Rajender Singh Pathania & Ors vs State Of Nct Of Delhi & Ors on 12 August, 2011

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1582 OF 2011

(Arising out of SLP(Crl.) No.1773 of 2008)

Rajender Singh Pathania & Ors. ...

Appellants

Vs.

State of N.C.T. of Delhi & Ors. ... Respondents

With

CRIMINAL APPEAL NO. 1583 OF 2011

(Arising out of SLP(Crl.) No.5702 of 2008)

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Leave granted in both the matters.

2. These appeals have been preferred against the same judgment and order dated 25.2.2008 passed by the High Court of Delhi in Writ Petition (Crl.) No.264 of 2007 by which the High Court has quashed the criminal case registered against respondent nos. 3 and 4; directed Central Bureau of Investigation (hereinafter called `CBI') to investigate the case in respect of the allegations made by the said respondents against the appellant nos. 2 to 4; and awarded a compensation of Rs.25,000/- each to the said respondents for wrongful confinement.

3. FACTS:

A. On 3.2.2007, Constable Virender Kumar, Head Constable Krishan Singh and Constable Jai Kumar, appellant nos. 2 to 4 respectively while patrolling in the area found that Sanjeev Kumar Singh and Dalip Gupta, respondent nos.3 and 4 respectively were fighting with each other in an intoxicated condition. The said appellants tried to pacify them but in vein. After realising that they were in drunken condition the aforesaid appellants took both the said respondents to the hospital for medical examination wherein they misbehaved with the Doctor and other staff of the hospital. After medical examination, it was opined that both the said respondents had taken alcohol.

B. The said respondents were booked under Sections 107/151 of the Code of Criminal Procedure, 1973 (hereinafter called `Cr.P.C.') and were produced before the Special Executive Magistrate (hereinafter called `the Magistrate') on 4.2.2007. The Magistrate issued show cause notice as to why they should not be ordered to execute personal bond of Rs.5,000/- each with a surety in the like amount for maintaining peace for a period of one year. The said respondents could not furnish the bonds and thus, the Magistrate sent both of them to judicial custody. The said respondents furnished the bond of Rs.15,000/- each on the next day, i.e., 5.2.2007 and were released. C. The said respondents filed Criminal Writ Petition No.264 of 2007 on 19.2.2007 before the High Court of Delhi praying mainly for quashing of the proceedings under Sections 107/151 Cr.P.C. and further asked to initiate criminal proceedings against the appellant nos.2 to 4 and award them compensation for illegal detention. The writ petition came for hearing on 26.2.2007. The standing counsel appearing for the State took notice on behalf of all the respondents in the writ petition. The High Court directed the police authorities to submit the status report. The appellant no.1 after making an inquiry in the case submitted the status report on 10.7.2007. The petition was heard on 31.10.2007 and has been allowed vide judgment and order dated 25.2.2008. Hence, these appeals.

4. Shri P.P. Malhotra, learned Additional Solicitor General appearing for the State of NCT Delhi and Shri Pradeep Gupta, learned counsel appearing for the appellants, have submitted that both the said respondents had been under the influence of liquor and were fighting with each other at a public place, thus, there was danger of breach of peace and tranquillity. Appellant nos.2 to 4 tried to pacify them but the said respondents did not pay any heed. They had been booked under Sections 107/151 Cr.P.C. and produced before the Magistrate on the next day. The Magistrate after completing legal

formalities directed that they may be released on furnishing the bonds to the tune of Rs.5,000/- each with a surety in the like amount. The said respondents were not in a position to submit the bail bonds on the said date and thus, could not be released on 4.2.2007. However, on the next day, they submitted the bail bonds voluntarily for a sum of Rs.15,000/-

each, and thus, they were released. Factual averments made in the writ petition were totally false.

Appellants had not been served personal notices and had no opportunity to defend themselves. The order impugned has been passed in flagrant violation of the principle of natural justice. Such a petty matter does not require to be investigated by the CBI. Token compensation to the tune of Rs.25,000/- has been awarded to each of the said respondents without determining the factual controversy.

Hence, the appeals deserve to be allowed.

5. On the contrary, the learned counsel appearing for the respondent nos. 3 and 4 has opposed the appeals contending that the appellants had violated fundamental rights of the contesting respondents and detained them in jail without any justification, therefore, the matter is required to be investigated by the CBI or some other independent investigating agency. Token compensation has rightly been awarded by the High Court. The appeals lack merit and are liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

7. In the writ petition, admittedly, altogether there were seven respondents, including the present appellants and the Magistrate who had passed the order under Sections 107/151 Cr.P.C. Record of the case reveals that the matter was listed for the first time on 26.2.2007 and the learned standing counsel for the State accepted notice on behalf of all the seven respondents therein. Most of the respondents before the writ court had been impleaded by name in personal capacity making allegations of exceeding their powers and abusing their positions. There is nothing on record to show that the standing counsel had any communication with persons against whom allegations of mala fide had been alleged, particularly, appellant nos. 2 to 4 and the learned Magistrate, respondent no.5 herein. Thus, none of them had an opportunity of appearing before the High Court. We do not find any force in the submission made by learned counsel appearing for the original writ petitioners that as the State had been representing all of them, there was no need to hear each and every individual.

Undoubtedly, the judgment and order impugned in these appeals has been passed in flagrant violation of the principles of natural justice and, thus, liable to be set aside solely on this ground.

8. The status report had been submitted before the High Court after having proper investigation, stating that the writ petitioners had been under the influence of alcohol and been abusing, threatening and quarrelling each other at the public place. The police personnel could not control them. When they were taken to the hospital for medical check up they were found intoxicated, and

they misbehaved with the doctor and staff of the hospital also. It had been brought to the notice of the High Court that Sanjeev Kumar - respondent no. 3, had been threatening the police officials that his cousin Shri Aushutosh Kumar was a Metropolitan Magistrate in Tis Hazari Courts, Delhi and he would teach them a lesson for ever. It was further pointed out that Shri Aushutosh Kumar, MM, Tis Hazari Courts, Delhi from his mobile No. 9868932336 had a talk with appellant no.1-Rajender Singh Pathania, SHO, PS Samaipur Badli, at 10.00 P.M. on his mobile No. 9810030663 for more than three minutes on 3.2.2007. The Magistrate had passed the release order of the said respondents, however, they could not be released because they failed to furnish the personal bond with a surety in the like amount. The High Court while passing the order did not consider it proper to have an investigation on the material facts regarding demand of bribe to the tune of Rs.500 from the writ petitioners or regarding the mis-behaviour of the said respondents with the doctor and staff of the hospital. The medical report reveals that they were intoxicated. The relevant part of the medical report dated 3.2.2007 made at 8.00 p.m. in Babu Jagjivan Ram Memorial Hospital, Jahangirpuri, Delhi reads as under:

> "Smell of alcohol ++ Patient had been irritating and misbehaving with the doctor and staff"

9. No further investigation or inquiry had been conducted on the charge of abusing, threatening and quarrelling by the writ petitioners with each other. Though the High Court reached the conclusion that the said respondents had been kept behind the bar for one day resulting into violation of their fundamental rights, without realising that since they failed to furnish bonds, no other option was available and they were sent to judicial custody in view of the order of the Magistrate. If the writ petitioners were aggrieved of the same, they could have challenged the same by filing appeal/revision. We failed to understand under what circumstances the writ petition has been entertained for examining the issue of illegal detention, particularly, in a case where there was a justification for keeping them in judicial custody.

10. The High Court reached the conclusion that in spite of the fact that the Magistrate passed the order to furnish the bonds of Rs.5,000/-

each, the bonds had been accepted for Rs.15,000/-. There is nothing on record to show that any of writ petitioners had raised the grievance before the Magistrate enhancing the amount of personal bonds. In fact, the said writ petitioners themselves voluntarily submitted bonds for Rs.15,000/- and therefore, no illegality could be found on that ground.

11. The judgment and order impugned herein shocked our judicial conscience as under what circumstances such a petty incident was considered by the High Court to be a fit case to be referred to the CBI for investigation.

12. This very Bench recently in Disha v. State of Gujarat & Ors., JT (2011) 7 SC 548, while relying upon earlier judgments of this Court in Ashok Kumar Todi v. Kishwar Jahan & Ors., JT (2011) 3 SC 50; and Narmada Bai v. State of Gujarat, JT (2011) 4 SC 279, came to the conclusion that for directing the CBI to hold the investigation the court must be satisfied that the opposite parties are

very powerful and influential persons or the State authorities like top police officials are involved and the investigation has not proceeded with in proper direction or it has been biased. In such an eventuality, in order to do complete justice a direction to the CBI to investigate the case can be issued.

13. In the instant case, the grievance of the writ petitioners basically had been against the two Constables and one Head Constable. It was not a case where it could be held that the State authorities were interested or involved in the incident. Thus, in our opinion, it was not a fit case where investigation could be handed over to the CBI.

It is not only in the instant case that the High Court has directed CBI to investigate but it is evident from the other connected cases which have been heard along with these appeals and are being disposed of by separate order, that on the same day i.e. 25.2.2008 the same Hon'ble Judge directed CBI enquiry in another paltry case under Sections 107/151 Cr.P.C. Further on 28.2.2008 CBI enquiry was directed in another case also under Sections 107/151 Cr.P.C.. Thus, it is evident that the High Court has been passing such directions in a most casual and cavalier manner considering that each and every investigation must be carried out by some special investigating agency.

14. The object of the Sections 107/151 Cr.P.C. are of preventive justice and not punitive. S.151 should only be invoked when there is imminent danger to peace or likelihood of breach of peace under Section 107 Cr.P.C. An arrest under S.151 can be supported when the person to be arrested designs to commit a cognizable offence. If a proceeding under Sections 107/151 appears to be absolutely necessary to deal with the threatened apprehension of breach of peace, it is incumbent upon the authority concerned to take prompt action. The jurisdiction vested in a Magistrate to act under Section 107 is to be exercised in emergent situation.

15. A mere perusal of Section 151 of the Code of Criminal Procedure makes it clear that the conditions under which a police officer may arrest a person without an order from a Magistrate and without a warrant have been laid down in Section 151. He can do so only if he has come to know of a design of the person concerned to commit any cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise prevented. The Section, therefore, expressly lays down the requirements for exercise of the power to arrest without an order from a Magistrate and without warrant. If these conditions are not fulfilled and, a person is arrested under Section 151 Cr.P.C., the arresting authority may be exposed to proceedings under the law for violating the fundamental rights inherent in Articles 21 and 22 of Constitution. (Vide: Ahmed Noormohmed Bhatti v. State of Gujarat and Ors., AIR 2005 SC 2115).

(See also: Joginder Kumar v. State of U.P. and Ors., AIR 1994 SC 1349 , D.K. Basu v. State of West Bengal, AIR 1997 SC 610).

16. In the instant case the proceedings under Sections 107/151 Cr.P.C. were initiated on 4.2.2007 and the High Court has quashed the proceedings. At such a belated stage, correctness of the decision to that extent does not require consideration. Even otherwise the issue regarding quashing of those

proceedings at this stage remains purely academic. So, we uphold the impugned judgment to that extent.

17. The issue of award of compensation in case of violation of fundamental rights of a person has been considered by this Court time and again and it has consistently been held that though the High Courts and this Court in exercise of their jurisdictions under Articles 226 and 32 can award compensation for such violations but such a power should not be lightly exercised. These Articles cannot be used as a substitute for the enforcement of rights and obligations which could be enforced efficaciously through the ordinary process of courts. Before awarding any compensation there must be a proper enquiry on the question of facts alleged in the complaint. The court may examine the report and determine the issue after giving opportunity of filing objections to rebut the same and hearing to the other side. Awarding of compensation is permissible in case the court reaches the same conclusion on a re-appreciation of the evidence adduced at the enquiry.

Award of monetary compensation in such an eventuality is permissible "when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers."

(Vide: Sebastian M. Hongray v. Union of India, AIR 1984 SC 1026;

Bhim Singh, MLA v. State of J&K & Ors., AIR 1986 SC 494; Smt. Nilabati Behera v. State of Orissa & Ors., AIR 1993 SC 1960; D.K. Basu v. State of W.B.,AIR 1997 SC 610; Chairman, Railway Board & Ors. v. Mrs. Chandrima Das & Ors., AIR 2000 SC 988; and S.P.S. Rathore v. State of Haryana & Ors., (2005) 10 SCC 1).

18. In Sube Singh v. State of Haryana & Ors., AIR 2006 SC 1117, while dealing with similar issue this Court held as under:

> "In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death..... Where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action."

(See also: Munshi Singh Gautam (D) & Ors. v. State of M.P., AIR 2005 SC 402; and Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi & Ors., AIR 2010 SC 475).

19. In view of the above, we are of the considered opinion that the High Court erred in awarding even token compensation to the tune of Rs.25,000/- each as the High Court did not hold any

enquiry and passed the order merely after considering the status report submitted by the appellant no.1 without hearing any of the persons against whom allegations of abuse of power had been made. Such an order is liable to be set aside.

20. In view of the above, appeals succeed and are allowed.

Judgment and order impugned herein is set aside except to the extent that the proceedings under Sections 107/151 Cr.P.C. against the contesting respondents stood quashed.

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J. (P. SATHASIVAM)

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New Delhi, (Dr. B.S. CHAUHAN)

August 12, 2011