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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 18.04.2009

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W.P. (C) 11983/2006

SHREE CHAND

..... Petitioner

Through: Mr. Shiv Charan Garg,
Advocate.

versus

STATE & ORS.

..... Respondents

Through: Ms. Mukta Gupta,
Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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

S.RAVINDRA BHAT, J. (OPEN COURT)

% The petitioner seeks the following directions to the respondents:

- (i) direct the nominated officer to pay the adequate damages
for the harassment and mental agony caused to the petitioner;
 - (ii) direct the nominated officer on the notice to give proper
rely of the said notice;
 - (iii) direct for holding departmental enquiry against the
nominated officer; and
2. Briefly the facts are that the petitioner, resident of 471, Chirag Delhi,

New Delhi claims to have lodged a complaint on 6.5.2006 with the police authorities to stop unauthorized construction by his neighbour Sunil. It is alleged that instead lodging a First Information Report (FIR) against the alleged offenders, the petitioner was detained in the police post from 10:00 AM to 4:00 PM and was harassed and tortured. The petitioner also avers to his being abused. In these circumstances, he claims to have complained to the superior officers on 15.5.2006 which led to his statement being recorded by the Delhi Police Vigilance Department. It is submitted that despite a notice to the respondents on 29.5.2006, asking them to pay damages, and for permission under Section 140 of the Delhi Police Act, the latter did nothing. The Writ Petition was filed on 17.7.2006. The petitioner besides relying on the contentions in the proceedings also relies upon the decision in *Salem Advocate Bar Association v. Union of India* AIR 2005 SC 3353 particularly paras 40 & 41 which deal with the obligation of government authorities in regard to reply to statutory notice.

3. The respondents filed their counter affidavit through the Additional DCP, Delhi Police, South District. They claim that on 6.5.2006, a PCR call was received about a quarrel in Village Chirag Delhi at House Nos.471 and 482; ASI Hari Ram had attended the call. That police official stated that there was a quarrel between one Anil Kumar and one Shree Chand (i.e. the petitioner). It is further averred that the concerned police man asked the parties not to take law into their hands and maintain peace, after which they calmed down. It is stated that again on the same day, the parties were involved in quarrel.

A call was made to the PCR which was received and attended to by HC Jaiveer Singh, who reached the spot and found that the parties were aggressive. It is claimed that Shri Anil Kumar and the present petitioner was arrested by the HC Jaiveer Singh, under Section 107 and 151 Cr.P.C. and later produced before the Special Executive Magistrate. They were sent to judicial custody. It is alleged that the parties' detention was to maintain peace and harmony.

4. During the course of the proceedings, the respondents were asked to furnish a copy of the vigilance enquiry report; the same was produced on 6.12.2007. Relevant part of the said report reads as follows: -

"The vigilance enquiry was got conducted by ACP/Vigilance. During enquiry, it has been revealed that a PCR call was made on 6.5.2006 and ASI Ram Nath, I/C PCR Van along with the staff reached the spot at 10.20 AM. That PCR call vide DD No.8 dated 6.5.2006 at 10.30 AM was received at PP Sheikh Sarai regarding quarrel at House No.471 & 482, Chirag Delhi. The call was entrusted to ASI Hari Ram who reached the spot and found that there was a quarrel between Shree Chand and Anil over some construction. Both the parties were brought to PP Sheikh Sarai and were allowed to go on the assurance that they would not quarrel again. Again a PCR call vide DD No.10 dated 6.5.2006 at 2.10 PM was received at PP Sheikh Sarai in the similar matter. The call was entrusted to HC Jalbir Singh. He reached the spot and found that Shree Chand and Anil were fighting over construction of 'chhajja' in the house. Since there was apprehension of breach of peace, therefore, Shree Chand (Petitioner) and Anil both were arrested u/s 107/151 CrPC from the spot and produced before the Ld. SEM on the same day who sent them to judicial custody. SI Sunil Kumar I/C PP Sheikh Sarai denied all the allegations.

During the course of enquiry, it is revealed that petitioner was earlier convicted for two years imprisonment with a fine of Rs.2000/- in case FIR No.173/83 u/s 406 IPC PS Baroda, Distt. Sonapat, Haryana. SHO/Malviya Nagar had informed DC/MCD,

South Zone vide letter dated 20.5.2006 about unauthorized construction at House No.482, Chirag Delhi village and on 23.6.2006, MCD staff had demolished it partially. The petitioner was not detained in PP Sheikh Sarai from 10 AM to 4 PM. He along with Mr. Anil was brought to the PP on the first PCR call at 10.30 AM and was allowed to go after enquiry. This fact is further corroborated by the second call regarding quarrelling at 2.10 PM pursuant to which they were arrested under preventive sections of law as there was apprehension of breach of peace. The allegations leveled in the complaint were found to be baseless and not substantiated."

5. The learned counsel contended that the respondents acted in a negligent manner in not dealing with the notice, thus depriving him of the right to proper redress and that the concerned nodal officer should be directed to pay damages.

6. Counsel for the respondents, on the other hand, submitted that the structure of Section 140 is such that the petitioner could have filed a Suit regardless of the reply or inaction of the respondents; the only impediment would have been that the Suit would not be entertained if it was filed after three months of the alleged cause of action.

7. Section 140 of the Delhi Police Act, reads as follows: -

"Section 140 - Bar to suits and prosecutions

(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

(2) In case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been, served on the defendant and the date of such service and shall state what tender or amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

8. In the *Salem Advocate Bar Association* case (supra); the Supreme Court emphasized the need for speedy response under Section 80 of the Civil Procedure Code. It stated that similar provisions exists in various other legislations as well and that wherever the statutory provision required service of notice as a condition precedent for filing of Suit and prescribed the period, it is not only necessary for the Governments or departments etc. to send a reply to such a notice, but it is necessary to properly deal with all material issues raised in the notice. The Court stated as follows: -

"40. section 80 (1) of the Code requires prior notice of two months to be served on the Government as a condition for filing a suit except when there is urgency for interim order in which case the Court may not insist on the rigid rule of prior notice. The two months period has been provided for so that the Government shall examine the claim put up in the notice and has sufficient time to send a suitable reply. The underlying object is to curtail

the litigation. The object also is to curtail the area of dispute and controversy. Similar provisions also exist in various other legislations as well. Wherever the statutory provision requires service of notice as a condition precedent for filing of suit and prescribed period therefore, it is not only necessary for the governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all material points and issues raised in the notice. The Governments, Government departments or statutory authorities are defendants in large number of suits pending in various courts in the country. Judicial notice can be taken of the fact that in large number of cases either the notice is not replied or in few cases where reply is sent, it is generally vague and evasive. The result is that the object underlying section 80 of the Code and similar provisions gets defeated. It not only gives rise to avoidable litigation but also results in heavy expense and cost to the exchequer as well. Proper reply can result in reduction of litigation between State and the citizens. In case proper reply is sent either the claim in the notice may be admitted or area of controversy curtailed or the citizen may be satisfied on knowing the stand of the State. There is no accountability in the Government, Central or State or the statutory authorities in violating the spirit and object of section 80.

41. These provisions cast an implied duty on all concerned governments and States and statutory authorities to send appropriate reply to such notices. Having regard to the existing state of affairs, we direct all concerned governments, Central or State or other authorities, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceedings against it, to nominate, within a period of three months, an officer who shall be made responsible to ensure that replies to notices under section 80 or similar provisions are sent within the period stipulated in a particular legislation. The replies shall be sent after due application of mind. Despite such nomination, if the Court finds that either the notice has not been replied or reply is evasive and vague and has been sent without proper application of mind, the Court shall ordinarily award heavy cost against the Government and direct it to take appropriate action against the concerned Officer including recovery of costs from him."

9. In this case, the preceding discussion would show that alleged incident took place on 6.5.2006. The petitioner contended that indignities had been committed on him and he wrote to the Vigilance Cell of Delhi Police on 15.5.2006; his statement too was recorded on 26.5.2006, as contended in these proceedings. In these circumstances, he got a legal notice issued to the respondent authorities on 29.5.2006. Although the respondents have eluded to the circumstances and also filed a vigilance enquiry report on 6.12.2007, the fact remains that there is no advertence to any response to the notice dated 29.5.2006. To that extent, the petitioner's grievance appears to be justified. In *Salem Advocate Bar Association* case (supra), the Supreme Court had clearly intended that when citizens seek to exercise rights or enforce them against government department or bodies and are required, as a prelude to issue notice, the agencies concerned should promptly deal with them. The underlying objective for making such provision and mandating the consequences was also spelt out by the Court.

10. Section 140 of the Delhi Police Act in this case in fact goes one step further; in case a person issue notice and the appropriate government sends it response after expiry of three months, the valuable right of citizen to sue the State – if he does not already institute proceedings in the meanwhile - is completely extinguished. In other words, the State Government can by the simple stratagem of doing nothing for three months tire out a potential litigant and entirely defeat his rights. In such cases it all the more imperative that the government should strictly adhere to the time frame and

respond within a reasonable time keeping the overall limit of three months in mind. No doubt the petitioner has not filed the Suit; yet that cannot in the opinion of the Court absolve the State of its culpable inaction in not responding to the notice issued on 29.5.2006. This in the view of the Court amounts to infraction of the law declared in *Salem Advocate Bar Association* case (supra). The respondents are, therefore, hereby directed to, in all cases where notices are received under Section 140 of the Delhi Police Act, to promptly ensure that reply is dispatched within reasonable time, preferably within four weeks of receipt of the notice. This would enable the aggrieved person to exercise his choice of pursuing civil remedies, in a meaningful manner.

11. In view of the above, though the Court does not propose to go into the merits of the case for more reasons than one – firstly, because the records of the police were also produced in Court and also due to the fact that the vigilance enquiry report has been placed on record, yet, at the same time, this is an appropriate case where the respondent – State should be asked to pay suitable costs. The costs are accordingly quantified @ Rs.50,000/- (Rupees Fifty thousand); they shall be paid by the respondents to the petitioner within four weeks.

12. The Writ Petition is disposed of in the above terms.

APRIL 18, 2009
/vd/

S. RAVINDRA BHAT
(JUDGE)