

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : December 8, 2009

Date of Decision: December 9, 2009

Crl.Rev.P.No. 404/2009

ANIRUDDHA BAHAL

..... Petitioner

Through: Mr. Sidharth Luthra, Sr.
Adv. with Mr. Satya Narayan,
Mr. Arindam Mukherjee and
Mr. Hitender Nath, Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Sharma, APP
with Insp. Sunil Kumar.

*** CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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

1. This is a petition under Section 482 of the Code of Criminal Procedure challenging the order of the learned Additional Sessions Judge dated 9.6.2009 whereby he partly allowed the revision petition filed by the respondent and directed trial of the petitioner under Section 353 of IPC.

2. A perusal of the FIR lodged by Shri N.S.Kharayat, Deputy S.P. CBI would show that some officials of Tehlka.com were to be examined in the case registered vide RC 1(S)2001-CBI-S/C-IV. He thereupon called the office of Tehlka.com firstly on 31.7.2002 and then on 1.8.2002. When he called on 1.8.2002, he was asked to call up on 2.8.2002. When he called up on 2.8.2002 he spoke to the petitioner – Anirudh Behl and explained to him that some officials of Tehlka.com were to be examined. The petitioner asked him to come to his office at about 11:30 a.m. on 5.8.2002. The complainant accordingly went to the office of Tehlka.com at D-1, Soami Nagar, on 5.8.2002 and was taken to the office chamber of the complainant. The petitioner explained the purpose of his visit to the petitioner. On hearing him, the petitioner got infuriated and started abusing him and CBI. When the complainant requested him to behave properly, he again abused him and thereafter he got up from his chair in a menacing manner, caught hold of the hand of the complainant and asked him to get out. He again abused the complainant, pushed him out of the office and asked him not to visit his office in future.

3. The following requirements are to be satisfied before Section 353 of IPC can be invoked:-

1. There must be assault or use of criminal force;
2. Such assault or use of criminal force must have been made on a public servant; and
3. It must have been on a public servant-
 - (a) while he was acting in the execution of his duty; OR
 - (b) with intent to prevent or deter him from discharging his duty; OR
 - (c) in consequence of anything done or attempted to be done by him in the discharge of duty.
4. Criminal force has been defined in Section 349 of IPC which reads as under:-

“349. Force—A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of

motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power;

Secondly.—By disposing any substance in such a manner that the motion, or change or cessation of motion, takes place without any further act on his part, or on the part of any other person;

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.”

5. In the present case, the complaint made by Shri N.S.Kharayat shows that the petitioner caught hold of his hand, asked him to get out and pushed him out of his office. By using his body power, the petitioner caused motion to the complainant when he caught hold of his hand and pushed him out of the office. Hence, use of criminal force is prima facie made out from the allegations made against the petitioner in the complaint.

6. The complainant was involved in the investigation of the RC 1(S)2001-CBI-S/C-IV and had gone to the office of the petitioner in connection with recording statement of some officials of Tehlka.com in that connection. When the complainant explained the purpose of his visit to the petitioner, he allegedly got

infuriated and used criminal force against the complainant, after hurling choicest abuses at CBI and its officials, including the complainant. The complainant was seeking to record the statement of officials of Tehlka.com, in discharge of his duty as a CBI officer when this happened. Once, he came to be associated with the investigation of RC 1(S)2001-CBI-S/C-IV, it was a part of his duty to carry out investigation of that case and, therefore, it cannot be denied that he was discharging his duty when he went to the office of Tehlka.com for the purpose of recording statements of some officials. The complainant was, therefore, subject to use of criminal force, in consequence of something done or attempted to be done by him in discharge of his duty as a CBI officer. Therefore, requirement 3(c) stands prima facie satisfied in this case.

7. Since the obvious objective of the petitioner in using his body power against the complainant and pushing him out of the office after abusing him and his organization, was to prevent or deter him from recording the statement of officials of Tehlka.com., requirement No.3(b) noted above also stands satisfied in this case.

Undisputedly, the complainant was a public servant. Therefore, requirement No.1, 2 and 3(b) & (c) are fully satisfied from the statements of the complainant and his companion.

8. It was contended by the learned counsel for the petitioner that the prosecution has not filed any document to show that the complainant had made an entry of departure before he left CBI office on 5.8.2002, though it has filed a document showing entry of departure of S.I. Kailash Sahu who accompanied him. The contention was that in the absence of entry of departure of the complainant, it cannot be said that he was performing his official duty when he visited the office of Tehlka.com. In support of his contention, the learned counsel has relied upon the provisions of Punjab Police Rules, which require every enrolled police official to make such an entry, while leaving a police station. The learned Addl.APP, on the other hand, contended that the complainant being an officer of rank of Deputy Superintendent of Police, he was not required to make entry of his departure from the CBI office as such an entry is required to be made by officials of the rank upto Inspector. I, however, need not go into this question at this stage for the simple reason that even if a CBI

officer is required to make an entry before leaving CBI office but he does not do so and leaves the office for discharge of his official duties, that by itself would not show that he was not performing his official duties at the relevant time or that he had actually not left his office for performance of his official duties. Such an entry, if made, corroborates and does lend credence to the statement of such an official, if it is claimed that he had actually not gone to the spot as claimed by him or that he had not left the office for the official purpose stated by him. Failure to make such an entry does not, by itself, falsify the complaint made by the police officer concerned, the veracity of which can be tested only during trial. If there is failure on the part of a police officer to make an entry of departure, his oral testimony in this regard has to be evaluated in the light of this omission, and taking into consideration, other corroborative evidence, if any. At this stage, it is not permissible for this Court to go into the truthfulness or otherwise of the allegations made by the complainant. The complainant has specifically stated that he had gone to the office of Tehlka.com to record the statement of some of its officials in connection with the investigation of RC

1(S)2001-CBI-S/C-IV. The complaint made by him has been corroborated in all respects, by S.I. Kailash Sahu, who had accompanied him to the office of Tehlka.com and who has been examined under Section 161 of Code of Criminal Procedure. Admittedly, an entry of departure of SI Sahu has been filed. Therefore, at this stage, even if it is presumed that the complainant had not made an entry of departure before leaving the CBI office, it cannot be said that he was not discharging his duty as a public servant when he visited office of Tehlka.com on 5.8.2002 or that he had not gone there at all.

9. It was next contended by the learned counsel for the petitioner that no notice under section 160 of Cr.PC was given to the petitioner in this case. Section 160 of the Code of Criminal Procedure empowers a Police Officer making an investigation under Chapter-XII of the Code of Criminal Procedure, to make an order requiring the attendance of any person who appears to be acquainted with the facts and circumstances of the case. But, this Section does not preclude the Police Officer from going to the place of a person whom he feels is acquainted with the facts and circumstances of the case being investigated by him and

recording the statement of such a person at his place. This is more so, when the Police Officer fixes a prior appointment with such a person as was done by the complainant in this case. In fact, going to the place of a person, instead of calling him to a Police Station or CBI office should be a preferred mode of his examination and needs to be appreciated and encouraged. Therefore, not issuing notice under Section 60 of Cr.P.C. has no implication at all, in the facts of this case.

10. The learned counsel for the petitioner has referred to the decision of Kerala High Court in ***Poulose vs. State***, 1985 Crl.L.J.222. In that case, there was an order of eviction passed by Tehsildar which had been stayed and the stay was still in force when the Village Officer and two of his assistants went to the property to evict the father of the petitioner. When they reached the spot, the accused rushed to the scene brandishing a spade. Considering the scope of Section 353 of IPC, the High Court, *inter alia*, observed as under:-

6. Sections 332 and 353, both crimes against public servants, use different phraseology which, probably, may not be very material, but cannot be ignored to understand the scope of S. 353. Section

332 applies when the public servant in the discharge of his duty is hurt, while S. 353 is attracted when the public servant in the execution of his duty is assaulted. The offence under Section 332 is graver inviting a sentence which may extend to three years, while under S. 353, the maximum punishment may extend only to two years. It is also noteworthy that while referring to acts against which there is no right of private defence, S. 99, protects a public servant acting in good faith under colour of his office.

7. A public servant discharges his duty when he performs the functions of his office and carries on any statutory or executive duty assigned to him. He executes his duty when he carried out some act or course of conduct to its completion. Execution denotes the fulfillment, completion or carrying into operation of any act or direction or order. When statutory orders and executive directions have to be implemented, the public servant acts in execution of his duty. Discharge of duty is therefore an expression of wider connotation while the term 'execution of duty' is of limited application.

8. Section 353, therefore, postulates that the public servant has jurisdiction to execute and insists that he should be in the process of execution of his duty when he is assaulted or criminal force is used. Legality of the execution of duty is the sine qua non for the application of Section 353. When, therefore, a duty is prohibited by statute or by orders of a superior authority, it cannot be said that the public servant acts in execution of his duty, for he was not in duty bound to execute any order. Administrative discipline compels obedience to the orders of the superior authority by the subordinate. A stay of an order

issued by a higher authority, prevents its execution by the subordinate.”

In the present case, the complainant was not acting in disregard of any administrative or judicial order when he went to the office of Tehlka.com. Even if it is assumed as was contended by the learned counsel for the petitioner that he was not executing an official duty at the time when criminal force is alleged to have been used against him, it cannot be disputed applying to equal proposition enunciated by Kerala High Court in the above referred case, that he was discharging his duty as a public servant, at that time. Reading of statement during investigation of a case, being a part of statutory as well as administrative duty of the complainant, it is difficult to accept that he was not discharging his official duties at that time. Therefore, this judgment is of no help to the petitioner.

11. The learned counsel has next referred to ***Richard Saldana and others vs. State***, 1960 Cri.L.J.828. In that case, the complainant, a Co-operative Extension Officer was proceeding to Trivandrum in a State Transport Bus, after attending a meeting of the Co-operative Society, when he was assaulted at a bus stop.

It was, therefore, held that travelling back to his home or to his headquarter was not a part of his official duty and that in order to attract Section 353 of IPC, the public servant must be performing the act which is so integrally connected with the duty attached to his office, so as to form part of it. The facts of the present case, however, are altogether different. The visit of the complainant to the office of Tehlka.com on 5.8.2002 was definitely an integral part of the duty which he was required to perform as a CBI officer in connection with the investigation of RC 1(S)2001-CBI-S/C-IV. Therefore, this judgment is also not attracted to the facts of the present case. The learned counsel has lastly referred to the ***Jaggu Singh @ Jagbir vs. State of Haryana***, 2005(1)RCR(Crl.)626. In that case, the complainant, a Police Constable was taking foot and resting at a Dhaba after finishing his office duty when he assaulted over a sudden quarrel. In these circumstances, it was held that he was not discharging his official duty at the time he was assaulted. Since the complainant in this case was very much performing his official duty when criminal force was used against him, prima

facie applicability of Section 353 of IPC to the facts of the present case cannot be disputed.

For the reasons given in the preceding paragraphs, I find no merit in the petition and the same is hereby dismissed. The observation made in this order shall not prejudice the trial of the case on merits.

(V.K.JAIN)
JUDGE

DECEMBER 9, 2009
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