

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 17th September, 2010

Date of Order: September 24, 2010

+Crl.M.C. 2793/2009

%

Aniruddha Bahal

24.09.2010

...Petitioner

Versus

State

...Respondent

Counsels:

Mr. Sidhartha Luthra, Sr. Adv. with Mr. Pramod Kumar Dubey, Mr. Arshdeep Singh, Mr. Kunal Sood, Mr. Yashpreet Singh, Advocates for petitioner.
Mr. Pawan Sharma, Standing Counsel for State with Mr. O.P. Saxena APP for State/ respondent with Mr. Jog Tirkey, Additional DCP

AND

+Crl.M.C. 3194/2009

%

Sushasini Raj

24.09.2010

...Petitioner

Versus

State

...Respondent

Counsels:

Mr. Lalit Sibbal with Mr. Pradeep Chhindra for petitioner.
Mr. Pawan Sharma, Standing Counsel for State with Mr. O.P. Saxena APP for State/ respondent with Mr. Jog Tirkey, Additional DCP

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. These two petitions have been preferred by the petitioners with prayer for quashing of charge-sheet qua them and also for quashing of order dated 6th July, 2009 of taking cognizance and issuing summons against them as accused in C.C. No.189 of

2009 arising out of the said charge-sheet and the proceedings thereunder.

2. The petitioners had conducted a sting operation to expose the practice prevalent amongst some of the Members of Parliament of taking money for asking question in the Parliament. This practice was known to public for quite some time but was not brought to notice of the public at large with credible proof. The petitioners took upon themselves the responsibility of exposing such persons with documentary proof and conducted a sting operation. The result of this sting operation was made public by airing the same on TV channels on 12th December 2005 and the entire nation watched some members of Parliament accepting money for asking questions. After this operation was aired, a committee was constituted by Lok Sabha on 17th December 2005 to enquire into the allegations of conduct of those members of Parliament whose names figured in the operation. The Rajya Sabha also constituted a committee on 18th December 2005 for the same purpose. However, despite the corruption into which some members of Lok Sabha had indulged being publicly aired, no FIR was registered by the police of capital of this country immediately. It was only after about one and a half year of airing of the tapes of sting operation that an FIR was registered at Police Station Parliament Street under Section 12 and 13 of Prevention of Corruption Act and in this FIR the prime accused were the petitioners herein who had conducted the sting operation.

3. A petition under Section 482 Cr.P.C. was filed before this Court by the petitioners for quashing of FIR and this Court dismissed the petition for quashing of this FIR and observed as under:

“8. This Court can quash an FIR only if all the facts stated in it even if considered true, do not disclose commissioning of a cognizable offence. In the instant case, it is the admitted case of the petitioners that there was a cognizable offence committed, although their case is that the offence was not committed by them but it was committed by Members of Parliament. In any event, investigation has to be there in the commission of offence and police is bound to book all those who committed the crime. The protection, as claimed by the petitioners under Section 24 of the Prevention of Corruption Act and under Section 12 can be claimed only during trial and not at the stage of registration of an FIR.

9. It is obligatory on the part of police to investigate into the crime in full and not in a piecemeal manner. The police is directed to book all those persons involved in the offence of taking bribe, their middlemen and to get them punished according to law. The police cannot book only the middlemen and the media persons and leave the real recipients of bribe untouched. If this is done, this would not only violate the principle of equality before law guaranteed under the Constitution of this Country but also would reflect subservient character of criminal justice system. This would also give a cause to the people to behave that giving and taking of bribe is a privilege of Members of Legislature”.

This Court also passed following directions in above matter:

- “(i) Police shall investigate into the entire offence involving middlemen, Members of Parliament and others who indulged into corruption and accepted bribe for asking and tabling questions in the Parliament. Since the entire investigation is document-based and the reports of the Committees are already there, the investigation must be completed within a period of 60 days from today and charge sheet be filed in respect of the offenders who committed the offences under Prevention of Corruption Act.*
- (ii) The petitioners, who claimed to have acted in the public interest are at liberty to seek protection from arrest, if they so desire under appropriate provisions of law.*
- (iii) The investigating agency shall not single them out and leave MPs from scope of investigation and action.*
- (iv) Protection and benefits under the provisions of Section 24 of Prevention of Corruption Act and under other provisions of law shall be available to the petitioners during trial”*

4. By way of present petitions, the petitioners have sought that no cognizance of offence should be taken against them since they were not the offenders and the sting operation was conducted by them to expose corruption and not to commit a crime. They rather should have been arrayed as witnesses by the prosecution but instead of arraying them as the witnesses they were made accused with the sole aim to kill the case itself, so that case fails without witnesses. It is submitted by counsel for the petitioners that the petitioners cannot be placed in the category of accomplices in the offence and the learned trial court has wrongly taken cognizance against them. The petitioners were performing their duties as citizen of this country by exposing the rampant corruption and

bringing the same to the notice of authorities the offence was being committed by some of the Hon'ble Members of Parliament and middlemen.

5. The petitions are opposed by learned State counsel. During arguments the State counsel was asked to consider if the prosecution was prepared to use the services of the petitioners as witnesses and seek their discharge from the case. The State counsel, after consulting the government, did not agree to this proposal.

6. The question that arises in these petitions is whether a citizen of this country has a right to conduct such sting operation to expose the corruption by using agent provocateurs and to bring to the knowledge of common man, corruption at high strata of society.

7. The Constitution [Part-IVA] lays down certain fundamental duties for the citizens of this country and Article 51A(b) provides that it is the duty of every citizen of India to cherish and follow the noble ideals which inspired our national struggle for freedom. I consider that one of the noble ideals of our national struggle for freedom was to have an independent and corruption free India. The other duties assigned to the citizen by the Constitution is to uphold and protect the sovereignty, unity and integrity of India and I consider that sovereignty, unity and integrity of this country cannot be protected and safeguarded if the corruption is not removed from this country. Another duty of every citizen is to defend the country and render national service when called upon to do so. I consider that a country cannot be defended only by taking a gun and going to border at the time of war. The country is to be defended day in and day out by being vigil and alert to the needs and requirements of the country and to bring forth the corruption at higher level. The duty under Article 51A(h) is to develop a spirit of inquiry and reforms. The duty of a citizen under Article 51A(j) is to strive towards excellence in all spheres so that the national constantly rises to higher level of endeavour and achievements I consider that it is built-in duties that every citizen must strive for a corruption free society and must expose the corruption whenever it comes to his or her knowledge and try to

remove corruption at all levels more so at higher levels of management of the State.

8. This Court can take judicial notice of the fact that of widespread corruption on a large scale which was unheard of before was now a common place. In 1988 (2) SCC 602 (*Antulay's case*), Justice Sabyasachi Mukharji observed as under:

"Values in public life and perspective of these values in public life, have undergone serious changes and erosion during the last few decades. What was unheard of before is common place today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of the cross-roads of values. It is, for the sovereign people of the country to settle those conflicts yet the Courts have vital roles to play in such matters."

These observations were made in 1988. Situation today is much worse.

9. I consider that it is a fundamental right of citizens of this country to have a clean incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption wherever he finds it, whenever he finds it and to expose it if possible with proof so that even if the State machinery does not act and does not take action against the corrupt people when time comes people are able to take action either by rejecting them as their representatives or by compelling the State by public awareness to take action against them.

10. This Court had considered as to whether a person making complaint regarding corruption can be considered as an accomplice or not in *State v P.K. Jain and another* 2007 CrI. L. J 4137 and observed as under:

10. I consider that observations of learned A.S.J brandishing the complainant in a trap case as accomplice amounts to discrediting the criminal justice system itself and portrays that the criminal justice system cannot respect the witnesses. This country is facing unprecedented rise in corruption. Situation has come to a stage that MCD officials, due to the corrupt practices, have turned the whole city into a slum by allowing all types of unauthorized construction, encroachment, squatting over public land. Engineers

of local body who were supposed to check the unauthorized construction and encroachment of the public land, encroachment of roads, encroachment of pavements, turn a blind eye to all this, since their pockets are warmed and palms are greased. Similarly the observation of the trial Court that complainant and his son are interested witnesses and not trust worthy, is unfortunate. In case of a legitimate trap, the persons and police officials taking part in trap, in no

sense can be said to be accomplice or un-credit worthy witnesses so that their evidence would require, under law to be corroborated by independent witness. The rule of corroboration is not a rule of law. It is only a rule of prudence and the sole purpose of this rule is to see that innocent persons are not unnecessarily made victim. The rule cannot be allowed to be a shield for corrupt. Moreover, the corroboration need not be by direct oral evidence and can be gathered from circumstantial evidence. The sole evidence of a complainant is sufficient to convict a person, if it is reliable, acceptable and trust worthy. There was a stage under our criminal justice system when the victim of rape was also considered as an accomplice. However, the law rectified itself over the time and gradually it was realized that it was unjust to consider and brand, a victim as an accomplice and seek corroboration of her testimony. Ultimately, Supreme Court laid down that sole testimony of a victim of rape, if trustworthy, was sufficient to convict the accused. In case of bribe giving and taking, normally people do not report the instances of bribe because it suits them to give bribe as they get their illegal works done. Only few persons come forward who either do not believe in giving bribe or who are on the right track or who are fed up by giving bribe. It requires great courage to report a matter to the Anti Corruption Branch in order to get a bribe taker caught red handed. In our judicial system complainant sometime faces more harassment than accused by repeatedly calling to police stations and then to court and when he stands in the witness box all kinds of allegations are made against him and the most unfortunate is that he is termed as an accomplice or an interested witness not worthy of trust. I fail to understand why a witness should not be interested in seeing that the criminal should be punished and the crime of corruption must be curbed. If the witness is interested in seeing that there should be corruption free society, why Court should disbelieve and discourage him. The witness who reported the demand of bribe so as to trap the culprits cannot be considered as an accomplice or non-trust worthy or interested witness. There is no reason for the court insisting upon an independent corroboration of the complainant's evidence in regard to the demanding of bribe before the trap was laid. When a given complainant first visits a public servant for doing or not doing some task for him, he does not go to him as a trap witness. He goes there in a natural way for a given task. To require him to take a witness with him at that stage would amount to attributing to the complainant a thought and foreknowledge of the fact that the accused would demand bribe. (Rajinder Kumar Sood Vs. State of Punjab, 1982 Cr. LJ 1338 (PandH)). The necessity for court to search for independent witness in case of charges for corruption cannot be insisted upon.

Such crimes are committed in secrecy and normally bribe are not taken openly (although there are bold public servants who do even that). In case of trap where accused has not been lured and goaded in some form to accept bribe but the accused himself has created a situation so that he gets bribe money or the accused indulges in the harassment of the complainant to compel the complainant to give bribe and the complainant reports the matter, the absence of independent witnesses to support the version of the complainant cannot be a ground to acquit the accused”.

11. It is argued by learned counsel for the State that the petitioners in this case in order to become witnesses should have reported the matter to CBI rather conducting their own operation. I need not emphasize that in cases of complaints against the persons, in powers how CBI and police acts. The fate of whistle blowers is being seen by the people of this country. They are either being harassed or being killed or roped in criminal cases. I have no doubt in my mind that if the information would have been given by the petitioners to the police or CBI, the respective MPs would have been given information by the police, before hand and would have been cautioned about the entire operation.

12. It is also argued by the counsel for the State that the petitioners did not act as a complainant in this case but they indulged into offering bribe and thereby committed offence under Prevention of Corruption Act. They can apply for becoming approver only under the said Act and they cannot be discharged. I consider that in order to expose corruption at higher level and to show to what extent the State managers are corrupt, acting as agent provocateurs does not amount to committing a crime. The intention of the person involved is to be seen and the intention in this case is clear from the fact that the petitioners after conducting this operation did not ask police to register a case against the MPs involved but gave information to people at large as to what was happening. The police did not seem to be interested in registration of an FIR even on coming to know of the corruption. If the police really had been interested, the police would have registered FIR on the very next day of airing of the tapes on TV channels. The police seem to have acted again as ‘his master’s voice’ of the persons in power,

when it registered an FIR only against the middlemen and the petitioners and one or two other persons sparing large number of MPs whose names were figured out in the tapes.

13. The corruption in this country has now taken deep roots. Chanakya in his famous work 'Arthshastra' advised and suggested that honesty of even judges should be periodically tested by the agent provocateurs. I consider that the duties prescribed by the Constitution of India for the citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot the corruption.

14. The prosecution in this case before filing charge-sheet was obliged to see as to what was the role and intention of the petitioners. The intention of the petitioners was made clear to the prosecution by airing of the tapes on TV channels and then by deposing truthfully before the two Committees of Parliament. The two committees of Parliament did not doubt the genuineness of the tapes or the intention of the petitioners. Under these circumstances, charging the petitioners with the offence under Prevention of Corruption Act would amount to travesty of justice and shall discourage the people of this country from performing their duties enjoined upon them by the Constitution of India as well as Criminal Procedure Code.

15. I, therefore, allow these petitions. The charge-sheet and order of taking cognizance and issuing summons against the petitioners as accused dated 6th July, 2009 in C.C. No.189 of 2009 arising out of the said charge-sheet and the proceedings thereunder qua petitioners are hereby quashed.

16. Both the petitions stand allowed.

September 24, 2010
rd

SHIV NARAYAN DHINGRA, J