

\$-32

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 31st October, 2012

+

CRL.MC. 226/2007

NARESH KUMAR

..... Petitioner

Through : Petitioner in person.

versus

STATE

.... Respondent

Through : Mr.Navin Sharma, APP for State.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

%

1. The petitioner is invoking the jurisdiction of this Court under Section 482 CrPC and under Article 227 of Constitution of India praying for quashing of the adverse remarks passed against him by the then learned ACMM in the case “*FIR No.105/1981, under Sections 365/392/397/398 read with Section 34 IPC, under Sections 25/54/59 of Arms Act and under Section 10 of Indian Aircrafts Act, 1934 titlted as State vs. Tejinder Pal Singh*”.

2. The grievance of the petitioner is that generic observations have been made by learned ACMM about him in the order dated 31.10.2006 without even issuing a notice requiring him to appear in the Court or giving him an opportunity of being heard before passing adverse remarks against him. Not only that, the learned ACMM also sent the copy of the

order to the Commissioner of Police thereby subjecting the petitioner to further embarrassment. The observations made by learned ACMM have stigmatised the unblemished service career of the petitioner in gross violence of principles of natural justice. The petitioner had never shown any disrespect to the Court at any point of time, rather he had appeared before the same Court thrice earlier.

3. It has been further submitted that petitioner was posted as DCP, IGI Airport and being administrative head of the concerned department, it was just not possible for him to leave the security arrangements to be made at the Airport in connection with departure of Prime Minister of India on his visit. The petitioner was directly responsible to make the security arrangements for Prime Minister at IGI Airport. The schedules/programmes of the visits of Prime Minister were not permitted to be disclosed for security reasons. It has been further submitted that he received a message from ACP, Palam while he was busy in security arrangements and at that time he could not have left the Airport to attend the Court. He directed the ACP, VRK to attend the Court. In the circumstances, on his inability to appear immediately in the case, the observations made by learned ACMM about his conduct were unwarranted and uncalled for. The same were without any basis and more so, as DCP (Security), IGI Airport, he was not required to appear before learned ACMM in connection with the case in which his presence was directed by the Court. The VRK Section is headed and managed by ACP who appeared before the learned ACMM. Not only that, the case was investigated by Crime Branch, Delhi Police and not by the Division headed by the petitioner.

4. The petitioner, thus, prayed for expunging the adverse observations recorded by learned ACMM about the petitioner in its order dated 31.10.2006.

5. Notice of the petition was given to the State.

6. In this petition, on 19.02.2007, this Court passed the following directions :

'Learned counsel for the petitioner contends that in the absence of other instances of non-appearance in the face of directions in that regard, no such observation could have been made against the petitioner.'

The aforesaid observation recorded by the ACMM tends to indicate that the petitioner has in the past also been found to be not acting in compliance with the directions for appearance. A report be called within two weeks from the Court concerned mentioning other cases, if any, wherein the petitioner inspite of being called failed to appear.'

7. The report dated 03.07.2007 was sent by learned ACMM vide Dispatch No.4060/Misc./Gaz./07 dated 07.07.2007 requesting for condoning the delay in sending the report due to administrative exigencies.

8. This report was duly replied by the petitioner vide reply supported with affidavit dated 18.09.2007 and annexures out of which annexures A1 to A5 are regarding the previous instances. Since the petitioner is only impugning the observation made in the proceedings dated 31.10.2006, which does not refer any specific earlier instance of the alleged conduct of the DCP, the reply pertaining to the proceedings dated

31.10.2006 needs to be considered. The relevant portion of the reply is reproduced as under :

'The then ACMM, New Delhi had also been exhibiting unreasonable working style, which would be borne out the following facts:

Letters No.108/X-PA-DCP/IGIA dated 25.12.2006 and No.98-99X/PA-DCP/IGIA dated 22.12.2006 sent by the petitioner to his senior officers in Delhi Police headquarters are annexed herewith and marked as Annexure-A6 (colly).

The ACMM, New Delhi had personally handed over an uncertified copy of its order dated 2.11.2006 in case FIR No.105/81 to the then ACP/Palam Dr.B.B.Chaudhary, who had forwarded the same to the undersigned. It was dispatched vide his office dispatch No.8522/ACP/P dated 17.11.06 and diarised in petitioner's office vide diary No.8511/SO-DCP/IGIA dated 7.11.06 and a copy thereof is enclosed herewith and marked as Annexure-P7. The ACP had made the following noting on the order :

"SO/DCP/IGIA

*To be put by before worthy DCP on priority for perusal.
Page 6 & 7 are to be perused specially.*

*Sd/-
(B.B. Chaudhary)
ACP/Palam
Dated 7.11.2006"*

The earlier advocate engaged by the petitioner had applied for a certified copy of ACMM, New Delhi's order dated 2.11.06 in case FIR No.105/81 of PS-Palam and was informed by the court staff that no such order was existing. He was supplied with a certified copy of the same after altering the date from 2.11.06 to 31.10.06. A certified copy of the order dated 31.10.06 is enclosed herewith and marked as Annexure-A8. This shows that the court of

ACMM, New Delhi had altered the date on coming to know about non-existence of its order dated 02.11.06 in the said case.

When the earlier advocate applied for a copy of the court order/summon/notice vide which the undersigned was asked to appear before the court on 31.10.06, none was supplied, rather a certified copy of under mentioned order was supplied, which apparently was generated later-on. A certified copy of the additional order dated 31.10.2006 generated later-on is annexed herewith as Annexure-A9.

*“State vs. Tajinder Pal singh
Dt. 31.10.2006*

Present : Addl. PP for the State with Inspr.Dinesh Kumar, Addl.ASO/PS-Palam

Accused on bail with counsel Shri Vipin Gogia, Advocate.

Addl. SHO is unable to give any satisfactory reply as to whether even the chargesheet has been filed against the present accused or not. In so far as accused Har Simran is concerned, he submits that the chargesheet had he filed against him and the case has been decided in his favour by the Court of Shri M.K.Chawla, the then Addl. Sessions Judge. The copy of order in respect of the same has not been placed before me. Sufficient time has been given to the SHO/PS-Palam to trace out the file but he is unable to give any satisfactory reply.

Under the circumstances, DCP/IGIA be called immediately alongwith the relevant record pertaining to FIR No.105/81, PS-Palam, the DCP shall inform this Court whether any final report has been filed against the present accused Tajinder Pal Singh after his return from Pakistant in December, 1997. Be awaited.

Sd/-

ACMM”

The generation of additional order dated 31.10.2006 is established from the following facts:

(i) that the main order dated 31.10.06 was received in the office of the Commissioner of Police, Delhi vide diary No.19192/CP-Delhi dated 10.11.06 thereafter he recorded his observations and further marked it to Joint C.P./Operations, Delhi.

(ii) that the main order dated 31.10.2006 was diarised in the office of Joint C.P./Operations vide diary No.3439/P.Sec. Jit. CP/Ops. Dated 10.11.06. This order was diarised in the office of DCP/IGIA vide diary No.8626-A/SO/DCP/IGIA dated 10.11.2006 and it contains the remarks of the Spl.Commissioner of Police, Delhi as under :

“Urgent

Correspondence need to be undertaken with MHA. Also depute an officer to personally search through the old record for relevant.”

(iii) The additional order dated 31.10.2006 generated later-on was neither received with the main order dated 31.10.2006 in Police Headquarters nor in the office of DCP/IGI Airport (through the Commissioner of Police, Delhi).’

The petitioner has annexed the copies of the identical orders, one dated 02.11.2006 and another dated 31.10.2006 in support of above averments.

9. I have heard the petitioner in person as well as learned APP for State and also gone through the record. The main grievance of the petitioner is that on 31.10.2006 when the Court had taken up the matter “*State vs. Tejinder Pal Singh*”, he was posted as DCP, IGI Airport. Neither he was associated with the investigation of the case or filing of

the chargesheet nor required to appear in connection with the lost VRK file. Only the ACP heading VRK could render the assistance, if any, required by the Court in reconstruction of the main file. Further grievance of the petitioner is that if at all the Court required his presence, notice could have been sent for his appearance giving him reasonable time to appear in the Court on the given date and not in the manner as reflected in the proceedings dated 16.09.2006 and 31.10.2006 that the DCP, IGI be called to appear in person as to why he proposed to reconstruct the main file in respect of the main case and then in the subsequent proceedings of the same date i.e. 16.09.2006 recording that though the SHO appeared before the Court with some photocopies of the representation of the main accused which were perused by learned ACMM, finding the same not relevant for the purpose of the case, the Court ordered for VRK file to be produced on 31.10.2006. There is no direction by the Court for issuance of any notice or summon or direction to the DCP, IGI Airport to appear in person for 31.10.2006 and later on resorted to cover up exercise. He has further submitted that on 31.10.2006 about 4.00 pm, while the petitioner was busy in connection with departure of Prime Minister of India from AFS Palam, he received a wireless message on digital trunking mode from Dr.B.B. Chaudhary, the then ACP/Palam, who informed him that the ACMM, New Delhi has sought his appearance immediately. The petitioner conveyed to him on the same communication mode that he was busy in connection with international departure of the Prime Minister of India and several Cabinet Ministers were also present, therefore he could not leave the security arrangements as the matter relates to national security/Prime

Minister's security and the same is required to be directly supervised by the area Deputy Commissioner of Police/Superintendent of Police In-Charge in accordance with Government of India's instructions contained in the 'Blue Book'. The above particulars security arrangement, date and time were contained in the enclosure and no further details could be disclosed being a Top-Secret matter.

10. The petitioner has further submitted that all officers of and above the rank of DCP are senior police officers in accordance with various instructions issued by Govt. of India from time to time and function as either Commanding Officers of the Units or their superior authorities. They are entrusted with sensitive and enormous nature of duties which have a direct bearing on public law & order, prevention & detection of crime and VVIP security duties etc. This has also been upheld by the Hon'ble Supreme Court of India and Delhi High Court.

11. The petitioner has placed on record the copies of proceedings of other cases before learned ACMM wherein he was put in appearance on various dated as per directions given by learned ACMM. The petitioner has submitted that on 31.10.2006 how the learned ACMM could order the DCP, IGI Airport, who is a senior officer and was busy in security arrangements for Prime Minister's departure, to be present in the Court when neither he had been summoned nor he could be of any assistance to the Court in reconstruction of the record or production of VRK file.

12. The details of the cases in which the DCP failed to appear sent by learned ACMM vide her report dated 03.07.2007 have been duly replied by the petitioner explaining the circumstances for his non-appearance in the Court. At this stage, it is necessary to refer the proceedings dated

16.09.2006 by learned ACMM as it has direct bearing to the adverse remarks made in the impugned order dated 16.09.2006, which are extracted below;

*'State vs. Tajinder Pal Singh
16.9.2006*

*Present : APP for the State.
Accused on bail.
SI Devender Singh is present.*

*He submits that file could not be traced from the VRK.
The DCP IGI be called to appear in person to explain as to why he
proposed to reconstruct the main file in respect of the present case.
Be awaited.*

ACMM : 16.9.2006

File is taken up again.

*Present : APP for the state with Inspector B.S. Khatana, SHO, PS
Mahipal Pur.*

Accused on bail.

*I am informed by the SHO that the VRK file could not be
traced being the old case. However, he could secure some
photocopies of the representation of the main accused Harsimran
Singh under National Security Act. I have gone through the said
documents. They are not relevant for the purposes of present case.
The present file has to be reconstructed. VRK file be called for
which one more opportunity is granted for 31.10.2006.*

ACMM : 16.9.2006'

13. The proceedings dated 16.09.2006 reflect the presence of SI Devender Singh who submitted that the file could not be traced from

VRK. Without specifying any date or time, the learned ACMM, in haste, ordered that DCP, IGI be called to appear in person to explain why he proposed to reconstruct the main file in respect of the present case. There is nothing on record to indicate that it was the part of the duty of DCP, IGI Airport to reconstruct the record or produce the VRK file. Not only that, in the proceedings dated 31.10.2006 after giving the facts of the case and the contentions of the accused that no person shall be prosecuted or punished for the same offence more than once, the learned ACMM, on application, called for the main file. The report received was to the effect that the file in respect of accused Harsimranjit Singh has been weeded out.

14. Thereafter learned ACMM directed SHO, PS Palam to get the file from VRK which could not be traced. The Court was informed that the case files decided upto the year 1996 have been destroyed. The ACP made efforts to trace the documents regarding sanction for prosecution but even the same was reported to be not traceable.

15. The learned ACMM vide impugned order dated 31.10.2006 wherein the adverse remarks against the petitioner were made, observed :

*'I have heard and considered the submissions made before me. It is an admitted case that only one person Harsimranjit Singh had faced trial in the aforementioned case and in so far as the present applicant is concerned, he has not appeared before this court after having undergone the conviction pursuant to the order of Lahore Court. It has been submitted by the counsel for the applicant/accused that the present accused has returned to India only in the year 1997. Hence, in this background, there is every possibility that he may never have been charge sheeted. **The DCP IGI had been called to assist this court but he has failed to***

appear instead ACP (Palam) Sh. B.B. Chaudhary has appeared on his behalf. It has been observed by this court that as a matter of routine whenever DCP IGI is called to appear for purposes of assistance, he evades appearances before the court. The ACP (Palam) Sh. B.B. Chaudhary is hereby warned that he shall only appear before this Court as and when so directed. Once this court has desired the appearance of the DCP (IGI), is only proper that the concerned officer should either come himself or make suitable request which he had not done. The DCP does not seem to be seriously interested in his court cases.'

16. Thereafter learned ACMM raised certain queries to be responded by the Commissioner of Police.

17. The petitioner has placed on record the copy of the proceedings dated 13.06.2006 in case titled as “*State vs. Baljinder Singh*” before learned ACMM wherein presence of the petitioner has been recorded. He was heard on the aspect of supplementary chargesheet and learned ACMM further recorded that time as requested was given to the DCP to file further investigation report.

18. The petitioner has also placed on record the copy of the proceedings dated 15.04.2006 in case titled as “*State vs. Bhupinder Singh*” wherein presence of DCP and ACP have been recorded with undertaking of the DCP to personally supervise the investigation in the case.

19. In the context of above proceedings wherein the DCP had appeared in person before learned ACMM either in connection with filing of supplementary chargesheet or to personally supervise the investigation, suffice it to say that there was no direction from any Court

to the DCP to supervise the investigation personally. Further, under the Code of Criminal Procedure, it is the Officer-In-Charge of the Police Station and not DCP who is required to file supplementary chargesheet. The proceedings have been filed by the petitioner to bring on record that as and when directed to appear, he did comply with the order of learned ACMM though as superior officer, it was not part of his duty to appear for the purpose for which he had been called by learned ACMM numerous times in various cases.

20. The learned ACMM failed to record any justification requiring personal appearance of the petitioner and how he could be of any assistance in production of the destroyed record when he was neither associated with the investigation nor the custodian of the record stated to have been destroyed as per rules. To secure personal appearance of the petitioner on 31.10.2006, there was neither any direction in the previous proceedings nor notice was sent to the petitioner giving him an opportunity to appear before learned ACMM. The ACP, In-charge, VRK Unit was present in person but he was not even allowed to speak, rather strong objection was taken on his appearance in the Court on the direction of DCP, IGI Airport recording that he should not appear on the direction of his superior officer and should appear only when so directed by the Court.

21. If the record has been destroyed or weeded out and was not available either in VRK or even with Judicial Desk Officer, Jaisalmer House, Ministry of Home Affairs i.e. the sanctioning authority, definitely it was not in the custody of DCP, IGI Airport so as to secure his personal appearance for purpose of production or reconstruction of record as the

VRK Unit was headed by the ACP concerned who did appear before learned ACMM but to her annoyance reflects in the order as under: -

The DCP IGI had been called to assist this court but he has failed to appear instead ACP (Palam) Sh. B.B. Chaudhary has appeared on his behalf. It has been observed by this court that as a matter of routine whenever DCP IGI is called to appear for purposes of assistance, he evades appearances before the court. The ACP (Palam) Sh. B.B. Chaudhary is hereby warned that he shall only appear before this Court as and when so directed. Once this court has desired the appearance of the DCP (IGI), is only proper that the concerned officer should either come himself or make suitable request which he had not done.

22. The tendency of Metropolitan Magistrate to call the senior police officers in the Court without any justification has been deprecated by this Court repeatedly. In **Commissioner of Police & Ors. vs. Manoj Sharma & Anr. MANU/DE/2653/2007**, a complaint was filed before the learned ACMM by an Advocate on the basis of a newspaper report with the allegations of use of excessive force on the protestors who were demonstrating peacefully against the reservation policy in higher studies. The learned ACMM entertained the complaint on the basis of newspaper report and same day directed the DCP, New Delhi to appear in person in Court and furnish a report in respect of the allegations of use of excessive force. The Commissioner of Police filed a writ petition seeking quashing of the order of learned ACMM. In para 12 and 13 of the report, it was observed as under :-

'12. I consider that the learned ACMM exceeded jurisdiction by ordering DCP to appear in person and by making observations about the kind of force used. In case any demonstrator or person

got injured or was misbehaved he/she had liberty to approach the Court with the complaint about the assault meted out to him/her. The Court of ACMM could not have taken upon herself the responsibility of determining as to what should have been the quantum of force used. This was not the area within her jurisdiction.

13. It is also observed that several Metropolitan Magistrates have tendency of calling police officers to their Courts without their presence being required in any particular case, just because they want to demonstrate their power to call police officers in Court. Such a tendency must be curbed and such orders cannot be looked upon kindly. No police officer should be called to the Court unless his presence is required specifically for any cause or for any purpose and if a senior police officer is called to the Court he should not be allowed to waste his time in Court at the cost of public duties.'

23. In the case ***State of Gujarat vs. Turabali Gulamhussain Hirani & Anr. AIR 2008 SC 86***, the Apex Court expressed concern about growing number of cases wherein various High Courts have summoned Chief Secretary, Secretaries to the government (Central & State), Director Generals of Police etc. The Apex Court, though, agreed that the High Court has power to summon these officials but cautioned that this should be done in very rare and exceptional cases when there are compelling circumstances to do so. In paras 7 to 10 of the report, it was observed as under :-

'7. There is no doubt that the High Court has power to summon these officials, but in our opinion that should be done in very rare and exceptional cases when there are compelling circumstances to do so. Such summoning orders should not be passed lightly or as a routine or at the drop of a hat.

8. Judges should have modesty and humility. They should realize that summoning a senior official, except in some very rare and exceptional situation, and that too for compelling reasons, is counter productive and may also involve heavy expenses and valuable time of the official concerned.

9. The judiciary must have respect for the executive and the legislature. Judges should realize that officials like the Chief Secretary, Secretary to the government, Commissioners, District Magistrates, senior police officials etc. are extremely busy persons who are often working from morning till night. No doubt, the ministers lay down the policy, but the actual implementation of the policy and day to day running of the government has to be done by the bureaucrats, and hence the bureaucrats are often working round the clock. If they are summoned by the Court they will, of course, appear before the Court, but then a lot of public money and time may be unnecessarily wasted. Sometimes High Court Judges summon high officials in far off places like Director, CBI or Home Secretary to the Government of India not realizing that it entails heavy expenditure like arranging of a BSF aircraft, coupled with public money and valuable time which would have been otherwise spent on public welfare.

10. Hence, frequent, casual and lackadaisical summoning of high officials by the Court cannot be appreciated. We are constrained to make these observations because we are coming across a large number of cases where such orders summoning of high officials are being passed by the High Courts and often it is nothing but for the ego satisfaction of the learned Judge.'

24. Reverting to the case of petitioner, there was no justified reason before learned ACMM to make the DCP appear in the manner it had been ordered on 31.10.2006. No reason has been recorded by learned ACMM for requiring presence of the senior police officer of the rank of DCP, IGI Airport in connection with reconstruction of the destructed record. It was not the part of his duty nor he was accountable before the

Court if record has been weeded out as per rules. When the VRK Unit is headed by an officer of the rank of ACP who appeared in person before the Court, why he was not considered to be competent enough to provide the necessary assistance in the matter pertaining to VRK Unit, remained unexplained in the impugned order.

25. The inability of the petitioner to appear immediately on getting the message was taken as wilful ignoring that earlier the concerned DCP had been appearing before learned ACMM in the matters though his presence was not required for the purpose he had been called to appear in person. The remarks made on 31.10.2006 against the petitioner are generic in nature without specifying on which date and for what purpose, the petitioner was earlier required to appear in person, whether any process was issued to secure his presence or any reasonable time was given to him to put in appearance so that his appearance in the Court is not at the cost of his duty of making necessary security arrangements for the Prime Minister at the Airport at that time.

26. In the facts and circumstances, the revision petition is allowed and the remarks as quoted above in para 15, are hereby expunged.

PRATIBHA RANI, J

October 31, 2012

'st'