
(2004) 12 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 16973-M of 1997

Sanjay Dalmia

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 13-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319

Citation : (2004) 14 CriminalCC 153 : (2005) 2 RCR(Criminal) 217

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : R.S. Cheema, Assisted by Mr. Rohit Khanna, for the Appellant; Rajan Gupta, Standing Counsel, for the C.B.I., Mr. Ashwani Talwar, for the Respondent

Final Decision : Allowed

Judgement

Amar Dutt, J.—Petitioner-Sanjay Dalmia is aggrieved by an order passed by the Special Judicial Magistrate, 1st Class, Ambala, u/s 319 of the Code of Criminal Procedure summoning him to stand his trial along with eight other accused challaned by the Central Bureau of Investigation under Sections 167, 193, 211, 420, 465 and 471 read with Section 120-B IPC.

2. The facts leading to the filing of the challan are not in dispute. Admittedly, on 30th July, 1994, a report is stated to have been lodged by one Sarvjeet Chauhan, resident of House No.1273, Pocket-B, Hari Nagar, Delhi-110064, at Police Station Sahibabad against one Uma Shankar Sitani. On the basis of the said report, Criminal Case bearing FIR No.656 of 1994, under Sections 504/506 IPC was registered in the aforesaid police station. No step was, however, taken in relation to the investigation of the said matter till September 12, 1994, on which date the Investigating Officer Shri R.K.Singh, Sub-Inspector of Police, allegedly recorded the statement of the complainant and thereafter on 16th September, 1994, non-bailable warrant was issued for the arrest of Uma Shankar Sitani by the Chief Judicial Magistrate, Ghaziabad (UP). A police party raided the house of Uma Shankar Sitani i.e.No. 115-A, Sainik Farm, Delhi on October 5, 1994 to

arrest Aim. He was not found present at home and on coming to know of this raid, the aforesaid Uma Shankar Sitani filed Criminal Writ Petition No.325 of 1994 before the Apex Court. According to him, the non-bailable warrant was obtained by the police authority of District Ghaziabad in Uttar Pradesh for arrest of the petitioner on account of business rivalry.

3. The Apex Court doubted the existence of complainant Sarvjeet Chauhan and vide order dated 5.1.1995 directed the Commissioner of Police, Delhi to inform the Court after getting the matter verified as to (a) whether there is House No. 1273 in existence in Pocket-B, Hari Nagar, New Delhi (b) whether Sarvjeet Chauhan resides there, and (c) to produce the aforesaid person in Court.

4. In pursuance of the aforesaid direction, Shri Alok Verma, Deputy Commissioner of Police, South District, Delhi, filed an affidavit stating (a) that no such address was in existence and (b) that Sarvjeet Chauhan cannot be said to be residing at the aforesaid address. On the basis of this report, the Apex Court came to a conclusion which would indicate that the report which is said to have been lodged at Police Station, Sahibabad, on the basis of which, Criminal Case No.656/96 has been registered at the said Police Station against the petitioner is by a non-available person and is a false one. Before the Apex Court, Uma Shankar Satani had also relied upon a report of J.P.Muna, Inspector of Police, P.P.Sainik Farm, Police Station Ambedkar Nagar, Delhi in the Daily Diary dated 5th October, 1994 wherein it was recorded that on enquiry, he has come to know that Sanjay Dalmia has filed a complaint in the Chief Judicial Magistrate's Court at Ghaziabad.

5. Faced with this situation, their Lordships of the Supreme Court, passed the following order:-

We, therefore, consider it appropriate to direct the Director of Central Bureau of Investigation to nominate a Senior Officer to investigate into the circumstances under which the criminal case No.656/94 was registered under Sections 504/506 IPC at Police Station Sahibabad and the person or persons responsible for having the said case registered against the petitioner in order to have him arrested in connection with the said case. The report of such investigation may be submitted to this Court by April 30,1995. Case Diary of Criminal Case No.656/94 is with the Registry of this Court. It will be open to the officer conducting the investigation to inspect the said Case Diary as well as the other record. The Registrar (Judicial) shall permit him such investigation and he may also be allowed to take zerox copy of papers from the case Diary and the record. A copy of this order may be sent to the Director, Central Bureau of Investigation.

6. In pursuance of this order, the Central Bureau of Investigation, investigated the matter and submitted the report. On the basis of the said report, the Apex Court passed the following order:-

In pursuance of the directions given by this Hon"ble Court in the order dated March 7, 1995, the Joint Director, CBI, New Delhi, by his letter dated 1st May,

1995, has sent a report of the investigation made by the officer nominated by the Director, CBI in respect of the matter specified in the order dated March 7, 1995. From the perusal of the said report, it appears that certain police personnel, Police Station, Sahibabad (UP) as well as at Police Station, NIT, Faridabad have registered and investigated false cases against the petitioner and that the complainant in both the cases were non-existent. The report also shows that there is strong suspicion that the complainant's allegation against Shri Sanjay Dalmia is not without basis. Having regard to the matters referred to in the report, we consider it appropriate that the CBI should register cases against the persons who have been prima facie found to be involved in registering those false cases after completing the investigation, take necessary steps in accordance with law for the prosecution of the persons found to be involved. The Directors General of Police of the State of UP as well as the State of Haryana, are directed to render full assistance to the Officers/officials of the Central Bureau of Investigation in discharge of their obligation.

7. The CBI completed the investigation and filed separate charge-sheets in relation to the Ghaziabad case as well as Faridabad case. The charge-sheet in relation to Faridabad case was filed before the Special Judicial Magistrate 1st Class, Ambala and it arrayed eight persons as accused namely: 1. Ishwar Singh son of Late Ch.Kanhiya Lal, resident of V.P.O. Atta, District Panipat; 2. Raghubir Singh son of Shri Sadhu Ram, resident of V.P.O.Bithwana, P.S.Sadar Rewari; 3. Raghubir Singh son of Shri Ram Chand, resident of Mehrela Basera, P.S.Jattari, District Aligarh (UP); 4. Raj Singh son of Shri Nyader Singh resident of village Matur, P.O. and P.S.Daurala, District Meerut (UP); 5. Bijander Singh son of Shri Ramji Lal, resident of V.P.O.Garh Khera, P.S.Chayasa, District Faridabad; 6. Asgar Hussain son of Shri Chander Khan, resident of V.P.O.Akeda, District Gurgaon; 7. Mam Chand son of Shri Ram Singh, resident of village Nangli Parashapur, P.O.Nangal, Shabhazpur, P.S.Bawal, District Rewari and 8. Rajinder Singh son of Shri Jag Ram resident of V. & P.O.Ghamast, District Rohtak and showed the petitioner in column No.2 of the challan. In the challan, Uma Shankar Sitani and his wife Smt.Leela Sitani were cited as witnesses. The Magistrate, after framing of the charges against the eight accused, recorded the statement of Uma Shankar Sitani. At this stage, an application was moved u/s 319 of the Code of Criminal Procedure, for summoning the petitioner as an accused.

8. After hearing the arguments, the Special Judicial Magistrate 1st Class, Ambala, passed the impugned order against which the petitioner has filed the present application u/s 482 Cr.P.C.

9. The short point, which has been urged by Shri R.S.Cheema, Sr.Advocate assisted by Shri Rohit Khanna, Advocate, appearing on behalf of the petitioner is that the statement of Shri Uma Shankar Sitani is to the following effect:-

On 5.10.1994 my wife had received a telephonic call from Shri Sanjay Dalmia at about 9 P.M. Sanjay Dalmia threatened my wife with dire consequences. He also informed my wife that the police was sent by him. Immediately my wife rushed

to the police station and lodged a report. After the receipt of the report of Commissioner of Police, Delhi, Hon''ble Supreme Court directed C.B.I, to investigate the case. CBI found that Sanjay Dalmia was involved in both the cases. CBI registered two cases, one pertaining to the case registered by the Haryana Police at Faridabad and the other by U.P.Police. Both the cases were registered, against him at the behest of Sanjay Dalmia. During investigation by the CBI when I was called, Ishwar Singh and Raj Singh accused had told me that the case was registered at the instance of Sanjay Dalmia and other higher officers. They also told me that U.P.Police had also visited them to seek guidance in registering a case against me.

To overlook the fact that there was nothing in the statement which would constitute primary evidence which implicated Sanjay Dalmia is basically an inference drawn by his wife SmtLeela Sitani about the telephonic talk which had taken place between her and the petitioner on 5.10.1994.

10. Learned counsel for the Central Bureau of Investigation has drawn my attention to the statement of SmtLeela Sitani recorded u/s 161 Cr.P.C. and states that in pursuance of the statement, the conclusion arrived at by the trial Court cannot be faulted with. He, however, had no answer to the legal proposition that the statement u/s 161 Cr.P.C, could not after the commencement of the trial be made the basis of a summoning order u/s 319 Cr.P.C. While there is no doubt that SmtLeela Sitani had made a statement before the police u/s 161 Cr.P.C. to the following effect:-

"It is worth mentioning that on the same day i.e. on 5.10.1994 at about 9.30 P.M. I received a telephonic call at my residence from Sh.Sanjay Dalmia, who threatened and said that he would not spare my husband. I immediately put the receiver of the telephone and went to Local Police post at Sainik Farm and lodged a complaint to this effect to Shri J.P.Meena, the then Incharge of the said Police Post and requested him for Police Protection for me and for my family members.

Lastly, I am to state that though Shri Sanjay Dalmia did not come forward to say anything to me or my husband face but I am sure that both the cases, one at P.S. NIT Faridabad in the year 1992 and another at P.S.Sahibabad (Ghaziabad) in the year 1994 were registered against my husband at the instance of Shri Sanjay Dalmia, MP, due to business rivalry."

Yet once the trial has commenced the stage at which her statement could be used to corroborate the allegations made by her husband implicating the petitioner would be only after she had appeared as a witness and stood by the averments contained in her statement u/s 161 Cr.P.C. The application u/s 319 Cr.P.C, in these circumstances, would, in my opinion, be pre-mature.

11. Consequently, the petition has to be accepted and a direction issued to the trial Court to proceed with the trial in accordance with law. Ordered accordingly.

12. However, it would be open to the prosecution to move an application u/s 319

Cr.P.C, which would be decided in accordance with law once the statement of Smt.Leela Sitani is recorded.