(2011) 08 P&H CK 0186

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 21058 of 2010

Samdeep Mohan Varghese — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 160
Information Technology Act, 2000 — Section 65, 66A, 66C, 66D, 66E
Penal Code, 1860 (IPC) — Section 120B, 408, 419, 420, 467

Citation : (2011) 08 P&H CK 0186

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The Petitioner, who is a Non-Resident Indian staying away in the distant shores of Singapore, seeks for direction that a case registered against him in FIR No. 30 dated 05.02.2010 for alleged offences under Sections 65, 66A, 66C, 66D, 66E of Information Technology Act and Sections 419, 420, 408, 467, 468, 469, 471 and 120-B IPC of the Indian Penal Code at Police Station, Rajpura City, District Patiala (Annexure P-7), is handed over to the Central Bureau of Investigation at Delhi through its Director, who is arrayed as 6th Respondent.

2. The facts leading to the complaint against him have come about under the circumstances, which according to the Petitioner, was in retaliation to the Petitioner''s several complaints lodged against Respondents No. 4, 10 and 11, who were Directors of a company at Delhi M/s Jay Polychem Limited. The Petitioner was himself an employee in the said company having occupied an executive post after resigning from Reliance Industries where he was alleged to have worked for 13? years. He had been sent to Houston, Texas (U.S.A.) on official assignment and later shifted to Singapore. While at Singapore, the Petitioner claimed that he had come to know of several alleged illegal activities being committed by the Managing Director of M/s Jay Polychem Ltd. including "money-laundering, large scale duping of Banks and counterparties and rating

institutions and circular trading of diamonds" (sic). The Petitioner''s allegation was that when he had resigned from service on 18.09.2009 and made a claim on 01.10.2009 for payment of the outstanding dues to him for the services rendered by him, the Respondent refused to acknowledge the Petitioner''s claim favourably. The Petitioner, therefore, issued a notice again on 09.11.2009 making a grave imputation of illegal activities of the 4th Respondent, which the Petitioner claimed ruffled the feathers of Respondent No. 4 and to settle scores with him, various frivolous litigations/complaints were filed against the Petitioner and his family members.

3. The differences that started with Petitioner''s unsettled claim for wages snowballed, with both parties trading charges one against the other. The Petitioner escalated his charges against the Respondent Nos. 4, 10 and 11 by giving complaints to the Department of Revenue Intelligence, Government of India, Directorate of Enforcement, Central Bureau of Investigation and Commercial Affairs Department, Singapore and these complaints appear to have made them furious. They retaliated by filing a complaint in FIR No. 30 dated 05.02.2010. This complaint was purported to be on the basis of a statement by one Sh. Baldev Singh before the Deputy Inspector General of Police, who is arrayed as 7th Respondent. The Petitioner would charge that the complicity of the 7th Respondent with the Respondents No. 4, 10 and 11 could be seen from the fact that the normal procedure of lodging a complaint was before the Station House Officer in charge of the Police Station within whose jurisdiction the offence was committed but he had directly resorted to a complaint to Deputy Inspector General of Police, who forwarded it to the District Attorney, Prosecution, Patiala. He had given an opinion that offences under Information Technology Act had been made out. Since the offences made in the opinion of the District Attorney, were all bailable, just only to harass the Petitioner, additional Sections of 419 and 420 IPC were added to make the offences non bailable. The Petitioner complains that the 7th Respondent himself has very close links with Respondent Nos. 10 and 11, which fact, according to the Petitioner, should be discerned from the fact that at every level, the 7th Respondent took keen interest in the whole investigation although it was not his duty. The 9th Respondent, who was the Investigating Officer on various occasions was alleged to have threatened the family members of the Petitioner and as the sham of investigation proceeded, several other Sections were also included namely 408, 467, 468, 469, 471 and 120-B IPC. Not merely the Petitioner but the whole close members of the Petitioner''s family namely his mother, sister and brother-in-law, were sought to be brought within the net of investigation.

4. The facts as detailed in the complaint are to the effect that the Petitioner along with one Amardeep Singh, Preeti, Charanjit Singh, Rahul, his sister and brother-in-law have hosted a website by the name www.jaypolychem.org and various emails were sent to customers, supplier, trade-counter parties, Banks and other institutions to malign the image of Respondent No. 4 and its Directors. The FIR was registered on 05.02.2010 for the alleged creation of website for

dissemination of defamatory materials against the Respondent Nos. 4, 10 and 11. Amardeep, who was employee of the 4th Respondent was immediately taken into custody by the police and when he was not prepared to give any statement against the Petitioner, according to the Petitioner, he was tortured to give statement against him. Yet another person Rahul Singh had also been taken into custody from Bombay by the Punjab Police and when he also refused to give favourable statement, he was alleged to have been tortured by the police. The 4th Respondent is also reported to have filed a Civil Suit in CS No. 2223 of 2009 before the Delhi High Court claiming damages and seeking for a pre-publication restraint against him from causing any defamatory material to be distributed in any form.

5. The Petitioner refers to yet another incident of a notice said to have been received from the Officer Incharge, Economic Officence Wing, District Jalandhar u/s 160 Code of Criminal Procedure claiming that a complaint had been made with them by Amardeep Singh that the Petitioner had created a fake and false website. The Petitioner would point out that even as per the records relied on by the Investigating Agencies, the website was created only in November, 2009 and it was inconceivable as to how there could have been a complaint of creation of fake website even in April, 2009. A large posse of policemen appears to have descended from Jalandhar at Kerala at the residence of the Petitioner''s mother on the pretext of delivering a notice on 04.12.2009 and had given out threats her that if Petitioner did not retract from the complaints, she would be seriously harmed. The Petitioner''s sister is a Pediatrician in a hospital at Ernakulam and brother-in-law is an Anaesthetist and they have absolutely no connection with the Petitioner in any of his professional activity except that they have merely a working knowledge of computers that is relevant to their respective fields. However, they were also harassed as though they had in their custody some incriminating documents against the Petitioner. The Petitioner would point out to how the Respondents 4, 10 and 11 are wreaking vengeance against him in various ways:

(i) The parental house of the Petitioner was raided and Petitioner''s mother, who was 78 years old was threatened by the police that unless she produced the Petitioner, her whole family would be liquidated.

(ii) Not only the police but also Senior Law Officers from Advocate General''s office had gone from Punjab to Kerala to assist the police to carry out the threats to the family and prosecute cases before the Courts at Kerala.

(iii) The officers of the Punjab Police had been accommodated at Taj Residency and posh hotels at the City of Kochi and bookings were done through the travel agent of the 4th Respondent Company namely M/s Nickair Inc. and the Petitioner gives details of the hotel vouchers in favour of the Investigating Officer, Respondent No. 8 Manmohan Sharma.

(iv) Gurmail Singh from the Economic Offences Wing, Jalandhar stayed at

Ernakulam in December, 2009 and stayed in Kochi for whole week at the company''s expense and during his stay, he had visited the residence of the Petitioner''s mother several times.

(v) Kasturi Lal of Punjab Police, Rajpura stayed at company''s expense at Mumbai to arrest Rahul, ransacked his house and physically assaulted the family members between 14 to 16 February, 2010.

(vi) The 8th Respondent visited Kochi on 21st and 22nd February, 2010 and on various dates in April, 2010 and during the stay in Kochi, he had broken into the house of Petitioner''s mother and planted false evidence against him.

(vii) On 21.02.2010, the 8th Respondent dragged the brother-in-law of the Petitioner, who was a reputed cardiologist-anaesthetist from his hospital in spite of the fact that he had obtained an interim bail from the Kerala High Court.

(viii) Yet another complaint has been lodged by the Superintendent of Police (Detective), SAS Nagar, Mohali on 13.08.2010 that some fake bank receipts were said to have been deposited to the 4th Respondent company making it appear as though some money had been embezzled by the Petitioner. If at all, the act of embezzlement could have taken place at Delhi where the company is situate and a registration of complaint at Mohali itself was evidence of the fact that as to how the Respondent No. 4 could manipulate to create evidence against the Petitioner within the State of Punjab.

(ix) The FIR registered at Punjab itself was an interestingly fabricated story of one of the officials of the company, who was on tour, opened a website at Rajpura, that seemed to suggest that the Petitioner had created a fake website to malign the 4th Respondent and other directors of the company.

(x) The complaint of alleged forgery and embezzlements was transferred to the District SAS Nagar, Mohali by the Inspector General of Police when the investigation carried out by the Superintendent of Police did not evoke any tangible material.

6. All these contentions of the Petitioner were to bring home the point that the Respondent Nos. 4, 10 and 11 are powerful and connected to the political big wigs of the State and through their influence, cases are sought to be brought within the State of Punjab and through the obliging police officials, the Petitioner, the members of his family and ex-colleagues in the company are being terrorized. There have been also criminal cases registered against some of the officials of the company, who were perceived to be intimately connected to the Petitioner, some at Bombay and the immediate members of the family at Kerala.

7. The active contest is entered by the Respondents No. 4, 10 and 11, who contend that the Petitioner, who is not prepared to join the investigation and stays away in a foreign country shall not be allowed the luxury of a transfer of investigation from the police machinery at Punjab to CBI. It is also contended by them that some of the employees of the 4th Respondent''s company have

travelled to Kerala that show that tickets had been purchased on the credit cards of the Petitioner, for which proof is also adduced. Pointing out to the fact that there is nothing unusual about counsel from the AG''s office to go to Kerala in a case where there were doubts of jurisdiction expressed by the High Court, the counsel for the 4th Respondent would also contend the Petitioner had actually filed a petition for anticipatory bail before the Kerala High Court which was dismissed. There was already an interim order in a civil suit for injuction passed by the High Court at Delhi, being convinced of the prima facie case brought by the 4th Respondent that defamatory materials was being disseminated by the Petitioner and therefore, the Petitioner could not be heard to say that he was not in any way connected with the alleged defamatory material put through the website floated by him to malign the 4th Respondent company.

8. The issue whether the investigation must be transferred from the State police to CBI should be seen in the context of offences attributed and the nature of investigation that the case would entail. It can be noticed that we are not examining a situation of the Petitioner lodging a complaint against Respondents No. 4, 10 and 11 and a grievance that the complaint by him against the top bosses are being thwarted by political influence of the 4th Respondent. On the other hand, the contention is that since he had alerted the South Block at Delhi of serious financial irregularities and money-laundering of the 4th Respondent company, the Petitioner and his family members were being hounded by the Respondent-police after registering a FIR at Rajpura. If the complaint lacks materials and it is being prosecuted out of vendetta that the company top bosses have against an ex-employee, who had worked under them, normally, the Petitioner ought to have his reliefs within the four corners of the Code of Criminal Procedure itself, such as seeking for quashing of the complaint or if the investigation had resulted in a report to the Magistrate and a charge-sheet had been framed, to apply for a discharge. Again for any harassment alleged to have been met by the Petitioner''s family members, there could be appropriate remedy for wrongful complaints against the persons responsible for damages. The result would be that an intervention through a writ petition would become necessary.

9. However, if the various episodes taking place at Delhi, Rajpura, Mohali, Bombay and Kerala were to be seen as episodes in a series that springs from a seemingly innocuous complaint lodged in a FIR for bailable offences, then it is clear that there is an attempt to terrorize a person, who has upped his ante against his employer, for whatever reasons. It all starts with an employee walking out of service and making a demand for arrears of salary and some accrued benefits, which he claims as legitimately due to him. Not till the Petitioner resigns from the job, do we find any complaint registered against him. A sure posturing to over-kill could be noticed and attempts to ransack homes in distant Kerala and involving the brother in law to attempt to apprehend him as though he is a criminal on the run had done little to improve the image of the Punjab police.

10. With all this background, would the case require to be transferred to the CBI? The Hon''ble Supreme Court has cautioned through several decisions that a transfer of investigation to CBI will not be done as a matter of course unless the matter is very serious, having national or international ramifications, or affects large scale public interest, and to raise the confidence in the investigation. In State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, ,a Constitution Bench of the Hon''ble Supreme Court was dealing with the power of a Court to order CBI investigation without a concurrence of the State and by holding such a power existed to investigate a cognizable offence the Hon''ble Supreme Court cautioned that while passing an order under Article 32 or 226 of the Constitution "the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plentitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because as party has leveled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

11. I am convinced that it is not a situation where CBI must be called to look into the allegations. I have not gone as far as to say that the matters referred to in the complaint are earth shaking details that would require an investigation of the premier agency in India. On the other hand, it just points out that even a seemingly innocuous complaint of an employee of a company against co-employee or ex-employee could snowball to higher proportions where the other members of the family could also be harassed. Strange are the ways of the police. A complaint of bailable offences escalates to investigation at Delhi, later to Bombay and still later to Kerala. Serious complaints of money laundering and shady dealings in diamonds with high connections gather dust in dark corners of investigation agencies. Maybe, there is no truth in the complaints but one would expect that a modicum of effort to be undertaken to investigate and if there exists no truth, punish the complainant tellingly in accordance with law. Learned Counsel for the Petitioner states that he has genuine apprehension that if he comes to join the investigation, immediately he will be liquidated but he is prepared to come if there is an assurance of his safety to any other State. A Petitioner cannot give such pre-condition to join an investigation but if protection is necessary, they can best be assured by the fact that the case is still under the

scanner of the High Court and anything going amiss, the Petitioner will still be entitled to approach this Court and point out to the dangers, which he faces at the hands of the police. Having regard to the manner in which the investigation has gone and how it is brought to the State of Punjab for an act of an employee operating from Singapore against a company at Delhi, I am of the view that the investigation must be transferred to the Crime Branch of the Punjab Police, Chandigarh. It shall also see if the jurisdiction is properly invoked in Punjab and if necessary, they may themselves transfer the investigation to the seat of alleged commission of offences. These observations are not meant to be taken as any form of appraisal of the merits of the complaint brought through the FIR.

12. The writ petition is disposed of with the above direction by declining prayer for transfer of investigation to CBI as sought for by the Petitioner but transferring to the Crime Branch of Punjab Police at Chandigarh.

