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Did no wrong, court made a mistake: Bharti

Insists He Was Trying To Bring Out Truth In ₹1,600Cr Scam

Naziya Alvi Rahman | TNN



BONA FIDE: Bharti expressed displeasure over the judge's refusal to accept the conversation as evidence

New Delhi: Evading a direct answer on the legality of his action, the city's law minister, Somnath Bharti, on Tuesday argued that his indictment by a court for tampering with evidence as a defence lawyer was "erroneous".

TOI had reported on Tuesday how Bharti was indicted by a CBI court in August last year. Cornered over the report, the minister told reporters, "It was erroneous on the part of the judge to describe my conversation with the witness as tampering with evidence... There is nothing illegal about a defence lawyer holding a normal conversation with a prosecution witness. The transcript of the conversation will reveal that I neither influenced nor intimidated the witness".

He said he was only trying to bring out the truth in the case—a Rs 1,600-crore scam—and expose how CBI was protecting the senior officers involved in it while pinning the entire blame on his client, a desk clerk.

Chief minister Arvind Kejriwal also came out in support of Bharti. "We want the media to play the audio recording (done by Bharti) to the nation. You decide what evidence has been tampered with after watching the recording. We respect the court but would disagree with the

judge calling the sting operation 'tampering' of evidence," he said.

CBI special judge Poonam A Bamba had hauled up Bharti and his client Pawan Kumar—facing prosecution on corruption charges—after CBI accused them of influencing a prosecution witness by speaking to him on phone and discussing the case.

Going into the facts of the case (which is sub judice), Bharti said that in three separate cases of alleged acts of omission and commission by employees of the State Bank of Mysore in 2006, CBI only made his client an accused

whereas the senior officers were made prosecution witnesses.

"They would openly talk in the bank about how they managed to walk free while Kumar was arrested and sent behind bars by the investigating agency. Our recorded conversation with one of Kumar's seniors aimed to unearth the truth as he accepted the same over phone," said Bharti.

The minister repeatedly expressed his displeasure over the judge's refusal to accept this conversation as evidence in court. "Instead, the court sent Kumar (who was then out on bail) back to jail,

accusing him and me of influencing a witness and trying to tamper with evidence," said Bharti.

He also cited an order passed by the previous judge, before whom the chargesheet of the case was filed, expressing discontentment with the CBI probe.

"On July 3, 2012, when CBI filed the chargesheet exempting senior bank employees and making Kumar an accused, the judge, Swarn Kanta, clearly expressed her views that the senior managers (those who were later made prosecution witnesses) should have been arrested by CBI," Bharti added.

Experts say it's a weak defence

Abhinav Garg | TNN

New Delhi: The defence offered by law minister Somnath Bharti to justify his act of reaching out to a prosecution witness during an ongoing trial has left many in the legal community unimpressed.

A few judges and lawyers TOI spoke to say his statement made in the press conference smacks of ignorance of legal procedures. His defence, they argue, is unsustainable and point out how the Delhi high court, followed by the Supreme Court, barred advocate R K Anand from court practice. That was because he, as a defence lawyer, attempted to in-

fluence a prosecution witness in the BMW hit-and-run case.

Bharti's attack on the court that passed strictures against him has also invited criticism since as long as the court order is not set aside or quashed, its observations gain finality.

"Even if the intention of Bharti and his client was noble, to approach a prosecution witness while his deposition is on and discuss the merits of the case, to secretly record the conversation can hardly be viewed as professionally sound. He violated the Bar Council of India's rules for advocates' conduct as he contacted a prosecution witness outside court," a sitting judge said.

Somnath Bharti's attack on the court has invited criticism, for as long as the court order is not set aside or quashed, its observations gain finality

Advocate Shaan Mohan said section 49(1)(c) of Bar Council of India rules specifies that an advocate can't "negotiate with or contact the opposite party outside the court. He can only contact the advocate of the opposite party for any form of communication".

In a release, Bharti said a special leave petition against the order in SC was filed but

withdrawn "because by the time it was to get listed before a bench, cross-examination of B S Diwakar got over and under pressure from Pawan's family I had to file bail application in the lower court... Pursuing in the SC would have meant Pawan would have been in jail at least for a month more. Though it did mean that I had let go my disagreement with lower court and then HC's orders/judgments which, if pursued in SC, has more probability to get turned down but Pawan having come out on bail had made the reason to approach infructuous and thus the injustice inflicted upon Pawan remained unattended."

CM bears brunt of opposition attack

TIMES NEWS NETWORK

New Delhi: Exactly two weeks after winning a vote of confidence with Congress support, the AAP government on Tuesday faced calls for the resignation of its law minister, Somnath Bharti, not only from the opposition BJP but also its 'ally'.

Reacting to a TOI report about Bharti's indictment by a court for tampering with evidence as a defence lawyer, leader of the opposition, Harsh Vardhan, said, "It has been proved that he was caught tampering with evidence in a Patiala House court. Even the judge has observed this. In such a situation, I think the people of Delhi demand Somnath Bharti's resignation, and if chief minister Arvind Kejriwal talks

about ethics, he should sack his minister".

BJP's state president, Vijay Goel, termed Kejriwal's defence of Bharti "shameless" and "shocking". Goel said, "Does Kejriwal want to send a message that his party leaders are above law? If he

does not agree with the verdict, he should go to court. But the argument given in defence of Bharti is unacceptable".

Congress, which has given "outside support" to the government, said AAP must decide on the minister's fate in view of the court order. "The court observation against Somnath Bharti is very serious, and this issue has become even more seri-

ous as Bharti is the law minister... Confidence in the minister has eroded because he himself is not ready to follow the rule of law," Delhi Pradesh Congress Committee said in a statement.

"The manner in which chief minister Arvind Kejriwal is trying to save the minister shows that there is a big difference in his words and deeds," DPCC chief Arvind Singh said, adding that AAP harps on sting operations that suit it but not those that go against it.

Congress Legislature Party leader Haroon Yusuf said, "Kejriwal's statement that they will not take cognizance of the court observation amounts to disrespect for the court. No responsible chief minister could give such a statement".

Review plea can pave way for scrapping BRT

Sana Shakil | TNN

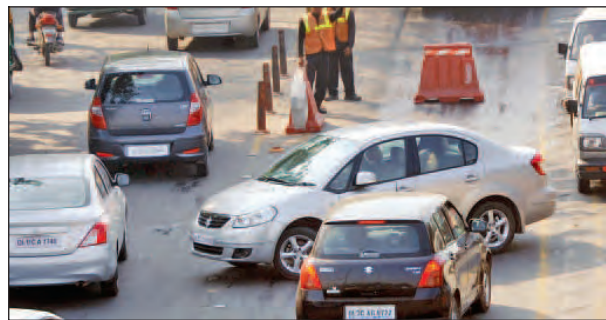
New Delhi: Scrapping the Ambedkar Nagar-Moolchand Bus Rapid Transit (BRT) corridor, which was one of the issues raised by AAP during its poll campaign, should not prove to be more difficult than delivering on power and water for Delhi government. The government has been promising to look into the issue—transport minister Saurabh Bharadwaj had assured TOI—and examine if there are any legal hurdles since Delhi high court had ruled against its scrapping in 2012.

Legal experts feel the government can simply file a review petition to apprise the high court of the government's changed stance on the

issue. "There is no law which says that BRT must exist in Delhi. The high court had only upheld the stand of the then Delhi government," said a senior lawyer who represents the Centre in many cases in high court.

Besides filing a review petition, the government can also pass a resolution and get it approved by the lieutenant-governor. "Courts generally uphold government decisions in policy matters. This is what the court did in October 2012, rejecting an NGO's plea," pointed out the lawyer, who did not wish to be named. He said the government can also commission another study on BRT to back its claim before the court.

Just a week before the as-



EASY TO CROSS LEGAL HURDLES

sembly polls, then chief minister Sheila Dikshit had said she would scrap BRT if she returned to power. That should not be a difficult task for the AAP government. Senior advocate Aman Lekhi said if the government gets serious about it, it can seek a review.

"They have to just inform the court that circumstances have changed and move an application." He said the courts rarely raise any objection on policy matters like these.

Senior advocate KTS Tulsii, who has been representing Delhi government on the issue

and had opposed scrapping of the corridor, admitted that the new government can indeed remove the 5.6km stretch.

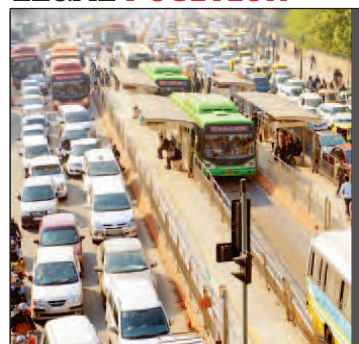
Tulsii, however, added that the government will have to file a review petition seeking modification of the court's 2012 order. The government counsel had strongly opposed removal of the corridor, saying BRT was the only solution for the city's growing needs. "BRT has encouraged people to switch over from private transport to public transport. However, if they want to scrap it, they will have to file a review petition in court seeking modification of the court's earlier order," he said.

Interestingly, senior AAP leader advocate Prashant Bhushan had vehemently ar-

gued in favour of BRT, seeking its continuation. So, it would be interesting to see if AAP manages to do a serious review of the project as promised during the campaign.

On October 18, 2012, a division bench of justices Pradeep Nandrajog and Manmohan Singh had rejected a PIL filed by NGO Nyayabhooni seeking removal of the BRT corridor. On October 26, 2012, the court rejected a review plea filed by the NGO seeking modification of the court's October 18 verdict. In April 2013, the NGO moved a fresh plea seeking scrapping of the corridor on the grounds that BRT was constructed in violation of Master Plan 2021. The matter is pending in court and is likely to be heard later in the month.

LEGAL POSITION



On October 18, 2012 the Delhi high court dismissed an NGO's plea to scrap the BRT after the Sheila Dikshit government defended the project. Can the AAP government still scrap the contentious corridor? Legal experts say nothing prevents it from fulfilling the pre-poll promise

- No law mandates BRT corridor in Delhi
- Govt free to review its policy decisions
- But it must inform high court about its changed stance as the matter is sub judice
- Court unlikely to object to a policy decision
- Cabinet simply has to pass

- a resolution about scrapping BRT and get it approved from the LG
- It can also move review petition or an application for modification of HC order
- It can get a study done to substantiate the claim that Delhi does not need BRT, and submit a copy to HC along with its review petition

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