

Amit Chaurasiya Vs State of Uttar Pradesh and Station House Officer of P.S. Sagra

Court: Allahabad High Court

Date of Decision: Aug. 1, 2008

Acts Referred: Constitution of India, 1950 " Article 226, 227

Criminal Procedure Code, 1973 (CrPC) " Section 154, 156

Penal Code, 1860 (IPC) " Section 147, 148, 307, 394

Citation: (2009) CriLJ 146 : (2009) 5 RCR(Criminal) 594

Hon'ble Judges: R.N. Misra, J; Amar Saran, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Amar Saran and R.N. Misra, JJ.

This writ petition under Article 226/227 of Constitution of India has been filed by the petitioner Amit

Chaurasia with the prayer that a writ, order or direction in the nature of mandamus be issued commanding and directing the respondents to register

the FIR of the petitioner.

2. We have heard Sri Sunil Vashisth, learned Counsel for the petitioner and the learned A.G.A. for the respondent State and perused the record.

3. It appears from the contents of the writ petition that one Dibyesh Pratap Singh came to the Mobile Repair Shop of the petitioner on 17.7.2008

at about 5 P.M. and abused him over some disputes on the repair of a mobile phone. The petitioner was also beaten by him. In the meantime,

Dibyesh"s father Devendra Pratap Singh also came there with five or six juniors lawyers and assaulted the petitioner by kicks and fists. He also

gave a threat to his life. Whereas the police of Sagra police station registered a case at Crime No. 448 of 2008 under Sections 147, 148, 394, 307

I.P.C. against the petitioner and some others on the report of Devendra Pratap Singh, it refused to register the report lodged by the petitioner

against Devendra Prasad Singh and other.

4. Thereafter the petitioner sent an application (Annexure -2) to the S.S.P. Varanasi by registered post but to no avail. He could not move the

Magistrate concerned u/s 156(3) Cr.P.C. for a direction for registration of the FIR and for investigation because the Central Bar Association,

Varanasi passed a resolution (Annexure-6) that no Counsel will plead the cause of the petitioner. Not only this, the lawyers went on strike. The

petitioner has suspected danger to his life in going to the court. Therefore, he has filed the present writ petition.

5. Learned AGA has contended that this Court cannot direct registration of an FIR under Article 226 of the Constitution of India. Learned

Counsel for the petitioner has cited a case of Mohindro v. State of Punjab and Ors. 2001 (3) Cri 190 , in which the Hon"ble Supreme Court of

India straight away directed the police concerned to register the case. The order is quoted below:

The grievance of the appellant is that though she has approached the authority for registering a case against the alleged accused persons but the

police never registered a case and never put the law in motion and therefore, having failed in an attempt in the High Court to get a case registered

she has approached this Court. Pursuant to the notice issued the respondents have entered appearance. Though the learned Counsel appearing for

the State of Punjab stated that there had been an enquiry, we fail to understand as to how there can be an enquiry without registering a criminal

case. On the facts alleged, it transpires that the appellant approached the police for registering a case and get the allegation investigation into and

yet for no reasons whatsoever the police failed to register the case. In the aforesaid premises, we allow this appeal and direct that a case be

registered on the basis of the report to be lodged by the appellant at the police station within a week from today and thereafter the matter will be

duly investigated into and appropriate action be taken accordingly.

6. Apart from the aforesaid decision, we are noticing that increasingly organised groups of people whether they are lawyers or students or workers

belonging to a trade union or members of political outfits or other groups seeking to coerce and browbeat the judicial and legal machinery only to

propagate their one-sided view point and are wholly unwilling to even permit consideration of the view point of the opposing party either in Courts

of Law or before the Police or other administrative authorities. Often such groups of people band together, pre-judge an issue and even resort to

assaulting opponents or refuse to represent rival groups by passing such resolutions as we see in the instant case.

7. Such behaviour can only sound the death knell of our democratic system, which believes in affording fair and free opportunity to each person to

press his case and it can only give rise to mob rule, where organized groups decide who should get and who should be denied justice. If this Court

does not step in to nip such conduct in the bud, and to ensure that justice is available to all and not only to organised groups, we will find people

taking recourse to mindless violence out of frustration or seeking the help of organised mafia groups or in becoming willing fodder for terrorists and

other extremists, who have their own agendas to promote. What we are saying is not mere idle speculation, but such phenomena are being widely

witnessed in society today.

8. In this connection the call by lawyers for a strike to quell the other side from getting a hearing has been vehemently criticized in the Constitutional

bench decision of the Apex Court in *Harish Uppal (Ex-Capt.) v. Union of India* AIR 2003 SC 739, which has cited with approval the following

passage from a judgment of the Full Bench of the Kerala High Court in the case of *K. Paricha and Anr. v. State of Kerala and Ors.* AIR 1971

Ker 291 :

No political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to

prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit

or for the benefit of the State or the nation.

(Emphasis added).

9. In *Mahabir Prasad Singh Vs. M/s. Jacks Aviation Private Ltd.*, it has appositely been observed in paragraph 16:

If any Counsel does not want to appear in a particular Court, that too for justifiable reasons professional decorum and etiquette require him to give

up his engagement in that Court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining

from appearing in that Court, that too not on any particular day on account of some personal inconvenience of the Counsel but as a permanent

feature, is unprofessional as also unbecoming of the status of an advocate. No Court is obliged to adjourn a cause because of the strike call given

by any association of advocates of a decision to boycott the Courts either in general or any particular Court. It is the solemn duty of every Court to

proceed with the judicial business during Court hours. No Court should yield to pressure tactics of boycott calls or any kind of browbeating.

10 It is indeed saddening that we have travelled so far from the ideals of service to the needy and a steadfast upholding of the Constitution which

was envisaged for the noble profession of law.

11. In *Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another*, the Supreme Court observed thus:

It is generally believed that members of the legal profession have certain social obligations, e.g. to render "pro bono publico" service to the poor

and the underprivileged. Since the duty of a lawyer is to assist the Court in the administration of justice, the practice of law has a public utility

flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behoving the noble profession and must not indulge in any

activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of

standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.

(Emphasis added)

12. Again in *In Re: In Re: Sanjiv Datta and Others*, the Supreme Court has stated thus :

20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members.

Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to

be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in

that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a

leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his

professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal

profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial

systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their

profession seriously and practise it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No

service will be too small in making the system efficient, effective and credible.

(Emphasis added)

13. We can do no better than to close this discussion with these inimitable words of V.R. Krishna Iyer J in *The Bar Council of Maharashtra Vs.*

M.V. Dabholkar and Others, who also cites some immortal lines on Judicial Ethics by Hastings, Hon. John S.:

15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law

ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is

unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the

legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is

statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the

community in him as a vehicle of justice - social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of

conduct cannot be crystallised into rigid rules but felt by the collective conscience of the practitioners as right:

It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience

governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the

fair and impartial administration of justice to the end that public confidence may be kept undiminished at all times in the belief that we shall always

seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable

only to a moral code which would drive irresponsible judges from the profession. Without such a conscience, there should be no Judge."* - and,

we may add, no lawyer.

* Hastings, Hon. John S., "Judicial Ethics as it Relates to Participation in Money-Making Activities" - Conference on Judicial Ethics, p.8, The

School of Law, University of Chicago (1964)

Such is the high standard set for professional conduct as expounded by courts in this country and elsewhere.

(Emphasis added)

14. A strike or a call by lawyers or a call to boycott or to compel brother lawyers not to represent a prospective litigant clearly impinges on his

fundamental right to be represented by a Counsel of his choice and for speedy justice and this Court cannot remain a mute spectator or throw up

its hands in helplessness on the face of such a threat to a fundamental right.

15. In a catena of cases, it has repeatedly been held that when any cognizable offence is reported to the police, it is bound to register a case as

provided u/s 154 of Cr.P.C. but unfortunately in the present case the district police did not act impartially.

16. In view of the above, we feel it just and proper to direct the S.S.P., Varanasi to get the case of the petitioner registered on the I basis of the

application already moved and to have the matter registered as a cross case of the above noted case filed by Devendra Pratap Singh.

7. The writ petition is disposed of.