

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 27.05.2015

W.P.(CRL) 1147/2015

PREM CHAND

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rai Ranjit, Advocate.
For the Respondents : Mr. Anil Soni, CGSC for R1 with Mr. Ikrant Sharma, RI, UOI.
Mr. Bijender Singh, ASI, A/c. Branch, GNCT, Delhi.
Mr. Mahajan, ASC for NCT of Delhi.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present Writ Petition under Article 226/227 of the Constitution of India seeks the following prayer:

“Issue a Writ of Certiorari/Mandamus quashing of all criminal proceedings emanating/arising from FIR No. 37 of 1998 dated 28.09.1998 Anti Corruption Branch Police Station, New Delhi including order of conviction and sentence dated 17th / 19th December, 2005 by Special Judge, Delhi in C.C.No. 54 of 1999 as affirmed in

Criminal Appeal No. 16/2006 dated 18.02.2014 by Hon'ble High Court of Delhi at New Delhi as ultravires and violating Article 14 and 21 of the Constitution of India and/or any other appropriate writ order or direction which this Hon'ble Court may deem fit in the facts and circumstances of the case.”

2. The facts that are necessary for adjudication of the present writ petition are as follows:

- (i) One Mohd. Saltar S/O Shri Sheikh Abdul Razzaq, R/O A-189, Tajpur Pahari, Badarpur, Delhi made a complaint to the Anti Corruption Branch on 28.09.1998. The text of the said complaint as delineated in the petition itself is as follows:

“ I am original resident of village and post office Mahadev Sameria and for the last about 8 years I have been selling bags etc. on a rehri near Kabristan in front of Police station Badarpur and about three months ago, all the rehri and squatters have been removed from there by the police officials and on enquiries, it was revealed that there was an order from the senior officials to do so but for the last about one month, all the squatters have re-encroached upon the land near Kabristan. Thereafter, I also start squatting there by placing my rehri and then three constables who were posted in the Beat have been coming to me and asking me to remove my rehri from the spot. On that, I told those police officials that the other squatters have also placed their rehri and have been squatting in the land near Kabristan to which the three constables replied that if I also want to place my rehri on this land, I will have to pay a

sum of Rs. 300/- per month besides a sum of Rs. 20/- on every Sunday to them. On this, I replied that I am a poor person and was unemployed for quite some time but those police officials starting threatening and abusing me. The names of those three police officials are Mohd Taufiq, Pramod Kumar and Prem Chand and they are posted in Police Station Badarpur. On 26.09.98 these three police officials again came to me and told me that if I want to place my rehri and squat in the said land, then I will have to pay a sum of Rs. 300/- per month besides Rs. 20/- on every Sunday and will also have to pay Rs. 400/- as advance. I told them that I am a poor person and cannot pay demanded amount. On this, Pramod Kumar and Taufiq had threatened me and I told them that I will arrange the money within 1-2 days. On the evening of 27.09.98 Mohd. Taufiq and Pramod Kumar had came to me and demanded the money, on which I prayed to them with folded hands that I have not been able to arrange the money on which they told me that Rs. 300/- should be arranged by the evening of 28.09.98 otherwise they will book me in false cases after brutally beating me. I am strongly against giving of bribe and I am totally fed up and therefore I am here. These three police officials will come to me around 5/6 pm to take the bribe money. I am having Rs. 300 after arranging the same. Prompt legal action be taken against these three police officials.

- (ii) On the basis of the said complaint, pre-raid proceedings were undertaken and the raid itself was conducted. After the conclusion of the raid FIR No. 37/1998 was registered by the Anti Corruption Branch Police Station against the accused which includes the petitioner herein. The accused persons were arrested and

subsequent upon investigation challan was filed in the court under Section 7/13 of the Prevention of Corruption Act and Section 120-B/34 IPC against the accused including the petitioner. After hearing the accused persons charges were framed under Section 7 read with Section 13(1)(d) and 13(2) of the Prevention and Corruption Act 1988 against the accused persons to which they pleaded not guilty and claimed trial.

- (iii) During the trial the prosecution examined a total of 13 witnesses who deposed against the accused persons including the petitioner herein.
- (iv) The court of Special Judge, Delhi by way of its judgment dated 17/19-12-2005 in CC No. 54/1999 convicted the petitioner under Section 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 read with Section 34 IPC and sentenced him to undergo RI for a period of one year and to pay a fine of Rs. 1,000/- and in default of payment of fine to undergo further SI for one month for offence under Section 13(1)(d) of the Act and RI for six months and to a fine of Rs. 5,000/- and in default of payment of fine to undergo further SI for 15 days under

Section 7 of the Act read with Section 34 of IPC. The sentences were directed to run concurrently.

- (v) The petitioner preferred a criminal appeal being Criminal Appeal No. 16/2006 before this Court which was dismissed by way of judgement and order dated 18.02.2014. The said judgement and order dismissed the appeal filed by the petitioner and confirmed the judgement and sentence passed by the trial court.
- (vi) The petitioner instituted a Special Leave Petition (Criminal) No. 2768/2014 before the Hon'ble Supreme Court of India which was dismissed by way of order dated 12.05.2015.
- (vii) Now Mr. Ranjit, learned counsel appearing on behalf of the petitioner has invited my attention to the relevant portion of the notification issued by the Ministry of Home Affairs dated 21.05.2015 which is to the following effect:

“The Anti Corruption Branch Police Station shall not take any cognizance of offences against Officers, Employees and Functionaries of the Central Government.”

3. The contention urged on behalf of the petitioner is that the said Notification dated 21.05.2015 has retrospective effect and consequently action

taken by the anti corruption branch police station resulting in the conviction and imposition of sentence on the petitioner is impermissible and contrary to law.

4. Mr. Mahajan, Learned Additional Standing Counsel (Criminal) on the other hand invites my attention to para 3 of the said notification dated 21.05.2015 which reads as under:

“The Notification supersedes earlier Notification number S.O.853(E)[F.No.U-11030/2/98-UTL] dated 24th September, 1998 except as respects things done or omitted to be done before such supersession.”

5. It is the submission of Mr. Mahajan that the notification dated 21.05.2015 itself clarifies that the said notification supersedes the earlier notification S.O.853(E)[F.No.U-11030/2/98-UTL] dated 24.09.1998 except as respects things done or omitted to be done before such supersession.

6. It is next urged by Mr. Mahajan, Additional Standing Counsel that the earlier notification was the subject matter of consideration in the appeal preferred by the petitioner against his conviction before this Hon’ble Court and that this Hon’ble Court after considering the powers and adjudication of the anti corruption branch negated the contention raised on behalf of the petitioner that the said anti corruption branch did not have the authority to prosecute the petitioner.

7. It is lastly urged by Mr. Mahajan, Learned counsel appearing on behalf of NCT of Delhi that this very Court in the recent judgement delivered on 25.05.2015 in bail application no. 878/2015 Anil Kumar Vs. GNCT of Delhi has turned the said notification dated 21.05.2015 as “Suspect”.

8. I have heard the rival submissions. The Supreme Court in **State of Haryana vs Bhajan Lal**, AIR 1992 SC 604 has held as follows:

“119 . It has been ruled by this Court in several decisions that Section 5A of the Act is mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality but that illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the Court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination the validity of the proceedings with the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby.”

9. In the present case it is observed that the petitioner has been tried and sentenced in accordance with law. The appeal preferred by the petitioner against his conviction has been dismissed by a well considered decision rendered by this court. The Special Leave Petition preferred by the petitioner has also been dismissed by the Hon’ble Supreme Court. The present petition seeks to reopen and reagitate issues which have attained finality. The petitioner has neither

pleaded nor urged any miscarriage of justice. It is observed that the earlier notification dated 24.09.1998 which has not been annexed to the present petition by the petitioner for the reasons best known to him was considered by this Hon'ble Court in the appeal preferred by the petitioner against his conviction.

10. The present petition appears to be an attempt to over reach the judicial process and is resultantly an abuse thereof. The notification relied upon by the petitioner itself entirely stipulates that things done before the supersession of the earlier notification cannot be disturbed or reopened.

11. In my view the petitioner cannot be permitted to negate the entire process of law by seeking to question his conviction at this belated stage.

12. Writ petition is accordingly dismissed. Pending applications also stand disposed of.

SIDDHARTH MRIDUL, J

MAY 27, 2015
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