

(2007) 09 AHC CK 0037
In the Allahabad High Court

Virendra Singh Bundela and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 147, 148, 307, 506

Citation : (2007) 09 AHC CK 0037

Hon'ble Judges : S.K. Jain, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amar Saran and S.K. Jain, JJ.—This writ petition has been filed by the petitioner Virendra Singh Bundela and others for seeking quashing of an F.I.R. lodged by Jairam Singh Yadav against the petitioners under Sections 147, 148, 149, 307, 342, 504 and 506 IPC, Police Station Kotwali, district Lalitpur at case crime No. 3350 of 2007.

2. The allegations in the F.I.R. were that Jairam Singh Yadav's son Jogendra Singh had won the Jakhlaun Zila Panchayat membership election, with support from the B.S.P. by a preponderant majority and had become Zila Panchayat Adhyaksh. Petitioner No. 1 Virendra Singh Bundela, who was a Minister in the S.P. Government, wanted to see his son Sanju alias Sanjai Singh on the seat, and had consequently started abducting the members of the Panchayat. On 27.10.2005 when the informant was going with the Zila Panchayat members to attend a meeting of the B.S.P. in Jhansi, then the petitioner Virendra Singh Bundela utilising his influence detained the informant and other members at the B.H.E.L. chauki till evening. Three members were forcibly detained and on 31.10.2005 when the informant had gone to Jhansi on some personal work he received a telephone call from Sanjai alias Sanjai Singh that he should not make his son contest the Zila Panchayat President elections and that he should also vote for him, otherwise he would have to face the consequences. When the

informant repelled his request, he showered abuses on him and threatened to eliminate his family. After half an hour, he received a phone call that Sanju alias Sanjai Singh and others along with 10 or 12 of their supporters had come in vehicles looking for the informant and had resorted to firing with their arms, which included carbine, revolver, pistol etc. They had also administered beatings to the informant's servant Shailendra and chaukidar Ramdas. Sanju Raja was accompanied by Pawan Raja, D.P. Raja and others. The incident was witnessed by several persons Atal Singh, Mahendra Singh, Sobendra Singh and others. After that Sanju Raja and others left the informant's house and went to another house in Civil Lines where they again indulged in firing and destruction of properties and administered beating to the informant's munim Krishna Pal Singh. The medical examination of Krishna Pal Singh was got done by the police. The informant had reported the matter dated 31.10.2005 to the D.I.G. Jhansi Division at 4.35 p.m. and prayed that the F.I.R. be registered. He prayed for action and security in view of the threats from Sanju Raja, who was involved in several cases including murders. However, owing to political pressure at that time, the report was not registered. The news of firing at his residence was published in contemporaneous local newspapers, whose cuttings were being attached with the F.I.R., which was lodged by the informant on 22.8.2007 at 9.15 p.m.

3. Learned Counsel for the petitioner urged that the F.I.R. have been lodged in a mala fide manner for political reasons after a lapse of two years and no credence should be given to the same. Furthermore, no application u/s 156 (3) Cr. P. C. was moved in the meanwhile. The respondents had murdered the petitioner's son on 10.11.2005 and the said report was lodged by way of counter blast for putting pressure on the petitioner to withdraw the murder case against the informant, who had been sent to jail. After grant of bail from the High Court, a petition had been moved in the Apex Court, wherein notice had been issued to the respondent No. 6.

4. Learned A.G.A., however, submitted that an attempt was made by the informant to report the incident dated 31.10.2005 and he had even moved an application before the D.I.G. at 4,35 p.m. on the same day, newspaper cuttings of that date and time corroborated the incident. There was a specific allegation in the F.I.R. that two servants of the informant Shailendra and Ramdas were beaten by the petitioner's son and others on the date of incident and that thereafter informant munim Krishna Pal Singh was beaten, who had been taken by the police for medical examination on the date of incident i.e. 31.10.2005. There is no contradiction of the said allegations anywhere in the detailed petition filed by the petitioner. Merely making allegation about the political mala fide provides no ground for quashing of an F.I.R if a prima facie case is disclosed on the allegations in the FIR. After considering a catena of decisions of the Apex Court it has been held in State of Orissa and Another Vs. Saroj Kumar Sahoo, at page 551 that "It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a

conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

(Emphasis ours)

To the same effect we find the following passage in paragraph 9 in AIR 2004 SC 555 "M. Narayandas v. State of Karnataka" which has referred to Bhajan Lal's case and to the case of Sheo Nandan Paswan:

9. It was next submitted that on the material placed before it the High Court was, right in concluding that the complaint was false, frivolous and vexatious. It was to be noted that the High Court arrived at this conclusion on the basis of unsubstantiated allegations made by the Respondents. How Courts should deal with such allegations is set out in para 108 of Bhajan Lal's case (supra). Para 108 read as follows: State of Haryana and others Vs. Ch. Bhajan Lal and others,

108. No doubt, there was no love lost between Shri Bhajan Lal and Dharam Pal. Based on this strained relationship, it has been then emphatically urged by Mr. K. Parasaran that the entire allegations made in the complaint due to political vendetta are not only scurrilous and scandalous but also tainted with mala fides, vitiating the entire proceedings. As it has been repeatedly pointed out earlier the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is on November 21, 1987. The evidence has to be gathered after a thorough investigation and placed before the Court on the basis of which alone the Court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but on evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, C. J. in Sheonandan Paswan Vs. State of Bihar and Others, may be referred to (SCC p. 318, para 16)

It is a well established proposition of law that a criminal prosecution, if otherwise

justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.

For this reason the submission cannot be accepted. If as claimed there is no substance in the complaint the investigation will say so. At this stage there were only allegations and recriminations. The High Court could not have anticipated the result of the investigation or rendered a finding on question of mala fides. Even if the Appellant had made the complaint on account of personal vendetta that by itself was not a ground to discard the complaint which had to be tested and weighed after the evidence was collected.

5. In view of the aforesaid facts and circumstances, as the F.I.R. clearly discloses the commission of a criminal offence against the petitioners and others which is corroborated by circumstances, such as the injuries on the prosecution side whose presence has not even been questioned in the averments made in the writ petition, and also the fact that the contemporaneous news paper reports mentioned the said incident. In such circumstances the mere failure of the informant to move an application u/s 156 (3) Cr. P. C. was not fatal for the prosecution, as under the earlier political dispensation the informant could not have been hopeful of a fair investigation in view of the influence wielded by the petitioner No. 1, who was a minister in the erstwhile government. It is not unknown when successor governments look at the misdeeds of the previous government, which may be justified when an accused has earlier succeeded in thwarting investigation into a crime against him, owing to political clout, and when there are no suspicions of a witch hunt. It cannot be inferred that in each situation where the FIR has been lodged after the change in government where a person with status in the erstwhile party in power was involved, it must have been lodged by the subsequent government in a mala fide manner. Significantly in this context it would be useful to refer to the sagacious words of Krishna Iyer, J. in *State of Punjab and Another Vs. Gurdial Singh and Others*,

If the use of power is for the fulfilment of a legitimate object, the actuation or catalisation by malice is not legicidal.

Likewise Hidayatullah, J. speaking for the Constitution Bench pointed out in *Krishna Ballabh Sahay and Others Vs. Commission of Inquiry and Others*,

The contention that the power cannot be exercised by the succeeding ministry has been answered already by this Court in two cases. The earlier of the two has been referred to by the High Court already. The more recent case is *P.V. Jagannath Rao and Others Vs. State of Orissa and Others*, It hardly needs any authority to state that the inquiry will be ordered not by the Minister against himself but by some one else. When a Ministry goes out of office, its successor may consider any glaring charges and may, if justified, order an inquiry. Otherwise, each Ministry will become a law unto itself and the corrupt conduct of its Ministers will remain beyond scrutiny.

6. In this view of the matter no ground is made out for quashing the FIR or for staying the arrest, and the writ petition is accordingly