

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15th January, 2013

+ **W.P.(CRL) 1748/2012**

HARMINDER SINGH & ORS. Petitioner

Through: Mr. Viraj S. Datar, Adv. with
Mr. Surinder Singh, Adv.

versus

STATE OF DELHI & ORS. Respondent

Through: Mr. Rajesh Mahajan, ASC for the State
with Ms. Richa Oberio, Adv.
Mr. S.Saravanan, Addl. DCP/NW.
Inspector Dinesh Kumar, PS Bharat
Nagar.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. By virtue of this Petition under Article 226 of the Constitution of India, the Petitioners seek protection of their life and liberty and transfer of the investigation of FIR No.267 dated 06.12.2012 registered in Police Station Bharat Nagar. This Court by an order dated 14.12.2012 directed the police to summon the Petitioners for investigation in the manner as indicated in the order. The learned counsel for the Petitioners states that in view of the directions given to the police, the Petitioners do not press their prayer 'A' in the Petition. However, the Petitioners, particularly, Petitioner No.1 does not expect fair and proper investigation of FIR

No.267/2012 by the police of PS Bharat Nagar and the local police of North-West District and, therefore, prays for transfer of investigation either to the CBI or to some other unit of the Delhi Police.

2. Before proceeding further, it would be appropriate to have an insight into the allegations/complaint made in the FIR No.267/2012.
3. On 04.12.2012 a report was allegedly made by Petitioner No.1 to DCP North-West to the effect that his son Chanshivroop Singh was an accused in Gitika suicide case. The Petitioner No.1 along with his son used to visit the Rohini Court in connection with the said case. On 2/3 occasions some unknown persons met him and his son there and threatened to shoot them. Some lawyers also met them and falsely prompted them to make a complaint to the Judge (dealing with the suicide case) that the police is threatening them to implicate him and his family members in other cases. He, further informed the police that his son got afraid of the threats and disappeared to some unknown place. Petitioner No.1 is further alleged to have made a complaint that persons at the behest of Govind (brother of Gopal Goel Kanda) were pressurizing him to go to the media and make a statement against the police.
4. According to the Petitioner No.1 he did not lodge the FIR No.267/2012 with the Police Station Bharat Nagar voluntarily. This FIR was lodged by him as dictated and at the instance of the police of PS Bharat Nagar.
5. The allegations leveled in the Petition and the fact that FIR No.267/2012 was got lodged from Petitioner No.1 by the police of PS Bharat Nagar are controverted by the IO. It is stated that infact on 31.10.2012 Chanshivroop Singh filed an application under Section 306 Cr.P.C. for

grant of pardon in the Court and a statement under Section 164 Cr.P.C. was recorded on 07.11.2012 by Mr. Vishal Singh, learned Metropolitan Magistrate. The statement was again recorded on 27.11.2012. The status report filed by the police is extracted hereunder:-

“During investigation of the case the role of Chanshivroop Singh son of Harminder Singh, R/o House No.2030, Sector-71 Mohali (Punjab) came to light. As per the charge sheet filed against Gopal Goyal Kanda & Aruna Chadha the role attributed to Chanshivroop Singh is as under:

“In pursuance of the criminal conspiracy, Gopal Kanda and Aruna Chadha appointed one Chanshivroop Singh as Assistant HR Manager in MDLR Group with the sole objective of ensuring that Geetika remained under the control of Kanda. At the instance of Gopal Kanda and Aruna Chadha Chanshivroop went to Dubai to ensure that Geetika is removed from her job with the Emirates Airlines. He was sent to Dubai under the garb of investigating the issue of forged NOC submitted by Geetika which she had submitted to Emirates Airlines, believing it to be a genuine document and thereby make efforts to ensure her removal from Emirates Airlines. On reaching Dubai, he contacted the HR Department of Emirates but he could not get any favourable response from them.

As per revelations made by Chanshivroop Singh, when he informed Gopal Goyal Kanda and Aruna Chadha of this fact, both the accused sent him a complaint from MDLR Airlines addressed to PS Civil Lines, Gurgaon. Chanshivroop Singh received this e-mail from the e-mail ID of ramkumar@gmail.com with an attachment containing a copy of the complaint against Geetika, purportedly given by MDLR authorities to PS Civil Lines, Gurgaon. He produced this document to the HR Department of Emirates Airlines and Gopal Goyal Kanda also talked to the Emirates authorities. Later, Chanshivroop Singh met Mr. Shirish Thorat, who was working in Emirates in the capacity of head of investigation and security group. Chanshivroop Singh handed

over one letter to him which was issued by MDLR on 03/08/10 by which he was authorized to investigate the said matter. He also gave the copy of a complaint by MDLR Group purportedly lodged by them against Geetika to the SHO, P.S. Civil Lines, Gurgaon, Haryana alleging therein commission of fraud and creation of fake and false experience certificates by Ms. Geetika Sharma as well as taking away some documents and laptop of the company.”

Chanshivroop Singh was arrested in the present FIR No.178/2012 and was released on police bail on 30.10.2012. His father/Petitioner stood the surety for Chanshivroop Singh. The copy of the bail bond dated 30.10.2012 is annexed as Annexure R-1.

On 31.10.2012 Chanshivroop Singh filed an application U/s 306 Cr.P.C. for grant of pardon in the court of Sh. D.K. Jangala ACMM Delhi. His statement U/s 164 Cr.P.C. was recorded on 7.11.2012 in the Court of Sh. Vishal Singh, MM Rohini Courts, Delhi. The statement of accused Chanshivroop Singh U/s 164 Cr.P.C. was again recorded on 27.11.2012 in the court of Sh. Vishal Singh, MM Rohni. The hearing on the application of tender of pardon by accused Chanshivroop Singh was fixed for 30.11.2012, but on that day accused Chanshivroop Singh did not turn up in Court. On 01.12.2012 the surety of Chanshivroop Singh and the Petitioner herein i.e. his father Harminder Singh s/o Sardar Tarlochan Singh appeared in the Magistrates Court and submitted that he was not aware about the whereabouts of his son. He stated that he had last contacted his son on 27.11.2012 and since then he was having no contact with him. Copy of the order dated 01.12.2012 is annexed herewith as Annexure R-2.

On 04.12.2012 the father/Petitioner Sh. Harminder Singh came to the office of the DCP/North West District and lodged a complaint alleging that some unknown persons are threatening him and his son and directing them to meet Govind Goyal S/o Murlidhar Goyal who is younger brother of Gopal Goyal Kanda. On the basis of the above complaint a case FIR No.267/2012 U/s 195A/341/506 IPC

was registered in P.S. Bharat Nagar and taken up for the investigation. Copy of FIR No.267/2012 U/s 195A/341/506 IPC, PS Bharat Nagar is annexed herewith as Annexure R-3.

During investigation it was revealed that Chanshivroop Singh had left India on the intervening night of 27/28 November 2012 for USA via Abu Dhabi by Flight number EY-211 of Etihad Airlines from Delhi on business visa. Copy of the immigration document and the ticket of the accused Chanshivroop Singh are annexed herewith as Annexure R-4 (Colly).

When these facts were brought to the notice of the Court of Ld. ACMM Rohini, the proceeding u/s 306 Cr.P.C. initiated on the application of accused Chanshivroop Singh were dropped on 13.12.2012 by the Hon'ble court of Sh. D.K. Jangla, ACMM. Copy of the said order dated 13.12.2012 is annexed herewith as Annexure R-5.

Inquiry into the disappearance of the accused Chanshivroop Singh, has revealed that during the intervening night of 27-28 of November, 2012, the Petitioner Harminder Singh stayed in Hotel Aira Xing, Pahar Ganj, Delhi along with his son Chanshivroop Singh and his brother-in-law Hardevinder Singh. Two friends of Chanshivroop Singh namely, Sudhanshu Karol and Avinash Rawat S/o Gajender Singh R/o H.No.422 Sec.37A Chandigarh also stayed in the same hotel with them. Their movement was recorded in the CCTV camera installed in the hotel. The recording of CCTV footage was obtained and studied. It revealed that on the intervening night of 27-28 of November, 2012 they left Hotel Aira Xing for Airport at around midnight. The surety/Petitioner and the brother in law of Chanshivroop had ensured that the immigration clearance was done. After seeing off his son and his friend Sudhanshu Karol they came back to the same hotel. His brother in law left the hotel early morning hours and the surety i.e. the father of the accused Chanshivroop Singh left for Mohali, Punjab at around 11.00 AM on 28.11.2012 along with Avinash Rawat. Copy of the 161 Cr.P.C. statement of Avinash Rawat dated 10.12.2012

has been annexed herewith as Annexure R-6. The CDR details of the surety Harminder Singh and other family members show that the family members of the accused Chanshivroop Singh and Petitioner are in constant touch with one Vishnu Tatiya who is a relative/close aide of accused Gopal Goyal Kanda and head of the purchase/sale department of MDLR Group.

Details that have emerged during the investigation reveal that the Petitioner Sh. Harminder Singh made a false statement on 01.12.2012 before the court of Ld. ACMM, Sh. D.K. Jangala that, he had no contact with his son/accused Chanshivroop Singh, but the Petitioner Harminder Singh went along with his son and son's friend to the Airport and facilitated them to flee from India. Moreover, on the analysis of CDRs, the Petitioner Harminder Singh had contacted Vishnu Tatiya on 29.11.2012 i.e. the next day of the journey of accused Chanshivroop Singh. It is further submitted that Petitioner Harminder Singh never been called to Police Station till the disappearance of his son/accused Chanshivroop Singh on 27.11.2012. After disappearance of his son Petitioner came himself to attend the court to tell the whereabouts of his son being a surety of his son. Only after absconding of his son from India he had been issued a notice on 01.12.2012 by the undersigned who directed him to produce accused Chanshivroop Singh within 10 days as he is the surety of Chanshivroop Singh. The allegation made by the Petitioner that passport of the accused Chanshivroop Singh son of Petitioner has been confiscated by the Respondent is denied. The allegation about making calls to the Petitioner from the phone no.8750870262 on 05.12.2012 to threaten them is wrong and denied as a call has been made only to confirm about whether Chanshivroop Singh was coming to attend the court date i.e. 06.12.2012 or not.

Further Chanshivroop Singh is liable to be proceeded against as an accused and the acts of Chanshivroop and the Petitioner show the overarching influence of the co-accused Gopal Goyal Kanda

and Aruna Chadha, who using their resources and associates such as Govind Goyal and Vishnu Tatiya have ensured that Chanshivroop Singh is not available for investigation and absconded. The present petition is an afterthought and filed as an abuse of process of the Court.

It is further submitted that the Petitioner and his family members were never called in the Police Station, the Petitioner is leveling false allegations against the police.

Keeping in view of the above said facts and the circumstances it is requested that the petition is without merit and deserves to be dismissed.”

6. It is urged by the learned counsel for the Petitioners that in view of the status report, it would not be fair that the investigation into FIR No.267/2012 is conducted by the police of PS Bharat Nagar. On the other hand, Mr. Rajesh Mahajan, learned Additional Standing Counsel for the State submits that transfer of investigation indirectly casts aspersion on the working of the Investigating Officer and, therefore, the Court should be slow in transferring the investigation. The learned counsel places reliance on *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors., (2010) 3 SCC 571* and *Vinay Tyagi v. Irshad Ali @ Deepak & Ors., Criminal Appeal Nos.2040-2041/2012* decided by the Supreme Court on 13.12.2012.
7. The authorities cited are not attracted to the facts of the instant case. In *Committee for Protection of Democratic Rights* the Supreme Court dealt with the power of the High Court to direct investigation by the CBI. The Supreme Court held that the power of the High Court under Article 226 of the Constitution of India cannot be curtailed or diluted by Section 6 of the Delhi Special Police Establishment Act, 1946. It held that the High

Court does have the power to order investigation in appropriate cases but the power must be used sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility to and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Similarly, in *Vinay Tyagi* the Supreme Court held that an accused cannot have a choice to have investigation carried by a particular agency.

8. In the instant case, the Petitioners do not want investigation by a particular agency. There are allegations and counter allegations by the first Petitioner on the one hand and by the police of PS Bharat Nagar on the other. According to the IO, Petitioner No.1 was a party to the escape of Chanshivroop Singh. He was accompanying him in hotel Aira Xing, Pahar Ganj, Delhi and had accompanied the earlier said Chanshivroop Singh to the airport on the night intervening 27/28 November 2012 when he left India.
9. Therefore, without doubting the fairness of investigation carried out by the IO under the supervision of the senior officers of the North-West District, it would be fair and instill confidence to both the parties and the public that the investigation is done by the Crime Branch of Delhi Police.
10. Accordingly, I direct that investigation of FIR No.267/2012, dated 06.12.2012 registered under Section 195A/341/506 IPC at Police Station Bharat Nagar shall be carried out by an officer not below the rank of Assistant Commissioner of Police in the Crime Branch of Delhi Police. The investigation shall be supervised by an officer not below the rank of Additional Commissioner of Police.

11. The Petition is disposed of as directed above.

(G.P. MITTAL)
JUDGE

JANUARY 15, 2013
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