Hazi Mohd. Harun Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Sept. 18, 2006

Acts Referred: Constitution of India, 1950 â€" Article 14
Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 482, 82, 83
Evidence Act, 1872 â€" Section 145
Penal Code, 1860 (IPC) â€" Section 120B, 147, 148, 149, 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€" Section 3

Hon'ble Judges: Imtiyaz Murtaza, J; Amar Saran, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Amar Saran, J.
Heard Shri V.P. Srivastava, learned Senior Advocate assisted by Shri Lav Srivastava, learned Counsel for the petitioner,

Shri J.S. Sengar for the private respondents/accused and learned Additional Government Advocate representing the State.

2. By means of this writ petition, the petitioner has challenged the order dated 10.3.2006 (Annexure 4) passed by the State Government

transferring the investigation to the CBCID principally on the grounds that the investigation had already been completed by the local police and

charge sheet had even been submitted on 26.12.2005 and the transfer had been effected in a legally impermissible manner at the instance of the

accused Wali Ullah for extraneous political considerations.

3. An earlier Division Bench consisting of Hon"ble Sushil Harkauli and Hon"ble G.P. Srivastava, JJ. had by an earlier order dated 28.7.06 called

for the original record of the State Government because the Court was of the view that the mere statement of the petitioner-complainant that there

was political Intervention was not sufficient for this Court to form such an opinion and, therefore the learned A.G.A. was directed to produce the

original record to show the manner and basis on which the decision to hold further investigation was taken and also the manner and basis on which

it was decided to get further investigation conducted by the CBCID.

4. In pursuance of the said order, the record of the State Government has been produced before us on 4.9.06.

5. The respondents have not chosen to file any counter affidavit in this case for refuting the allegations contained in the writ petition.

6. It may be noted that the allegations in the FIR, which was lodged on 19.12.2005 at 7.15 P.M at police station Sultanpur Ghosh, district

Fatehpur by the petitioner, were that Smt. Raniya who had been supported by the accused Wali Ullah, the ex-Pradhan of the village had lost to

Smt. Ram Sakhi wife of Bulaki in the village Pradhani elections as the village Panchayat had been declared a reserved seat for Scheduled Caste

women. This defeat had angered Wali Ullah and his relations and supporters, and they had become inimical to Smt. Ram Sakhi, and Bulaki, and

they were entering into conspiracies to eliminate them. The petitioner used to support Smt. Ram Sakhi. Because of the threats to their lives Smt.

Ram Sakhi and Bulaki were residing at the residence of the petitioner''s brother Dost Mohammad. On the date of incident, 19.12.05 at about 6

p.m the accused respondent Jasim Ullah and Ors. were seen carrying arms and going on the road leading to the place where Ram Sakhi and her

husband were residing. The petitioner flashed his torch and saw Jasim Ullah, Samlm Ullah, Mujlb Ullah, Shaukat Ali and Mahtab Ali carrying guns

and Mohd Shafi armed with a rifle. Nasrul was armed with an axe. They were going towards Dost Mohd''s house. The petitioner and his

companions Hasnain Akhatar and Niyaz Ahmad followed them. They saw Mohd Shafi hurling caste derogatory abuses and then on the exhortation

of Jasim Ullah that they had been instructed to finish of the deceased, Mohd Shafi, Samim Ullah, Jasim Ullah, Mujib Ullah, Shaukat Ali, Mahtab

resorted to indiscriminate firing resulting in the deaths of Ram Sakhi, her husband Bulaki and their son Udal. On the cries of the petitioner and his

companions the assailants fled from the spot.

7. Shri Srivastava has drawn our attention to the application submitted by Wali Ullah, who has described himself as an ex-President of Samajwadi

Party, Fatehpur. In the said application, he claims that he along with his four brothers had been falsely implicated due to political enmity with their

opponent Dhunni Singh on the basis of a false and fabricated story and that he and his brothers were in no way involved in the incident and actually

the murder of Pradhan, her husband and son has been committed by Dhunni Singh and persons connected to him and that he was praying for an

enquiry by the CBCID.

8. Thereafter it appears that the impugned order was passed by the State government and the letter dated 10.3.2006, addressed to the DG

CBCID, Lucknow, signed by the Under Secretary was issued, which mentions that in response to the complaint of Shri Wali Ullah, ex-President

of Samajwadi Party, Fatehpur dated 29.12.2005, the State Government after consideration had taken a decision that the matter be transferred to

CBCID and that the matter was being transferred to the CBCID and with immediate effect the on-going investigation should be conducted by the

CBCID and a report submitted to the State Government.

9. It appears that pursuant to the said order the investigating officer/Deputy S.P., CBCID, Allahabad moved an application in the instant case

(case crime No. 109 of 2005, under Sections 147/148/149/302/34/120-B IPC, 3(2) of SC and ST Act and 7 Criminal Law Amendment Act,

police station Sultanpur Ghosh, district Fatehpur) before the Additional Sessions Judge/Special Judge (SC and ST Act), Fatehpur that in view of

the order of the State Government transferring the case to the CBCID with immediate effect, permission for further investigation by the CBCID

may be granted. The application was allowed by the Special Judge vide order dated 19.4.2006. The Special Judge stayed the trial and directed

that CBCID should conclude the investigation without further delay.

10. The said order dated 19.4.06 was challenged by the petitioner by an application u/s 482 Cr. P.C., (Criminal Misc. Application No. 5071 of

2006) and an order has been passed therein by Hon''ble Ravindra Singh, J on 18.5.2006 that in view of the contention that for the purpose of

delaying the proceedings after submission of charge sheet, further investigation was being done by the CB CID for political considerations, hence

the operation of the order of the learned Sessions Judged dated 19.4.2006 staying the trial was being kept in abeyance, i.e. the trial was allowed

to proceed.

11. We have perused the record produced by the learned Additional Government Advocate pursuant to the order of this Court dated 28.7.2006.

12. We find that in response to the letter of the accused Wali Ullah dated 29.12.2005, which was supported by two letters of two MLAs of the

Samajwadi Party Madan Gopal Verma and Mohd Safir, a report was sought from the Superintendent of Police, Fatehpur. The S.P. sent a D.O.

letter dated 9.2.2006, which mentioned that this matter was the result of village pradhani elections. The case had been investigated by the CO.

Khaga and the accused in the case other than Wali Ullah has been arrested on 20.12.2005, 21.12.2005, 23.12.2005, 24.12.2005 and so far as

Wali Ullah was concerned proceedings u/s 82 and 83 Cr.P.C. had been initiated against him on 21.12.2005 and 25.12.2005. After collecting

sufficient evidence the charge sheet had been submitted on 26.12.2005. However as a rider the S.P. had stated that in case the government was

interested in getting the matter re-investigated by CBCID he had no objections.

13. This kind of proviso when the opinion of officers posted in the district is sought for effecting a transfer or for providing a gunner at State''s cost

that even though in the opinion of the officer there was no good ground to allow the prayer, but if it was the wish of the powers that be

(euphemistically described as the government) then he has no objection to the decision needs to be castigated. Such riders completely contrary to

the opinion furnished on the facts of the case are being given, probably to please political bosses for preventing their transfers from their district

postings. This spineless compliance to unjustifiable or illegal demands is singularly unfortunate, as it militates against the concept of the bureaucracy

being a ""steel frame"" as envisaged by the founding fathers of our Constitution and democracy who visualized a supportive but independent role of

the police and administrative bureaucracy. An honest and forthright expression of opinion by the officer not hedged in by such compromises and

conditionalities in order to please political masters is unfortunately becoming a rare thing. The concluding words in Narendra Modivalapa Kheni v.

Manikrao Patil AIR 19 SC 2171 (paragraph 29) are very significant in this regard:

We part with this case with an uneasy mind. There is a finding by the High Court that an influential candidate had interfered with officials to

adulterate an electoral roll. We have vacated the finding but must warn that civil services have a high commitment to the rule of law, regardless of

covert commands and indirect importunities of bosses inside and outside government. Lord Chesham said in the House of Lords in 1958: ""He is

answerable to law alone and not to any public authority"" A suppliant, obsequious, satellite public service - or one that responds to allurements,

promotional or pecuniary - is a danger to a democratic polity and to the supremacy of the rule of law.The courage and probity of the hierarchical

election machinery and its engineers, even when handsome temptation entices or huffy higher power browbeats, is the guarantee of electoral purity.

To conclude, we are unhappy that such aspersions against public servants affect the integrity and morale of the services but where the easy virtue

of an election official or political power-wielder has distorted the assembly-line operations, he will suffer one day. Be that as it may, we express no

final opinion beyond what has already been said.

(Emphasis supplied).

14. The aforesaid words could very well apply to many public servants in our police force or bureaucracy today.

15. Happily in this case, the file nothings dated 20.2.06 and 21.2.06 and material on the record show that the Under Secretary (Home) and the

Special Secretary (Home), in spite of the wavering opinion of the S.P., have clearly mentioned that as the facts In the S.P.''s report show that the

investigation had been completed and the charge sheet even submitted on 26.12.2005 after finding sufficient evidence, hence it was inappropriate

and inopportune to get the case investigated by the CBCID at this stage, and that the file was being sent for reconsideration by the Chief Minister.

16. It appears that their sage advice went unheeded and it appears that the Chief Minister on 9.3.2006 ordered that the case be investigated by the

CB CID. This is mentioned in the noting or the Chief Minister''s Principal Secretary dated 9.3.2.006. Thereafter the impugned letter dated

10.3.2006 to the DG CBCID was issued.

17. It should be noted that we are governed by a system of laws. No one, howsoever high he may be placed is above the Rule of Law. No

authority judicial, political or administrative can act on pure whim or fancy, and there is nothing like absolute discretion in our democratic political

system. No one is entitled to distribute largesse, whether by way of granting immunity from prosecutions to accused by direct or indirect methods,

i.e. either by withdrawal of prosecutions or by transferring investigations or preventing arrests or by handing out gunners to disentitled persons at

State cost only because they happen to be party men or because of political recommendations. Every authority, howsoever high he may be placed

will have to justify his decisions on the basis of set norms or rules. In this connection Desai J speaking for the Constitution bench in D.S. Nakara

and Others Vs. Union of India (UOI), has cited with approval the stirring words of Krishna Aiyyar J in Maneka Gandhi v. Union of India and the

Constitution bench in Ajay Hasia etc. v. Khalid Mujib Sahravardi in pargagraph 14 of the law report:

''14. Justice Iyer has in his inimitable style dissected Article 14 as under:

The article has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory diktats. Equality is the

antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of ''executive excesses'', if we

may use current cliche, can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost And

so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; Be you ever so high, the law is above you.

Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Affirming and explaining this view, the Constitution Bench in Mrs. Maneka Gandhi

Vs. Union of India (UOI) and Another, held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness

because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is

implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large

number of decisions bearing on the subject, in AIR India Vs. Nergesh Meerza and Others, the Court formulated propositions emerging from an

analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are

treated differently without any reasonable basis.

(Emphasis supplied)

18. It should also be noted that in this case there has been a violation of the observations of the Apex Court in Central Bureau of Investigation and

another Vs. Rajesh Gandhi and another, that ordinarily no transfer shall be effected to another agency at the asking of the accused.

19. The order is vitiated also because in the absence of any opinion on the record based on any material advising the transfer of the case to the CB

CID, the order transferring the investigation to the CBCID appears to have been passed only to propitiate two MLAs of the Samajwadi Party,

Shri Madan Gopal Verma, M.L.A. Jahanabad, Fatehpur and Shri Mohammad Shafir, M.L.A. Khaga, Fatehpur, who have sent in

recommendatory letters. These are irrelevant and extraneous consideration for passing an order transferring the investigation.

20. In the present case, we also find that the application of the accused Wali Ullah dated 29.12.2005 does not make any complaint about the

functioning of the local police.

21. Shri J.S. Sengar, however, tried to argue that it was at the instance of Dhunni Singh, the political rival of Wali Ullah that the respondents had

been implicated and actually the murder had been committed by Dhunni Singh. Significantly, the Respondents have not even cared to file any

counter affidavit setting up any such claim. There is thus nothing whatsoever on record to substantiate this averment that this murder was not

committed by these named accused, but by Dhunni Singh and his supporters. Prima facie there appears little reason for the witnesses to exonerate

Dhunni Singh and his supporters for the crime and to substitute the names of the present accused in their place.

22. After the conclusion of the investigation and submission of charge sheet, normally there is also no justification to transfer the investigation to

another agency, if no grave fault and error in the investigation process is shown. No authority was cited by the learned Counsel for the private

respondents that this case fell in any of those categories of cases where the transfer of investigation to the CBCID even after submission of charge

sheet and cognizance by the court may be justified.

23. The only point argued by Shri Sengar was that some of the accused may have been innocent and without investigation by the CBCID, their

innocence could not be established. Without support of any material to substantiate any such allegation, theoretically an accused may raise such a

plea in every case and ask for investigation by another agency if the investigation by the earlier agency has proved inconvenient for him by involving

him in the crime. The Courts can never countenance any such extreme contention. The only basis for raising this plea was that the investigation was

concluded very hastily and the charge sheet submitted in ten days. If an incident takes place in the heart of the village and there are eye witnesses

and a motive for the crime, simply because the charge sheet has been submitted promptly in ten days provides no reason to doubt its reliability,

24. It may be noted that at this juncture only 161 Cr. P.C. statements have been recorded by the investigating agency and that they did not

constitute substantive evidence, but witnesses can only be contradicted with those statements in Court in accordance with Section 145 of the

Evidence Act. Therefore, there is no question of adjudicating on the innocence or guilt of a particular accused at this stage. That is the intent and

purpose of the criminal trial.

25. Moreover, some letters present on the record by the MLAs Madan Gopal Verma and Mohammad Safir supporting accused Wali Ullah

(which have not been filed by the accused who has not chosen to file any counter-affidavit) only show that Wali Ullah had participated in some

cycle rally for the Samajwadi Party and he was with the MLAs on the date of incident (19.12.05). This alleged evidence of alibi will have to be

considered by the trial court when and if these defence witnesses appear in Court at the appropriate stage and depose on oath. Moreover it will

have to be seen whether a direct role of participating in the crime has been ascribed to the accused Walli Ullah or he has only been shown as a

conspirator to the crime u/s 120-B IPC. It would be wrong to prejudge the issue at this stage. However we are clarifying that any observations

hereinabove have only been made for disposing of this writ petition, and the trial court shall conduct the trial and consider the prayer for bail if any,

uninfluenced by the aforesaid observations.

26. In this view of the matter, this writ petition succeeds and is allowed. The impugned order dated 10.3.2006 passed by the State government

transferring the investigation to the CB CID is quashed. The trial court is expected to proceed with the trial and to conclude the same

expeditiously.