

(2011) 11 DEL CK 0204

In the Delhi High Court

Case No : Writ Petition (Criminal) 1820 of 2010 and Criminal M.A. 4976 of 2011

Vikas Bakshi

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Delhi Police Act, 1978 — Section 91, 93, 97

Penal Code, 1860 (IPC) — Section 120B, 208, 221, 323, 34

Citation : (2012) 2 AD 877 : (2011) 185 DLT 189 : (2012) 1 JCC 16

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : A.K. Biswas, for the Appellant; Dayan Krishnan, ASC for State with Inspector, Ajay Sharma and PS C.R. Park, for the Respondent

Judgement

Hon''ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner prays for the following:

a) The Central Bureau of Investigation to investigate the entire matter after registering case/s wherever necessary specially with respect to the

incidents of 08.09.2010 and 09.09.2010 except the incidents covered by this Hon''ble High Court's order dated 19.11.2009 and taking custody

of the pocket spy camera get it forensically examined and also to investigate the co-relation among all the abovementioned incidents happened with

the Petitioner since he exposed the extortion and corruption of the aforesaid police official Inspector Joginder Kumar and thereby bring all the

accused persons including the respondents to books in specified time period.

b) the Respondent No. 1 and 2 to suspend and/or transfer all the aforesaid accused respondents from the police station C.R. Park, New Delhi with

immediate effect till the inquiry in the entire matter is not complete or till the matter is not decided.

c) the respondent No. 1 & 2 to take action against the Addl. Comm. Of Police (Crime) for not complying this Hon'ble High Court's order dated

19.11.2009 and further directing them to see that action against Respondent No. 1 is taken as according to this Hon'ble High Court's order

dated 19.11.2009 in a fixed time period.

d) the quashing of false, fabricated, concocted and illegal proceedings u/s 91, 93 & 97 of D.P. Act in DD 23A dated 09.09.2010 initiated against

the Petitioner now pending in Court of Shri Munish Markan, M.M. (South-East), Saket, New Delhi or alternatively direct the respondent No. 1 &

2 to take appropriate steps to withdraw/ quash the same by the next date of hearing in the matter, which is on 18.02.2011 or within such period

which this Hon'ble High Court deems reasonable and also direct the Respondent No. 1 to pay exemplary damages to adequately compensate the

damage and injuries caused to the Petitioner in a specific time period.

e) the respondent No. 1 to pay an avoidable cost of Rs. 25,000/- or any other amount which this Hon'ble High Court may deem fit and proper to

the Petitioner in view of the legal injury suffered by him in view of the illegal conduct of the respondent No. 4 and other Police officials under him in

not registering First Information Report in the matter of 08.09.2010 & 09.08.2010 till date in a specified time period.

2. The grievance of the Petitioner is that the Petitioner had earlier filed a complaint against Respondent No. 11 Inspector Joginder Kumar as he

was subjected to threats, intimidation, extortion and corruption by him being SHO P.S. Kalkaji. When no action was taken, the Petitioner filed a

writ petition before this Court being W.P.(CRL) No. 1049/2009 seeking registration of a criminal case against the Police officials with further

direction to transfer the investigation to independent agency i.e. CBI. This Court after hearing the arguments and in view of the fact that vigilance

enquiry conducted by the vigilance department revealed misdemeanor on part of the Police officers directed the Additional Commissioner of Police

(Crime) to recommend necessary actions as warranted under law against guilty Police officials and while doing so would take into consideration

the report of vigilance enquiry. This was besides the departmental enquiry

initiated against Respondent No. 11, which was directed to be continued. The prayer "C" in the present petition seeks directions to take action against Additional Commissioner of Police for not complying with the order dated 19th November, 2009 passed by this Court. As per the reply affidavit filed by the Additional Commissioner of Police (South-East District) it is stated that besides the departmental enquiry initiated against the Respondent No. 1 as was stated in the W.P.(CRL) No. 1049/2009, a criminal case was also registered and thus adequate action as directed by this Court vide order dated 19th November, 2009 has already been taken. I find no non-compliance of the order passed by this Court.

3. The primary grievance of the Petitioner in the present petition relates to the subsequent incidents dated 8th September, 2010 and 9th

September, 2010. According to the Petitioner on 8th September, 2010 at about 11.40 AM while the Petitioner was going to Police Station C.R.

Park to meet the ATO i.e. the Inspector concerned along with his wife and PSO when he reached the corner of a small park near the House No.

52/36 C.R. Park, he found a white swift car No. DL-3C-AW-9913 standing in between the road. When the Petitioner sounded the horn of his

car, Respondent No. 14 came out who was on the driver seat of the said car and started abusing the Petitioner. Since a female was involved the

Petitioner called No. 100 and also informed the local Police Station. According to the Petitioner, Respondent No. 12 aged about 25 years was

under the influence of drugs. When the PCR staff came, she started abusing the PCR staff also. After a long persuasion the Respondent No. 12

was forced to get down from her car by the Police. In front of Police she started assaulting the Petitioner injuring upper portion of his left hand.

Respondent No. 12 also damaged the Petitioner's Honda car by kicking with her legs and she further snatched the Petitioner's mobile phone as he

was making a video recording of her. The lady Police officers were called who controlled the Respondent No. 12 and recovered the Petitioner's

mobile phone from her. Thereafter, one Constable took the Petitioner and his wife to the trauma centre, AIIMS where they were treated and they

came back to Police Station thereafter. On coming back to the Police Station, the Petitioner did not find the Respondent No. 12. According to the

Petitioner, the Head Constable then tried to pressurize the Petitioner to

compromise the whole incident, and said that he would get the Petitioner reimbursed of the damages caused from the said Respondent No. 12. The Petitioner again called up No. 100 and talked to one Inspector and one Additional Commissioner of Police and got the entire incident recorded in the PCR form.

4. The grievance of the Petitioner is that the Respondent No. 12 was not medically examined. The Petitioner had recorded some video-audio conversation of the Head Constable Nahar Singh, Inspector Sanjay Singh and the mother of Respondent No. 12. On 9th September, 2010 at about 3.00 PM Petitioner gave a complaint to the Joint Commissioner of Police. Thereafter he went to meet the SHO PS C.R. Park along with his wife and PSO. The ACP misbehaved and assaulted the Petitioner. Further a spy camera was found in the front pocket of the Petitioner which was seized by the SHO concerned. The Petitioner was thereafter arrested and his wife was asked to sign on a bail bond. According to the Petitioner action against Respondent No. 3,4,5&6 is required to be taken by registering FIR u/s 469/471/354/355/342/221/218/500/506/34/120-B IPC and investigation thereon to be conducted by the CBI.

5. I have heard learned counsel for the parties. In the present writ petition besides filing counter affidavit of the Additional Commissioner of Police

(South-East District), the Respondents has also placed on record the report of enquiry conducted by the vigilance department, by the Additional

Commissioner of Police, vigilance department dated 28th August, 2011. As per the vigilance report it is stated that on 8th September, 2010 the

Petitioner had given a complaint at the PS C.R. Park making the allegations as set out in the preceding paragraph. On 9th September, 2010 the

Petitioner again came to the Police Station and wanted to know the action taken on his complaint on the incident dated 8th September, 2010. He

was having a hidden recording device spy camera and started recording the conversation between him and the Police officers to which SHO C.R.

Park objected. On this the Petitioner got annoyed and created nuisance and thus action was taken u/s 91/93/97 Delhi Police Act (in short D.P.

Act) against the Petitioner. According to the report during the enquiry the allegations of corruption and beating by the ACP and local Police could

not be substantiated but it was found that the action u/s 91/93/97 D.P. Act taken

by the local Police against the Petitioner was without proper justification. In view thereof departmental enquiries have been directed against the Respondent No. 3,4,5&6. It is further stated that on a complaint of Ms. Nazanin Gheidi after prosecution opinion a case FIR No. 44/2011 u/s 323/341/354/506/509/34 IPC has been registered on 25th February, 2011.

6. The Petitioner is not satisfied with this report and according to him the complete vigilance enquiry should be furnished to him so that he could decide whether the vigilance enquiry has been conducted properly or not. I have perused the vigilance enquiry report filed in the present case and do not find that the Respondent No. 2 is required to file the entire enquiry material before this Court.

7. The prayers in the present petition are with regard to the registration of FIR on the complaints of the Petitioner and the investigation by the CBI.

The Hon''ble Supreme Court in Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, , Minu Kumari and Another Vs. The State of

Bihar and Others, and Aleque Padamsee and Others Vs. Union of India (UOI) and Others, has held that in case no FIR is registered by the Police

on the complaint, the complainant has the alternate remedy of filing a complaint before the Metropolitan Magistrate. Thus the Petitioner is at liberty

to file a complaint case where Magistrate would be in a position to exercise his option as to whether to proceed to try the same as a complaint

case as the entire material evidence is in his possession or direct registration of FIR.

8. Further in State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, and T.C.

Thangaraj Vs. V. Engammal and Others, , the Hon''ble Supreme Court laid down the parameters where the Courts in exercise of its jurisdiction

under Article 226 of the Constitution would direct CBI to investigate the matter. It has been repeatedly held that while passing directions to the

CBI to investigate, the Courts should exercise self imposed limitation on the exercise of its Constitutional powers and the extraordinary power must

be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in

investigation or where such an order may be necessary for doing complete

justice and enforcing the fundamental rights. The allegations of the Petitioner relate to the assault on the 8th and 9th September, 2010 and taking away his belongings on the 9th. Thus, the facts in the present case do not warrant that this Court should direct CBI investigation.

9. As regards the last prayer of the Petitioner for quashing of the proceedings under Sections 91/93 & 97 of the Delhi Police Act vide DD No.

23A dated 9th September, 2010, it may be noted that the cognizance has already been taken by the Learned Metropolitan Magistrate. The

Magistrate while considering the said kalandra will also look into the vigilance report and take action in accordance with law.

10. I find no ground to award exemplary damages in favour of the Petitioner because at this stage it cannot be said that in the incident dated 8th

September, 2010 or 9th September, 2010 there was no role of the Petitioner. It may be noted that case FIR No. 44/2011 u/s

323/341/354/506/509/34 IPC has already been registered against the Petitioner.

11. Petition and application are disposed of with liberty to the Petitioner to take the alternate remedies as available in law.