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SAMPAT SINGH AND ORS.

v.

STATE OF HARYANA AND ORS.

DECEMBER 18, 1992

B

[S. RATNAVEL PANDIAN AND K. JAYACHANDRA REDDY, JJ.]

Constitution of India, 1950—Article 136—Appeal by persons not parties to earlier proceedings—Locus standi of petitioners—Whether appeal maintainable.

C

Constitution of India, 1950—Article 136—Appeal—Appreciation of facts—Party approaching court with ulterior motive—Liability of.

D

Criminal Procedure Code, 1973—Section 173—Case registered u/ss. 161, 165, IPC and u/s. 5(2) Prevention of Corruption Act—Whether Magistrate has jurisdiction.

E

Petitioner Nos. 1 to 16, members of the Legislative Assembly of Haryana and petitioner Nos. 17 to 19 members of the Parliament jointly filed a Civil Writ Petition under Article 226 of the Constitution of India before the High Court seeking to direct an investigation by Central Bureau of Investigation against one Ch. Bhajan Lal on the basis of F.I.R registered on the complaint making serious allegations of corruption, misuse of authority etc. and for setting aside the order of the Magistrate discharging the accused, Ch. Bhajan Lal.

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The High Court dismissed the petition by a brief order without going into the *locus standi* of the petitioners. Hence this SLP.

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When the very maintainability of this petition on the ground of *locus standi* of the petitioners was raised, it was contended that the perfunctory and mutilated investigation, the hasty submission of the Cancellation Report by the Police under Section 173 of the Code of Criminal Procedure and the unreasoned order of the Magistrate discharging Ch. Bhajan Lal without application of his judicial mind - writ large on the face of the final order dated 22.7.91 - were all under a cloud of suspicion and dust and, therefore, this Court in the interest of justice had to step into the matter

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and direct a fresh investigation by the CBI; that Ch. Bhajan Lal by

offering the post of Chairman of Khadi Board of Haryana State had inspired one Dharam Pal to file an affidavit withdrawing the allegations made in the complaint and that Ch. Bhajan Lal had thus planned very meticulously and ingeniously to derive the final nail in the coffin of investigation and in that endeavour had become successful. A

Dismissing the Special Leave Petition, this Court B

HELD: 1. The petitioners were not at all parties to the earlier proceedings at any stage. Hence, the petitioners have no *locus standi* to approach this Court for the reliefs sought for in this petition. [732-D]

Janata Dal v. H.S. Chowdhary, [1992] 4 SCC 305 and *Simaranjit Singh Mann v. Union of India and Another*, (1992) 4 J.T. 441, referred to. C

2.1. It is not for a Court to keep track of an investigation and watch its day to day progress but, of course, when an investigation culminates into a final report as contemplated under Section 173 of Cr. P.C., then the competent Court enjoins a duty within its authority sanctioned by law to scrupulously scrutinise the final report and the accompaniments by applying its judicial mind and take a decision either to accept or reject the final report. [733-E] D

2.2. The Court should not be indirectly used as an instrumentality by anyone to attain or obtain any beneficial achievement which one could not get through normal legal process and that if any one approaches the Court with ulterior motive, designed to wrench some personal benefit by putting another within the clutches of law and using the Court as a devise only for that end but not to get any legal remedy, then in such a situation the Court should heavily come upon such a person and see that the authority of the Court is not misused. [732-G,H] E F

2.3. The complainant who initiated the law into motion alleging serious allegations against Ch. Bhajan Lal who was then holding a Cabinet rank in the Central Government, may become liable for criminal and civil liability in case the allegations are not proved. [733-B] G

2.4. Neither the State nor the complainant has challenged the Order of the Magistrate discharging the accused, presumably for the reasons that the Police has closed the investigation and sent its Cancellation Report and that the complainant has expressed his desire in his affidavit H

A not to probe into the allegations. [732-H; 733-A]

2.5. Whatever might have been the motive of the complainant for withdrawal of his complaint, he, after having fought the case up to this Court in quashing proceedings cannot have any justification in requesting the investigating officer not to probe into the allegations and staging a 'walk out' of the Court. On the other hand, he ought to have submitted to the discipline of the Court, especially when he has initiated the proceedings as a public interest litigant. [733-C]

C 3.1. In the instant case, the case is registered under Sections 161 and 165 of the Indian Penal Code and under Section 5(2) of the Prevention of Corruption Act, which offences can only be tried by a Special Court.

[733-G]

D 3.2. It was necessary for the Magistrate to have sent the final report to the Special Court which is alone competent to try the case. [734-B]

A.R. Antulay v. R.S. Nayak & Anr., [1988] Suppl. 1 SCR 1 and *K. Siva Kanchi Reddy v. State of A.P.*, 1991 Andhra Pradesh Law Journal 1, Referred to.

E 3.3. The Magistrate before whom the cancellation report had been placed, instead of acting on it by himself, should have forwarded the same to the Special Judge but he has not done so especially when he has no power to try the offences. [734-D]

CIVIL APPELLATE JURISDICTION : Special Petition (c) No. 16764 of 1991.

F From the Judgment and Order dated 20.9.1991 of the Punjab and Haryana High Court in C.W.P. No. 14500 of 1991.

Kapil Sibbal, K. Parasaran, R.K. Garg, Ms. Indu Malhotra, Ms. Indu Goswamy, Mahabir Singh and S. Srinivasan for the appearing parties.

G The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. The above Special Leave Petition is preferred by the petitioners of whom petitioner Nos. 1 to 16 are members of the Legislative Assembly of Haryana and petitioner Nos. 17 to 19 are members of the Parliament. They all jointly filed a Civil Writ Petition No.

14500 of 1991 under Article 226 of the Constitution of India before the High Court of Punjab and Haryana, Chandigarh seeking various reliefs, the main of which being to direct an investigation by Central Bureau of Investigation against Ch. Bhajan Lal on the basis of F.I.R. No. 372 of 1987 of Sadar Police Station, registered on the complaint of Dharam Pal, making serious allegations of corruption, misuse of authority etc. and for setting aside the order of the Magistrate discharging the accused, Ch. Bhajan Lal.

The High Court dismissed the petition by a brief order without going into the *locus standi* of the petitioners. The relevant portion of the impugned order is as follows:

"3. The reasons disclosed in the writ petition and canvassed by the learned counsel for the petitioners broadly are, that respondent No. 2 being in the helm of affairs of State, there is a reasonable apprehension in the minds of the people that a fair and impartial investigation in the aforesaid F.I.R. is not expected, more so when respondent No. 2 in the earlier case has already refuted the allegations levelled against him in the affidavit filed by him before the Hon'ble Supreme Court. It has been vehemently stressed by the learned counsel for the petitioners that the State Police Agency will not be in a position to hold free and fair investigation and on that account, the investigation should be conducted by the Central Bureau of Investigation.

4. After hearing the learned counsel for the petitioners and having gone through the writ petition, we do not find any merit in the contentions, as in substance the prayer of the petitioner is to ask this Court to pass an order which may have the effect of running directly counter to the judgment of the Hon'ble Supreme Court as contained in the concluding paragraph of the judgment referred to above. Dismissed."

Hence this SLP.

When the very maintainability of this petition on the ground of *locus standi* of the petitioners was raised, Mr. R.K. Garg, learned senior senior counsel forcibly contended that the perfunctory and mutilated investiga-

A tion, the hasty submission of the Cancellation Report by the Police under
Section 173 of the Code of Criminal Procedure and the unreasoned order
of the Magistrate discharging Ch. Bhajan Lal without application of his
judicial mind - writ large on the face of the final order dated 22.7.91 - are
all under a cloud of suspicion and dust and, therefore, this Court in the
B interest of justice has to step into the matter and direct a fresh investigation
by the CBI. He further contended that Ch. Bhajan Lal by offering the post
of Chairman of Khadi Board of Haryana State had inspired Dharam Pal
to file an affidavit withdrawing the allegations made in the complaint and
that Ch. Bhajan Lal had thus planned very meticulously and ingeniously to
derive the final nail in the coffin of investigation and in that endeavour has
C become successful.

These petitioners were not at all parties to the earlier proceedings
at any stage. Hence, notwithstanding the above submission, we unreservedly
hold that these petitioners have no *locus standi* to approach this Court
for the reliefs sought for in this petition. In this connection, reference may
D be made to the decisions of this Court in *Janata Dal v. H.S. Chowdhary*,
[1992] 4 SCC 305 and *Simranjit Singh Mann v. Union of India and Another*,
[1992] 4 JT 441. The copies of the affidavit of Dharam Pal and the order
of the Magistrate, discharging the accused have been produced before us.
We also sent for the file, containing the said affidavit and discharge orders
E and perused the same.

Though it is true that Dharam Pal who appeared before this Court
supporting the case of the State of Haryana in Civil Appeal No. 5412 of
1990 with full vigour, appears to have suddenly reversed back from his
F earlier stand and given an affidavit withdrawing his allegations. The ques-
tion whether the offering of the post of Chairman of Khadi Board of
Haryana as a *quid pro quo* for tendering the affidavit or not, does not fall
within our province in the present proceeding. Further we do not like to
express any opinion on his conduct except observing that the Court should
not be indirectly used as an instrumentality by anyone to attain or obtain
G any beneficial achievement which one could not get through normal legal
process and that if any one approaches the Court with ulterior motive,
designed to wrench some personal benefit by putting another within the
clutches of law and using the Court as a device only for that end but not
to get any legal remedy, then in such a situation the Court should heavily
come upon such a person and see that the authority of the Court is not
H misused. Neither the State nor the complainant, Dharam Pal has chal-

lenged the Order of the Magistrate discharging the accused, presumably for the reasons that the Police has closed the investigation and sent its Cancellation Report and that Dharam Pal has expressed his desire in his affidavit not to probe into the allegations. We have gone through the entire file as well as the Order of the Magistrate. Except observing that the complainant who initiated the law into motion alleging serious allegations against Ch. Bhajan Lal who was then holding a Cabinet rank in the Central Government, may become liable for criminal and civil liability in case the allegations are not proved. Whatever might have been the motive of Dharam Pal for withdrawal of his complaint, he, after having fought the case up to this Court in quashing proceedings cannot have any justification in requesting the investigating officer not to probe into the allegations and staging a 'walk out' of the Court. On the other hand, he ought to have submitted to the discipline of the Court, especially when he has initiated the proceedings as a public interest litigant.

Be that as it may, having regard to the various facts and circumstances as brought to our notice, we feel that it has become necessary that this Court on its own has to examine the legality of the Order of the Magistrate.

Needless to say, it is not for a Court to keep track of an investigation and watch its day to day progress but, of course, when an investigation culminates into a final report as contemplated under Section 173 of Cr.P.C., then the competent Court enjoins a duty within its authority sanctioned by law to scrupulously scrutinise the final report and the accompaniments by applying its judicial mind and take a decision either to accept or reject the final report. In the present case, that stage has come on the submission of the final report, namely the cancellation report, by the Investigating Officer.

We shall now examine whether the Magistrate has got power to act on the basis of the cancellation report one way or the other under Section 173 of the Code.

In the instant case, the case is registered under Sections 161 and 165 of the Indian Penal Code and under Section 5(2) of the Prevention of Corruption Act, which offences can only be tried by a Special Court. We think it is not necessary to expatiate the proposition of law in this regard but suffice to refer to the decision in *A.R. Antulay v. R.S. Nayak & Anr.*, [1988] Suppl. 1 SCR 1, where in at page 44, the following dictum is laid down:

A "Section 7(1) of the 1952 Act creates a condition which is *sine quo non* for the trial of offences under Section 6(1) of the said Act. The condition is that notwithstanding anything contained in the Code of Criminal Procedure or any other law, the said offences shall be triable by a Special Judges only."

B In the light of the above observation, it was necessary for the Magistrate to have sent the final report to the Special Court which is alone competent to try the case.

C Reference may also be made to *K. Siva Kanchi Reddy v. State of A.P.*, 1991 Andhra Pradesh Law Journal 1, to which one of us (K. Jayachandra Reddy, J.) was a party.

D Reverting to the case on hand, the Magistrate before whom the cancellation report had been placed, instead of acting on it by himself, should have forwarded the same to the Special Judge but he has not done so especially when he has no power to try the offences.

E Under these circumstances, we set aside the order of the Magistrate dated 22nd July 1991 and direct him to transmit all the papers along with the cancellation report to the Special Judge having jurisdiction. The Special judge to whom the entire matter will be transmitted may, after going into the records, pass the necessary orders according to law.

The Special Leave Petition is dismissed subject to our *suo moto* direction as indicated above.

V.P.R.

Petition dismissed.