

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) NO(s). 48 OF 2011

SANJEEV AWASTHI & ANR Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(With appln(s) for directions, stay, amendment of the petition, permission to file addl. affidavit, exemption from filing O.T. and office report )  
(for final disposal)

Date: 11/02/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU  
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Shanthi Bhushan, Sr. Adv.  
Ms. Kamini Jaiswal, Adv.  
Mr. Akhilesh Kalra, Adv.  
Mr. Rohit Kr. Singh, Adv.

For Respondent(s) Mr. Irshad Ahmad, AAG  
Mr. Gaurav Dhingra, Adv.  
Mr. Ashutosh Kr. Sharma, Adv.  
Mr. Vikrant Yadav, Adv.

R.No.9 Mr. R. Basant, Sr. Adv.  
Mr. Shekhar G. Devasa, Adv.  
Mr. V.N. Raghupathy, Adv.

U.O.I. Mr. K. Radhakrishnan, Sr. Adv.  
Dr. Ritu Bhardwaj, Adv.  
Ms. P.L. Nigam, Adv.

Mr. Rishi Malhotra, Adv.

UPON hearing counsel the Court made the following

O R D E R

1. The Petitioners; Sanjeev Awasthi and Shamhu Sharan Ram are seeking following reliefs in this Writ Petition filed under Article 32 of the Constitution of India :

"a) Issue Writ Order or Direction transferring the investigation of case FIR No.35 and 36 of 2011 lodged at Collectorgunj Police Station Kanpur, and the circumstances leading to the lodging of the FIR itself to an independent investigating agency or Central Bureau of Investigation;

b) Issue Writ Order or Direction to the Central Government to provide for the security to the Petitioners and their family members, since there is imminent danger to their life from the state machinery;

c) Pass such further or other order or direction that this Hon'ble Court may deem fit be passed."

2. During the pendency of this Writ Petition, the investigating agency had filed a charge-sheet before the Trial Court. However, this Court, by its order dated 03.05.2011, had directed the learned Trial Judge not to take cognizance of the charge-sheet so filed. The order passed by this Court reads as under:

"We permit the respondents to file the report under Section 173 of the Criminal Procedure Code in the Trial Court subject to the rights that the petitioners' claim in the present proceedings and that the filing of the charge-sheet would not foreclose any option to them in this matter. It is also clarified that notwithstanding the filing of the charge-sheet the Trial Court will not take cognizance thereof till further orders.

....."

3. During the course of proceedings, this matter had come up before this Court again on 08.01.2013. On that date, the learned senior counsel Shri Shanthi Bhushan had made a statement before this Court that the petitioners-herein would make a representation before the appropriate authorities for the purpose of further investigation in the case under Section 173(8) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.) and had requested to grant four weeks' time for that purpose.

4. Keeping in view the request so made by the learned senior counsel, we had adjourned the matter by six weeks.

5. By our order dated 17.07.2013, we had directed the learned counsel for the State of Uttar Pradesh to file an appropriate status report indicating the current position insofar as the investigation said to have been ordered by the State Government some time in the month of May, 2013 is concerned.

6. The investigating agency has filed reports of investigation before this Court. We will refer to the reports dated 12.08.2013 and 17.10.2013 filed by the investigating officer - A.K. Tiwari, Inspector. In the report dated 12.08.2013 the investigating officer had made certain remarks against certain high officials working in the State Government including Secretary to the then Chief Minister. However, in the conclusion, he had stated that the role and the criminal liability of those officers can be conclusively stated after further investigation.

7. In the words of the investigating officer:  
"the role of the criminal liability of officers such as Shri Navneet Sahgal, Secretary C.M., Shri Kunwar Fateh Bahadur Singh, Principal Secretary, Home, Shri Karam Veer Singh the then D.G.P., U.P., Sri Vijay Kumar then I.G. Kanpur and other political dignitaries at whose instance this conspiracy might have been hatched requires further investigation."

8. In the second report dated 17.10.2013, which is the final report, the said investigating officer had not made any reference to the role said to have been played by the aforesaid officers. In fact, he has stated that the petitioners; Sanjeev Awasthi and Shambhu Sharan Ram are not involved in the offences alleged against them before the learned Trial Judge. He has also stated that they will be taking appropriate proceedings before the learned Trial Judge for dropping the proceedings against the petitioners.

9. In the words of the said investigating officer:

"the charge sheet submitted against the accused persons named in the FIR namely, Sanjeev Awasthi and Sambhu shall be withdrawn after obtaining due permission from Hon'ble Court and after completing other legal formalities. No legal action is recommended against Sanjeev

Awasthi and Shambhu in this case."

10. After submission of the final report dated 17.10.2013, the respondents have filed an affidavit dated 25.11.2013. In the said affidavit they have enclosed a letter written by one Sudhir Singh Chauhan, Deputy Secretary, Government of Uttar Pradesh addressed to Additional Director General of Police, Economic Offences Investigation Wing, Lucknow, U.P. as Annexure-I. The said annexure would indicate that the State Government in principle has accepted the final report of the investigating officer dated 17.10.2013.

11. When a query was made to the learned counsel appearing for the State of Uttar Pradesh regarding what action the State has taken against the officers who are implicated by the investigating officer in his report dated 17.10.2013, he would submit that the prosecuting agency has applied for sanction as required under Section 197 of the CrI.P.C. with the State Government and the same is awaited.

12. However, Shri Shanthi Bhushan, learned senior counsel appearing for the petitioners strenuously submits that this Court should take appropriate proceedings against the officers to whom the investigating agency in his report dated 12.08.2013 had made certain allegations.

13. He further contended that this Court, being the highest Constitutional Court, should protect the freedom of all the citizens of this country under all circumstances.

14. The contention of the learned senior counsel appeals to us. But, we cannot be giving the relief sought for by the learned senior counsel for the reason that the investigating officer in his report dated 12.08.2013, though had made certain allegations against the officers and had observed that the role played by them, requires a further investigation and, therefore, nothing positive can be said against them at that stage. Thereafter, a final report is submitted by the investigating officer before this Court. In the said report, nothing is said against those officers.

15. In a case like this, we cannot be conceding to the request of the learned senior counsel who prays that some action should be taken against the higher officials in the State Government.

16. Insofar as the present proceedings are concerned, we are of the opinion that, as of now, the reliefs sought for by the petitioners have become infructuous for the reason that the investigating agency in its final report clearly observes that no case is made out against the petitioners against whom FIRs are filed before the jurisdictional police authorities and cognizance has been taken by the learned Trial Judge. In that view of the matter, the reliefs sought for by the petitioners at this stage need not be granted by us.

17. Since we are inclined to see whether the State Government is serious in taking action against the police officers who were implicated in the final report of the investigating agency dated 17.10.2013, therefore, for that purpose, we want to keep this matter pending before this Court till the State Government takes a final decision insofar as the officers against whom certain allegations are made by the investigating agency. Therefore, call this petition after eight weeks.

(G.V.Ramana)  
Court Master

(Vinod Kulvi)  
Asstt.Registrar