

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

Judgment reserved on: September 14, 2011
Judgment delivered on: September 22, 2011

+ CRL.M.C.NO.1543/2009

SATISH RANA

....PETITIONER

Through: Mr.Sidharth Luthra, Senior Advocate
with Ms.Smriti Sinha and Ms.Shikha Pandey,
Advocates.

Versus

CBI & ANOTHER

.....RESPONDENTS

Through: Dr.A.K.Gautam, Standing Counsel
with Mr.Neeraj Kapoor, Advocate for R.1/CBI.

Mr.Dayan Krishnan, Special P.P. with Mr.Nikhil
Menon, Advocate for respondent No.2/State.

Dr.Vijendra Mahndiyan, Advocate for the
additional respondent/complainant.

+ CRL.M.C. NO.1544/2009 & CRL.M.A.NO.5566/2009

VINAY TYAGI & ORS.

....PETITIONERS

Through:Mr.Sidharth Luthra, Senior Advocate
with Mr.Pramod Kumar Dubey, Mr.Sajal
Dhamija, Mr.Kunal Sood, Mr.Himanshu Gupta,
Mr.Yashpreet Singh & Mr.Amit Sharma,
Advocates.

Versus

CBI & ANR.

.....RESPONDENTS

Through: : Dr.A.K.Gautam, Standing Counsel
with Mr.Neeraj Kapoor, Advocate for R.1/CBI.

Mr.Dayan Krishnan, Special P.P. with Mr.Nikhil
Menon, Advocate for respondent No.2/State.

Dr.Vijendra Mahndiyan, Advocate for the additional respondent/complainant.

+ **CRL.M.C.NO.1881/2009 & CRL.M.A.No.7028/2009**

STATE NCT OF DELHI

....PETITIONER

Through: Mr.Dayan Krishnan, Special P.P. with Mr.Nikhil Menon, Advocate

Versus

CBI

.....Respondent

Through: Dr.A.K.Gautam, Standing Counsel with Mr.Neeraj Kapoor, Advocate.

Dr.Vijendra Mahndiyan, Advocate for the additional respondent/complainant.

AND

+ **CRL.M.C.NO.3695/2009**

NAGENDER & ORS.

....PETITIONERS

Through: Mr.Anupam S.Sharma, Advocate for petitioners No.1 to 4.

Mr.Maninder Singh, Advocate for petitioner No.5.

Versus

CBI & ANOTHER

.....RESPONDENTS

Through: Dr.A.K.Gautam, Standing Counsel with Mr.Neeraj Kapoor, Advocate for R.1.

Mr.Dayan Krishnan, Special P.P. with Mr.Nikhil Menon, Advocate for respondent No.2.

Dr.Vijendra Mahndiyan, Advocate for the additional respondent/complainant.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Satish Rana, petitioner in Crl.M.C. 1543/2009; Vinay Tyagi, Atul Tyagi, Neeraj Kumar, Sudhir Kumar, Upender Singh, Prem Pal Singh & Naresh Pal, petitioners in Crl.M.C. 1544/2009; Govt. of NCT of Delhi, petitioner in Crl.M.C. 1881/2009 and Nagender, Satender Singh, Rustam Ahmed, Hariom and Raj Kumar, petitioners in Crl.M.C. 3695/2009, vide their respective petitions have sought quashing of FIR R.C.No. 2(S)/2002/SIC-IV-New Delhi under Section 120B IPC read with Sections 218/302/201 IPC and Sections 218/302/301/34 IPC and also the order dated 06.08.2008 passed by learned C.M.M., Delhi and all proceedings emanating therefrom. The petitioners have also sought quashing of the order dated 14.05.2009 passed by the learned Additional Sessions Judge, Delhi in Criminal Revision No. 07/2009.

2. Briefly stated, facts relevant for disposal of the above petitions are that High Court of Delhi in Criminal Writ Petition No. 70/2002 titled 'Chander Bhan Singh Vs. State & Ors.' directed the CBI to conduct investigation into case FIR No. 14/2002 and 15/2002, P.S. Trilok Puri, Delhi

with direction to conduct appropriate follow up action under law and if warranted, for registration of new case under appropriate penal provisions.

3. Accordingly, on the basis of the facts detailed in FIR No. 14/2002, P.S. Trilok Puri, CBI registered a case RC No. 2(S)/2002/SIC-IV/N.D. dated 01st March, 2002 against Upender @ Rupender @ Kanu Jat under Sections 307/186/353/506 IPC as well as Section 27 of the Arms Act. A separate case RC No. 3(S)/2002/SIC-IV/CBI-N.D. was also registered against Devender S/o Chander Bhan Singh, elder brother of Upender @ Kanu Jat under Sections 25/27/29 of the Arms Act.

4. On conclusion of investigation, CBI filed a closure report in case RC No. 3(S)/ /2002/SIC-IV/N.D. for want of evidence against the accused persons. The report was accepted by the Court.

5. On the night of occurrence, FIR No.14/2002, P.S.Trilok Puri was registered on the complaint of Sub-Inspector Vinay Tyagi of Special Staff-East District, New Delhi, a petitioner herein, wherein it was alleged that on the basis of a secret information, one criminal namely Upender @ Rupender @ Kanu Jat, who was wanted in many criminal cases in Gaziabad and Delhi was hiding in a house at Pandav Nagar and was having illegal possession of weapons and he might commit some serious crime. SI Vinay Tyagi thus constituted four teams for conducting the raid and weapons were issued to the members of the team. It is alleged that the team headed by SI Satish Rana (a petitioner), was sent to main gate of the aforesaid house at Pandav Nagar and SI Vinay Tyagi along with the

other team members took up position at the back side of the house. SI Satish Rana pressed the call bell of the house and one young person opened the door and asked for identification. SI Satish Rana introduced himself as a police officer and said that they had information that a criminal named Upender @ Rupender @ Kanu Jat was present in the house with illegal weapons. Aforesaid person who opened the door rushed inside the house. The deceased Upender @ Rupender @ Kanu Jat ran towards the back side of the house with a revolver in his hand and jumped from the window while firing at the police party. The police party, which was holding position in the back side of the house also fired in retaliation and consequently, Upender @ Rupender @ Kanu Jat was killed. SI Vinay Tyagi allegedly seized a .38 revolver from the person of the deceased, who was identified by his father Chander Bhan.

6. The CBI, during investigation recorded statement of the witnesses, obtained the reports of Ballistic Expert, report of Finger-Print Expert and also the post mortem report. On the basis of investigation, CBI came to the conclusion that 13 police officials namely the petitioners had killed the deceased in the garb of an encounter.

7. On conclusion of investigation, S.P.'s report was forwarded to the Competent Authority for obtaining sanction for prosecution of the petitioners under Section 197 Cr.P.C. The Lieutenant Governor, being the competent authority, on consideration of the material placed before him, refused to accord sanction for prosecution, inter alia, observing thus:-

“And whereas there is nothing on record to prima facie disclose the conspiracy amongst the aforesaid alleged accused police officials to kill the deceased Kanu Jat. The record, rather, prima-facie discloses that the aforesaid alleged police officials have not acted in any pre-determined manner whatsoever, and the death of the deceased Kanu Jat was a natural consequence of the retaliatory firing while exercising their right of private defence, that ensure when the team of special staff comprising the aforesaid alleged accused police officials raided the house of the deceased Kanu Jat.

And whereas, considering all the circumstances in its entirety, it appears that there are no satisfactory grounds to grant prosecution sanction for initiating criminal proceedings against the aforesaid thirteen alleged accused police officials in respect of offences alleged to have been committed by them in discharge of their officials duties”.

8. CBI filed final report under Section 173 Cr.P.C. seeking closure of the case RC No. 2(S)/2002/SIC-IV/N.D. on the ground that Hon'ble Lieutenant Governor, the Competent Authority did not find it a fit case for grant of sanction under Section 197 Cr.P.C. and declined to grant permission for the prosecution of the petitioners/accused persons vide order dated 03rd January, 2008.

9. The closure report was contested by Shri Chander Bhan, father of the deceased and even the Public Prosecutor appearing on behalf of the CBI. Learned CMM, on consideration of the closure report, came to the conclusion that the evidence collected by the CBI, prima facie, disclosed commission of offence punishable under Section 120B IPC read with Section 218, 302/201 IPC and substantial offences punishable under Sections 218/302/201 read with Section 34 IPC. Thus, vide his order dated 06.08.2008, learned CMM took cognizance of the offence and issued process for appearance of the accused police officers.

10. Govt of NCT of Delhi, aggrieved by the aforesaid order, filed a revision petition under Section 397 Cr.P.C. which was dismissed by learned Additional Sessions Judge vide order dated 14th May, 2009.

11. Feeling aggrieved of the order of learned CMM dated 06.08.2008 as also the order of the revision court dated 14.05.2009, the petitioners have approached the High Court under Section 482 Cr.P.C. seeking quashing of aforesaid orders.

12. It is submitted by learned Sh. Dayan Krishnan, Special P.P. appearing on behalf of the NCT of Delhi in Crl.M.C. 1881/2009 that the impugned orders of learned C.M.M. as also the revision court is not sustainable under law for the reason that aforesaid orders have been passed ignoring the object and scope of Section 197 of the Code of Criminal Procedure and also ignoring the fact that CBI, after investigation, sought sanction for prosecution of the accused police officials, which was declined by the Lieutenant Governor of NCT of Delhi on consideration of material placed before him, by a speaking order dated 03.01.2008. It is also contended that the impugned order of learned CMM is liable to be set aside for the reason that it is a non-speaking order. It enumerates only the conclusions but does not refer to any evidence or material, which persuaded the Magistrate to come to those conclusions. Learned counsel for the petitioner/State further submits that otherwise also, the order of learned CMM is based upon incomplete material collected during investigation. Expanding on the argument, learned counsel for the petitioner submits that CBI, during investigation, recorded the statement

of Sh. M.K.Lall, the then DCP (East), wherein he has stated that on his instructions, the accused police officials had gone to the place of occurrence with a view to apprehend the deceased Rupender @ Upender @ Kanu Jat, a dreaded criminal and it was done on the receipt of a secret information. It is contended that two press reporters Kamal Sharma and Kamaljeet Singh were also examined during investigation, who, in their statements under Section 161 CrPC supported the version of the accused police officials that the deceased Kanu Jat was killed in self-defence when the police retaliated to the firing by him. It is submitted that if the statements of those three witnesses were placed before the learned CMM, it could have persuaded the Magistrate to come to the conclusion that this was a case in which sanction under Section 197 CrPC is required. It is further contended that Govt. of NCT of Delhi has a locus standi to impugn the order of learned CMM and the revision court in view of the law laid down by the Supreme Court in the matter of **State of U.P. Vs. Mohd. Naeem, AIR 1964 SC 703.**

13. Learned Sh. Sidharth Luthra, Sr. Advocate appearing for the petitioners in Crl.M.Cs. 1543/2009 & 1544/2009 has also argued on similar lines. He has added that the petitioners in Crl.M.C. 1544/2009 were not even heard by the revision court and that DD No. 45 dated 11.01.2002, concerning the movement of the petitioners/police officials was neither considered nor placed before the concerned Magistrate. It is further contended that once the investigating agency has sought sanction for prosecution and it is rejected, the only remedy available to the aggrieved party is to challenge the order refusing sanction in writ jurisdiction and not

before the Magistrate concerned. In support of this contention, he relied upon the judgment in the matter of **State of Punjab Vs. Mohd. Iqbal Bhatti, 2009 (17) SCC 92.**

14. Learned Sh. Maninder Singh, Advocate appearing for the petitioner No.5 Raj Kumar and learned Sh. Anupam S. Sharma, Advocate for the petitioners No. 1 to 4 in CrI.M.C. 3695/2009 have adopted the submissions made on behalf of the other petitioners. It is further argued that the statement of ASI Majeed Khan under Section 161 CrPC dated 12.01.2002 and the statement of the daughter of the complainant dated 12.1.2002, which go in favour of the petitioners, have not been taken into consideration by the learned CMM while arriving at a conclusion.

15. On the contrary, learned Sh. A.K.Gautam, Standing Counsel appearing for the respondent/CBI submits that the orders of learned CMM as also the revision court cannot be faulted. Impugned orders are based upon the scrutiny of entire investigation recorded, including the statements of the witnesses and material referred to by learned counsel for the petitioners in their submissions. He further submits that actually, as per the investigation of CBI, a prima facie case for prosecution of the accused police officials was made out and for that reason alone, as a matter of extra caution, sanction for Lieutenant Governor was sought, although it was not required as the accused police officials had acted beyond the scope of their official duty.

16. Learned Dr. Vijendra Mahndiyan, Advocate appearing for the complainant/additional respondent submits that perusal of the impugned

order of learned CMM would show that he has referred to the statements of the press reporters, therefore, it cannot be said that their statements recorded during investigation were not placed before the learned CMM. It is contended that even the order of revision court refers to those statements. It is further contended that on the basis of the evidence collected during investigation, it is a clear case of cold-blooded murder, as such, there was no requirement for grant of sanction under Section 197 CrPC. If the CBI, in its own wisdom, has opted to seek sanction and the sanction is refused, it would not make any material difference because, prima facie, the act committed by the petitioners is beyond the scope of their official duty. Learned counsel further submits that even if for the sake of argument, it is assumed that the statements of DCP M.K.Lall and press reporters were not placed before the Magistrate, their statements are not so relevant that it would have impacted the decision of CMM. It is further submitted that the names of DCP M.K.Lall and the press reporters are not mentioned in the FIR and they have been later introduced during investigation with a view to provide defence for the accused police officials. It is also contended that DD No. 45 dated 11.01.2002 is a self-supporting document prepared by the accused police officials to create a defence. In support of his contention, learned counsel has relied upon the judgments **2001 CrI.L.J. 3505, AIR 1970 SC 1661, AIR 2009 SC 2015 & 2007 CrI.L.J. 4481.** Thus, learned counsel for the complainant/additional respondent has strongly urged for dismissal of the petitions.

17. I have considered the rival contentions and perused the record. The question for determination is whether the impugned order of learned CMM is unsustainable in law for the reason that it is based upon incomplete material placed before him and also because that it is a non-speaking order. The judgments relied upon by learned counsel for the complainant, which deal with the scope and applicability of Section 197 Cr.P.C., are not relevant for determination of the aforesaid issue. It is not disputed that on conclusion of the investigation, CBI submitted S.P.'s report along with the material collected during investigation before the Lt. Governor of Delhi with a request for seeking sanction for prosecution of the accused police officers (petitioners). The Lt. Governor vide a speaking order dated 03.01.2008 declined to grant sanction for prosecution. Perusal of the copy of S.P.'s report submitted for the consideration of the Lt. Governor would show that along with S.P.'s report, a Kalandara of evidence collected during investigation in RC No.2(S)/2002/CBI/SIC-IV/New Delhi containing details of statements made by 39 witnesses under Section 161 Cr.P.C. was also submitted. The said statements, included the statements of Sh. M.K. Lall, DCP., who was then in-charge of East District, Kamal Sharma, Crime Reporter, Navbharat Times and Kamaljeet Singh, Press Photographer.

18. M.K. Lall, DCP in his statement under Section 161 Cr.P.C. had stated that on the relevant day on the receipt of telephone call from SI Vinay Tyagi, he directed him to conduct the raid on the house of the deceased Upender @ Kanu Jat who was wanted in murder and kidnapping cases of Ghaziabad and Delhi. He also stated that on the same night, he received

a telephone call from Shri Kamaljeet Singh, Photographer, Times of India informing that some suspected criminals were moving around house No.B-49, who may commit crime. Kamaljeet Singh requested him to send the police force immediately. Sh. M.K. Lall also stated during investigation that Kamaljeet Singh told him that one criminal was abusing some person in the street and he had also fired on them with his revolver. Similarly, Kamal Sharma and Kamaljeet Singh in their statements under Section 161 Cr.P.C. had supported the version of the accused persons that they had fired on the deceased in retaliation, which resulted in his death.

19. However, on perusal of the copy of the closure report submitted in the court of CMM, it transpires that along with this closure report, a list of 45 witnesses including the Investigating Officers was submitted, but this list did not include the names and statements of the above three witnesses, namely, DCP M.K. Lall, Kamal Sharma and Kamaljeet Singh. From this, it is obvious that this is a case of deliberate withholding of material evidence collected during investigation by the CBI from the learned CMM. Thus, the order of learned CMM dated 06.08.2008 admittedly is based upon incomplete material.

20. Next challenge to the impugned order dated 6th August, 2008 of learned CMM taking cognizance against the accused police officers (petitioners) is that the order is a non-speaking order. The Supreme Court, in the matter of “**Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samiti**”, 2010 (3) SCC 732, highlighting the importance and need of a well reasoned speaking order observed thus:-

“ **40.** It is a settled legal proposition that not only an administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice-delivery system, to make known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum.

42. Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.”

In the matter of **State of Rajasthan vs. Sohan Lal, (2004) 5 SCC 573**, it was observed thus:-

“3. The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice.

..... The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.”

21. Perusal of the impugned order dated 06.08.2008 of learned CMM would show that in Para 17 of the order, learned CMM has observed that on consideration of the record, prima facie, following facts are disclosed:

“(a) That deceased was involved in some criminal cases of Ghaziabad and Delhi.

- (b) That 13 police persons with their fire arms and weapons conducted raid at the house of deceased at about 11.00 P.M.
- (c) That deceased suffered 8 bullet injuries on his person which resulted in his death as per post mortem report.
- (d) That about 31 rounds of bullets were fired at the spot by police persons.
- (e) That statement of about 13 witnesses established that accused persons killed the deceased to show it an encounter.
- (f) That the deceased does not have any weapon or fire arm in his hand at the time of incident.
- (g) That as per the statement of witnesses, no bullet was fired by the deceased at the police personnel's.
- (h) That the fire arm was planted by the accused persons to show it a case of encounter.
- (i) That no bullet was recovered from the spot fired from the revolver allegedly recovered/planted from the deceased.
- (j) That no gun shot residue was found at the hands of the deceased by the expert.
- (k) That no finger prints were found on the revolver allegedly recovered from the possession of the deceased.
- (l) That the statement of two press reporters who supported the version of accused persons is not corroborated by the report of the experts and circumstances of the cases.
- (m) That the deceased was lying on the ground with his hands up at the time of incident."

22. However, the learned CMM, in the impugned order has failed to refer to any evidence or material specifically which persuaded him to come to the aforesaid conclusions and take cognizance against the petitioners/accused persons despite of the fact that the competent authority had declined to grant sanction for prosecution on the basis of the investigation on record. Thus, it is apparent that the impugned order of learned Chief Metropolitan Magistrate is a non-speaking order which impinges on the liberty of the petitioners, as such it cannot be sustained

in law. The learned Additional Sessions Judge, while dismissing the revision, has not taken note of the fact that the impugned order of the learned CMM is a non-speaking order and it is based upon concealment of the material evidence. Therefore, I find it difficult to sustain his order.

23. In view of the discussion above, I am constrained to set aside the orders of learned Chief Metropolitan Magistrate dated 06.08.2008 as also the revision court dated 14.05.2009 and remit the matter back to concerned learned Chief Metropolitan Magistrate having jurisdiction over East District and direct him to reconsider the matter afresh and take a decision on the closure report submitted by the CBI. CBI is also directed to place before the learned Chief Metropolitan Magistrate the entire evidence collected during investigation so as to enable him to pass an appropriate order.

24. Parties are directed to appear before the learned Chief Metropolitan Magistrate on 03.10.2011.

25. Petitions stand disposed of.

26. Trial Court record be sent back immediately.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 22, 2011
pst/akb