
(2007) 11 DEL CK 0306

In the Delhi High Court

Case No : Writ Petition (Criminal) No's. 1125 and 1126 of 2007

Sri Bharadwaaj Media Pvt. Ltd.

APPELLANT

Vs

State
 Aniruddha Bahal Vs State (NCT of Delhi)

RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120, 120B
Prevention of Corruption Act, 1988 — Section 12, 13, 13(1), 24
Procedure and Conduct of Business Rules — Rule 269, 295

Citation : (2007) 11 ILR Delhi 65 : (2008) 1 RCR(Criminal) 1008

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sidharth Luthra, P.K. Dubey and Arundhati Katju, in W.P.Crl. No. 1125/2007 and Akhil Sibal and Pradeep Chhindra, in W.P.Crl. No. 1126/200, for the Appellant; Rajdipa Behura and Mukta Gupta, Standing Counsel in W.P.(Crl.) No. 1126/2007, for the Respondent

Final Decision : Disposed Off

Judgement

Shiv Narayan Dhingra, J.—By this common order, I shall dispose of the above two writ petitions, preferred under Article 226 of the Constitution of India read with Section 482 Cr.P.C seeking issuance of a writ for quashing the FIR No. 96 of 2007 u/s 12, 13 of the Prevention of Corruption Act, 1988 read with Section 120B IPC, Police Station Parliament Street, New Delhi registered on a complaint of Mr. Sanjay Bhatia, Assistant Commissioner of Police, Special Team, Crime Branch, Mr. Bhatia made a complaint that on 12th December, 2005, a Private Channel telecast a programme called "Operation Duryodhan", showing some Members of Parliament including Dr. Chhatrapal Singh Lodha of Rajya Sabha, receiving money for raising questions in the Parliament. The matter was referred to a Committee on Ethics of Parliament. The Committees recommended in its report to proceed against the corrupt middlemen, private secretaries, personal assistants of MPs officially working in Parliament, who were instrumental in

arranging the meeting of undercover reporters with Members of Parliament and acted as conduits in murky deals. One Harish Badola has been mentioned in the complaint as middleman, who was used as a conduit by journalists and who received an amount of Rs. 25,000/- on behalf of Dr. Chhatrapal Singh Lodha, which included Rs. 5000/- as his own share. Mr. Harish Badola, after receiving the amount, arranged a meeting of the undercover journalists with Dr. Chhatrapal Singh Lodha. It is reported that Harish Badola in connivance with Ms. Suhasini Raj of cobrapost.com hatched up a criminal conspiracy with ulterior motive for obtaining pecuniary advantage and thereby he and the journalist committed offence of criminal misconduct u/s 13(1)(d) of Prevention of Corruption Act read with Section 120 of IPC.

2. The FIR was also registered against the officials of Cobrapost.com, TV Channel 7 and Aaj Tak, which, according to complainant, committed an offence of abetment, as defined u/s 12 of Prevention of Corruption Act, by carrying out Operation Duryodhan and telecasting the same. It is also stated that they have acted in contravention of the procedure given under Rule 295 of the Rules of Procedure and Conduct of Business in the Council of States regarding unethical behavior or breach of code of conduct by a Member.

3. Quashing of the instant FIR is sought on the ground that the registration of the FIR was a gross and blatant violation of the rights of the petitioners who had undertaken an operation in public interest to expose the corruption and criminal acts on the part of some Members of Parliament and their agents. The action of the petitioners of exposing corruption was necessary so that the people may know the acts of their elected representatives. The exposure of criminal activities on the part of the Members of Parliament could not have been done without resorting to undercover investigation. Being associated with Fourth Estate, it was the duty of the petitioners to bring truth to the knowledge of people. The petitioners acted in exercise of their rights guaranteed under Article 19(1)(a) of the Constitution and the FIR registered against the petitioners was an illegal act resulting into unreasonable restrictions on the fundamental rights of the petitioners of free speech. The criminal proceedings initiated against the petitioners amounted to unreasonable restrictions on fundamental rights of the petitioners as there was no bar on trap being laid by a person other than the police officer to expose the criminal activities of offenders and perpetrators of crime. It is also stated that the reporters of the petitioners deposed on oath before the Parliamentary Committees making full and truthful disclosures about all facts and the Parliamentary Inquiry Committee raised no doubts as to the bona fides of the reporters and the action against the Members of Parliament was initiated by the respective House on the basis of allegations made in the tapes and transcripts. It is also stated that the acts of the petitioners were protected u/s 24 of the Prevention of Corruption Act, 1988 and the petitioners have statutory immunity from prosecution u/s 12 of the Act. The reporters of the petitioner made a statement in the proceedings under Rules 269 of the Rules of Procedure and Conduct of Business of the Lok Sabha, against the Members of Parliament

before the Parliamentary Inquiry Committees and the petitioner has statutory immunity from prosecution u/s 24 of the Prevention of Corruption Act, 1988. The petitioner conducted the sting operation to expose corruption and had not committed any offence under the law of India and the impugned FIR was nothing but an attempt to stifle a free and independent media.

4. Notice of the petitions was served upon the State and a status report has been filed wherein it is stated that a Committee on Ethics of Rajya Sabha was formed to which this matter was referred and this Committee in its report recommended that action be taken against corrupt middlemen, private secretaries, personal assistants of Members officially working for the Parliamentary Committee Offices who were instrumental in arranging the meeting of undercover reporters with MPs and acted as conduits in murky deals under law. The 7th Report of the Committee was presented to the House on 23rd December, 2005.

5. A perusal of the report would show that the Committee observed as under:

24. The Committee was convinced beyond doubt that Dr. Lodha had accepted money for tabling questions in the Rajya Sabha and the pleas taken by him in defense were untenable in the light of the statements/evidence before it.

35. The Committee has applied its mind to the whole unfortunate incident, gave full opportunity to the Member concerned to make submissions in his defense and has also closely examined witnesses from cobrapost.com and Aaj Tak. The Committee has also viewed the video tapes and heard the audio transcripts more than once. After taking all factors into consideration, the overwhelming and clinching evidence that the Member has, in fact, contravened para 5 of the Code of Conduct for Members of the Rajay Sabha and having considered the whole matter in depth, the Committee, with great sadness, has come to the conclusion that the member has acted in a manner which has seriously impaired the dignity of the House and brought the whole institution of Parliamentary democracy into disrepute. The Committee Therefore recommends that Dr. Chhatrapal Singh Lodha be expelled from the Membership of the House as his conduct is derogatory to the dignity of the House and inconsistent with the Code of Conduct which has been adopted by the House.

36. While recommending the maximum punishment against an erring member, the Committee would like to make a general point regarding sitting operations of this nature. In some countries such operations are illegal under the law. Perhaps the time has come for Parliament to consider the broad question of regulation such undercover operations, which necessarily involve expenditure of large sums of money by the agencies concerned, and also an intrusion into individuals' privacy.

37. In the course of examination of this case, a sordid state of affairs came to light, namely, the role of corrupt middlemen, private secretaries/personal assistants of members, officials working in the Parliamentary Party Officers, who have been instrumental in arranging the meetings of undercover reporters with

M.P.s and acted as conducts in murky deals. Their misdeeds not only infringe the law prima facie but have the potential to wreck the system from within. The Committee would suggest that after taking legal advice, the concerned authorities may proceed against them under the law so as to stem the rot.

The instant FIR was got registered by ACP on the basis of above recommendations.

6. Surprisingly, the above-stated FIR was registered not in respect of the crime but in respect of the accused persons. It is settled law that police has to take cognizance of an offence and not of offenders. Once cognizance of an offence is taken, it is the duty of police to find out who the offenders were. After finding the offenders, it is the duty of the police to proceed against them according to law. Taking bribe for asking question by the MPs through their middlemen is the offence covered under Prevention of Corruption Act. The two Parliamentary Committees, one of Lok Sabha and other of Rajya Sabha have thoroughly investigated into the genuineness of the tapes and the report shows that the committees came to conclusion that the tapes were genuine and not doctored, and what was depicted in the tapes was real conduct of some of the MPs who indulged into "cash and query" episodes. The police has a bounden duty to investigate the commission of a cognizable offence, once it is brought to its notice. Police cannot investigate a crime partially only in respect of some accused, leaving other accused untouched on the ground that their names do not appear in the FIR. The bribe taker who takes bribe to perform his duty is equally the culprit. The bribe giver is normally on the mercy of the officials and babus who compel him to pay bribe even for lawful work. To get an unlawful work done by paying bribe is equally a serious offence.

7. It is pity that police of this country has lost its ears and eyes. When whole nation could watch, hear and see certain M.P.s indulging into corruption, on different T.V. Channels and read it in different newspaper with every minute details, police officials and Mr. Bhatia had no ears and eyes No. FIR was registered of this crime at any police station and no investigation was initiated. FIR was registered only when "Committee" desired action against middlemen and media-men. Since Committee desire action against others and not against M.P.s, FIR was not registered of the offence but against some offenders. Police seems to have attitude "see no crime, hear no crime".

8. This Court can quash an FIR only if all the facts stated in it even if considered true, do not disclose commissioning of a cognizable offence. In the instant case, it is the admitted case of the petitioners that there was a cognizable offence committed, although their case is that the offence was not committed by them but it was committed by Members of Parliament. In any event, investigation has to be there in the commission of offence and police is bound to book all those who committed the crime. The protection, as claimed by the petitioners u/s 24 of the Prevention of Corruption Act and u/s 12 can be claimed only during trial and not at the stage of registration of an FIR.

9. It is obligatory on the part of police to investigate into the crime in full and not in a piecemeal manner. The police is directed to book all those persons involved in the offence of taking bribe, their middlemen and to get them punished according to law. The police cannot book only the middlemen and the media persons and leave the real recipients of bribe untouched. If this is done, this would not only violate the principle of equality before law guaranteed under the Constitution of this Country but also would reflect subservient character of criminal justice system. This would also give a cause to the people to behave that giving and taking of bribe is a privilege of Members of Legislature.

10. This FIR registered against selected persons at the behest of Committee exposes the thinking that corruption itself is not bad but exposure of corruption is bad because it brings the institution to disrepute. The other institutions where there are corrupt persons, should follow suit and make it clear to the nation that the citizens should desist from reporting corruption as they would be hounded. When corruption of individuals in the institution is exposed, it gives an opportunity to authorities to take action against those who indulge in corruption and to clean its stables. Instead of expressing gratefulness to the persons who exposes corruption, if the institutions start taking action against those who expose corruption, the corruption is bound to progress day and night. India is already placed very high in the index of corruption and is considered one of the most corrupt countries of the world.

11. I, Therefore, dispose of these above two writ petitions giving following directions:

(i) Police shall investigate into the entire offence involving middlemen, Members of Parliament and others who indulged into corruption and accepted bribe for asking and tabling questions in the Parliament. Since the entire investigation is document-based and the report of the Committees are already there, the investigation must be completed within a period of 60 days from today and charge sheet be filed in respect of the offenders who committed the offences under Prevention of Corruption Act.

(ii) The petitioners, who claimed to have acted in the public interest are at liberty to seek protection from arrest, if they so desire under appropriate provisions of law.

(iii) The investigating agency shall not single them out and leave MPs from scope of investigation and action.

(iv) Protection and benefits under the provisions of Section 24 of Prevention of Corruption Act and under other provisions of law shall be available to the petitioners during trial.

12. These writ petitions stand disposed of with above directions.