

Madhuresh Vs. Cbi and Others

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Court : Delhi

Decided On : Mar-04-1997

Reported in : 1997IIAD(Delhi)952; 1997CriLJ2820; 1997(41)DRJ182; 1997RLR397

Judge : M. Jagannadha Rao, C.J. and; Manmohan Sarin, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 161, 162, 163, 164 and 165; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154, 156, 157, 173(1) and (8), 190, 200 and 203

Appeal No. : C.W. No. 4257 of 1996

Appellant : Madhuresh

Respondent : Cbi and Others

Advocate for Def. : G.L. Sanghi, Sr. Adv., ; K.N. Bhat, Additional Solicitor General, ;

Advocate for Pet/Ap. : Prashant Bhushan, Adv

Judgement :

M. Jagannadha, Rao, C.J.

1. The petitioner has filed this writ petition on 5-11-96 as a Public Interest case impleading the Central Bureau of Investigation, the Union of India and Sri Sita

Ram Kesari, President of the Congress Party, as respondents 1 to 3 respectively. The relief sought in the writ petition is for the issue of a writ of Mandamus to respondents 1 and 2 to ensure that a thorough and proper investigation is conducted into the complaint of the petitioner dated 7-10-96 submitted to the 1st respondent.

2. Petitioner claims to be a journalist and to have worked as Private Secretary from 1988 to 1990, to one Sri Shyam Sunder Singh Dhiraj (formerly Urban Development Minister of State of Bihar) and petitioner says that person was a 'close confidant and right hand man of' the 3rd respondent. Petitioner claims to have been Editor of a magazine called 'Sampurna Kranthi' of Bihar during 1974. Petitioner submits that he has association with some political leaders and that he also came into close contact with the 3rd respondent and he says that thus he had opportunity to 'see the working' of the 3rd respondent from very close quarters after he became Secretary to Mr. Dhiraj. Petitioner alleges that not only did he come into contact with the 3rd respondent but with the latter's son and daughter-in-law and other members of his family, including one grandson and grant daughter-in-law and five grant-daughters and their husbands. The broad allegation is that the 3rd respondent who came from humble beginning had amassed a huge amount of wealth for himself and his family members, especially after 1979 when the 3rd respondent became treasurer of Congress party. The 3rd respondent became a member of the Lok Sabha in 1967 and thereafter a member of the Rajya Sabha in 1972 and has continuously been a Member of the Rajya Sabha. He became treasurer of the same party at the national level in 1979 till September, 1996 when he became President of the said party. It is also mentioned that the 3rd respondent was a Minister of State in the Central Government between 1975-79, 1986-86 and a Cabinet Minister from 1991-1996. Allegations are made that neither the 3rd respondent nor his son, daughter-in-law nor grandson nor grant daughter-in-law have paid income-tax (except what the 3rd respondent might have paid as Minister) and that the 3rd respondent and his family members 'have amassed huge amount of property valued over crores of rupees' since 1979. It is stated that the petitioner 'has personal knowledge' of a number of movable and immovable properties acquired by the 3rd respondent and his immediate family members. In para 5 of the writ petition, petitioner set out, vide sub- paras (a) to (f), a list of the

said properties. In para 6 he says that the 3rd respondent's son who has no work nor received any income 'has also acquired a great deal of movable property' during the past few years. Prior to 1991, the 3rd respondent's son worked as Liason Officer, SKG Distillery on a meagre salary. A list of movable assets of the 3rd respondent's son are set out in para 6, sub-paras (a) to (d). Then, in para 7, petitioner has set out on sub-paras (a) to (c) the assets acquired by the 3rd respondent's grandson, who is also 'unemployed'. In para 8, petitioner refers to the 5 grant daughters of 3rd respondent who were, married between 1983 to 1994, that their husbands had only modest means but they have all become 'quite wealthy' some of them having assets worth 'crores' of rupees. In sub- paras (a) to (c) certain details of the alleged assets of the grant son-in-law are set out. In para 9 petitioner has made an allegation that he had personally seen the 3rd respondents receiving huge sum of money in suit-cases at his Delhi residence from unidentified business while he was a Minister. Petitioner says he has 'personally seen' huge bundles of currency notes in cloth bags being given by the 3rd respondent to several MLAs as 'bribe, to vote in his favor for his Rajya Sabha Membership. Both in 1988 and 1994. It is then stated that the petitioner approached the CBI Director on 5-10-96 and he advised the petitioner to file a regular FIR 'on which he promised to take action'. The petitioner says he filed an affidavit on 7-10-96 and 'handed over' the same to the Director, CBI. Four weeks passed by thereafter and 'no tangible action has been taken by the CBI on the petitioner's complaint. The petitioner has repeatedly inquired from the CBI Office on the action taken on his complaint but he has not received any response about the same.' The petitioner thereforee says that 'he has read to believe that the CBI and its Director are not going to proceed on this matter until they have political clearance from the Prime Minister because of the fact that the survival of the present Government had been on the support of the Congress party' headed by the 3rd respondent and thereforee the petitioner is forced to move the Court.

3. On 7-11-96, when the matter was listed for admission we did not think it necessary to issue notice to the CBI or 3rd respondent but issued notice to the Union of India limited to filing a 'status report' and adjourned the matter to 2-12-96. On that day, learned Additional Solicitor General of India Sri K. N. Bhat appearing for Union of India and also CBI contended that the petition was not maintainable,

that norms must be laid down in such PIL matters. However, without prejudice to the said contentions, he submitted that a 'status report' will be filed as per the order dated 7-11-96 on 17- 12-96, as directed by us. Matter came up on 19-12-96, and on that day written submissions were filed by Sri K. N. Bhat regarding maintainability of the writ petition and the Status Report 1 was filed. Mr. G. L. Sanghi appeared for the 3rd respondent (though notice was not issued to 3rd respondent) and submitted that the petitioner was giving interviews in the media and damaging the reputation of the 3rd respondent and of his political party. The petitioner's counsel gave an undertaking that petitioner will not go to the media in connection with the subject matter of writ petition. The CBI asked 2 months time for filing a report. We granted time till 20-1-97. On 20- 1-97, Status Report II was filed and further time was sought by CBI for filing a final report. In fact, counsel for 3rd respondent pressed for hearing of the case on that day but as detailed in the order dated 20-1-97, the case could not be taken up due to administrative reasons and was adjourned to 10-2-97. On 10-2-97, the 3rd 'Status Report' was filed and arguments were heard on 12-2-97 and judgment reserved.

4. Counsel for petitioner, Sri Prashant Bhushan submitted that petitioner has locus standi to set the criminal law in motion, that the petition is not a motivated one, that when nearly one month had elapsed after a complaint followed by an appeal was given to the CBI on 7-10-96, it was open to the petitioner to move the Court seeking mandamus, inasmuch as there was no response from the CBI and that breach of statutory duties by CBI was sufficient cause of action for filing the writ petition. He also contended that an FIR ought to have been registered and investigation without registration of FIR was not an effective one. He contended that the contents of the petitioner's affidavit revealed that the 3rd respondent was guilty of offences under Sections 7.20 of the Prevention of Corruption Act, 1988, that Sections 2 and 32 of the Delhi Special Police Establishment Act 1946 read with the notification dated 6-11-56 specified offences under Section 161 to 165 IPC and offences under the Prevention of Corruption Act. Accordingly, these would come within the purview of CBI and hence direction could be issued to CBI. Some recent rulings of the Supreme Court were relied upon.

5. Learned Additional Solicitor of India, Sri. K. N. Bhat submitted that petition was not maintainable at the instance of the petitioner on these allegations, and even if maintainable, there was no cause of action inasmuch as the petitioner rushed to the Court at a premature stage, that there was no truth in his allegation that he reminded the CBI nor in the allegation that there was no response. Mr. Bhat also relied upon several rulings of the Supreme Court and submitted that no mandamus is called for on facts of the case and that in any event, in view of the three status reports filed into Court which show that proper action has been taken, no such order is called for. He said that it was nobody's case that the non-registration of FIR precluded the CBI from examining witnesses or gathering material. He said petitioner ought not have moved the High Court but ought to have moved the competent Criminal Court as per the procedure in the Cr.P.C. if petitioner felt that the CBI was not moving in the matter. Sri G. L. Sanghi for the 3rd respondent (even though no notice was given to the said respondent) submitted that the petition was politically motivated to harm the 3rd respondent and his party, it was defamatory and mala fide. Petition should be dismissed with heavy costs.

6. We do not propose to go into the question of locus standi of the petitioner. We will, however, go into the question as to whether there was enough justification for the petitioner to approach the High Court within 4 weeks of his lodging a complaint with the CBI, whether CBI ought to have straightway registered a FIR and whether it was not permissible for them to investigate without registering an FIR and whether the petitioner ought to have moved the Criminal Court and also whether the petitioner is entitled to any mandamus on the facts and circumstances of the case, in view of the Status Reports I, II and III respectively dated 17-12-96, 20-1-97 and 10-2-97 filed by the CBI.

7. Taking up the first question, it will be noticed that the petitioner approached the CBI on 5-10-96, followed by affidavit/complaint on 7-10-96 and filed the writ petition on 5-11-96. We have already referred to the pleadings of the petitioner in the writ petition in this behalf. Having regard to the nature of allegations which are contained in the complaint of the petitioner, in our opinion, ought to have waited for reasonable time before presuming that no action was taken by 5-11-96 or that no

speedy action would be taken in future. We have noticed that petitioner said in para 12 of the writ petition that 'no tangible action' was taken because though he 'repeatedly' inquired in CBI office he did 'not receive any response'. We asked the petitioner's counsel as to when the petitioner went to CBI Office after 7-10-96 whom he met and who was the person who did not give him the response. No details however were forthcoming and none have been mentioned in para 12 of the writ petition. If inaction on the part of the CBI was to be the sole cause of action for filing the writ petition, one would expect full details of the efforts made by the petitioner to move the CBI to be given. No registered notice was sent within reasonable time after 7-10-96 to say that action was not being taking by the CBI or that petitioner had gone to CBI office and met such and such person on various dates and the persons so asked did not give any response. There is no contemporaneous evidence to show that petitioner has tried to move in the matter. The petitioner appears to have surmised as stated by him in para 12 and ground (B) - that 'the petitioner has reason to believe that the CBI and its Director are not going to proceed on this matter until they have political clearance from the Prime Minister because of the fact that the survival of the present Government has been on the support of the 'party' headed by the 3rd respondent. We are of the view that there is no evidence of any effort made by the petitioner to find out whether any action on his complaint has been taken by the CBI and that the petitioner rushed to the Court without reasonable time having elapsed accordingly without there being sufficient justification to move Court.

8. Learned counsel for the petitioner contended that the petitioner was not bound to disclose as to what steps he had taken to find out if the complaint was being investigated and that was a matter of evidence which could be set out in the rejoinder. This submission cannot be accepted. In *S. P. Gupta v. UOI*, : [1982]2SCR365 , it was stated that in writ proceedings, affidavits constitute 'not merely their pleadings but also partake of the character of evidence in the case'. therefore details ought to have been set out in the main writ petition. A rejoinder can contain only a reply to the specific points raised in the counter-affidavit and is not a substitute for a proper writ petition. If the main affidavit of a writ petition is bereft of details, a respondent can, in fact, say in his counter- affidavit that no counter is called for on the vague allegations of the petitioner. In *G. Shaik Shavalli*

v. Secy. RTA Annapur, : AIR 1982 AP296 , in a case seeking relief on the ground of refusal to dispose of an application, it was observed (at page 298) :

'To the question whether a writ petition disclosed any cause of action or not, the answer has to be found in the initiating document. Such a question has to be decided exclusively with reference to the averments made in the writ petition and wholly without reference to the counter- affidavit. It is a threshold question

For the aforesaid reasons, we do not propose to admit the writ petition nor call upon the respondents to file their counters to the writ petition.

9. Coming to the second contention, namely, as to whether the CBI ought to have straightway registered an FIR before starting preliminary investigation, the petitioner's counsel submitted that there was no provision in the Code of Criminal Procedure which permitted the police authorities to start preliminary investigation before registering an FIR. It was pointed out to the counsel that perhaps the correct approach to the problem was whether there was any prohibition in the Code to start a preliminary investigation. That the latter approach is the correct one is clear from several rulings of the Supreme Court. It was pointed out by Mudholkar, J. in State of U.P. v. Bhagwant Kishore Joshi, : 1964 CriLJ140 while agreeing with the conclusion of the majority that the question was whether there was any prohibition in the Cr.P.C. against starting a preliminary investigation before registering an FIR. Mudholkar, J. stated (at page 145 (of Cri LJ) :-

'In the absence of any prohibition in the Code, express or implied, I am of the opinion that it is open to a police officer to make preliminary inquiries before registering an offence and making a full scale investigation into it'.

10. Again in P. Sirajuddin v. State of Madras, : 1971 CriLJ523 it was held by Mitter, J. that before a public servant, whatever be his status, is publicly charged with act of dishonesty which amounts to serious misdemeanour or misconduct and before a first information report is lodged against him, there must be some suitable preliminary investigation as to the allegations by a responsible officer. Otherwise, if an FIR is straightway registered, 'such a report would do incalculable harm not only to the office in particular but to the department he belonged to'.

11. Adverting to the above observations of Mudholkar, J. and Mitter, J., Ratnavel Pandian J. stated in *State of Haryana v. Bhajan Lal*, : 1993 CriLJ1042 as follows :

'We are in agreement with the views expressed by Mitter J. and Mudholkar, J. in the above two decisions'.

For the above reasons, we hold that the registration of an FIR is not a condition precedent for conducting a preliminary investigation as distinct from a regular investigation. In fact, learned senior counsel Sri K. N. Bhat stated that the non-registration of an FIR did not, as a fact come in the way of making an effective preliminary investigation and nobody has objected to the procedure adopted by the CBI.

12. Now we come to the main issue dealing with the role of the Court and the scope of the writ of mandamus that is sought to be issued. In the last one year we have about several rulings of the Supreme Court on this aspect, starting with *Vineet Narain v. UOI*, : [1996]1SCR1053 (dated 30-1-96) and ending with *Union of India v. Sushil Kumar Modi* : 1997 CriLJ1168 (dated 24- 1-97). The last decision puts the role of the Court beyond any doubt.

13. We may start with the leading judgment in this area rendered by Lord Denning in *R. v. Metropolitan Police Commissioner*, AIR 1968 763. Indicating the duty of the Commissioner of Police, Lord Denning said :

'..... I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of state I hold it to be the duty of the Commission of Police, or it is of every Chief Constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are not to be prosecuted; and, if need be, bring the prosecution or see that it is brought, but in all these rulings, he is not the servant of any one, save of the law itself. No Minister of the Crown can tell him he must or must not, that observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies

on him. He is answerable to the law and to the law alone

The nature of such a duty and the power of the Court to enforce it were also mentioned by Lord Denning as follows :

'A question may be raised as to the machinery but which he could be compelled to do his duty. On principle, it seems to me that once the duty exists, there should be a means of enforcing it. This duty can be enforced, I think, either by action at the suit of the Attorney General or by the prerogative order of mandamus

The Supreme Court in *Union of India v. Sushil Kumar Modi*, : 1997 CriLJ1168 accepted the dictum of Lord Denning and their Lordships stated : 'There can be hardly any doubt that the obligation of the police in our Constitutional scheme is no less'. So the law in India is the same.

14. Having noticed the positive side of the role of the High court, the Supreme Court also referred to certain areas which the Court has to keep aloof from. They said that the role of the Court does not extend to formation of any opinion on the final step that is to be taken upon the investigation i.e. after the regular investigation made subsequent to registration of an FIR. In the same case *Union of India v. Sushil Kumar Modi* : 1997 CriLJ1168 the Supreme Court observed clearly :

'According to the Code of Criminal Procedure, the formation of the opinion as to whether or not there is a case to place accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the Police and by no authority (See *Abhinandan Jha v. Dinesh Mishra*) : 1968 CriLJ97 .

Their Lordships emphasised that the High Court's function is limited to the following :

'This must be borne in mind as also that the scope and purpose of a proceeding like the present is to ensure proper and faithful performance of its duty by the police officer by resort to the prerogative writ of mandamus'.

therefore it is clear that it is not open to the High Court to go into the merits of the matter or review the final decision of the police. If however the Court's monitoring of the investigation shows either sluggishness or a deviation from a normal, honest and objective investigation, the Court could give 'guidance' to the Counsel for the CBI rather than express anything on the merits of the investigation.

15. The High Court should also see that anything done by it does not prejudice the case of the accused. In this context, the Supreme Court in Sushil Kumar Modi's case : 1997 CriLJ1168 referred to Anukul Chandra Pradhan v. Union of India, : (1996)6SCC354 to say that the High Court must see that publicity in these matters does not diminish dilutes the requirement of our criminal law for a fair trial in case a charge sheet is registered and the matter goes to trial. The relevant passage in Anukul Chandra Pradhan's case reads as follows :

'A note of caution may be appropriate. No occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial : It is reiterated, that any observation made by this Court for the purposes of the proceedings pending here has the bearing on the merits of the accusation, and is not to influence the trial in any manner. Care must be taken to ensure that the credibility of the judicial process is not under mind in any manner.'

Having referred to the above passage, their Lordships in Sushil Kumar Modi's case described the task of the High Court as a 'delicate one' which has to be handled with dexterity and tact. They observed (page 437, para 11) :

'The delicate task of ensuring implementation of the rule of law by requiring proper performance of its duty by the CBI and other governmental agencies, while taking care to avoid the likelihood of any prejudice to the accused at the ensuing trial because of any observation made on the merits of the accusation in the present proceedings, has to be performed with dexterity and tact needed in the conduct of such a proceeding.'

In view of the aforesaid ruling of the Supreme Court clearly delineating the role of the High Court, the position is, in our opinion, clear enough.

16. It was argued by the learned Additional Solicitor General of India Sri K. N. Bhat that the judgment of the Supreme Court in *All India Institute of Medical Sciences Employees Union (Regd.) v. Union of India*, : (1996)11SCC582 (dated 29-10-96) governs the case and the writ petition is liable to be dismissed inasmuch as if the petitioner was not satisfied with the action of the CBI, he could move the Criminal Court of competent jurisdiction under Section 190 of the Cr.P.C. read with Section 200 thereof by filing a complaint before the Magistrate to take cognizance of the offences and requesting the Magistrate to inquire into the complaint as provided in Chapter XV of the Code. The Magistrate could, record evidence and if he finds a prima facie case, instead of issuing process to the accused he is empowered to direct the concerned police to investigate into the offence under Chapter XII of the Code and submit a report. If the Magistrate finds that the complaint does not disclose any offence requiring further action, he is empowered to dismiss the complaint under Section 203 of the Code. If he finds that prima facie an offence is disclosed, he is empowered to take cognizance of the offence and issue process to the accused.

17. In our opinion, the above decision in *AIIMS* case is not in any manner in conflict with the other judgments of the Supreme Court culminating in *Union of India v. Sushil Kumar Modi*, : 1997 CriLJ1168 . The ruling in *AIIMS* case obviously takes care of a later stage in the proceedings. The broad procedure is that initially the complainant goes to the police and investigation is to be done as per the provisions of Chapter XII by the police under Sections 154, 156, 157 refer to the said procedure. Section 173(1) envisages that every investigation under this Chapter shall be completed without unnecessary delay. On completion, if the police come to the final decision that the investigation had revealed the commission of offence, it shall so report to the Magistrate who under Section 190 takes cognizance of the same. Section 173(8) permits the investigating officer to make further investigation into the offence. But where the police have ultimately come to the conclusion that no offence has been prima facie brought out during the investigation, the complainant can go before a Magistrate and seek redress as

per Sections 190,200 etc. and the Magistrate can record evidence and if he finds a prima facie case, he can direct investigation again under Chapter XII. This is the ratio of AIIMS case.

18. But, in our view, the decision in Union of India v. Sushil Kumar Modi : 1997 CriLJ1168 takes care of an earlier stage. If during the investigation under Chapter XII, the police are found to be not performing their duty by conducting an honest, objective and speedy investigation, then at that stage, the aggrieved party can use the Mandamus procedure by moving the High Court under Art. 226 to see that the police perform that duty effectively. If after the investigation has reached the finality and the police had come to the conclusion that prima facie no offence was made out, then the complainant could adopt the procedure envisaged in Ss. 190, 200 etc. as laid down in AIIMS case : (1996)11SCC582 . The said decision is not therefore in conflict with Union of India v. Sushil Kumar Modi : 1997 CriLJ1168 which deals with the scope of mandamus.

19. Now coming to the facts of the case before us, we have referred to the petitioner's allegations in the complaint as well as in the writ petition. We do not propose to set out all the particulars of the property, movable and immovable, then acquisition etc. as given in the complaint and in the writ petition inasmuch as our role is quite a limited one. In the present case an extra point arises, namely that presently we are not dealing with a regular investigation that is being made after the registration of an FIR. We are at the stage of a preliminary investigation that is being conducted by the CBI for the purpose of deciding whether the allegations warrant registration of an FIR and a regular investigation. On 7-11-97, we had merely asked the Union of India to file a status report I. A report dated 17-12-96 in a sealed cover was filed and came up before us on 19-12-96. On that day, the CBI asked for further time by 2 months. We perused the status Report I and granted time till 20-1-97. On that day, a status Report II was filed. We perused the same and adjourned the case to 10-2-97 to enable the CBI to file, what they told us, the final status Report. Then status report III dated 10-2-97 was filed and the writ petition was heard on 12-2-97. We have perused the said status Report III also. On the basis of these 3 reports, we have observed the steps taken by the CBI during its preliminary investigation with regard to each allegation in the complaint

and each item of property, movable or immovable. The CBI had examined several witnesses, gathered several documents from different sources, including governmental departments etc., they have examined the petitioner also on several occasions, (copies of his statements have been filed along with the status reports), they have obtained information from the 3rd respondent by way of questionnaire etc. and then proceeded to verify the facts and come to several conclusions. We do not think it desirable to set out in the body of this judgment the various facts which have been gathered during the course of the preliminary investigation by the CBI in these 3 reports, as we are not adjudging the merits of the conclusions of the CBI. As stated by the Supreme Court it is for the police authorities to draw their final conclusions in the matter and not for this Court. We are mainly concerned with the question whether the investigation is going on honestly, sincerely, objectively and without delay. We have confined our attention to this delicate task that is cast upon us and have, as stated above, examined the progress of the investigation. In fact, in a way, we have monitored the progress made by the CBI in the month of October, November, December, 1996 and January and February, 1997. We are satisfied that the investigation, though preliminary, has been and is going on within the well defined parameters stated above. In any event the writ petition has served the legal purposes for which it has been filed.

20. In the result, on the basis of the complaint of the petitioner and followed by the notices for status reports, the CBI has been investigating into this matter in a manner which does not call for further monitoring or the issuance of a mandamus.

21. We hope and trust that the CBI will complete its preliminary investigation of all aspects which are before it in the light of the principles laid by the Supreme Court, to which we have referred to above.

22. We may however clarify that we should not be understood to have said anything on the merits or demerits of the conclusions drawn by the CBI with regard to the subject matter before it.

23. The writ petition stands disposed of as above.

24. Order accordingly.

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