N.S. Hoon Vs. Uoi and anr

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SooperKanoon Citation : sooperkanoon.com/924575

Court : Delhi

Decided On : Jan-24-2012

Appellant : N.S. Hoon

Respondent : Uoi and anr

Advocate for Def. : Mr. P.K. Sharma, Mr. Udai Prakash, Mr. Jatan Singh

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI + W.P. (Crl.) No.1048/2011 Reserved on: 01.12.2011 Pronounced on: 24.01.2012 N.S. Hoon ...... Petitioner Through: Petitioner in person Versus UOI and Anr. ...... Respondents Through: Mr. P.K. Sharma, Standing Counsel for CBI with Mr. Udai Prakash, Advocate Mr. Jatan Singh, Advocate for UOI CORAM: HON'BLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J..

1. The petitioner has filed a Criminal Writ petition under Article 226 for the issuance of writ of mandamus against the respondents claiming that he was falsely implicated in the criminal proceedings .He has demanded criminal action to be taken against the respondents and Rs. 5000 crores as damages..

2. The facts leading to the present writ petition are that RC8/87/SIU-VIII was registered in CBI/SIU-VIII Units(EOW-III) on the basis of information received by CBI on 26.06.87 that the petitioner during the period from 21.04.87 to 06.05.87 stayed in Hotel Ambassador at New Delhi by giving false particulars about his

nationality to the hotel staff and wrongly declared himself as Indian even though he is a British citizen and was thus found contravening the provisions of Section 7 read with Section 14 of Foreigners Act,1946. The petitioner was required to furnish the particulars regarding his nationality to the Hotel management which he failed to do, thus contravening the provisions of Section 5 of the Foreigners Act. W.P (Crl.) 1048/2011 Page 1 of 8.

3. It was further alleged that he was required to pay his hotel bills in foreign currency as per the provisions of section 9 and 15 of the Foreign Exchange Regulations Act,1973 r/w Notification No. F 64/Ec/ 80 dated 20.8.81 issued by Central Government, but he made the payment of his hotel expenses in Indian Currency, violating the aforesaid provisions and liable to be punished under section 56 of the Foreign Exchange Regulations Act..

4. CBI conducted the house search of the petitioner and seized his passport. During the search, petitioners advocate claimed that the petitioner has been granted Anticipatory Bail on 14.05.87 by the court of Justice M.K. Chawla of High Court. However, the copy of the said order was not produced at that time..

5. The petitioner was thereafter summoned to CBI office for interrogation on 28.06.87. During interrogation, it was learnt by CBI that the order of anticipatory bail was not applicable to the present proceedings as the petitioner was declared as proclaimed offender in a case registered by the Calcutta police. In order to prevent the petitioner from absconding, he was arrested. He was produced in the court of Ld.ACMM, Delhi and was remanded to judicial custody for one day and was released on bail on 01.07.87 with certain conditions..

6. A charge-sheet was filed on 24.8.1987 against the petitioner under Section 420 IPC ,Section 7 r/w Section 14 of Foreigners Act, 1946 ,Section 3 of Registration of Foreigners Act, 1989 r/w rule 14 of the Foreigners Rule,1939 framed there under, punishable under Section 5 of Registration of Foreigners Act, 1939..

7. On 7.1.2003 charges were framed under the above mentioned Sections. However, The Petitioner was acquitted vide an order dated 3.1.2011, by the learned ACMM stating: W.P (Crl.) 1048/2011 *Page 2 of 8* "Therefore, benefit of

doubt is to be given to the accused. It may be possible that the receptionist was not able to hear properly the word Indian Resident. Probably because of the appearance of accused they might have been misguided and believe that accused is an Indian.".

8. The learned trial court also recorded the following facts while acquitting him:- Petitioner is British National holding a British Passport No.B-134426 and, therefore, covered under the definition of foreigner as used under Foreigners Act, 1946. Secondly, the accused being a foreign national was under an obligation to declare his nationality in the visitors register kept in the hotel as required under rule 14 of Registration of Foreigners Act. Thirdly, it is proved that petitioner stayed in the hotel between 21.4.1987 to 6.5.1987..

9. I have heard the petitioner in person and the learned counsels for the respondents and perused the entire record..

10. The petitioner has claimed that the criminal proceedings were initiated against him in furtherance of a conspiracy between the Police Department and CBI and there were no grounds for proceeding against him. He has taken up various grounds in the petition for action against the two Departments; the first being that CBI initiated false, frivolous and malafide criminal proceedings against the petitioner wherein he has been acquitted..

11. His next contention is that perusal of the order passed by the trial Judge would show that it was not a case of criminal intent at all and neither it was the case of the prosecution nor was there any evidence to that effect .He maintains that it was a case which was unreasonably thrusted upon him. He submitted that the charge was framed for the paltry amount of Rs. 8000/- paid by him in Indian Currency..

12. The petitioner has further stated that it was not a case of arrest since he had no criminal intent which could harm the society or the nation or the Government in any manner as he had just kept with him Indian currency of some paltry amount. He further stated that it was not a case within the jurisdiction of the CBI and all the proceedings against him were without jurisdiction and the CBI has not disclosed

the name of the complainant in the proceedings against him and had suppressed material information from the Court..

13. Per contra, the learned counsel for CBI submitted that the Writ petition is not maintainable as there is nothing to indicate that the allegations in the FIR and in the charge sheet did not constitute any offences. It is submitted that there was no evidence to support the allegation of the petitioner that the proceedings against him were pre-meditated. It is also submitted that during the course of trial the procedure laid down by the law was followed..

14. From the entire record available before me, it is seen that there is nothing to show that the criminal prosecution against the petitioner was malicious in any manner. CBI has acted according to law in force and procedure established by the law. The procedure was followed in accordance with the law within the permitted parameters settled by law. CBI was empowered to investigate the case under Foreigners Act, 1946 and Rules framed thereunder. The learned trial Court rightly did not found any irregularity in the proceedings against the petitioner..

15. Regarding the acquittal of the petitioner, there are no observations to the effect that the proceedings were without sufficient grounds or the petitioner was totally innocent. He was acquitted on technical grounds by giving benefit of doubt and conclusion arrived at by the trial court was that there may have been a misunderstanding or over hearing by the staff regarding the nationality of the petitioner. It has been nowhere recorded that there were no reason to believe that the petitioner had violated the provisions of the Registration of Foreigners Act and the Foreign Exchange Regulations Act. The acquittal of the accused was due to want of unflinching evidence and not due to lack of any grounds to proceed against him. Hence, the contention of the petitioner that a false case was registered against him without sufficient grounds of proceedings cannot be accepted..

16. Further, the submission of the petitioner that the amount of Rs. 8000 was too less an amount for criminal prosecution is baseless as the quantum of money was not the criteria of prosecution. Rather the contravention of the provision of Foreign Exchange Regulations Act was the basis of the prosecution. The amount paid by

the petitioner does not affect in any way the fact that he made the payment of his hotel bills in Indian currency, in violation of the provisions of Foreign Exchange Regulations Act..

17. Regarding the submission of the petitioner that he had been granted anticipatory bail by the court, there is nothing on record to show that the said order was produced to the officer on demand. Moreover, the said order was not in respect of the instant case. Since, the petitioner was a British National, there was every apprehension that he would flee the country to evade the process of law. Keeping these facts in mind, the decision to arrest the petitioner was taken by the CBI. The petitioner was duly produced in front of the Magistrate after arrest and thus, there was no violation of any right of the petitioner. Also there is no material to support the petitioners claim that there was any suppression of documents from the Trial Court at any stage of trial. W.P (Crl.) 1048/2011 Page 5 of 8.

18. From the perusal of the record, it is noted that as soon as the petitioner was released on bail in the instant case, he filed a Criminal Misc. Petition 620/1987 and instituted contempt of Court proceeding against the officials of CBI, Calcutta Police and Delhi police alleging that Calcutta Police had arrested him with the assistance of CBI violating the Order of Delhi High Court dated 14.05.1987. However, it was observed that the Calcutta police had arrested him in a different case under the Suppression of Immoral Traffic Act. The petitioner was arrested by Calcutta Police in case no 308 dated 04.07.1971 under Section 366 A, IPC read with Section 3, 4 and 5 of Suppression of Immoral Traffic Act 1956, wherein he was declared a proclaimed offender by Metropolitan Magistrate, Calcutta. This case was registered on the basis of the raid conducted by the Calcutta Police in Stockman Building on 24.07.1971. The case filed by the petitioner was dismissed by the High Court of Delhi vide its Order dated 3.3.1989 observing that the CBI, Calcutta Police and Delhi Police had not committed any contempt of the Court by arresting the petitioner even if they were informed about the anticipatory bail order granted by the Delhi High Court on 14.5.1987 as it was clearly established that he was arrested with regard to an entirely different case. Thus, it can be seen that the petitioner is in the habit of filing a frivolous case against the police as and when he was arrested. It has been his tendency to file cases against the authorities as soon

as he is let out on bail in any case against him..

19. This fact is supported by paying attention to the array of cases filed by him. (i) A petition in 1987 with the allegations that CBI is not following the order of trial court for medical checkup of the petitioner. On the contrary the real facts were that the concerned court has issued a direction to Jail Superintendent Tihar and not the CBI to get the petitioner medically examined. Thereafter, the petitioner withdrew that petition as not pressed. W.P (Crl.) 1048/2011 *Page 6 of 8* (ii) Petitioner also filed TP Criminal 26-28/1989 in Supreme Court for transferring of the case pending in Calcutta and Jaipur to the court of Delhi. However, the said was also dismissed by Honble Supreme Court. (iii) The petitioner also filed another Criminal MC 2676/1990 before Delhi High Court for staying of the trial court proceedings in FIR No.11/87/SIU-VIII and for cancelation of NBW. The same was also dismissed by this Court vide an order dated 15.3.1991; (iv) The petitioner filed another Criminal MC 1046/1991 praying quashing of the FIR RC 11/87/SIU-VIII which was dismissed by this Court vide its order dated 18.12.2001. (v) Petitioner also filed the Criminal Complaint against Shri Ashok Kumar Jain and 20 others before CMM. The said case was quashed by the Calcutta High Court vide an order dated 28.6.1990 passed in Criminal Revision No.1072/90; (vi) The petitioner filed another complaint bearing number 1964/1990 before the CMM under section 365,384, 389 r/w 120 B IPC, which was dismissed by the 11th MM Court, Calcutta vide its order dated 30.8.90. (vii) The petitioner filed another Criminal Complaint No.2118/1990 against 23 persons including the then Director of CBI and other CBI officials. The same was also dismissed by the Calcutta High Court vide its order dated 28.02.1996. (viii) The High Court of Calcutta also quashed the order of summoning against CBI officials vide order dated 28.2.1996 passed in Criminal Revision Petition 132/1994..

20. It is evident from the slew of cases filed by the petitioner against the CBI and its officials that the petitioner is a chronic litigant and files cases against the authorities whenever any step is taken against him due to his activities which are contrary to law. If the petition is allowed, it would give a free hand to the petitioner to drag the investigating agencies into years of litigation, just because they followed the procedure laid by law. W.P (Crl.) 1048/2011 Page 7 of 8.

21. In the present petition, not only the CBI and Police are questioned but even the Judiciary and Government are sought to be maligned in a highly derogatory and utterly contemptuous manner. The unparliamentary language used by the petitioner is evident by words like "slave Magistrate", "obliging judge", "corrupt CBI". Such petitions are nothing but a waste of precious judicial time and mockery of the legal process and are here because of the undue indulgence given to such unscrupulous litigants. The conduct of the petitioner is highly condemnable and deserves no consideration even due to his age as he has unabatedly abused the process of law in intimidating and obstructing the public officials from discharging their duties..

22. In view of the above discussion, the writ petition is dismissed with a cost of Rs.20,000/- to be deposited by the petitioner with Delhi High Court Legal Services Committee within two weeks from today. M.L. MEHTA, J. January 24, 2012 awanish W.P (Crl.) 1048/2011 Page 8 of 8