

Ravinder Singh Vs. State

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Court : Delhi

Decided On : Dec-14-2011

Appellant : Ravinder Singh

Respondent : State

Judgement :

\$~37 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C.1262/2011 and Crl.M.A.4676/2011(stay) % Judgment delivered on:14th December, 2011 RAVINDER SINGH Petitioner Through : Mr.Parvinder Chauhan, Adv. versus STATE Respondents Through : Mr.Navin Sharma, APP for State Respondent No.2 in person. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J. (Oral).

1. Instant case is loaded with long history, which is being filed to assail the impugned order dated 25.10.2010 passed by learned Additional Sessions Judge - 03, Outer, Rohini Courts, Delhi whereby the order dated 13.08.2009 passed by learned Metropolitan Magistrate was set aside and further directed to the extent that petitioner herein is liable to be summoned tried and punished for the offences under Section 3 (1) (viii) of the SC and ST (Prevention of Atrocities) Act, 1989, as at the stage of summoning of the accused the learned MM has to see the prima facie case only. The MM at the stage of summoning of the accused is not to satisfy itself whether the proceedings will Crl.M.C.No.1262/2011 *Page 1 of 17* ultimately result in the conviction of the accused as the Court at the stage of summoning of the accused has to see the prima facie case only and prima facie offence under

Section 3 (1)(viii) of the SC and ST (Prevention of Atrocities) Act, 1989 is fully made out against the Respondent No.1-Sh.Ravinder Singh, S/O Sh. Kartar Singh, R/O H.No.91, Village and Post-Office Siras Pur, Delhi. Hence, learned MM Rohini Courts, Delhi/concerned Court was directed to summon the Respondent No.1-Ravinder Singh for the aforesaid offences and to proceed as per law..

2. Learned counsel for petitioner submits that initially the Writ Petition (Crl) No.1667/2005 was filed by the petitioner against the many respondents wherein, respondent No.2 was one of the respondents, which was dismissed by this Court vide order dated 29.09.02005. It is apparent that this writ petition was filed by Mr.Pradeep Rana, Advocate..

3. Thereafter, the same advocate i.e. Mr.Pradeep Rana filed another Writ Petition (Crl.) No.2657/2006, against the many respondents wherein, respondent No.2 was also one of the respondents..

4. Learned counsel for petitioner has fairly conceded that both the writ petitions were verbatim and filed by one advocate..

5. The latter writ petition was disposed of by coordinate bench of this Court as petitioner did not appear on two consecutive dates and accordingly dismissed for non-prosecution vide order dated 24.08.2007. Crl.M.C.No.1262/2011 Page 2 of 17.

6. Learned counsel for petitioner further submits that respondent No.2 herein filed a Contempt Case (Crl) No.10/2007 on the ground that the petitioner in his subsequent writ petition i.e. W.P.(Crl) No.2657/2006 had concealed the material fact of dismissal of his previous writ petition i.e. W.P.(Crl) No.1667/2005. Further, the petitioner had made a false declaration at para No.23 page No.22 of the said writ petition and thus, further filed false affidavits placed at page Nos.25,26, 31, 32 of the paper-book of said writ petition to the effect that no other similar petition has been filed by him or on his behalf before Delhi High Court or any other court, therefore, the petitioner had made false declarations in the affidavits knowingly and deliberately..

7. Respondent No.2 made averments in the Contempt Case (Crl.) No.10/2007 as under:- "9. That from a comparison between the previously filed and disposed of W.P.(Crl) No.1667/2005 and the subsequently filed W.P.(Crl) No.2657/2006, the following things shall be observed: (a) That the parties to both the Writ Petitions are identical; (b) The content of both the Writ Petitions and the respective affidavits in support is identical - only the dates of preparation of the papers are different; (c) The subsequently filed Writ Petition contains a declaration of non-filing of any previous Writ Petition in the Crl.M.C.No.1262/2011 *Page 3 of 17* matter, duly supported by an affidavit of the petitioner; (d) The prayer clauses in both the petitions are identical; (e) Both petitions have been instituted through the same Id counsel; (f) There is no mention in the subsequently filed Writ Petition that prior to its filing, the petitioner had approached the Delhi High Court through the previously filed Writ Petition, which was dismissed (in limine) by the Order dated 29.09.2005 of Hon'ble Justice R.S. Sodhi..

10. That under the circumstances, the declaration of the respondent in his subsequent W.P.(Crl) No.2657/2006 that he has not instituted any other Writ Petition in the matter before the Delhi High Court was false to his knowledge..

11. That the respondent thereby, has stated on oath, through his Writ Petition and Affidavit a false thing in a judicial proceeding before the High Court."

8. Vide order dated 18.12.2007, notice to show cause was issued to the petitioner by Division Bench of this Court as to why contempt proceedings be not initiated against him. Subsequently, vide order dated 23.07.2008, Mr.Pradeep Rana, Advocate was also put to notice to show cause as to why contempt proceedings be not initiated against him. Both of them filed their reply to the notices. Crl.M.C.No.1262/2011 *Page 4 of 17*.

9. Mr.Pradeep Rana, Advocate tendered apology. Whereas, in the reply filed by petitioner it is averred as under:- "9. That in the month of December 2007, the Answering Respondent received copy of an appeal filed by the Petitioner before the Deputy Commissioner (North-West). It is submitted that the vide the said appeal was claimed that he (Sukhbir Singh Kemwal) was in possession of the aforesaid land of the Answering Respondent. In support of his contention, the

Petitioner has relied upon copies of two writ petitions allegedly filed on behalf of the Answering Respondent, through aforesaid Sh.Pradeep Rana, Advocate being W.P. (Crl.) No.1667/2005 and another WP (Crl) No.2657/2006. Copies of the writ petition and the order passed therein were annexed. It is submitted that from the contents of the said writ petitions, it appears that the Answering Respondent had admitted that the Petitioner was in possession of the land of the Answering Respondent whereas the said fact was incorrect and was like to rude shock to the Answering Respondent. It appears that the aforesaid Sh.Pradeep Rana, in connivance with Petitioner, had taken undue advantage of the trust deposited by the Answering Respondent in him. Sh.Pradeep Rana, despite knowing well that the Answering Respondent was in possession of the land in question and for this fact only was facing harassment from the hands of the Petitioner still wrote that the land is in possession of the Petitioner (Sh.Sukhbir Singh Kemwal). This has been done for the obvious reason that Sh.Pradeep Rana mixed up with Petitioner in as much there is no other beneficiary of the said false statement. Therefore, interest of Answering Respondent as well as profession duties of an Advocate have been compromised in whole affair. In this regard, a Crl.M.C.No.1262/2011 *Page 5 of 17* complaint dated 29.12.2007, has already been filed with the Bar Council of Delhi. A copy of the said complaint is annexed herewith as Annexure R/1..

10. That the whole design is clear from the fact that whereas the WP (Crl) No.1667/2005 was dismissed vide order dated 29.09.2005, however another writ petition bearing No.3657/2006 containing the same admissions (in fact this writ petition is verbatim repetition of earlier writ petition) was filed on 18.11.2006. it is submitted that this writ petition contains prayer for quashing of the FIR No.254/05 and restoration of possession whereas the fact is that in the February 2006 itself the Police had filed a closure report qua the Answering Respondent as such the Answering Respondent had no reason to seek quashing of the FIR. Similarly, vide order dated 22.07.2006, the Tehsildar (Narela) in proceeding under Section 27 of the Delhi Land Reforms Act had upheld the possession of the Answering Respondent hence Answering Respondent had no reason to seek the possession back. Even, the Petitioner had admitted the possession of the Answering Respondent, even after the registration of FIR, and said admission of the Petitioner is recorded in order dated 05.05.2005 passed by the Court of

Sh.Yogesh Khanna, ASJ, Delhi. In any case, since the Answering Respondent was in possession of the said land as such, at no point of time, he had any reason to seek the restoration of possession. To make the things more interesting the subsequent writ petition bearing No.2657/2006 has been allowed to be dismissed in default. It is submitted that the Answering Respondent was not even aware of the dismissal of earlier writ petition therefore there is no question of making a *Crl.M.C.No.1262/2011 Page 6 of 17* deliberate false statement in subsequent writ petition..

11. Therefore, it is clear that aforesaid Sh.Pradeep Rana, by taking undue advantage of relation of client and advocate filed the W.P.(Crl) No.1667/2005 contrary to the instruction of the Answering Respondent whereas the later writ petition being W.P.(Crl) No.2657/2006 has been filed without instructions by using the appears signed by the Answering Respondent in good faith..

12. That it is also submitted that the allegations which has been levelled against the Answering Respondent is that the Answering Respondent while filing the subsequent writ petition did not disclose the fact of filing the subsequent writ petition did not disclose the fact of filing of previous writ petition. The further allegation is that the Answering Respondent did so to gain legal advantage. First of all, it is the humble submission of the Answering Respondent has, ever, deliberately concealed any fact from this Hon'ble Court. As is apparent from above, the Answering Respondent himself is victim of betrayal. It may be seen that both the writ petition have been filed under the signatures of Sh.Pradeep Rana, Advocate. Thus, even the said counsel was aware of the said factum of filing previous writ petition. It is humbly submitted that in the normal course of things the petitions are drafted by the counsels and the parties sign on the dotted lines, whereas, in the present case the Answering Respondent is not well versed with English and was not even aware of filing of subsequent writ petition. In so far as the allegation with respect to gaining legal advantage is concerned, it is clear that rather than having *Crl.M.C.No.1262/2011 Page 7 of 17* any potential of ensuring any legal advantage the aforesaid writ petitions have put the Answering Respondent in disadvantageous position in as much as undisputed possession of the Answering Respondent has come under cloud..

10. The said criminal contempt case was finally disposed vide order dated 16.02.2009 observing as follows:- "1. Learned counsel for Ravinder Singh admits that W.P.(Crl) No.1667/2005 and W.P.(Crl) No.2657/2006 were filed under his signatures but states that he being not well-versed in English would sign the petition and supporting affidavits in Hindi and that he was being guided by his counsel with respect of the contents of the petition..

2. Mr.Pradeep Rana learned counsel for Mr.Ravinder Singh expresses his regrets and tenders unqualified apology for filing two identical petitions one after the other and not disclosing in the second petition that the first petition was filed and was dismissed..

3. Keeping in view the young age of Mr.Pradeep Rana learned counsel for the petitioner states that in view of the fact that Mr.Ravinder Singh has admitted that both petitions were filed under his signatures and has given an explanation as to what happened, the petitioner does not want to pursue the remedy against the counsel, the instant petition may be disposed of as not pressed..

4. We disposed of the petition as not pressed..".

11. The apology of Mr.Pradeep Rana, Advocate was accepted on the submission of respondent No.2 that he did not want to pursue the Crl.M.C.No.1262/2011 *Page 8 of 17* remedy against the counsel and further submitted that the instant petition may be disposed of as not pressed..

12. Thereafter, respondent No.2 filed complaint against the petitioner. Learned Metropolitan Magistrate vide its order dated 13.08.2009 passed the order on the point of summoning holding that no false, malicious, or vexatious litigation was filed by the petitioner against the respondent / complaint and the provisions of Section 3 (1) (viii) of the SC and ST (Prevention of Atrocities) Act, 1989 could not have been invoked. In the background of facts and circumstances of the case the ingredients Section 3 (1) (viii) of the SC and ST (Prevention of Atrocities) Act, 1989 are not made out. Accordingly, the complaint was dismissed..

13. Being aggrieved the respondent No.2 preferred a Revision Petition bearing No.23/2009 and vide impugned order dated 25.10.2010, learned Additional Sessions Judge has recorded in para No.9 as under:- "9. After hearing arguments and on the perusal of the entire material on record, I am of the considered opinion that admittedly the Respondent no.1 has filed two Writ Petitions (Crl.) No.1667/05 and No. 2657/06 between the same parties with identical relief, knowing fully well that his first Writ Petition was dismissed by Hon'ble High Court of Delhi vide order dated 29.09.2005 and the Respondent no.

1. has filed false declaration in the subsequent Writ Petition No. 2657/06 that he has not instituted any other Writ Petition in this matter before the Hon'ble High Court of Delhi. When the Revisionist filed counter Affidavit in Crl.M.C.No.1262/2011 *Page 9 of 17* opposition to the subsequent Writ Petition, none has appeared on the behalf of the Respondents and ultimately the said Writ Petition was dismissed in default on their non appearance on dated 24.08.2007. The Revisionist has filed the Contempt Petition and the said Contempt Petition has been dismissed by the Hon'ble High Court of Delhi vide order dated 16.02.2009 as not pressed. The order of the Hon'ble High Court of Delhi is on the record and the said order had also been reproduced by Ld. MM in the impugned order dated 13.08.2009 in para.

13. The Revisionist and the Respondents knows well about the Contempt of Court Proceedings and its outcome. It is an admitted fact that the Revisionist is a member of the Scheduled Caste and the Respondent No.

1. is not the member of the Scheduled Caste. Once, the Respondent no.1 has filed subsequent Writ Petition knowing fully well that his earlier Writ Petition between the same parties and on the same relief has already been dismissed by the Hon'ble High Court of Delhi vide order dated 29.09.2005 on merits, the filing of the subsequent proceedings between the same parties on the same relief by concealing material fact is nothing but the institution of the false, vexatious and malicious proceedings against the Revisionist who is a member of the Scheduled Caste. The position might have been different if the Respondent no.

1. have gone against the order dated 29.09.2005 passed by Hon'ble High Court of Delhi in Revision or Appeal before the larger bench of the Hon'ble High Court of Delhi or before the Hon'ble Supreme Court of India if so warranted but the Respondent no.

1. had chosen to conceal the factum of dismissal of the earlier Writ Petition and filed the subsequent Writ Petition between the same parties and on the same relief by giving false declaration that he has not instituted Crl.M.C.No.1262/2011 *Page 10 of 17* any other Writ Petition before the Hon'ble High Court of Delhi which was false to the knowledge of the Respondent no..

1. Ultimately, the Respondents have been taken to task in the Contempt Proceedings by the Hon'ble High Court of Delhi. The Case Law on the aspect is also crystal clear to the effect that a case cannot be registered merely on the basis of filing of a suit or criminal or other legal proceedings. Whether the offence has been committed or not can be decided only after the suit or the proceedings is over or has reached to its logical conclusion. Applying the aforesaid ratio in the present case, the two Writ Petitions (Crl.) filed by the Respondent no.

1. have reached its logical end. The first Writ Petition has been dismissed on merits and the subsequent Writ Petition has been dismissed in default. Even for the filing of the subsequent Writ Petition between the same parties and for the same relief by concealing the material facts, by filing the false declaration, the Respondents have been taken to task in the Contempt proceedings by the Hon'ble High Court of Delhi and somehow the Contempt proceedings were dismissed being not pressed. Hence, the proceedings in the Writ Petitions filed by the Respondent have reached its logical conclusion."

14. Learned counsel for petitioner has drawn the attention of the Court towards order dated 22.06.2006 passed by the Tehsildar Narela in case No.25/TH/KG/2006 dated 22.06.2006 in the matter of 'S.S. Kemwal v. Anil Kumar Aggarwal' and passed the order in favour of the petition, while appreciating the evidence on record. Crl.M.C.No.1262/2011 *Page 11 of 17*.

16. Before proceeding further, it would be pertinent to mention here that though Tehsildar Narela passed a detailed order considering the factual matrix and evidence on record, but it is not being considered necessary to mention the same here for the simple reason, that it is pending under challenge before this Court after being challenged before two forums, by the respective aggrieved party..

15. The said order dated 22.06.2006 passed by the Tehsildar Narela was challenged by the respondent No.2 before the Deputy Commissioner (North-West) District which was allowed vide order dated 10.04.2008..

16. The petitioner being aggrieved from the aforesaid order passed by the Deputy Commissioner (North-West) District, Delhi carried it to further challenge before the Financial Commissioner Delhi and the petitioner succeeded before the Financial Commissioner Delhi and vide order dated 15.12.2009, petition of the petitioner was allowed..

17. Respondent No.2 being aggrieved again challenged vide Writ Petition No.4936/2011 before this Court, which is pending for adjudication..

18. Respondent No.2 personally present in the Court. He has informed that while issuing notice in the said petition, this Court has granted status-quo order in respect of the land in question, and has been made absolute. Crl.M.C.No.1262/2011 Page 12 of 17.

19. The short issue in the instant petition is that whether the petitioner is liable for the action on account of false, malicious, or vexatious litigation against the respondent No.2..

20. Respondent No.2 submits that the first Writ Petition (Crl) No.1667/2005 was dismissed in limine without issuance of any notice. Thereafter, verbatim another Writ Petition (Crl.) No.2657/2006 was filed. After filing the counter-affidavit by respondent No.2 in latter Writ Petition (Crl.) No.2657/2006 the petitioner intentionally chosen not to appear in the matter. Finally, vide order dated 17.08.2007, Writ Petition (Crl.) No.2657/2006 was dismissed for non-prosecution..

21. He further submits that thereafter, respondent No.2 filed the contempt petition against the petition, however, Mr. Pradeep Rana was not arrayed as respondent, however, Mr. Rana was summoned by this court vide order dated 23.07.2008 and thereafter, he tendered his unconditional apology. Pursuant thereto, respondent No.2 did not press the contempt petition..

22. Further, respondent No.2 clarified that in the contempt petition, he exonerated Mr. Pradeep Rana, Advocate and thereafter, he filed complaint case under Section 3 (1) (viii) of the SC and ST (Prevention of Atrocities) Act, 1989 before the learned Magistrate for the false, malicious, or vexatious litigation filed against the respondent No.2, which was dismissed without appreciating the facts that how much water had already flown. Crl.M.C.No.1262/2011 Page 13 of 17.

23. Learned counsel for petitioner has relied upon *Rajat Kumar Bandyopadhyay v. The State of West Bengal* and *Anr Crl.L.J. 3360* wherein Kolkata High Court has held as under:- "7. Now from a bare reading of the aforesaid provisions of Section 3 (1)(viii) of the said Act, it is abundantly clear that there are two basic ingredients of the said offence, firstly, there must be a suit or criminal or any other legal proceeding against any member of Scheduled Castes or Scheduled Tribes, instituted by any person who is not a Scheduled Caste or Scheduled Tribe and Secondly, such suit or criminal or any other legal proceeding so instituted must be false, malicious or vexatious. Thus, there is no scope to prosecute anyone not being a member of Scheduled Castes or Scheduled Tribes, under the aforesaid provisions without it first being shown that a suit or criminal or other legal proceeding so instituted against any member of Scheduled Castes or Tribes is false, malicious or vexatious. In my opinion, there is hardly any scope of launching of any prosecution under Section 3 (1)(viii) of the said Act against any non-scheduled Caste or Scheduled Tribe on mere institution of a suit or criminal or any other legal proceeding against any member of Scheduled Caste or Scheduled Tribe, and on the bare allegations the same was instituted falsely, maliciously or vexatiously till such suit or criminal or legal proceeding reaches its logical conclusion on a finding that the said suit or criminal or legal proceeding in question was false, malicious or vexatious. In the case in hand, I do not find there is any allegation of institution of any suit or criminal or other legal proceeding against the

complainant by the petitioner far less any allegation that the same was instituted falsely, maliciously or vexatiously. There is also no CrI.M.C.No.1262/2011 *Page 14 of 17* allegation that any suit or criminal or other legal proceeding instituted against the complainant by the petitioner has been found to be false, malicious or vexatious. The enquiry held in March, 2007, where the wife of the present petitioner Mrs. Baishakhi Banerjee was summoned was instituted on the complaint of the complainant/opposite party no.

2. against some students who allegedly misbehaved with him but that was not an enquiry or a legal proceeding instituted against the opposite party no. 2, a member of the Scheduled Castes on a false, vexatious and malicious charge far less by the present petitioner. Similarly, the departmental enquiry which was started against the complainant, in May, 2007 for his alleged misconduct upon his refusal to return the answer scripts of examination of PG I and PG II students was instituted by the vice- chancellor of Jadavpur University not by the present petitioner. Accordingly, on the face of the evidentiary material collected by the police during investigation and on the allegation made in the First Information Report, as the basic ingredients of the offence punishable under Section 3 (1)(viii) of the said Act is found missing, no case for the alleged offences can said to have been made out against the petitioner."

24. Learned counsel for petitioner further submits that no Court till date has ever reached to the conclusion that the said two writ petitions filed against the respondent No.2 were false, malicious, or vexatious litigation and until and unless said terminology is proved, the person cannot be prosecuted under Section 3 (1) (viii) of the SC and ST (Prevention of Atrocities) Act, 1989. CrI.M.C.No.1262/2011 *Page 15 of 17*.

25. Admittedly, the first Writ Petition (CrI) No.1667/2005 filed by petitioner was dismissed in limini having no merits therein. The second Writ Petition (CrI.) No.2657/2006 was filed wherein notice was issued and after filing the counter-affidavit/reply, petitioner preferred not to appear in the Court, therefore, same was dismissed for non- prosecution..

26. I note, in the impugned order it is recorded that admittedly the petitioner filed two Writ Petitions (Crl.) No.1667/05 and No.2657/06 between the same parties with identical relief, fully knowing well that his first Writ Petition was dismissed by this Court vide order dated 29.09.2005 and filed false declaration in the subsequent Writ Petition No.2657/06 that he has not instituted any other Writ Petition in this matter before this Court. When the respondent No.2 filed counter-affidavit in opposition to the subsequent Writ Petition, none has appeared on the behalf of the petitioner and ultimately the said Writ Petition was dismissed in default on their non appearance on dated 24.08.2007 and the petitioner never got it restored. The respondent No.2 filed the Contempt Petition which has been dismissed by this Court vide order dated 16.02.2009 as not pressed. The order of this Court was on the record and the said order had also been reproduced by learned MM in the impugned order dated 13.08.2009 in para.

13. Both the parties knew well about the Contempt of Court Proceedings and its outcome. It is an admitted fact that the respondent No.2 is a member of the Scheduled Caste and the petitioner is not the member of the Scheduled Caste. Once, the petitioner filed subsequent Writ Crl.M.C.No.1262/2011 *Page 16 of 17* Petition, fully knowing well that his earlier Writ Petition between the same parties and on the same relief had already been dismissed by this Court vide order dated 29.09.2005 on merits, the filing of the subsequent proceedings between the same parties on the same relief by concealing material fact is nothing but the institution of the false, vexatious and malicious proceedings against the respondent No.2 who is a member of the Scheduled Caste..

27. Keeping the above discussion into view, I find no infirmity in the impugned order dated 25.10.2010 passed by learned Additional Sessions Judge, Delhi. I concur with the same..

28. Consequently, Criminal M.C.No.1262/2011 and Criminal M.A. No.4676/2011 are hereby dismissed..

29. No order to costs. SURESH KAIT, J DECEMBER 14, 2011 Mk Crl.M.C.No.1262/2011 *Page 17 of 17*