

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

+ **LPA 430/2009**

% **Date of Decision: 12.04.2010**

Ashok Sharma Petitioner
Through Mr. Shiv Charan Garg and Mr. Imran
Khan, Advocates for the Petitioner.

Versus

The Lt. Governor of Delhi & Ors. Respondent
Through Mr. S.Q. Kazim, Mr. Ali Mirza, Advocates
for the respondent Nos. 1, 3 to 12
Ms. Pragya Verma, standing counsel for
respondent No. 2/UOI
Mr. Sanjeev Bhandari, Advocate for
respondent Nos. 4 to 6

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The appellant has impugned the order of the single Judge passed in the writ petition filed by the appellant holding that the relief sought by the appellant cannot be granted in his writ petition as the writ petition involves disputed questions of facts and otherwise also it is not a fit case in which discretionary writ jurisdiction should be invoked and thus dismissed the writ petition by order dated 2nd July, 2009.

The appellant had filed a writ petition contending, inter-alia, that his wife was living separately with her parents from 19th September, 2006 whereas he was residing at Trinagar, Delhi. According to the appellant on 29th October, 2006, his wife came at about 9:00 pm with her mother, her brother and two cousins and told the appellant that she wants to take away all her goods and articles. The appellant did not allow her to take away the goods and locked the room as according to him it was illegal. Consequent whereof appellant's wife and the persons who had accompanied her broke open the lock and took away all the goods and articles.

The appellant complained to the Police and a PCR van reached at the spot, however, according to the appellant, his wife and other persons who had accompanied her had run away from the spot. Since after the wife and the persons who had accompanied her had ran away and there was no chance to fight at the spot, the matter was referred to the local police and respondent No. 9 took the appellant to the police station, Shanti Nagar, where the mother-in-law of the petitioner and other persons on behalf of the wife also came and the appellant was beaten up by respondent No. 9. The complaint of the appellant was not registered and after beating him he was taken to Babu Jagjivan Ram Hospital in the three wheeler and even his purse was snatched which contained Rs. 190/- and documents, out of which respondent No. 9 took Rs. 100/- and paid to three wheeler driver.

The appellant also alleged that a false DD entry was made on 29th October, 2006 to cover up his beating by respondent No. 9 and the appellant was kept in a lockup and was produced before the concerned Magistrate on 1st November, 2006. The parents of the appellant were not informed about his arrest nor he was allowed to call his parents and other relatives and the signatures of the appellant were taken forcefully on the blank papers and in these circumstances, respondent No. 9 violated the directions of the Supreme Court laid down in D.K. Basu's case. The appellant also contended that on 31st October, 2006, his bail bond was not accepted and the respondent No. 10, Assistant Commissioner of Police sent him to Tihar Jail in judicial custody though the case was registered against him under 107/151 Cr.P.C. was bailable offence and therefore, respondent No. 10 also misused his power and prepared false, bogus and fabricated report against him. The appellant also made various allegations against respondent No. 9 and that the complaint against respondent No. 9 dated 2nd January, 2008 was sent to respondent Nos. 1 to 5, however no action was taken by respondent Nos. 1 to 5. Similarly, it was contended that even respondent No. 7 suppressed the matter and made false and bogus report in order to provide protection to respondent No. 9 and in the circumstances, even respondent Nos. 1 to 5 and respondent No. 7 were involved.

With these allegations, the appellant demanded the damages of Rs. 50,000/- from respondent Nos. 1 to 7 and other respondents and since, respondent No. 8 was in-charge of the police station, Shanti Nagar, hence, damages were also claimed from him.

The appellant contended that he had sent a legal notice dated 14th March, 2008, however, no reply was received. In the circumstances, relying on Salem Advocate Bar Association Vs. UOI & Ors., AIR 2005 SC 3353, it was contended that case of the petitioner is of custodial violence and mental and physical torture/injuries which is apparent from the MLC of the appellant and thus claimed the damages.

The appellant thereafter filed a writ petition being 7313/2008, titled as Ashok Sharma Vs. Lt. Governor of Delhi & Ors, which was disposed of with a direction to the respondents to reply to the legal notice of the appellant dated 14th March, 2008.

Pursuant to the directions by the Court, respondent No. 11 is alleged to have sent a reply dated 3rd December, 2008 to the legal notice, however, the reply was very cryptic and did not deal with the allegation made by the appellant. The appellant therefore, made a complaint dated 7th January, 2009 to the Commissioner of Police and thereafter moved an application under Right to Information Act. The appellant also filed an application for setting aside the order passed in

the earlier writ petition No. 7313/2008 which was however dismissed. However, the appellant was given liberty to file afresh a Civil Writ Petition, which was filed by the petitioner, however, the same was also dismissed by the single Judge by the order dated 2nd July, 2009 holding that the writ petition involved disputed questions of fact and the writ petition of the appellant was not fit for exercise writ jurisdiction.

The learned counsel for the appellant has relied on (2004) 3 SCC 553, ABL International Ltd. and Anr. Vs. Export Credit Guarantee Corporation of India Ltd. and Ors. and WP(C) No. 11983/06 titled as Sri Chand Vs. State & Ors. decided on 18th April, 2009 to contend that even in disputed questions of fact which require oral evidence, the same can be recorded and the Court can award damages in favour of the petitioner and against the respondents.

This court has heard learned counsel for the parties in detail. The Single Judge has held that since the writ petition involves disputed questions of fact, which could be decided by detailed evidence only and therefore, had declined to exercise discretionary writ jurisdiction in favour of the petitioner.

The reliance by the petitioner on the decision of ABL International Limited and Anr. (supra) is also of no help because in that case, the only fact which was disputed was the obligation of the first

respondent in that case to cover the risk of non-payment of consideration by cash in US currency on the ground that the risk covered by the first respondent was a risk arising out of not supplying of goods by the barter method only. The Apex Court had held that limited area of dispute could be settled by looking into terms of contract of insurance as well as the export contract, and adjudication of that dispute did not require consideration of any oral evidence or any other documentary evidence other than what is already on record and as no external aids were required, the Supreme Court had interfered in the facts and circumstances of that case in contradistinction to the case of the appellant which involves various disputed questions of fact, which cannot be determined without detailed oral evidence and the documentary evidence.

The learned counsel for the petitioner has also relied on the vigilance report. Merely on the basis of the report, the liability of the respondents cannot be fixed without giving them opportunity in the present facts and circumstances. In the circumstances, on the basis of the ratio of ABL International Limited and Anr. (Supra), it will not be appropriate to burden the respondent with damages and costs.

In Srichand (supra), relied on by the appellant, the Single Judge has held in the peculiar circumstances of that case where instead of recording an FIR against the alleged offenders, the

complainant was detained in the police station and was harassed and tortured. In Srichand (Supra) there was no response to the notice filed by the petitioner in that case in contradistinction to the case of the appellant who had filed a writ petition and pursuant to which direction was given to the respondent to reply to the notice and a reply was sent by respondent No. 11. The appellant contends that the reply was cryptic and not sufficient. Whether the reply was cryptic or not, cannot be equated with no reply given by the police official as was held in the case of Srichand. In Srichand's case, the Court still did not go into the merits of the case, because the records of the police and the vigilance inquiry report had not been placed, however, a cost quantified at Rs. 50,000/- was awarded to the petitioner in that case. However, in the present facts and circumstances, since the Single Judge has also held that the question raised in the writ petition involved disputed questions of fact which required detailed evidence and it is not a fit case for exercising discretionary writ jurisdiction, therefore, in the entirety of facts and circumstances, this Court is also of the view that the disputed question of facts should not be adjudicated by recording detailed evidence in the writ petition in the present facts and circumstances.

This cannot be disputed that for issuing a writ for any other purpose under article 226 of the Constitution of India, it has always been in the discretion of the High Court to interfere or not, depending upon the facts and circumstances of each case. It is not necessary for

the High Court in exercise of its writ jurisdiction to interfere in every case where there is violation of fundamental statutory rights. Reference in this connection may be made to the decisions of the Supreme Court in Durga Pershad Vs The Chief Controller of Imports and Exports, AIR 1970 SC 769, holding that even where there is an allegation of breach of fundamental right, the grant of relief is discretionary and such discretion has to be exercised judiciously reasonably. Constitution Bench of the Supreme Court in The Moon Mills Ltd. vs M.R.Meher, AIR 1967 SC 1450 had held that writ is legally a matter of sound discretion and would not be issued if there be such negligence or omission on the part of the applicant to assert his right as taken on conjunction with the lapse of time and other circumstances, which may cause prejudice to the adverse party. Writs so far as they are concerned with the enforcement of the other rights are not issued as a "matter of course." In Shangrila Food Products Ltd. Vs Life Insurance Corporation of India (1996) 5 SCC 54, the Supreme Court had held that "the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party, before invoking the jurisdiction of the High Court, the court can take into account the

unfair advantage gained and can require the party to shed the unfair game before granting relief. The disputes in the present writ petition was between estranged husband and wife and the police personnel to whom the complaints were made. The appellant has not disputed that the wife came to her matrimonial home to take away her goods which was denied to her by the husband. The pleas and contentions raised are disputed and not admitted and cannot be adjudicated without detailed evidence on the disputed facts.

In the circumstances, there is no ground to interfere with the order of the Single Judge and the LPA is therefore dismissed. However, it will be open to the appellant to invoke any such civil or criminal remedies as are available to him against the alleged acts of the respondents in the facts and circumstances. Considering the facts and circumstances, the parties are also left to bear their own costs.

ANIL KUMAR, J.

APRIL 12, 2010
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MOOL CHAND GARG, J.