

(2007) 11 DEL CK 0155

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 570 of 2003 and Criminal M. No. 450 of 2003

Vimal Bhai

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-11-2007

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Criminal Procedure Code, 1973 (CrPC) — Section 42, 42(2)
Penal Code, 1860 (IPC) — Section 324

Citation : (2008) CriLJ 1953 : (2008) 147 DLT 123 : (2007) 99 DRJ 675

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Prashant Bhushan, Sumeet Sharma and Madhulika, for the Appellant; Dalip Mehra and Rajiv Ranjan for respondent No. 1 and Mukta Gupta, for the Respondent

Judgement

Reva Khetrapal, J.—The petitioner, who is the social activist, has filed the present writ petition with the following prayers:

(a) direct Respondents to get the inaction of the police officials investigated through some independent agency, to identify the erring policemen/officials and initiate disciplinary proceedings against them;

(b) direct Respondent No. 2 to register an FIR of the Petitioner and to investigate the matter, identify the culprits and charge them u/s 324 IPC or any other relevant provision of law.

2. The facts as set out in the petition are as follows. The petitioner is a social activist working with the non-governmental organization, "National Alliance for Peoples" Movement", working in the field of social reforms and communal harmony. The petitioner had actively worked with the Narmada Bachao Andolan and is at present working with Tehri Dam oustees in Uttranchal with an organization called "Matu (Soil) Peoples" Organization". It is the case of the

petitioner that on 4.5.2003, one Praveen Togadia of Vishwa Hindu Parishad and activists of Bajrang Dal were holding the programme of Trishul Diksha near the Coffee Home on Vikas Marg, New Delhi. The petitioner with his two women colleagues, had also gone to this site for peacefully protesting against Praveen Togadia's Trishul Diksha programme by displaying some placards. These placards said "Trishul Nahin Rozgar Chahiya", "Talwar Nahin, Pyar, Jihad Nahin, Dharam Yudh Nahin, Aman, Ekta, Shiksha Chahiye". As soon as the petitioner and his colleagues displayed these placards, they were set upon by some unknown persons of Bajrang Dal and VHP, who were present there in the Diksha ceremony, and the petitioner was beaten badly with lathis and guels by these people. At the time of the incident, several policemen were standing right there as mute spectators without taking any action to stop the crime being committed in broad day light. The inaction of the policemen to prevent the crime is evident from the photographs published in the news item in the English daily "The Hindu" dated 5.5.2003, copy whereof is annexed as Annexure P-1 to the present petition.

3. The petitioner was taken to Lal Bahadur Shastri Hospital where he was medically examined and discharged from the said hospital with the medical report that he had suffered some injuries on the right shoulder and other parts of his body. A copy of the medical report is annexed as Annexure P-3 to the petition.

4. The grievance of the petitioner is that though he made a complaint to the concerned Police Station, instead of registering a First Information Report on his said complaint u/s 324 of the Indian Penal Code and taking appropriate action against the culprits, the police officials prepared a report that no cognizable offence had been made out.

5. The petitioner further asserts that pursuant to the above incident, on 5.5.2003 he sent a letter to the Deputy Prime Minister and the Home Minister, through his counsel, narrating all the above-mentioned facts and complaining about the inaction of the police officials, but till date he has not received any response to the said letter, a copy whereof is annexed as Annexure P-4 to the present petition. Two days thereafter, that is, on 7.5.2003, the petitioner sent a legal notice to the Commissioner of Police (Annexure P-5) narrating the facts of the incident dated 4.5.2003 and requesting him to take appropriate action against the errant police officials, who had watched the incident like mute spectators, however, no response has been received by the petitioner till date from the Commissioner of Police as well. Hence the present writ petition under Article 226 of the Constitution.

6. Notice of the petition was issued by this Court to the respondents. In response to the said notice, Status Report has been filed on behalf of the respondent No. 2/ State, wherein it is submitted that the allegations leveled in the petition by the petitioner regarding the inaction of the police officials are false and baseless as the police personnel deployed there responded immediately when the scuffle took place. The relevant portion of the Status Report, which is submitted to this Court by the Deputy Commissioner of Police, East District - Delhi, reads as

follows:

1. On 4th May, 2003 Vishwa Hindu Parishad had organized a "Trishul Diksha Programmer/Rally" at District Centre, Laxmi Nagar from 8.00 AM to 12.00 Noon. The Rally was attended by large number of people. From the point of view of security and law and order elaborate arrangements were made as such a Force comprising of police personnel of CRPF (1+1+6+33), CISF (7+34+21) and Local Police (4+13+28+31+72) was deployed accordingly. Due to the aforesaid arrangement there was no untoward incident at or around the function except one incident. Following is the sequence of events pertaining to the incident.
2. At 10.35 AM : The moment the scuffle was noticed by the outside force deployed near the place of occurrence on Vikas Marg, the police swung into action and separated the Petitioner from the other persons who were trying to assault him. The local Police personnel on Motor Cycle patrol on Vikas Marg assisted the outside force.
3. At 10.42 AM, the scuffle was also noticed by Zonal in charge ACP, Kalyanpuri Shri M.R. Gotwal who immediately came at the place of occurrence on Vikas Marg near Bus Stand near Madhuban Chowk and called by Wireless Inspector Shri Ashok Tyagi, SHO, New Ashok Nagar and Inspector Shri Sarbjeet Singh, DIU East who was also looking after the arrangement on Vikas Marg and adjacent roads to immediately rush to the spot. Consequently, Inspector Ashok Tyagi and Shri Sarbjeet Singh also reached there and directed nearby PCR Van on Patrol to take the Petitioner and two girls Along with him to Police Station/Hospital for necessary legal action and the situation was controlled due to the timely intervention of the Police.
4. At 10.45 AM, the PCR Van took the Petitioner and girls from the place of occurrence and departed for the Police Station Preet Vihar.
5. At 11.00 AM, the PCR Van in charge ASI Ram Nath - 3711/D, Driver HC Jagdish 4042/PCR, Gunman Ct. Gag Raj No. 2183/PCR came to the Police Station and handed over the Petitioner and two girls to Duty Officer ASI Anita at PS Preet Vihar who made a D.D. Entry vide D.D. No. 16A and sent the copy of DD Entry Along with Petitioner with two girls to ASI Yad Ram for necessary legal action.
6. Between 11.00 AM to 11.45 AM, ASI Yad Ram recorded the statement of Petitioner and the girls namely, Gayatri Arya D/o Smt. Satyawati Arya, resident of D-M-T 52, Tuglakabad Industrial Area, M.B. Road, Delhi and Km. Durga D/o Smt. Parvati, resident of as abovementioned. In their statements, they stated that they are working as social workers. On that day at about 10.30 AM they came from their respective houses to Coffee Home. They came there, not to participate in the Programme of Praveen Bhai Togadia. They were standing at the Madhuban Bus Stand, near Swasthya Vihar and they were having paper posters in their hands. On these posters there were certain messages written in Hindi which were "TRISHUL NAHI ROJGAR CHAHIYE, TALWAR NAHIN PYAR, JIHAD NAHIN DHARAM YUDH NAHIN, EKTA AMAN SHIKSHA CHAHIYE". Just after

reaching the Bus Stand having posters in their hands, some people having "DANDA" in their hand came to the Bus Stand and asked who are you and from which place you have come? As we showed the said posters to those people, they tore those posters and told them to go from this place. As Vimal Bhai Along with Gayatri Arya and Kumari Durga started walking from the Bus Stand they pushed Vimal Bhai and hit him with Danda, causing injury in little finger of left hand, back shoulder, right leg, both girls Gayatri Arya and Km. Durga did not sustain any injury and they refused to go for medical examination as they admitted in their statements in writing to ASI Yad Ram.

7. At 12.45 PM, the Petitioner was taken to LBS Hospital by ASI Yad Ram and Ct. Ram Bhajan No. 2013/E for medical examination. The Petitioner was medically examined vide MLC No. 2472/03 on which Doctor opined the nature of injury as simple blunt injury.

8. At 1.09 PM, ASI Yad Ram Along with the Petitioner and Ct. Ram Bhajan No. 2013 came to the Police Station, since there was commission of no cognizable offence from the statement of Petitioner and M.L.C. of the Petitioner was made out, hence ASI Yad Ram made a D.D. Entry vide D.D. No. 18A and gave a copy of the D.D. Entry to the Petitioner and advised him to approach the concerned Court as the same was a non-cognizable offence.

9. From the facts mentioned above, it is clear that Police had taken all precautions by laying out an elaborate arrangement to ensure security and law and order. When few participants of the Rally had a scuffle with the petitioner, the Police personnel deployed at and near the place of occurrence responded immediately and ensured that it was not allowed to escalate further. It was only due to timely intervention by the Police personnel deployed there, that the Petitioner was saved from serious injuries and the two girls namely Gayatri Arya and Kumari Durga did not suffer any injury. Senior Officers deployed around the area immediately rushed to the place of occurrence and ensured that the petitioner Along with girls was shifted to police station Preet Vihar for necessary legal action. It is, Therefore, denied that the police was a mute spectator to the assault on the Petitioner as alleged.

7. Shri Prashant Bhushan, the learned Counsel for the petitioner, contended that the police officials, whose primary duty was to prevent crime and maintain the law and order situation, totally failed to prevent the assault on the petitioner by the activists of the "Bajrang Dal" and "Vishwa Hindu Parishad", which is in utter violation of the fundamental rights guaranteed to the petitioner under Article 19(1)(a) of the Constitution. The police personnel, as is borne out from the photographs published in the newspapers, chose to remain mute spectators. It was also contended by the learned Counsel for the petitioner that the malafide acts and inaction of the police is evident from the fact that the police officials, though were eye witnesses to the incident, refused to register an FIR against the culprits and instead prepared a report to the effect that no cognizable offence was made out. Lastly, the counsel for the petitioner contended that since the

communications of the petitioner sent to the authorities have remained unresponded till date, the petitioner has apprehension that the respondents are not likely to take any action against the culprits.

8. Ms. Mukta Gupta, the learned Standing Counsel for the State, on the other hand, submitted that on the day of the incident sufficient security personnel were deployed at the site comprising of personnel from the CRPF, the CISF and the local police. It was further submitted by Ms. Gupta, Standing Counsel for the State that it was the police who intervened and the petitioner was in fact saved by their timely action. Far from being mute spectators, the police officials were instrumental in warding off the miscreants. However, the petitioner having sustained a minor injury opined to be a simple blunt injury, the registration of a First Information Report was not called for.

9. The incident having taken place as far back as in the year 2003 and the petitioner having sustained minor injuries in the scuffle which took place, this Court is of the view that registration of the First Information Report in the instant case after more than four years of the incident would be an exercise in futility and perhaps for this reason the prayer for registration was not pressed by the learned Counsel for the petitioner. This Court would, however, be failing in its duty if it does not observe that some comprehensive guidelines are necessary to be issued for the better functioning of the police so that the general public does not lose faith in the police department and the law and order machinery of the State. This is a welfare State governed by democratic principles in which fundamental rights such as freedom of expression are allowed full play. This, however, does not mean that whenever placards are held out by innocent and peace loving citizens to air their grievance or to seek espousal of their cause, the placards must be trampled upon and the hands which hold them broken. Rallies and processions too are the order of the day. Such kind of rallies and processions are more often than not held after adequate notice, thereby enabling the higher rung of police officials to man the route to be adopted by the rally or procession with adequate security personnel. One cannot, however, help but notice that such security personnel posted at strategic places to prevent untoward incidents are more often than not little better than bystanders - a little better because they are armed and for no other reason. It is lost sight of by such personnel that their job is to prevent even a small scuffle from taking place rather than to step in to avoid rioting alone.

10. The newspaper cutting placed on record by Shri Prashant Bhushan, the learned Counsel for the petitioner, is ample proof of the fact that the police personnel posted at such spots consider it their duty to man the spot, but beyond this, their role is not at all proactive. There is little realisation of the fact that a small scuffle has the potentiality of sparking a serious situation, if not checked and averted, and as a matter of fact, there are news reports galore where rallies and processions have led to major rioting in riot prone areas and even in those areas which are not so riot prone. It is here that the role of the

police officials and other security agencies assumes significance. This is not to say that the police should unnecessarily lathi-charge or tear-gas a peaceful rally or procession. But, at the same time, it must be impressed upon them that their deployment is for the singular purpose of ensuring peace in the area, so that neither those who carry torch of the rally nor the innocent wayfarer is the sufferer. Then again, booking a culprit in case he commits a cognizable offence is one thing but the police must be made to realise that even in cases where a non-cognizable offence is committed, it is not exactly helpless.

11. Accordingly, this Court in exercise of its powers under Article 226 of the Constitution of India directs the respondent No. 2 (the Commissioner of Police) and all other law enforcing agencies including the Director, CISF and the Director, CRPF to issue comprehensive guidelines to personnel working under them to ensure that no untoward incident takes place in the course of the frequent rallies and processions within the National Capital Territory of Delhi and its adjoining areas and at any rate such incidents are minimised to the maximum. It is further directed that the law enforcing agencies while mapping out the route of such rallies and processions shall depute security personnel by their names and designations at a particular spot and for any incident which takes place within the radius of that particular spot, the named security officials shall be held to be wholly responsible. All newspaper reporters and media persons covering the event shall also be afforded full protection by the security personnel. Photographs taken by such media persons may be used to identify the culprits and to take action against them in accordance with law not only for the commission of cognizable offences but also for non-cognizable offences so that minor incidents capable of igniting major law and order problems are dealt with appropriately. Those equipped with lathis, dandas, batons, short staff or any other instruments, which may be used as weapons of offence which are likely to cause grievous injury or death if used at a sensitive and vulnerable part of the body, be not allowed to participate in the rally or procession till disarmed. Such lathis and other weapons of offence be seized by the police forthwith to maintain peace and social order. Full effect be also given to the provisions of Section 42 of the Code of Criminal Procedure to arrest a miscreant for the commission of a non-cognizable offence in case of his refusal to give his name and residence. When the true name and residence of such person/persons have been ascertained, he/they shall be released on executing bond(s), with or without sureties, to appear before the Magistrate, if so required (Sub-Section 2 of Section 42). Should the true name and residence of such person not be ascertained within 24 hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction. Callous and indifferent attitude and dereliction of duty by the personnel posted at the spot be dealt with by the higher authorities in a stringent manner and the promotional avenues of such personnel be blocked till such time as they prove themselves equal to the task entrusted to them. Training courses be imparted to the personnel to make them cognizant with their

duties and responsibilities and to equip them with the mode and manner in which they are expected to deal with miscreants and goons, who may be inextricably mixed up with peace loving citizens demonstrating for a cause or airing a grievance. Mandatory advanced courses and training be imparted to identified personnel to equip them with the know how of handling specially volatile situations, likely to disrupt the peace and harmony of the State itself. Such other comprehensive guidelines be promulgated by the Commissioner of Police, the Director of CISF and the Director of CRPF and other law enforcing agencies as may be thought fit and proper for the effective management of strikes, hartals, riots, rallies, processions, demonstrations and the like. The said comprehensive guidelines be circulated to all personnel without exception.

12. W.P. (Crl.) No. 570/2003 and Crl. M. No. 450/2003 stands disposed of accordingly.

Copy of this order be given duly to the Standing Counsel for the State to forward the same to the Commissioner of Police, the Director of CISF and the Director of CRPF and other law enforcing agencies with instructions to frame comprehensive guidelines as delineated above within a period of three months from today and to forward a copy of the same to the Registrar General, High Court of Delhi.