

SUPREME COURT OF INDIA

Ram Mehar Singh

Vs.

State of NCT of Delhi & Ors.

Crl.A.No.1585-1586 of 2011

(P.Sathasivam and B.S.Chauhan,JJ.,)

12.08.2011

JUDGMENT

Dr. B.S.Chauhan,J.,

SLP(Crl.)No.5998-5999 of 2008

1. Leave granted in all the cases.

2. The criminal appeals arising out of S.L.P.(Crl.) Nos.5998-5999 of 2008 have been filed against the common judgment and order dated 28.5.2008 passed by the High Court of Delhi in L.P.A. Nos. 286/2008 and 289/2008. Though the matters had arisen before the Division Bench from different judgments of the Single Judge Bench, however, the same had been heard together and disposed of by the impugned judgment and in all these cases, the Division Bench dismissed the appeals filed by the State of N.C.T. of Delhi, respondents herein, against the judgments of the learned Single Judge dated 28.2.2008 in W.P. (Crl.) No. 1392 of 2007 and 25.2.2008 passed in W.P. (Crl.) No. 2448 of 2006, wherein it has been alleged by the writ petitioners that the police authorities had misused their powers while resorting to the provisions of Sections 107/151 of the Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C.) and violated their fundamental rights. A learned Single Judge had quashed the criminal proceedings under Sections 107/151 Cr.P.C.; awarded a token compensation and further directed the Central Bureau of Investigation (hereinafter called CBI) to investigate the cases against the police officials who had allegedly misused their powers, and directed the police administration to initiate proceedings against such officials.

3. Facts and circumstances giving rise to Criminal Appeals arising out of SLP (Crl.) Nos. 5998-5999 of 2008 are that there had been some dispute between one Shri Raj Kumar Bansal and his wife Smt. Urvashi Bansal. The writ petitioner Shri Purshottam Ramnani being a family friend helped Smt. Urvashi Bansal financially by giving a huge amount of loan and as the same was not returned, dispute arose between them regarding the immovable properties. On the complaint of Smt. Urvashi Bansal, the proceedings under Sections 107/151 Cr.P.C. were initiated against the writ petitioner and in that respect he was produced before the

Special Executive Magistrate, Jahangir Puri, Delhi (hereinafter called the Magistrate) on 25.8.2007, wherein he was released on furnishing personal bond. The said Shri Purshottam Ramnani filed W.P.(CrI.) No. 1392 of 2007 on 31.10.2007 alleging that in case there was some dispute regarding the immovable property, the police could not resort to the provisions of Sections 107/151 Cr.P.C., and since he had been detained in jail for one day, there was violation of his fundamental rights, therefore, he should be awarded compensation and erring police officials be punished.

4. The writ petition was heard and disposed of by the learned Single Judge vide judgment and order dated 28.2.2008 granting all reliefs sought by the writ petitioner to the effect that proceedings under Sections 107/151 Cr.P.C. were quashed. The court held that the writ petitioner was illegally detained by invoking provisions of Sections 107/151 Cr.P.C. and the provisions of Section 145 Cr.P.C. could have been invoked; a sum of Rs.50,000/- was awarded as token compensation. The court further gave liberty to the said writ petitioner to file suits for damages for tortious liability against the erring police officials and also for recovery of possession of the immovable property.

5. Being aggrieved, the State of NCT of Delhi preferred L.P.A.No.286 of 2008 and the same was dismissed by the impugned judgment and order dated 28.5.2008.

6. The present appellant was SHO of the police station concerned at the relevant time. Admittedly, in the writ petition he was not a party by name, nor any notice had ever been issued to him and he had no opportunity to defend himself. Even before the Division Bench in the L.P.A. filed by the State he was not impleaded as a party. Thus, the relevant submission on his behalf is that certain observations and directions have been made against him though he had never been heard.

7. Submission on behalf of the learned counsel for the contesting respondents has been that not giving an opportunity of hearing to the present appellant either before the learned Single Judge or the Division Bench remains immaterial, for the reason, that he would be heard by the concerned authorities during the disciplinary proceedings to be initiated in pursuance of the impugned judgments and orders. However, there is no denial by him of the fact that the present appellant had neither been made a party by name nor he had been given any notice of the proceedings and thus, he had no opportunity of being heard. The judgments of the courts below are based on the premises that instead of resorting to the provisions of Sections 107/151 Cr.P.C. the provisions of Section 145 Cr.P.C. could have been invoked in the present situation.

8. In Criminal Appeals arising out of SLP (CrI.) Nos. 6719-6720 of 2008, the facts had been that the appellant No.1-Sudesh Ranga being the SHO of the Police Station had received a complaint from Ashok Kumar Munna, the respondent herein against Keshav Kumar, respondent No.2 that the water from his toilet had been entering into the house of the complainant and damaged the entire wall because of seepage, and foul smell was also coming. On being asked, the respondent Keshav Kumar refused to carry out the repair and quarrelled with him and beaten him. In view of the said complaint, Keshav Kumar was

detained under Sections 107/151 Cr.P.C. on 16.7.2006 and was produced before the Magistrate on 17.7.2006, wherein he was directed to be released on furnishing personal bond of Rs.5,000/- with one surety in the like amount. As he failed to furnish the personal bond he was sent to judicial custody and was released only on 18.7.2006 on furnishing the said bond. Keshav Kumar filed writ petition on 30.10.2006 alleging the violation of his fundamental rights by the police authorities by resorting to the provisions of Sections 107/151 Cr.P.C. The High Court entertained the said writ petition and asked the respondent therein to submit the status report. The High Court after considering the same disposed of the writ petition vide order dated 25.2.2008 quashing the proceedings under Sections 107/151 Cr.P.C.; directing to pay a token compensation to the complainant to the tune of Rs.50,000/- and further direction was issued to the Commissioner of Police to initiate disciplinary proceedings against the appellants.

9. Being aggrieved, the State of NCT of Delhi preferred L.P.A. No. 289 of 2008 which has been dismissed vide impugned judgment and order dated 28.5.2008. Hence, these appeals.

10. As both the matters had been disposed of by the Division Bench by the common judgment, we have heard them together alongwith other Criminal Appeals arising out of SLP (Crl) Nos. 1773 of 2008 and 5702 of 2008 and are being disposed of by the common judgment.

11. Whatever may be the legal position, admittedly, the police officials i.e. appellants had not been impleaded by name in the writ petitions. The standing counsel appearing for the State of N.C.T. of Delhi had taken notice on behalf of the parties excluding the private parties. Thus, while hearing the writ petitions, these appellants had not been given an opportunity of hearing at all before the writ court and definitely the learned Single Judge passed certain orders/directions against them.

12. Being aggrieved, the State filed L.P.As. before the Division Bench wherein also none of these appellants had been impleaded and both the appeals stood dismissed by the common judgment and order dated 28.5.2008. Thus, even before the Division Bench, all these appellants had not been given any opportunity to appear or plead their defence. Even on merit, the opinion of the High Court in first case, that the proceedings under Section 145 Cr.P.C. could have been resorted to instead of Sections 107/151 Cr.P.C. does not seem to be correct. In fact it is the officer on spot who has to take a decision as what provisions should be resorted to according to the prevailing circumstances. Even in another case if there had been altercation, abusing, threatening and beating, by no means, it can be held that resorting to the provisions of Sections 107/151 Cr.P.C. was totally unwarranted.

13. We have decided other connected appeals arising out of SLP (Crl.) Nos. 1773 of 2008 and 5702 of 2008 giving reasons. These appeals stand disposed of in terms of the same. In view of the above, the judgments and orders impugned herein are set aside except to the extent that in all these cases the proceedings under Sections 107/151 Cr.P.C. stood quashed. In first case liberty given by the High Court to file a civil suit for recovery of immovable property shall remain intact.

