

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 283/2009

A & B

..... Petitioner

Through Mr. Trideep Pais with
Ms. Naomi Chandra and
Mr. Amit Kumar, Advocates.

versus

STATE THR. N.C.T. OF DELHI & ANR. Respondents
Through Ms. Mukta Gupta, Sr. Standing Counsel
and Mr. Pawan Bahl, APP.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER

25.05.2009

1. The present case arose out of a seemingly innocuous act involving the petitioners, a young married couple, outside the Dwarka Court complex on 18th September 2008. Pursuant to the orders of this Court, a conscientious Commissioner of Police had the case again inquired into. The result is that the misconceived prosecution of the petitioners for the offence under Section 294/34 IPC is by this judgment brought to a close.

Background Facts: the version of the Petitioners

2. The facts are that petitioners decided to get married of their own will, without the consent of their respective parents. Seeking to get their marriage registered under the Hindu Marriage Act, 1955, they engaged the services of a lady lawyer (hereafter referred to as LL).

LL informed them that the marriage would be registered in two phases. First there would be a ceremony at the Arya Samaj temple followed by the registration. LL quoted a fee of Rs.15,000. The petitioners were to pay Rs.7,000 for the religious ceremony and Rs. 8,000 for the registration. Rs. 7,000 was paid to LL by the petitioners upfront for overseeing the marriage ceremony at the Arya Samaj Mandir which took place on 4th September 2008.

3. On 6th September 2008 the petitioners paid LL Rs.8,000 for the purposes of the registration of the marriage. LL asked the petitioners to come to the Dwarka Court Complex at around 2 pm on 18th September 2008 to get the paper work done for the registration. At around 2.30 p.m., LL met the petitioners at the Dwarka Court complex. She informed them that the gazetted officer who would be attesting their papers was held up with some work and therefore they should wait outside the court complex. The couple decided to wait under a Delhi Metro Pillar outside the court complex. Shortly thereafter their ordeal began.

4. According to the petitioners they were taking pictures of each other and of them sitting together using their mobile phones. Some of the said pictures have been placed on record. They spotted that LL's associate, a lawyer named JD, was standing in the vicinity talking on his mobile phone while continuing to glance at them. A Police Control Room (PCR) suddenly showed up there and a couple of policemen alighted and made their way towards them. One of

these policemen [later identified as Sub Inspector (SI) Vidyadhar] spoke rudely to them, accused them of “kissing in public” and told them that this was an offence which would land them in jail. Both the petitioners were arrested and taken to the Dwarka police station in Sector 23 in the police van. Petitioner No.1 was manhandled and pulled by his hair and collar. There were about four policemen inside the PCR van and there was no lady constable. Despite this Petitioner No.2, a woman, was also arrested and taken in the police van. According to the petitioners, all this happened at around 3.30 p.m.

5. Upon reaching the police station, the petitioners 1 and 2 were made to sit separately. Petitioner No.1 was taken into a room for questioning whereas petitioner No.2 was asked to sit inside near the front desk. The petitioners then kept calling LL who initially did not take their calls. Thereafter she landed up in the police station at around 5 pm along with her colleague `JD`. LL informed the petitioners that JD would had some “contacts” with the Dwarka police. LL and JD then stated that they had negotiated with the police and they were making efforts to ensure that the petitioners would not be imprisoned for their “crime”. JD informed petitioner No.1 that the police was going to register an FIR and would not let them leave the police station unless they paid Rs.20,000. Petitioner No.2 was also informed by LL that the case for which the police were going to register an FIR against them would carry a punishment of imprisonment for a period of three years and that the

police would permit them to leave only if they paid Rs.20,000.

6. The petitioners were shaken up by the whole episode and did not see any other option but to agree to pay the said sum as they feared they would be detained in the police station overnight if they refused. It is stated that while they were in the police station, the petitioners were not allowed to see each other or contact any one from their respective families. LL took petitioner No.1 to the upper floor of the police station and informed him that the police would register an FIR and that the bail amount was set at Rs.20,000. He was also asked to get two persons to stand as surety. Petitioner No.2 was informed by LL that by paying Rs.20,000 they would be charged with a lesser offence punishable with imprisonment for a year. As the petitioners were not carrying Rs.20,000 in cash, LL suggested that the petitioner No.1 should give her his ATM card which she would use to withdraw the said amount. Having no other option, petitioner No.1 agreed to this. A taxi in which the petitioner No.2 was to be dropped at her house was called to the police station. Petitioner No.1 gave his ATM card to LL at around 7 pm. LL went in the said taxi to the ATM, withdrew the money, and returned with the cash. She then claimed that she had deposited the amount with the police who nevertheless proceeded to register the FIR. The petitioners have placed on record a statement from the ICICI bank showing that Rs.20,000 was withdrawn from the ATM using the card of Petitioner No.1 on 18th September 2008 at 7.11 pm.

7. Thereafter the two sureties whom the petitioners had called to stand as surety came to the police station and completed the formalities. The petitioners were asked to be present in the court on 24th September 2008 and then allowed to leave. It is stated that once everyone came out of the police station LL and JD asked for an additional sum of Rs.5,000 as their professional fee for getting the petitioners released on bail. The petitioners did not have the money. LL told them that they could pay the said sum later. It is stated that LL telephoned petitioner No.2 and informed her that the case against them was in the court and that they should pay Rs.70,000 more to LL to reach an “out of court” settlement since the case could drag on for several years.

8. On the following day, i.e., on 19th September 2008, when petitioner No.2 asked LL lawyer how the sum of Rs.20,000 was spent, LL explained that Rs.12,000 was spent for procuring bail and Rs.8,000 was for bribing the police to register the FIR for a lesser offence. The petitioners realised that they had been duped by LL and JD acting in connivance with the concerned policemen at Dwarka police station.

The version of the Prosecution

9. The FIR No. 581 of 2008 registered at PS Dwarka against the petitioners for the offence under Section 294/34 IPC narrates a different version. The time in the FIR is shown as “from 17.15 hours onwards.” The date and time of the receipt of information in the

police station is shown as 18th September 2008 and 18.30 hours. The complainant was SI Vidyadhar Singh (No. D/3563) himself. According to him at around 5.15 pm he and Constable Roshan Lal (No. 1314/SW) were present near the District Court Complex Dwarka. He claimed to have seen saw the petitioners 1 and 2 “sitting in an objectionable position near Metro Pillar No.1140” and “kissing each other”. It was alleged that as a result of the acts of the petitioners “the passers by were feeling bad.” [The FIR is in Hindi and the words in quotes are an approximate translation]. Vidyadhar Singh apprehended both of them with the help of Constable Roshan Lal. Claiming that the petitioners had committed an offence under Section 294 read with 34 IPC (doing obscene acts in a public place “to the annoyance of others”). Accordingly, a written application was sent for registration of the case through Constable Roshan Lal No. 1314/SW. Thereafter a charge sheet was filed in the court of the learned Metropolitan Magistrate (MM) and cognisance was taken of the offence under Section 294/34 IPC against both the petitioners.

10. Along with the charge sheet was enclosed a copy of the FIR, two arrest memos, one seizure memo, the bail bond and the personal bond and a punishment slip. The statements of the persons listed as witnesses were also appended. The witnesses were Constable Roshan Lal, lady Constable Sheela, ASI Shishu Pal Singh and SI Vidyadhar Singh. The arrest memo in respect of Petitioner No.1 showed the time of arrest as 7 pm. The arrest memo in respect of petitioner No.2 showed the time of her arrest as 7.15 pm. In her

statement under Section 161 CrPC lady Constable Sheela claimed that she was asked to come to Sector 10 Dwarka and that petitioner No.2 was arrested by SI Vidyadhar Singh in her presence. Constable Sheela signed the arrest memo. Constable Roshan Lal also maintained that he was present with Vidyadhar Singh at around 5.15 p.m. when they found the petitioners sitting in an objectionable position and kissing each other.

Events thereafter

11. The petitioners gave a complaint to the Bar Council of India on 9th October 2008 against LL and JD. On 27th October 2008 they also made a detailed complaint to the Commissioner of Police. This was received in the office of the Commissioner of Police on the same date. The petitioners received an intimation from the Inspector (Vigilance) asking them to appear before him on 7th November 2008 at 2 pm. Thereafter nothing was heard by them. On 28th January 2009 the petitioners filed the present petition seeking quashing of the FIR No. 581 of 2009 registered at P.S. Dwarka and all proceedings consequent thereto.

12. At hearing of this case on 2nd February 2009 the following order was passed by this Court:

“1. The facts brought to the notice of this Court by way of the present petition which seeks the quashing of proceedings arising out of FIR No. c are rather troubling. The Petitioners are a young couple, aged 28 and 23 years, who solemnized their marriage on 4th

September 2008 at the Arya Samaj Mandir, Jamuna Bazar, Delhi apparently without the knowledge of their respective parents. They sought the services of a lawyer to get their marriage registered under the Hindu Marriage Act, 1955. The lawyer asked them to come to the Dwarka Court Complex on 18th September 2008 apparently to get some paper work done in regard to the registration of their marriage. While they were waiting under the Metro Station near the court complex at around 3 pm in the afternoon, an Assistant Sub-Inspector (‘ASI’) of Police Vidyadhar Singh (No. D/3563 PIS No.16960047) attached to the Police Station Dwarka along with a constable Roshan Lal (No. 1314/SW) accosted them and allegedly told them that he knew what they were up to. According to the FIR which was registered at the instance of the Vidhyadhar Singh, he found the two Petitioners “sitting in an objectionable position near Metro Pillar No.1140 and were kissing each other. As a result of which the passersby were feeling bad.” (This is the English translation of the FIR which was registered in Hindi which corresponds to these words).

2. The FIR records that on enquiry the ASI found that Petitioner No.2 is the wife of Petitioner No.1 residing at the same address. Learned counsel for the Petitioners clarifies that in the complaint made to the Bar Council of India and to the Commissioner of Police although the addresses of the parties are shown as being in Greater Kailash, which is the permanent address of Petitioner No.1, this has been done for the sake of convenience. Since this was a love marriage without the knowledge of their respective parents, the address of Petitioner No.2 continues to be shown as being in Gurgaon.

3. What is striking is that despite the SI finding on enquiry

that the two Petitioners were husband and wife living in the same place, he thought it fit to go ahead and register an FIR for an offence under Sections 294 read with 34 IPC. Although the FIR refers to “passers by” being annoyed not a single name of any “passer by” is found mentioned. Learned counsel for the Petitioners adds that the so-called investigation of the FIR has resulted in a charge sheet being filed on 30th January 2009 which does not refer to a single statement of any passer by recorded under Section 161 CrPC. To say the least, the FIR even when taken on its face value, does not make out a case for the offence under Section 294 read with 34 IPC. It is inconceivable how, even if one were to take what is stated in the FIR to be true, the expression of love by a young married couple, in the manner indicated in the FIR, would attract the offence of “obscenity” and trigger the coercive process of the law.

4. Notice.

5. Mr. Behl, learned APP for the State accepts notice.

6. The trial court record be produced before the next date of hearing.

7. Mr. Behl further states that he will also take specific instructions on the action taken on the complaint made on 27th October 2008 by the Petitioners to the Commissioner of Police which appears to have been received in the Office of the Commissioner of Police on that day itself by Ms. Shalini Singh, DCP, S/W.

8. There will be a stay of further proceedings arising out of FIR No. 581 of 2008 till further orders.

9. List on 25th February 2009.”

13. An application was soon thereafter filed by the petitioners stating in view of the unusual publicity that the case was receiving in the media, their names should not be revealed even in the cause list. By an order dated 22nd February 2009, this application was allowed and cause title was amended to read as “A & B v. State”.

14. The respondent State filed its reply which was considered by this Court on 22nd April 2009 and the following order was passed:

“1. The reply dated 18th March, 2009 signed by the Deputy Commissioner of Police (South-West), New Delhi has been perused.

2. In the order dated 2nd February 2009, this court had recorded the statement of Mr. Pawan Behl, the Learned APP that he will take specific instructions on the action taken on the complaint made on 27th October, 2008 by the petitioners to the Commissioner of Police. In the reply, among other things, it is stated that a vigilance enquiry was conducted by “authorized officer” and he had examined the witnesses including ACP Shri Rajinder Singh. The statement of (LL), Advocate and the statements of other witnesses were also recorded. It is stated that on the basis of the statements made, the enquiry was closed.

3. The file of the enquiry has been shown to this Court. It appears that the enquiry was conducted by Sub Inspector Veer Singh of the Vigilance Branch (South-West) and not by the DCP himself. The petitioners gave a statement before SI Veer Singh to supplement the complaint dated 27th October, 2008. It appears that they also gave him the

printout of the bank statement showing withdrawal of cash of Rs.20,020/- at 7.11 p.m. on 18th September, 2008 from the ATM using the card of petitioner No.1. The specific allegation of the petitioners is that when they were brought to the police station after their arrest, they had called (LL), the lawyer, who had undertaken to get their marriage registered. They were made to believe that the said lawyer and her associate were negotiating with the police in order to help them out of the police station and to ensure that they were not imprisoned for the crime. The allegation is that around 5.30 p.m., the associate of the lawyer informed petitioner No.1 that the police was going to register an FIR for an offence punishable with three years' RI, and would not let them to leave the police station unless they paid Rs.20,000/-. They were assured that if they made such payment they would be charged with an offence which carried a lesser punishment of imprisonment for one year only and not three years as originally proposed. (It is required to be noticed at this stage that the offence for which the petitioners have been charged is under Section 294 IPC and is punishable with three months' imprisonment).

4. The specific allegation of the petitioners is that since the petitioners were not carrying Rs.20,000/- in cash and they were told that they will not be allowed to leave the police station without paying the amount, (LL) suggested that the petitioner No.1 could give her his ATM card which she would use to withdraw the said amount. A taxi was called to the police station in which (LL) went to the ATM, withdrew the money and returned. She then claimed to the petitioners that she had deposited the said amount with the police, who then proceeded to register the FIR.

5. In the face of the above allegations of the petitioners, it is surprising that in the enquiry report, prepared by SI Veer Singh he has glibly accepted the statement of the lawyer that the petitioners gave her Rs.20,000/-as advance case fees and the remaining fee was to be paid to her during the trial of the case. The arrest memo shows that the petitioner No.1 was arrested at 7.00 p.m. near the Metro Pillar No.1140 District Court, Dwarka and petitioner No.2 at 7.15 p.m. near the Metro Pillar No.1140. The statement made by (LL) in the enquiry that the said amount was paid to her as fees, in between 7 p.m. and 7.15 p.m. appears unbelievable. In the enquiry when she was asked how the petitioners managed to pay her the money, she explained that the petitioners withdrew the money from the ATM themselves and gave it to her. Clearly, the time of the withdrawal of the money from ATM and the time of the arrest shown in the arrest memo totally belies the statement of (LL). It is indeed surprising that this statement of (LL) has been accepted by the Enquiry Officer as being correct. A bare perusal of the documents on the case record, and the statements recorded by the police themselves show that (LL) was not speaking the truth before the Enquiry Officer.

6. The report of SI Veer Singh further shows that originally the lawyer was asked to come on 24.11.2008 and when she expressed some difficulty she was asked to come on the following day. A message was sent to the petitioners “to manage accordingly.” But it is claimed that since one of them talked to the Enquiry Officer “in a very rude manner”, he simply lodged two D.D. entries. Clearly, therefore, no opportunity was given to the petitioners to cross-examine the lawyer whose statement as noted above does not inspire confidence at all.

7. The whole purpose of this Court eliciting a proper response about the action taken by the police on the complaint of the petitioners was to enable them to get to the bottom of the allegation that illegal gratification was sought in the police station premises for letting the petitioners off or for booking them for a lesser offence. The report of the enquiry prepared by the SI Veer Singh, which has been repeated verbatim by the Additional DCP, does not inspire confidence at all.

8. Another important facet is the role played by ACP Rajender Singh who on 25.11.2008 made a statement before the Enquiry Officer to the effect that he had himself seen the petitioners sitting in an objectionable posture and kissing each other on 18.9.2008 outside the Dwarka Court premises. Interestingly, ACP Rajender Singh is nowhere mentioned in the FIR as having witnessed this incident. He has not been cited as a witness in the charge-sheet filed before the trial court. It is remarkable that an officer of a senior level who claims to have seen the alleged incident himself has not been cited as a witness by the police. He has chosen to make such a statement for the first time during the enquiry. This makes his role rather doubtful.

9. This Court is unable to understand why the police has not been able to conduct a responsible enquiry into the matter in the face of the specific allegations made by the petitioners.

10. Therefore, this Court requires the Commissioner of Police to examine the matter concerning the circumstances preceding the registration of the FIR, and in particular the allegations made by the petitioners

concerning the conduct of the police officials and the lawyer in the episode. The allegations in the petition on the conduct of the police officials should be probed thoroughly by the Commissioner himself or by a very senior level police officer so that the complete truth can be unearthed.

11. A copy of this petition along with a certified copy of this order be delivered to the Commissioner of Police within the next three days. This Court requires the Commissioner of Police to himself personally file an affidavit in this Court enclosing the report of enquiry by the next date of hearing after the completion of the enquiry. The Commissioner of Police is free to take any consequential disciplinary action, if any, without waiting for further orders from this Court.

12. List on 25th May, 2009.

13. Interim order to continue.”

Conclusions of the Enquiry by the Special Commissioner

15. Pursuant to the above order passed by this Court, the Commissioner of Police Shri Y.S. Dadwal has filed an affidavit dated 22nd May 2009 enclosing therewith the report of the vigilance enquiry conducted by Shri Satish Chandra, Special Commissioner of Police. The enquiry appears to have been a detailed one in which both the petitioners, the two lawyers and the concerned police officers were examined. Their cell phone records were scrutinized. The conclusions arrived at by the Special Commissioner of Police in his report dated 20th May 2009 are as under:

“1. Cell phone records indicate that ACP/Dwarka, Shri

Rajinder Singh and SI Vidyadhar are making a false statement regarding time of arrest. The records indicate that (Petitioner No.1 and Petitioner No.2)* were arrested from near Metro pillar No.1140 in front of Dwarka Court entry gate at about 1530 hours. At the time of arrest, there was no lady Const. or lady police officer present and therefore the process of making arrest has violated guidelines for arrest of a lady accused due to absence of a lady officer.

2. Statement of Advocate (JD) indicated that *(Petitioner No.1) was lodged inside the P.S. lock-up whereas *(Petitioner No.2) was in the Reception Room of the P.S. However, I.O.SI Vidyadhar has denied this. He has stated on record that *(Petitioner No.1) was kept in the 'Sankraman Kaksh' and that both accused were together. Advocate (LL) and *(Petitioner No.1) himself have also stated that he was kept in a room and not in the lock-up.

3. Cell phone records are not of any help in tracing the movement of those who sent to withdraw money from the ATM. The record of only (JD) indicated his movement at 7.11 PM in the location where the ATM is installed.

4. Statement of Taxi driver Raju Kanojia indicated that three persons went to withdraw money. Description provided by him indicate these to be Advocates (JD), (LL) and *(Petitioner No.2). However, *(Petitioner No.1) has denied this, saying he and *(Petitioner No.2) were not allowed to go out. Since *(Petitioner No.2) was in custody, her movement to the ATM would not have been possible without consent and knowledge of the police officer/I.O. SI Vidyadhar.

5. From the chain of events, it is concluded that

Advocates (LL) and (JD) managed to obtain substantial amount as their fee.

6. *Petitioner No.1 and *Petitioner No.2 were arrested from near Metro Pillar No.1140, Sector-10, Dwarka at about 3.30 PM but they were shown to have been arrested at 7 PM. To that extent, the records of the P.S. i.e. station diary, time of registration of FIR etc. were managed. Also movement of lady Const. is only shown to have taken place on paper whereas no lady Const. was present at the time of arrest.

7. The case was registered on 18.9.08, and was charge sheeted on 30.10.08, but **no sincere efforts appear to have been made to investigate the case properly. The most important ingredient of the offence, i.e., annoyance to the public has not been proved during investigation. There is no public witness to prove the annoyance, there is no PCR call and the only witness, ACP Rajinder Singh, has remained in the background. He is neither the complainant of the FIR nor the witness.**

8. **The enquiry is indicative of the fact that police officers by their conduct managed to force *Petitioner No.1 to pay substantial amount of fees to their advocates.** It is a strong possibility that SI Vidyadhar also received a part of this payment, which however, remains only a conjecture.

9. **Disciplinary proceedings are recommended against SI Vidyadhar of PS Dwarka and Shri Rajinder Singh, ACP/Dwarka.”** (emphasis supplied)

Consequential directions

16. At today's hearing Ms. Mukta Gupta, the learned Senior

Standing Counsel for the State submitted that in view of the findings returned by the Special Commissioner of Police there was no objection on behalf of the State to the quashing of the FIR. She added that the essential ingredient of Section 294 IPC that the act in question must cause annoyance to some persons was not found and therefore not even a prima facie case was made out against the petitioners. She assured that the disciplinary proceedings against the police officers concerned would be carried to its logical end. She further stated on instructions that the Commissioner of Police would himself write a letter to each of the petitioners conveying the apology of the Delhi Police for the hardship they were subject to on account of this case.

17. This Court appreciates the promptness with which the Commissioner of Police as well as the Special Commissioner have acted and ensured the completion of the enquiry. The gesture of the Delhi Police in offering to write a letter of apology to each of the petitioners (which it is expected would be done immediately) will doubtless earn goodwill for them.

18. In view of the conclusions reached by the Special Commissioner of Police and in view of the submissions by the learned counsel for the State, this Court is not called upon to decide whether in the facts and circumstances of the case the offence under Section 294 IPC stood attracted. This Court has expressed its prima facie view on this aspect in its order dated 2nd February 2009. In view of the assurance

given by the learned counsel for the State no specific direction is issued in respect of completion of the disciplinary proceedings against the police officers concerned. The petitioners are free to seek any other remedies available to them in law including their complaint to the Bar Council of India.

19. The FIR No. 581 of 2008 registered at PS Dwarka under Section 294 read with 34 IPC pending in the Court of the learned ACMM, Dwarka Courts, New Delhi and all proceedings consequent thereto are hereby quashed.

20. The petition is accordingly allowed with costs of Rs. 5000 to each of the petitioners which will be paid to each of them by the State within four weeks from today.

21. Order dasti to the parties. The trial court record be returned to the court concerned together with a certified copy of this order. A certified copy be also delivered forthwith to the Commissioner of Police.

S. MURALIDHAR, J.

MAY 25, 2009
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