

Janata Dal

Vs

H. S. Chowdhary and Others

(Criminal Appeal No. 304 of 1991)

Janata Dal

Vs

H. S. Chowdhary

(Criminal Appeal No. 305 of 1991)

Harinder Singh Chowdhary

Vs

Union of India and Another

(Criminal Appeal No. 306 of 1991)

Janata Dal

Vs

H. S. Chowdhary and Others

(Criminal Appeal No. 307 Of 1991)

Communist Party of India (Marxist)

Vs

H. S. Chowdhary and Others

(Criminal Appeal No. 308 of 1991)

Indian Congress (Socialist) by General Secy.

Vs

H. S. Chowdhary and Others

(Criminal Appeal No. 309 of 1991)

Union of India

Vs

H. S. Chowdhary and Another
(Criminal Appeal No. 310 of 1991)

Union of India and Another

Vs

The Hon'ble High Court of Delhi
(Criminal Appeal No. 311 of 1991)

Dr. P. Nalla Thampy Thera, Petitioner

Vs

Union of India and Others
(Writ petition (Crl.) No. 114 of 1991)
(S.R. Pandian, K. Jayachandra Reddy JJ)

27.08.1991

ORDER

S. RATNAVEL PANDIAN, J.

1. A brief resume of the facts which have given rise to the above appeals and writ petition would be necessary to appreciate the unsavoury controversies created by way of public interest litigations, though we have decided to give only our conclusions now and the detailed reasons later in order to avoid any delay in this matter for the reasons, namely, (1) in the application for direction filed by the Union of India through CBI on July 11, 1991 it is submitted that "the Swiss authorities would remove the blocking order on August 31, 1991 and the account holders would withdraw the large funds, running into millions of dollars (equivalent to crores of rupees)" and prayed that the judgment may be pronounced by the end of August 1991 lest miscarriage of justice would be caused, and (2) that the learned Additional Solicitor General, Mr. Altaf Ahmad appearing on behalf of the Union of India and CBI on August 23, 1991 reaffirmed the above statement of the Union of India and requested that the CBI should be allowed to proceed with the investigation without any interruption or hindrance so that the investigation may be speeded up thereby meaning that the wheels of investigation already started moving on, should be permitted to be proceeded with unfettered and untrammelled so that the valuable evidence may be obtained from the Swiss Bank through their authorities without further loss of time, otherwise the accounts in the Swiss Bank now frozen may be defrozen.

2. The Central Bureau of Investigation/Delhi Police Establishment/Anti-Corruption Unit-IV, New Delhi registered the first information report dated January 22, 1990 relating to Crime No. RC/(A)/90/ACU-IV under Section 120-B read with Sections 161, 162, 163, 164 and 1165-A of the Indian Penal Code read with Sections 5(2), 5(1)(d) and 5(2)/5(1)(c) of the Prevention of Corruption Act 1947 (herein referred to as P.C. Act) read with Sections 409, 420, 468 and 471 of the Indian

Penal Code against 14 accused of whom 3 are named, they being (1) Shri Martin Ardbo, former President of M/s. A. B. Bofors, Sweden (accused 1); (2) Shri Chadha alias Win Chadha, S/o Shri Assa Nand, President of M/s. Anatronc General Corporation/Anatronc General Companies Ltd., C/4, Main Market, Vasant Vihar, New Delhi (accused 3) and Shri G. P. Hinduja, New Zealand House, Hay Market, London SW-1 (accused 7). The rest of the 11 accused are stated in general as directors/employees/holders/beneficiaries of account code and public servants of the Government of India. The core of the allegations is that these accused, named and unnamed, entered into a criminal conspiracy, obtained illegal gratification in the form of money from BOFORS, a Swedish company through the agent firms/companies/persons as motive or reward for such public servants who by corrupt or illegal means or by otherwise dishonestly using their official position as public servants caused pecuniary advantage to themselves, BOFORS, the agents and others in awarding contracts to BOFORS for the supply of guns to the Government of India and in the transaction also committed the offences of criminal breach of trust, cheating of Union of India, forgery and using of forged documents etc. It appears that the CBI has commenced its investigation during the course of which it has recorded statements of witnesses and took into their custody various documents and files relating to this Bofors deal.

3. While it is so, the CBI moved an application before the Special Judge, namely, Shri R. C. Jain stating inter alia that the investigation of the case is to be conducted not only in India, but also in Switzerland, Sweden and other countries, that an important aspect of the investigation which is to be conducted in Switzerland is to collect documentary and oral evidence relating to all aspects of the accounts in banks in Switzerland to which remittances were made by M/s. A. B. Bofors from Sweden, that in particular, the authorised signatories and the beneficiaries of the said accounts have to be traced by such investigation as they are, in fact, the ultimate beneficiaries of the payments made by M/s. A. B. Bofors and that under the procedure followed by banks in Switzerland, an authorised signatory can operate an account for the benefit of certain other persons regarding whom the authorised signatory has to submit certain declarations to the concerned bank and, therefore, it is very essential for the investigation of this case that the documentary and oral evidence should be collected regarding this as well as the other aspects of the bank accounts in Switzerland. In the said application after referring to the exchange of letters dated February 20, 1989 between the Government of India and Switzerland for mutual assistance agreeing that the authorities of both the countries shall provide to each other the widest measure for assistance in the investigation of criminal matters, it has been stated that the competent authority to ask for assistance in India and abroad is the court/tribunal/judge or magistrate exercising jurisdiction. The Director of the CBI sent a request dated January 23, 1990 and supplemented by another request dated January 26, 1990 to the concerned authorities in Switzerland for freezing/blocking certain bank accounts relevant to this case and the Federal Department of Justice and Police, Switzerland moved Shri Parraudin, Judge of Geneva and the concerned Judge of Zurich who, on being prima facie convinced of dual criminality and the need for investigation in Switzerland, froze the relevant bank accounts in this regard of January 26, 1990 as intimated by the Federal Department of Justice and Police through the Embassy of India in Switzerland and that as per this information, the relevant accounts in the bank have been blocked up to February 28, 1990 and that request for judicial assistance from Switzerland in this matter, therefore, should be made by February 28, 1990 failing which the Swiss law obliges the withdrawal of instructions to block the accounts and that the Federal Department of Justice and Police at Berne which corresponds to the Ministries of Law and Home, Government of India, have assured that the Swiss authorities would render assistance in the investigation in Switzerland in accordance with the mutual assistance agreement dated February 20, 1989 only on receipt of a Letter Rogatory from the competent judicial authorities in India.

4. On the above pleadings, the CBI requested the Special Judge to send a Letter Rogatory/request to Switzerland urgently for getting the necessary assistance in the investigation to be conducted in Switzerland lest very important and relevant evidence would remain uncollected and the cause of justice would be frustrated. The Special Judge after hearing Shri Arun Jaitley, the then Additional Solicitor General of India and Shri K.N. Sharma, Deputy Legal Adviser, CBI and Shri Baljit Singh, Senior Public Prosecutor by its considered order dated February 5, 1990 allowed the application of the CBI, the relevant portion of which reads thus :

"In the result, the application of the CBI is allowed to the extent that a request to conduct the necessary investigation and to collect necessary evidence which can be collected in Switzerland and to the extent directed in this order shall be made to the Competent Judicial Authorities of the Confederation of Switzerland through the Ministry of External Affairs, Government of India subject to the filing of the requisite/proper undertaking required by the Swiss law and assurance for reciprocity."

5. The Special Judge also directed certain documents to be sent along with his letter of request, such as the copy of the FIR dated January 22, 1990, mutual assistance agreement dated February 20, 1989 etc. etc. The court finally made a note reading thus :

"Needless to mention that no observation made in this order shall tantamount to expression of opinion at any subsequent stage of enquiry or trial."

6. When the matter stood thus, Shri V. S. Aggarwal on the strength of the notification issued by the Administrator of the Union territory of Delhi assumed charge as a Special Judge in Place of Shri R.C. Jain. Before Shri Aggarwal, the Special Judge, Shri Harinder Singh Chowdhary, an advocate filed a public interest litigation by filing Criminal Miscellaneous Case No. 12 of 1990 under Article 51-A of the Constitution of India seeking the following prayers which we are reproducing hereunder :

"In the premises your petitioners humbly request that in order to maintain the dignity, prestige and the fair name of the country and the ideals enshrined in the Constitution that no rogatory letter be issued on the formal request of the CBI unless the allegations against named persons are established to the satisfaction of this Hon'ble Court :

It is further requested that no request for rogatory or freezing bank account be made to Swiss Government unless the concerned persons are noticed and heard on the subject :

It is further requested that the petitioner may be permitted to join during inquiry before this Hon'ble Court in the capacity of public interest litigant.

It is further requested that inquiry under Section 340 CrPC be held to determine the alleged offence committed by various persons and till then all proceedings of rogatory be stopped."

7. The Special Judge, namely, Shri V. S. Aggarwal by his considered judgment dated August 18, 1990 dismissed the petition holding "this request of the learned counsel cannot be accepted." Finally, the learned Judge made the following note :

"Put up on September 30, 1990 for arguments on the question as to whether any action under Section 340 of the Code of Criminal Procedure is to be initiated or not. No opinion on the merits of the main case is being expressed."

8. The Special Judge then issued (1) Note of Compliance and (2) Amended letter rogatory on August 22, 1990.

9. Shri Harinder Singh Chowdhary, the public interest litigant on being aggrieved by the order dated August 18, 1990 of the Special Judge filed a criminal revision before the High Court of Delhi under Sections 397/482 of the Code of Criminal Procedure and raised several questions of law challenging the legality and validity of the impugned order and made the following prayers :

(a) to quash the entire FIR No. RC.I(A) 90/ACU-IV dated January 22, 1990 and criminal proceedings covered by the same.

(b) or remand the case to the Special Judge permitting the petitioner to argue his case before the lower court and also direct the court below to decide the petition on merits.

(c) direct the court that no request for rogatory letters be made to Swiss Government, till the petitioner is heard on his application.

(d) the petitioner may be permitted to join during the inquiry to determine the question of dual criminality before the learned Special Judge in the capacity of public interest litigant, and also direct the learned Special Judge to decide the question of dual criminality before issuing the letter rogatory.

(e) direct the learned Special Judge not to issue any rogatory letter on the formal request of the CBI unless the allegations against named persons is established to the satisfaction of the Special Judge by cogent evidence.

10. This revision petition has been registered as Criminal Miscellaneous (Main) No. 1821 of 1990 on the file of the High Court of Delhi. During the hearing of the above case before the High Court, several applications seeking impleadment/intervention were filed in the proceedings among which one was filed by Mr. Prashant Bhushan, another by Mr. N. Ram and some more by various political parties.

11. Mr. Justice M. K. Chawla who heard the Criminal Misc. (M) No. 1821 of 1990 passed an order dated December 3, 1990 directing all the applications for intervention to be kept on record and observed, "The interveners will be heard only if the Court feels the necessity of hearing further arguments after the conclusions of the arguments of ASG appearing for the GOI and the CBI". Thereafter on December 6 and 7, 1990, Mr. Justice M. K. Chawla heard the arguments advanced on behalf of the CBI as well of the Union of India. While it was so, the Janata Dal etc. approached this Court by filing a Special Leave Petition (Criminal) No. 2320 of 1990 and this Court on December 10, 1990 upon being mentioned and hearing the learned counsel for the parties, passed the following order :

"We find on December 3, 1990 the learned Judge indicated in his order that several applications had been filed by different people for impleadment/intervention in the proceedings and the learned Judge observed that these applications would be heard

and if necessary arguments on behalf of the intervener could be permitted after other counsel are heard. Grievance has been made that these applications have not been formally disposed of by the court. We are of the view that the learned Judge should dispose of these applications by a judicial order before the matter is reserved for judgment and in case the applications are not accepted, judgment should not be delivered for at least 2 days after such an order on these writ petitions is made to enable them to move this Court."

12. It appears that in compliance of the above directions of this Court, Mr. Justice Chawla heard Mr. Ram Jethmalani who appeared on behalf of Janata Dal and Mr. Prashant Bhushan on December 11, 1990. The learned counsel, Mr. Jethmalani orally requested Justice Chawla to recuse himself from the case which request was rejected by the learned Judge. Thereafter, a petition for recusation was filed which was also dismissed on December 17, 1990. After hearing the learned counsel for Mr. H. S. Chowdhary as well for the interveners, the final order was passed by Mr. Justice Chawla on December 19, 1990, the relevant portion of which reads thus :

"In my opinion, the case of the petitioner does not fall within the ambit and scope of the law laid by the Supreme Court in *Bandhua Mukti Morcha (Bandhua Mukti Morcha v. Union of India, 1986 Supp SCC 553 : 1987 SCC (Cri) 62*). So, I hold that the petitioner has no locus standi to file the present revision petition and is thus not maintainable on his behalf. The same is hereby dismissed.

As a consequence of the dismissal of the present petition, holding that the petitioner has no locus standi, the applicants have no right to be impleaded and their impleadment/intervention applications are also rejected.

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So, I suo moto take cognizance while exercising my powers under Sections 397 and 401 read with Section 482 of the Code, and direct the office to register the case under the title, Court on its own motion v. State and CBI.

Consequently, I call upon the CBI and the State to show cause as to why the proceedings initiated on the filing of FIR No. RCI(A)/90/ACU-IV dated January 22, 1990 pending in the court of Shri V.S. Aggarwal, Special Judge, Delhi be not quashed."

13. The sum and substance of the above order is that in the opinion of Mr. Justice Chawla, the petitioner Shri Harinder Singh Chowdhary has no locus standi to maintain the petition and consequently the interveners also have no right to seek for impleadment or intervention and that the learned Judge having held so, took suo moto cognizance of the matter for the reasons assigned in his order and directed issue of show cause notice to the CBI and the State (Union of India) as to why the proceedings initiated on the strength of the FIR dated January 22, 1990 pending before the Special Judge be not quashed. It was at his stage, all these criminal appeals and the writ petition have been filed in this Court. This Court on December 20, 1990 in Criminal Appeal No. 304 of 1991 (arising out of SLP Criminal No. 2476 of 1990 filed by the Janata Dal) passed the following order granting interim stay :

"... In the meantime, the reasons leading to registration of the suo moto proceedings

would not be operative. There shall be interim stay of proceedings including hearing before the High Court."

14. In order to understand the scope of each of the criminal appeals and the prayer made therein, we are presently giving a brief note of the appeals and the writ petition.

Criminal Appeal No. 304 of 1991

15. This appeal is preferred by the Janata Dal against the order dated December 17, 1990 passed by the High Court rejecting its application Criminal (M) No. 2656 of 1990 in Criminal Misc. (M) No. 1821 of 1990 filed before the High Court requesting the learned Judge to recuse himself from the proceedings.

Criminal Appeal No. 305 of 1991

16. This appeal is filed by the Janata Dal against the order of the High Court dated December 19, 1990 rejecting the application for impleadment of the appellant and other interveners and also issuing suo moto notice to the State and the CBI.

Criminal Appeal No. 306 of 1991

17. This appeal is directed by Mr. Harinder Singh Chowdhary (the original petitioner who filed the public interest litigation before the Special Judge) challenging the first part of the order of the High Court dated December 19, 1990 dismissing his petition on the ground that he has no locus standi to file the petition.

Criminal Appeal No. 307 of 1991

18. This appeal is preferred by the Janata Dal questioning the correctness of the earlier order dated December 3, 1990 passed by the High Court refusing to allow the appellant's application for impleadment/intervention.

Criminal Appeal No. 308 of 1991

19. The Communist Party of India (Marxist) has directed this appeal against the order of the High Court dated December 3, 1990 refusing to allow its application for impleadment/intervention.

Criminal Appeal No. 309 of 1991

20. This appeal is preferred by Indian Congress (Socialist) against the main order of the High Court dated December 19, 1990 dismissing its application for impleadment and taking up suo moto cognizance for quashing the FIR.

Criminal Appeal No. 310 of 1991

21. This appeal is filed by the Union of India canvassing the legality and correctness of the order dated September 5, 1990 passed by the High Court and praying for a direction directing the High Court to decide the maintainability of the public interest litigation as a preliminary question. In that appeal, the learned Solicitor General requested for the deletion of respondent 2, Martin Ardbo, former President, M/O A. B. Bofors, Sweden (who is only a pro forma respondent) from the array

of parties and accordingly the permission was granted by this Court's order dated March 13, 1991.

Criminal Appeal No. 311 of 1991

22. This appeal is filed by the Union of India and the CBI questioning the said second part of the order dated December 19, 1990, namely taking suo moto cognizance and issuing notice calling upon the CBI and the State to show cause as to why the proceedings initiated on the strength of the FIR be not quashed. It may be noted that the appellants in this appeal have impleaded the High Court through its Registrar as a respondent.

Writ Petition No. 114 of 1991

23. This petition is filed by one Dr. P. Nalla Thampy Thera seeking certain directions relating to Bofors matter and for quashing the later part of the order dated December 19, 1990 of the High Court.

24. Mr. Anand Dev Giri, the learned Solicitor General assisted by M/s. Anil Katyar and Ashok Bhan and thereafter the present Additional Solicitor General, Mr. Altaf Ahmad appearing on behalf of the Union of India as well as the CBI; Mr. Ram Jethmalani and Mr. Shanti Bhushan, both learned senior counsel assisted by Mr. Prashant Bhushan appearing in Criminal Appeal Nos. 304, 305 and 307 of 1991 and Mr. K.G. Bhagat, the learned senior counsel appearing in Criminal Appeal Nos. 306 and 311 of 1991 on behalf of Mr. H. S. Chowdhary assisted by Mr. M. N. Shroff, besides a battery of lawyers advanced their respective arguments raising manifold questions of law with reference to the various provisions of the Constitution of India, Indian Penal Code, Code of Criminal Procedure and other Acts and the Memorandum of Understanding etc. for a very considerable length of time totally running for 34 full days and laid stress upon a host of decisions in support of their respective cases. The introverted and extroverted rhetorical submissions made by all the learned counsel were punctuated sometimes with inflammatory remarks, occasionally with discordant and embittered notes as well as esoteric statements, intermittently with political overtones, but at the same time with admirable ability exhibiting their profound knowledge in criminal law. In fact, each one of them was trying to outwit and score a march over the other. In this connection, it may be pointed out that the present Additional Solicitor General, Mr. Altaf Ahmad has declared unambiguously and perspicuously that he is in full agreement with the argument of the former Solicitor General, Mr. A. D. Giri and that his present articulation serves only as supplement to that of the former Solicitor General. Though the entire submissions made by the former Solicitor General are not being extracted in this short order, we feel that it would be appropriate to briefly refer to the core of the submissions of the learned Solicitor General, Mr. A. D. Giri. The learned Solicitor General strenuously urged that Mr. H. S. Chowdhary claiming to be a public interest litigant has filed the original petition before the Special Judge as a proxy of the accused who are all behind the curtain and who by this perilous proceeding are trying to evade the dragnet of the investigation and of whom even the named accused are maintaining stoic silence all through unmindful of all the proceedings till date and that the CBI though subjected to increasing uncharitable and unwarranted criticism and vilification and also scurrilous attack, with remarkable resilience is relentlessly attempting to collect all available materials by unearthing the wider conspiracy and well knitted illegal transaction within its legally permissible limits. It is pertinent to mention that Mr. Altaf Ahmed, the learned Additional Solicitor General appearing on behalf of the Union of India and CBI after Mr. A. D. Giri (the former Solicitor General) has relinquished his office, reinforced the same arguments and further pleaded that the matter should be disposed of before the end of August 1991 for the reasons stated supra so that the CBI may effectively carry on with the investigation.

However, we are not at present giving the details of the points urged except observing that the question as to whether the laws are so petrified as to be unable to respond to the challenges made will be dealt with in detail in our main judgment. As mentioned albeit we, in order to avoid further delay in these matters, are inclined to give only our conclusions, the reasons in support of which will follow in our detailed judgment at a later stage.

25. It is most relevant to note that none of the appellants before this Court save the Union of India and CBI is connected in any way with the present criminal proceeding initiated on the strength of the first information report which is not sought to be quashed by Mr. H. S. Chowdhary. Although in the FIR, the names of three accused are specifically mentioned none of them has been impleaded as a respondent to these proceedings by any one of the appellants. Even Mr. Martin Ardbo, former President of M/s. A. B. Bofors, who was impleaded as a pro forma respondent in Criminal Appeal No. 310 of 1991 has been given up by the Solicitor General. Therefore, under these circumstances, one should not lose sight of the significant fact that in case this Court pronounces its final opinion or conclusions on the issues other than the general issues raised by the appellants as public interest litigants, without hearing the really affected person/persons, such opinion or conclusions may, in future, in case the investigation culminates in filing a final report become detrimental and prejudicial to the indicated accused persons who would be totally deprived of challenging such opinion or conclusions of this apex court, even if they happen to come in possession of some valuable material to canvass the correctness of such opinion or conclusions and consequently their vested legal right to defend their case in their own way would be completely nullified by the verdict now sought to be obtained by these public interest litigants.

26. Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

27. We, in the above background of the case, after bestowing our anxious and painstaking consideration and careful thought to all aspects of the case and deeply examining the rival contentions of the parties both collectively and individually give our conclusions as follows :

1. Mr. H. S. Chowdhary has no locus standi (a) to file the petition under Article 51-A as a public interest litigant praying that no letter rogatory/request be issued at the request of the CBI and he be permitted to join the inquiry before the Special Court which on February 5, 1990 directed issuance of letter rogatory/request to the Competent Judicial Authorities of the Confederation of Switzerland; (b) to invoke the revisional jurisdiction of the High Court under Sections 397 read with 401 of the Code of Criminal Procedure challenging the correctness, legality or propriety of the order dated August 18, 1990 of the Special Judge and (c) to invoke the extraordinary jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure for quashing the first information report dated January 22, 1990 and all other proceedings arising therefrom on the plea of preventing the abuse of the process of the court.

2. In our considered opinion, the initiation of the present proceedings by Mr. H. S. Chowdhary under Article 51-A of the Constitution of India cannot come within the true meaning and scope of public interest litigation.

3. Consequent upon the above conclusions (1) and (2), the appellants namely, Janata Dal, Communist party of India (Marxist) and Indian Congress (Socialist) who are before this Court equally have no right of seeking their impleadment/intervention. For the same reasons, Dr. P. Nalla Thampy Thera also has no right to file the Writ Petition (Criminal) No. 114 of 1991 as a public interest litigant.

4. Having regard to the facts and circumstances of the case, the suo moto action of Mr. Justice M. K. Chawla in taking cognizance in exercise of the powers under Sections 397 and 401 read with Section 482 of the Code based on the convoluted and strained reasoning and directing the office of the High Court of Delhi to register a case under the title Court on its motion v. State and CBI cannot be sustained.

Consequent upon the above conclusion No. (4), we hold that the directions of Mr. Justice M. K. Chawla calling upon the CBI and the State to show cause as to why the proceedings initiated on the strength of the first information report dated January 22, 1990 be not quashed, cannot be sustained.

28. In the result, we agree with the first part of the order dated December 19, 1990 of Mr. Justice M.K. Chawla holding that Mr. H. S. Chowdhary and other intervening parties have no locus standi. We, however, set aside the second part of the impugned order whereby he has taken suo moto cognizance and issued show cause notice to the State and CBI and accordingly the show cause notice issued by him is quashed.

29. In view of the above conclusions, all the proceedings initiated in pursuance of the first information report dated January 22, 1990 relating to Crime No. RC/(A)/90/ACU-IV on the file of the Special Judge, Delhi including the issuance of the letter rogatory/request as they stand now, remain unaffected and they can be proceeded with in accordance with law.

In Summation

30. Criminal Appeal Nos. 304, 305, 306, 307, 308 and 309 of 1991 are dismissed. Criminal Appeal No. 310 of 1991 filed by the Union of India against the order dated September 5, 1990 of the High Court is dismissed in view of the fact that the said order does not survive for consideration on the passing of the final order dated December 19, 1990. The Writ Petition No. 114 of 1991 is also dismissed.

31. Criminal Appeal No. 311 of 1991 filed by Union of India and CBI is allowed for the reasons stated above.

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