

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 36

Case :- CRIMINAL MISC. WRIT PETITION No. - 21733 of 2008

Petitioner :- Parvez Parwaz & Another
Respondent :- State Of U.P. & Others
Counsel for Petitioner :- S.F.A. Naqvi
Counsel for Respondent :- Govt. Advocate

Hon'ble Ramesh Sinha,J.

Hon'ble Umesh Chandra Srivastava,J.

1. An affidavit of compliance has been filed by the Sri Rahul Bhatnagar, Chief Secretary of the State, who is present in the Court in compliance of this Court's order dated 4.5.2017, which is taken on record.
2. Heard Sri S.F.A. Naqvi, learned counsel for the petitioners, Sri Raghvendra Kumar, learned Advocate General assisted by Sri A.K. Sand, learned A.G.A. for the State and perused the record.
3. Learned counsel for the petitioners states that this Court passed an order on 4.5.2017 calling upon the Chief Secretary of the State to clarify whether on the Draft Final Report (hereinafter referred to as 'the DFR') which was submitted by the C.B.C.I.D. after investigation was pending for approval or grant of sanction for prosecution of the accused was awaited. Today it has been stated that the prosecution sanction has already been refused by the Principal Secretary (Home) U.P. Lucknow on 3.5.2017 copy of which has been annexed as annexure-A-8 to the affidavit of compliance filed today. He argued that the order refusing sanction of prosecution apparently shows the malafide conduct and mischievous act of the State Government. He submits that the petitioners may be allowed ten day's time to amend the prayer of the petition by means of an appropriate application for challenging the order dated 3.5.2017 passed by the Principal Secretary (Home) of the State of U.P. refusing sanction for prosecution and further consider the prayer of the petitioner for getting the investigation of the present case by an independent agency such as C.B.I. etc. as the petitioners have no hope in the C.B.C.I.D. which was investigating the matter and proposed to submit a charge-sheet against the accused on coming to the conclusion that offence under sections 143, 153, 153A, 295A, 505 I.P.C. is made out against them as is evident from the report of S.P. C.B.C.I.D. dated 10.7.2015 but submitted the final report in the matter before the court concerned on 6.5.2017 in view of the refusal to grant prosecution sanction by the State Government on 3.5.2017.
4. Learned Advocate General has pointed out that the sanction for grant of prosecution of the accused of the present case has been refused by the Principal Secretary U.P. (Home) Lucknow on 3.5.2017 and in pursuance of the same the C.B.C.I.D. has already submitted final report in the matter before the court concerned on 6.5.2017, i.e., after refusal of grant of sanction for prosecution.
5. Considered the submissions advanced by learned counsel for the parties and perused the record.
6. The relevant paragraphs of the affidavit of compliance filed today by the Chief Secretary of the State are being quoted hereinbelow:-
"3. That the record reveals that investigation of the case was completed by the C.B.C.I.D. and thereafter vide letter dated 10.7.2015 matter was sent to Home Department, Govt. of U.P. for giving sanction of prosecution of the accused, named therein, under section

147/153/153A/295A and 505 I.P.C. A true copy of the letter dated 10.7.2015 is being enclosed herewith and marked as annexure no. A-1 to this affidavit.

4. That the said letter was received in the office of the Special Secretary, Home, Govt. of U.P. on 20.7.2015. Thereafter, vide office noting dated 11.7.2016, matter was sent to the Law Department for seeking legal opinion.

5. That on 11.7.2016, the Special Secretary, Law and Legal Remembrancer, Govt. of U.P. sent back the file noting that the Investigating Officer may be called for discussion along with case dairy on any working day. In compliance of the said office noting dated 12.07.2016, a letter was sent on 25.07.2016 to Superintendent of Police, CBCID for sending the Investigating Officer along with case dairy on 27.07.2016 as required by the Additional Secretary, Law/Additional Legal Remembrancer. A true copy of the letter dated 25.7.2016 is being enclosed herewith and marked as annexure no. A-2 to this affidavit.

6. That on 27.07.2016, the Investigating Officer did appear but without the relevant record/case dairy and he sought one week's time for bringing the records.

7. That vide letter dated 02.08.2016, the Superintendent of Police, CBCID was against directed to send the Investigating Officer along with case dairy and relevant record on 08.08.2016. A true copy of the letter dated 02.08.2016 is being enclosed herewith and marked as annexure no. A-3 to this affidavit.

8. That pursuant to the above mentioned letters, the Investigating Officer did appear and matter was discussed with the Additional Legal Remembrancer, Government of Uttar Pradesh. However, report of the Central Forensic Science Laboratory, CBI, New Delhi, regarding the CD (Compact Disc) which was given by the complainant to the Investigating Officer in support of the evidence, was not on record and therefore, Legal Remembrancer, Government of Uttat Pradesh asked to call for that report from the Investigating Officer.

9. That pursuant to above mentioned noting of the Principal Secretary (Law)/Legal Remembrancer, Government of Uttar Pradesh dated 09.09.2016, a letter was sent on 18.10.2016 to Superintendent of Police, CBCID for clarification as required by the Principal Secretary (Law)/Legal Remembrancer, Government of Uttar Pradesh. A true copy of the letter dated 18.10.2016 is being enclosed herewith and marked as annexure no. A-4 to this affidavit.

10. That since the CBCID did not respond to the letter dated 18.10.2016, a reminder was again sent on 21.12.2016 to the CBCID. A true copy of the letter dated 21.12.2016 is being enclosed herewith and marked as annexure no. A-5 to this affidavit.

11. That in reply to the above mentioned letters, the Superintendent of Police, CBCID vide his letter dated 3.1.2017 informed that the letter dated 18.10.2016 had not been received in his office and then again a copy of the said letter dated 18.10.2016 was sent to him on 08.03.2017 from the Home Department, Government of U.P. A true copy of the letter dated 08.03.2017 is being enclosed herewith and marked as annexure no. A-6 to this affidavit.

12. That pursuant to the above mentioned letter, the Superintendent of Police CBCID sent the report of Central Forensic Laboratory, CBI, Nes Delhi dated 13.10.2014 vide his letter dated 24.03.2017. A true copy of the letter dated 24.3.2017 and report dated 13.10.2014 are being enclosed herewith and marked as annexure no. A-7 & 7A to this affidavit.

13. That after having the above mentioned test report, the matter was again sent to the Law Department on 26.4.2017.

14. That Law Department has given opinion on 01.05.2017 on which Principal Secretary Home, i.e, Competent Authority took a decision for refusing the sanction for prosecution and thereafter, on 03.05.2017 Order was issued for refusing the sanction by Home Department and the CBCID was informed accordingly. A true copy of the letter dated 03.05.2017 is being enclosed herewith and marked as annexure no. A-8 to this affidavit.

15. That thereafter, CBCID closed the matter on 06.05.2017 and informed the Government vide letter dated 09.05.2017. A true copy of the letter dated 06.05.2017 is being enclosed herewith and marked as annexure no. A-9 to this affidavit"

7. Thus it is apparent from the affidavit filed by the Chief Secretary of the State and the affidavit of compliance dated 17.12.2016/23.12.2016 of the Investigating Officer Sri Anand Narain Singh of the C.B.C.I.D. Sector Gorakhpur shows that the present matter was only pending for approval of grant of sanction of prosecution of the accused persons before the State Government and not the D.F.R. which was sent by the C.B.C.I.D. after investigation of the case was pending for approval as has been stated in the affidavit of compliance dated 24.4.2015/6.5.2015 of Sri Chandra Bhushan Upadhyay Investigating Officer of C.B.C.I.D. Sector Gorakhpur and the same has already been approved by the competent authority and has been sent to the State Government along with its approval for grant of sanction of prosecution, therefore, the statement made by Sri Vimlendu Tripathi, learned Government Advocate before this Court on 4.5.2017 was a wrong statement just to mislead this Court and complicate the issues and not letting the Court to proceed for deciding the question framed by this Court vide order dated 28.4.2017. The extract of which has been quoted hereinbelow:-

"

From a perusal of the record, it appears that the matter of sanction regarding prosecution of the accused persons is pending before the State Government and the question of grant of sanction for prosecution is to be decided by the Head of the State Government, who himself is a prime accused in the present F.I.R. lodged by petitioner no. 1.

As the said question which has crop up in the matter before this Court requires proper adjudication, learned counsel for the parties are directed to assist the Court in the matter on the next date fixed by placing legal proposition of law in the matter.

Put up the matter for further argument on 4.5.2017."

8. It is painful and disturbing from a perusal of the affidavit of compliance filed today by the Chief Secretary of the State by which it is apparent that the sanction for prosecution of the accused has been refused by the Principal Secretary (Home) U.P. Lucknow on 3.5.2017 but the same was not brought into the knowledge of the Court by Sri Vimlendu Tripathi, the learned Government Advocate while the Court was passing the order dated 4.5.2016, calling upon the Chief Secretary of the State to clarify the fact regarding approval of D.F.R. or grant of sanction for prosecution is awaited or not.

9. Sri Vimlendu Tripathi, who is present in the Court has tried to justify the same but when failed in his attempt has apologized orally before the Court.

10. The Court accept his oral apology with a hope and trust that the said conduct shall not be repeated by him in future.

11. So far as refusal of sanction for prosecution of the accused by the Principal Secretary (Home) U.P. Lucknow vide order dated 3.5.2017 is concerned, learned counsel for the petitioners prays for and is allowed ten days' time to amend the prayer made in the present petition by means of appropriate application challenging the said order of refusal for grant of sanction for prosecution.

12. List on 7th July, 2017 for further hearing for consideration of prayer for transfer of investigation of the present case to C.B.I. and also examining the validity of the refusal of grant of prosecution sanction by the Principal Secretary (Home) U.P. Lucknow.

13. By the next date of listing, learned A.G.A. may file supplementary counter affidavit filed by learned counsel for the petitioners on behalf of petitioner no. 2 on 17.4.2017.

14. As it is apparent from the record that 29 criminal cases including the present case were registered with respect to the incident dated 27.1.2007 in district Gorakhpur where communal riot broke in the city and there has been loss of lives and properties of the public at large, we

direct the Chief Secretary of the State to file status of all those cases till date through a detailed comparative chart.

15.* As this Court is considering the prayer made in the present petition and further examining the validity of the refusal of grant of sanction of the accused of the present case, we restrain the concerned court below from passing any order on the Final report submitted by the C.B.C.I.D. before the court concerned on 6.5.2017 in F.R. No. 1 of 2017 till the disposal of the present petition.*

16. The presence of Chief Secretary of the State is hereby dispensed with unless otherwise directed by the Court.

17. Office is directed to issue a certified copy of this order to the learned Government Advocate free of cost for its compliance.

18. The Registrar General is directed to send a certified copy of this order to the District Judge Gorakhpur forthwith for its compliance.

(Umesh Chandra Srivastava, J.) (Ramesh Sinha, J.)

Order Date :- 11.5.2017

Shiraz