

(2008) 03 SC CK 0025

In the Supreme Court Of India

Case No : Criminal Appeal No. 545 of 2008 (Arising out of SLP (Criminal) No. 497 of 2006)

Sarvsheel Mago

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 211, 341, 342, 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 58
Penal Code, 1860 (IPC) — Section 120B, 211, 307, 341, 342

Citation : (2008) 2 ACR 2073 : (2008) 4 JT 73 : (2008) 4 SCALE 537 : (2008) 11 SCC 703

Hon'ble Judges : V. S. Sirpurkar, J; S. B. Sinha, J

Bench : Division Bench

Advocate : Subodh Markandeya, Chitra Markandaya and R. Agrawal, for the Appellant; Vikas Singh, A.A.G., B.S. Mor, Neeraj Mor, Mahinder Singh Dahiya, Rajni Ohri, B.K. Prasad, P. Parmeswaran, Kusum Singh, R.C. Kaushik, Rajeev Gaur "Naseem", Rajesh Ranjan and T.V. George, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—Leave granted.

2. Appellant herein has challenged the order passed by the High Court, whereby his petition u/s 482 Cr. P.C. was disposed of with certain directions. In his petition, the appellant had sought registration of criminal case against respondent nos. 4 to 6 for offences under Sections 341, 342, 211 I.P.C. and Section 58 of the Narcotic Drugs & Psychotropic Substances Act (hereinafter referred to as 'NDPS Act') read with Section 120B I.P.C in relation to the incident which took place on 7.8.2004. The High Court, however, refused to issue any direction regarding the registration of a criminal case on the ground that there was no material on record, from which it could prima facie be found that respondent No. 4 had stopped the vehicle and conducted the search with mala fide motive. The High Court viewed it as a part of the duty of respondent No. 4.

The High Court did not also find fault with the alleged role played by respondent nos. 5 and 6, however, left it open to the appellant to avail of his alternative remedy on the basis of allegation that respondent No. 5 and 6 were deliberately and intentionally implicating him by making false calls to the police.

3. The factual background of this is that out of respondent nos. 4, 5 and 6, the 4th respondent is a police officer working as Assistant Sub- Inspector, Police and posted at Model Town Police Station of Karnal and is presently posted at Ram Nagar, Karnal, while respondent nos. 5 and 6 are private individuals. Appellant has a daughter called Nidhi Mago and in the year 1999, her marriage alliance was being discussed with Parshant Arora, son of respondent No. 6 who was then out of India and was scheduled to come to India in the end of May, 1999.

4. According to the appellant, Nidhi Mago was kidnapped on 15.5.1999 from Chandigarh. This kidnapping was done at the instance of respondent No. 5 Sanjay Bhardwaj. She was allegedly made to go through the marriage ceremonies. However, on 26.5.1999, she was rescued from Golabanda, Orissa and on the next day, a crime was registered for offences under Sections 376, 363, 366, 468, 467, 471 and 120B I.P.C. vide F.I.R. No. 0087/1999 against respondent No. 5, his father and his friend. It is then contended that during the pendency of this FIR, Nidhi Mago was married to Parshant Arora, son of respondent No. 6 on 1.6.1999 and the marriage was registered. She started cohabiting with Parshant Arora at Karnal. After this, Parshant Arora went back to Canada from where he had come and Nidhi Mago was also sent back to her parents' house with the assurance that she will be sent to Canada as soon as her Visa is granted. It is, however, alleged that respondent No. 6 took her passport. In June, 1999, allegedly, there was a dispute among the appellant and respondent No. 6 on account of alleged dowry demand. It was on account of this that respondent nos. 5 and 6 colluded with each other and started blackmailing the appellant. In the month of July, 1999, respondent No. 6 as attorney of Parshant Arora filed a petition for annulment of marriage. On the same day, respondent No. 5 filed a petition for restitution of conjugal rights against Nidhi Mago. These petitions were still pending when respondent No. 5 filed a complaint against the appellant and his family members for offence u/s 307 I.P.C., which was registered as FIR No. 586/99 in Police Station, Sector-17, Chandigarh. A trial went on the basis of this allegation. So much so, respondent No. 5 had also filed a criminal case u/s 307 I.P.C. against the appellant and the family members at Nalagarh, Himachal Pradesh. The Sessions Judge, however, vide his order dated 12.10.2004 was pleased to acquit the appellant and family members of all the charges. In the year 2001, Nidhi Mago moved an application for maintenance pendente lite against the son of respondent No. 6 Parshant Arora, upon which respondent No. 6 withdrew petition that he had filed on behalf of his son. It was the petition under the Hindu Marriage Act. Thereafter, he filed a suit, which is still pending adjudication, while respondent No. 6 filed a SLP being SLP (C) No. 4708/2002 against the interim stay granted against respondent No. 6's son in the Civil Revision Petition No. 4321/2001. According to the appellant, the said

revision petition is still pending.

5. The appellant then alleged that respondent No. 6 had filed a private complaint for an offence u/s 420 I.P.C. against the appellant and his family members on some false grounds. However, the High Court vide order dated 30.1.2004 had stayed the proceedings of the same general complaint. On 21.5.2004, the appellant had come to the Court of Additional Sessions Judge Sh. J.S. Kalar, Chandigarh to attend the hearing of the said case, which was registered under F.I.R. No. 586/99. When he came out of the Court, the officials of the Crime Branch of Chandigarh Police surrounded him and his car and told the appellant that they had the telephonic information that the appellant was carrying a contraband of drugs in his car. The car was thoroughly checked and nothing incriminating was found and, therefore, the appellant and his car was released. On this, the appellant lodged a complaint against respondent No. 5 with the S.S.P., Chandigarh. However, the police did not take any action. Thereafter, appellant and his son were again apprehended by Panchkula Police, near their house on the same allegation that police had secret information about the appellant carrying narcotic drugs. Again the search was taken and nothing incriminating was found. The appellant was, however, released. The appellant again filed a complaint to take action against respondent No. 5 with S.S.P., Panchkula for which the F.I.R. was made. However, the police did not take any action. This complaint was made for falsely implicating the appellant.

6. On 7.8.2004 the appellant and his daughter and other family members had come to Delhi to attend the court where annulment petition filed by Nidhi Mago was pending. While coming back from Delhi to Karnal it was seen that respondents 5 and 6 were following the car and when they were about to reach Karnal, respondents 5 and 6 had gone ahead and the car was stopped at Liberty Chowk, Karnal at the instance of respondents 5 and 6 by respondent No. 4. Immediately thereafter respondents 5 and 6 left while the car was searched by the respondent No. 4 and other police officers who were not even wearing the uniform nor were they wearing their name plate. In spite of the protest, the car was searched again and nothing incriminating was found. However, the respondent No. 4 started pressurising the appellant to come to the Police Station. On this the appellant grew suspicious that something may be planted in the car and hence he, instead of going to the Police Station, went to the residence of Superintendent of Police, Karnal where even respondent No. 4 followed him. Again the search was taken at the direction of Superintendent of Police at his residence and nothing incriminating was found. It was, however, further contended that the Superintendent of Police initiated a Departmental Inquiry against the respondent No. 4 and the respondent No. 4 came to be transferred. The appellant alleges that all this was done at the instance of the respondent No. 6 who was exerting his pressure.

7. The appellant further alleges that he wanted to lodge a complaint in the Police Chowki, Model Town, Karnal, however, since the respondent No. 4 was the senior-

most officer in the Chowki, he refused to register the complaint. Therefore, he had to lodge a complaint through post. However, the respondent No. 4 refused to accept the complaint and no investigation was carried out on the basis of the complaint made by the appellant. It was, therefore, that the appellant filed an application u/s 156(3) Cr.P.C. in the month of August, 2004 alleging the conspiracy between respondents 4, 5 and 6 against the appellant by falsely implicating him for possessing contraband substances. Even before registration of this application, the respondent No. 6 appeared along with his counsel before the learned Chief Judicial Magistrate and the Chief Judicial Magistrate instead of ignoring the respondent No. 6 directed the appellant to withdraw his application and returned the whole paperbook to him.

8. It was, thereafter, that the appellant filed a petition u/s 482 Cr.P.C. bearing Criminal Misc. No. 44156-M of 2004 (O&M) for a direction to register criminal case under Sections 341, 342 and 211 Cr.P.C. read with Section 58 of the NDPS Act and Section 120B IPC against respondents 4, 5 and 6. This petition was opposed by respondent No. 4 but admitted that during the search at Liberty Chowk, Karnal nothing incriminating was found in the car. He, however, pointed out that he had made the Daily Diary Entry of his action and that nothing was malafide. According to the appellant, very strangely the State had adopted the reply of the respondent No. 4 wherein the respondent No. 4 had admitted that no investigation had been carried out on the basis of the complaint made by the appellant. In short, the complaint of the appellant is that the respondents 1, 2 and 3 were not doing their statutory duty of looking into the complaint and registering the same under the influence of respondents 4, 5 and 6.

9. During the course of arguments, the appellant supplied a list of various cases pending in between the parties, namely, the appellant on the one hand and respondents 3, 5 and 6 on the other. There are as many as 12 cases in respect of respondent No. 6 Col. Sadanand Arora and about 8 cases in respect of respondent No. 5 Sanjay BhardwaJ.

10. This Court initially issued a notice on the SLP and also issued notice to CBI as the appellant had filed a petition for its impleadment. After hearing the parties this Court passed the following order on 27.7.2007:

Keeping in view the facts and circumstances of this case and having regard to the allegations and counter allegations made by the parties, we are of the opinion that an officer of the rank of DIG under the direct supervision of the DGP should make an independent investigation as to whether any attempt had been made by respondent No. 4 herein to harass the petitioner by making endeavours to lodge cases under the NDPS Act. We are not oblivious of the fact that the allegations have been made in the light of the disputes between the private parties. Ordinarily, we would not have interfered with the judgment of the High Court but allegations of such serious nature, in our opinion, should be thoroughly inquired into. We would request the DGP of the State of Haryana to submit a report within three months from the date of receipt of copy of this order.

Put up after three months.

Accordingly a thorough inquiry was got conducted by the Director General of Police and an affidavit has been filed by him. In his affidavit, the deponent Shri R.S. Dalal, IPS, Director General of Police, Haryana has firstly mentioned about the incident dated 8.8.2004 regarding the search of the car at Liberty Chowk, Karnal and has thereafter asserted that he has gone through the statements made by the complainant, his wife and his son and also the statements of as many as 12 police officers including the respondent No. 4 Surinder Malik, ASI as well as the Superintendent of Police, Karnal. The deponent has thereafter given his conclusions. In his affidavit it is further suggested that the versions of the ASI about the secret information having been conveyed to the Superintendent of Police was not supported by SP, Karnal Shri Vikas Arora and the version of the appellant that ASI Surinder Malik had tried to take the car to the Police Station but the appellant of his own rushed to the SP's residence to be correct. It is further suggested that it transpired from DDR Nos. 12 and 13 dated 8.8.2004 that the search was not made under the direction of SP, Karnal and the SP, Karnal had also denied to have given any direction for such search. In his affidavit the DGP has found fault with the behaviour of Shri Surinder Malik, ASI and the local police and that they had acted in a mala fide manner.

11. A copy of the report of the Inquiry made by Deputy Director General of Police, State Crime Branch, Haryana dated 28.10.2007 has also been filed. We would not go into the details of the report. However, the report suggests that a full and detailed inquiry was made by the DIG at the instance of the DGP which was in the nature of investigation.

12. We are satisfied after going through the Inquiry Report that there is a case for investigation into the offence. We, therefore, direct the further investigation by the officer of the rank of DIG into the complaint made by the appellant. We, however, at this stage, do not find the necessity of referring the matter to CBI as in our opinion the DIG has so far conducted unbiased and independent investigation in the matter. We expect that an independent and unbiased investigation shall be done on the basis of the complaint against all concerned including respondents herein as also such others who had any role to play in the incident dated 8.8.2004. Such investigation would be conducted and further action, if necessary, shall be taken against all such persons who have been found to have a hand in the harassment of the appellant, whose car was constantly searched on as many as three occasions without anything objectionable being found. The DIG under whose supervision the investigation shall be conducted shall also take into account the previous history of the litigation as also the previous proceedings and an objective investigation shall be conducted therefor. The Inquiry Report does not speak from the angle of part played, if any, by respondents 5 and 6 and others. However, that angle shall also be examined and investigation conducted in that behalf. We are, however, convinced that at the level where the investigation is going on there is nothing suspicious or mala fide

and, therefore, we reject the prayer of the appellant to hand over the investigation to CBI. We, however, give liberty to the appellant to approach this Court again in case the need is felt. However, that will be only after the investigation is complete and a report of the investigation is submitted before the competent court. We also expect the investigation to be completed within three months and in case it is not possible, the Investigating Officer shall have the liberty to approach this Court for extension of time.

13. With the above directions we dispose of the present appeal.