

COURT OF DISTRICT JUDGE, BHOPAL

(Presided by Sh. M.W. Deo)

GAS CLAIM CASE NO. 1113 OF 1986

UNION OF INDIA

(Plaintiff)

Versus

UNION CARBIDE CORPORATION

(Defendant)

ORDER

This order disposes of I.A. No. 19 by the defendant Union Carbide for restraining the plaintiff and its C.B.I. officials from further questioning interrogating or intimidating Shri Sunder Rajan, the Senior Instrumentation Engineer of the Union Carbide as also restraining the CBI officials from putting Sunder Ranjan to a lie detector test.

2. The application (IA NO. 19.), its reply rejoinders, annexures and affidavits filed in its connection almost make a complete record by itself for the restricted work of disposal of this petition.

3. It is not in dispute that at the time of the gas leak tragedy which took place on 2-3rd December, 1984, Shri Sunder Rajan was senior instrumentation engineer in the plant. The CBI have registered as per their reply and affidavit, a criminal case against Mr. Mukund and 4 other persons of the plant vis-a-vis the incident and they are investigating the offence or offences under it.

4. It is also not in dispute that Shri Sunder Rajan was interrogated by the C.B.I. officials at Bhopal from 20th to 25th January, 1987.

5. The grievance of the Union Carbide by this petition (IA. NO. 19) is that Sunder Rajan is being asked to attend the CBI for further interrogation at Delhi and is also threatened to be put to a lie-detector test. It is further alleged that the CBI officials during the aforesaid interrogation between 20th and 25th January, 1987 misbehaved with and intimidated Sunder Rajan. The defendant Union Carbide in a nutshell submits that Sunder Rajan being a key witness to the suit, he cannot under law be further interrogated, questioned or intimidated much less put to a lie-detector test.

6. The plaintiff Union of India denied the allegation of misbehaviour and intimidation on the part of the CBI officials Shri Murarilal and Shri Shukla. The Union of India, plaintiff has also denied any case of issue of a restraint order as prayed by the Union Carbide.

7. It is well settled that if an incident gives rise to investigation of an offence

on the criminal side and filing of a suit on the civil side the investigation can certainly proceed for the simple reason that the statements made to police officers during the course of investigation under section. 161 Cr. P.C are not at all admissible as evidence in a Court of law. At best this material may be used as previous statement for contradicting the witness during cross-examination. That being so, in normal course, the investigation arising out of an incident can go on even if a suit for civil remedy has been instituted out of the said incident.

8. When pointedly asked as to what jurisdiction does the defendant invoke in support of the prayer, Shri F.S. Nariman, learned counsel for the defendant categorically stated that it was 'contempt jurisdiction' and in support of his statement he referred to *Halsbury's Laws of England Vol. 9 page 89*. The relevant part relates to intimidation of a witness.

9. In *Partap Singh and another vs. Gurbux Singh*, (AIR 1962 SC 1172), their Lordships dealt with only interference with or prejudice to parties litigating in a court. This case did not deal with intimidation of witnesses though in the definition of 'contempt' as given by Oswal and reproduced in para 10, a reference to witnesses has only been made. In the case of *Waryam Singh vs. Sadhu Singh*, AIR 1972 SC para 208, circumstances of testing the witness and threat of involvement in various cases were made out. This is to be found towards the end of para 2 where it is mentioned that the witness Charanjeet Lal was beaten and abused because he did not agree to withdraw his support from the complainant. The facts are distinguishable from the case in hand.

10. Reference was also made to cases of *Moorie* 1978 (1) All. E.R. 58 and *Attorney-General* 1968 All. E.R. 326 regarding the statement of law that victimization of witness is contempt of court. Though the principle is indisputable the facts in both these cases were again distinguishable.

11. The question is whether questioning during course of the investigation by CBI of a person who is to be a witness in a pending suit could amount to contempt. It would be a different matter if at the time when such a person was to come to civil court to give evidence or were to be intimidated if he were to speak truth before the court as submitted by Shri Vepa Sarathy, learned counsel for the Union of India, Sunder Rajan has not been prevented from being a witness in the civil suit and it would be absolutely free for him to state full truth before the court as a witness and not support the statement made or extracted without volition of witness by CBI. It is trusted and hoped that CBI will not indulge in intimidation (Illegible).

12. I am inclined to agree with the submissions of the Union of India and hold that there does not appear to be good legal basis for restraining CBI from further interrogating Sunder Rajan.

13. Shri F.S. Nariman, learned counsel for the defendant argued emphatically that putting Sunder Rajan to a lie-detector test was illegal and unconstitutional and cannot be permitted. The learned counsel wanted to draw upon article 21 of the constitution. He did not cite any judicial authority in favour of his proposition. In any case how and the manner in which Sunder Rajan be interrogated during course of investigation of an offence by CBI is a matter which clearly belongs to the domain of the criminal court in whose jurisdiction the investigation falls and not a civil court. I am inclined to hold that such material as is collected during

investigation not being admissible in evidence before this court, this court could not grant the prayer and therefore, it is not necessary to decide the unconstitutionality of the lie detector test.

14. In the result, the application I.A. No. 19 restraining the CBI from further interrogating and questioning Sundar Rajan, is rejected.

Dated : 3.4.1987

Sd/-
(M.W. Deo)
District Judge,
Bhopal