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**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.P.(C.) No.117 of 2019

Smt. Sukham Yaipha Leima, aged about 42 years, W/o late Sukham Sunil Singh, a resident of Yairipok Laimanai, P.O. Yairipok, P.S. Andro, Imphal East District, Manipur, PIN – 795149.

..... *Petitioner/s*

– Versus –

1. The Union of India through the Defence Secretary, Ministry of Defence, Government of India, Central Secretariat, South Block, New Delhi – 110001.
2. The Home Secretary, Ministry of Home Affairs, Government of India, Central Secretariat, North Block, New Delhi – 110001.
3. The Commanding Officer, 7 Assam Rifles, C/O 99 APO.
4. The State of Manipur through the Chief Secretary, Government of Manipur, Manipur Secretariat, South Block, P.O. & P.S. Imphal, Imphal West District, Manipur, PIN – 795001.
5. The Director General of Police, Manipur, Police Headquarter, P.O.&P.S. Imphal, Imphal West District, Manipur, PIN – 795001.
6. The Superintendent of Police, Thoubal District, P.O. & P.S. Thoubal, Thoubal District, Manipur, PIN – 795138.

.... *Respondent/s*

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner : Mr. M. Rakesh, Advocate

For the Respondents : Mr. S. Samarjeet, Sr. PCCG for the Central Government
Mr. RK Umakanta, GA for the State Government

Date of Hearing : 01.08.2023

Date of Judgment &
Order : **14.08.2023**

JUDGMENT & ORDER
(CAV)

(A. Guneshwar Sharma, J)

[1] The petitioner herein has filed the present petition under Article 226 of the Constitution inter alia praying for a compensation of Rs.20,00,000/- (Rupees twenty lakhs) for unjustified killing of her husband namely Sukham Sunil Singh by personnel of 7 Assam Rifles on 21st May, 2001 and to punish the involved personnel after entrusting the criminal investigation to an Independent Agency like Central Bureau of Investigation (CBI) or National Investigation Agency (NIA). The prayer in the writ petition is reproduced as below:

- (i) to admit this writ petition and issue Rule Nisi;
- (ii) to issue a writ in the nature of Mandamus directing the Respondents to pay Rs.20,00,000/- (Rupees twenty lakhs) only as compensation to the Petitioner for their illegal action of capturing and subsequent killing of her husband namely Sukham Sunil Singh in a fake encounter;
- (iii) to issue a writ in the nature of Mandamus or any other appropriate writ or order or direction directing the Respondent No.4 to 6 to hand over the investigation into the killing of the Petitioner's husband to an independent investigating agency like Central Bureau of Investigation (CBI) or National Investigation Agency (NIA) so that it could proceed with the investigation and make all attempts to book the culprits, who were involved in the arrest and subsequent killing of the Petitioner's deceased husband namely Sukham Sunil Singh in a fake encounter;
- (iv) to issue any other appropriate Writ or order or directions which the Hon'ble court deems fit and proper in the facts and circumstances of the case.
- (v) *in the interim* to issue a direction directing one of the District Judges or any other Senior Subordinate Judicial Officer to cause a fact finding inquiry into the illegal action of capturing and subsequent killing of the Petitioner's husband namely Sukham Sunil Singh without assigning any lawful reason.

[2] The brief fact of the present petition is that on 21.05.2001, the petitioner's husband namely Sukham Sunil Singh was killed by personnel of 7 Assam Rifles allegedly in a fake encounter and thereafter, a false and fabricated report was lodged to the Officer-in-Charge, Thoubal Police Station. Accordingly, an FIR being FIR No. 71(5) 2001 TBL P.S. U/S 121/121-A/307/120-B IPC, 13 UA(P) Act, 25(1-B) A Act, 6(1-A) Indian W/T Act, was registered against her deceased husband.

[3] The petitioner submitted a representation dated 21.05.2001 to the Deputy Commissioner, Thoubal to inquire into the facts which led to the killing of her husband namely Sukham Sunil Singh and to punish the guilty persons as per law.

[4] The petitioner submitted a representation dated 30th July, 2018 to the Director General of Police, Manipur requesting for registration of criminal case against the personnel of 7 Assam Rifles who were involved in the killing of her husband namely Sukham Sunil Singh. It is stated that nothing is done with the representation/complaint lodged by the petitioner to the Deputy Commissioner, Thoubal as well as to the Director General of Police, Manipur. It is stated that the petitioner has 2(two) daughters. As the respondents had failed to do any necessary step regarding the

representations submitted by the petitioner, she approached this Court for justice by praying for relief as reproduced above.

[5] The Central Government filed counter affidavit inter alia stating that the husband of the petitioner namely Sukham Sunil Singh was killed in an encounter by an ambush party consisting of personnel of the 7 Assam Rifles on 21.05.2001. When he was challenged to stop his scooter along with his accomplice tried to run away and was killed. Arms, ammunition and other articles were recovered. It is denied that the husband of the petitioner was innocent and stated that he was a member of an underground organization.

[6] The State also filed counter affidavit denying the allegation in the main petition. It is stated that the petitioner is put under strict proof that her husband was abducted and subsequently killed by 7 Assam Rifles on 21.05.2001. It is further stated that the incident took place on 20.05.2001 and the writ petition is filed only in the month of February, 2019 after a gap of almost 18 years and the petition is hopelessly time bar. The State Respondent considered the representation submitted by the petitioner after a delay of more than 17 years. The State authority made a preliminary inquiry instead of directly registering FIR and in the inquiry, the petitioner did not co-operate and participate in the inquiry. The representation dated 21st May,

2001 was not submitted to the Office of the Superintendent of Police, Thoubal, the Officer-in-Charge of Thoubal Police Station and the Officer-in-Charge of Yairipok Police Station. No GD entry or any entry was found for the alleged representation dated 21.05.2001 in the in the aforesaid such police stations. It is stated that the petitioner has not explained 17 years in approaching the Court for filing complaint and praying for dismissing the writ petition.

[7] Heard Mr. M. Rakesh, learned counsel for the petitioner, Mr. RK Umakanta, learned GA for the State Respondent and Mr. S. Samarjeet, learned Sr.PCCG for the Central Government.

[8] Mr. M. Rakesh, learned counsel for the petitioner submitted that it is informed that final report is submitted in connection with the FIR registered by the Assam Rifles' personnel, but no FIR has been registered on the complaint lodged by the petitioner herein for the death of her husband. It is submitted that exercising extraordinary power, this Court may direct CBI or NIA to take up the matter, investigate and punish the culprits.

[9] Learned counsel for the Respondents refers to a common order dated 14.01.2020 passed by a Division Bench of this Court in W.P.(C) No.927 of 2018 and W.P.(C) No.928 of 2018 while observing Para 17 that in a matter

relating to fundamental right to life, the petitioner cannot be non-suited only on delay and since the matter involved disputed questions of fact, the petitioner was directed to approach competent Court of jurisdiction under the provisions of the Cr.P.C. Para 17 of the common order dated 14.01.2020 passed in W.P.(C) Nos.927 and 928 of 2018 is reproduced below as:

"17. Considering the above factual backgrounds, it is clear that in both cases, there appears to be undue delay on the part of the petitioners in seeking the legal redress but since they are pleading on fundamental right to life, we are not inclined to non-suit the applications of the petitioners. In the facts of the present cases, the version of the petitioners and the denial by respondent No.2 are in the realm of disputed facts. The nature of incident as alleged by the petitioner is denied by the respondent No.2 in a very clear and categorical term and the final report of police has been filed stating that there is no clue. All these reference were placed before the Court of competent jurisdiction and hence, if the petitioners have any material to support the further proceeding against the armed personnel as alleged by them, then, the law provides a forum before the Criminal Court in terms of the Code of Criminal Procedure, 1973 despite the fact that the final report of the police has been filed stating that there is no clue in the case. The petitioners will be entitled to approach the Court of competent jurisdiction to lay

proper material so as to enable the Court to take cognizance of the offence if there is material to justify the same.”

[10] We have considered the fact of this case minutely, the submissions of the learned counsels for the parties and materials on record.

[11] The relief prayed for in the writ petition is for payment of compensation for the death of the deceased and investigation of the alleged fake encounter by CBI or NIA. It may be noted that in the case of **Priyanka Srivastava and Ors. Vs. State of U.P. and Ors.** reported as **(2015)6SCC287: MANU/SC/0344/2015**, a Division Bench of the Hon'ble Supreme Court held that a person, who is aggrieved by non-registration of FIR in connection with a cognizable offence by the police, can approach the concerned Magistrate under Section 156(3) CrPC for directing the police to investigate the matter. Relevant Paras are reproduced below as:

24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above

law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction Under Section 156(3) Code of Criminal Procedure and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

25. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the Respondent No.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the Appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant No.1. We are only stating about the devilish design of the Respondent

No.3 to harass the Appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application Under Section 156(3) Code of Criminal Procedure is a simple application to the court for issue of a direction to the investigating agency. We have apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.

26. At this stage it is seemly to state that power Under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

27. In our considered opinion, a stage has come in this country where Section 156(3) Code of Criminal Procedure applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the

veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

We have already indicated that there has to be prior applications Under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application Under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate Under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence

cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

[12] We are of the view that the present writ petition can be disposed of with the observation that the petitioner herein may approach the competent Court for an appropriate application under Section 156(3) Cr.P.C. for initiating investigation by the police in connection with the death of her husband in the alleged fake encounter by personnel of the 7 Assam Rifles. When such application under Section 156 Cr.P.C. is filed, the concerned Magistrate shall examine the matter on merit and proceed as per law. The petitioner is at liberty to approach again any competent Court of jurisdiction including this Court for the compensation as prayed for, if need arises in future. With this observation, the writ petition is disposed of. No costs.

JUDGE

ACTING CHIEF JUSTICE

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