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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10th July, 2018

Pronounced on: 08th August, 2018

+ CRL.M.C. 121/2015 & CrI.M.A. 545/2015

VISHNU P DAS

..... Petitioner

Through: Mr. Abir Phukan & Ms. Sonali
Jain, Advs.

versus

B K SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. On the criminal complaint (CC no.53/01/12) instituted by the respondent, the petitioner was summoned as an accused to be put on trial for the offence punishable under Section 500 of Indian Penal Code, 1860 (IPC) by the Metropolitan Magistrate by order dated 28.03.2014.

2. The petitioner has approached this court invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) and Article 227 of the Constitution of India, 1950 seeking quashing of the said proceedings on the plea that the same are in the nature of abuse of the process of law.

3. The petition has been resisted by the respondent who argues that the summoning order has been passed on the basis of evidence adduced and for sound reasons and consequently this court ought not interfere.

4. Having heard the counsel on both sides and having gone through the record, this court is of the opinion that the petition must be allowed and the criminal prosecution brought to an end.

5. The petitioner was working during the relevant period as Chairman-cum-Managing Director of National Buildings Construction Corporation (NBCC) where the respondent (complainant of the case) was employed as Senior General Manager (HRM). It appears that the respondent had certain grievances against the management with regard to his service career particularly on the issue of promotion. He had been making representations in that regard.

6. Around the abovesaid period, a writ petition – WP(C) 8884/2011 – came to be filed by one Rajesh Kumar in the name of Sanchar Times (a monthly magazine) impleading, amongst others, the petitioner and NBCC as parties. The writ petition was styled as public interest litigation (PIL) invoking the jurisdiction of this court under Articles 226 and 227 of the Constitution of India to pray for writs in the nature of *quo-warranto*, *mandamus*, *certiorari* alleging certain irregularities, illegalities, mis-management, manipulations, illegal and corrupt practices in NBCC, resulting in wrongful loss to the exchequer and praying for investigation. The copy of the writ petition would show that amongst the material that was submitted in support of the

said PIL, copies of certain communications addressed by Mr. Om Prakash Yadav, a Member of Parliament, *Lok Sabha* to the Minister for Urban Development and to the Prime Minister of India were submitted, such communications pertaining to dates such as 30.07.2009, 20.08.2009, 27.08.2009, 25.11.2009, etc. In some of these communications reference is made to the disciplinary action initiated against the complainant leading to his suspension and denial of promotion and loss of seniority on which account he had been aggrieved.

7. The writ petition came up before the court on 11.01.2012 when the following order was passed :-

“Order dated 11.01.2012

Mr. Mehta, learned counsel appearing for NBCC on a demurer submits at the outset that this Court has earlier dismissed identical writ petition filed by one Ram Bahadur Singh [W.P.(C) No.5075/2011] on 20th July, 2011 on the ground that the said petition lacked material particulars and was not entertainable as a public interest litigation. His submission is that most of the paragraphs in the present writ petition are verbatim reproduction of the said writ petition which would clearly indicate that the present petitioner had the knowledge of filing of writ petition by Ram Bahadur Singh but this fact is not disclosed in the writ petition. He also submits that from various documents filed along with this writ petition, it would become apparent that the petition is filed at the instance of one Mr. B.K. Singh who is working as Senior General Manager in the NBCC and is having certain grievances against the management relating to his non-promotion etc. He has also pointed out that some documents which are annexed with the petition are

obtained under RTI, certain other documents which are the internal correspondences have also been filed which would show that Mr.B.K. Singh is the person who has given the material to the petitioner for filing the present petition. On this basis, it is submitted that this is not a bona fide public interest litigation filed by the petitioner. He also submits that even otherwise, there is no merit in the allegations made by the petitioner. Many of the complaints have already been looked into and have been found to be frivolous and bereft of any merits and other complaints of the petitioner are being looked into.

Without prejudice to the aforesaid contentions of Mr. Mehta, learned counsel for NBCC and without issuing formal show cause notices, we would like Mr. Mehta to submit in brief the outcome of investigations into the complaints which have already been looked into and the status of investigation in respect of complaints which are pending. The report shall be filed in sealed cover.

List on 22nd February, 2012.”

(emphasis supplied)

8. The writ petition was dismissed by order dated 22.02.2012, it reading as under :

“22.02.2012

W.P.(C)No.8884/2011

When this matter came up for hearing on 11.01.2012, Mr. Tanmay Mehata, learned counsel appearing for respondent nos. 7,8 & 10 made submission that the petition was motivated and could not be entertained as public interest litigation. He also pointed out that earlier, identical writ petition filed by one Ram Bahadur Singh [W.P.(C) No. 5075/2011] on 20.07.2011 had been dismissed.

Having regard to the nature of allegation made in this petition without prejudice to the aforesaid contention of Mr. Mehta, we called upon him to submit in brief the outcome of the investigations into the complaints in sealed cover. He has produced the status of the complaint lodged by CVO which are the subject matter of the present writ petition. Perusal thereof shows that most of these complaints are examined either by CVO or by NBCC. Many complaints are found to be without any merit and have been closed after thorough examination. Some of the complaints are still pending consideration at the hands of concerned authorities.

Reading of this report makes it clear that various complaints submitted, received or being received are given consideration at the hands concerned authority. Therefore, it may not be appropriate to take the matter as public interest litigation and entertain this petition.

This writ petition is accordingly dismissed. We make it clear whenever any complaint is established, the respondents shall take proper action.”

9. The respondent instituted a criminal complaint (from which these proceedings arise) seeking prosecution of the petitioner for the offence of defamation punishable under Section 500 IPC on the ground that the submissions made before the writ court as recorded in the proceedings dated 11.01.2012, which have been extracted above (the portions underlined), about the writ petition (PIL) having been filed at his instance were unfounded, such submissions having been made with the intention and motive of harming his reputation, neither the writ petition nor the documents attached therewith showing any connection between him and the writ petitioner nor there being any occasion for him to provide such documents as were filed with the

writ petition, the averments in the case not containing even a whisper about he being behind such litigation.

10. On the basis of pre-summoning inquiry, the Metropolitan Magistrate issued summons to the petitioner calling him upon to appear as accused by order dated 28.03.2014.

11. The allegations of the complainant that there was nothing in the writ petition (PIL) or the material filed therewith to indicate any connection between him and such litigation are not correct. Copies of the communications sent by a Member of Parliament to various authorities (Minister for Urban Development and the Prime Minister) which concerned him and his grievances vis-à-vis the management of NBCC formed core of the material filed with the writ petition. The writ petitioner was a person unconnected with the department of NBCC. There was no occasion for him to be in possession of copies of such documents. The petitioner, as the Chairman-cum-Managing Director of NBCC, had been called by the writ court to render assistance in consideration of allegations about the corrupt practices in his organization. He apparently was at a loss to understand the source of the material or inputs which had triggered the PIL to be initiated. The suspicion that the complainant who had grouse against the management of NBCC seemingly arose on account of the nature of the documents filed with the writ petition. It is against such backdrop that the possibility of he being the person at whose instance the matter had been initiated was expressed in the course of submissions by the counsel representing NBCC. Eventually, the writ court found it

appropriate not to entertain the matter as PIL and dismissed it by the subsequent order dated 22.02.2012. Whether or not the respondent was actually the person behind initiation of such PIL could not, thus, be fully probed. Be that as it may, from the above facts and circumstances, it cannot be said that the intention of the petitioner in raising the possibility of involvement of the respondent as the person behind the PIL was with the intent to defame him. The petitioner was only assisting the writ court in adjudicating upon the PIL and the submissions made on his behalf cannot be construed as insinuation which was designed to defame the respondent (the complainant) [S. *Khushboo vs. Kanniammal & Anr.*, (2010) 5 SCC 600].

12. There is one more reason why the prosecution against the petitioner cannot be allowed to continue. He was a public servant at the relevant point of time vis-à-vis the acts attributed to him within the meaning of the expression used in Section 197 Cr.P.C. In assisting the writ court, through the counsel engaged by the department, he was acting in discharge of his official duty. No prosecution can be launched against him against the above backdrop without a prior sanction being obtained under Section 197 Cr.P.C. [*Rakesh Kumar Mishra vs. State of Bihar & Ors.*, and *Director of Inspection & Audit & Ors. vs. C.L.Subramaniam*, 1994 Supp (3) SCC 615].

13. Thus, the petition is allowed.

14. The proceedings in the criminal complaint case (CC No.53/01/2012) pending in the court of Metropolitan Magistrate,

instituted by the respondent against the petitioner for offence punishable under Section 500 IPC are hereby quashed.

15. This disposes of pending application as well.

(R.K. GAUBA)
JUDGE

AUGUST 08, 2018

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