

# **SUPREME COURT OF INDIA**

State of Punjab

Vs.

Vinod Kumar

Crl.A.Nos.431-39 of 2000

(K. T. Thomas, D.P. Mohapatra and R. C. Lahoti JJ.)

04.05.2000

## **ORDER**

**K.T. THOMAS, J.**

1. Leave granted.

2. Learned Single Judge of Punjab and Haryana High Court while hearing Writ Petitions filed in respect of the alleged disappearance of three persons (Vinod Kumar, Ashok Kumar and Mukhtiar Singh) passed certain directions in the impugned judgment. Investigation of the case was already ordered to be entrusted to the Central Bureau of Investigation (CBI). The directions are these:

1. The investigation report shall be submitted within one month before the Chief Judicial Magistrate, Ambala and not before the Chief Judicial Magistrate of Ludhiana.

2. The State Government shall accord necessary sanction as provided under Section 197 of the Code of Criminal Procedure without any delay when asked by the Central Bureau of Investigation (to whom the investigation had been entrusted).

3. By way of an interim measure State Government was directed to pay a sum of Rs. 2,00,000 (two lakhs) each to the wife and children of Ashok Kumar and Mukhtiar Singh within one month from the date of the judgment. It was made clear that such payment shall be made without prejudice to the right of those persons to claim compensation against the State or any other person who may be found ultimately responsible in the matter.

3. The State of Punjab has filed Special Leave Petitions in challenge of the second direction mentioned above. One Ashok Kumar has filed the Special Leave Petition against denying ex-gratia compensation to him as he was also illegally detained according to him.

4. As matters progressed much after filing of the Special Leave Petitions major part of the challenge in these Special Leave Petitions has become infructuous. For example, pursuant to an interim order passed by this Court directing the Government to consider and pass appropriate orders regarding sanction to be accorded for prosecution of the persons against whom accusations had been made by those who moved the High Court, an order has been passed by the Governor of Punjab on 7.2.1998. That order states thus:

Sanction is hereby accorded under Section 197 Cr.P.C. for the prosecution of S/Sh. S.S. Saini, IPS, the then S.S. P/ Ludhiana, S.S. Sandhu, the then S.P. / Ludhiana, Inspector Paramjit Singh, the then S.H. O., P.S. Focal Point, Ludhiana and Inspector B.C. Tiwari, the then S.H. O. Kotwali Ludhiana, for offences under Section 120B, I.P.C. read with Sections 342, 343 and 365, I.P.C. and Sections 342, 343 and 365 I.P.C. in case RC 2131/94- SIU.V. /CBI/? Delhi registered by the C.B. I. on April 18, 1994.

5. The said order has been brought to our notice by Sh. Altaf Ahmad, learned Additional Solicitor General arguing for the C.B. I. Two rival contentions have been raised before us in respect of the said sanction. First is that no sanction should have been accorded by the State Government at all in respect of those of fences. The other is that sanction accorded was too insufficient as the State Government should have granted sanction in respect of other offences including Section 364 of the I.P.C. We do not wish to express any opinion on such contentions, for, the adequacy, validity and need for sanction etc. are matters which the respective parties can raise before the trial court at the appropriate stage. Any observation which we may make on the merits of such contentions is likely to cause prejudice to one or the other side and therefore we choose to refrain from making such observations.

6. Ms. Lata Krishnamurti, learned Counsel submitted that the offence under Section 364 of the I.P.C. could be established despite the non-mention of that offence either in the investigation records or in the sanction order. On this aspect Sh. Altaf Ahmad, learned Additional Solicitor General reported to us that in the final report which CBI would be submitting before the Court, the offence under Section 364 I.P.C. would also be included. Both Sh. P.P. Rao and Sh. D.D. Thakur vehemently, contended that the offence under Section 364 cannot stand by any stretch of imagination. It is for them to bring to the notice of the Court concerned at the appropriate stage and we would not pass any comment on that.

7. Regarding the direction passed by the learned Single Judge that "State Government shall accord necessary sanction as provided under Section 197 of the Code", we chose to interpret and understand the said direction as this: "State Government shall consider the question of according sanction as provided under Section 197 Cr.P.C. and pass appropriate order thereon." We have no manner of doubt that learned Single Judge would not have granted a direction more than that though the phraseology used by him is liable to be interpreted in the way the State Government entertained apprehension about it. As the said direction would stand recast in this way it is unnecessary for us to consider, in this case, whether it is open to the High Court to direct State Government to grant sanction under Section 197 of the Code in any given situation.

8. We do not express any thing regarding the interim compensation awarded as the learned Single Judge himself made it very clear that such direction was with out prejudice to the right of any claimant to claim compensation against the State or any person who is found responsible for it, in the manner provided by law.

9. This Court has already held in A.K. Sanghi and Ors. v. Uttarakhand Jan Morcha and Ors.: 1999CriLJ3500 that question of deciding the grant of compensation would arise only after the trial court enters upon a finding regarding the liability to be fixed on the delinquent officers. Sh. P.P. Rao, learned senior Counsel expressed apprehension that the said direction is likely to be mistaken by the trial court as a finding made by the High Court on facts. We did not find any scope for such

misapprehension and we are sure that no court will take any such cue from the interim compensation award passed.

10. Lastly, we make it clear that we have not in any manner inhibited the rights of the parties to address arguments at the stage of framing charge either for discharge or for framing charge etc. With the above directions and observations these appeals are disposed of.