
(2010) 02 P&H CK 0330

In the Punjab And Haryana At Chandigarh

Case No : CM No. 20231 of 2009 in C.W.P. No. 18317 of 2009

Sukhdev Singh Dhillon and Others

APPELLANT

Vs

State of Punjab and Another
 State of Punjab and
Another Vs Sukhdev Singh Dhillon and Others

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(1), 397(2), 398, 482
Prevention of Corruption Act, 1988 — Section 19, 19(3), 22, 3, 5(3)

Citation : (2010) 1 ILR (P&H) 1033 : (2010) 3 RCR(Civil) 3

Hon'ble Judges : Mukul Mudgal, C.J.;Jasbir Singh, J

Bench : Division Bench

Judgement

Mukul Mudgal, C.J.—This petition has been filed as a Public Interest Litigation and the averments as to the locus of the petitioner are to be found in paragraph No. 1 of the petition which reads as follows :--

1. That the petitioners are lawyers who have been practicing in the Courts of law for several years. The petitioners felt that various cases were coming to the Hon"ble High Court which were nothing but an abase of the process of law, an act of mala fide or vendetta. Law is meant for the protection and regulation of the lives of people. No one can be allowed to make a mockery of law in order to serve his own ends. The petitioners have filed this present petition as the Vigilance Bureau. Punjab has not been following the mandatory Vigilance Guidelines in any case which have been upheld as legally valid and binding by a Division Bench of the Hon"ble Punjab and Haryana High Court. The Vigilance Bureau, Punjab has been working as an oppressive outfit aiming at settling personal or political scores without following the relevant guidelines. Hence, the present writ petition has been filed in the interest of justice to prevent miscarriage of Justice and undo all the illegal acts done by the Vigilance Bureau. Punjab. In a Welfare state like ours, the rule of law has to be prevalent and not the whims and fancies of police officials, politicians or other bureaucrats.

2. Consequently, the prayers made in the writ petition are as follows:--

(i) Issue appropriate writ, order or direction especially in the nature of writ of Mandamus directing the Punjab Government to comply with the Vigilance Guidelines.

(ii) Issue appropriate directions to the Punjab Government to explain as to why the mandatory Vigilance Guidelines have not been complied with.

(iii) Issue appropriate directions to the Punjab Government to take action against the Vigilance Bureau Officials who have intentionally been violating these Vigilance Guidelines to serve their own ends.

(iv) Issue necessary directions to the learned Trial Courts to stay the proceedings going on in FIR No. 10. dated 8th September, 2007, PS. Vigilance Bureau. F.S.-1. Mohali, FIR No. 5, dated 23rd March, 2007, Vigilance Bureau, Ludhiana, FIR No. 30. dated 11th July, 2007. Vigilance Bureau. Patiala and FIR No. 28 dated 20th June. 2008. Vigilance Bureau. Patiala. till the pendency of the present writ petition.

(v) Issue necessary directions for summoning of the entire record of the cases from the Trial Courts in FIR No. 10 dated 8th September 2007, PS. Vigilance Bureau, FS.--I, Mohali. FIR No. 5 dated 23rd March. 2007. Vigilance Bureau. Ludhiana. FIR No. 30, dated 11th July. 2007. Vigilance Bureau, Patiala and FIR No. 28, dated 20th June, 2008, Vigilance Bureau, Patiala so as to look into the illegalities committed by the Vigilance Bureau, Punjab, regarding registration of FIRs and the illegalities committed by the investigating agencies while conducting the investigation.

(vi) Issue any other direction or relief that this Hon"ble Court may deem fit in the facts and circumstances of the case.

3. In this petition, notices were issued to the respondents by this Court on 30th November, 2009 in the following terms :--

Present:--Mr. DPS Randhawa. Advocate, for the petitioners.

Learned counsel for the petitioners states that the instructions of the Government of Punjab. Department of Vigilance. dated March 6. 2000 (Annexure P-I), have and are not being complied with by the Vigilance Bureau, These instructions were challenged in this Court in Civil Writ Petition No. 9256 of 2002. The Division Bench in its order dated 15th May, 2006 dismissed the writ petition. Thereafter fresh instructions were given by the Government of Punjab. Department of Vigilance to the Chief Director Vigilance Bureau. Punjab, dated September 12, 2006 (Annexure P-3) whereby it was stated that instructions dated March 6. 2000 issued by this department should be followed strictly.

Learned counsel has stated that these instructions are mandatory.

Notice of motion for 18th January. 2010.

Notice re; stay.

Relevant record be summoned from the State as well as from the trial Court in FIR No. 10 dated 8th September, 2007, P.S. Vigilance Bureau. F.S.-I, Mohali. FIR No. 5. dated 23rd March. 2001. Vigilance Bureau. Ludhiana. FIR No. 30, dated 11th July 2007. Vigilance Bureau, Paliala. and FIR No. 28 dated 20th June. 2008. Vigilance Bureau. Paliala

Sd.-Mehtab Singh Gill, Chief Justice Sd/ -Ram Chand Gupta, Judge.

30th November. 2009.

4. Thereafter. Civil Misc. Application No. 20231 of 2009 was moved on 15th December. 2009 by the applicants-State of Punjab in which notices were issued to the non-applicant-petitioners for 17th December. 2009 and at the joint request of learned counsel for the parties, the matter was listed on 18th December. 2009. On 18th December. 2009. the following order was passed by this Court :--

CM No. 20231 of 2009 in CPW No. 18317 of 2009

Present : Mr. U.S. Mattewal. Advocate General, Punjab with Mr. U.S. Sindhu. Addl. Advocate General, Punjab for the applicant.

Mr Amitabh Chaturvedi. Advocate, for petitioner No. 1.

Mr G.S. Chahal. Advocate for petitioner No. 2

Learned Advocate General. Punjab, has inter-alia. argued as under :--

(a) PIL is not maintainable in criminal proceedings :

(b) No stay can be granted in the Prevention of Corruption Act matters in view of the law laid down by the Hon'ble Supreme Court in Satya Narayan Sharma Vs. State of Rajasthan, ; and

(c) Order dated 30th November, 2009 of which modification is sought had in fact issued notice of stay but order of summoning of record in addition to notice regarding stay amounts in effect to stay of further proceedings.

Mr. Chaturvedi requests for an adjournment on the ground that the learned senior counsel for the petitioner is not available.

At his request, list on 22nd December. 2009.

Since the counsel for the petitioner is praying for accommodation and the next date in one of the cases in which record has been summoned is on 19th December. 2009. we direct that till the next date of hearing status quo in respect of summoning of records pursuant to the order dated 30th November 2009 of this Court be maintained.

December 18, 2009

(Sd.)... MUKUL MUDGAL Chief Justice.

(Sd)... A.JAY KUMAR MITTAL Judge.

5. On 22nd December. 2009. this Court had passed the following order :--

CM Nos. 20683-20684 of 2009 and CM No. 20231 of 2009 in CWP No. 18317 of 2009

Present : -- Mr. H.S. Mattewal. Advocate General. Punjab with Mr. H.S. Sindhu Addl. Advocate General, Punjab for the applicant

Mr. G.S. Chahal, Advocate for petitioner No. 1

Mr. Ashok Aggarwal. Sr. Advocate with Mr. R. Kartikeya and Mr. Mukul Aggarwal Advocates, for petitioner No. 2

Mr. Rajesh Punj. Advocate for the applicants.

CM No. 20683 of 2009

Allowed as prayed for

CM No. 20684 of 2009

To be taken up with the main case.

CM No. 20231 of 2009 in CWP No. 18317 of 2009

Mr. Ashok Aggarwal learned Senior Counsel appearing for petitioner No. 2 states that he has no objection to order dated 18th December. 2009 being continued upto the next date of hearing and the civil misc. application taken up for consideration with the main case.

Learned Advocate General. Punjab, has no objection to the said adjournment but prays that interim application be decided first.

List again on 18th January, 2010 for consideration of CM No. 20231 of 2009. List the writ petition also as directed by the order dated 30th November. 2009.

Interim order dated 18th December, 2009 to continue.

December 22, 2009.

(Sd.)... MUKUL MUDGAL. Chief Justice.

(Sd.)... AJAY KUMAR MITTAL. Judge.

6. Consequently this Civil Misc. Application has been taken up today.

7. The main plea of learned counsel for the applicant respondents seeking vacation of interim order dated 30th November. 2009 was that while a notice on stay was issued, nevertheless the records were summoned which in fact amounted to stay of proceedings, as no case can go on in the absence of the Record. He submitted that this writ petition was in fact a proxy litigation on behalf of the individuals who were resourceful enough to adopt appropriate legal

proceedings and intact had adopted them. He further submitted that the petitioners were related to and associated with the persons the record of whose cases had been summoned.

8. The principle plea of Shri Mattewal, learned Advocate General for the State of Punjab was that the issue of summoning of record amounts to stay of trial and since notice had also been issued on the question of stay on 30th November, 2009, the summoning of record in fact amounted to an ex-parte stay of proceedings in a P.I.L. and therefore, such an order was not sustainable. For this purpose, he relied upon a judgement of Hon"ble Supreme Court in Satya Narayan Sharma Vs. State of Rajasthan, wherein it was held as follows :--

We find that what has happened in this case is happening in a large number of matters. Corruption in public offices is becoming rampant, When public servants are sought to be prosecuted under the said Act, by filing revisions u/s 397 Criminal Procedure Code or by filing petitions u/s 482 Criminal Procedure Code, stay of the trials are obtained and parties successfully manage to delay the trials. The stays are granted by Courts without considering and/or in contravention of Section 19(3)(c) of the said Act. This has an adverse effect on combating corruption amongst public servants. It has therefore become necessary to reiterate the law. We have thus heard this Petition only on the question of law as to whether or not trials under the Prevention of Corruption Act could be stayed.

(Emphasis supplied)

14. We have heard the parties. Section 19(3)(c) of the said Act reads as follows :

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).

xxx

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry trial, appeal or other proceedings.

It is thus to be seen that this Section provides :

(a) that no court should stay the proceedings under the Act on any ground and

(b) that no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

To be noted that (b) above is identical to Section 397(2) of the Criminal Procedure Code which deals with revisional power of the Court. If Section 19 was only to deal with revisional powers then the portion set out in (b) above, would have been sufficient. The legislature has, therefore, by adding the words no court shall stay the proceedings under this Act on any other ground clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even where a Court is exercising inherent jurisdiction u/s 482 of the

Criminal Procedure Code.

(Emphasis supplied)

15. There is another reason also why the submission that. Section 19 of the Prevention of Corruption Act would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code. " Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of *Madhu Limaye versus The State of Maharashtra*, *Janata Dal versus. H.S. Chowdhary*, and *India Sawhney versus. Union of India* the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.

(Emphasis supplied)

16. We see no substance in the submission that Section 19 would not apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court.

(Emphasis supplied)

17. Thus in cases under the Prevention of Corruption Act there can be no stay of trials. He clarifies that we are not saying that proceedings u/s 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings u/s 482 can be adapted. However even if petition u/s 482 Criminal Procedure Code is entertained there can be no stay of trials under the said Act. It is then for the party to convince the Court concerned to expedite the hearing of that petition. However merely because the Court concerned is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily.

(Emphasis supplied)

9. Reliance was also placed on the judgment of Hon'ble Supreme Court in *Janata Dal Vs. H.S. Chowdhary and Others*, and in particular reliance was placed upon paragraphs 25 and 26 of the said judgment which read as under :--

25. It is most relevant to note that none of the appellants before this Court save the Union of India and CBI is connected in any way with the present criminal proceeding initiated on the strength of three first Information Reports which is now sought to be quashed by Mr. U.S. Chowdhary. Although in the FIR., the names of three accused are specifically mentioned none of them has been impleaded as a respondent to these proceedings by anyone of the appellants. Even Mr Martin Ardho, former President of M/s A.B. Bofors. who was impleaded

as a proforma respondent in Criminal Appeal No. 310 of 1991 has been given up by the Solicitor General. Therefore, under these circumstances, one should not lose sight of the significant fact that in case this Court pronounces its final opinion or conclusions on the issues other than the general issues raised by the appellants as public interest litigants, without hearing the really affected person/ persons, such opinion or conclusions may, in future, in case the investigation culminates in filing a final report become detrimental and periodical to the indicted accused persons who would be totally deprived of challenging such opinion or conclusions of this apex court, even if they happen to come in possession of some valuable material to canvass the correctness of such opinion or conclusions and consequently their vested legal right to defend their case in their own way would be completely nullified by the verdict now sought to be obtained by these public interest litigants.

26. Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

(Emphasis supplied)

10. In reply. Mr. Ashok Aggarwal. learned Senior Counsel has submitted that petitioners being public figures are concerned with the observance of norms by the Vigilance Bureau in the State and. accordingly, had moved this petition. He submitted in reply to the pleas of Mr. Matthewal that bar contemplated in Section 19(3) of the Prevention of Corruption Act. 1988 (for short "the Act") will not apply to the matters of sua motu cognizance and matters of public interest such as the present petition in view of the provisions of Section 22 of the Act. He has further relied upon the definition of provisions of Section 3 of the Act to contend that since only a Sessions Judge or an Additional Sessions Judge could be appointed as a Special Judge, the revisional powers lay only with the High Court.

11. For appreciating the contentions of Mr. Aggarwal. it is necessary to extract the provisions of section 19(3) of the Act which reads as under:--

19. Previous sanction necessary for prosecution :-(1) No Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction.--

(2) x x x

(3) Notwithstanding anything contained in the Code of Criminal Procedure. 1973 (2 of 1974),--

(a) No finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of Or any error, omission or irregularity in. the sanction required under sub-section (1). unless in the opinion of that court, a failure of justice has in fact

been occasioned thereby:

(b) no court shall stay the proceedings under this Act on the ground by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

(c) no court shall stay the proceedings under this Act on any other ground of any error, omission or irregularity in the sanction granted and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

12. The learned Senior Counsel for petitioners has thus submitted that in view of explanation appended to Section 397 of the Code of Criminal Procedure, that bar contemplated by the Act may apply when a proceeding is moved by a party but not in a PIL such as the present one or in sua motu proceedings. He, therefore, submitted that Section 397 of the Code of Criminal Procedure is not a fetter on the powers of the High Court in calling for the record of the case.

13. Section 397 of the Code of Criminal Procedure, 1973 reads as under :--

397. Calling for records to exercise powers of revision : (1) the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself Or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court and may when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or his own bond pending the examination of the record.

Explanation -All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

14. Mr. Aggarwal further submitted that calling of the records contemplated two kinds of record, one of the record of the State and one of the judicial records. He further submitted that in the present case, both the records are necessary for determination of the issues raised in this writ petition. Reliance was also placed on the judgment of Delhi High Court in Dillip Kumar Parida (Dr.) versus All India Institute of Medical Science & others, 157 (2009) DLT 191 (DB) where it was held that Courts have frequently held that executive instruction can be framed in

areas where the statute is silent.

15. In our view, the position of law in so far as the question of stay in Corruption case trials is concerned, has been clearly laid down by the Hon''ble Supreme Court in Satya Narayan Sharma's case (supra), The Hon''ble Supreme Court has categorically laid down that Section 19 of the Prevention of Corruption Act clearly applies even to Section 482 of the Code of Criminal Procedure dealing with the exercise of inherent jurisdiction. It has been clearly held that inherent jurisdiction cannot be exercised to get over the specific bar of the statute. It has further been held that Section 19 of the Act regarding stay of trial applies to proceedings u/s 482 of the Code of Criminal Procedure in the High Court. Thus it is evident that even the invocation of the present jurisdiction has been prescribed by the Hon''ble Supreme Court in Satya Narayan Sharma's (supra). Since Section 19 specifically bars an interim order in corruption trials it has also been laid down in the above judgment that the bar contemplated by Section 19 also applies to the High Court. This bar even applies to the exercise of inherent jurisdiction of the High Court.

16. In so far as the plea raised by the respondents by relying upon the judgment in Janta Dal case (supra) is concerned regarding maintainability of this writ petition as a Public Interest Litigation, that may have no bearing on the issue of interim order at this stage. We are, therefore, of the view that stay of proceedings in cases under Prevention of Corruption Act is clearly forbidden by the judgment of the Hon''ble Supreme Court of India in Satya Narain's case (supra) and inherent exercise of jurisdiction would stand para materia with the exercise of jurisdiction under the Public Interest Litigation, as has been amplified by the judgment of Hon''ble Supreme Court in Janta Dal's case (supra). Even if we accept the plea of Mr. Aggarwal that Section 397 of the Code of Criminal Procedure applies, then the interests of justice would be fully met if the copies of the record are made available. In any event, the petitioners are not and cannot be concerned with the original records as the issue in the present PIL is applicability of the Vigilance Guidelines. The relevant provisions of Section 22(d) (b) of the Act reads as follows :--

22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.--The provisions of the Code of Criminal Procedure 1973. shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,

(a) x x x

(b) x x x

(c) x x x

(d) in sub section (1) of Section 397, before the Explanation, the following proviso had been inserted namely :-

Provided that where the powers under this section are exercised by a court on an

application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings, --.

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.

(Emphasis Supplied)

17. The provisions of Section 22(d)(b) of the Act clearly demonstrate that if the Court is satisfied then an examination of the record of the proceedings may be made from the certified copies. Therefore we will determine the plea of learned counsel for the applicant-respondents about the present proceedings being a proxy litigation for the accused at a later stage. In so far as the interim orders are concerned, we are satisfied that stay of proceedings could not have been granted on any ground contrary to the law laid down by the Supreme Court. There is substance in the plea of the respondent that summoning of record in fact tantamounts to stay of proceedings. The issue involved in the writ petition can however be adequately considered by us by the examination of the certified copies of the record of the proceedings, if necessary.

18. Accordingly, we direct that the State of Punjab shall prepare the photostat copies of the records of the cases which are the subject matter in the present writ petition and file their copies certified as true and correct copies alongwith an affidavit. If the record in any case has been sent to this Court, it will be sent back as per the above directions to the concerned Court.

19. Since the order of stay in Prevention of Corruption Act cases is clearly forbidden by the Hon''ble Supreme Court as per the decisions examined by us in this order, and this Court has not granted any stay, it is evident and we make it clear that the trial Court are not restrained from proceeding further notwithstanding the pendency of this writ petition in this Court.

20. The above application stands disposed of accordingly.

21. Main case be now listed on 20th April, 2010.