
(2006) 12 AHC CK 0004
In the Allahabad High Court
Case No : Criminal M. W.P. No. 14722 of 2006

R.S. Pandey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 3, 4
Penal Code, 1860 (IPC) — Section 302
Prevention of Terrorism Act, 2002 — Section 3, 4

Citation : (2007) 1 ACR 490

Hon'ble Judges : R.C. Deepak, J;G.P. Srivastava, J

Bench : Division Bench

Advocate : V.P. Srivastava and Lav Srivastava, for the Appellant; Vijay Bahadur Singh, G.S. Hajela, Amarjeet Singh, Lal Vijay Singh, Vidhu Bhushan Singh and Vijay Shanker Misra and A.G.A., for the Respondent

Judgement

R.C. Deepak, J.—The reliefs sought in the present criminal misc. writ petition are to direct the C.B.I., or any other independent agency unaffiliated in any manner to the Government of Uttar Pradesh or appointing any Commission/ Committee to look into the inquiry regarding the alleged "Kunda Kaand" pursuant to letters dated 19.7.2003 and 23.7.2003, issued by the Respondents No. 4 and 6, that to quash the said letters or to grant any other relief, as this Court deems fit and proper in the circumstances of the case.

2. The brief facts emerging from the record are that in the year 2002 the Government of Uttar Pradesh was led under the Chief Ministership of Miss Mayawati. The Petitioner was appointed as Deputy Superintendent of Police in the year 2000. On 9.11.2002, he was posted as Circle Officer, Kunda, district Pratapgarh. Sri Raghuraj Pratap Singh alias Raja Bhaiya alias Toofan Singh son of Sri Udai Pratap Singh and his father Sri Udai Pratap Singh resident of Bainti, Police Station Hathgaon, district Pratapgarh and Sri Akshay Pratap Singh alias Gopal Ji son of Sri Lal Shiv Pratap Singh resident of Jamon, Police Station Jamon, district Sultanpur have criminal backgrounds, as there is a history sheet No.

163A of Raghuraj Pratap Singh alias Raja Bhaiya having 37 criminal cases including the cases of murders, etc. Sri Uday Pratap Singh's history sheet No. 18A having 50 criminal cases including 302, I.P.C. and other cases of heinous nature. Similarly Akshay Pratap Singh alias Gopal Ji suffers from history of 32 criminal cases punishable for life imprisonment and death. The relevant documents in this regard are appended as Annexures-1 and 4 to the writ petition. As a consequence, on 25.1.2003 the Petitioner raided the house of Raghuraj Pratap Singh alias Raja Bhaiya (Respondent No. 8) and his father and recovered AK-47 rifles alongwith other lethal weapons having the capacity of mass destruction, massacre and violence and in this regard a case as Case Crime No. 10 of 2003 u/s 3/4, P.O.T.A. Act was registered at Police Station Kunda, district Pratapgarh against them and they were sent to jail, but the Government of Uttar Pradesh headed by Miss Mayawati ended on 27.8.2003 and Sri Mulayam Singh Yadav was sworn as Chief Minister for the Government of Uttar Pradesh on 29.8.2003. The misfortune of the Petitioner started at the fall of Miss Mayawati's Government and a case as Case Crime No. 227 of 2003 u/s 3/4 Immoral Trafficking Prevention Act, 1956, was registered against the Petitioner and his family members on 28.11.2003. The Petitioner and the co-accused approached this Court by way of Criminal Misc. Writ Petitions No. 7736 of 2004, 7737 of 2004, 6872 of 2004, 6873 of 2004 and 7926 of 2004 and interim relief was granted to them. The matter was investigated and the allegations were found false and the investigating agency submitted the final report. Consequently, the petitions were dismissed as being infructuous. The present Government withdrew the P.O.T.A. case from Sri Raghuraj Pratap Singh alias Raja Bhaiya and others on 29.8.2006 and Sri Raghuraj Pratap Singh alias Raja Bhaiya was sworn as Cabinet Minister in the present Government in July, 2004. Sri S. K. Shukla and others filed Writ Petitions (Criminal) Nos. 132 and 134 of 2003 against the order of withdrawal of P.O.T.A. case in the Hon'ble Apex Court. The Hon'ble Apex Court was pleased to set aside the order of withdrawal of the case and considering the gravity of the offence and for fair and independent trial of the P.O.T.A. case, transferred the case in the State of Madhya Pradesh. The bail of Sri Raghuraj Pratap Singh alias Raja Bhaiya was rejected by the P.O.T.A. Court, but subsequently he was released on bail.

3. The record further discloses that Paramhans Mishra was posted as S.H.O., Kunda, Pratapgarh. He lodged/registered a case as Case Crime No. 10 of 2003 u/s 3/4, P.O.T.A. Act against, Sri Raghuraj Pratap Singh alias Raja Bhaiya, his father Uday Pratap Singh and others. The Petitioner and Paramhans Mishra were the prime witnesses of prosecution in the P.O.T.A. case. The P.O.T.A. case was pending against them in the P.O.T.A. Court in the State of Madhya Pradesh. It is alleged that Akhilesh Mehrotra, the then D.I.G., Allahabad Range visited the house of Petitioner and Paramhans Mishra and threatened them to face dire consequences if they deposed against the said accused in the P.O.T.A. case, as a consequence, the Petitioner and Paramhans Mishra made a complaint dated 25.3.2006 to the A.D.G.P., Uttar Pradesh and D.G.P., Lucknow, respectively, but

inspite of threatening, so given, they stood the witnesses in the case wherein Uday Pratap Singh was convicted and Sri Raghuraj Pratap Singh alias Raja Bhaiya and Sri Akshay Pratap Singh alias Gopal Ji were acquitted. The copy of the judgment in P.O.T.A. case is appended as Annexure-1 to the supplementary-affidavit. The appeal was filed against the order of acquittal. The same was admitted and it is pending in the Court concerned.

4. The records further indicate that certain complaints in regard to act, conduct and activities of the Petitioner and abovenamed Paramhans Mishra were made allegedly under the motivation of the accused in P.O.T.A. case specially Sri Raghuraj Pratap Singh alias Raja Bhaiya and these are to be enquired under the caption of "Kunda Kaand" and in this regard letters dated 19.7.2003 (Annexure-17) and 23.7.2003 (Annexure-12) have been issued against the Petitioner by the Superintendent of Police, C.B. C.I.D., U.P. (Respondent No. 6) and D.G.P., U.P., Vigilance (Establishment), Lucknow (Respondent No. 4). It is alleged that the Petitioner and Paramhans Mishra had an apprehension that no fair, proper and independent inquiry would be made to these letters/allegations, as a consequence they filed Writ Petition (Criminal) No. 189 of 2004 in the Hon"ble Apex Court for redressal of their grievance and the Hon"ble Apex Court was pleased to stay the further proceedings pursuant to these letters on 17.8.2004 (Annexure-18) and the stay order was extended till further orders on 27.8.2004 and on 1.12.2006, this petition was disposed of, as it was being withdrawn and the liberty to file the same before this Court. The copy of the order dated 1.12.2004 is appended as Annexure-20 to the writ petition. Hence, the present writ petition.

5. We have heard Sri V. P. Srivastava, learned senior advocate with the assistance of Sri Lav Srivastava, learned Counsel for the Petitioner, Sri Vidhu Bhushan Singh, learned Additional Advocate General with Sri Vijay Shanker Misra, Government Advocate, Sri Lal Vijay Singh and Sri Amarjeet Singh, learned A.G. As. for the State and Sri Vijay Bahadur Singh, learned senior advocate for Respondent No. 8, learned Counsel for the Union of India, Sri G. S. Hajela, learned Counsel appearing on behalf of C.B.I., and perused the record.

6. Learned Counsel for the Petitioner has confined his argument to the solitary prayer that the matter in dispute requires to be enquired by the C.B.I., as the C.B. C.I.D. and Vigilance Department are directly under the Control of Government of Uttar Pradesh wherein Sri Raghuraj Pratap Singh alias Raja Bhaiya is a Cabinet Minister on whose motivation the proceedings against the Petitioner have been initiated and he must influence the inquiry. Therefore, there would be no fair and proper investigation therein.

7. Learned Additional Advocate General submits that he is not against the prayer that the inquiry be not entrusted to C.B.I., but he raised a preliminary objection that the present writ petition is not maintainable.

8. Sri Vijay Bahadur Singh, learned senior advocate appearing on behalf of

Respondent No. 8 Sri Raghuraj Pratap Singh alias Raja Bhaiya also raised objection in regard to the maintainability of the writ petition and he objected that the C.B. C.I.D. and Vigilance Departments are competent to make fair and proper inquiry into the matter, therefore, there is no need to transfer the inquiry to C.B.I., or any other agency.

9. We have given our thoughtful consideration to the arguments of the learned Counsel for the parties and we are of the view that since the Writ Petition No. 189 of 2004 referred to above regarding the same subject-matter was maintainable before the Hon"ble Apex Court, the same is also maintainable before this Court, therefore, the objections raised by the learned Counsel for the opposite parties in this regard are not tenable and the same are rejected. Since the learned Counsel for the State has not objected that the inquiry may not be entrusted to C.B.I., and we are also of the view that for fair, proper, independent and impartial inquiry, the matter be entrusted to some independent agency away from the control of the present State Government.

10. In view of the facts discussed above and giving due consideration to the allegations made against the present Government of Uttar Pradesh in regard to the impartial inquiry in the matter under inquiry, we find it a fit case to be enquired into thoroughly by the C.B.I. The C.B.I., is hereby directed to hold an in-depth inquiry in pursuance of the letters dated 19.7.2004 (Annexure-17 to the writ petition) and 23.7.2004 (Annexure-12 to the writ petition) and submit its report to this Court within a period of five months from the date the copy of this order is received by it.

11. List this case before us after the expiry of the period indicated above.

G. P. Srivastava, J.

I agree.