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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 6th October, 2021

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W.P.(C) 1401/2021

NIKHIL BORWANKAR

..... Petitioner

Through: Petitioner in person

versus

STATE (NCT) OF DELHI & ORS.

..... Respondents

Through: Mr. Satyakam, Additional Standing Counsel (GNCTD) for R-1

Mr. Preet Pal Singh & Mr. Saurabh Sharma, Advocates for BCI

Mr. Chetan Sharma, Additional Solicitor General with Mr. Ajay Digpaul, Central Government Standing Counsel with Mr. Kamal R. Digpaul, Mr. Amit Gupta, Mr. Vinay Yadav, Mr. Akshay Gadeock & Mr. Sahaj Garg, Advocates for UOI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

: D. N. PATEL, Chief Justice (Oral)

1. Present Public Interest Litigation has been preferred seeking the following reliefs:-

“a) Search warrants be issued against advocates only when investigating officer has obtained prior sanction from Director of Prosecutions (DoP) upon the submission of an appropriate standardised proforma by investigating officer, issued as determined by this Hon’ble Court, submitted through an officer not part of the investigation of the rank of

Superintendent of Police, after due deliberation thereupon by the DoP; and

b) Search warrant be issued against advocates only when Court issuing search warrant concludes in writing that alternative methods of obtaining information have been considered by the investigating agency, and that such efforts could compromise the criminal investigation or prosecution, or could result in the obstruction or destruction of evidence, or would otherwise be ineffective; and

c) Search warrants issued against advocates be executed in terms of S.103 CrPC wherever practicable; and where not practicable, reasons be recorded by the Magistrate in order issuing warrant, along with the appointment of a “privilege team” comprising law enforcement agents unconnected with the investigation and Bar Council appointed independent advocates to execute search warrants; and

d) All documents/articles seized be submitted directly to the jurisdictional Magistrate under sealed cover.

e) Copies of all seized materials be provided forthwith to the subject attorney or a legal representative; and

f) All participating law enforcement agents be mandated to wear clear and visible identification and individual body cameras throughout the execution of the search warrant, with the entire search exercise audio and videographed, which recording (s) be deposited with the jurisdictional Magistrate at the culmination of proceedings; and

g) Search officials be mandated to follow the procedures as determined by this Hon’ble Court to effect the Searching and Seizing of Computers and other electronic devices and records; and

h) Adequate training be undertaken by Respondents of law enforcement agencies with regard to the provisions of effecting legal search and seizure;

i) Adequate training be undertaken by Respondents of the Magistracy with regard to the provisions of effecting legal search and seizure;

j) Pass any other and further orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of this case."

2. Petitioner appearing in person is aggrieved by the actions and omissions of the Respondents in effecting search and seizure operations at the premises of Advocates. A direction is sought for framing of mandatory procedures / guidelines to be followed by Police / Investigating Agencies while carrying out search and seizure operations on the premises of an Advocate, who is a suspect, subject or target, an Advocate related by blood or married to a suspect or the one who is believed to be in possession of contraband or proceeds of a crime as also related to searches of business organizations where they involve material in possession of individuals serving in the capacity of a legal advisor to the organization.

3. The argument put forth by the Petitioner is that the Indian Evidence Act, 1872, provides protection to professional and confidential communications with the legal advisors under Sections 126 to 129, whereby any person who seeks the services of an advocate, registered under the Advocates Act, 1961 enjoys the attorney-client privilege. In ***Kalikumar Pal vs. Rajkumar Pal, AIR 1952 Cal 148***, the Court ruled that communications between an attorney and a client are privileged even if they contain information pertaining to third parties. It is further submitted that there may arise occasions when Law Enforcement Agencies may require issuance of search warrants for premises of an advocate, who is the subject of an investigation and / or engaged as an attorney for a client who is the subject

of investigation. While carrying out such searches, certain safeguards ought to be followed and prior to filing an application for a search warrant in any Court, the Investigating Officer must mandatorily obtain sanction from the Directorate of Prosecution. The search warrant should be drawn in accordance with the requirements of law, minimising the need to search and the Magistrate must direct a search in his own presence in terms of Section 103 of Code of Criminal Procedure, 1973 (Cr.P.C.). Petitioner also submits that while passing an order under Section 93 Cr.P.C for issuance of search warrants, the provisions of privileged communications enshrined in Sections 126 to 129 of the Indian Evidence Act be kept in mind.

4. We have heard the Petitioner at length.

5. Looking to the facts and circumstances of the case, we see no reason to entertain the writ petition as there are adequate provisions under the Cr.P.C., which provide remedies to the concerned person against whom search warrants have been issued. Cr.P.C. is a complete Code in itself and while taking recourse to the remedies thereunder, it is always open to the concerned person to bring to the notice of the concerned Court the safeguards and provisions of the Indian Evidence Act including those relating to privileged communications between an attorney and a client.

6. We have also perused the relevant provisions of Cr.P.C. and the Evidence Act. In our view, no blanket order with respect to the procedure of search warrants can be passed in a petition being in the nature of a Public Interest Litigation. As rightly submitted by the Petitioner, there may be occasions when investigation entails issuance of search warrants against an advocate, whether in the capacity of a subject of investigation or as an attorney of a client against whom investigation is underway. As and when

the affected person / advocate is aggrieved by the procedure or methodology followed in issuance of search warrant, the aggrieved person is always at liberty to invoke the mechanism of Cr.P.C. and the safeguarding provisions of the Indian Evidence Act and seek cancellation of the warrant. Needless to state that the concerned Court is equipped with the power to look into all the issues that may be raised and the safeguarding provisions highlighted and take a decision in a given case including the power to decline to issue a search warrant or cancel the same, if issued. It goes without saying that it cannot be stated as a matter of thumb rule that as and when a raid is carried out or the premises of a suspect are searched, necessarily there is a violation of the rights and privileges of the person concerned. Facts and circumstances would be different in different cases and would speak for themselves and can be taken care of by the concerned Courts.

7. Much has been argued out by the Petitioner that whenever a search is carried out, the proceedings must be videographed. We are unable to accept the said submission as a general proposition. Every case of search will turn out on its own circumstances and the urgency of the action required. Sometimes the Investigating Agency may be compelled to carry out the search without any delay and in such a situation, the need of prompt and urgent action for search and seizure may not be compatible with a prior exercise of arranging for a set up for conducting videography. It would, therefore, depend on the facts of a given case, of which the Investigating Officer would be in the best position to take a decision. As an illustration, if on information, it is learnt by the Investigation Agency that a suspect is in possession of the weapons of crime at his premises, a delay in carrying out search could defeat the very purpose of search and seizure. There can be any

number of permutations and combinations of factors on account of which it may not be feasible to videograph the search or seizure conducted by the concerned Agency and, therefore, we are not inclined to accept as a general proposition that no search should be carried out in the absence of a videography by a 'privilege team', as sought to be argued by the Petitioner.

8. Hence, we see no reason to entertain this writ petition which is in the nature of a Public Interest Litigation. Needless to state that an individual person, affected by the search / seizure procedure, can always take recourse to the remedies available in law, in the appropriate Forum.

9. Writ petition is, accordingly, dismissed.

CHIEF JUSTICE

JYOTI SINGH, J

OCTOBER 06, 2021

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