

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(CrL.) No. 988/2007

Date of Reserve: 19th September, 2007

10.10.2007

Date of judgment: 10.10.2007

S. D. Sharma ... Petitioner

Through: Mr. Pradeep Gupta, Advocate

Versus

Government of NCT Delhi and Ors. ... Respondents

Through: Ms. Mukta Gupta with Ms. Rajdipa Behura, Advocates

CORAM

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT:

1. This Writ Petition has been filed under Article 226 and 227 of Constitution of India read with Section 482 of Cr.P.C. wherein a prayer has been made that the Court should declare the action of arrest of petitioner by the respondent nos. 1 to 4 on 5th October, 2006 as illegal. It is also contended that petitioner was harassed continuously for 4 years by colourable use of power by the respondent. This should also be declared illegal and the Court should issue a mandamus directing respondents to pay damages to the petitioner for illegal arrest and harassment and direction should be given not to harass the petitioner on the basis of other similar complaints by different clients of the petitioner.

2. Petitioner is the proprietor of M/s. Real Services Inc. The petitioner claims that he studied immigration laws of UK, USA, Canada and Australia and visited these countries and has liaison and contact with more than 100 leading professional law firms. He made association agreement with these law firms and he started providing consultancy service in India to the persons who were interested to migrate to these countries, in respect of immigration law. The petitioner used to charge his professional fee for providing services in respect of visa and other counseling to his clients. He hired well educated counselors. His 95% of clients were satisfied with the services. The petitioner has given in detail how he used to work and has also placed on record documents concerning his firm and working. He submitted that 2 FIRs were lodged against him at the complaint of Pankaj Sud and Jai Bhagwan making false allegations of fraud and cheating. A bare perusal of the contents of FIRs of these two persons would show that allegations were almost same and no offence had been committed and the transaction was purely of civil nature. In case of FIR lodged by Pankaj Sud, the Court had passed an order not to arrest the petitioner without prior notice. However, since no such order was passed in case filed by Jai Bhagwan, the respondent misused their power by lodging the FIR on 5.10.2006 and arresting the petitioner on the same day. The police did not investigate the real facts and without investigating and looking into the correspondence and the records available, arrested the applicant without any reason. More similar complaints were also lodged by some other persons.

3. The petitioner's contention is that the police is entitled to arrest the offender only after investigating the matter and if there was cogent evidence against the offender. The petitioner, in the case lodged by Pankaj Sud had placed before police officials all documents and other material showing that the controversy was purely of civil nature and there was lack of action on the part of the client in not providing necessary data and information so that his application for immigration could

be entertained by the authorities. There was no question of cheating or fraud on the part of the petitioner. Despite having all these data, the police authorities misused their power malafidely and arrested the petitioner tarnishing his personal image and compelling him to close his business thereby causing him irreparable loss and damages. The petitioner in view of above submissions prayed for the reliefs sought by him in the Writ Petition.

4. When a criminal case is registered against somebody, the Court cannot jump to conclusion, merely on the basis of FIR, whether the case was a false case or a truthful case and whether the petitioner has been malafidely arrested or has been rightly arrested. FIR is merely a first information given to the police so as to bring machinery of criminal law in motion. FIR is not considered as an encyclopedia of facts. It is only after challan is filed, the Court can form an opinion, at the time of framing of charge, whether a case was made out against the accused worth trial or not. If the evidence collected by the prosecution does not disclose commission of any offence, by the accused even prima facie, the Court has to discharge the accused. The accused at that stage can lay a claim that the case was got registered against him malafidely and police also acted malafidely. Even after charge is framed, on conclusion of trial if a Court finds that no case was made out against the accused and he was falsely implicated, the Court is bound to acquit the accused and that will be the second stage whether accused gets a right to claim that he was falsely implicated. The present Writ Petition filed by the petitioner has not been filed after discharge of the petitioner or after acquittal of the petitioner. In a Writ Petition this Court cannot declare if the arrest of the petitioner in a criminal case was illegal, unless on the face of it, it appears that it was a case where no arrest could have been made.

5. I consider that this Court cannot issue a declaration in the present case since the complainant in this case made certain allegations and investigation of these allegations and collection of evidence is being done by the prosecution.

6. Needless to say that in case it is found that the petitioner was arrested without there being sufficient evidence and without there being any complicity of the petitioner in the crime, petitioner will have right to proceed against the respondent for malicious prosecution and illegal arrest. It is settled law that police cannot encroach upon the liberty of a citizen without following due process and law and without there being sufficient and cogent material showing, prima facie, involvement of the accused. I consider that the present petition filed by the petitioner is premature.

7. The claim of the petitioner for damages also cannot be entertained. The petitioner should approach Civil Court for claim of damages proving the quantum of damages suffered by the petitioner. Writ Petition does not lie for claiming damages on account of loss of business, reputation, etc. The Writ Petition is not maintainable and is hereby dismissed.

October 10, 2007 SHIV NARAYAN DHINGRA J.