

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

+ **W.P.(CRL) 318/2013**

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Date of decision: 23.05.2014

KRISHAN KUMAR

..... Petitioner

Through: Mr. Aaditya Wadhwa with Mr. Sahil
Mongia, Advocate.

versus

STATE & ORS.

..... Respondent

Through: Mr. Saleem Ahmed, St. Counsel.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. This is a petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. whereby petitioner is seeking transfer of investigation of FIR No. 216/2012, under Section 302 IPC, P.S. Crime Branch, to CBI.

2. The petitioner is a Head Constable in Delhi Police. His son Manish Kumar, the deceased, aged 23 years was also serving in Delhi Police as a Constable and was posted at 7th Battalion, DAP, Malviya Nagar, Delhi. It is stated that officers/staff of 7th Battalion are provided residential accommodation in a 8 square acre compound in Malviya Nagar. It is stated that the said compound is a highly guarded and protected place as it is occupied by the officers and family members of Delhi Police. It is further stated that several officers are residing in a similarly built one and a half

storey buildings. These buildings have a ground floor and half of first floor which have rooms and remaining half of 1st floor is the terrace. The deceased was residing at 1st floor of one such building and was sharing his barrack with 4-5 other occupants. It is alleged that 20-25 officers of Delhi Police were staying in that building at the relevant time.

3. On 3.5.2012, at about 8.00 AM, petitioner was informed that the body of his son was lying in a water tank located on the terrace on the first floor of barrack building. It is alleged that the water tank in which body of deceased was found was having capacity of 1000 litres and was 4.5 ft. deep.

4. On getting information, petitioner reached AIIMS where body of his deceased son was taken for post mortem. The petitioner was shocked to see that none of the colleagues of his son were there who could have informed him of the circumstances in which his son had died.

5. On 7.5.2012, petitioner went to the spot i.e. PTC Malviya Nagar and on questioning, he was informed by the police personnel present there that the water tank on the terrace of PTC from where body of deceased was recovered, was only used for washing utensils and other domestic purposes and water from the said tank was not used for drinking and bathing. The said information was provided to him by the personnel who used to reside with the deceased in the barrack itself. On further inquiries, the petitioner was informed that in the night intervening 2/3rd May, 2012, upto 0300 hours the deceased was with his colleagues (batch mates) in the barrack and thereafter nobody could provide him vital information as to how deceased had died. Petitioner has alleged that the involvement of colleagues in the same barrack cannot be ruled out. It is alleged that when the petitioner had seen the body of deceased at AIIMS, there were injury marks on the fore-

head and neck.

6. Petitioner has alleged that after the post mortem was conducted, body was handed over to him and he had taken the body to village for cremation. There also, none of the officers or officials of 7th Battalion or anybody from the department had come to pay condolences to him. The petitioner has alleged that the investigation has not been properly conducted. The deceased was serving as a constable in Delhi Police. It is alleged that there is involvement of personnel of Delhi Police in the murder of his son. It is alleged that the deceased was killed by drowning him in the water tank. It is further stated that it is the legitimate right of the petitioner to have fair investigation of the matter. It is submitted that till today the respondents have not been able to find any clue in the case. It is alleged that since as per petitioner, there is involvement of the colleagues of deceased who also work in Delhi Police, the investigation done by the respondents is not fair and proper and the respondents are intentionally not naming the culprits. It is, therefore, prayed that the investigation of FIR No. 216/2012, under Section 302 IPC, P.S. Crime Branch, be handed over to the CBI.

7. The respondents had filed the status reports on different dates. The status report dated 12.3.2014 is filed by Sh. S.S. Gill, ACP, Anti Robbery Cell, Crime Branch, Delhi, wherein it is stated that the deceased was posted in 7th Battalion, Malviya Nagar, Delhi Police. On 3.5.2012 his dead body was found in a water tank of first floor of barrack of 7th Battalion. Initially, inquest proceedings into the death of Constable Munish Kumar i.e. deceased were done vide DD No.33 B dated 3.5.2012 in P.S. Malviya Nagar. Later on, a complaint was filed by the petitioner suspecting foul play into the death of his son which was marked to the Crime Branch, Delhi, for

conducting investigation into the allegations levelled by him. In the complaint, petitioner had alleged that he was not satisfied with the cause of death as narrated to him. He suspected that someone had conspired to kill his son by drowning him in the water tank. On the basis of his complaint, FIR was registered and investigation was taken up. In the status report, the details of injuries as per post mortem are given which are as under:-

“(a) Hematoma of size 1.5X1.5 cm of faint reddish colour preset over right side of forehead, 1 cm above the middle of the right eye brow.

(b) A faint brown colour horizontal mark of length 8 cm and width 0.5 cm present on the lower part of neck on the anterior aspect. The mark is 2 cm above the suprasternal notch on the midline. The above mark is devoid of any abrasion and parchmentisation. On dissection of neck, no hematoma and extravasation is found in the underlying soft tissue. The neck muscles and thyroid complex are found intact.”

8. It is also stated that the expert had inspected the scene of occurrence and opined that no sign of struggle, inside and outside the water tank, were observed. No marks of dragging were observed near the tank. The viscera was sent to CFSL but no poison could be detected in the viscera. It is further alleged that during investigation it was also revealed that on 2.5.2012 deceased was suffering from fever and had gone to a Doctor at Rohtak who had suggested ‘vidal test’ to him. Dr. Vijay Verma of Nursing Home, Rohtak, was examined during the course of investigation who had stated that the deceased was suffering from typhoid. The police officials who were residing with the deceased were also interrogated. During interrogation it was revealed that they were using the water from the water tank with the

help of bucket as no tap was attached and the water from that tank was being used for utensils cleaning and bathing. It was also disclosed that deceased was suffering from fever from the last 4/5 days. They further stated that they had seen him awake in the intervening night of 2/3rd May at around 12.30 midnight. It is alleged that Constable Om Prakash was the first person who had seen the dead body of Ct. Manish Kumar when he had gone to take water from the tank. He had informed the same to the Duty Officer and local police was also called. They immediately reached the spot and the deceased was taken out from the tank. Due to muddy water, the trouser of the deceased was not noticed by SI Raj Kumar while taking out the body. The trouser was noticed by the staff of 7th Battalion and same was taken into possession by SI Raj Kumar on 09.5.2012. The spot was got videographed. The height of the tank wherein body was found is 4'2'' and diameter was 15'5''. The deceased was wearing T-shirt, banyan and underwear. One slipper was found inside and one outside the tank. It is stated that there were five compartments in the barrack and the deceased was sharing compartment with Ct. Sher Singh (PIS No.28108323), Ct. Naresh Kumar (PIS No.28107304), Ct. Rajesh Kumar (PIS No. 29101609) and Ct. Vikas Kumar (PIS No.28107007). The aforesaid police officials were interrogated but nothing incriminating was found. The names of other police officials who were interrogated, have been given in the status report.

9. In the above referred status report it is stated that all the friends of deceased were interrogated but nothing incriminating could come out. Even their polygraph test was got done from 01.4.2013 to 5.4.2013. But nothing relevant could come out. The CDRs of two mobile phone numbers 9990469878 and 9802242010 which were being used by the deceased were

got analysed. It is alleged that investigation is being carried out meticulously and the petitioner is also informed about the same from time to time.

10. Another status report dated 23.7.2013 was filed by Inspector Sukhvinder Singh of Crime Branch wherein it is stated that polygraph examinations of 5 suspected persons were collected, however, analysis and evaluation of those reports does not disclose deceptive response from any of the suspects.

11. During the course of hearing, learned counsel for petitioner submitted on 19.11.2013 that four constables of 7th Battalion had died in suspicious circumstances few days after the death of son of petitioner. Thereafter, this Court vide order dated 19.11.2013, ordered for filing a status report as to whether the submission made was factually correct or not. Thereupon, a status report dated 16.12.2013 was filed wherein it is admitted that four incidents of death (including the present case) had taken in the 7th battalion, Malviya Nagar, Delhi wherein police personnel posted in the 7th Battalion, Delhi Police had died. It is stated that in one case the alleged incident had occurred at Haryana. However, it is alleged that the cause of death and timings of these cases are different and the same have nothing to do with the present case. It is alleged that in respect of death of Constable Dinesh Kumar, FIR No.166 dated 7.5.2012, under Section 302 IPC, P.S. Malviya Nagar, Delhi was registered wherein one Constable Sunil Kumar had fired a shot at him from the service revolver of Constable Kalu Ram in the barrack. It is stated that investigation is complete, charge-sheet has been filed and matter is going on in court and is at evidence stage. Regarding death of H.C. Vishram Singh, it is submitted that his body was found near the 'Cot' of building of 7th Battalion, Malviya Nagar on 23.5.2012 and thereafter

necessary investigation was done. It is alleged that no foul play was suspected in the death of H.C. Vishram Singh. However, viscera along with other exhibits were deposited in the FSL, Rohini, Delhi for seeking expert opinion to rule out poisoning/intoxication and inquest proceedings are pending for want of expert opinion about the viscera. About the third death i.e. murder of Constable Devinder, it is alleged that FIR No. 252 dated 3.9.2012 under Section 364/302/201/216 IPC read with Section 25 of Arms Act, P.S. Beri, District Jhajjar, Haryana has been registered on the statement of one Narinder. The accused persons have been arrested and charge-sheet has been filed in the concerned court.

12. The learned counsel for petitioner has submitted that the height of the deceased was 5'11" and his body was found in a water tank of 4'2" height. It is submitted that the post mortem report shows injuries on his body which indicates that some sort of struggle had taken place while forcing the deceased into the tank. It is submitted that at that time 20/25 officials of Delhi Police were sleeping about 10 metres away from the place of incident i.e. where the water tank was kept. It is not believable that nobody could hear the struggle. It is submitted that since the officers of Delhi Police are in the area of suspicion, the possibility of their conducting the investigation fairly can't be ruled out. It is submitted that it is not a case of suicide as is projected by the Delhi Police. It is not believable that the deceased who was 5'11" would commit suicide by drowning himself in a water tank of 4'11" as is alleged by respondents. It is further submitted that there is more than 100 days unexplained delay in the registration of FIR. The crime team reached the scene of crime after 4 days i.e. on 7.5.2012. Further, the trouser of the deceased was found in the water tank itself i.e. on 09.5.2012 whereas

his dead body was recovered on 3.5.2012 and the crime team inspected the spot on 7.5.2012. It is further submitted that there is murder of another Constable i.e. Ct. Dinesh Kumar at point blank range in the same compound on 07.5.2012. One H.C. Vishram Singh is alleged to have committed suicide on 23.5.2012 in the same compound. The other incident had also occurred wherein a constable of same battalion was murdered at Haryana on 28.8.2012. It is submitted that all these occurrences point a needle of suspicion on the officials of Delhi Police and suggest that there is some foul play. It is submitted that, keeping in view the other incidents, as are stated above, having taken place in a short span of time in 7th Battalion after the incident of present case and also considering the lapses in the investigation, it will be appropriate that investigation is done by CBI. It is further submitted that since the officers of Delhi Police are in the area of suspicion, it will be appropriate to hand over the investigation to an independent agency i.e. CBI. It is submitted that even if Delhi Police would carry out the investigation fairly, the same will lack credibility as there are allegations against the officials of Delhi Police. The learned counsel for petitioner has relied upon State of West Bengal & Ors. v. The Committee for Protection of Democratic Rights, West Bengal and Ors.: (2010) 3 SCC 571 and R.S. Sodhi v. State of U.P. and Others.: 1994 Supp.(1) SCC 143.

13. On the other hand, learned counsel for respondents has submitted that the thorough investigation has been done in the matter, the details of which have been given in different status reports filed, as are referred above. The investigation is being carried out in a fair manner. A large number of police officials/suspects have been interrogated. The other incidents as are stated above have also been thoroughly investigated. There is no reason as to why

the present case will not be investigated in a fair and proper manner. It is submitted that as per investigation carried out, present is a case of suicide.

14. I have heard learned counsel for the parties and gone through the material on record including status reports of different dates filed by respondents.

15. The petitioner i.e. father of the deceased is not satisfied with the investigation carried out by Delhi Police. The reasoning has also been given which are discussed in detail in the submissions of Ld. counsel for petitioner, as such is praying for investigation by CBI.

16. Learned counsel for petitioner has placed reliance on *State of West Bengal & Ors. v. The Committee for Protection of Democratic Rights, West Bengal and Ors. (2010) 3 SCC 571*, wherein the issue referred for the opinion of the Constitution Bench of Supreme Court was whether the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can direct the CBI established under the Delhi Special Police Establishment Act, 1946 (for short “the Special Police Act”) to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State, without the consent of the State Government.

17. The Constitution Bench, after adverting to the required factual details, rival contentions and the relevant constitutional provisions has concluded as under:

“45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have

been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

18. After saying so, the Constitution Bench has clarified that this extraordinary power must be exercised sparingly, cautiously and in exceptional situations. The relevant portion of the judgment is reproduced as under:-

“46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility 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. Otherwise, the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

19. In **R.S. Sodhi v. State of U.P. and Others.: 1994 Supp.(1) SCC 143,** on which reliance has been placed by Ld. counsel for the petitioner, the Supreme Court observed:-

“...We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation.”

(emphasis supplied)

20. In the above-referred case, the allegations were against the local police personnel. The apex court felt that no matter how thorough and honestly the local police may carry out the investigation, the same will lack credibility as allegations were against them. The Supreme Court thought it both desirable and advisable and in the interest of justice to entrust the investigation to CBI so that it may complete the investigation at an early

date and it was clarified that the Supreme Court merely acted in public interest.

21. It is admitted position that three more incidents of death of police personnel of 7th Battalion, Malviya Nagar, Delhi, had taken place immediately after the incident of present case. Out of which two cases are of murder wherein charge-sheets have already been filed against the culprits. The third one is alleged to be of suicide. The details of which have already been given above. The status reports filed from time to time by the respondents have also been perused. The local police has already carried out the investigation and according to it present is a case of suicide. The ld. counsel for petitioner has pointed out certain defects in the same which are noted in the submissions of the petitioner. However, it will not be appropriate to comment on the same. Accordingly, the same are not discussed herewith.

22. Considering the peculiar facts and circumstances of the present case, the other incidents having taken place at PTC, Malviya Nagar and also considering that the petitioner is suspecting the involvement of Delhi Police personnel, it is appropriate to entrust the investigation to an independent agency like CBI as is prayed so that complete justice is done to the petitioner and the petitioner and his family feel assured that independent agency is looking into the matter and finality of the investigation may bear credibility. Accordingly, the investigation of FIR No. 216/2012, under Section 302 IPC, P.S. Crime Branch is transferred to CBI with the direction to proceed further in the matter. The respondents are directed to hand over all the records of the present case to the CBI within four weeks and the CBI shall investigate all aspects of the case and file a report to the concerned

court having jurisdiction within a period of six months from the date of taking over of the investigation.

23. It is made clear that aforesaid order is passed only for the limited purpose of transferring the investigation to the CBI and shall not be construed as any expression of opinion on the merits of the case.

24. The writ petition stands disposed of.

VEENA BIRBAL, J

MAY 23, 2014

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