

Court No. - 2

Case :- MISC. BENCH No. - 10096 of 2011

Petitioner :- Nitin Singh

Respondent :- State Of U.P.Through Its Prin. Secy. Home Lko.And Ors.

Counsel for Petitioner :- R.C.Gupta,Suyash Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Ajai Lamba,J.

Hon'ble Narendra Kumar Johari,J.

(ORAL)

1. Nitin Singh son of Shri K.P. Singh resident of C-172, Alpha – 1, Greater Noida, District Gautambudh Nagar has preferred this petition for issuance of a writ in the nature of mandamus directing respondent no.1 (Principal Secretary, Home, U.P., Lucknow) to decide representation dated 01.09.2011 and reminder dated 05.10.2011, placed on record as Annexures – 2 and 3 respectively.

The other prayer made in the petition is for issuing a direction to respondent no.2 (Director General of Police, U.P., Lucknow), respondent no.3 (District Magistrate, Gautambudh Nagar, U.P.) and respondent no.4 (Deputy Inspector General of Police/Superintendent of Police, Gautambudh Nagar, U.P.) to provide adequate security to the petitioner.

2. We find that the petition was filed through Shri R.C. Gupta, Advocate and Shri Suyash Gupta, Advocate.
3. Gist of the pleadings in the petition is that the petitioner is Director in Flamingo Buildwell and Developers Pvt. Ltd., Orchid Stocks Pvt. Ltd. and B.N. Institutional Education (P) Ltd., and also does trading of leading women's garments group named "W".

It has also been pleaded that the petitioner is engaged in infrastructure development, real estate promoters, developers etc. It has been pleaded that the petitioner has a property dispute with Mohd. Kashif and Mohd. Adil, both brothers, holding post of Directors in another corporate who allegedly have cheated the petitioner of Rs.1,80,00,000/-. It has been alleged that on account of the dispute, monetary and otherwise with the said two persons, F.I.R. with allegations of cheating and forgery etc., has been registered in Police Station Kasna, District Gautambudh Nagar, U.P., for commission of offence under Sections 420, 467, 468, 471, 406, 506 Indian Penal Code, placed on record as Annexure – 11.

4. It has been alleged that the petitioner was attacked on 02.12.2010 at around 10:00 AM when, after parking his car, he was on his way to the office. The attack was carried by three un-identified persons on motorcycles armed with firearms. None, however was injured. An application was moved for providing security, which however has not been provided.

It has been pleaded that the petitioner was again attacked on 05.12.2010 at around 10:30 PM by un-identified persons with firearms. F.I.R. was registered for commission of offence under Sections 504 and 307 Indian Penal Code in Police Station Dankaur, District Gautambudh Nagar, U.P., placed on record as Annexure – 13.

5. When action was not taken, applications were given to the respondents for early decision on the representation. Subsequently, the petitioner filed Writ Petition No.210 (MB) of 2011 titled 'Nitin Singh Vs. State of U.P. & Ors.' for providing adequate security cover and deciding representation dated 15.12.2010 (Annexure – 14) which was finally decided on

13.01.2011. Copy of the order has been placed on record as Annexure – 1.

6. We have referred to contents of Annexure – 1.

Vide order dated 13.01.2011 rendered in Writ Petition No.210 (MB) of 2011 (supra), the State Government was directed to take a decision with regard to grant of security to the petitioner. It was further directed that in the meantime till the matter is adjudicated by the State Government, Superintendent of Police/ District Magistrate, Gautambudh Nagar shall consider the requirement of grant of security to the petitioner, and security may be provided on payment according to rules/government order.

7. It has been pleaded that after passing of order dated 13.01.2011, a security person was provided to the petitioner on 06.02.2011 on payment of 25% of the cost, which however was withdrawn on 06.08.2011 on the pretext that it can be revived after getting fresh report from District Level Authorities pertaining to perception of threat to the petitioner.
8. It has been pleaded that final report was filed in Court after investigation of F.I.R., placed on record as Annexure – 13 (supra). It has further been pleaded that thereafter protest petition was filed in appropriate Court having competent jurisdiction. It has been pleaded that another attempt was made on the life of the petitioner.
9. We have taken into account contents of order dated 15.11.2011 passed in this petition, which reads as under :-

“In spite of time having been granted, opposite parties have not filed counter affidavit.

Keeping in view the pleadings on record and the factual matrix argued by the learned counsel for the parties, as an interim measure, opposite parties are directed to provide security to the petitioner on payment basis immediately in accordance with rules.

Let counter affidavit be filed within four weeks. Rejoinder affidavit, if any, may be filed within a week thereafter.

List thereafter.”

10. The petitioner is enjoying benefit of interim order passed vide order dated 15.11.2011, extracted above. This has been admitted by learned counsel for the petitioner.
11. Although the case was required to be listed for hearing soon after 15.11.2011, however reference to the order sheet indicates that the case was not listed for about 8 years. The case was listed on 23.05.2019 when the following order was passed :-

“Learned counsel for the petitioner is not available.

List on 24.05.2019, high up in the list.

No further adjournment would be given under any circumstance.”

12. The case was listed on 24.05.2019, however again counsel(s) for the petitioner were not available, therefore, the following order had to be passed on 24.05.2019 :-

“Learned counsel(s) for the petitioner is reported to be on sanctioned leave.

List on 18.07.2019.”

13. On 18.07.2019 when the case was listed for hearing, the file was not forwarded to the Court. This Court asked Deputy Registrar, Miscellaneous Bench Section to explain. Order dated 18.07.2019 is self-speaking and reads as under :-

“1. The instant writ petition has been listed at Serial No.12 of the Daily Cause list, however the file has not been forwarded by the branch/section for adjudication by the Court.

Shri R.K. Maurya, Deputy Registrar, Miscellaneous Bench Section alongwith three other officials has been summoned. Shri Maurya informs the Court that the file was available two days back, however today it was not available for being forwarded to the Court. We find that the petitioner is enjoying fruits of interim direction, while conveniently the file has been misplaced.

2. Learned counsel for the petitioner has not appeared.

3. In the considered opinion of the Court, a thorough inquiry into the matter is required.

4. We hereby direct Senior Registrar of the Court to order a thorough inquiry. In case it is found that there is a foul play, the Senior Registrar shall not hesitate in getting a criminal case registered.

5. Let a report be furnished before this Court on or before 31.07.2019.

6. In the meantime, the file be reconstructed. We have been informed that file available with the State is complete.

7. List on 31.07.2019. “

14. In deference to order dated 18.07.2019, inquiry was conducted. The conclusion drawn by Dr. Deepak Swaroop Saxena, OSD(J) (S)/the Inquiry Officer is in the following terms:-

“In light of the facts narrated by the statements of EW-1 Sri RK Maurya, Sri Shyam Narayan (EW-2) Assistant Registrar, Sri Ram Sewak (EW-3) Assistant Registrar, Sri Chhote Lal (EW-4) Section Officer, Sri Kedar Nath Gupta (EW-5) Review Officer, Sri Mahendra Kumar, Peon (EW-6), Sri Sher Ali, Peon (EW-7) and Sri Neeraj Kumar, Review Officer (EW-8) and also in view of the documentary evidences i.e. the written confession of Sri Manoj Kumar (in which he has confessed that he has deliberately hidden the file of WP No. 10096 (MB) 2011 in the drawer of Sri Neeraj Kumar for preventing it to be sent to Court) and the copy of FIR lodged against Sri Manoj Kumar it is established that Sri Manoj Kumar (R/o 1/326, Vishal Khand, Gomti Nagar, Lucknow) is prima facie responsible for deliberately hiding the file of WP No.10096 (MB) 2011 to prevent it from providing the Court for hearing at it's date fixed and FIR has also been lodged against him.

Due to negligence of Sri RK Maurya, Deputy Registrar, Sri Shyam Narayan, Assistant Registrar and Sri Ram Sewak, Assistant Registrar towards discharging their responsibility of supervision of the MB Section the security of the judicial records of the MB Section was remained on edge.

Sri RK Maurya, Deputy Registrar, Sri Shyam Narayan, Assistant Registrar, Sri Ram Sewak, Assistant Registrar, Sri Chhote Lal, Section Office, Sri Neeraj Kumar, Review Officer, Sri Kedar Nath Gupta, Review Officer, Sri Mahendra Kumar, Peon and Sri Sher Ali, Peon are prima facie responsible for illegally patronizing an unauthorized person namely Sri Manoj Kumar alias Commander in the Section where valuable judicial records are lying and for not providing the file of WP No. 10096 (MB) 2011 to the Hon'ble Court at it's date fixed.

Report is humbly submitted for your goodself's kind perusal and necessary orders.”

15. In view of the conclusion drawn, we have referred to the confessional statement of Shri Manoj Kumar who was seen in CCTV footage as committing the offence. Gist of the statement of Manoj Kumar when translated reads as under :-

“My name is Manoj Kumar s/o Late Shri Krishna Chandra Lal and I am resident of 1/326, Vishal Khand (1), Gomti Nagar, Lucknow. Presently, I am serving as a private clerk to Shri Badrish Tripathi, Advocate. Earlier to this I was serving as Sewak with Justice Shailendra Saxena from 2004 to 2006. My file is pending before Registrar General, Allahabad and to pursue the file, I keep coming to the Court. On 18.07.2019 at about 10 O’Clock, I had gone to Writ MB Section for inquiring about a copy. I found file of 10096/11 M.B., which I put under the rack. I put the file there on the asking of Shri O.P. Srivastava. Shri Om Prakash Srivastava, Advocate had told me that file 10096/11 M.B., should not be sent to the Court.

Sir, it is stated that in future I will not commit any such fault.

*Om Prakash Srivastava
R/o Govind Vihar Colony,
2/337 Gomti Nagar,
Lucknow.*

*Manoj Kumar
1/326, Vishal Khand (1),
Gomti Nagar,
Lucknow.
Mob. No.9454294222*

16. The High Court is also a Court of record and is required to maintain the record for all times. The case in hand was listed repeatedly, however arguments were not addressed for one reason or the other, as can be noticed from the above extracted orders. Evidently the lawyers employed one reason or the other to delay adjudication. When the case was directed to be listed on 18.07.2019, the file was not received in the Court whereupon an inquiry was ordered. The inquiry officer concluded as extracted above.
17. From the facts and circumstances of the case it becomes evident that Manoj Kumar is not an employee serving in the Registry of the Court. The said Manoj Kumar was found in the Miscellaneous Bench Section and had an opportunity to manipulate and hide the file. The inspection section is not located anywhere close to the place where Manoj Kumar was found. It is only on account of CCTV grab that true facts could be unearthed.

18. It is evident that cognizable offence has been committed relating to original record of the High Court. Consequently, F.I.R. No.0461 dated 19.07.2019 has been registered in Police Station Vibhuti Khand, District Lucknow for commission of offence under Sections 380 and 411 Indian Penal Code.
19. We hereby direct Superintendent of Police (North), Lucknow to personally conduct investigation in the matter. For the said purpose, the Investigating Officer shall not spare any Official/Officer of the Registry or Advocate. All efforts be made to bring the criminals to justice.
20. We are constrained on recording that though Manoj Kumar the active player has named the person(s) at whose behest he was working, the said person(s) have not been arrayed as accused. We have also noticed that by the file not being placed before the Court and the extension of stay order, the petitioner Nitin Singh would be the beneficiary, however even Nitin Singh has not been arrayed as accused.

We are recording all these facts in this order to sensitise the Investigating Officer and to direct him to investigate the conduct of all concerned.

21. It appears that in the record rooms of the High Court and various Sections of the High Court outside persons are regularly being allowed to roam around. This is a cause of serious concern because some undesirable element might indulge in destruction of records by fire etc., also. Presence of unauthorised persons in such sensitive areas where records are kept and maintained, is a security risk and threat to the Court itself.

In such circumstances, we hereby direct Superintendent of Police, Security, High Court and Commandant, C.R.P.F./CCTV, High Court to seal all CCTV footage(s) for a period of one month preceding 18.07.2019, relating to record rooms and

various sections of the High Court. The said CCTV footage(s) be examined to find out as to how many non-employees/unauthorised persons have been entering, and working in various sections and record rooms etc., of the High Court.

The Senior Registrar shall depute a senior officer for the purpose. The said senior officer would work alongwith officials/officers of various sections and record rooms so as to identify the outside persons working/present in various branches.

22. So far as the departmental side is concerned, we find that only preliminary inquiry has been conducted. Although conduct of Manoj Kumar as evident from CCTV footage and his confessional statement, speaks volumes about the *modus operandi*, however regular inquiry is required to be conducted under the service rules and regulations.
23. We hereby direct Senior Registrar of the Court to forthwith initiate regular inquiry proceedings in the matter so that persons responsible are brought to book under the service rules and regulations also.
24. We have questioned Shri Suyash Gupta, Advocate who today is present in Court on behalf of the petitioner. Shri Gupta admits that the petitioner has been enjoying fruits of interim direction since 2011 and it is the petitioner who would get benefit by continuance of the order.

Shri Gupta has not been able to justify the conduct of making attempts to hide the file and evade process of Court.

25. We are of the considered view that the petitioner has tried to subvert the process of the Court by engaging in criminal activity and interfering with the administration of justice. Writ Court is also a Court of equity. In such circumstances, we find

no reason to entertain the petition and hereby dismiss the petition.

26. We hereby direct Senior Registrar of the Court, Director General of Police, U.P., Lucknow and Commandant, C.R.P.C., to take cognizance of contents of order and ensure necessary compliance.

We direct the Senior Registrar to place a copy of the regular inquiry report before the Court for its consideration on 20.09.2019.

27. The judicial file be sealed under signatures of Bench Secretary of the Court.

A copy of the Inquiry Report be given to Superintendent of Police (North), Lucknow to take a cue for investigation.

Let a copy of this order be released under signatures of Bench Secretary and supplied to Senior Registrar of the Court, Commandant, C.R.P.F., Superintendent of Police (North), Lucknow and Superintendent of Police, Security, High Court.

Order Date :- 31.7.2019

Nishant/-