

IN THE HIGH COURT OF DELHI AT NEW DELHI

CrI. M.C.NO. 3143-47/2006

Judgment delivered on :07 December, 2009

Equesterian Federation of India & Ors. Petitioners
Through: Mr. Rajiv Dutta, Sr. Advocate with
Mr.Kumar Dushyant Kumar, Adv.

I.S. Lamba Respondents
versus
Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (ORAL)

By this petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of the summoning order dated

22.12.2005 passed by the learned M.M. Ms. Gitanjali Goel, under Section 406, 420 and 34 IPC.

The brief facts of the present case are as under:

In the present petition the petitioners have been arraigned as accused in the complaint case filed by the respondent no.2 under Section 200 Cr.P.C. wherein after recording the pre-summoning evidence on behalf of the complainant, the learned M.M. issued summons to the petitioners for an offence under Section 406, 420 IPC read with Section 34 IPC.

The petitioner no.2 served in the Indian Army at the rank of Lt. General. Similarly petitioner no.3 is a retired Major General of the Indian Army and was the Vice President of the Equestrian Federation of India. The petitioner no.4 is also a retired Major General of the Indian Army and was the Vice President (Vet) of the Equestrian Federation of India. The petitioner no.4 is also a retired Major General of the Indian Army and the petitioner no.5 is serving as a Colonel in the Indian Army.

The case of the petitioners is that the respondent no.2 is in the habit of filing cases against the petitioner no.1 and its

officers on one pretext or the other with the sole objective to harass them so that he can manage to become a part of the Executive Committee. Major General B.S. Panwar (Retd.,) petitioner no.3 herein, was appointed by Equestrian Federation of India to proceed to Riding School, Stockholm (Sweden) along with other persons who were invited by the same to see the standards of the Equestrian Sport of India Riders and to meet the officials, riders, trainees and other involved persons in the Equestrian Sport in order to explore the possibilities of co-operation between India and Sweden. The respondent has been paid Rs. 15,000/- for attending EFI course for CD/TD in Event, held at Lexington Kentucky during April, 2004 and Rs.500 for the expenses for the transportation from Delhi to Meerut for Attending Coaching Camp. The case of the petitioners is that entire expense incurred by the EFI has been duly accounted and entered into the Ledger Book and every entry is very clear.

Mr. Dutta, learned Senior Advocate appearing for the petitioners submits that the complaint case filed by the respondent no.2 against the petitioners, is a gross abuse of the

process of the court. Counsel further submits that if the allegations leveled by the complainant/respondent no.2 are accepted as correct, even then no cognizable offence is made out against the present petitioners. Mr. Dutta further submits that the respondent no.2 has not been appearing in the matter for the last many occasions which would itself show that the respondent has nothing to say in opposition to the present petition. Mr. Dutta submits that all the petitioners at the relevant time were high ranking officers and the respondent deliberately did not disclose the posts and status of the petitioners. Counsel further submits that the learned trial court in a most mechanical manner passed the summoning order without carefully going through the averments of the complaint as well as the pre-summoning evidence. Counsel further submits that the respondent no.2 is in the habit of filing false cases against the other high ranking officers and his sole aim is to defame the prestigious body i.e. Equestrian Federation of India, so that somehow or the other he manages to become the Executive Member of the said Federation.

On merits, Mr. Dutta submits that the respondent

complainant has leveled false allegations in the complaint by submitting that the funds of the said federation were misappropriated by the present petitioner by hatching a criminal or planned conspiracy. The contention of the counsel for the petitioner is that it is the Federation itself which has circulated the accounts of the said body when its Annual General Meeting was convened for 24.7.2005. Counsel further submits that in the said account separate expenses were shown as incurred by the Federation towards the visit of Major General B.S. Panwar, Additional Director General who was nominated by the Federation to attend the Swedish Equestrian Educational Centre Stockholm, Sweden from 6.6.2003 to 12.6.2003. Counsel contends that the said amount was not accounted by the Federation in the account of the petitioner. Counsel thus submits that as far as the payment made by the respondent/complainant was concerned i.e. an amount of Rs. 15,500/-, the same is separately reflected in the statement of accounts of the Federation and the said entry has no connection with the other entry which was independent and separate from the expenses incurred for the other officers who

were deputed to attend the said conference. Counsel thus submits that the complaint filed by the respondent was patently false and vexatious and the continuation of the said complaint case against the petitioners would be gross abuse of the process of the court.

I have heard learned counsel for the petitioner at considerable length.

It is trite law that machinery of criminal law cannot be set into motion as a matter of routine. Criminal prosecution is a serious matter and should not be indulged by people to serve their selfish designs. Issue of process is a serious job and the courts cannot mindlessly and ritualistically issue process. The party against whom allegations are leveled has to go through the ordeal and agony of a criminal trial which may tarnish his image and lead to adverse consequences. It would be pertinent to reproduce the relevant paras from the judgment in “**Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors. 1998 Cri. L.J. 1**” in this regard:

“27. Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course.

It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

I have perused the records produced and the entries which are the cause of the present complaint and it appears that the present case is nothing but an abuse of the process of the court. The Ld. M.M. erred in issuing the process in this case as to issue a process what needs to be satisfied firstly is whether the allegations made in the complaint prima facie establishes the offence and secondly whether it is expedient in the interest of justice to permit a prosecution both of which are not fulfilled in the case at hand.

The petitioners have placed reliance on the judgment of this court in **K.K. Agarwal and Another Vs. Enforcement**

Directorate (MANU/DE/0827/2009). The said judgment is relevant in the present case and it would be pertinent to reproduce the following paras:-

"As regards exercise of power under Section 482 CrPC, while relying on its earlier decision in State of Karnataka v. L. Munniswamy and Ors. MANU/SC/0143/1977 : 1977CriLJ1125 , the Apex Court has held in the case of B.S. Joshi v. State of Haryana 2003 CBC 393 (Sc) that it would not be expedient to allow a lame prosecution to continue and the ends of justice are higher than the ends of mere law. In this connection the following extract from paragraph 10 of the aforesaid case in B.S. Joshi is pertinent.

In State of Karnataka v. L. Munniswamy and Ors., considering the scope of inherent power of quashing under Section 482, this Court held that in the exercise of this wholesome power, the High court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature.

10. Also, it is no more res integra that the standard of proof required in criminal proceedings is higher than that required before adjudicating authority, therefore if an accused is exonerated before the adjudicating authority then criminal proceedings on same set of facts cannot be allowed to continue against him."

Nobody has chosen to represent the respondent despite number of opportunities granted by this court, therefore, the matter is heard in the absence of the respondent.

Hence in the light of the above submissions of the petitioner, the summoning order dated 22.12.2005 passed by the Ld. M.M. is hereby quashed.

The petition stands disposed of accordingly.

December 07, 2009
MG

KAILASH GAMBHIR,J