

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: July 29, 2010
Date of Order: 12th August, 2010

Crl. Rev. P. No. 120 of 2010

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12.08.2010

MOHAN LAL JATIA

... Petitioner

Through: Mr. K.K. Sud, Sr. Advocate with
Mr. Kunal Malhotra & Mr. Mahipal Ahluwalia,
Advocates.

Versus

REGISTRAR GENERAL, SUPREME COURT OF INDIA

... Respondents

Through: Mr. Vikas Pahwa, Standing Counsel
for CBI with Mr. Tarun Verma, Advocate.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. By the present petition, the petitioner has assailed the order of learned Chief Metropolitan Magistrate (CMM) dated 11th December, 2009, whereby an application of the petitioner for adopting a procedure of warrant trial as applicable to a complaint case and for recording pre-charge evidence was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that in an SLP pending before Supreme Court, being SLP No. 1330 of 1986, challenging a detention order, an affidavit was filed by accused Ashok Jain that a representation had been made in the Secretariat of President of India on 15th April, 1986, and this representation had not been disposed of by the Central Government. This plea, taken by the petitioner before the Supreme Court, was contested by Union of India (UOI) and it was stated that no such representation was filed before the President of India and a false affidavit was sworn before the Supreme Court. The Secretariat of President of India filed an affidavit informing the Court about the procedure by which dak was received and handled at Rastrapati Bhawan. Register from the office of Rastrapati Bhawan was produced before the Supreme Court. UOI made an application under Section 340 of Code of Criminal Procedure (Cr. P.C.) before the Supreme Court for prosecuting the persons responsible for filing false affidavit through Mr. Ajay Jain before the Supreme Court. It was also informed that UOI has referred the matter to Central Bureau of Investigation (CBI) for investigation. The Supreme Court, vide its order dated 12th September, 1986, directed CBI to proceed with the inquiry and directed that the result of inquiry be communicated to UOI. On 29th

April, 1987, Writ Petition and SLP came up for hearing before the Supreme Court and the Supreme Court dismissed the SLP and Writ Petition challenging the order of detention and observed that the detenu and his other associates had gone to deplorable lengths to create evidence favouring the detenu which aroused convulsion thoughts in the minds of Supreme Court about the efficiency and integrity of the concerned sections of President's Secretariat. It further observed that it was a fit case where detenu, his wife, Ashok Jain and other persons responsible for fabrication of false evidence should be prosecuted for the offences committed by them. The Supreme Court deferred the passing of final order on application of UOI under Section 340 Cr. P.C. awaiting CBI report. Directions were issued for complete investigation to be taken up by CBI and the Supreme Court directed its Registrar (Judicial) to keep relevant records in safe custody in a sealed envelope till such time they are called for and when the application under Section 340 Cr. P.C. was taken up for final orders. Director of CBI was directed to get the investigation done and submit report to Ministry of Home Affairs, Government of India. Subsequent to this, CBI registered a case vide RC No. 2/87/SIU-III on 1st May, 1987. The CBI submitted its report to the Department of Personnel and Training on 31st January, 1989,

recommending prosecution of Mohan Lal Jatia, Pushpa Devi Jatia, Ashok Jatia, Ashok Jain, Gurcharan Singh and Milap Chand under the provisions of Section 120B, 193, 218, 468, 471, 468, 420 IPC read with Section 511 of IPC. This investigation report was placed before the Supreme Court in 1994. On 20th July, 1994, Supreme Court passed a detailed order directing its Registrar General to prepare a complaint in terms of Section 195 Cr. P.C. read with Section 340 Cr. P.C. and file it before the competent Court for action. The complaint was thus filed by Registrar General of Supreme Court before the Court of CMM, Delhi, on 19th August, 1994. From 1994 till 1999, the accused persons were being summoned and ultimately on 27th November, 1999, Metropolitan Magistrate (MM) observed that compliance under Section 207 Cr. P.C. has been done. This order of learned MM was assailed by the accused persons in a Criminal Revision on 14th January, 2000. Thereafter one of the accused filed an application under Section 210 Cr. P.C., regarding procedure to be followed when there was a complaint case and police investigation in respect of the same offence. This application under Section 210 Cr. P.C. was disposed of vide order dated 15th July, 2000 by MM observing that the case instituted by the Registrar General of Supreme Court was to be dealt with as if it was instituted on a police

report in view of Section 343 (1) of Cr. P.C. This order was assailed before this Court vide Crl. M.C. No. 2452/2000 and the accused also sought quashing of complaint pending before the Court of MM. This Court vide order dated 18th March, 2004, dismissed the Crl. M.C. No. 2452/2000. On 11th December, 2009, the petitioner again moved an application before the Trial Court, again assailing the procedure adopted by the Trial Court and stated that the Trial Court should adopt the procedure as mentioned in Chapter XIX-B of Cr. P.C. This application was dismissed by the learned CMM and this petition has been filed assailing the order of learned CMM.

3. Chapter XXVI of Cr. P.C. deals with the offences affecting administration of justice. These are those offences which are committed by the accused persons or witnesses during pendency of trial or otherwise when the matter is pending before the Court. While Section 340 of Cr.P.C. gives no details about the procedure to be adopted by a Court where an offence against administration of justice is committed, Section 343 of Cr. P.C. provides the procedure to be followed by a Magistrate to whom a complaint is made under Section 340 Cr. P.C. Section 343 (1) of Cr. P.C. specifically provides that a complaint made to the Magistrate under Section 340 or 341 Cr. P.C., notwithstanding

anything contained in Chapter XV (Chapter dealing with complaint cases), is to be dealt with as if it was instituted on a police report. Section 344 Cr. P.C. provides for following of a summary trial procedure for trial in cases of giving false evidence, by the same Court where false evidence is given. Under Section 344 of Cr. P.C., the trial court has option to follow summary trial procedure and convict the offender who commits an offence affecting administration of justice with punishment up to 3 months imprisonment. It also provides that the Court, at its discretion, may make a complaint under Section 340 Cr. P.C. Similarly, Section 345 Cr. P.C. prescribes procedure in cases where offences as prescribed in Section 175, 178, 179 & 180 of Cr. P.C. or in Section 228 of IPC (offences of acting administration of justice) and committed by a person in view or presence of the Court. Under this provision a Court in whose presence the offence is committed can take cognizance and summarily sentence the person to a fine not exceeding Rs. 200/- and in default, simple imprisonment extending to one month can be awarded. Section 346 Cr. P.C. provides that where procedure of summary trial as given under Section 345 Cr. P.C. is not followed and the court considers that punishment of fine of Rs. 200/- was not adequate, the Court may forward the case to Magistrate, having jurisdiction to try the same.

Section 346 (2) Cr. P.C. again emphasizes that the Magistrate to whom a case is forwarded under Section 346(1) Cr. P.C., shall proceed and deal with the case as if it was instituted on a police report.

4. The different provisions of this Chapter make it clear that intention of Legislature had been that either the offences against administration of justice should be tried summarily by the concerned Court or if the complaint is filed by the Court regarding such offences, the complaint should be treated as a police report. In view of clear mandate of the statute there can be no doubt about the procedure which has to be followed by the Courts below and the complaint filed by the Registrar General of Supreme Court has to be treated as a police report and the trial of the petitioner and the other accused persons has to be conducted in the same manner as a trial of a warrant case on police report case is done.

5. The learned counsel for the petitioner has relied upon *Ajay Kumar Ghose Vs. State of Jharkhand, AIR 2009 SCC 115* to press the point that procedure to be followed by a Magistrate should be a warrant trial procedure as provided under Section 244, 245 and 246 of Cr. P.C. and submitted that since a complaint was filed by the Registrar General of

Supreme Court, pre-charge evidence should be recorded by the Court of CMM and after recording of pre-charge evidence, it should be considered whether there was sufficient evidence to frame charge or not. I consider that this case does not help the prosecution. In *Ajay Kumar Ghose* case an official of High Court had filed a complaint under Section 340 Cr. P.C. The complaint was not accompanied by any material in support of complaint. The accused appeared in pursuance of summons sent to him under Section 244 Cr. P.C. and came out with an application for discharge. The learned MM dismissed the application and framed charges against the accused. The Supreme Court in para 34 of the *Ajay Kumar Ghose* judgment observed that there was absolutely nothing before the learned MM beyond the complaint to consider framing of charge and the learned MM could have undoubtedly proceeded under Section 245(2) of Cr. P.C. on the basis of discharge application and discharged him. In view of Section 245(2) Cr. P.C., the Court could have discharged the accused even before any evidence was recorded. Since in the case before learned MM, the complainant was High Court, no statements were recorded by the Court of MM and there was no other material before the Court of MM but the Court of MM still framed the charge. It is under these circumstances that Supreme Court

allowed the SLP and remanded back the case for recording of complainant's evidence.

6. In the present case, the Supreme Court had ordered holding of an inquiry by CBI before directing a complaint to be filed against the petitioner and the CBI had collected entire material which showed the commission of offence and only after the investigation was completed by the CBI, that the Supreme Court directed making of a complaint under Section 340 Cr. P.C. It is not a case where a bare complaint was available before the Magistrate and there was no other evidence available before the Magistrate. The Magistrate in this case was to decide about framing of charge on the basis of evidence available on record and to see whether charge is made out or not. Moreover, the Supreme Court in *Ajay Kumar Ghose (Supra)* case was not asked to consider if the warrant trial procedure as applicable to complaint cases was to be followed in all cases under Section 340 Cr. P.C. when a complaint is filed by the Court. The statute had specifically stated that a complaint sent by the Court under Section 340 Cr. P.C., notwithstanding the procedure of Chapter XV of Cr. P.C., has to be considered as a police report and the case has to proceed as if it was made on a police report. Thus, procedure as available under Section 245 and 246 of Cr. P.C. of

recording of evidence of complainant twice over would not be the procedure to be followed.

7. The other case relied upon by the petitioner is *Godrej & Boyce Mfg. Co. Pvt. Ltd. Vs. UOI, 1992 Cri.L.J. 3752* and it has urged that the Bombay High Court had held that procedure of warrant trial in complaint case is to be followed. This contention also must fail. In *Godrej & Boyce Manufacturing Co. Pvt. Ltd. (Supra)* case, the Court itself observed that they had not made preliminary inquiry into the case and the Court had not issued notice to summon at least to some among the prospective accused.

8. In the present case, a preliminary inquiry was got done by Supreme Court through CBI and after getting the investigation done through CBI, the Supreme Court directed its Registrar General to file a complaint against those persons who were found involved in the offence in the investigation done by the CBI. I, therefore, consider that no pre-charge evidence was required to be recorded in the present case and the procedure being advocated by petitioner, second time before this Court was not the correct procedure.

9. Even otherwise, I consider that in view of clear mandate of the statute that the complaint under Section 340 Cr.P.C. is to be treated as a police report, the procedure to be followed by the learned CMM is that of a warrant trial case on a police report and not of a warrant trial case on a complaint.

10. The counsel for the petitioner referred to *R.S. Nayak Vs. A.R. Antulay, 1984 (3) SCC 86* case to justify re-agitating the issue again before this court and stated that even Supreme Court reversed its own decision when it found that the earlier decision was contrary to procedure laid down in Code of Criminal Procedure. We must remember that *A.R. Antulay's* case is not an example of civil liberty, but, is an example of as to how a judicial death can be given to a complaint. In *Antulay's* case a complaint of documented corruption died an unnatural death because of multifarious Writs and SLPs, despite the fact that for every ton of cement, for which licence was granted, a fixed amount of donation was paid by the licencees in the Trusts created for this purpose and the entire payment was documented. Despite all that, the complaint against corruption got killed and nothing happened, courtesy Indian Judicial System. The judicial process is often used as a tool to see that even if there is documented proof of commission of

crime, the accused gets scot free because of multifarious levels of appeals, writs, revisions, 482 Cr. P.C. petitions and SLPs to which the accused and petitioners have unlimited access under the present system. The real judicial reform can come in this country only when, despite the strength of money power and political power, one is not able to capture the judicial system and hold it to ransom on the strength of this power.

11. The present petition is a gross misuse of the judicial process. The accused persons have come second time before this Court assailing the procedure being adopted by the learned MM. The whole effort of the accused persons seems to be not to allow the trial to proceed further. The case is a glaring example how the trial can be stalled by adopting delaying tactics. The complaint of an offence committed in 1986 in respect of administration of justice in Supreme Court, where a false affidavit was filed, despite investigation got done from CBI by the Supreme Court followed by a complaint to CMM, Delhi through its Registrar General in the year 1994 is still at initial stage. From the year 1994, we are in 2010. For these 16 long years, the trial has not proceeded an inch. Those who talk of judicial reforms must take note of

such numerous cases pending in Courts where the judicial process is misused to see that the trials do not proceed further.

12. The petition being frivolous is dismissed with cost of Rs. 1,00,000/- to be deposited with Delhi High Court Legal Services Committee.

SHIV NARAYAN DHINGRA, J.

12th AUGUST, 2010

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