atmosphere of police interrogation without notification of rights and an offer of assistance of counsel tend to subjugate the individual to the will of his examiner. It required exclusion of a defendant's statement obtained through custodial interrogation unless he has been informed of his constitution right to silence and presence of attorney retained by him or provided by State and, of the possible adverse use of the statement and unless he had voluntarily, knowingly and intelligently waived those rights before making the statement. Chief Justice Warren drew support for this view from the experience of other countries including India where "confessions made to police in presence of a magistrate have been excluded by rule of evidence since 1872". Justice Clark disagreed with majority called it going "too far) too fast", and Justice White "voluntriness with a vengeance". Since then, Miranda has been extremely controversial. Later on, the Burger Court decided a number of cases weakening Miranda by narrowing its application and providing exceptions to its full implementation. Paul G. Kauper in his "Judicial Examination of the Accused. A Remedy for the Third Degree", 30 Michigan Law Review 1224 at 1247, had noticed in 1932 that if the police has to await the arrival of the counsel, preliminary interrogation will lose its effectiveness. Its value depends upon immediate questioning. Attorney's

presence will give the prisoner a moral support and discourage spontaneity of his responses, encourage him to fabricate a device or an alibi and may lead to vexatious objections by the counsel to throttle the investigation.

(8) However, in Nandini, it was held that :

" THE statement of the accused, if voluntary, is admissible, indeed, invaluable."

(Para 64)

".....We think that Art. 20(3) and Art. 22(1) may, in a way, be telescoped by making it prudent for the Police to permit the advocate of the accused, if there be one; to be present at the time he is examined, x xxx But all that we mean is that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will, was the project."

(Para 59)

".....HE cannot supply answers or whisper hints or otherwise interfere with the course of questioning except to intercept where intimidatory tactics are tried, caution his client where incrimination is attempted and insist on questions and answers being noted where objections are not otherwise fully appreciated. He cannot harangue the police but may help his client and complain on his behalf.....".

(Para 60)

".....BUT they (the police) must invariably warn-and record that fact-about the right to silence against self-incrimination; and where the accused is literate take his written acknowledgment."

(Para 61)

"THE symbiotic need to preserve the immunity without stifling legitimate investigation persuades us to indicate that after an examination of the accused, where lawyer of his choice is not available, the police official must take him to a magistrate, doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience where he may unburden himself beyond the view of the police and tell whether he has suffered duress, which should be followed by judicial or some other custody for him where the police cannot teach him. The collector may briefly record the relevant conversation and communicate it-not to the police-but to the nearest magistrate. Pilot projects on this pattern may yield experience to guide the practical processes of implementing Art. 20(3). We do not mandate but strongly suggest."

(Para 63)

(9) From a reading of the above observations in Nandini and Miranda, I feel that subject to a few exceptions, S. 162 Cr. P. G. and Ss. 24 to 30 of the Evidence Act

do already take care of the constitutional rights by excluding from evidence all self-incriminatory statements whether voluntary or otherwise and, Therefore, there was no need to give any directions. What the court appears to be concerned in Nandini is to sensitise the police to humanism and Therefore it made it prudent for the police to allow a lawyer where the accused wants to have one at the time of interrogation, if it wants to ensure that its interrogation is carried on in secrecy by physical and psychic torture. That is why it cautioned that it was not a "mandate" but a "strong suggestion.". I think, it is correct to urge that the Supreme Court was not laying down a binding direction but only prudent policy for the police.

(10) I will Therefore refrain from making any direction, but will dispose of this petition by strongly suggesting that it will be prudent for the police to allow Shri Panjwani to be present at the time of interrogation.. Petition allowed.