

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 876 OF 2002

Central Bureau of Investigation , Lucknow, U.P.Appellant

Versus

Indra Bhushan Singh & Ors.
Respondents

...

With

CRIMINAL APPEAL NO.877 OF 2002

J U D G M E N T

Madan B. Lokur, J.

1. The three questions before us are: (i) whether the complaint filed against the respondents under Section 195(1)(b) of the Code of Criminal Procedure, 1973 was authorized by the Allahabad High Court; (ii) whether it was necessary to obtain a sanction from the Allahabad High Court for filing the complaint

against the respondents, and (iii) if a sanction was necessary, whether it was in -fact obtained. In our opinion, the first question must be answered in the negative. Consequently, the second and third questions do not arise or are, at best, academic in nature and need not be answered. As such, the orders under appeal call for no interference.

The facts

2. On 25th May, 1990 a learned Single Judge of the Allahabad High Court is said to have dealt with Writ Petition No. 5267 of 1990 (purportedly filed by Dr. Sheetal Nandwani) and passed an order to the effect that the competitive examinations scheduled to be held on 27th May, 1990 for admission in post-graduate medical courses in State medical colleges ought not to be held. Instead, admissions should be made on the basis of marks obtained by the candidates in the MBBS course as has been done in MDS courses. With this brief order the writ petition was allowed.

3. In compliance with the order dated 25th May, 1990 the State Government cancelled the scheduled competitive examinations in seven medical colleges in Uttar Pradesh and a direction issued to grant admission on the basis of MBBS results.

4. For reasons that are not relevant, the medical college in Meerut was not informed of the cancellation. Therefore, Dr. Rahul -Verma, like several others, participated in the examination held on 27th May, 1990. However, unlike others he filed Writ Petition No. 5548 of 1990 in the Lucknow Bench of the Allahabad High Court in which he sought and was granted, on 4th June, 1990 the same relief as Dr. Sheetal Nandwani on the basis of the order dated 25th May, 1990. He was represented in the case by his lawyer Indra Bhushan Singh. Dr. Rahul Verma is one of the respondents in Criminal Appeal No.877 of 2002 while Indra Bhushan Singh is the respondent in Criminal Appeal No.876 of 2002.

5. The order dated 25th May, 1990 was challenged in this Court and the result of the petition is reported as ***U.P. Junior Doctors' Action Committee v. Dr. B. Sheetal Nandwani and Others.***¹

6. This Court found that no writ petition bearing no. 5267 of 1990 was filed by Dr. Sheetal Nandwani and obviously therefore

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(1990) 4 SCC 633

no order was passed on 25th May, 1990 in the said case. It was found that the entire proceedings were fabricated and fake and this Court was satisfied that there was deep rooted conspiracy which resulted in the purported order dated 25th May, 1990. Consequently, this Court passed appropriate orders in the case and also directed that -the entire matter be investigated by the CBI which was required to identify the persons behind the deep rooted fraud and bring them to book without any delay. It was observed that the purity of the judicial stream should not be permitted to be polluted by a clandestine move such as the one that was the subject matter of discussion and citizens should not be misled by the actions of conspirators.

7. Pursuant to the directions given by this Court to investigate the conspiracy, the CBI searched the premises of Dr. Rahul Verma and found a copy of the order dated 25th May, 1990. The CBI also carried out investigations with regard to the role of Indra Bhushan Singh and others. We were informed by the learned Additional Solicitor General that the persons responsible for the fraud leading to the order dated 25th May, 1990 have not yet been identified although about 24 years have gone by.

8. Be that as it may, on 26th August, 1991 a complaint was filed by Shri H.D. Kandpal, Deputy Registrar (Administration), Lucknow Bench of the Allahabad High Court in the Court of the Special Judicial Magistrate (CBI) in Lucknow against Dr. Rahul Verma and Indra Bhushan Singh. The complaint was filed under the provisions -of Section 195(1)(b)(i) and Section 195(1)(b)(iii) of the Code of Criminal Procedure and sought punishment of the accused persons under Section 120-B of the Indian Penal Code (IPC) read with Sections 193/196/420 thereof and independently under Section 193 of the IPC.

9. The complaint gives the background facts leading to its filing and goes on to state, *inter alia*, that after he had filed the writ petition, but before it was presented to the court, Dr. Rahul Verma substituted four pages in the writ petition as filed. In these pages, a reference is made to the purported order dated 25th May, 1990 and two of the pages were signed by Indra Bhushan Singh. During the hearing of the writ petition on 4th June, 1990 a photocopy of the purported order dated 25th May, 1990 was filed in court by Indra Bhushan Singh. On the basis of this writ petition with the interpolated or substituted pages and the purported

order dated 25th May, 1990 filed during the course of hearing, a learned Single Judge of the Allahabad High Court, Lucknow Bench passed orders on 4th June, 1990 directing the State Government to act in accordance with the purported order dated 25th May, 1990. The complaint states, however, that the signature of Dr. Rahul Verma -on the vakalatnama filed along with the writ petition could not be confirmed. In the complaint, it was prayed that cognizance of offences committed by Dr. Rahul Verma and Indra Bhushan Singh under Section 120-B read with Sections 193, 196, and 420 of the IPC and Section 193 of the IPC be taken and the accused persons, that is, Dr. Rahul Verma and Indra Bhushan Singh be summoned to face trial for the offences said to have been committed by them.

10. The complaint, as originally filed on 26th August, 1991 did not mention that H.D. Kandpal had the authority to file it on behalf of the Allahabad High Court. But a paragraph was subsequently inserted in the complaint to the effect that H.D. Kandpal had the authority to file the complaint on behalf of the Lucknow Bench of the Allahabad High Court.

11. Be that as it may, the Magistrate took cognizance of the complaint and issued summons to Dr. Rahul Verma and Indra Bhushan Singh.

12. At this stage, it is worth mentioning that pursuant to the orders passed by this Court in the case filed by the U.P. Junior Doctors Action Committee, the CBI submitted to this Court a "Self Contained Note" dated 27th August, 1991 under cover of a letter -- dated 28th August, 1991 in which it was stated, *inter alia*, that "A statutory complaint under provisions of Section 195(1)(b) of Cr. P. C. is being obtained from competent authority (*sic*) of Allahabad High Court for prosecuting Dr. Rahul Verma and I.B. Singh Advocate." In other words, Kandpal had no authority to file the complaint on 26th August, 1991 as claimed by him since on 28th August, 1991 the necessary sanction was "being obtained". It is on this basis that learned counsel for the accused persons submitted that a paragraph to the effect that Kandpal was authorized to file the complaint was inserted in the complaint subsequently and illegally.

13. Subsequent to the Magistrate taking cognizance of the complaint, Indra Bhushan Singh moved an application for being

discharged from the prosecution of the case. Apart from contesting the matter on its merits, in the sense that no case was made out for proceeding with the complaint, one of the grounds taken by him was to the effect that the complaint was filed without due authorization. By an order dated 2nd April, 1999 the Magistrate rejected the application on merits, but did not advert to the issue regarding authorization (in favour of Kandpal) to file the complaint. -

This led Indra Bhushan Singh to file Criminal Case No.1875 of 1999 in the Allahabad High Court and that was allowed by the order under appeal dated 4th February, 2000.

Decision of the High Court

14. In the High Court, three submissions were advanced on behalf of Indra Bhushan Singh. It was contended, firstly, that before filing a complaint, the High Court ought to have conducted an inquiry as mandated by Section 340 of the Code of Criminal Procedure. The High Court, in the order under appeal, decided this issue in his favour and held that an inquiry ought to have been conducted before the complaint was filed. We express no opinion on this issue and leave it open for adjudication in an appropriate

case. Secondly, it was argued that the Allahabad High Court had not authorized Kandpal to file the complaint. In this regard, it was held:

"A perusal of the original complaint itself shows that the complaint was once type then again at internal page 7 a fresh para was added at the bottom with fresh typewriter with fresh ribbon that the complainant is authorized to file this complaint on behalf of the Hon'ble High Court, Lucknow Bench, Lucknow. On this typing initial has been made by Sri Kandpal. Apparently, the complaint shows that Sri Kandpal has got some authority on behalf of High Court. The petitioner alleged that there was absolutely no such authority. On 9.6.1999 also, the petitioner had argued that there was no order of the High court to file the complaint against Indra Bhushan Singh and the - present argument was also advanced that there is no such order in writing on record to show any such authority. In the Lower Court also this point was raised that there is no order of the High Court authorizing Sri Kandpal for filing such a complaint against Indra Bhushan Singh. The prosecution was granted several dates but record was not produced. Such a plea was also taken in the application for discharge dated 9.12.1995 in para 15. The entire record of the High Court was summoned and both the counsels for the parties, namely, Sri Amarendra Nath Singh and Sri D.R. Azad went through the entire records to search out whether Sri Kandpal has been authorized to file complaint. Sri Azad searched out the entire records of the case but could not find any such direction of the Court passed by the High Court authorizing Sri Kandpal to file the complaint. Thus, the complaint filed by Sri Kandpal is without any authority and is to be quashed merely on this ground."

Thirdly, it was contended on the merits of the allegations made, that there was no case for proceeding against Indra Bhushan

Singh. The High Court decided this issue also in favour of Indra Bhushan Singh. In our opinion, it is not necessary to go into the merits of the case since it is quite clear that the complaint deserves to be quashed on the sole ground that Kandpal was not authorized to file it.

15. Following the order passed by the High Court, Dr. Rahul Verma also moved an application for being discharged from the prosecution and by an order dated 7th April, 2001 the Magistrate accepted the application and closed the case against him. The order -

passed by the Magistrate is the subject matter of appeal in Criminal Appeal No.877 of 2002 and it is based on the order dated 4th February, 2000 passed by the High Court in the case of Indra Bhushan Singh.

Proceedings in this court and conclusion

16. Before us, learned Additional Solicitor General sought to contend that it was not necessary to obtain the sanction of the Allahabad High Court to prosecute Dr. Rahul Verma and Indra Bhushan Singh. He placed reliance on ***Iqbal Singh Marwah v. Meenakshi Marwah***.² In our opinion, this question will arise only

if the complaint filed by Kandpal against Dr. Rahul Verma and Indra Bhushan Singh was an authorized complaint. If the complaint was filed without any authority conferred on Kandpal, it is no complaint at all, and that would make the requirement of a sanction completely irrelevant.

17. Therefore, it is essential to first answer the primary question, that is, whether or not the complaint filed by Kandpal against Dr. Rahul Verma and Indra Bhushan Singh was at all authorized. Realizing this as the primary issue, this Court passed an order on -

28th October, 2009 to the effect that the Allahabad High Court is required to be impleaded as a party respondent “for an effective hearing of these appeals, and to do complete justice between the parties.” Accordingly, notice was issued to the Allahabad High Court.

18. In response to the notice issued by this Court, an affidavit dated 28th January, 2010 was filed on behalf of the Allahabad High Court. The affidavit reads as follows:-

“I, Shamsheer Chandra aged about 52 years son of Late
Ram Sundar Tripathi presently posted as Officer-On-

(2005) 4 SCC 370

Special Duty (Litigation), High Court, Allahabad, the deponent herein, do hereby solemnly affirm and state as under:

1. That, the deponent is at present posted as Officer-On-Special Duty (Litigation), High Court, Allahabad, and as such is fully conversant with the facts and circumstances of the instant case and is competent and duly authorized to swear the instant affidavit.
2. That, it is stated that no authorization was given by the High Court for filing of the complaint dated 26.08.1991 before the Special Judicial Magistrate, C.B.I., Lucknow, by the Deputy Registrar (Administration) of the Lucknow Bench of the High Court, Allahabad. As such, no record in relation thereto is available or existent.
3. That, a fact finding enquiry in the matter of the alleged authorization to the then Deputy Registrar (Administration) of the Lucknow Bench of the High Court, Allahabad was initiated by the Allahabad High Court and the enquiry has now been concluded and it has been reported that Sri H.D. Kandpal, the then -
4. Deputy Registrar (Administration) of the Lucknow Bench of the High Court, Allahabad; who had retired from service on November 1992,

was responsible for lodging the complaint dated 26.08.1991 before the Special Judicial Magistrate, C.B.I., Lucknow without any sanction/approval of the High Court of Judicature at Allahabad. A true copy of the fact finding Enquiry Report dated 14.12.2009 and its supplementary report dated 22.12.2009 of the Enquiry Officer in the same enquiry are being annexed herewith and is marked as Annexure-1 (colly) to this affidavit."

19. It is quite clear from the affidavit filed by the Allahabad High Court that Kandpal had filed the complaint against Dr.Rahul Verma and Indra Bhushan Singh without any authority conferred on him by the High Court. This is now beyond question.

20. Since the complaint by Kandpal was filed without any authority, in our opinion, the Magistrate could not have taken cognizance of it or proceeded with the matter. He lacked the jurisdiction to do so since there was no valid complaint before him.

21. In view of the factual position as stated on affidavit on behalf of the Allahabad High Court, the other questions urged by the learned Additional Solicitor General do not arise. They would

certainly arise if the complaint had been a valid complaint, which it was not.

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22. Under these circumstances, in view of the categorical stand of the Allahabad High Court that no sanction or authorization was given to Kandpal to file a complaint against Dr. Rahul Verma or Indra Bhushan Singh, there is no merit in these appeals and they are accordingly dismissed.

.....J
(Ranjana Prakash Desai)

.....J
(Madan B.

Lokur)
New Delhi;
May 2, 2014

JUDGMENT