
(2012) 08 DEL CK 0440

In the Delhi High Court

Case No : Writ Petition (Criminal) 264 of 2011, Criminal M.A. 8996 of 2011,
2373 of 2011

Ravinder Kumar Tyagi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Explosives Act, 1884 — Section 3, 5
Penal Code, 1860 (IPC) — Section 120B, 166, 167, 186, 193

Citation : (2012) 6 AD 446 : (2012) 131 DRJ 353 : (2012) 4 JCC 2382

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Siddharth Luthra, with Ms. Smriti Sinha, Mr. Mr. Singh, Mr. Pramod Kr. Dubey, Ms. Yaspreet Singh, Ms. Jyoti Tyagi and Mr. A.S. Rathore, for the Appellant; Sanjay Lao, APP, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Garg, J.—The petitioners have filed the writ petitions for quashing the judgment dated 02.02.2011 of ASJ, Dwarka Courts, New Delhi in the matter of State v. Saqib Rehman @ Masood and Ors. in Sessions Case No. 24/2010 arising out of FIR No. 146 dated 02.07.2005, registered at police station Kapasahera under Sections 307/353/186/489(c)/482/120B/34 IPC and 25/27 Arms Act and 3/5 Explosive Act to the extent of the observations and directions passed in paragraphs 141 to 145 and all the proceedings enumerated thereunder. They have also prayed for expunging certain adverse remarks made against them in the impugned judgment. The petitions have been filed on the ground that adverse remarks against the petitioners are unwarranted and uncalled for and that they are not based on any material/evidence on record. Moreover, that were not necessary to adjudicate upon the controversy in the case.

2. We have heard the learned counsel for the petitioners and learned standing

counsel for the State and have perused the Trial Court record.

3. Case of the prosecution is that in June, 2005, SI Ravinder Kumar Tyagi posted in the office of Special Staff, South-West District, Delhi received a secret information that Masood and Zahid involved in terrorist activities have made their base in Delhi and were about to strike in Delhi, Gurgaon and other satellite towns of Delhi. This information was recorded as DD No. 6 dated 27.06.2005 in the office of Special Staff. On 01.07.2005, at 10:30 P.M. SI Ravinder Kumar Tyagi on receipt of secret information that the Masood and Zahid along with their two associates were about to come to Delhi at 12:30 A.M. from Gurgaon in a blue Tata Indica Car bearing No. HR-26-S-0440 and were in possession of heavy arms and ammunition, formed a raiding party consisting of SI Raj Kumar, ASI Charan Singh, ASI Nirakar Sharma, HC Raj Kumar, HC Ombir Singh, Ct.Surender Singh, Ct.Vinay, Ct.Dinesh Kumar, Ct. Raja Ram, Ct. Zafar Khan, Ct. Kishan, Ct.Sanjay Singh, Ct. Rohtash, Ct. Santraj and Ct.(Driver) Suresh and laid a trap on Gurgaon Delhi Road near NH-8 & Rajokri Crossing at about 11:30 P.M. It is further alleged that at about 12:45 A.M. a blue colour Tata Indica Car bearing No. HR-26S-0440 was seen coming from the Gurgaon Road and when it failed to stop despite signal, the police chased it and forced it to stop near Randhawa Farm House. Accused Saqib Rehman @ Masood, sitting on the front seat of the car immediately came out and fired two rounds on the police party with his pistol. SI Ravinder Tyagi fired one round in turn from his service revolver. He and Constable Vinay snatched the pistol from Saqib Rehman. The accused Nazir Ahmed Sofi @ Doctor, who was on the driver's seat exhorted Saquib Rehman to shoot at the police party but was overpowered by ASI Nirakar Sharma. The accused Gulam Moinuddin Dar sitting on the back seat tried to remove pin of the handgrenade but was overpowered by Constable Surender Singh who snatched the handgrenade from his hands. The accused Bhashir Ahmed Shah @ Basir exhorted Gulam Moinuddin Dar to hurl the handgrenade at the police but was overpowered by Head Constable Raj Kumar.

4. The pistol recovered from Saqib Rehman contained four live rounds of 7.62 bore loaded in the magazine and one live round in the pistol chamber. The police seized two cartridges fired by Saqib Rehman @ Masood. In the personal search of Nazir Ahmed Sofi, 12 live cartridges of 7.62 bore were recovered. Head Constable Raj Kumar recovered 35 bullets of AK-47 assault rifle from the right pocket of the pant of Bashir Ahmed Shah. SI Ravinder Tyagi prepared a rukka and sent it to the P.S. Kapasahera for registering the FIR. FIR No. 146/2005 was accordingly registered at PS Kapasahera at 4:33 A.M. for the aforesaid offences. SI Mahender Singh along with Ct.Surender Singh of PS Kapasahera reached the spot and conducted necessary proceedings. On search of Tata Indica vehicle, a briefcase containing an Army Combat Uniform and fake currency notes of Rs. 50,000/-were recovered. In the personal search of Gulam Moinuddin Dar @ Zahid, a sketch of Palam Air Force Station was recovered from his pant pocket. The I.O. arrested all the four accused and recorded their disclosure statements.

5. During investigation, it was revealed that the four accused had been staying in Hotel Baba Continental, Saraswati Marg, Karol Bagh, Delhi. A team lead by ASI Charan Singh along with the accused Saqib Rehman and Gulam Moinuddin Dar was sent to Srinagar and another team lead by SI Mahender Singh along with accused Bashir Ahmed Shah and Nazir Ahmed Sofi was sent to Patna, Bihar, for arrest of co-accused and recovery of arms/ammunition etc. The team lead by ASI Charan Singh arrested the accused Abdul Qayoom Khan on 07.07.2005 and recovered fake currency notes of Rs. 5,000/-from his possession. One AK-47 Assault Rifle, 2 magazines, 130 live cartridges, 2 handgrenades and 3 UBGL grenades were recovered at the instance of the accused Saqib Rehman. Ten UBGL grenades along with one wireless set No. 144057 were recovered at the instance of Gulam Moinuddin Dar. Another accused Abdul Majid Bhat was also apprehended on 11.07.2005 by ASI Charan Singh from Paharganj, New Delhi and 3 detonators were recovered from his travel bag. During the course of investigation, part of the amount allegedly received by the accused from their mentors ISI, Pakistan was recovered at the instance of the accused Saqib Rehman from bank accounts in Srinagar and Delhi. The amount of Rs. 4.5 lacs was found deposited by accused Saqib Rehman in his father's A/c No. 13043 in Jammu and Kashmir Bank, Connaught Place, Delhi, on 11.05.2005 and on 16.05.2005 a sum of Rs. 50,000/-was deposited in the said account. A further sum of Rs. 50,000/-was deposited in the account No. 11052 of Mahmood-ur-Rehman, the father of Saqib Rehman in J&K Bank, Srinagar on 17.05.2005. Mahmood-ur-Rehman withdrew an amount of Rs. 1 lac from J&K Bank, Srinagar on 04.07.2005 after the arrest of accused Saqib Rehman. ASI Charan Singh tried to trace him but could not find him. On 19.08.2005, SI Mahender Singh along with other staff left for Patna and arrested the accused Birender Kumar Singh on 21.08.2005 with the help of police officers from P.S. Gandhi Maidan, Patna. Fake currency notes to the tune of Rs. 82,000/-were recovered at his instance from Patna. His associate Mohd.Wahid could not be apprehended for want of complete details.

6. During investigation, it was revealed that real registration number of the Tata Indica vehicle of the accused was HR-51M-6358 and it was registered at Faridabad, Haryana, in the name of one Azad Singh Yadav. The accused Saqib Rehman Masood was found involved in other criminal cases in J&K. After completion of the investigation, all the seven accused were charge-sheeted for the commission of aforesaid offences and were duly brought to trial.

7. To prove its case the prosecution examined 32 witnesses in all. It also tendered in evidence the FSL report Ex.P2, dated 17.01.2006 and two reports from Govt. Press, Nasik.

8. Statements of the accused were recorded u/s 313 Cr.P.C. in which they alleged that the encounter dated 02.07.2005 was a fake one. They pleaded that they were kept in illegal detention since 23.06.2005 and their signatures were taken on blank papers. The accused pleaded false implication and denied any recovery

from their possession or at their instance. The accused Haji Gulam Moinuddin Dar examined himself as DW1. The accused also summoned and examined Sh. Rajesh Kumar Chaudhary, Sr. Manager (Legal), Zee News Limited as DW2.

9. After appreciating the evidence and considering all the facts and circumstances of the case, the Trial Court acquitted all the accused. It concluded that the alleged encounter during the night intervening 01.07.2005 and 02.07.2005 did not take place at all and an absolutely false encounter was projected. Furthermore, the court noted that the story of the encounter had been carefully scripted in the office of the Special Staff, Delhi Police by its main author SI Ravinder Tyagi with the assistance of SI Nirakar, SI Charan Singh and SI Mahender Singh. All these four officers acted in advancement of their self-interest in total disregard to the demands of their solemn duty. These four police officers whose duty was to protect and safeguard the citizens turned into persecutors and tormentors. In the opinion of the court, innocent accused were framed in a false criminal case. Accordingly, the Trial Court directed the Commissioner of Police to initiate appropriate inquiry against the four police officers and the SHO police station Kapasahera was directed to register FIR against them u/s 167, IPC. Copy of the judgment was ordered to be sent to the concerned Magistrate P.S. Kapasahera with directions to treat the same as a complaint against them for committing offences punishable under Sections 166, 193 and 195 IPC and to proceed with the same as per law. Aggrieved by the said observations/directions the petitioners have preferred the present writ proceedings. Their contentions are indicated below.

10. It is argued that the Trial Court did not believe the prosecution case on various grounds enumerated in the impugned judgment and concluded that the encounter was a fake one and all the accused were falsely implicated for ulterior motive in this case.

11. The Trial Court was within its jurisdiction to appreciate the evidence on record to ascertain if it was sufficient to prove the charges against the accused. The Trial Court found the evidence highly deficient and acquitted all the accused in the case. The State has preferred Criminal Leave Petition No. 234/2011 against the acquittal of the accused and it is pending before this Court.

12. The petitioners appeared as prosecution witnesses during trial and deposed on oath. In their absence and without issuing any show cause notice whatsoever, the Trial Court, while appreciating the prosecution evidence, held that a fake encounter was managed by these four police officers to falsely implicate the accused.

LEGAL ASPECT

13. In the case of State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2011) 12 SCC 689 the Supreme Court observed as under:

13. The cardinal principle of the administration of justice requires for proper

freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalizations defeat the very purpose for which they are made. Thus, it is relevant to consider:

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

14. This view has been persistently approved and followed by this Court as is evident from the judgments in Jage Ram, Inspector of Police and Another Vs. Hans Raj Midha, ; R.K. Lakshmanan Vs. A.K. Srinivasan and Another, ; Niranjan Patnaik Vs. Sashibhusan Kar and Another, Major General I.P.S. Dewan Vs. Union of India (UOI) and Others, Dr. Dilip Kumar Deka and Another Vs. State of Assam and Another, and State of Maharashtra v. Public Concern for Governance Trust & Ors., AIR 2007 SC 777.

15. Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.

14. In the case of The State of West Bengal and Others Vs. Babu Chakraborty, the Supreme Court held:

In our view, the High Court was not justified and correct in passing observations/strictures against appellants 2 & 3 without affording an opportunity of being heard, and it is in violation of catena of pronouncements of this Court that harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case. Likewise, the directions issued by the High Court to the trial Court to lodge a complaint to the Magistrate having jurisdiction for prosecuting appellants 2 and 3 for having committed an offence u/s 58 of the Act read with Section 166 and 167 of the Indian Penal Code is not warranted. The observations made by the High Court are liable to be expunged and accordingly, we expunge the same including the direction to lodge a complaint against appellants 2 & 3.

As rightly pointed out by Mr. Tapas Ray, the observations of the High Court in the

impugned judgment passing strictures against the appellants have been made while against the record of the case and penalize the two police officers who were discharging their official duties as per the law. The action taken by appellants 2 & 3 have been taken in the case of discharging of their official duties while discharging their duties, the official would have violated certain provisions. That does not, in our opinion, enables the Court to pass strictures against the officials and ordered compensation. There is no evidence or circumstance to show that there was any malafides on the part of these officers.

Likewise, the direction issued by the High Court directing the State of West Bengal to pay compensation of Rs. 1 lakh to the respondent/accused giving liberty to the State to realize or to recover the whole of such compensation from appellant No. 2, Mr. K.L. Meena, a member of the Indian Police Service, is wholly unjustified.

In our view, officers who are discharging their statutory duties cannot be blamed when the action taken by the State Government and the officials concerned are for implementing the objects behind the Act by resorting the check and to direct the raids etc. The High Court has further penalized the State Government and its officers for such an action. Since the strictures passed against them are wholly unjustified, we have no hesitation in expunging the remarks.

15. In the case of State of Maharashtra v. Public Concern for Governance Trust & Ors. AIR 2007 SC 777 the Supreme Court discussed the law on the subject as under:

23. We shall now analyze and consider the rulings of this Court cited by learned Solicitor General.

1. Dr. Dilip Kumar Deka and Another Vs. State of Assam and Another,

The above judgment relates to expunging adverse remarks. The above was a case of adverse remarks recorded by the High Court against the members of hospital allegedly for misleading the court and stalling process of the court by submitting manipulated report regarding condition of a person to justify his shifting from police remand to the hospital. The High Court made adverse remarks without giving any opportunity to the members of extending or defending themselves, without any evidence showing that their conduct justified such remarks and without any necessity of such remarks for the purpose of deciding the matter. This Court held on facts that adverse remarks were unwarranted and hence expunged. This Court also cautioned superior courts to use temperate and moderate language and also held that opportunity to be given to the affected party before recording of adverse remarks by the Court. This Court also held thus:

6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a Court of law in cases to be decided by it were succinctly

laid down by this Court in *The State of Uttar Pradesh Vs. Mohammad Naim*, . Those tests are:

- (a) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
- (b) Whether there is evidence on record bearing on that conduct justifying the remarks; and
- (c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in *Jage Ram, Inspector of Police and Another Vs. Hans Raj Midha, R.K. Lakshmanan Vs. A.K. Srinivasan and Another*, and *Niranjan Patnaik Vs. Sashibhusan Kar and Another*,

7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice.

8. Judged in the context of the first test laid down in *Mohd. Naim's case* (supra) the above discussion of ours is sufficient to quash the impugned remarks, but we find that the remarks are vulnerable also to the second test laid down therein. On perusal of the order dismissing the revision petition we find that the remarks of the learned Judge are based solely upon the fact that the report of the medical Board consisting of four medical experts belied their report. Indeed, except the report of the Board we have also not found any other material on record from which the learned Judge could have legitimately and justifiably obtained satisfaction to pass the above remarks against the two appellants before us. We hasten to add that in making the above observation we have left out of our consideration the materials which prompted the learned Judge to make adverse comments against the IO."

2. *Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India (UOI) and Others*,

In the above case, Dr. AR. Lakshmanan, J. concurring with the opinion expressed by Hon. K.G. Balakrishnan, J. has observed that public interest litigation is meant for the benefit of the lost and the lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court and that PILs are not meant to advance the political gain and also to settle personal scores under the guise of PIL and to fight a legal battle. In para 57, it has been observed as follows:-

57. Certain allegations have been made against CBDT and the Public Prosecutors, Members of the income tax Tribunal, etc. None of them were made parties before us. Therefore, the allegations made against them are one-sided and cannot be looked into at all. We cannot also say that all these authorities have acted in a mala fide manner."

3. Dr. J.N. Banavalikar vs. Municipal Corporation of Delhi & Anr., 1995 Suppl. (4) SCC 89

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4. S. Pratap Singh Vs. The State of Punjab,

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A. A.K.K. Nambiar Vs. Union of India (UOI) and Another, This Court in paras 8 & 9 held thus:

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24. In the instant case, allegations have been made against the then Chief Minister, however, he was not made party before the Court. Therefore, the allegations made against him are one-sided and do not merit any consideration.

25. We are surprised to find that inspite of catena of decisions of this Court, the High Court did not, give an opportunity to the affected party, the then Chief Minister, before making remarks. It cannot be gainsaid that the nature of remarks made in this judgment will cast a serious aspersion on the Chief Minister affecting his reputation, career etc. Condemnation of the then Chief Minister without affording opportunity of being heard was a complete negation of the basic principles of natural justice.

16. In para 36 and 37 of the said judgment the Supreme Court observed :

36. It is thus amply clear that one is entitled to have and preserve ones reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review.

37. For the aforesaid reasons, we hold that the observations/strictures and remarks made by the High Court against the appellant behind his back is totally uncalled for and not warranted. We, therefore, have no hesitation to order expunction of the remarks made in para Nos. 38,139, 140 and 141 of the impugned judgment. The civil appeal is allowed only to the above extent. We order no costs.

17. In the case of State of West Bengal v. Mir Mohammad Omar & Ors (2000) 8

SCC 234 the Supreme Court directed the courts to ordinarily desist from castigating the investigation while ordering acquittal. It observed as under:

41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above.

FACTUAL ASPECT

18. In the present case the petitioners were not given any opportunity of being heard before some serious adverse remarks were made against their conduct. It is relevant to note that the accused themselves did not initiate any proceedings or lodge any complaint against the petitioners for their false implication in the case before any authority. It is improbable that the investigating team consisting of more than 15 police officers of different ranks from different police stations would conspire against the accused residing at different places to falsely implicate them in this case. The charge-sheet reveals that pursuant to the disclosure statements made by the accused the police discovered "facts" which were hitherto unknown to it. Only from their disclosure statements, the police came to know about their stay at Hotel Baba Continental, Saraswati Marg, Karol Bagh, Delhi. The police not seized the relevant documents regarding the stay of the accused at the hotel and also produced PW-2 (Ajay Tomar), owner of the hotel, who testified regarding visit and stay of Gulam Moinuddin Dar in room No. 302 on 04.04.2005; that he again came on 15.04.2005 and stayed in room No. 204 along with three other persons namely Nazir, Masood and Zahid. On 02.07.2005 the police officer again brought all the four persons to the hotel. He (PW-2) identified only accused Gulam Moinuddin Dar by putting his hand on him. He also identified accused Abdul Majid Bhat as Nazir Ahmed Sofi and further stated that he could not identify the other two persons on account of lapse of

time. He proved the relevant pages of the register Ex.PW2/A, Ex/PW2/B and Ex.PW2/C. The accused did not clarify the purpose of their visit to Delhi and their stay at the said hotel. The police during investigation also examined an independent public witness PW-1 (Gurcharan Singh) from whom the accused Gulam Moinuddin Dar had purchased Army Combat Uniform for either Rs. 600/- or Rs. 650/-. While appearing as a witness, PW-1 identified the accused who had purchased the uniform from him. The Trial Court, however, dubbed him a stock witness and discarded his evidence in toto.

19. The investigation in this case was not confined only to the incident which occurred on the night intervening 1/2.07.2005. Three other accused with fake currency notes were arrested from distant places. How and under what circumstances the petitioners came to know about the involvement of other three accused persons living outside Delhi and their nexus with the co-accused earlier in this case has not been discussed. The Trial Court also did not render any finding how and from where substantial amounts of money happened to be deposited in the bank accounts of Saqib Rehman and Mahmood-ur-Rehman (Saqib Rehman's father). The Trial Court seems to have disbelieved the prosecution case in entirety when it found discrepancies in the statements of witnesses on some facts. While this court would not embark on an appellate review of the findings, at the same time, the production of materials and evidence crucial in support of the prosecution case and arrest of co-accused are circumstances which ought to have been considered by the Trial Court while rendering a blanket finding, that the petitioners ought to be proceeded against criminally.

20. There is no principle or rule of law that a statement made in the court by a police personnel has to be necessarily disbelieved. It may or may not be believed. No court can assume that every statement of police man is necessarily false. *C. Ronald and Another Vs. State, U.T. of Andaman and Nicobar Islands*, There was no material before the Trial Court to conclude that in all probability the petitioners conspired to falsely implicate the accused in a false encounter.

21. Considering the legal and factual aspects, we are of the opinion that the observations and directions contained in the impugned judgment are not warranted. The petitioners cannot be punished before they are found guilty. Their individual role in the investigation requires to be inquired into by affording them reasonable opportunity of being heard. Prosecution should not be ordered because there is some inaccuracy in the statements which may be innocent or immaterial. There must be a prima facie case of deliberate falsehood on a matter of substance or resort to fabricating false evidence or creation of false clues with a view to secure conviction.

22. In the light of the above discussion, the directions contained in the impugned judgment require modification. The Commissioner of Police is directed to inquire into the role and conduct of the petitioners in the investigation of the case and take appropriate action in accordance with the Statute/Rules applicable to the

petitioners, after affording them a reasonable opportunity of hearing. The petitions and all pending applications stand disposed of, in the above terms.